THE PRINCIPLE OF NON-INTERVENTION AND
INTERNATIONAL ORDER

by

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This thesis is my own original work.

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Introduction

What provoked this enquiry was the prevalence of the view that the contemporary world is not a world in which a principle of non-intervention can obtain in international relations. The argument supporting this view takes two forms. One is that developments in international law in the twentieth century - the admission of the individual into international society as a subject of the law of nations, the progressive civilization of the state by law, and the emergence of international organizations as authorities, in embryo, above the state - either have undermined or are in the process of eroding the order of sovereign states in which the principle of non-intervention had meaning. A second form of the argument draws attention not directly to the erosion of the law of sovereign states, but to changes in the political environment in which international law is formed. This argument has it that the polarization of power in the international system after the Second World War, and the ideological conflict between the principal powers, has put an end to that international system of balance among many which incorporated a principle of non-intervention as an integral part of its working. The ultimate purpose of this thesis is to reply to these arguments, to demonstrate not merely the persistence of the principle of non-intervention in the vocabulary of international relations, but its continuing contribution to international order.

In approaching this task, three sorts of questions present themselves. There is firstly a question about norms; about why a principle of non-intervention has been asserted as part of the law of nations, from what sources it derives and why it ought to be observed. There is secondly an historical question about whether states, in the past and in the contemporary world, can be said to have conducted their foreign relations according to the principle of non-intervention, and about the forces that seemed to compel adherence to it or divergence from it in particular cases. There is thirdly a sociological question about the function the principle performed and performs in the foreign policies of states, and about the functions the principle can
be said to fulfil in the society formed between states. It is by attention to these questions that the argument of the work will be developed.

Part I of the thesis is about definition; it will try to indicate the major features of the event called "intervention" in international relations, and suggest what is meant by a principle of non-intervention. Part II is about the history of the idea of non-intervention. It will trace the origins and derivation of the principle of non-intervention through the treatises on international law. It will go on to examine the espousal of the idea of non-intervention as a theory about how international relations ought to be conducted if the best interests of states were to be served and peace among them to be achieved. And finally, it will look at the history of non-intervention in the practice of states: at doctrines of non-intervention proclaimed by statesmen, at the extent to which their policies conformed to their declared doctrines and to a principle of non-intervention held to exist apart from the glosses put upon it by particular states, and at the functions the principle of non-intervention performed in the foreign policies of states - the place it filled in their doctrinal armouries.

Part III is about the theory and practice of non-intervention in contemporary world politics. The chapter on the Soviet Union examines the place of the principle of non-intervention in Soviet foreign policy from the Revolution to the present-day: from the acceptance of the rule in response to the problem of maintaining the Soviet position as a state in a world of states, to the elaboration of a Soviet doctrine of non-intervention in response to the problems presented by the establishment of other Communist states after the Second World War. The chapter on United States doctrine and practice since 1945 studies the fate of an American doctrine of non-intervention which, born and nurtured in an atmosphere of non-participation in world politics, was now tested against American participation in and domination of international politics. The last chapter of this part looks at the principle of non-intervention in the forum of the United Nations, a forum in which many states agreed on the importance of the principle, but few on its
scope and content. This chapter will consider the different interpretations of the principle favoured by the states of the West, the Communist states, and the states of the Third World.

Part IV is about the part played by the principle of non-intervention in the maintenance of order between states. While the study of the practice of states might suggest a multiplicity of doctrines of non-intervention serving a variety of purposes, this part will attempt to fix the place of the principle of non-intervention in contemporary international law, and state the reasons for supposing that it retains a place there in spite of the progressive doctrines that would unseat it. The final chapter will spell out the conception of international order in which the principle of non-intervention has a place, and examine the senses in which the principle can be said to make for the preservation of that order. But the principle of non-intervention, though it might be important to it, does not exhaust the account of order between states. It will be the task of this last chapter to measure the domain of the principle against other imperatives of international order, before going on to suggest the reasons for thinking that the principle of non-intervention retains a role in ordering the relations between states despite the argument that the nature of contemporary international politics is such as to make it an unworkable rule of international conduct.
PART I

DEFINITION

Chapter 1

Definition: Intervention and the Principle of Non-Intervention.

Intervention is a word used to describe an event, something which happens in international relations: it is not just an idea which crops up in speculation about them. The event might take a form as significant as the entry of one state into a violent conflict within another state, or as apparently insignificant as an ill-chosen remark made by a statesman about the affairs of a foreign state. The fact that the same word is used to describe such diverse phenomena turns the focus of attention from intervention as an event to intervention as a concept, in order to discover what it is that is common to each case. This is the task of definition and three general observations about it arise from these statements. In the first place, because intervention is a word used to describe events in the real world, and not a purely abstract concept, freedom to stipulate an arbitrary definition is limited. Secondly, because intervention is a term used to describe such a broad range of activities in international relations, it is unlikely that any definition can capture the whole of reality. And, in the third place, disagreement about the concept of intervention, about the sorts of activity that are to be called intervention and what it is that makes them similar, casts doubt upon any idea that painstaking research could uncover the essential meaning of intervention.

Without losing sight of these observations, this chapter will attempt to point out the major features of intervention, before going on to say what is meant by the principle of non-intervention. Believing that established usage, however obscure and contradictory, provides the principal clue to the location of intervention as an event in international relations, it will analyse that usage by breaking the idea of intervention down into five component
parts. The analysis will distinguish a subject which embarks upon, and an object which suffers the intervention, the activity of intervention itself, the types of intervention and the purpose of the activity. This should provide a crude outline of the sort of animal that intervention is in international relations, and that is the object of the exercise - to fix its place in knowledge about international relations, and not to discover a legal definition which might satisfy those who seek to restrain its occurrence by law.¹

I

i). The Subjects of Intervention.

Someone, some entity or group sets intervention in train. It might be a state - Britain intervened in Greek affairs when she despatched a naval squadron to Greek waters in 1850 in search of redress for an alleged wrong done to one of her citizens. It might be a revolutionary group within a state, a group enjoying the tacit support of its government, as was the case with the adventures of Generals Mathews and Jackson in Florida during the second decade of the nineteenth century. It might be a revolutionary group within a state which is not only an embarrassment to its government but a positive danger to its survival, as in recent years with the Palestinian Arabs in Jordan.²

¹On the difference between "logical" and "legal" definition, see Julius Stone, Aggression and World Order, (Berkeley and Los Angeles, 1958), pp.84-86. On the search for a legal definition in the United Nations General Assembly, see below Chapter 7, section III.

²In both these cases of intervention set in motion by a revolutionary group within a state, it is the state itself which is held responsible for the action. Spain looked to the government of the United States to curb the actions of its dissident generals, Israel to the government of Jordan. Any rules about intervention in international relations are applied to states and the organizations established between them. Though some would have them so, revolutionary groups within states are not formal actors in the international system, "subjects" (of international law) in a sense different from the one being used here.
Intervention might be the action of a group of states, as when the powers of Europe presided over the separation of Belgium from Holland in the 1830's. And in the modern world, regional and universal international organizations have taken their place as possible subjects of intervention, even if only at the prompting of a principal power - the Organization of American States in the Dominican Republic and the United Nations in the Congo.¹

ii). The Object of Intervention.

The description of the object of intervention, the thing which is having something done to it by the subject, identifies that target not merely as a sovereign state, but traditionally seeks to indicate that part of the target at which the intervention is aimed. Thus customary definitions of intervention distinguish two broad destinations for the activity of intervention: the domestic affairs of a state and its external affairs - the relations it has with another state or states.² This is a useful distinction in that it is sensitive to the difference between an "external" act which addresses itself to a state's foreign relations, and an "internal" act which seeks to penetrate and meddle in the

¹For the view that the legitimacy of intervention is partly determined by the nature of the intervening actor, see Richard A. Falk, "On Legislative Intervention by the United Nations in the Internal Affairs of Sovereign States", in Falk, Legal Order in a Violent World, (Princeton 1968), pp.336-353. For a discussion of this view see below, Chapter 8, section II and Chapter 9, section VI.

domestic arrangements of a state. American intervention in the First World War had as its aim the defeat of Germany. Allied intervention in Russia in 1918 was justified on the same ground, but after the defeat of Germany, a second and internal target of the intervention was revealed to be the defeat of the Russian revolution.

But the distinction between internal and external intervention is not always so clear. Was American intervention in the Lebanon in 1958 internal intervention to shore up a shaky pro-Western regime against threats from within, or external intervention to ward off threats from abroad? Moreover, external affairs are the stuff of international relations, and to identify them as a target for intervention tends to lose any characteristics peculiar to that event in the general clamour of relations between states. It may be that a better view of the target of intervention is afforded by reference to a concept favoured by the framers of the Charter of the United Nations - domestic jurisdiction. If there are matters of purely domestic concern, defined either geographically as matters taking place within the territory of a state, personally as matters concerning individuals within the jurisdiction of a state, functionally as matters which could be dealt with conveniently and efficiently by states individually, or politically as matters which could be dealt with by states individually without affecting the interests of others, then it might be said that intervention occurs whenever any of these matters is made the object of intrusion by a foreign state. But neither is this concept altogether helpful, for the boundaries of domestic jurisdiction are themselves hazy, and the confident assertion that any matter is a domestic question might be confounded in time by

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international practice.\(^1\)

Here, the broad notion of domestic affairs will be relied upon to identify the object of intervention, and it will be taken to exclude the application of the label "intervention" to the entry of a state into a war between other states, and to include as "intervention" the participation of a state in a conflict taking place within another state. To sharpen the perception of the object, it may be added that the target of intervention is its authority structure; intervention is directed at the "identity of those who make the decisions that are binding for the entire society and/or to the processes through which such decisions are made".\(^2\)

iii). The Activity of Intervention.

A subject intervenes and an object suffers the intervention; the activity of intervention itself is the "doing-word" of the relationship. Intervention might be a "coming-between" or an "interposition". The mediation by a third party of a dispute between two states would conform to this definition, as would a military operation to separate two feuding parties in a civil war or in a war between states. More generally, intervention might be a "stepping-in" or an "interference" in any affair so as to affect its course or outcome.\(^3\) This definition could encompass the situation in which intervention takes place on behalf of one party to a

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1In its Advisory Opinion on Nationality Decrees in Tunis and Morocco of 7 February 1923, the Permanent Court of International Justice observed that: "The question whether a certain matter is or is not solely within the jurisdiction of a state is an essentially relative question; it depends upon the development of international relations", cited in M.S. Rajan, United Nations and Domestic Jurisdiction, (Calcutta, 1958), p.37.


3Both these meanings of intervention - that of "coming-between" and "stepping-in" appear in the Oxford English Dictionary.
dispute, as well as the activity of coming-between the parties.

Many scholars have sought to define intervention by using the synonym "interference". Not just interference, but "dictatorial interference", Oppenheim thought, was the characteristic that set intervention apart from other sorts of activity. Others have identified the imposition of the will of one state on that of another, the attempt to compel or coerce the sovereign will of another state, as the "essence" of intervention. But these definitions are entirely satisfactory only if the words "interference", "dictatorial" and "coercive" are readily understandable in the context of international politics. Interference might be defined as action taken to affect the actions of others, dictatorial interference as action taken to prescribe the actions of others. The crucial, but in international relations elusive, distinction for Oppenheim's definition is that between affecting some action and prescribing its course. The notion of coercion might clarify this distinction by introducing the idea of force. To coerce is to "constrain or restrain by application of superior force or by authority resting on force; to constrain to compliance or obedience by forcible means". Coercive interference then, might identify intervention by its use or threat of force. But this distinction also has its shortcomings; it can be objected that it is at once too inclusive and too exclusive. Too inclusive because in any case of interference by a great power in the affairs of a small power, the small power can plausibly claim that that activity was coercive.

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1 See, e.g., Winfield in Lawrence, op.cit., p.119; Fenwick, op.cit., p.288 n.54; Hall, op.cit., p.337.

2 Oppenheim, op.cit., p.305.

3 Lawrence, op.cit., p.119; Thomas and Thomas, op.cit., p.72.

4 O.E.D.
due to the implicit threat of force which a powerful state can hold over a weak state. Too exclusive because to confine the label "intervention" to activity which uses or threatens force in international relations, might fail to capture the reality of dictatorial behaviour in spheres like that of international economic relations.

Here, no pretence will be made to encompass the whole field of interventionary activity in a single definition, and intervention will be understood as coercive interference - the use or threat of force will be taken as a guide to the incidence of intervention. And the idea of "stepping-in", of something imported into a situation from outside will link the use or threat of force to its destination in the authority structure of the object of intervention. Further, if such "stepping-in" is a distinguishing feature of intervention in international politics, so also is "stepping-out" the objective of intervention having been achieved or failed of achievement. Though intervention is a perennial feature of international politics in the sense that interventions are always occurring, each intervention is a discrete act; an intervention made permanent becomes something else. Thus Rosenau speaks of one of the defining characteristics of intervention as its "convention-breaking" nature; it breaks an established pattern of conduct in international relations and either terminates in the re-establishment of that pattern or itself becomes conventional. ¹ Intervention might take place in the interests of the balance of power, but it is not a permanent feature of relations between states as the balance of power itself is.

iv). The Types of Intervention.

It might be possible to shed light on intervention as a type of activity by setting it apart from other types of activity, by pointing out what it is not rather than indicating what it is. Thus some writers have referred to

¹Rosenau, op.cit., pp.161-163.
intervention as a type of activity which is to be distinguished from war; they have sought to place it in a spectrum between war or the aggressive crossing of international frontiers at the one end and mere diplomatic pressure at the other.\(^1\) As to the distinction between intervention and war, Hall wrote that:

\[\ldots\text{regarded from the point of view of the state intruded upon, it (intervention) must always remain an act which, if not consented to, is an act of war. But from the point of view of the intervening power it is\ldots a measure of prevention or of police, undertaken sometimes for the express purpose of avoiding war\ldots it may be a pacific measure, which becomes war in the intention of its authors only when resistance is offered,\ldots Hence although intervention often ends in war, and is sometimes really war from the commencement, it may be conveniently considered abstractedly from the pacific or belligerent character which it assumes in different cases.}\(^2\)

Here Hall seems to be saying that the distinction between intervention and war is not of the utmost importance and that intervention can be studied by the use of criteria which do not depend on such a distinction. Clearly, the results of American intervention in Vietnam make it difficult to distinguish between intervention and war on the basis of the intensity of the conflict. The difference between diplomatic pressure and intervention may be clearer, though the caveats about interference as opposed to dictatorial interference apply here, and it may be preferable to rely on the "convention-breaking" formula to distinguish them rather than on the degree of intensity of the pressure.

Intervention is a type of activity, and there are also types of intervention. Military intervention might be one such type, taking place when troops are despatched to keep order or to support a revolution in a foreign state, or when military aid is given to a government whose internal position is insecure or which is in conflict with a neighbouring state. It has also been argued that the very presence or display of armed force - such as the location of the American Sixth Fleet in the Mediterranean Sea - has


\(^2\)Hall, \textit{op.cit.}, p.337.
an effect on the politics of the littoral states tantamount to intervention in their affairs.\(^1\) Economic intervention might constitute another type of intervention, occurring when strings are attached by the great to aid given to the small, or when an economically developed state denies a contract to an under-developed primary-producing state. And various sorts of political intervention might be said to take place when hostile propaganda is disseminated abroad, when moral support is lent to a revolutionary struggle within another state, when recognition is refused to an established government, or when a member-state of the Commonwealth insists on discussing the internal affairs of another member at a Prime Ministers' Conference.

Not all these activities conform to a definition of intervention as coercive interference aimed at the authority structure of a target state, and two doubtful cases of intervention may be singled out for attention. One view has it that intervention is of the nature of the international system, not in the sense that the nature of the system suggests that states will intervene in each other's affairs from time to time, but in the sense that it is built into the system. Where states weak and strong coexist, "A Great Power intervenes in the domestic realm of other states...by its sheer existence".\(^2\) A similar view holds that the choice of a policy of non-intervention by a state which has the power to intervene is one form of intervention.\(^3\) Certainly the policies of the great are of continuous and anxious interest to the small. Certainly the failure of the democracies to intervene in the Spanish Civil War sped the victory of France. And certainly it is difficult to define precisely the notion of intervention. But if either of these two views were accepted, it would be difficult to

\(^1\)For these distinctions between different sorts of military intervention, see P. Calvocoressi, World Order and New States, (London, 1962), p.17.


distinguish intervention from international politics in general.

It is not possible to consider any one case as the ideal type of intervention and to measure other posited cases against that ideal type. The job of distinguishing between types of intervention is one of classification and not of definition; it assumes that the genus of intervention has been identified and goes on to locate the various species of that genus. Political, military and economic intervention might be such species, but they do not define the genus.

v). The Purpose of Intervention.

The purpose of intervention is the end towards which it is directed, the thing which it is designed to achieve. At the outset of the Peloponnesian War, the Athenians sent a fleet to aid Corcyra against Corinth in order that the Corcyrean fleet should not pass into the hands of the Corinthians and turn the balance of power against Athens.\(^1\) France intervened in Syria in 1860 in order to save the Christian Maronite tribes of the Lebanon from the ravages of the Moslem Druses, an act which has been called one of "pure humanity" when the troops despatched might have been needed elsewhere at any time.\(^2\) The Soviet Union and her allies intervened in Czechoslovakia in 1968 to defend the socialist gains of the Czechoslovak people and the interests of the entire Communist movement.

The balance of power, the interests of humanity and the maintenance of ideological solidarity are but three of the ends which states have pursued by intervention, and it might be argued that the compilation of a catalogue of

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\(^1\) In Rex Warner's translation, Chapter 4 of Thucydides, *History of the Peloponnesian War* (Harmondsworth, 1954), is entitled "Athenian Intervention against Corinth".

purposes of intervention is of little value in defining intervention, because it would tend to become a general account of states' motives for action in foreign policy. To many international lawyers, however, the purpose served by any intervention has been a fundamental criterion in the assessment of its legality. Thus if intervention takes place for the purpose of forcing a delinquent state to submit to recognized rules of international law, or to punish a breach of the law, or to neutralize the illegal intervention of another, then, it has been argued, it is lawful activity. At this point, the notion of intervention has become confused in legal thought by the reluctance to call a lawful act "intervention". Whenever an intervention can be said to take place by right, Oppenheim argues that it never constitutes a violation of external independence or territorial supremacy. But his definition of intervention refers to "dictatorial interference" in the internal or external affairs of a state, and dictatorial interference clearly implies a violation of external independence or territorial supremacy. This is the core of the confusion between the use of the word intervention as a description of an event in international relations, and its use as a normative expression by international lawyers. If intervention by right is held not to violate the independence of the target state, a violation which features in most definitions as the thing which above all differentiates intervention from other phenomena, then is it to be understood that intervention by right is not intervention? However difficult it may prove, there can be no objection to attempting to distinguish lawful from unlawful intervention, but the attempt is not advanced by excluding "lawful intervention" from the class of events called intervention.

Like identifying types of intervention, distinguishing between interventions according to their purpose is a

1 Oppenheim, op.cit., p.305; Winfield in Lawrence, op.cit., p.119; Hall, op.cit., p.342. For a fuller discussion, see below, Chapter 8, section I.

2 Oppenheim, op.cit., p.305.
task of classification and not of definition. Two factors make the task problematical. In the first place, any one case of intervention might combine several purposes. The purpose of British, French and Russian intervention in Turkish affairs, culminating in the Battle of Navarino in 1827, might be said to have been Greek independence. But sympathy for the Greek nation or for Greek co-religionists was combined with abhorrence at Turkish behaviour in the Morea, the interest in peace between Greece and Turkey, and the concern of each great power with the action of the others and for the European balance. If this example demonstrates the problem of choosing between different purposes, a second difficulty lies in the choice between different versions of purpose. The real motive, if such a notion is an intelligible one, of the intervening state, might differ from the purpose proclaimed in the official justification and differ again from the leisured assessment of the scholar after the event. The task of classification seems to be as hazardous as that of definition.

From this survey of customary definitions it is now possible to select an approximate definition of intervention as that activity undertaken by a state, a group within a state, a group of states or an international organization which interferes coercively in the domestic affairs of another state. It is a discrete event having a beginning and an end, and it is aimed at the authority structure of the target state. It is not necessarily lawful or unlawful, but it does break a conventional pattern of international relations. This definition will be used as a guide to cases of intervention in history, but it will not

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1 Though the preoccupation with ideological conflict during the Cold War has allowed one writer to define intervention as: "The use of force by the United States, directly or indirectly, in order to prevent what is believed to be the likelihood of Communist assumption of power in a state, or in order to overthrow an established Communist regime". H.S. Dinerstein, Intervention against Communism, (Baltimore, 1967), p.3.
be imposed on that history to the exclusion of doctrines of intervention and non-intervention which have not relied upon the notion of coercion. What will be adhered to more strictly is the notion of intrusion in domestic affairs; intervention will not be taken to mean either simply participation in world politics or entry into a war between other states.

II

Intervention having been defined, non-intervention might be said to be the circumstance in which intervention does not occur. But beyond the accident of non-intervention, a state might be said to follow a policy of non-intervention when it chooses not to intervene in a situation where intervention also is a possible policy. Publicists have expounded theories of non-intervention which assert the desirability of states refraining from intervention from the point of view of the achievement of peace between states, or of providing for the best interests of a particular state.\(^1\) And international lawyers have asserted non-intervention as a principle, a rule which states are obliged to adhere to in their relations with each other.\(^2\)

A rule is an imperative which prescribes a particular form of action or restraint as the legitimate form of conduct for a certain class of people or institutions. It identifies a standard of behaviour and makes conformity to such behaviour the norm for the class to which it applies. The rule of non-intervention can be said to derive from and require respect for the principle of state sovereignty. Sovereignty can be a statement expressing the idea that "there is a final and absolute political authority in the political community" and that "no final and absolute authority exists elsewhere".\(^3\)

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\(^1\) See below, Chapter 3.

\(^2\) See below, Chapter 2.

Where such final and absolute authorities are collected together in international society, it can be said that the recognition by each of them of the others' authority within their own domains - recognition of a principle of state sovereignty - is fundamental to their coexistence.\(^1\)

If a state has a right to sovereignty, this implies that other states have a duty to respect that right by, among other things, refraining from intervention in its domestic affairs. The principle of non-intervention identifies the right of states to sovereignty as a standard in international society, and makes explicit the respect required for it in abstention from intervention.

The function of the principle of non-intervention in international relations might be said then, to be one of protecting the principle of state sovereignty. "Protect" here metaphorically; it is not the rule itself which functions as protector, it merely indicates or draws attention to that which is to be protected. The will on the part of states to make the rule effective is the force which provides the protection, and that willingness might be encouraged by three extra-legal factors. In the first place, states might feel obliged to obey rules out of a sense of moral duty. Secondly, they might adhere to rules through a calculation that it is in their interests to do so. And thirdly, they might be forced into obedience to rules.\(^2\)

An account of the promise of each of these factors as inducements to rule-determined behaviour by states will emerge from the study of the practice of states with regard to the principle of non-intervention.

Pursuing the idea further of the function of the non-intervention principle as protector of state sovereignty, it has been called a "doctrinal mechanism to express

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\(^1\) Hinsley argues that: "a state which claims to be free of limit and control within its community is bound in logic to concede the same freedom to other states in theirs". *Ibid.*, p. 158.

the outer limits of permissible influence that one state may properly exert upon another". It might be said to stand at the frontier between diplomatic pressure which is tolerable to the pressured and various degrees of coercion which are not. The idea of frontier, in more than just a geographical sense, is a useful one. The principle of non-intervention might serve to delimit the border between the domain of international law and that of municipal law. In the same way, the matters which Article 2(7) of the Charter leaves to domestic jurisdiction have the principle of non-intervention as their guardian against the extension of the competence of the United Nations. And for long before the San Francisco Conference in 1945, one of the primary roles for the principle of non-intervention was for it to be invoked on behalf of the independence of states against the development or establishment of a super-state.

It might be objected that this notion of frontier, or of various frontiers, fails to make it clear whether it is the function of the principle of non-intervention to define them, or whether the principle shifts to frontiers defined by other criteria. In effect, the two are complementary. To ask what areas the principle of non-intervention protects is equivalent to asking what matters are within the domestic jurisdiction of states.

Castlereagh's principle of non-intervention was also a doctrine of intervention. By detailing the circumstances in which Britain would feel obliged to intervene, he pointed out what was meant by the principle of non-intervention. Similarly, during its debates on the


2For Canning on the Holy Alliance, see below, Chapter 4, pp.104-105.

3Falk, loc.cit.

4See below, Chapter 4, pp.90-104.
question of apartheid, the General Assembly's interpretation of Article 2(7) determined the actual limits of South Africa's extreme interpretation of the principle of non-intervention. The frontiers protected by the principle of non-intervention are unclear at any one time, they vary over time, and they are defined differently by different statesmen - Castlereagh or Palmerston, Theodore or Franklin Roosevelt, Krushchev or Brezhnev. But the idea of frontier remains a helpful one, not least for international law, in establishing the convention that there are frontiers which states must have good reason to cross. This is not to make the mistake of supposing that any crossing of the frontiers is unlawful, for there may be circumstances in which it is both lawful and moral to intervene. What follows will, in large part, examine the place of the principle of non-intervention in international relations by studying the occasions on which it has been overridden.
PART II THE HISTORY OF THE PRINCIPLE OF NON-INTERVENTION

The chapters of this part will consider the history of the idea of non-intervention in three aspects: as a principle, a theory, and in the practice of states. The discussion of non-intervention as a principle will seek the derivation of the rule through the treatises on international law. The study of non-intervention as a theory will examine the doctrines of writers, other than international lawyers, who have urged the principle as a rule of conduct which might serve the interests of a particular state, or the interest of all states in peace, or who have speculated about the conditions in which the principle might be workable as a norm of relations between states. Theory here not as an attempt to account for behaviour in international relations, but as a proposal about what form that behaviour should take. The examination of non-intervention in the practice of states will be concerned with the extent to which states have acted according to the rule, with doctrines developed by statesmen about non-intervention, and with the function the principle fulfilled in their foreign policies.

The uniting thread of these three aspects is the idea of non-intervention as an imperative of international conduct. Tracing the derivation of the principle answers the question, Why is there such an imperative in international law? The enquiry into theories of non-intervention answers the question, Why observe the rule? And the examination of state practice answers the question, Have states in fact observed the rule? These distinctions are not meant to suggest that international lawyers are not also theorists, or that statesmen are pragmatists unblemished by theory - indeed pragmatism is itself a theory - or that theorists are necessarily far removed from the realities of international life. But the chapters will be organized, to take concrete examples, according to the distinction between Christian Wolff's principle of non-intervention as part of his vision of international law,
Richard Cobden's espousal of a doctrine of non-intervention as the principle which should have informed the conduct of British foreign policy in opposition to England's actual behaviour in international relations, and the principle of non-intervention as it informed the actual conduct of American foreign policy in the hands of John Quincy Adams.
Chapter 2 The History of Non-Intervention as a Principle.

A principle or rule has been so far understood as an imperative which prescribes a particular form of action or restraint as the legitimate form of conduct for a certain class of people or institutions. Thus the principle of non-intervention is an imperative requiring states to refrain from interfering in each other's affairs. This rule was seen to derive by implication from the rule that states shall respect each other's sovereignty or exclusive competence. But the principle of state sovereignty can be and has been understood not only as an imperative requiring a particular form of behaviour, but also as an hypothesis or proposition in the science of international law. There is no inconsistency involved in allotting both these meanings to the principle of state sovereignty simultaneously. It will be as well to remember however, that the concept is often referred to as a central principle of international law from which particular rules derive.

In discussing the genesis of the principle of non-intervention, it is possible to make a broad distinction between the formulations of the Naturalist international lawyers on the one hand and the Positivist school of international law on the other. While the Naturalists conceived of law as a body of rules inherent in the nature of man and of the universe discoverable by the use of "right reason", the Positivists sought rules of international law by observation of the actual practice of states. For the Naturalists, the rights and duties of men, and states as collections of men, were no more than their natural inheritance as men or states. For the Positivists, on the other hand, a right or a duty could have meaning only if it were sanctioned by custom or by a treaty between states.\(^2\)

\(^1\)See above, Chapter 1, pp.13-14.

\(^2\)This is only one, and for the present purpose the most important one, of the many distinctions between naturalism and positivism. For a list of others, see H.L.A. Hart, The Concept of Law, (Oxford, 1961), p.253.
Perhaps Westlake caught the essence of the distinction between the two schools of thought when he identified an Anglo-Saxon tradition of law which would think primarily of rules and then of rights as measured by them, while the continental tradition would tend to think primarily of rights and then of rules which embodied them.¹

The significance of this difference of approach with respect to the principle of non-intervention is not that one school asserted the existence of such a rule and the other denied it, for a right to state sovereignty was conceded by both schools, if for different reasons. Indeed, the similarities between the two schools of thought in their arrival at the same destination — a rule of non-intervention — might be more important than the different routes taken thither. If a generalization is at all possible, it would be that the positivist approach, with its greater attention to the actual practice of states, was more tentative in its formulation of rules than a Naturalism informed by supposedly immutable law.

i) The Naturalists.

Natural law for the lawyer or the political scientist, as opposed to the natural scientist, is about "ought" not about "is". It is about right conduct discoverable by human reason, not about the description of cause and effect in the natural world. There is, however, a third interpretation of the phrase "law of nature" which, although it uses the language of the lawyer, sets out to frame the hypothesis of the scientist. Thus, for Hobbes, a law of nature was "a precept or a general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life".² This is clearly an injunction about what men ought to do, but it is also,

as Hobbes goes on to explain, an imperative, without which (among other imperatives), civil society would be impossible. If this hypothesis is right, if there are certain rules of conduct without which social life would be impossible, then these rules form what has been called the "minimum content of Natural Law" in a sense which is closer to that of the scientist than that of the lawyer. In the fourth place, it is possible to understand the phrase "law of nature" as describing the rules which are said to apply in the hypothetical state of nature before the establishment of civil society. For Hobbes, no such rules could apply in a condition in which every man was at war with every man, but only a right of nature by which every man is at liberty to use his own power to preserve himself in a situation of sauvé qui peut. But Pufendorf, and later Wolff and Vattel, were to imagine a state of nature in which man's natural condition was one of peace not war, where the obligations of natural law were applicable whatever the social circumstances in which man found himself. Hobbes shared with these later Naturalists, the view that kings and persons of sovereign authority existed together in a state of nature; he differed from them in the conclusions he drew from the existence of such a condition.

To identify, then, a Naturalist school of thought, is not to impute to its members a oneness of outlook. With respect to the non-intervention principle, it is possible, firstly, to represent such a rule as a "dictate of right reason" which follows from the natural independence of states. In the second place, it can be argued that a rule of non-intervention is an imperative without which a society of sovereign states would be an impossibility. Thirdly, and more generally, the notion of a law of nature has been sufficiently elastic to incorporate the view that

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1 Hart, op.cit., pp.188-189. See also, below, Chapter 9, section II.

2 Hobbes, loc.cit.

would deny the possibility of rules operating between states existing in a state of nature, and the directly contrary view that states in such a condition are obliged to obey natural law. In spite of these contending opinions about the content of natural law, it is possible to link them together by means of the negative criterion that the differences within the school of thought are less significant, given the present purpose of seeking the origin of the rule of non-intervention, than those which divide the Naturalists from other schools of thought.

From what sources, then, did the Naturalists derive the principle of non-intervention? Grotius, Hobbes and Pufendorf can be regarded as precursors of the notion, not because their writings, implicitly or embryonically, contained a rule of non-intervention, but because they furnished ideas without which the principle could not have found expression in the form which it took in the works of Wolff and Vattel. In particular, Grotius can be taken to be a precursor of the notion, because he conceived of international law as a law which existed between sovereign states; Hobbes and Pufendorf, in their radically different ways, contributed the notions of natural equality and a state of nature.¹

The task which Grotius set himself, was to treat the law which was concerned with the mutual relations among states or rulers of states, in a comprehensive and systematic manner.² Grotius appreciated the fact of the

¹This is not to suggest either that Grotius invented the concept of sovereignty, or that Hobbes and Pufendorf were the first to conceive of a state of nature in which all men were equal. Rather, they can all be taken as very good examples of these views, and Grotius can be regarded as the first to have built a system of international law around the assumption of the sovereignty of states.

separateness of states; the problem was to establish that a common law among them did exist,¹ and the systematic answer to the problem was to be found, primarily, in the principles of natural law.²

Grotius identified the sovereign power as "that power....whose actions are not subject to the legal control of another", and observed that "the state is the common subject of sovereignty".³ He did not draw, from this observation, the conclusion that states had a duty not to intervene in each other's affairs. The closest he came to advancing such a rule was in his denial that states had a right to intervene in the internal affairs of an ally, if the subjects of that ally claimed to have been wronged at the hands of their sovereign.⁴ For, he argued, quoting Aristotle, alliances were concerned with preventing the perpetration of wrongs against any one of the allies, not with wrong-doing among the citizens of an allied state.⁵

Two reasons can be offered in explanation of Grotius's failure to accompany his right of sovereignty with a rule of non-intervention expressing respect for that sovereignty. The first is a technical one about the vocabulary of international law. Grotius, it has been argued, had no conception of intervention as an intermediate condition between peace and war; any act of violence by one state upon another was for him an

¹Ibid., Prolegomena, para.28.
²Ibid., Prolegomena, para.30. By a law of nature, Grotius meant "...a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God". Ibid., Book I, Ch.I, section X, para.1.
³Ibid., Book I, Ch.III, section VII, para.1.
⁴Ibid., Book I, Ch.III, section XXI, para.7.
⁵Loc.cit.
act of war. According to this view, it would be absurd to search for rules about intervention in a treatise which did not treat the matter as separable from the problem of war.

If, on the other hand, the separation of the concept of intervention from that of war is not regarded as a cardinal defining characteristic of intervention the reason for the neglect of a rule of non-intervention by Grotius must be sought elsewhere. To locate it, it is necessary to return to Grotius' conception of the place of the state in international society. For Grotius, international society was a universal community of mankind; his natural law applied directly to individuals as well as to states. The notion that states were the exclusive members of international society was a formulation of nineteenth century international law, unknown to the seventeenth century. If the individual is as much a subject of international law as is a state, and if in any dispute his cause can be regarded as a just one, then service rendered on his behalf "is not only permissible, it is also honourable". Though Grotius made a remarkable concession to the sovereign by denying his subjects the right to take up arms when wronged by him, he did not deny the right of others to take up arms on their behalf.

Grotius' conception of international society made it impossible for him to establish a clear rule of non-intervention. At the same time, his assertion

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3Grotius, op.cit., Book I, Ch.V, section II, para.1; Book II, Ch.XXV, section VI.

4Ibid., Book II, Ch.XXV, section VII, para.3.
that it was possible to imagine a society formed between sovereign states (as well as between individuals), was an essential presupposition for later writers who did develop a principle of non-intervention.

Hobbes thought that all men, in their natural condition, were equal. The weakest among them had strength enough to kill the strongest, either by subterfuge, or by joining a confederacy with others.\(^1\) As to faculties of mind, Hobbes found an even greater equality amongst men, than that of strength, for prudence was but experience, which equal time bestowed equally on all men.\(^2\) The three principal causes of quarrel inherent in the nature of man, were competition, diffidence and glory, and the pursuit of these goals, in a state of nature, led to a war of all against all.\(^3\) For Hobbes, the end of this conflict could come about only through the establishment of civil society by means of a social contract which transferred men's natural right to govern themselves to the Leviathan in exchange for their security.\(^4\) But states, which had not united into an organized community, remained in the state of nature, maintaining towards each other a posture of war;\(^5\) the conception of a proper law existing between them in such a situation would be to Hobbes no more than an "inane phrase".\(^6\) Hobbes' denial of international law has importance for the present study in two respects. Firstly, it meant not only a denial of a society between states but also did away with the older notion of a societas humana built upon the individual. In the second place, Hobbes'

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1 Hobbes, Leviathan, p.80.
2 Loc.cit.
3 Ibid., p.81.
4 Ibid., Ch.XVII.
5 Ibid., p.83.
conception of states existing together in a state of nature meant that they were equal not juridically but, like individual men in the state of nature, having equal claim to all goods or things. This latter view opened the way to the doctrine of the absolute equality of states regarded as important by some publicists of the following century and instrumental in their formulations of a rule of non-intervention. The former view, while it did not admit of any sort of international society, can nevertheless be regarded as a progressive doctrine with respect to international law, by its perception of the participants in the international system being states not individuals. Hobbes' contention that a state of Nature prevailing between sovereigns was a less miserable condition than that which prevailed among individuals, had the virtue of, at least beginning, to delineate the international environment as sui generis.

Pufendorf's state of nature was very different from that of Hobbes. The natural state of man which he imagined was one in which natural law, in the sense of obligatory rules of law, applied. He denied the Hobbesian war of all against all because even those who lived in a state of nature could, and should, and frequently did, lead a mutually social life. Pufendorf saw the equality of strength which Hobbes proposed as "more likely to restrain the will to do harm than to urge it on .... For...neither gains as much from victory as the one loses who is killed". Nor, he argued, were things so scarce, that struggle for them would always be necessary.

2Pufendorf, De Jure Naturae et Gentium, Book II, Ch.II, section 3.
3Ibid., Book II, Ch.II, section 5.
4Ibid., Book II, Ch.II, section 8.
5Loc. cit.
Because man could take heed of his reason, the natural state of man was not one of war but of peace, a peace founded upon natural law. The basis of natural law was for Pufendorf, as it had been for Grotius, the necessity for man to be sociable because of his individual helplessness. The Hobbesian right of self-preservation still applied, but it was not to be so emphasized as to eclipse the possibility of social life between men.

Pufendorf thought that since human nature belonged equally to all men, and no-one could live a social life with a person by whom he was not rated as at least a fellow man, it followed as a precept of natural law, that "every man should esteem and treat another man as his equal by nature, or as much a man as he is himself". He regarded Hobbes' assertion of equality of strength and in faculties of the mind as not only wrong, but also as irrelevant, for whatever the differences or similarities in wealth and the goods of body or mind, men were equal in liberty and before the law. This "equality of right" had its origin in the fact that an obligation to cultivate a social life was equally binding on all men, since it was an integral part of human nature as such.

Pufendorf's doctrine of equality is a classical example of the derivation of a prescriptive statement from a descriptive statement; he argued that because men were equal as men, they ought therefore to treat each other as equals, or as much men as themselves. And as Pufendorf drew the same analogy as Hobbes had between men in a state of nature and states in that condition, the principle of equality obtained in the

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relations between states as it did in relations between
men in a commonwealth. The principle of equality now had
a juristic quality as an imperative which men and states
ought to observe in their relations with each other, as
opposed to Hobbes' observation that men and states were
factually equal.

The principle of non-intervention finds its first
explicit manifestation in the writings of Wolff and Vattel,
although neither of them used the word "intervention" in
the technical sense it was to acquire in the works of
nineteenth century publicists.¹ Like Hobbes and
Pufendorf before him, Christian Wolff regarded nations
as individual free persons living in a state of nature,²
a condition in which nations, like individuals, used none
other than natural law.³ According to that immutable,
necessary law, nations were bound by perfect obligations
to themselves and by imperfect obligations to other
nations, and from these duties followed natural rights
which were imprescriptible.⁴ In order to bring this
system closer to the real world, Wolff invented a
civitas maxima, a great society which was supposed to
have come about by a quasi-agreement between nations,
from which the voluntary law of nations could be derived.⁵

Wolff took over Pufendorf's principle of natural
equality. He argued that:

By nature all nations are equal the one to the other.
For nations are considered as individual free persons
living in a state of nature. Since by nature all men
are equal, all nations too are by nature equal the
one to the other...Just as the tallest man is no
more a man than the dwarf, so also a nation, however
small, is no less a nation than the greatest nation.
Therefore, since the moral equality of men has no

¹See Winfield, "The History of Intervention in International
Law", pp.132-133.
²Christian Wolff, Ius Gentium Methodo Scientifica Pertractatum,
(1764), trans. Joseph H. Drake (1934), reprinted (NY, 1964),
Prolegomena, para.2.
³Ibid., Prolegomena, para.3.
⁴Ibid., O. Nippold's introduction p.xxxix.
⁵Ibid., Prolegomena, paras.9-12.
relation to the size of their bodies, the moral equality of nations has no relation to the number of men of which they are composed.\textsuperscript{1}

Their rights and obligations were then also by nature, the same.\textsuperscript{2} Here again rights and duties are derived from the notion that a state is equal to another state and therefore ought to be treated as such; factual inequalities between states are not considered relevant.

Wolff is taken to be the author of an absolute principle of non-intervention.\textsuperscript{3} He did argue that "By nature no nation has the right to any act which belongs to the exercise of the sovereignty of another nation, for sovereignty, as it exists in a people or originally in a nation, is absolute",\textsuperscript{4} and that "perfection of sovereignty consists in its exercise independently of the will of any other".\textsuperscript{5} States were under an obligation not to interfere in each other's government, from which arose a right not to allow such interference.\textsuperscript{6} But Wolff also asserted that "In the supreme state [civitas maxima], the nations as a whole have a right to coerce the individual nations if they should be unwilling to perform their obligation, or should show themselves negligent in it".\textsuperscript{7} This statement might be interpreted as a contradiction of an absolute rule of non-intervention, allowing a right

\textsuperscript{1}Ibid., Prolegomena, para.16.
\textsuperscript{2}Ibid., Prolegomena, para.17.
\textsuperscript{3}e.g. by Thomas and Thomas, Non-Intervention, p.5 and Wight, "Western Values in International Relations" in Butterfield and Wight, Diplomatic Investigations, p.113.
\textsuperscript{4}Wolff, op.cit., Ch.II, para.255.
\textsuperscript{5}Loc.cit.
\textsuperscript{6}Ibid., Ch.II, para.269.
\textsuperscript{7}Ibid., Prolegomena, para.13.
of collective intervention to enforce minimum standards of human conduct.\(^1\) Wolff's system was based primarily on natural law; the fundamental rights of states to equality, sovereignty, liberty and independence all arose from his account of the natural law, and it was from such natural rights that the duty of non-interference arose (though Wolff started from natural obligations and derived from them natural rights rather than vice versa). His invocation of the fictional civitas maxima as a midwife for the positive (voluntary) law of nations confused his clear statement of a principle of non-interference.

Wolff's system of international law, built a priori on supposed principles of natural law, is devoid of any reference to the actual practice of states. His rule of non-intervention is the product of abstract reflection, not the result of observation of the practice of states. Wolff's follower Vattel, also a Naturalist, made more attempt to accommodate his account of international law to the practice of states.

If Wolff's civitas maxima was an impotent fiction, his system at least had the value, as Vattel

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\(^1\)The resolution of this apparent conflict in the interpretation of Wolff seems to be either that:-

a) Intervention by the civitas maxima does not negate an absolute principle of non-intervention, because the rule applies to the relations between states and not between the state and the community of states acting together, or:-

b) Measures taken by states to coerce another state to perform its obligation may amount to reprisals, blockade or war but not to intervention, or:-

c) In the definition of "absolute", is an absolute right one that is prior to any conflicting rights of others, or merely one that always applies in the ideal civitas maxima in which every state is acting as it should act? The latter interpretation would conform to Wolff's general approach, his greater concern with "ought" than with "is" in the relations between states.
pointed out in his preface, of conceiving of a society of states, not of individuals; Wolff had effected the separation of the two ideas. In place of Wolff's *civitas maxima*, Vattel put the natural liberty of nations, their common welfare, duties and perfect and imperfect rights, as productive of the voluntary law of nations. Both the necessary and the voluntary law of nations were established by natural law, but the former was necessitated by that law, the latter only recommended.

The cornerstone of Vattel's system was the absolute freedom and independence of states, there being by no means the same necessity for a civil society among nations as there was among individuals. Since nations were free and independent as men were by nature, it was a law of their society that "each Nation should be left to the peaceable enjoyment of that liberty which belongs to it by nature. The natural society of nations can not continue unless the rights which belong to each by nature are respected". Thus Vattel reiterates Wolff's doctrine of natural rights, but adds to it by pointing to a general law requiring respect for those rights. If independence is the right, then the principle of non-intervention would be the rule requiring respect for that right.

Vattel also follows closely the principle of equality as formulated by Wolff:

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Since men are by nature equal and their individual rights and obligations the same, as coming equally from nature, Nations, which are composed of men and may be regarded as so many free persons living together in a state of nature, are by nature equal and hold from nature the same obligations and the same rights. Strength or weakness, in this case, counts for nothing. A dwarf is as much a man as a giant is; a small Republic is no less a sovereign State than the most powerful kingdom.¹

Here again, states were equal because they were states, just as men were equal because they were men.

Vattel's insistence on the absolute independence of states as the basis of international law renders that law extremely fragile with respect to its enforcement. "All States," he argued, "have a perfect right to whatever is essential to their existence, hence all Nations may put down by force the open violation of the laws of the society which nature has established among them".² But, he argued, these rights must not be so extended as to prejudice the liberty of Nations.³ Thus the imperative of self-preservation is reasonably urged as the motive for enforcing law, but that enforcement is not reckoned a duty but only an option, and whatever happens, law enforcement must never prejudice the liberty of the offender. Given Vattel's reluctance to sacrifice liberty to the enforcement of law, and his unequivocal championship of the absolute independence and equality of states, it is logical that a rule of non-intervention should play a prominent part in his system. He states it thus:

It clearly follows from the liberty and independence of Nations that each has the right to govern itself as it thinks proper, and that no one of them has the least right to interfere in the government of another. Of all the rights possessed by a Nation, that of sovereignty is doubtless the most important and the one which

¹Ibid., Introduction, para.18.
²Ibid., Introduction, para.22.
³Ibid., Introduction, para.23.
others should most carefully respect if they are desirous not to give cause for offence. ¹

Despite such a clear statement of the principle of non-intervention Vattel seems to allow two notable exceptions to the general rule: intervention on the just side in a civil war and intervention in the interests of the balance of power. ²

Vattel's international law can be regarded as a definitive end to the notion of a societas humana which had survived since the Spanish school of international lawyers had popularized it in the sixteenth century. ³

Although his system was built upon the natural law, Vattel's emphasis of the independence of states and the implications of such emphasis for the content of international law, foreshadowed the Positivist treatises of the following century.

ii). The Positivists.

In general the Positivist international lawyers are to be distinguished by their common search for rules of international law in the actual practice of states. There is, in this approach, an implied rejection of the method of natural law which holds those rules to be discoverable by the use of human reason. Both these definitions of Positivism are acceptable here; the one which draws attention to what Positivism is, and the other which says what it is not. The meaning of Positivism which is not acceptable here, is that which

¹Ibid., Book II, Ch.IV, para.54. See also, Book I, Ch.III, para.37; Book II, Ch.I, para.7; Book II, Ch.I, para.18.

²For a discussion of the exceptions to Vattel's principle of non-intervention see below, Chapter 8, section I.

³Hinsley, Power and the Pursuit of Peace, (Cambridge, 1963), pp.166-167. Hinsley cites the rejection by Vattel of Wolff's civitas maxima as evidence for this. But this might as plausibly be seen as the rejection of the idiosyncrasies of a particular author, rather than of a whole tradition of legal scholarship, particularly as Wolff's civitas maxima was so different from the old societas humana.
refers to the definition of law advanced by Austin and people of his persuasion, whose view it was that laws, properly so-called, were the commands of the sovereign. According to this view, the expression "international law" is a misnomer for a body of rules which is no more than "positive international morality". The answer to this argument about the content of law is beyond the scope of the present purpose which is to discover the derivation of the principle of non-intervention in the writings of some Positivist international lawyers, Positivists, because their accounts of international law were based on rules arising from custom and treaty and not from the dictates of right reason. Unlike the Naturalists, the Positivists tended to draw a clear distinction between international law as it actually was and opinions about what it ought to be.\(^1\)

G.F. von Martens recognized the existence of a natural law prevailing between nations living in a state of nature,\(^2\) but deemed it insufficient when nations "come to frequent and carry on commerce with each other".\(^3\) In such a situation the common interests of nations obliged them to "soften the rigour of the law of nature", and to "render it more determinate" by means of express or tacit conventions and by simple custom. The sum of the rights and obligations thus established formed the Positive law between nations, in opposition to the Natural law.\(^4\) In spite of this Positivist

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3Ibid., Introduction, section 2.

4Loc.cit. Martens actually refers here to "rights and obligations established between two nations". In section 3 he generalizes the statement to demonstrate a Positive law between the majority of European powers.
basis, Martens' law of nations contained significant elements which seem to be borrowed from the Naturalists and in particular from Wolff and Vattel. He referred to nations having "inherent rights", and seemed to number among them, those of territorial sovereignty, equality and liberty, and even a natural right to augment the power of the state by external aggrandizement.

It is not clear whether Martens derives the rule of non-interference from the "inherent right" of a state to territorial sovereignty, or from the same right derived from observation of the practice of states. He merely declares that the internal constitution of the state depends upon the will of that state, "foreign nations having not the least right to interfere in arrangements which are purely domestic". Nor are his permissible exceptions to the rule any guide. By allowing intervention on the just side in a civil contest, he echoes the views of Grotius and Vattel, and inclines to a Naturalist doctrine. On the other hand, the right to intervention from positive title, and the right to intervene on the grounds of self-preservation, he derives from the practice of European states. What appears sometimes as arch-positivism in Martens' work, is opposed by his apparent acceptance

1Ibid., Book VI, Ch.VIII, section 1.
2Ibid., Book III, Ch.I, section 1.
3Ibid., Book III, Ch.I, section 2.
5von Martens, op.cit., Book III, Ch.II, section I.
6Loc.cit.
7e.g., in his Introduction, section 2.
of the doctrine of fundamental rights; it is difficult to ascertain which view prevailed in his account of the rule of non-interference.

This mixture of rights of states derived from the Natural law and rules sanctioned by the practice of states, did not end with the work of von Martens. It recurs in the writings of the early American international lawyers, James Kent and Henry Wheaton. Kent referred to the "perfect equality, and entire independence of all distinct states" as a "fundamental principle or public law", and criticized the interventions of the Holy Alliance in Naples and in Spain as violations of that principle. He cited Grotius, Vattel and Rutherforth in support of his view that "no state is entitled to take cognizance or notice of the domestic administration of another state, or of what passes within it as between the government and its own subjects". At the same time, he recognized intervention to preserve the balance of power among neighbouring nations as being very frequent and, on occasion, necessary and just. Kent retreated before the confusions of state practice, in his discussion of the permissibility of intervention in civil conflict, by arguing that:

The right of interposition must depend upon the circumstances of the case. It is not susceptible to precise limitations, and is extremely delicate in the application. It must be submitted to the guidance of eminent discretion, and controlled by the principles of justice and sound policy.

2 Ibid., Part I, Lecture II, section 23.
3 Ibid., Part I, Lecture II, section 21 and footnote a.
4 Loc.cit.
While Kent saw the most useful part of the law of nations as being instituted or Positive law founded on usage and consent, he was unwilling to sacrifice Natural jurisprudence, which, he argued, derived its force and dignity from the principles of right reason, and which bound every state to conduct itself with justice, good faith and benevolence. Kent's discussion of the rule of non-intervention reflected his determination to serve two masters in the derivation of law.

Henry Wheaton's account was similar to that of Kent though his definition of international law was less deferential to state practice. For him, international law consisted of "those rules of conduct which reason deduces, as consonant to justice, from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent". He made a distinction between primitive or absolute rights of states and conditional or hypothetical rights. The former were held by states because they were states, and they were absolute in the sense of not being limited to particular circumstances. The latter rights were associated with belligerency and neutrality. For Wheaton, the absolute right, which lay at the foundation of all the rest, was that of self-preservation, and it was with reference to this right that he discussed the right of intervention. An examination of the practice of states, and in particular, of the events following the Congress of Aix-la-Chapelle in 1818, proved to him "the inefficacy of all the attempts

1 Ibid., Part I, Lecture I, section 2.
3 Ibid., Part II, Ch.I, para.60.
4 Ibid., Part II, Ch.I, para.61.
5 Ibid., Part II, Ch.I, para.63.
that have been made to establish a general and inevitable principle on the subject of intervention" and led him to assert that:

It is in fact impossible to lay down an absolute rule on this subject; and every rule that wants that quality must necessarily be vague, and subject to the abuses to which human passions will give rise, in its practical application.¹

In spite of these reservations, Wheaton attempted to formulate a principle of non-intervention. He observed that:

Every State, as a distinct moral being, independent of every other, may freely exercise all its sovereign rights in any manner not inconsistent with the equal rights of other States...No foreign State can lawfully interfere with the exercise of this right, unless such interference is authorized by some special compact, or by such a clear case of necessity as immediately affects its own independence, freedom and security. Non-interference is the general rule, to which cases of justifiable interference form exceptions limited by the necessity of each particular case.²

Wheaton, like Kent, tried thus to reconcile a right to independence regarded as by nature absolute, with state practice which recognized no such absolute right.

Sir Robert Phillimore claimed to have based his international law as much on Divine as on Positive law.³ In fact, his treatment of the subject made very little reference to Natural law except in the introductory remarks about the sources of international law.⁴ The Positivist emphasis is reflected in Phillimore's discussion of the rights of states in general, and rules about intervention in particular. Unlike Kent and Wheaton, he claimed that as a matter of fact states did recognize one another's independence;⁵ he did not,

¹Ibid., Part II, Ch.I, para.65.
²Ibid., Part II, Ch.I, para.72.
⁴Ibid., Vol.I, Part I, Ch.VIII.
⁵Ibid., Vol.I, Part I, Ch.IX, section LX.
therefore, need to derive such a right from Natural law. Merely to show that states had a right to independence from custom or from tacit consent, however, was not apparently sufficient for Phillimore. Perhaps it was the nineteenth century obligation to be "scientific" which led him to derive the state's right to independence from the "proposition" that states were recognized as "free moral persons",¹ and the right to equality from the proposition that each state was a "member of a universal community".²

The science of international law was, for Phillimore, mainly constructed on these two presuppositions. From the right to independence, he deduced, inter alia, the right to a free choice with regard to the internal constitution and government of the state, without the intermeddling of any foreign state, the right of territorial inviolability, the right of self-preservation and the right to absolute and uncontrolled jurisdiction over all persons and things within the territory of the state.³

Phillimore thought that the right of self-preservation was the first law of nations, as it was of individuals. "A society which is not in a condition to repel aggression from without", he argued, "is wanting in its principal duty to the members of which it is composed".⁴ This right warranted a state in extending precautionary measures outside her territorial limits, even to the extent of transgressing the borders of her neighbour's territory.⁵ By thus reckoning the right of self-preservation as prior and paramount to that of territorial inviolability, Phillimore established a right of intervention on those grounds as superior to

¹Ibid., Vol.I, Part III, Ch.II, section CXLV.
²Ibid., Vol.I, Part III, Ch.II, section CXLVII.
³Ibid., Vol.I, Part III, Ch.II, section CXLV.
⁴Ibid., Vol.I, Part III, Ch.X, section CCXI.
⁵Ibid., Vol.I, Part III, Ch.X, section CCXIV.
the rule of non-intervention. This does not negate the principle of non-intervention as a general rule; it does mean, however, that it is overridden when it collides with the higher imperative of self-preservation.

Like Phillimore, Sir Edward Creasy paid homage to the notion of moral law existing among nations and then ignored it in his account of Positive and consuetudinary international law. Indeed, Creasy's notion of a "perfect right" borrowed nothing from the old Natural law doctrine. For him, a perfect right was "a right which is sanctioned by positive law and the breach of which is considered to constitute a casus belli". He distinguished between "the Pacific Rights" of states and those "which arose out of an actual condition of warfare". Of the former, the most important or "Primary Rights" were those to security, independence, equality, ownership and empire.

Creasy considered intervention as an example of "an occasion on which the Positive Rights of one state according to international law come into conflict with the Positive Rights of another state". Intervention by one state in the internal affairs and domestic politics of another state was "in the nature of things" a grievous violation of the other state's right to self-government such that "at first sight it would seem impossible to make any colourable excuse for such an interference with primary principles".

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1 Sir Edward Creasy, *First Platform of International Law*, (London, 1876), Ch.I, para.1; Ch.II, para.22 et seq.; Ch.IV, para.66; Ch.V, para.81.
3 *Ibid.*, Ch.VIII, para.156.
5 *Ibid.*, Ch.IX, para.284. Here Creasy cites von Martens on the "natural right" of a state to augment its power.
the frequency of such intervention, which led him to formulate allowable exceptions to the rule, without apparently questioning the integrity of his primary principles supposedly sanctioned by Positive law.

For W.E. Hall, the "ultimate foundation" of international law was the assumption that "states possess rights and are subject to duties corresponding to the facts of their postulated nature". The old doctrine of "natural rights" which for Phillimore were "propositions" had now become "assumptions". Among these assumptions, Hall listed the right of a state to do whatever was necessary to continue and develop its existence, the right to give effect to and preserve its independence, and the right to hold and acquire property.

Independence Hall defined as "the power of giving effect to the decisions of a will which is free, in so far as absence of restraint by other persons is concerned". His right of independence followed as "in its largest extent, a right possessed by a state to exercise its will without interference on the part of foreign states...and so taken it would embrace the rights of preserving and developing existence".

Absence of interference from other states, then, Hall regarded as a defining characteristic of the right of independence. At the same time, the duty of non-interference, or of respecting the

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1 Hall, A Treatise on International Law, p.50.
2 Loc. cit. Hall argued that "the proprietary character of the possession enjoyed by a state is logically a necessary consequence of the undisputed fact that a state community has a right to the exclusive use and disposal of its territory as against other states." Ibid., p.53.
3 Ibid., p.55.
4 Loc. cit.
independence of others, he saw as arising out of that right of independence:

a state has entire freedom of external and internal action within the law. To interfere with it, therefore, is wrong, unless it can be shown that there are rights or duties which have priority...over the duty of respecting independence.\(^1\)

One such incontestable right was that of self-preservation; Hall, like Phillimore, held that the imperative of self-preservation was superior to that of non-intervention.\(^2\)

In the work of T.J. Lawrence, the rights and obligations of states appeared neither as fundamental rights and duties, nor as propositions, nor as assumptions. As in the formulation of Creasy, states possessed rights and duties by virtue of the law they had created for themselves; Wheaton's absolute and conditional rights became, under Lawrence's unabashed positivism, the normal and abnormal rights and duties of states.\(^3\)

Lawrence argued that

Just as the law of the land clothes every child under its authority with certain rights which are his through no act of his own, so International Law gives to the states under its authority certain rights which belong to them through the mere fact of subjection to it.\(^4\)

There is then, no mystery for Lawrence in the derivation of the right of independence - "the right of a state to manage all its affairs, whether external or internal, without control from other states" - such a right was simply conferred on states by the law under which they lived.\(^5\)

\(^1\)Ibid., p.65. On the distinction between independence and non-intervention, see below, pp.48-49.

\(^2\)Loc.cit.

\(^3\)Lawrence, Principles of International Law, pp.112-113.

\(^4\)Ibid., p.12.

\(^5\)Ibid., pp.115-116.
Having established that the rights and duties of states were nothing more than rules made by states for the use of states, Lawrence went on to declare that an appeal to the practice of states in order to discover rules on the subject of intervention was useless; \(^1\) "the facts of international intercourse", he wrote, "give no clue to the rules of International Law". Confronted with this difficulty, he advocated a return to first principles "admitted on all sides", such as the right of independence and of self-preservation, from which rules, or at least moral precepts, regarding intervention could be deduced. \(^2\) Thus, even Lawrence, in order to escape the confusions of state practice, resorted to principles of Natural law, or axioms of the science of international law, in order to discover rules applying to intervention. Lawrence rejected a doctrine of absolute non-interference, if it meant simply isolationism, as fatal to the idea of a family of nations. He also rejected it if it meant that a state should take an interest in international relations, but merely resort to moral utterances if other states behaved in a manner of which it disapproved. His answer amounted to a plea for reasonableness in international relations:

[states] should intervene very sparingly, and only on the clearest grounds of justice and necessity; but when they do intervene, they should make it clear to all concerned that their voice must be attended to and their wishes carried out. \(^3\)

Perhaps the request for reasonableness was a final admission that intervention was a matter, rather of policy, than of law.

\(^1\) Ibid., p.121.

\(^2\) Loc.cit.

\(^3\) Ibid., p.135. This statement might be said to reveal Lawrence's admiration for Canning, see below, Chapter 4, pp.104-114.
The Positivist international lawyers looked at here, sought in the main to discover the principles of international law in the actual practice of states. Where practice provided but an equivocal guide to principle, refuge was found either in borrowing from the Naturalist international lawyers or in the assumptions or first principles upon which the system of international law was supposedly based. Mountague Bernard based his account of the "reason of the rule" of non-intervention on the latter approach.\(^1\) Law, in Bernard's view, was made by the development of principles, their pursuit into detail and their application to classes of cases. In this way a body of law could accumulate without reference to positive legislation. This law might be contradicted by the consent of nations or be given a positive value exceeding its intrinsic weight by universal acceptance, but acceptance did not, strictly speaking, make law.\(^2\)

For Bernard, the whole fabric of international law rested on two first principles, the destruction or impairment of which would destroy or impair the system. The first principle was that states were "severally sovereign and independent", the second that they were also members of a community "united by a social tie".\(^3\) The doctrine of non-intervention as a corollary from a cardinal principle of international law, that of sovereignty, had a prima facie claim to a place in the system, and the burden of proof lay with those who would deny it.\(^4\) Admitting, however, that abstract reasoning was always liable to control by positive usage, Bernard examined the commonly advanced justifications for intervention and found them wanting as legitimate exceptions to the


\(^2\) Ibid., pp.4-5.

\(^3\) Ibid., p.7.

\(^4\) Ibid., p.9.
principle of non-intervention. The international practice of intervention, he argued, was so diverse as not to allow its classification as settled usage, which was the necessary requirement for a rule to be established. The conclusion which Bernard arrived at was that the exceptions were all inadmissible, and that the principle of non-intervention, so far as he had examined it, was "universally true".  

In allowing no exceptions to the rule, Bernard echoed Wolff's absolute principle of non-intervention. Unlike Wolff, Bernard conceived of the rule as a logical requirement of a system based on the principle of state sovereignty, not as an imperative of Natural law. It was in this sense that Bernard asserted the universal truth of the non-intervention principle and as such he set up the rule over against the facts of international conduct. But he also wanted to measure the rule against those facts, and he found that while there were exceptions in practice to the principle of non-intervention, none of them was sufficiently consistent as to provide a guide to law.

The difficulty with Bernard's account, a difficulty encountered to a greater or a lesser extent by most of the nineteenth century Positivists, was the distinction between first principles or assumptions and the practice of states. Bernard wanted to argue at the same time that the general principles were established by universal consent, and that those principles could be contradicted by universal consent. He distinguished between the intrinsic weight of first principles and the value given to them by international acceptance - and yet derived them both from the same Positivist source. The solution to this dilemma in Positivist thought might lie in the notion of a minimum content of Natural

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1 Ibid., p.23.
2 Ibid., pp.4-5.
Law which would logically separate Bernard's "first principles" from international practice.¹

iii). The Derivation of the Principle of Non-Intervention in International Law: Summary and Critique.

Both the Positivist and the Naturalist schools of international law arrived at a principle of non-intervention, and advanced the rule with a tenacity varying as much within as between the two schools of thought. The relevant distinction between the Naturalists and the Positivists is that while the former prescribed that which ought to happen in international relations according to an ideal law, the latter were more concerned with that law which was actually observed in those relations. The general criticism of the Naturalists is that they paid no heed to the relevance to law of state practice, of the Positivists that they reduced law to a rubber-stamp for legitimizing that practice. As to the derivation of the non-intervention principle, it would be too crude an over-simplification to say that the Naturalists established such a rule arguing a priori from first principles; and that the Positivists, submitting such principles to the bar of practice, accounted for the exceptions to the general rule. And yet the proposition that reason established the rule of non-intervention and practice modified it seems to be tenable from the texts of the Positivists.²

In the writings of the Naturalists and the Positivists, the principle of non-intervention was seen to be closely related to sovereignty or independence or equality, whether these rights were held to be fundamental or

¹Hart, The Concept of Law, pp.189-95. See below, Chapter 9, section 11.

²This generalization applies only to the Positivists referred to in the above text. It would emphatically not apply to modern Positivists like Kelsen.
axiomatic, presuppositions of the law of nations or simply rights through customary acceptance. The task here is to examine these ideas as they relate to that of non-intervention.

a) The Doctrine of Fundamental Rights.

The doctrine which taught that states held certain fundamental rights from their very nature as states, had its origin in the work of Wolff, was fully acceptable to von Martens, underpinned, if with some reluctance, many of the Positivist writings of the nineteenth century, and its influence endured into the twentieth century.¹ The objections to the doctrine now seem obvious. The first is that it is impossible to deduce, in so comprehensive a way as the Naturalists did, prescriptions about the way men or states ought to behave from more or less simple statements of what they are. For law as a normative system guiding the behaviour or men in society is not the same thing as a law of Physics which attempts to describe regularities in the natural world. The second objection applies to the doctrine of fundamental rights in its diluted form, held by the Positivists as presuppositions rather than imprescriptible rights. As Kelsen has pointed out,

This version of the natural-law doctrine is as logically impossible as is the classical version of that doctrine. Legal principles can never be presupposed by a legal order; they can only be created in conformity with this order.²


But neither of these objections applies to the enterprise of attempting to discover those rules without which social life among men or states would be impossible, and referring to them as fundamental principles.

b) Sovereignty and Independence.

Sovereignty can be understood as a description of the supreme authority within a political community, or as an assertion of the need for such an authority as a provider of order within the state. From the notion of supreme authority can be inferred a denial of any authority above the state, an inference which, if it rendered international law meaningless, might be logically true but can be shown to be false empirically. Sovereignty might also be interpreted as meaning the exclusion of the authority of other states, but not of international law, and it is in the expression of this idea that the principle of non-intervention has its primary function.

In this sense the idea of non-intervention is close to, if not synonymous with, that aspect of sovereignty which draws attention to its exclusive nature - independence. If sovereignty and independence are not themselves merely two words conveying the same idea, the difference between them might lie in that between sovereignty in its internal and in its external aspect. Sovereignty in its internal aspect can be regarded as Hinsley's "final and absolute authority in the political community" - a positive concept about power within the state. Sovereignty in its external aspect can be regarded, if not as no authority above the state, then at least as the exclusion of the authority of other states - a negative concept defining sovereignty by what it excludes rather than by what it

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2 See above Chapter 1, p.13.
includes. It is for this aspect of sovereignty that independence is a synonym.\(^1\) Non-intervention in turn is not quite a synonym for independence. If a state has a right to independence, it is a right to conduct its affairs free from the interference of others and other states have a duty to respect that right. The principle of non-intervention explicitly links the right of one state to independence to the duty of others to respect it and expresses this relation in a rule of international conduct.

c) **Equality.**

Perfect equality is not possible, for two things, similar in every other respect, will always differ as to their distribution in space.\(^2\) To say that two or more things are equal is to say that they resemble each other in a way which is relevant to the comparison being made between them. Thus two triangles can at once be considered equal in the sense that the sum of their internal angles amounts to two right angles, and unequal if their sides are of different lengths. Men are equal as men, unequal as particular individuals. States are equal as states, unequal in most other respects.\(^3\)

Men are equal before municipal law, states are equal before international law. This does not mean that all men or all states have equal rights, for company directors have a greater capacity for rights than have dustmen, great maritime states have a greater capacity for rights than small continental ones. What the principle of equality before the law does require is

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that a dustman and a company director should receive equal
treatment by the law if they have committed a similar
offence; that a great state should be as circumspect
about interfering in the affairs of another state as a
small state, for the principle of non-intervention
applies equally to both of them. In neither of these
cases are actual inequalities considered relevant, for
the cases themselves are alike. That like cases should
be treated equally and unlike ones not is an imperative
without which law would cease to be law and become mere
arbitrariness.

Dickinson distinguished another sort of equality
in international law, which posited, if not an arithmetical
equality of rights between states, then at least an
equal capacity for rights by which states were potentially
equal.\(^1\) This sort of equality, according to Dickinson,
is what most writers on international law have meant in
their discussions of equality.\(^2\) It is a legacy of natural
law; Wolff and Vattel thought states as collections of men
were by nature equal, as individual men were, and that
in consequence they all had the same rights and were
under the same obligations. This notion is not only
empirically false, but is subject to the same objections
as the doctrine of fundamental rights.

The actual inequality of states has led some
international lawyers to reject the doctrine of legal
equality as a useless, redundant and even mischievous
fiction.\(^3\) Useless because it serves no purpose as a
principle from which rules of international law can be
deduced.\(^4\) Redundant because it offers nothing which is

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1. E.D. Dickinson, The Equality of States in International
2. Loc.cit.
   British Year Book of International Law, Vol.IV, (1923-1924),
   pp.3-4.
4. Loc.cit.
not already provided by the notion of independence. Mischievous because it is a "spurious application of a nominally democratic principle" to the unsuitable environment of international relations. But the principle of equality before the law has survived the attacks of the deniers. Oppenheim's conception of the member-states of the international community being "equal to each other as subjects of international law", is carried on in the Charter of the United Nations which bases the Organization on "the principle of the sovereign equality of all its Members". The principle of non-intervention, so frequently derived in the treaties of international law from the principle of equality, does at least receive from that principle the idea that it applies equally to all states.

It has been said that the doctrine of fundamental rights betrays its origin in the struggle for independence of the modern state. The dual function the doctrines of sovereignty, independence and equality - whether they were asserted as fundamental rights or not - might be said to have performed was that of detaching the emergent states from the pretensions of Papal and Imperial authority, at the same time as drawing attention to their individual existence - each separate.

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1 Westlake, Collected Papers, pp.86-87.
4 Article 2(1).
from the other. Apart from its attendance as midwife at
the birth of the modern state, the doctrine of fundamental
rights might be said to have functioned as a protector of
weak states from the ravages of the strong. If the weak
had no other means of protection, they could at least mark
the interventions of the strong with the brand of illegality,
and make the most of such a feeble weapon by representing
intervention as the violation of an absolute or fundamental
right. And a third function for the fundamental rights
document was within the science of international law. Where
the Positivists could derive no rule from a confused pattern
of state practice, fundamental rights were the first
principles to which they could return for guidance.

In each of these functions of the fundamental
rights doctrine, the principle of non-intervention
finds a place. It features as a doctrine asserted on
behalf of the sovereignty and independence of the state
against other states and against the existence of any
authority above the state, and as a principle which
crowned the achievement of a society made up exclusively
of states. It is a principle championed by small states
against the meddling of the great. And it is a first
principle of a society of sovereign states which can be
relied upon by international lawyers in the absence of
any clear customary rule. This chapter has examined
the principle of non-intervention as an imperative of
international law. The next will examine the view that
it makes good political sense for states to observe it.

1 Hinsley speaks of Bodin's attempt "to release international
relations from the imperial or universalist framework", Sovereignty, pp.181-182; Kooijmans represents legal equality
as having mainly a negative nature, being manipulated as a
weapon against universalistic tendencies, Doctrine of Legal
Equality, p.56; Philip C. Jessup argues that "independence
was a historically convenient concept because it helped to
differentiate those political groupings which determined

2 Fenwick, International Law, p.225.

3 For an expansion of the idea of non-intervention as a
"first principle" of international society, see below,
Chapter 9, sections I and II.
Chapter 3  The History of Non-Intervention as a Theory.

A theory of non-intervention will be understood here as a doctrine urged as a means to some particular desired end, such as lasting peace, or the security of states, or the protection of the best interests of a particular state. As such, it will encompass the views of those who, while asserting the need for states to observe the principle of non-intervention if peace between them were to be secured, argued that this was not the only condition having to be met before that end could be achieved. Cobden's espousal of a near-absolute doctrine of non-intervention will first be examined, and then the views of Mill, Kant and Mazzini, as they departed from Cobden's extreme position.

Richard Cobden's Theory of Non-Intervention.

Though he wished to see the principle of non-intervention win general acceptance as a rule of international conduct, it was not abstract inference from the premise of the sovereignty of states that led Cobden to espouse it. What he did assume was that no government had the right to involve its people in hostilities, except "in defence of their own national honour or interests". Unless this principle were made the rule of all, he thought, there could be no guarantee for the peace of any one country, "so long as there may be found a people, whose grievances may attract the sympathy or invite the interference of another state". Thus Cobden believed that the "national interest" was an intelligible concept, that fidelity to it required states to abstain from participation in the domestic conflicts of others, and that adherence to such a rule was a *sine qua non* of peace among states.


2Loc. cit.
Cobden was a Manchester business-man and later a professional politician who, when he advocated the conduct of foreign policy according to the principle of non-intervention, had in mind the interests of the people of Great Britain. In Cobden's view, this did not mean that British interests were to be indulged at the expense of other nations, for he combined with his conviction about the rightness for Britain of a policy of non-intervention, a convenient belief in the doctrine of the harmony of interests. "Now the House of Commons is a body that has to deal with nothing but the honest interests of England", he said in a speech to that body, "and I likewise assert that the honest and just interests of this country, and of her inhabitants, are the just and honest interests of the whole world". The fact that the real world was not a place in which concord prevailed could be ascribed to the failure of states to observe the principle of non-intervention, to the interference of aristocratic government in the naturally harmonious relations of peoples. The idea that inter-governmental relations were inimical to good international relations was expressed in Cobden's maxim in praise of American foreign policy: "As little intercourse as possible betwixt the Governments, as much connection as possible between the nations of the world".

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2 Cobden, "Russia", (1836), in Political Writings, p.216, (Cobden's emphasis). Cobden also used a quotation from Washington's Farewell Address as an introduction to his pamphlet "England, Ireland and America": "The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connection as possible." Ibid., p.3. See also on Cobden's principles of the harmony of interests and of non-intervention, J.A. Hobson, Richard Cobden, The International Man, (London, 1919), pp.20-21 and 36.
Just as Christian Wolff came closest to advocating an absolute principle of non-intervention among eighteenth century international lawyers, so, among nineteenth century politicians, Cobden was the nearest to urging an absolute policy of non-intervention. In 1858, he wrote in a letter to a friend:

You rightly interpret my views when you say I am opposed to any armed intervention in the affairs of other countries. I am against any interference by the government of any one country in the affairs of another nation, even if it be confined to moral suasion. Nay, I go further, and disapprove of the formation of a society or organisation of any kind in England for the purpose of interfering in the internal affairs of other countries. I have always declined to sanction anti-slavery organisations formed for the purpose of agitating the slavery question in the United States.¹

By his advocacy of such a comprehensive prohibition of intervention in the domestic affairs of other nations, or in quarrels between them, Cobden found himself at odds with most of the statesmen of his day who were responsible for the making of British foreign policy. In his speeches and writings, he agitated for acceptance of his doctrine in two main ways. The first was to stress the advantages which would accrue to the people of Britain should their government adopt a policy of non-intervention and to point out the domestic disadvantages of an interventionary foreign policy. The second and more persuasive part of Cobden's argument consisted in trenchant criticism of the interventionary policies of successive governments, by which Cobden was concerned to show either that the purposes which intervention was intended to serve were spurious, or that intervention was an

¹Richard Cobden to Mrs. Schwabe, 1858, in Hobson, op.cit., p.400.

²In the two pamphlets "England, Ireland and America" and "Russia" in which Cobden worked out a large part of his theory of foreign policy, he was concerned to demonstrate the inefficacy of a war against Russia on behalf of the Turks. Political Writings, pp.5-119 and 122-258.
unfitting instrument for their achievement.

That Cobden stressed the material advantage of the British people in order to advance the cause of non-intervention, is evidence more of his political acumen than of "a narrow and grovelling commercialism".¹ If adherence to the rule of non-intervention were a necessary if not a sufficient condition for international peace, then for Cobden, its pedigree was pure and at the least a foreign policy conducted according to a coherent principle was to be preferred to being "at sea on foreign politics without rudder or compass".²

But Cobden found his association with the "peace party" more of an embarrassment than a fruitful platform for his views; he thought that the party's dogged insistence on the doctrine of non-resistance allowed no agitation or discussion on secondary details - plans of a more gradualist nature which "might prepare men's minds, step by step, to look upon the abolition of war as a possible thing".³ For Cobden, the doctrine of non-intervention was one of these modes, one which could be tied to a more concrete conception of interest than that of a vision of future peace.

Cobden's interpretation of the doctrine of the harmony of interests did not lead him to set up this abstraction as the primary goal which Britain ought to pursue in formulating her foreign policy. That goal would be best served by Britain pursuing her own immediate interest which was ultimately the interest of

¹A criticism of Cobden quoted in Hobson, op.cit., p.16.
³Cobden to Henry Richard, 18 November 1851, Hobson, op.cit., pp.81-82
the whole world. But statesmen with whose foreign policies Cobden fundamentally disagreed would also erect the national interest as their guiding motive. What set Cobden apart from them was that his conception of Britain's interest was informed by the interests of the commercial classes. Britain was a manufacturing nation whose well-being was dependent upon trade. Since trade was best served by a peaceful world, Cobden could attach his doctrine of non-intervention to the interests of the manufacturers. In order to show that his policy of non-intervention was more than just a "sterile principle", Cobden was concerned to emphasize that the Palmerstonian principle of intervention was against the interests of "our people in a variety of ways, as in distracting attention from home politics, adding loads of debts and taxation which keep down by their presence the working class and prevent them from rising in the social scale and therefore from rising politically".  

1 There are confusions in this doctrine which appear if the argument is pursued to any length, e.g. in Cobden's own words: "And if such is the character of free trade... that it unites, by the strongest motives of which our nature is susceptible, two remote communities, [England and America] rendering the interest of the one the only true policy of the other..." Political Writings, p.225. The imperative of pursuing the national interest seems here to become the imperative of pursuing another nation's interest.  

2 Cobden to Henry Richard, 15 October 1856, Hobson, op.cit., p.171. One of Cobden's criticisms of British intervention in Spain during the 1830's was the cost of the exercise, half a million sterling in 1836 compared to 10,000 pounds spent on establishing Normal Schools. "When the affairs of the British Empire are conducted with as much wisdom as goes to the successful management of a private business", he wrote, "the honest interests of our own people will become the study of the British ministry; and then, and not till then, instead of being at the mercy of a chaos of expedients, our Foreign Secretary will be guided by the principle of non-intervention in the politics of other nations". Political Writings, p.230.
Thus Cobden's biographer could write that "he had always advocated the principles (sic) of non-intervention, not on grounds of sentiment, philanthropy, or religion, but strictly in the dialect of policy and business".  

The second means which Cobden adopted to advance his doctrines about international politics was to discredit those of his opposition. These consisted of the "two stock pretences" usually employed to excuse British intervention in the politics of the Continent - the maintenance of the balance of power in Europe and the protection of commerce. To these, Cobden added the particular species of interventionism of his own time - Palmerston's notion that British interference was required to further the cause of liberalism abroad.

Cobden considered the phrase "the balance of power" an "undescribed, indescribable, incomprehensible nothing". The various definitions of the balance of power offered by Vattel, Gentz and Brougham were, he thought, vague and meaningless if taken separately, confusing and contradictory if taken together. It was not the balance of power which had motivated England's foreign policy but lust for conquest, and if, perchance, any small state had preserved its independence, Cobden attributed that state of affairs to the limits which "nature herself has set to the undue expansion of territorial dominion". The only correct view of the balance of power, Cobden thought, was the literal definition of Francis Bacon's, which interpreted the phrase as meaning a balance of all ingredients of national power, from extent of territory to advances in

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1 John Morley, The Life of Richard Cobden, (2 vols., London, 1881), Vol.II, p.158. Morley wrote this of Cobden to combat the argument that Cobden's opposition to the Crimean War carried no particular weight because of his well-known opposition to almost every war.

2 Political Writings, p.196.

3 Ibid., pp.197-198.

4 Ibid., p.201.
civilization. Bacon's principle of balance required that states see and hinder a potential imbalance before it occurred and disrupted the system; if men were to abide by this rule, wrote Cobden, it would reduce them below the level of brute animals.

Even when he assumed a principle of balance which operated with complete efficiency, Cobden considered its invocation to justify British intervention in Turkey against the spread of Russian power to be wrong. In the first place, he drew attention to that tradition of European thought and practice which placed Turkey beyond the pale of European civilization, outside the system of which the balance of power was a part. Intervention in Turkey would not accord with this tradition. Secondly, to the argument that a Russia in possession of Constantinople would jeopardize the interests of British commerce, Cobden replied by asking why the American possession of New York, "a port far more commodious than Constantinople", had never been subjected to a similar sort of balance of power calculus. In the third place, Cobden countered the argument that a Russian invasion of Turkey would endanger Britain's colonies, by declaring that the Russians (or Austrians) would be "far too abundantly occupied in retaining the sovereignty over fifteen millions of fierce and turbulent subjects" to contemplate any further expansion.

Cobden's fundamental objection to the principle of the balance of power, however, was not its vagueness and confusion as a concept, or that interventions

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1 Ibid., p.204.
2 Ibid., pp.204-205.
3 Ibid., pp.206-209.
5 Ibid., p.20. (Cobden's emphasis). The posing of this question of potential danger to the British colonies led Cobden to question their retention if so much military power had to be deployed to protect them.
predicated upon it did not match the doctrine they were supposed to uphold. Cobden objected above all to the military connotation of the phrase "balance of power", as if conquest could augment the power of a state or intervention check or balance the power of another. Cobden thought that it was through "the peaceful victories of mercantile traffic, and not by the force of arms, that modern states have yielded to the supremacy of more successful nations". The engine of national power and grandeur was "labour and improvement", and to Russian aggrandizement in Poland and the Crimea, Cobden compared the achievements of Watt and Arkwright in England, declaring that it was to these people that England owed her position and not to Wellington or Nelson. If peaceful industry were the true source of the power of the state, it followed that intervention could neither enhance the power of the intervening state, nor balance the power of its opponent.

Thus, for Cobden, if the balance of power meant anything at all, its maintenance would certainly not be served by intervention. The second "stock pretence" which Cobden sought to unmask was that which saw the protection of commerce as requiring an interventionary foreign policy and a large navy. Cobden was not doubtful about the objective of the protection of commerce, as he was about that of maintaining the balance of power. What he was doubtful about was whether military force could ever provide the desired protection. Commerce, he thought, provided its own protection in that force could never prevail against the natural wants and wishes of mankind; British trade in particular could be protected and enlarged only by the cheapness of her manufactures. Indeed, standing armies and navies, far

1 Ibid., p.79.  
2 Ibid., pp.147-148.  
3 Ibid., p.11.  
4 Ibid., p.219.
from providing protection, actually detracted from commerce by adding taxation to manufacturers' costs and by tending to repel rather than to attract customers.\(^1\) Cobden's conception of the autonomy of commerce and of the reality of shared interests which brought traders together, meant that he regarded intervention for the protection of commerce as, at best, an irrelevance, and at worst, a serious disservice to the interests of the "middle and industrious classes of England".\(^2\)

The third notion which Cobden wished to discredit was that of Britain as carrier of "schemes of universal benevolence", as enforcer of "the behests of the Almighty in every part of the globe",\(^3\) or as a "gensdarme (sic) whose office it was, gratuitously, to keep in order all the refractory nations of Europe".\(^4\) Whether it was Pitt, Burke, Fox and Grey sitting in judgment on the French Revolution,\(^5\) or the widespread enthusiasm, in and out of the Parliament of his own time, for the cause of liberalism and constitutionalism in Europe, Cobden wondered at the self-importance of a nation which could assume such a store of virtue and wisdom, of God-given power and authority, as to make it feel competent even to discuss these matters so earnestly.\(^6\) Cobden was also impressed by the hypocrisy of Englishmen who, notwithstanding the "embarrassing weight" of their own colonies, chastised others for their unlawful

\(^1\)Ibid., p.235.

\(^2\)Ibid., p.34. The justification for the phrase "at best an irrelevance" lies in Cobden's account in the pamphlet "England, Ireland and America", of how little England's trade was affected by Napoleon's blockade during the Napoleonic Wars. Political Writings, pp.11-13.

\(^3\)Speech to House of Commons, 5 June 1855, in Bright and Rogers, Speeches by Richard Cobden, Vol.II, p.27.

\(^4\)Political Writings, p.9.

\(^5\)Ibid., p.195.

\(^6\)Ibid., pp.6-7.
aggrandizement.¹

In place of the arrogance of an interfering foreign policy, Cobden recommended that Britain confine herself strictly to the just interests of her empire, and those interests excluded intervention to maintain peace and order, or to bring truth and justice to the world. Cobden sympathized with the cause of progress and freedom in Europe and one of his criticisms of the balance of power system was that it erected a barrier in the path of that cause. Because the maintenance of a balance required that the established members of the state system be kept intact against nationalist revolution, Cobden deplored the consequent subordination of the interests of the people of Europe to the perceived interests of their governments.² In spite of, and in his own view because of, his sympathy for nationalist movements, however, Cobden could not countenance intervention on their behalf. Such action would contravene the non-intervention principle which, Cobden stressed, would also prevent foreign interference to put down the nationalities.³

Cobden's case against interference with the form of European governments was stated most clearly in a speech to the House of Commons in June 1850 opposing a motion in praise of the government's conduct of foreign policy.⁴ In the first place, Cobden questioned the

¹Ibid., p.153.
²Richard Cobden to Henry Richard, no date except December (?), Hobson, op.cit., pp.188-190.
³Speech to the House of Commons, 22 December 1854, in Bright and Rogers, op.cit., p.6.
⁴Speech to House of Commons, 28 June 1850 in Bright and Rogers, op.cit., pp.211-229. Cobden directed this speech at those who advocated intervention for constitutionalism and in particular at its chief proponent, Mr. Cockburn, M.P. for Southampton. But Cobden was reluctant to attribute the championship of liberalism against despotism abroad to Lord Palmerston and thus dignify his interventionary foreign policy with high-sounding principles. Rather he wished to represent Palmerston as timid in dealings with the Great Powers (and in particular Russia) and overbearing to small states (in this instance, Greece). See ibid., particularly pp.227-228.
wisdom of a Britain which acted as a universal guarantor of constitutional government, pointing out that this would involve the Foreign Office in the reform of "every country on the face of the earth". Secondly, after asserting that Britain had no right to interfere with any other form of government whether it were republic, despotism or monarchy, Cobden emphasized the consequences of contravening this principle. A Britain which intervened to further constitutionalism, he argued, must tolerate a Russia which invaded Hungary. On the other hand, a Britain which adhered to the non-intervention principle would not be embarrassed by its own actions when denouncing the illegalities of others. In the third place, Cobden put the non-intervention principle into the mouths of the Hungarian and Italian nationalists, and regarded its efficient operation as the best chance for the achievement of their aspirations. It was not British interference on their behalf that they required, Cobden argued, but the establishment of such a principle, among outside powers, as would leave them entirely to themselves.

To this argument that observation of the rule of non-intervention would further the growth of liberalism by preventing intervention against it, Cobden added a more direct one, that outside interference on behalf of liberalism simply could not work. It was by the "force and virtue of native elements, and without assistance of any kind" that a people worked out its own political regeneration. Moreover, "A people which wants a saviour", wrote Cobden, quoting Channing with approval, "which does not possess an earnest and pledge of freedom in its own heart, is not yet ready to be free".

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1 Ibid., p.224.
2 Ibid., p.225.
3 Ibid., p.226.
4 Cobden, Political Writings, p.36.
5 Ibid., p.230.
Thus intervention was doubly inappropriate as a means to promoting liberalism abroad; outside assistance could not promote a necessarily mature growth, and if such assistance was requested by a people, that very request was evidence of its immaturity and inability to benefit from intervention.

Cobden urged adherence to the non-intervention principle as a policy which would suit the real interests of the British people, not primarily as a rule of international law. His counsel, on the grounds of her interest, against British intervention to protect Turkey from Russia, reveals the difference between the two imperatives. The rule of non-intervention, it can be argued, if it is to function effectively as an ordering device in international society, must admit the legitimacy of counter-intervention to uphold the principle of non-intervention. At international law, Britain might have a right if not a duty to intervene on behalf of the Turks against Russian intervention. The only sanction Cobden would allow was the power of opinion and moral force.

Cobden's faith in the power of moral force in international relations took two forms. In the first place, Cobden thought that opinion alone would establish rules of conduct between nations. Impressed by Russian and Austrian restraint in not interfering in Turkey to claim the Hungarian political refugee, Kossuth, Cobden wrote to John Bright:

...I felt convinced...that it was that expression of OPINION from Western Europe scared the despots instantly from their prey. And you are quite right; it is opinion and opinion only that is wanting to establish the principle of non-intervention as a law of nations, as absolutely as the political refugee in a third and neutral country is protected now by the law of nations.

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1 See below, Chapter 8, section 1.

By "that expression of opinion" Cobden meant the unanimous expression of indignation from all parties and every shade of opinion, as expressed in the newspapers of London and Paris.

The second article of Cobden's faith was the power of example. To those who argued that they were in favour of non-intervention provided other people conformed to the same principle, Cobden replied that he too wished to see the principle universally adopted and that the first step towards it was for Britain to set an example by herself conforming to it. "If England, America and France would proclaim such a law for themselves", he wrote, "no other power would dare to violate it...if England and America would first observe the principle themselves, they might afterwards say 'Stop' to Russia, and the word would then have as much force as if uttered with the voice of a thousand cannon".

Cobden's hypotheses about the power of persuasion in international relations were not and still have not been put to the test, unlike his faith in the peace-loving nature of the commercial classes of England which was found wanting at the time of the Crimean War. But his refusal to admit even the possibility of force to uphold the law being opposed to force deployed against the law was a weakness in his doctrine which Mill emphasized.

1 Richard Cobden to Henry Richard, 5 December 1856, Hobson, op.cit., p.183. Cobden was replying to Mr. Roebuck, M.P. for Sheffield.


3 Though Mill did not address himself to the speeches and writings of Cobden but rather to a British foreign policy which proclaimed a principle of non-intervention.
Concern that by her words England was misrepresenting the true motive of her foreign policy and that by her deeds she was abusing the habitual principles of that policy, led Mill to attempt to clarify the grounds upon which it was justifiable to intervene in the affairs of other countries. Because the British policy of non-intervention was interpreted in other countries as none other than a screen for her own aggrandizement and because Britain's actions did not always seem to accord with her professed principles, Mill thought it appropriate to reconsider the whole doctrine of non-interference as a moral question.

In the first place, Mill, more forcibly than Cobden, made a distinction between rules applicable in the relations of civilized nations and those which were relevant to conduct towards "barbarians". The behaviour of the former towards the latter might indeed offend against the great principles of morality, but could never violate the law of nations, since barbarians had not the rights of a nation. For Mill, criticism of French conduct in Algeria or that of the English in India in

1 J.S. Mill, "A Few Words on Non-Intervention", reprinted from Fraser's Magazine, December 1859, in Mill, Dissertations and Discussions: Political, Philosophical, and Historical, (4 vols., London, 1875), Vol.III, pp.153-178. The "words" Mill objected to were those used by statesmen to justify non-intervention by England in continental affairs by reference purely and baldly to the criterion of British interests. This, he thought, left England open to the charge of being an unprincipled meddler in other nations' affairs. What they really meant, according to Mill, was that while England would normally observe the principle of non-intervention, she would overrule it if such action were required by the higher principle of self-defence. The "deed" Mill objected to was the "insane blunder" England seemed to be committing by her attempts to defeat the French-inspired Suez Canal project. Ibid., pp.162-166.

2 Ibid., p.166.
terms of the principle of non-intervention, or indeed of any customary rule of international law, was irrelevant. ¹

In the international relations of civilized nations, Mill reduced the question of the legitimacy of interfering in the regulation of another country's internal concerns to whether, in time of civil war, a nation is justified in taking part on one side or another. Mill answered the various questions which arose from this problem, in some cases according to the customary law of nations, in others by reference to rules of morality or the requirements for their proper operation, and in others by the use of reason or what seemed to him to be sound policy. In the case of a protracted civil war in which neither side could gain a sufficient ascendancy to end it, Mill relied on "admitted doctrine" to justify intervention by neighbours to insist that the contest cease.² As to intervention on behalf of a people struggling for liberty against its government, Mill used similar arguments to Cobden to deny its legitimacy. This judgement was not based on a rule of any sort, but upon a conviction that the best test of a people's fitness for popular institutions was a willingness "to brave labour and danger for their liberation".³

Assistance to a people kept down by foreign intervention, Mill argued, was a necessary requirement for the proper operation of the principle of non-intervention. Help of this kind did not disturb

¹Ibid., p.168.
²Ibid., p.172. By "admitted doctrine", Mill clearly meant that of customary international law. He showed it to be a maxim of "what is called international law" by the use of examples of intervention of this type.
³Ibid., Mill did not lay this down as an invariable rule, he merely said that intervention of this sort can "seldom ...I will not go so far as to say never - be either judicious or right". Ibid., p.175.
an indigenous balance of forces but served to redress a balance disrupted by outside intervention. Mill argued the case for counter-intervention in the following manner:

The doctrine of non-intervention, to be a legitimate principle of morality, must be accepted by all governments. The despots must consent to be bound by it as well as free States. Unless they do, the profession of it by free countries comes but to this miserable issue, that the wrong side may help the wrong, but the right must not help the right. Intervention to enforce non-intervention is always rightful, always moral, if not always prudent.1

By admitting the legitimacy of what might be called humanitarian intervention to bring to an end a deadlocked civil war, and by insisting on the legitimacy of counter-intervention to uphold the rule of non-intervention, Mill parted company with Cobden's more extreme doctrine of non-intervention.

Immanuel Kant.

Kant's fifth preliminary article for eternal peace reads: "No state shall interfere by force in the constitution or government of another state".2 Like Cobden he held this principle to be an indispensable condition for the achievement of peace among nations. Unlike Cobden, Kant seemed to allow exceptions to the rule of non-intervention in order to make it consistent with other articles that he set forth in his scheme for perpetual peace.

International peace, and a law of nations to preserve it, Kant thought, must be based on the freedom

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1Ibid., p.176.

and "moral integrity" of each nation.\(^1\) There could be no justification for a state interfering in the constitution of another unless internal dissension had split it into two parts each constituting a separate state. But if the internal strife had not yet reached this stage of anarchy, then interference from outside powers was an infringement of the right of an independent people struggling with its own weaknesses. Interference of this sort, Kant considered, would tend to render the autonomy of all states insecure.\(^2\)

While Cobden agitated against intervention to promote or to bring down a particular form of government, Kant appeared to imply an exception to the rule of non-intervention if by intervention a republic could be established or a despotic regime crushed. Kant's first definitive article for perpetual peace declared that "the civil constitution in each state should be republican".\(^3\) To the question whether the republican constitution was the only one which could lead to world peace, Kant replied that it did "offer the prospect of the desired purpose", because the decision to go to war would be in the hands of citizens who would be aware of their real deprivations as a result of war, unlike a head of state (i.e. not a citizen) who could find war an amusing diversion.\(^4\)

The solution to this problem in the interpretation of Kant as to which is the more pressing imperative —

\(^{1}\)Ibid., p.256, the second definitive article of the eternal peace; see also W. Sacksteder, "Kant's Analysis of International Relations", in Journal of Philosophy, Vol.51, No.25 (1954), pp.849-850, and Hinsley, Power and the Pursuit of Peace, pp.67-69.

\(^{2}\)Kant, "On Eternal Peace" in Friedrich, op.cit., p.248.

\(^{3}\)Ibid., p.250. By a republican constitution, Kant meant one founded on the following three principles: freedom of all members of a society as men, the dependence of all on a single common legislation as subjects, and the equality of all as citizens. Loc.cit.

\(^{4}\)Ibid., pp.251-252.
the rule of non-intervention or an international society made up of republics—seems to lie in regarding republicanism as prior to non-intervention. If it is the nature of the internal order which ultimately determines the character of international society, then rules about international relations must give precedence to rules about domestic society. It is then possible to argue that "Kant restricts and defines non-intervention...to the making of a civil constitution; conversely, Kant would probably have asserted the right of other powers to intervene when a people is being deprived of its constitution by a totalitarian coup d'état". Only in an international society made up of republican nations could a rule of non-intervention apply absolutely.

The other problem in Kant, with respect to the rule of non-intervention, is his conception of a "Cosmopolitan or World Law" set forth in the third definitive article of perpetual peace. For Kant, Mill's distinction between civilization and barbarity with respect to applicability of rules, would not have been relevant. Moreover, Kant's requirement of a jus cosmopoliticum seemed to erode the distinction between municipal and international law, and to add a third dimension of world law applying directly to men without consulting the state as intermediary. The non-intervention principle is a rule between states whose applicability is compromised if individual men or groups have recourse to a law beyond the state. Kant's conception of a "public law of mankind" making a "violation of law and right in one place felt in all others" seems to restrict the rule of non-intervention to an even narrower field.

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1 This is Karl Loewenstein's interpretation of Kant in Political Reconstruction, (NY, 1946), pp.17-20.

2 Friedrich, Inevitable Peace, p.178. (Friedrich's emphasis of "civil constitution").
than the requirement of republicanism. ¹

While Mill's thoughts on the principle of non-intervention can be said to have analysed among other things the requirements for the operation of the rule in the then existing international order, Kant's requirements for perpetual peace seemed to base adherence to the principle on a radical, if not a revolutionary, revision of that order.

Joseph Mazzini.

Mazzini's criticism of the doctrine of non-intervention involved at best a feeling with Kant (though for very different reasons) that its proper functioning would require a revision of the international system. At worst, Mazzini considered the doctrine a mere slogan disguising the machinations of the great powers. On this view, the conviction shared by Cobden and Mill that the doctrine had a moral content would be absurd.

Mazzini saw the origin of the principle of non-intervention as an offspring of the theory of human rights which was the legacy of eighteenth-century thought in Europe. ² The doctrine of the equality and liberty of all men, applied to states, led to an assertion of a right of non-intervention. This product of the "negative and purely critical" spirit of the previous century had,

¹Kant, "On Eternal Peace", pp.257-259. Kant's concern, in proposing his third definitive article, was with the "inhospitable" conduct of civilized nations towards peoples outside Europe and North America who were "counted for nothing". Thus Friedrich suggests that Kant "would have restricted the idea of non-intervention in such fashion as to enable the world federalism (Kant's second definitive article on international law) to take positive steps to protect people against imperialism and minorities against abuse". Op.cit., p.48.

according to Mazzini, originally served a useful purpose. The function of the non-intervention principle had been twofold. In the first place it was "a useful and righteous protest against the lust of conquest and appetite for war, which had till then characterised the activity of Europe". Secondly, the principle of non-intervention represented the best way so far evolved by governments to avoid conflict between them.

After the French Revolution, Mazzini thought, the history of the principle of non-intervention demonstrated that it had already made its contribution to "the intellectual progress of the human race" and was now a mere tool of the great powers, a principle invoked to protect their own self-interest. After the Congress of Vienna, Mazzini argued, the rule of non-intervention was to fulfil a function which directly contradicted the cause in whose service it had been originated; it became a protector of the legitimist settlement of 1815. The rule was to stand guard over the parcelling out of Europe effected at Vienna. It was to allow the governments recognized by that settlement to do as they would with the people within their frontiers, and it was to justify intervention to uphold the status quo, should those people attempt to disturb it. This interpretation of the function of the non-intervention doctrine after 1815 allowed Mazzini to

1 Joseph Mazzini, Life and Writings of Joseph Mazzini, (6 vols., London, 1890-91), Vol.6, Appendix on "Non-Intervention", first published 1851, p.300. Theories of equality and liberty were negative because they begged the question - equality and liberty to what end? critical because they served to protest against a tyrant in the name of freedom. Salvemini, op.cit., pp.26-27.

2 Mazzini, op.cit., p.300.

3 Salvemini, op.cit., p.28.

4 Mazzini, op.cit., p.300; Salvemini, Mazzini, p.28.

5 Mazzini, op.cit., pp.300-301.
assert his view of the real meaning of the doctrine in words which were to be echoed by John Stuart Mill eight years later.¹ According to Mazzini, the non-intervention principle now meant "intervention on the wrong side; intervention by all who choose, and are strong enough, to put down free movements of peoples against corrupt governments. It means cooperation of despots against peoples, but no cooperation of peoples against despots".² Because of this perversion of its original meaning, Mazzini thought non-intervention to be a discredited doctrine, at least among thinking people, in Europe. Only in England was the doctrine still respected and this was due to its degeneration into a "kind of selfish indifferentism".³

For Mazzini, two sorts of condition would have to be met if the non-intervention principle were to be an acceptable rule of conduct between nations. In the first place, Mazzini thought that the rule would have to be adhered to absolutely. If the principle of non-intervention were proclaimed by other states as a ground for doing nothing on behalf of Italian independence, then those states should also accept an internal revolution as legitimate and do nothing to put it down.⁴ But Mazzini went further than this to demand that the historical record of the rule of non-intervention be put straight. "The same theory which proclaims non-interference as the first law of international politics", he declared, "must include, as a secondary law, the right of interference to make good all prior infractions of the law of non-interference".⁵

¹See above, p.68.
³Ibid., p.301. This argument was one to which Mill addressed himself in his essay on Non-Intervention. See above, p.66-68.
⁴Mazzini, op.cit., pp.304-305.
⁵Ibid., p.305.
Mazzini's second condition for acceptance of the rule of non-intervention was that it should apply between nations. He thought that the rule presupposed a state of things "in which all the due conditions of Nationality have been attended to". Mazzini's theory of nationalism asserted that "God has divided the human race into masses so evidently distinct; each with a separate tone of thought, and a separate part to fulfil". On this view, the rule of non-intervention could play a legitimate role only if it served to protect a God-given order, and that role was no longer a legitimate one if "the inhabitants of Europe were flung together anyhow".

For Mazzini, the nation was a more permanent thing than a system of rule, and it was the nation and not the system of rule which should be inviolate.

But apart from his criticism of the abuse of the principle of non-intervention by the great powers and his predication of the only conditions in which such a rule could properly operate, Mazzini seemed to repudiate the sort of international society which would embrace the rule as a principle of its existence. He would not have tolerated Cobden's anarchistic conception of international society in which the rule of non-intervention would be of fundamental importance. The very reasons which convinced Cobden of the wisdom of a policy of non-intervention led Mazzini to denounce it as "an abject cowardly doctrine: atheism transplanted into international life, the deification of self-interest". The "atheism", the political bloodlessness of the rule of non-intervention, was for Cobden its principal asset. Certainly, it would prevent intervention on behalf of liberalism, but it would

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1 Ibid., p.301.
2 Ibid., p.303.
3 Ibid., p.304.
4 Quoted in Salvemini, op.cit., p.28.
prevent intervention against it too. But Mazzini, fired by enthusiasm for revolutionary nationalism, could only see the rule operating against this righteous cause. In a similar way to Kant's *jus cosmopoliticum*, Mazzini envisaged an international society in which nations could combine, as a matter of international duty, to counter some glaring wrong being done within an independent nation. He thought that it was beginning to be felt in international society, that confronted with such a wrong, "other nations are not absolved from all concern in the matter simply because there may interpose between them and the scene of the wrong, seas, tracts of continent, and traditional diplomatic courtesies". Furthermore, Mazzini thought, the traditional diplomatic courtesy - the rule of non-intervention - removed "one of the most potent impulses towards progress, which as history teaches us, is almost always fulfilled through acts of intervention".

Both Cobden and Mill addressed their ideas about non-intervention primarily to British foreign policy, Cobden in a long and lonely attempt to persuade its makers, by the force of his argument alone, into a radical change of course, Mill in a less ambitious attempt to nudge them back into what he saw as the mainstream of the British tradition of non-intervention. Cobden not only laid bare the weaknesses of his opponents' doctrine with inescapable logic, he also developed his own theory of foreign policy, and it is in the theory Cobden constructed rather than in the arguments he used to belabour Palmerston that a major flaw can be found. Cobden's radical anarchism made no provision, outside the power of example and of opinion, against the violator of the rule of non-intervention. In affirming the legitimacy of counter-intervention to

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enforce non-intervention, Mill improved on Cobden's theory, but in doing so, he raised a whole series of questions which Cobden's absolute non-interventionism avoided, questions about when the law had been broken, which is the wrong side and who judges. Concerned not with the reform of a particular state's foreign policy, or with approximate order in the world as it was, but with the conditions for perpetual peace between states, Kant seemed to require the establishment of republican government within states before a rule of non-intervention could operate between them. In this, Mazzini followed Kant; the principle could only apply once international relations were indeed the relations between nations. But this vision remaining unrealized, Mazzini was bitter about the function of the principle in the international politics of his time. Originally a progressive doctrine, it had been turned to the advantage of the great powers and so corrupted that it had come to mean not non-intervention, but intervention, and intervention on the wrong side at that.

Each of these theories of non-intervention outlived its author, and survives to instruct the contemporary debate about international relations. The Third World doctrines of non-intervention pressed at the United Nations, bear a striking resemblance to those of Mazzini—in the view that non-intervention is for the great powers a disguise for intervention, in the wish to extend the protection of the principle of non-intervention to nations, making it the obverse of the right of self-determination, and in the desire to make good prior infractions of the rule in the campaign against colonialism and racialism.\(^1\) Kant's doctrine that the form of government within states determines the nature of order between them has had many followers, from Woodrow Wilson's faith in and interference on behalf of constitutional democracy, of which Kant might have

\(^1\)See below, Chapter 7, sections IV and V.
approved, through the interference of the Russian revolutionaries on behalf of the working-class movement, of which Kant might not have approved, to the acknowledgement by the founding-fathers of the United Nations of some basis in the Kantian relationship by their writing the protection of human rights and fundamental freedoms into the Charter. In the Cold War, Mill's doctrine of counter-intervention to enforce non-intervention has seen service on both sides of the battle, and Cobden's doctrine has survived as a protest against it. The recurrence of these different themes will be apparent in the chapters that follow.
Chapter 4
The History of Non-Intervention in the Practice of States

In writings on international law, and in theories of foreign policy, adherence to the rule of non-intervention has been urged as right conduct for states in their relations with each other. Whether the motive of such urging is the maintenance of a rule of law between states, or the advancement of the interests of a particular state, the function of the principle is one of restraint, its purpose is to prevent the state from conducting its foreign relations by a method perceived to be undesirable. This chapter will examine the extent to which the principle can be said to have restrained the foreign policies of three states; France at the time of the Revolution and its aftermath, Britain after the Vienna Settlement, and the United States from her independence to the Second World War. Beyond the question of whether these states can be said to have observed the rule, for whatever reasons, it will be seen that the principle had functions in more than the one dimension of restraint. The rule formed part of the language of diplomacy. Statesmen developed doctrines of non-intervention and used them to defend their own policies and to criticize the policies of others, to advance their own objectives and to hamper the achievement of the objectives of others, and to communicate their views about the limits of the permissible in international relations. The principle of non-intervention served to legitimate action in international politics, to provide a doctrinal weapon in support of foreign policy, and to provide some guide by which states could predict each other's action, or reaction, in international relations.
Non-Intervention in French Revolutionary Doctrine and Practice.

It is tempting to regard the ideas of the French Revolution about international relations as following from, and out of the same root as, the Declaration of the Rights of Man. To an extent, this temptation can be justifiably indulged. In the first place, Abbé Grégoire's Declaration of the Law of Nations submitted to the Convention in June 1793 echoed the Declaration of 1789, substituting the rights of peoples for the rights of men. That this substitution could be made so easily by Grégoire was due, it has been argued, to the natural law doctrine of the eighteenth century. Writers like Wolff and Vattel had already made use of the analogy between man in a state of nature and states in a similar condition in their accounts of international law. Secondly, Rousseau's ideas about government by consent and sovereignty would be, if put into

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1Among the articles of the Declaration is one positing a state of nature among nations, another asserting the inalienable sovereignty of nations, another proclaiming the non-intervention principle. Amos Hershey, The Essentials of International Public Law and Organization, (NY, 1939), pp.82, n.34.

2Nussbaum, Concise History of Law of Nations, p.119. This is not, of course, to argue that natural law doctrine was peculiar to the eighteenth century. For the influence of the doctrine on the French Revolution, and for the theoretical antecedents of the Revolution generally, see A.W. Ward, G.W. Prothero and S. Leathes (eds.), The Cambridge Modern History, Vol.VIII, (Cambridge, 1904), pp.1-35.

3See above, Chapter 2, pp.28-33. Nussbaum draws a direct line between Vattel and Grégoire, stating that Grégoire's theses were drawn almost entirely from Vattel's treatise. Op.cit., p.158.
practice, as significant for the relations between states as for their domestic order. The doctrine of the sovereignty of the people injected into international law the idea of nationality.¹

Grégoire's Declaration was not passed by the Convention; but that body, and the Assembly before it, did espouse notions about the conduct of foreign policy couched in terms of natural law if not directly inspired by it. Doctrines of this sort were the May 1790 announcement that the French nation would not embark upon wars of conquest, and the Decree of April 1793 declaring that the French people would not interfere in the government of other powers. The question whether or not these protestations can be taken as representative of French Revolutionary doctrine on international relations depends upon their consistency with other declarations. In other words, can they be regarded as guiding principles for the French nation or merely as reactions to particular circumstances?

The National Assembly declared on 22 May 1790, that "the French nation will refuse to undertake any war of conquest, and will never employ its forces against the liberty of any people".² Coming as it did, after the Assembly's refusal to take part in a war with England on behalf of Spain over the Nootka Sound incident, this declaration can first be interpreted as "an honest expression of a pacific policy".³ This "unrevolutionary" interpretation is strengthened by Mirabeau's warnings of the madness of French disarmament in the face of an armed Europe, his concern that France, by changing her own


³Thompson, op.cit., p.248.
political system, could not thereby change that of others.¹

A second interpretation of the Declaration of 22 May places emphasis not on its "honest expression of pacific policy", but on its significance as representative of a "new international law, foreshadowed as early as 1789 when Corsica was admitted as a department of France".² On this view, the importance of the declaration was not its assertion that "man's will, freely expressed, was to determine the destiny of the soil".³ Whereas before international law had been a law between territorial and dynastic states, states which, in their relations, took no account of the wishes of individual men or peoples, the Revolution would liberate nations, as it had men, and make the will of the people the determinant of the subjects of international law. According to this principle, the citizens of other states could change their allegiance by plebiscite. When the National Assembly was confronted with the results of its own declaration by the declared wish of the inhabitants of Alsace and Avignon to join France, it hesitated to annexe them for fear of providing the interested powers with a casus belli. Thus while the 22 May Declaration can be interpreted as an earnest of a pacific policy, it was not its pacific nature which mattered. The Declaration, if it ever became more than mere words, would undermine the very foundations of the old order of public law in Europe.

The difficulties of adhering to the twin obligations of a principle which would liberate subject peoples without taking over responsibility for their protection by armed force, were brought home to the French Convention towards

¹C.M.H., Vol.VIII, pp.188-189.
³Loc.cit.
the end of the year 1792. On 19 November, the Convention was asked to consider the requests of the citizens of Limburg and Mainz for French protection from "the despots who threaten them". The Convention could choose between ignoring the petitions, offering French protection, or guaranteeing the liberty of the neighbouring peoples. Infected by the enthusiasm following Dumouriez's victory over the Austrians at Jemappes, the Convention, without referring the matter to the Diplomatic Committee, carried the following decree:

The National Convention declares, in the name of the French people, that it will accord fraternity and assistance to all peoples who shall wish to recover their liberty and charges the executive power to give to the generals the necessary orders to furnish assistance to these peoples and to defend the citizens who may have been or who may be harrassed for the cause of liberty.

From this declaration of French intentions towards peoples struggling for freedom, followed the Decree of 15 December which was addressed to the financing of French activity not only in the Rhineland but in the territory captured by Dumouriez's campaigns. This Decree directed the French generals in occupied countries to proclaim immediately the sovereignty of the people, the suppression of all established authority and the placing under the protection of the French Republic of all goods belonging to the public treasury. "This famous decree", according to Lefebvre, "instituted the dictatorship of revolutionary minorities under the protection of French bayonets, and undertook to secure the fortunes of other peoples without consulting them, at their expense". By the policy of annexation and of guerre aux châteaux, paix aux chaumières, "France thus

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1 C.M.H., Vol.VIII, p.300.
3 Anderson, Constitution and Documents, p.130.
4 Ibid., pp.130-133.
5 Lefebvre, op.cit., p.277.
ceased to be the volunteer, and became the mercenary of the cause of 'freedom'.

The French Convention, by its reaction, and perhaps over-reaction, to events forced upon its notice had carried two declarations, which together with the forcible opening of the Scheldt by French gunboats, were to lead to war with England. Of the 15 December decree "More even than all the previous transactions", Pitt said in the House of Commons seven years later, "it amounted to a universal declaration of war against all thrones, and against all civilized governments."

The Decree on Non-Intervention of 13 April 1793 has to be taken, then, not only in the light of the circumstances of its own proclamation but also in the light of the two momentous decrees of the last months of the previous year. The new decree aimed at reciprocal non-intervention between France and the other European states:

The National Convention declares in the name of the French people, that it will not interfere in any manner in the government of the other powers; but it declares at the same time, that it will sooner be buried under its own ruins than suffer that any power should interfere in the internal regime of the Republic, or should influence the creation of the constitution which it intends to give itself.


2 The French defended the opening of the Scheldt by reference to natural law. C.M.H., Vol.VIII, p.300; N.C.M.H., Vol.VIII, p.710, n.5. Nussbaum points out that the law of nature might better be interpreted as dictating that the Scheldt be open to all nations and not just to France, Concise History of Law of Nations, p.120.

3 Quoted in Thompson, French Revolution, p.338. The causes of the outbreak of war between France and England in February 1793 are a matter of controversy which is not relevant here. Interestingly, Cobden thought that the "bombastic" Decree of 19 November was not a sufficient cause for England to go to war with France and he used the letters of Chauvelin and Lebrun as evidence for a more conciliatory attitude on the part of France. "1793 and 1853 in Three Letters" in Political Writings, pp.303, 304 and 307-308.

4 Anderson, Constitutions and Documents, pp.133-134.
At the time of the passing of this declaration, France was not only split by internal dissension, but her armies in the Low Countries, on the Rhine and on the Moselle were in a disastrous condition.¹ Danton, who was at this time controlling French foreign policy, sought to repair the international situation by reopening contacts with England and Prussia and by disavowing the Decrees of 19 November and 15 December. Addressing the Convention, he said:

It is time the National Convention should make it known to Europe that France knows how to combine with republican virtues statesmanship. In a moment of enthusiasm you passed a decree, the motive of which was certainly noble, since you bound yourselves to protect nations resisting their tyrants. This decree would logically imply an obligation to assist an insurrection in China ... Let us pass a resolution that we will not meddle with our neighbour's affairs.²

Thus Danton invoked the doctrine of non-intervention as a tactical device in the war against the powers, a device which, together with the diplomatic contacts, did "little more than increase the assurance of the victorious coalition".³

For Danton, the doctrine of non-intervention was not, as it was for Grégoire, a matter of principle traceable from natural law and consistent with French Revolutionary ideals. Danton invoked it as a weapon from the French nation's desperately weak armoury, to function not as a stick with which to beat the European powers, but as a shield against their further advance. Nor can the May 1790 Decree on No Conquest be regarded, according to traditional international law, as amounting to a declaration of non-intervention; it would rather represent annexation by

³Loc.cit., "Ces ouvertures ne firent guère qu'accroître l'assurance des coalisés victorieux."
plebiscite - a peaceful action having a clear interventionary effect. However, the doctrine of national sovereignty from which the doctrine of no conquest arose, could be interpreted as carrying with it a rule of non-intervention once the will of the people had become the informing principle of statehood. In this sense French Revolutionary doctrine would take on the same quality as that of Kant and Mazzini, both of whom based adherence to the principle of non-intervention on the prior fulfilment of another condition. But nowhere in French Revolutionary thought is this sort of doctrine spelled out. Indeed, in the 1793 Constitution which failed to pass the Convention, the Decree on Fraternity of 19 November 1792 and the Decree on Non-Intervention of 13 April 1793 appear next to each other, no explanation being offered for their apparent inconsistency. As it was, in the fervour of a successful revolution, France proclaimed a doctrine of intervention in the name of the new order, but retreated behind the principle of non-intervention in an attempt to safeguard her security when it was threatened by the forces of the old regime. It was after the Revolution had become the Empire, and after the defeat of the Empire in 1815, that the traditional British doctrine of non-intervention was worked out more closely than hitherto, and opposed to the interventionary doctrines of the European powers.

II

Non-intervention in British Doctrine and Practice.

Action according to the principle of non-intervention had always been a possible policy for Great Britain in her relations with Europe. Indeed, her insular position,

1See above, Chapter 3, pp.68-75.

2Articles 118 and 119 of that Constitution, Anderson, Constitutions and Documents, p.183.
reinforced by a powerful navy, suggested the seductive policy of total abstention from participation in continental affairs, an isolationism which would interpret the non-intervention principle absolutely. But, because such a policy presaged ultimate disaster if it ignored the threat of single-power hegemony in Europe, a British interest in a European balance of power went hand-in-hand with the requirement of naval supremacy. The principle of balance and that of non-intervention, were consistent with each other at least in the sense that both were concerned to protect the independence of the several European states by preventing the aggrandizement of any one power beyond its own frontiers.\(^1\) For Britain, this concern with the independence of states, and with a balance between them stopped short of the continental preoccupation with the form of government established within states. The threat to British security was the power which revealed its aggressive intentions by forcible intervention in the affairs of other states, not the power which was supposed to be aggressive because of the nature of its internal institutions. British faith in the singularity and inviolability of her institutions led her, not only to discount any threat to her security emanating from the mere existence of a particular social system in another state, but also to deny the validity of a principle of interference which had as its object the form of government within states.\(^2\) The distinction between political threats and social threats, between the external conduct of states

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1\(^{In\ other\ senses,\ however,\ the\ two\ principles\ are\ not\ consistent\ with\ each\ other.\ For\ a\ discussion\ of\ them\ see\ below,\ Chapter\ 9,\ section\ III.\ }

2\(^{For\ these\ reasons\ the\ British\ doctrine\ of\ non-interference\ has\ been\ called\ "the\ reverse\ side\ of\ the\ belief\ in\ the\ uniqueness\ of\ British\ institutions"\ expressing\ the\ conviction\ "that\ threats\ to\ British\ security\ were\ political,\ not\ social\ in\ nature".\ Henry\ A.\ Kissinger,\ A\ World\ Restored,\ (London,\ 1957),\ p.34.\}
and their internal affairs, has been fundamental in British foreign policy. Thus Pitt, in 1792, saw the danger from France, not in her revolution, but in her threat to the Scheldt, and thereby to the "political system of Europe, established by solemn treaties and guaranteed by the consent of all the Powers". Even when Britain despatched troops to Lisbon in 1826, Peel could argue in a debate in the House of Commons three years later, that such conduct was not intervention in Portugal's internal affairs, because it was undertaken not to maintain any political institution, but to honour treaty commitments and to uphold the independence of Portugal. Britain's laissez-faire attitude to forms of government in other states did not mean she would refrain from intervention if pressing imperatives like the maintenance of the balance of power required it; what it did mean was that she could admit intervention only as an exception, not as a rule, of international conduct. The British principle of non-intervention could then be regarded as an expression of a laissez-faire ideology. As a guide to conduct it was not necessarily inconsistent with the traditional British pursuit of a European balance of power. It could also be advocated as an instrument for the achievement of another objective of British policy - the maintenance of European peace. For Britain, commitment to this objective was not a mere pious aspiration; it was founded in the interests of a satisfied nation, with no territorial ambitions in Europe, whose well-being as a

1 Quoted in C.M.H., Vol.VIII, p.304.

2 Donald Southgate, The Most English Minister, (London, 1966), p.10. That the existing government did benefit by Canning's intervention does not alter the fact that his motive for intervention was the preservation of Portuguese independence and not the survival of constitutional government.
commercial power did not benefit from European conflict. The rule of non-intervention, if observed by states, would contribute to peace to the extent that it removed one instrument of conflict between them. Thus Britain could espouse the rule not only as a guide to the conduct of her own foreign policy, but also as a beneficent principle of European international relations.

If non-intervention was a possible policy for Britain, it was also actual, at least in the sense that it was widely held to be a precept of foreign policy. The doctrine of non-interference in the internal affairs of other countries has been referred to as "an axiom of British politics since the accession of the House of Hanover". It was a doctrine of "British politics" in the sense that it was not the preserve of any one party or faction in the spectrum of political allegiance. During a House of Lords debate in 1849, Lord Derby declared non-intervention to be "the one principle of sound policy in which on both sides of the House there was a universal and unanimous concurrence". That the doctrine was at one time held to be a "Whig principle", or attached at another to the famous Tory names of Pitt, Castlereagh and Canning, or related at a third to Cobden and the Peace Party, serves to demonstrate its political promiscuity.

This widespread adherence to the principle of non-intervention can be explained, in part, as a recognition by all parties of the objective situation of Britain - an island power, facing a powerful Europe, cherishing her unique institutions. The persistence of the principle is perhaps better explained by its amorphous and flexible nature, which allowed politicians of vastly different colour to interpret the rule in their own way and to use it as a lever for their various conceptions of the British

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interest. In Whig thought, the principle of non-intervention could be related to the doctrines of 1688, by which "all power held by Sovereigns may be forfeited by misconduct, and every nation is the judge of its own internal government".\(^1\) For the Tory, the beauty of the principle was that it eschewed doctrine in favour of interests, that it restricted the activities of the ideologue in foreign policy. In Radical thought, a policy of non-intervention meant a Britain at peace and flourishing commercially.

While advocacy of a policy of non-intervention was ubiquitous in British political thought, it did not constitute a consensus of it. In the Lords debate mentioned above, Derby's enthusiasm for non-intervention was opposed by Lord Lansdowne's quip that a declaration against interference in the concerns of foreign nations was only fit for a place "among the neat maxims at the head of a schoolboy's copy-book", and that any practical statesman would treat it with "perfect contempt".\(^2\) There was no lack of discussion about the desirability of a policy of non-intervention; indeed, it formed a focal point of the British debate on foreign policy. But it was not a debate which took place according to party alignments; the principle of non-intervention found support and met opposition among all political groupings.

This section will look at the part played by the principle of non-intervention in the foreign policies of Castlereagh, Canning and Palmerston.\(^3\) It will examine


\(^2\) Bernard, *loc. cit*.

\(^3\) These three to illustrate three different conceptions of the principle of non-intervention: Castlereagh, sympathetic to the Old Guard of Europe, but using the principle to restrain their schemes from a position within the Alliance; Canning, using the principle to separate Britain from the Alliance, and delighting in it as a weapon against both the Old Guard and the constitutionalists; and Palmerston, erring from Canning's middle way in the opposite direction to Caslereagh and interpreting it as defining the outer limits of permissible British action against the Old Guard and for constitutionalism in Europe.
the way in which these statesmen interpreted the rule, the extent to which they can be said to have acted in accordance with it, and the function the rule fulfilled in their diplomacy.

i) Castlereagh.

The settlement of 1814-1815 had laid low, for the time being, the spectre of revolution in Europe. Yet it was the issue of what was to be done in the event of its resurgence which divided Britain from the continental powers, and led to the demise of the Congress system after Verona in 1822. A need to conserve the new European order was generally recognized among the victorious allies, but there were differences of view as to what constituted that order. One school of thought, dominant in Britain, held that it was sufficient for international tranquility to uphold the territorial settlement of 1815; to this imperative, the other school of thought, typified by Austria, added the requirement of preserving the dynastic arrangements legitimized by the Congress of Vienna. Both these views can be explained in terms of the interests of their principal proponents. For Austria, a vulnerable international position between France and Russia, and a sensitive internal sovereignty over a multi-national empire, gave her a twin interest in the sanctity of frontiers and the legitimacy of thrones. For Metternich, the Chancellor of Austria, revolution was a threat because it might spread by contagion to the Austrian domain. It was the more dangerous because its spread was not left to chance, but was advanced by an international conspiracy against the dynastic order. Moreover, a direct relation was traced in Austrian thought, between revolution within a state and its propensity to aggress beyond its frontiers. This analysis led Austria to assert a right, if not a duty, to intervene in states torn by social upheaval, in order
to forestall an otherwise inevitable challenge to the whole European order.¹

The Austrian doctrine of prophylactic intervention stemmed from the view that territorial and dynastic integrity were interdependent, that the one could not be preserved without attention to the other. In British thought, the two ideas were separated and only one of them taken as fundamental to the conservation of the new order. The British perception that she was politically, but not socially, vulnerable, meant that she shared with the continental powers the view that protection of the territorial settlement was a legitimate subject for European concern, but parted company with them on the dynastic question. The British doctrine of non-intervention, in one of its senses, meant that she would act to meet an immediate danger demonstrated by actual aggression, but not a potential danger whose existence was a matter of conjecture. It was not that British foreign policy-makers were unconcerned about revolution in other states - some of Castlereagh's anti-revolutionary outbursts were as virulent as Metternich's - but the existence of revolution did not by itself justify a policy of intervention.

For Britain to go as far as she did in committing herself to a Vienna Settlement which allowed no frontier to be altered "without touching a Treaty to which Britain was a party"² was a new, if not a radical departure in foreign policy. But Castlereagh's attachment to the Alliance and his belief in the efficacy of conference diplomacy, did not prevent him from setting limits to the activities of the Allies by attempting to control them from within. When the Treaty of Alliance was being redrafted at Paris towards the end of 1815, the Tsar proposed that the Allies support both Louis XVIII and the liberal constitution

¹ On Austrian thought, see Carsten Holbraad, The Concert of Europe: A Study in German and British International Theory 1815-1914, (London, 1970), pp.15-34.
² Webster, Castlereagh, 1815-1822, p.51.
which he had granted the year before. This Castlereagh could not accept, it was "too strong and undisguised an interference of the Allied sovereigns in the internal concerns of France". Castlereagh's draft, which in large part became the Treaty of 20 November 1815, declared the main object of the Alliance to be the protection of Europe against French attack. Revolution in France was not to be considered a casus foederis unless it should prove to be aggressive. Thus Castlereagh upheld the British doctrine of non-intervention by directing the attention of the Allies to the external activities of France and not to her internal politics.

Castlereagh restated this doctrine at the Congress of Aix-La-Chapelle in 1818. In a reply to a Russian memorandum which would have bound each state to guarantee not only the frontiers, but the governments of all other states, he disparaged the idea of an "Alliance Solidaire" which implied "the previous establishment of such a system of general government as may secure and enforce upon all kings and nations an internal system of peace and justice". Such a system was premature; in the Europe of 1818 it would mean that "force was collectively to be prostituted to the support of established power without any consideration of the extent to which it was abused".

For Castlereagh the only practicable system was one in which each state was left to rely for its security upon

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1 Ibid., p.53.
3 Webster, op.cit., p.54.
4 With one significant exception, viz. the engagement to exclude the Bonaparte family from the throne of France, justified on the ground that their return would certainly lead to aggressive war. See Webster, op.cit., p.54.
5 Quoted in ibid., p.51.
6 Quoted in loc.cit.
the justice and wisdom of its own particular system.\footnote{loc\textit{cit}.}

Castlereagh's mission was to persuade Alexander and his Ministers to "descend from their abstractions",\footnote{Cambridge History of British Foreign Policy, Vol.II, p.27.} and to further the British view of the Alliance as an instrument of peace, not of reaction, whose function was to mediate, not to dictate.\footnote{Ibid., p.31.}

The fullest exposition of the way in which Castlereagh interpreted the principle of non-intervention came in the State Paper of 5 May 1820, a document which has been taken to express the "foundations of British foreign policy".\footnote{Harold Temperley and Lillian M. Penson, (eds.), Foundations of British Foreign Policy, (Cambridge, 1938), p.48.} This paper was formulated in Cabinet as a response to a Russian despatch drawing the attention of the Allies to the revolution in Spain and anticipating the need for Allied interference.\footnote{Webster, \textit{op.cit.}, p.228.} It is significant for three reasons: firstly, it contained the British definition of the permissible perimeter of Alliance activity; in the second place, it conveyed Castlereagh's conception of how the game of European diplomacy was to be played or his theory of international relations, and thirdly, it delineated the circumstances in which Britain would feel obliged to intervene. The principle of non-intervention defined, or was defined by, each of these aspects of Castlereagh's foreign policy.\footnote{The following summary of Castlereagh's State Paper is taken from the text in \textit{C.H.B.F.P.}, Vol.II, pp.623-633.}

In Castlereagh's view, nothing was more likely to impair, or even to destroy, the real utility of the Alliance, than any attempt to push its obligations beyond its original conception. It was an Alliance formed to...
subdue France and then to protect the ensuing territorial settlement. "It never was, however, intended as an Union for the Government of the World, or for the Superintendence of the Internal Affairs of other States". The Alliance could be kept together so long as it did not assume as a matter of course, a collective jurisdiction whenever a great political event, like the one in Spain, presented a future and speculative danger to Europe. Further, Castlereagh doubted whether unanimity or concurrence between the powers on all political subjects was either possible or desirable. The different position, institutions and habits of thought of the Powers rendered them essentially different; in view of this, the Allies could find a common interest only if they limited themselves to the genuine overlap of their separate interests. For Castlereagh, the principle of non-intervention could be identified with the legitimate boundary of the objects of the Alliance. Action beyond that boundary violated the principle.

Castlereagh saw the "Game of Public Safety" in Europe, as taking place between a Western Mass consisting of France and Spain and an Eastern Mass made up of Russia and Germany. The problem was to protect the latter against revolutionary dangers from the former. The solution of Russian and German armed intervention, was impracticable because it left unsolved the problem of self-government after the intervening forces had withdrawn and it also subjected the intervening armies to the danger of revolutionary contamination. Secure in their own power, the Eastern States should leave those of the West to work out their own political processes. To reduce the principle of interference to a system, moreover, was not only physically, but also morally impracticable, such that no state with a representative system of government could act upon it, nor tolerate intervention to direct the course of experiments in representative government in other states. Thus Castlereagh drew a distinction between representative and autocratic
government, but unlike the Eastern Powers, he did not base his foreign policy, or his conception of world order, on the survival of one and the fall of the other. He reiterated in 1820, his assertion at Aix-la-Chapelle in 1818, that each state must rely for security on its own political system. He rated the political independence of the state higher than the nature of the political order within it, and thus opposed his principle of non-interference to the continental doctrine of ideological interference.

Of the actual position in Spain, Castlereagh wrote that "there is no portion of Europe of equal magnitude, in which such a Revolution could have happened, less likely to menace other States with that direct and imminent danger, which has always been regarded, at least in this Country, as alone constituting the case which would justify external interference". The British principle of non-interference was not absolute, Britain would be found in her place when there was actual danger to the European system, but could not act on "abstract and speculative Principles of Precaution".

For Castlereagh, non-intervention was not just a principle which adorned formal statements of the British position in European international politics, it was also a policy she could follow in her relations with Europe. Non-intervention was a practicable policy for Britain and also, Castlereagh argued, for Europe, and he sought to demonstrate this by stressing the impracticability of intervention. At Aix, one of Castlereagh's objections to the Allied assertion of a right to intervene in the internal affairs of other states was his doubt about their competence to judge what was "legal" in another state.1 In his State Paper of 5 May 1820, Castlereagh (apart from his general critique of Allied intentions), raised particular objections arising from the nature of the

situation in Spain. In the first place, because there was no governing authority with which foreign powers could communicate, intervention in such an unsettled situation would probably compromise both the Allies and the King of Spain and weaken the efforts of Spaniards of good intention.  

Secondly, Castlereagh pointed out, on the authority of the Duke of Wellington's memorandum, that the Spanish nation was "of all the European People, that, which will least brook any interference from Abroad". Their national character, rendering them "obstinately blind to the most pressing considerations of public safety", would make the position of the king the more threatened by the suspicion of foreign interference. Castlereagh's third objection to intervention in Spain was that such a policy could not be legitimated domestically if there were no immediate danger to other states.

It followed that Wellesley, the British Minister at Madrid, was instructed by Castlereagh to abstain from any interference, including advice on affairs in Spain, unless the king's life were in danger or an attack on Portugal countenanced. When, later in 1820, revolution took place in Portugal, the traditional ally of Britain, Castlereagh was concerned to point out that England's guarantee did not apply "to the question of authority now pending between Sovereign and subject". His policy of non-intervention reflected the old distinction between internal and external affairs; Britain wanted to be friendly to Portugal "without reference to the state of

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1 Ibid., pp. 624-625.
2 Ibid., p. 624.
3 Loc.cit.
4 Ibid., p. 625.
5 Webster, Castlereagh, 1815-1822, p. 233.
6 Ibid., pp. 250-251.
its political institutions".  

The policy of non-intervention which Castlereagh pursued towards Austrian activity in Germany and Italy was less ingenuous. When Metternich asked for the moral support of the powers for his putting down of constitutionalism in the German states contained in the Carlsbad Decrees of 1819, Castlereagh replied that "we are always pleased to see evil germs destroyed without the power to give our approbation openly". His excuse for inaction was that the expression of any opinion would be an intervention in the internal affairs of the German Confederation. Again, after the revolution in Naples of July 1820, Castlereagh's non-intervention allowed Austrian repression. In terms of the principles of 5 May, Castlereagh conceded an Austrian right to intervene because the Neapolitan revolution was at once more dangerous and less justified than that in Spain. Because of the dangers to Europe of collective allied action, Castlereagh positively encouraged Austria to act against the Neapolitan rebels unilaterally. In neither of these cases was the political independence of other states the prime motive for Castlereagh's policy of non-intervention. Indeed, by failing to counter-intervene, Britain could be said to have degraded the principle of state independence. Her main concern was to forestall the collective action of the Allies by encouraging the most interested power to intervene on her own. 

Sound policy for England, the principle of non-intervention was also urged by Castlereagh as a guide to the conduct of the other European powers; he advised them in terms of the rule. The purpose of the 5 May State Paper

1_ Ibid., p.254, n.2.  
2_ Ibid., p.192.  
3_ Ibid., p.194.  
was not just to explain British inaction in Spain, it sought also to forestall the intervention of others by a strong statement of the British attitude. The particular objections to intervention in Spain, arising from the peculiar nature of the situation there, gave Castlereagh good reason for British non-intervention. By rehearsing these objections in the State Paper, it was his intention to demonstrate to the European powers the follies of intervention. Castlereagh's objective was to make general the British interpretation of the limits of the Alliance. The extent to which he would pursue this objective beyond the giving of advice was left unclear. The threat of British counter-intervention to offset intervention by the Eastern Powers was not made explicit, but the attention of those powers was drawn to Britain's traditional interest in the affairs of the Peninsula. In Portugal also, while making clear the British policy of non-intervention, Castlereagh emphasized that no other state would be allowed to interfere either. In particular, he sought to disabuse the King of Portugal of the "delusive hope that the Holy Alliance will undertake a crusade for the re-establishment of the old system in Portugal". With respect to the revolution in Naples, Castlereagh interpreted the rule of non-intervention in a different way. Britain would not interfere with what she regarded as justifiable intervention by Austria to put down the revolution, but she wished to localize the dispute and oppose any European principle of intervention.

Affairs in Spain and Italy led Castlereagh to invoke the principle of non-intervention to restrain Allied suppression of revolution. Revolution in Greece led him to invoke the same principle to restrain Russian support for rebellion. If, in the former case, the rule of non-intervention expressed British separation from the Alliance,

1Webster, Castlereagh, 1815-1822, p.252.
2Ibid., pp.267 and 270.
in the latter case the same rule was consistent with the restatement of Alliance principles against Russia. The Greek rebellion was a national movement undertaken in the name of Christianity against an Islamic power, whose credentials as a member of the European system were disputed. Sympathy for co-religionists and the possibility of expansion at the expense of the Turk made Russian intervention a probability. For Castlereagh, the overriding consideration was the danger to the balance of power if Russia advanced in the Balkans. To forestall this, Castlereagh and Metternich had to convince the Tsar that the Greek revolt belonged in the same dangerous category as the revolutions in the West. A Castlereagh who had been used to playing down the danger of revolution, now emphasized it and appealed to the Alliance principles in their widest manifestation, for in the one case of Greece, they were in perfect unison with the British principles of non-intervention and the balance of power.¹

When invocation of the non-intervention principle failed to prevent the intervention of another power, Castlereagh could still use it to protest against that action and to defend his own policy. The 5 May State Paper at once criticized the attitudes of other states and justified the British position. Later in 1820, after the revolution in Naples, Castlereagh's refusal to comply with Metternich's suggestion that diplomatic relations with that state be broken off, was defended on the ground that such an action would be unwarranted interference in the internal affairs of Naples.² But, in spite of British efforts to avoid it, a conference convened at Troppau "to define by a general proposition the principles on which

¹On the Greek rebellion and the European reaction, see Webster, op. cit., pp.349-382, and Kissinger, A World Restored, pp.286-311.
²Ibid., p.254.
the allies would intervene in Naples". On 19 November 1820, Austria, Russia and Prussia issued a Protocol of this sort sanctioning a general principle of intervention. Castlereagh's protest against this document was contained in a despatch to Stewart, the British Minister at Vienna. The Troppau doctrine of interference appeared to Castlereagh to make the Alliance into a Super-State and the Allies into "armed guardians of all thrones"; Britain could not consent "to charge itself as a member of the Alliance with the moral responsibility of administering a general European Police of this description".

These objections were repeated in a circular to all British ambassadors, sent by Castlereagh on 19 January 1821. This despatch set out to reply to a Holy Alliance circular of 8 December 1820 which had implicated Britain in the activities at Troppau and had not remained secret. Again Castlereagh criticized the general principle of interference and the "federative system in Europe" which it implied, again he recognized an Austrian but not an Allied right to intervene in Naples, and again he stressed that the right of intervention was an exception to general principles which could not be reduced to a rule.

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1 *C.M.H.*, Vol.X, p.27. Britain sent a delegate only of ambassadorial rank to the conference.

2 The Troppau Protocol read: "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 of legal order and stability. If, owing to such alterations, immediate danger threatens other States, the Powers bind themselves, by peaceful means, or if need be by arms, to bring back the guilty State into the bosom of the Great Alliance." *C.H.B. F.P.*, Vol.II, pp.37-38.

3 *Webster, Castlereagh 1815-1822*, p.304.


Internationally, Castlereagh used the non-intervention principle to restrain the activities of the Holy Alliance, domestically the principle was used to restrain Castlereagh from too "European" a foreign policy. A tradition of non-intervention in British foreign policy provided a Parliament which tended to isolationism with doctrinal ammunition against Castlereagh's European posture. This ammunition was also available at Cabinet level. The need for Britain to legitimate her foreign policy domestically was explained by Castlereagh in the 5 May State Paper. In the first place, he pointed out that dictatorial intervention in the affairs of Spain would be unpopular in Britain and would lead to the embarrassment of the government. Secondly, excitement of public sentiment by unnecessary interference abroad distracted the people from internal problems of greater importance. Thirdly, and most importantly, Castlereagh stressed that constant and ineffectual meddling by Britain in Europe would sour the public mind as to encourage total abstention from European affairs. "The fatal effects of such a false step" he wrote, "might be irreparable when the moment at which we might be indispensably called upon by Duty and Interest to take a part should arise". Britain had then to take her principle of action not merely from the expediency of the case, but from those maxims which a popular and national government had imposed on her.

Sometimes this domestic constraint operated only to affect the mode of legitimation of a policy which was to be undertaken anyway. After Napoleon's escape from Elba and his overthrow of Louis XVIII, there was no doubt.

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1 On the "isolationism" of the British parliament, see *ibid.*, pp. 20-21.
3 *ibid.*, p.632.
in Castlereagh's mind of the need for a Bourbon restoration, but he could not justify war with Napoleon on that basis. To make the war a popular one, Castlereagh needed to stress that it was to be fought against a Napoleon who had lost the support of the French people. Here the doctrine of non-interference operated not to prevent intervention, but to stop its taking place for the wrong reasons. At another time the doctrine enforced a muted reaction from Castlereagh to a policy of which he approved but public opinion disliked - the Austrian action at Carlsbad in 1819. Constraints such as these were irritants for Castlereagh, but not major obstacles to his making of foreign policy.

Objections to Castlereagh's policy, in terms of the doctrine of non-intervention, were more significant when they came directly from Cabinet than from Parliament. When Castlereagh, in his despatches from Aix in 1818, referred more than once to the maintenance of the Congress system of diplomacy, Canning, who was suspicious of continental entanglements and objected to the great power system, pointed out that "our true policy has always been not to interfere except in great emergencies and then with commanding force". Not only at Aix, but during the whole of his tenure of the Foreign Office, Castlereagh had to consider a Cabinet and a Parliament which thought of an alliance as directed against a particular enemy, and not as a permanent instrument for peace.

2 Kissinger, A World Restored, p.178.
3 See above, p.97.
4 Webster, Castlereagh, 1815-1822, p.147.
5 Ibid., pp.147-148; Kissinger, op.cit., p.276. This attitude in Parliament could of course be turned to advantage by Castlereagh in the actual conduct of his diplomacy; thus, at Aix, Castlereagh could throw on Parliament "the onus of obstructing the complete realisation of the Tsar's ideal" and bargain on that basis for a position acceptable to the British government.
This problem confronting Castlereagh is illustrated by the distinction he drew between policy and its legitimisation, both internationally and domestically. Of the Troppau Protocol, he said to Esterhazy, the Austrian Minister in London, "You would have done better to have acted first and talked afterwards." Even after the despatch of December 16 was sent to Stewart, Castlereagh told the Russian Ambassador that it was not the aims and intentions of the Allies he was opposing, but the issue of an official document, and he warned Lieven that if the Protocol were made public, Britain would have to issue a counter-blast. This came on January 19, forced on Castlereagh by the publication in the British press of the 8 December Holy Alliance circular. The need for Castlereagh to issue this counter-blast as a palliative for domestic opinion caused Esterhazy to liken him to a "great lover of music who is at Church; he wishes to applaud but he dare not". Castlereagh's desire to maintain the Alliance foundered on the rock of Metternich's insistence that intervention in Naples be sanctioned by the principles of the Holy Alliance. The British doctrine of non-interference presaged the end of the Alliance, not because it precluded any intervention, but because it disallowed intervention on grounds which were domestically intolerable. In this case at least, the domestic legitimation of action in international relations was more significant for Europe than action itself.

It is possible to regard Castlereagh's interpretation of the principle of non-intervention as the keystone of a coherent system of foreign policy. It meant that Britain would intervene if an immediate threat to her security, evidenced by aggression, presented itself, but not on abstract and speculative principles of precaution. Into this definition could be fitted the distinction between

1 Webster, Castlereagh 1815-1822, p.302.
2 Ibid., p.305.
3 Ibid., p.326.
the internal and external affairs of a state, only the latter being the proper subject for the concern of others. In turn, Britain's concern with the territorial settlement of 1815 was consistent with her interest in the external affairs of states, her lack of concern with the dynastic order of 1815 was consistent with the view that internal affairs were not a matter for international adjudication. In each of these three aspects, the non-intervention principle expressed the outer limits of legitimate Allied conduct. In practice, the principle had the advantage, for Castlereagh, of flexibility. In the Spanish case, it was used to prevent Allied intervention on behalf of the throne of Spain. In Naples, it was used to prevent the participation of any other power in the Austrian intervention. In Germany, it excused inaction. And, in Greece, it served to prevent a Russian upset of the balance of power.

ii) Canning

In a speech to the House of Commons on 14 April 1823, Canning took as the text for his own foreign policy the principle of non-intervention laid down "with all the qualifications properly belonging to it", by Castlereagh in May 1820. But if Castlereagh had used the non-intervention principle to define the outer limits of the Alliance from a position within it, Canning used the principle to bring the Alliance to an end and to place Britain outside it. Canning espoused an "English" policy compared to Castlereagh's "Europeanism". He objected to the Alliance system of Congress diplomacy, where Castlereagh disputed only its methods. Furthermore, Canning made his "Englishness" the basis for popular support and he mobilized opinion in

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favour of his attitude to the European "Areopagus".¹

Canning's separation of Britain from the Europe of the Holy Alliance did not lead him to campaign abroad for the acceptance of British principles of government. He shared Castlereagh's concern for the independence of states within the framework of the Vienna settlement,² but he was less concerned, even than Castlereagh, with the nature of government within states. He thus drew once more the traditional distinction between the internal and external affairs of states, and declared British neutrality with respect to the former. To this, Canning added a new interpretation of the non-intervention principle by stating the British position as "one of neutrality not only between contending nations, but between contending principles".³ So long as arbitrary governments did not violate the rights of free states, Britain was quite ready to live in amity with them,⁴ and for this laisser-faire attitude, Canning had a special reason. Britain would lose her preponderating influence if free states, with institutions comparable to her own, were established on the continent.⁵ Intervention to uphold constitutionalism was out of the question for a Britain whose proper position was the via media between "Jacobinism" and "Ultraism".⁶ Adherence to the principle of non-intervention was then fundamental for a Canning, who, suspicious of both despotism and democracy, based his policy on a middle course

¹Temperley and Penson, Foundations of British Foreign Policy, pp.65-66.
³Temperley and Penson, op.cit., p.66.
⁴Ibid., p.86.
⁵Temperley, op.cit., p.458.
⁶Loc.cit.
between them.¹

Canning's objection to the principle of interference was more thoroughgoing than Castlereagh's, and his use of the non-intervention principle to underline his opposition to the Congress system tended to an isolationism which Castlereagh could not have countenanced. This apart, their appreciation of the limits for Britain of a policy of non-intervention was similar; Castlereagh would intervene when threatened by "direct and imminent danger", Canning would intervene "in great emergencies and then with commanding force".

During Castlereagh's years at the Foreign Office, Canning had been a consistent advocate of a policy of non-intervention for Britain. When Austria intervened to put down revolution in Naples in 1821, Canning, from the back benches of the House of Commons, urged "neutrality in word and deed".² Neutrality in word because it would be a fraud for England to mention support when she intended none, neutrality in deed, firstly because of the absurdity of going to war over the pedantic State Papers of the Allies and secondly, because the democratic principles of the rebels were not those of Britain anyway.³ Furthermore, a policy of non-intervention recommended itself because the interference of strangers became, sooner or later, an object of jealousy, and the cause for which it was undertaken would be retarded rather than advanced thereby.⁴

¹Ibid., p.43.
²Speech of 20 March 1821, cited in ibid., p.46.
³Loc.cit.
⁴Loc.cit.
In office himself, Canning practised what he had preached to Castlereagh. Foreseeing an Allied project of interference in the Spanish struggle, Canning instructed Wellington at the Congress of Verona "frankly and preemptorily to declare, that to any such interference, come what may, His Majesty will not be a party". But if Canning would not share in an Allied interference, nor would he counter it by force. When France marched on Spain in the Spring of 1823, Canning declared an "honest neutrality" for England. Canning maintained this position against a French request for support from Britain and a request from the rebels for a guarantee of their constitution. "The very principle on which the British Government so earnestly deprecated the war against Spain", wrote Canning to A'Court, the British Minister to Spain, "was that of the right of any Nation to change or to modify its internal Institutions". Exercise of a right of guarantee would lead "to an intermeddling with the affairs of the guaranteed state, such as to place it, in fact, at the mercy of the Power who gives the guarantee". While uncertainty prevailed in Spain, Canning's instructions to A'Court were that he avoid the appearance of advising or controlling, or of being the setter-up or puller-down of successive ministries".

To the continuing turmoil in Portugal, Canning, at the outset, shared the attitude of Castlereagh - the desire to carry on good relations without reference to Portuguese political institutions. Thus Canning rejected

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1 Ibid., p.65.
2 Ibid., p.87.
3 18 September 1823, cited in Ibid., Appendix II, p.540.
4 Loc. cit.
5 Ibid., p.95.
the frequent appeals from the Portuguese Liberals for British military intervention against the reactionaries.¹
Such an intervention would be, in Canning's view, a measure of internal police and not of external defence and, as such, could not be legitimized in terms of the principle of non-intervention.² Thus Thornton, the British Minister at Lisbon, who had supported the Portuguese requests for intervention, was rebuked by Canning and rebuked again for an offence against another British interpretation of the doctrine of non-intervention. Thornton was informed by Canning that his attendance at conferences, with Portuguese ministers and the ambassadors of the Holy Alliance; which discussed the internal affairs of Portugal, was "wholly out of your Province and entirely disapproved by your Court".³ But to bring about the demise of French influence at Lisbon, Canning himself was prepared to override the principle of non-intervention and intrigue in Portuguese domestic policies for the removal of the French party.⁴ Canning repeated this policy of intervention in 1826 when British forces were sent to fight in Portugal; this time, however, Canning could justify an interventionary policy in terms of the principle of non-intervention.⁵

The other exception to Canning's general policy of non-intervention was his reaction to the Greek rebellion, which culminated, after Canning's death, in the Battle of Navarino—in which the Turkish and Egyptian fleets were destroyed in 1827. Castlereagh's policy towards the rebellion against Turkish rule in Greece had been

¹Ibid., pp.196, 198, 201.
²Ibid., p.198. This did not, however, preclude the sending of a naval squadron to the Tagus.
³Ibid., p.204.
⁴Ibid., p.208.
⁵See below, pp.110-111.
to isolate the conflict from European international politics by welding the non-intervention principle to the anti-revolutionary principles of the Holy Alliance.\(^1\)

The inability of the Turks to protect British commerce, popular sentiment in favour of the Greeks and the ever-present threat of Russian intervention made Castlereagh's course impossible for Canning.\(^2\) The imperative of the balance of power and the expedient of satisfying it by restraining Russia by cooperation rather than by opposition, led Canning to interfere on behalf of the Greeks, firstly by recognizing their status as belligerents and finally by acting as midwife for their independence. In this case, the principle of non-intervention was judged by Canning to be inferior to the principle of balance and to the opportunity of splitting Russia from the Holy Alliance.

As with Castlereagh, so with Canning; non-intervention was not only a policy for England, it was also a principle to be urged on other states, or in terms of which others were to be persuaded to do England's bidding. Canning's instructions to Wellington at Verona meant the separation of Britain from the Alliance. They were also intended to forestall collective allied intervention in Spain by making British opposition clear\(^3\) (but leaving the action which would follow from actual Allied intervention deliberately vague). If Canning succeeded in forestalling collective intervention, he had still to prevent French intervention in the name of the Alliance, without going to war against her. His aim was

\(^1\)Though Castlereagh himself was prepared to recognise Greek belligerent status when the situation required it. See C.H.B.F.P., Vol.II, p.45.

\(^2\)See Temperley, op.cit., pp.319-337.

\(^3\)Ibid., p.74.
to persuade France to conform to the principle of non-intervention by stressing the popular agitation in England against French intentions, and by introducing a doubt into the mind of the French charge d'affaires as to whether England would remain neutral if France marched on Spain.¹

These warnings failed. Canning accepted perforce the fait accompli of the French attack on Spain, but took the opportunity to warn France against a permanent military occupation of Spain, the appropriation of any part of the Spanish Colonies and the violation of the territorial integrity of Portugal.² In October 1823, Canning cemented this warning by wringing from Polignac, the French Ambassador in London, a declaration that France had "no intention or desire to appropriate to Herself any part of the Spanish Possessions in America".³ In July 1824, Canning's formidable attitude to the threat of French intervention in Cuba on behalf of legitimist Spain, caused France to give a pledge that French troops should not land in Cuba.⁴ Where vital British interests were threatened, Canning was prepared to uphold the principle of non-intervention by the counter-threat of British military action; in other cases he was prepared to use diplomacy but not force for the same purpose.

Portugal was a vital interest. Canning's policy of non-intervention in Portuguese affairs depended upon the prevention of intervention by others. In 1824, the threat to send Hanoverian troops to Portugal prevented French military activities there and allowed Canning to

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¹Ibid., p.80.
²Ibid., p.83.
³Ibid., p.115.
⁴Ibid., pp.170-171.
maintain his policy of non-intervention. In 1826 when the King of Portugal died, his heir, the Emperor of Brazil, gave Portugal a constitution. The legitimists of the Holy Alliance were thus placed in a dilemma, for a sovereign of whom they approved, had granted a constitution of which they disapproved. If logic could forestall Allied intervention, Canning's was the victory, for he could use the legitimists' own argument of legality emanating from the sovereign to show that there was no ground for intervention against the constitution.

The principle of non-intervention could be invoked in defence of British inaction in European politics, in protest against the policies of other states and, by implication at least, as a justification when Britain did interfere in European politics. As a British principle counselling interference only in great emergencies and then with commanding force, it could be used as a reason for Britain to hold aloof from the conflicts of others. The physical impossibility of intervention against the French invasion of Spain would thus justify the British policy of neutrality. British intervention in Portugal, however, was defended not on grounds of interest, but on those of duty, and the principle of non-intervention was upheld as a European imperative and not as a British expedient. When, in December 1826, Portuguese deserters supporting the absolutist Miguel, attacked Portugal with Spanish arms and equipment, Canning decided that the casus foederis of the ancient British alliance with Portugal had occurred. In the House of Commons, Canning justified his sending of troops by pointing out that they were sent "not to rule, not to dictate, not to prescribe constitutions - but to defend and preserve the independence of an Ally".

1 Ibid., pp.202-203.
2 Ibid., pp.368-370.
3 Ibid., p.380.
This was intervention to uphold the principle of non-intervention, it was launched to protect territorial integrity not to guarantee a constitution. Canning's defence satisfied the traditional British concern with refraining from intervention in the internal affairs of other states, though the Holy Alliance considered his distinction between defending territorial integrity and supporting constitutionalism to lack substance.¹

Canning also used the non-intervention principle to criticize the policies of other states. He went further than this to use the rule as a weapon with which to beat the Holy Allies. Thus his instruction to Wellington at Verona irrevocably separated Britain from the Allies and destroyed the Congress system, and the process was legitimized by reference to the non-intervention principle. Canning made this weapon the more potent as he based it upon popular support. Castlereagh had foreshadowed British separation from the European despots, Canning brought the Congress system to an end and looked for support for his policy in public opinion.² Opinion, in his view, was stronger than armies and he feared a war of opinion more than a war of armies. But if opinions were to collide, then Britain had the superior strength.³ When the French king opened Parliament in 1823 with a speech which reiterated the principles of the Holy Alliance, Canning took this as his cue to publicly declare British opposition to the Allied doctrine of interference.⁴ Again, after the French intervention in Spain, Canning denounced France in

¹Ibid., p.385.
²Temperley and Penson, Foundations of British Foreign Policy, pp.65-66.
³Ibid., pp.66-67.
⁴Temperley, Foreign Policy of Canning, p.78.
Parliament and went as far as to trust that Spain "may come triumphantly out of the struggle". But he would go no further. Like Castlereagh, Canning would not countenance British intervention on behalf of constitutionalism; unlike Castlereagh, he made noisily public his opposition to the legitimist interventions of the Allied powers.

Neutrality between contending principles as well as between contending nations was the basis of Canning's foreign policy, and it was a policy designed to maintain Britain's unique position in the world. If the principle of non-intervention was the dogma which expressed this policy, Canning also elevated the rule to a central place in his international theory. Adherence to the rule would safeguard the independence of states, and it was on that independence that the peace of the world depended. But in practice, Canning was not always faithful to his doctrine of independence. In Portugal, it had been maintained by the sending of troops, but in Spain the policy of non-intervention excused his failure to react to French intervention. The shortcomings of the doctrine of independence were revealed in a third case, when the Greek rebellion confronted Europe with a choice between the creation of an independent Greece, or the maintenance of the integrity of the Turkish Empire. If Canning's interpretation of the principle of non-intervention was thus as flexible as Castlereagh's, it reflected the primacy of interest over doctrine. In this sense, one of Canning's interpretations of the principle was consistent - the

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1 Quoted in ibid., p.87.
rejection of ideological intervention as a possible policy for England in favour of constitutions, or as an actual policy of the Holy Allies against them.

iii) Palmerston

For Castlereagh, the non-intervention principle had defined the outer limit of permissible conduct for an alliance of which Britain was a member; in Canning's case, the principle represented the middle way between despotism and democracy; for Palmerston, the principle drew the outer limits of permissible conduct for Britain as a champion of liberalism as well as an opponent of the European despots. Palmerston regarded Canning as his master, but he interpreted the master in a way which suited his own policy.¹ In his first major foreign policy speech to the House of Commons on 1 June 1829, he criticized the non-intervention policy of Wellington and Aberdeen towards Portugal; he regarded their legalistic attitude as an abuse of Canning's principle in that it favoured the absolutist Miguel.² In Palmerston's view, Canning would never have allowed the balance of power in Portugal to turn against him in this way.³ Palmerston also chose to overlook Canning's distinctions between intervention to uphold independence and intervention in favour of constitutions. The whole history of relations between England and Portugal had been, to his mind, one of intermeddling by the former, and for the Wellington

¹Temperley and Penson, Foundations of British Foreign Policy, p.88.
²Southgate, The Most English Minister, p.12.
³Ibid., p.13.
government to shelter now behind the principle of non-intervention was to make the navy of England "the subservient tool of tyranny".¹ Palmerston's desire to "keep England on the side of liberal opinions"² was made explicit soon after his arrival at the Foreign Office. In the House of Commons, on 2 August 1832, he said, "Constitutional States I consider to be the natural allies of this country; and .... no English Ministry will perform its duty if it be inattentive to the interests of such States".³ Palmerston's method of fulfilling this duty was to advertise his support for constitutional states and thereby to sway public opinion to their cause. He inherited from Canning the belief that the power of opinion was superior to that of physical strength, but he wielded that power on behalf of a cause, support for which Canning had declared to be against the interests of England.⁴

Palmerston interpreted the principle of non-intervention in a way which allowed him to act as the moral guardian of European liberalism. His assertion that there was nothing in the principle of non-interference that disallowed intervention if what passed in a neighbouring state concerned the interests of England,⁵ differed from the interpretations of Castlereagh and Canning only in degree - Palmerston did not emphasize the "great emergency"

¹Quoted in ibid, p.12.
²Temperley and Penson, op.cit., p.100.
³Ibid., p.101.
⁴Ibid., p.100.
⁵Ibid., pp.91-92.
requirement stressed by his predecessors. What was new in Palmerston's interpretation of the principle was contained in his explanation to William IV of the action the Cabinet intended to take in protest against Austrian repression of liberalism in Germany. Palmerston explained that the Cabinet objected, on principle, to interference by force of arms which subjected the will of an independent nation to the military dictation of a powerful neighbour, and led to the destruction of the balance of power. An interference which consisted merely of friendly advice, on the other hand, and which was designed to prevent the collision of arms, was sanctioned by international law and consistent with the independence of states. For Palmerston then, the non-intervention principle proscribed only military intervention. Apparently clear, this doctrine could imperceptibly become one of intervention and not of non-intervention. When in the following year Metternich was again concerned with putting down constitutionalism in Germany, Palmerston's riposte went as far as to claim that "Whatever affects the general condition of Europe ... is a legitimate object of solicitude to England, and a proper subject for the exercise of her moral influence in the first place, or even for her armed interference if she should think the occasion require it". Fifteen years later, Palmerston was to defend his interference in Portugal in even more exaggerated terms, referring to a Britain "at the head of moral, social and political civilisation" whose duty, whose


vocation it was, not to enslave but to set free.  

Palmerston's enthusiasm for the spread of liberalism had its doctrinal root in the belief that constitutional reform averted revolution. He thought that the state's natural condition was one of freedom and that anything which stood in the way of achieving this condition was necessarily a conspiracy. British interference on behalf of liberalism was then, a "good" policy, in that it sought to reinforce a natural tendency, and a practical policy in that it avoided revolutionary disruption. It was also, in Palmerston's view, an advantageous policy for Britain. It countered the pretensions of the eastern powers more successfully than did reliance on a non-intervention principle which allowed the asymmetry of unanswered legitimist intervention. Canning's neutrality in the ideological dispute gave way to Palmerston's participation in it; Canning's objection to intervention as a method of conducting foreign policy was replaced by Palmerston's greater concern with the objectives or principles for which intervention was undertaken.

Palmerston did not, however, sacrifice traditional British interests like the balance of power for an ideological crusade, and while he spoke of a "duty to set free", he acted only according to the imperative of British interests. But his conception of British interests was wider than that of Castlereagh or Canning and included a

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1Seton-Watson, Britain in Europe, p.254.
2Ibid., p.460.
3Southgate, op.cit., p.108.
4Ibid., pp.53-54.
commitment to liberalism, on the ground that a liberal state meant an independent state which meant in turn a pro-British state.\(^1\) It was in this sense that Palmerston meant that it was England's real policy to be "the champion of justice and right".\(^2\)

If Palmerston's interpretation of the non-intervention principle lay in the distinction he made between "friendly advice" which was permissible and "armed interference" which was not, in his actual policy he was not always faithful to either precept. On some occasions he followed a policy of non-intervention which precluded even the giving of advice. During the Polish insurrection in the early 1830's, Palmerston, preoccupied as he was with the problem of Belgian independence, looked to a quick victory for the Russian forces which had intervened to repress the revolution. The principle of balance prevailed over that of independence to the extent of a reluctance, on the part of Palmerston, even to enter a protest against the Russian action.\(^3\) Similarly, when Austrian troops intervened in Modena and Parma to put down revolution there in 1831, Palmerston would not criticize Metternich. If the rule of non-intervention required counter-intervention to uphold it, Palmerston side-stepped this logic by stating that his concern was more with avoiding a Franco-Austrian war, than with "the abstract and not easily definable principles

\(^1\) Southgate, *op. cit.*, p.108.

\(^2\) Seton-Watson, *op. cit.*, p.459. Palmerston said in the same speech that this course was to be pursued by "the weight of moral sanction and support". *Loc. cit.*

\(^3\) It was the Cabinet which insisted that the Tsar be informed that, in the British view, he was still obliged to uphold the constitution. Webster, *Palmerston*, Vol.I., p.189 and Southgate, *The Most English Minister*, p.44.
upon which interference and non-interference should depend". Again when Russia interfered to repress the revolution in Hungary on Austria's behalf in 1849, Palmerston's concern with a strong Austria in the European balance led him to encourage rather than to protest against the Russian action.

On other occasions, Palmerston strayed from the principle of non-intervention as he defined it, in the opposite direction, by using armed force to interfere, notably in Portugal and in Spain. To events in Portugal he was especially sensitive, since he had criticized the Wellington government for allowing the absolutist Miguel to come to power. But in 1831, the urgency of problems elsewhere and the inheritance of non-intervention made action difficult. Palmerston would have liked to intervene on behalf of Pedro, the supposed liberal and the legitimate ruler of Portugal, but the non-intervention principle persuaded him that the "thing ought to be done in a decent manner" and Grey pointed to the lack of justification for a British assisted invasion of Portugal against a de facto ruler. In reply to Pedro's constant requests for British help in the ensuing years Palmerston had then to plead neutrality and non-intervention. This was, however, merely a formal posture; the non-intervention policy was used to justify British connivance at Pedro's expedition against Miguel, and it never precluded support.

1 Southgate, op.cit., p.45.
2 N.C.M.H., Vol.X., p.264. It was only after Hungary had been restored to Austria that Palmerston protested against Austrian inhumanity.
4 Ibid., p.244.
5 Ibid., p.245.
for the constitutionalists at Lisbon. When, in 1834, Palmerston and Grey were finally convinced of the need to interfere with armed force in Portugal, the Cabinet again rejected the plan and caused Palmerston to achieve his objects by a "veiled intervention" - the negotiation of the treaty of Quadruple Alliance. By the terms of the Treaty signed in April 1834, the Queens of Spain and Portugal were to assist each other in expelling Miguel, the Portuguese, and Carlos, the Spanish, pretender from the Peninsula. England was to blockade the ports and French armed assistance was also promised. Thus, by a "coup de main" Palmerston had legitimized a policy of interference which had been barely disguised by verbal allegiance to the non-intervention principle, and had at the same time set up what he regarded as a "powerful counterpoise to the Holy Alliance of the East".

To the civil war in Spain, Palmerston's attitude was even less reserved than it had been in Portugal. He admitted his policy to be interference based on the treaty of 1834, and further he asserted the right of outside countries to take part with either of the belligerents in a civil war. British ships attacked and blockaded Spanish ports, arms were supplied to the government forces and Spain was allowed to raise in Britain a legion of 10,000 men. Palmerston's justification for his action was extravagant. He spoke of an obligation to improve Spanish institutions and to help her acquire the "inestimable privileges of

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1 Temperley and Penson, Foundations of British Foreign Policy, p.103.
3 Ibid., p.397.
4 Speech to the House of Commons, 24 June 1835, cited in Temperley and Penson, op.cit., p.104.
representative government". He followed in Spain the doctrine which he was to lay down in 1844 in relation to Greece, "that if any nation should be found not fit for constitutional government, the best way to fit such a nation for it would be to give it to them".

On other occasions, Palmerston was true to his own doctrine of non-intervention. Dissatisfied with the Italian settlement between Austria and France in 1859, he protested to both powers on the ground of self-determination for Italy, and proposed that the disputed territories be annexed to Piedmont. Palmerston intended no military intervention, but he was determined to give advice and express an opinion, and even to threaten action in the belief that "the threat would make the action unnecessary". Again in 1864, when Austrian and Prussian troops took over Schleswig-Holstein, Palmerston's reaction was to take a middle course between "an ignominious silence" and "broadsides of shot and shell", a policy which was to lead to a vote of censure in the House of Commons, and represented, internationally, the nemesis of Palmerston's devious doctrine of non-intervention.

The principle of non-intervention could be used as a rule in terms of which to guide or coerce the actions of others in either of two ways. Firstly, an attempt could be made to avert the intervention of another state by the suggestion that she follow the principle of non-intervention, or by the threat of counter-intervention if she executed the policy.

1Ibid., p.103.
2Ibid., p.104.
3Ibid., p.465.
4Ibid., p.514.
Secondly, once an intervention had taken place, the rule of non-intervention could justify and be upheld by counter-intervention to discipline the intruding state. Palmerston made use of the principle in both these senses, though with respect to the latter method, he preferred to discipline by words rather than action. In attempting to forestall intervention Palmerston, on several occasions, used the rule of non-intervention as a "ring-holding" device. When Piedmont, located in a sensitive position between France and Austria, and threatened in 1831 by attack from French extremists, took fright at what she supposed to be a Whig policy of non-intervention, Palmerston set out to reassure her. France was informed that her toleration of the extremists on the Piedmontese border was inconsistent with a policy of non-intervention, and at the same time Austria was left in doubt as to the British reaction to a French initiative. It was Palmerston's policy to uphold the independence of Piedmont by making both France and Austria uncertain of the British reaction to intervention. In Portugal, Palmerston was less tentative; he made it very clear that any intervention from Spain or the Holy Alliance would provoke British counter-intervention. In 1848 and again in 1859, Palmerston demonstrated his concern for Italian independence. In 1848, he warned Metternich that Britain could not view with indifference "any aggression whatever" on the rights and territories of Rome or Turin. In 1859, Austria and France were merely "formally requested" to refrain from armed interference in Italy.

Palmerston stated the logic of counter-intervention more clearly than either Castlereagh or Canning. Changes in internal constitution and form of government were

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2 Ibid., p.246.
3 Southgate, op. cit., p.204.
4 Ibid., p.466.
matters with which England had no business to interfere by force of arms, but the attempt of one nation to seize and appropriate the territory of another was a different matter. Because such action might endanger other states by deranging the balance of power, Britain held herself at liberty to resist it on the principle of self-defence. Palmerston rarely made use of this doctrine to the extent of using armed force, though his activities in Portugal and Spain could be justified in terms of counteracting the support both material and moral, which the Eastern Powers gave to the absolutists in the Peninsula.

More often, Palmerston's method of counter-intervention was to answer armed bands by despatches in the belief that protest, even if ineffective, was to be preferred to "tacit acquiescence" in the wrongs of others.

For Palmerston the rule of non-intervention did not play a major part, as it had done for Castlereagh and Canning, in the criticism of others and in the defence of his own actions. It provided the rationale for his counter-interventionary protests, and his objections to Austrian activity in Germany and Italy were couched in terms of the independence of states and the desirability of non-intervention. But Palmerston surrendered Canning's middle ground between contending principles and contending nations, and as a result, criticism and justification were framed in the language of participation in the ideological battle, rather than that of abstention from it. Palmerston found it "impossible not to fancy one saw a settled design on the part of the Austrian government

3 Ibid., p. 359 and p. 367.
to put down constitutional freedom wherever it exists and to cherish bad government wherever it is to be found." and he traced symptoms of this from the Vistula to the Tagus.¹ Thus he objected more to the ends than to the means of Austrian foreign policy. Confronted, in his view, by a universal conspiracy against constitutionalism on the part of the Holy Alliance, Palmerston replied in defence of his own conduct by claiming himself a universal reference. His continual interference in Portugal was justified by a supposed obligation to come to the aid of struggling liberalism everywhere.² His penchant for giving advice to others and expressing an opinion on their conflicts was justified on the ground of England's great power status which meant that "no event...bearing on the balance of power, or on the probabilities of peace or war" could be a matter of indifference to her.³

This aptitude for lecturing gave other powers the opportunity to criticize Palmerston according to the non-intervention principle. When, in 1848, the Spanish government was advised to adopt constitutional methods, her premier found this "offensive to the dignity of a free and independent nation" and demanded that the British Ambassador leave the country.⁴ In the same year, Schwarzenberg reacted to Palmerston's protests about Austrian repression in Lombardy by repudiating all interference in Austrian affairs and pointing out to Palmerston that Austria did not presume to advise him on his policy in Ireland.⁵ Even Metternich,

¹ Ibid., p.235.
² Seton-Watson, Britain in Europe, p.254.
³ Quoted in Southgate, op.cit., p.463. This was said in reply to the Queen's criticism of Palmerston's policy - but he consistently used the same sort of justification.
⁴ Seton-Watson, op.cit., p.254.
⁵ Ibid., p.262.
in 1832, objected to Palmerston's protest against his policy in Germany in terms of the non-intervention principle.¹

As well as forming part of the language of international relations, the rule of non-intervention was a principal weapon in the hands of Palmerston's domestic critics throughout his years as foreign secretary and later as prime minister. In Parliament, the principle was the focus of Tory as well as Radical dissent. When, in 1850, Palmerston sought redress from the Greek government for an alleged wrong to a British citizen, Don Pacifico, by the despatch of a naval squadron to Greek waters, his actions brought on a motion of censure in the House of Commons. In the ensuing debate, Gladstone opposed the principle of non-intervention to the Palmerstonian spirit of interference, fearing that the attachment of England to a party in other countries would encourage other powers to behave in the same way, to the ultimate detriment of freedom and peace.² Cobden also stressed the power of example and the consequent danger of British departure from the rule of non-intervention, and restated his doctrine that the spread of liberalism depended more upon peace, commerce, and education than "on the labours of cabinets and foreign offices".³ Peel looked back with favour to Fox, Pitt, Grenville, Canning and Castlereagh whose policy it had been not to intervene in the affairs of others.⁴ Again, in 1864, when Disraeli moved a vote of censure over Palmerston's threats without performance to Germany on the Schleswig-Holstein question, support for the motion from all

¹Southgate, op.cit., p.53.
²Seton-Watson, op.cit., p.280.
³Ibid., p.282 and above Chapter 3, pp.62-64.
⁴Ibid., p.283.
parties was expressed chiefly in the language of non-intervention. Lord Robert Cecil drew the threads of the debate together with his view that if Cobden had been at the Foreign Office instead of Russell, Britain's position would be more dignified and she "would at least have been entitled to the credit of holding out in the name of England no hopes which she did not intend to fulfil". 1

The non-intervention principle also provided the Palace with the language for disagreement with Palmerston's foreign policy. In 1848, the Queen objected to Palmerston's system of diplomacy in Spain and Portugal "which makes the taking up of party politics its principal object". 2 In 1859, Victoria warned Palmerston that a proper neutrality involved abstention from the advice he was giving to the powers on the management of Italian affairs. 3 Whatever the motive of the Royal advice to Palmerston, the principle of non-intervention was thought to be the most effective vehicle for conveying it.

Palmerston's response to criticism varied: sometimes it was a matter of parliamentary tactics, sometimes he had an acute reply to a particular argument and sometimes he formulated a doctrine of his own to counter the non-interventionists. As a parliamentary tactician, he survived the Don Pacifico debate by fixing his "Civis Romanus Sum" argument to a clause in the preamble of Lord Stanley's motion of censure, which suggested that British subjects abroad were entitled to the protection of the laws of the country in which they resided. Palmerston, by pointing to the fallibility of this doctrine and exaggerating it, was able to side-step the major issue. 4 A later attempt

1 Quoted in ibid., pp.456-457.
2 Southgate, op.cit., p.198.
3 Ibid., p.463.
4 Ibid., pp.271-272.
to turn the debate on a motion of censure in his favour was less impressive; in the Schleswig-Holstein debate of 1864, Palmerston "took away the breath" of his audience by totally ignoring the arguments of his critics and basing his defence on what the government had done for national prosperity.\(^1\) To the argument that his activity in Turkey in 1839 was an offence against the rule of non-intervention, Palmerston replied that "true political wisdom consists not in enunciating a policy in sonorous terms, but in applying to each question as it occurs the rules of common-sense and prudence".\(^2\) The Cobdenite argument that the true interest of England was in commerce not the balance of power and that the promotion of liberalism abroad did not aid the expansion of commerce, Palmerston stood on its head: the freedom of commerce depended upon attention to the balance of power and the adoption of liberal constitutions led to the development of commercial ties.\(^3\)

On a number of occasions, however, domestic criticism acted as a constraint to Palmerston's conduct of foreign policy, particularly when the criticism was manifest at cabinet level. In his policy towards Portugal and Spain in the 1830's, Palmerston was restrained by

\(^2\) A.G. Stapleton, Intervention and Non-Intervention, (London, 1866), pp.72-74. Stapleton criticizes this defence as a casting aside of the recognized established principles of international law. He also indict Palmerston's interventionary foreign policy in general because it separated the moral from the physical strength of Britain - irresistible when combined - and advanced the establishment of the law of force throughout Europe. He also used the Cobdenite argument that Palmerston's intervention had set the example for Russian intervention in Hungary in 1848, and French intervention in the Papal States in 1850. The book as a whole is a neo-Canningite syllabus of Palmerston's errors.

\(^3\) This was a reply to Roebuck, a Radical, who later turned Palmerstonian, in the House of Commons, 17 March 1837, Southgate, op.cit., p.141.
an unwilling cabinet. In 1859, Palmerston's draft advice to Austria and France on Italy was made less offensive by the intervention of the Queen and the tailoring of the Cabinet. The Palace and the Cabinet combined again in 1864 to deflate the bombast of Palmerston and Russell, in the interests of avoiding war with Germany over Schleswig-Holstein.

It is possible to read into Palmerston's foreign policy a certain logical coherence, in the following way: he interpreted the doctrine of non-intervention in a way which allowed him to support the growth of liberalism abroad, in order to avert revolutionary upheavals, which by inviting outside intervention would upset the balance of power. In practice, Palmerston, while he would have accepted that the factors were inter-related, never conformed to the logic of such a system. True, he confronted Metternich's support for crowns with British advocacy of liberalism, but he rarely allowed ideology to predominate over the principle of balance and the maintenance of the territorial system. The non-intervention principle was not an invariable rule but a device to be used when the opportunity presented itself.

This opportunism was reflected in his definition of the principle of non-intervention. The distinction between armed interference and the giving of friendly advice allowed Palmerston to support the liberal cause without committing British armed force to its survival. He worked out the logic of counter-intervention, used it in his policy towards Spain and Portugal, left

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2 Southgate, op.cit., p.465.
3 Ibid., pp.515-518.
4 For the view that the policy of actively encouraging the Liberal cause against the Holy Alliance died with Canning and the placement of Palmerston in the tradition of Castlereagh, see Hinsley, Power and the Pursuit Of Peace, p.222.
the option open to use it elsewhere, but did not stake
the British reputation on the universality of its
application.\footnote{Seton-Watson calls the formation of the Quadruple
Alliance, Palmerston's "idea of non-intervention", \textit{op.cit.},
p.183. Similarly Webster says that the difference
between the doctrine of non-intervention as it was
interpreted in the 1820's and the 1830's was that in
the former years Britain had put forward the doctrine,
but had stood aside when it was disregarded, and in the
latter years Britain had interpreted the doctrine as
giving her a "right to protect the Liberal Movement if
the Eastern Powers attacked it". \textit{Palmerston}, Vol.II,
pp.787-788.} He could define the rule as strictly
as had Canning when it suited his purpose and he used
it as an excuse for accepting Louis Napoleon's supposedly
illiberal coup in France.\footnote{Southgate, \textit{op.cit.}, p.287.}

The reaction from Palmerston's interfering
foreign policy after the Commons' debate of 1864 led
succeeding ministries to interpret the principle of
non-intervention in a way which owed much to Cobden and
meant virtual abstention from continental affairs.\footnote{Temperley and Penson, \textit{Foundations of British Foreign
But although it was thought that Palmerston had been
over-free with his advice to foreign powers, the
distinction he made between armed interference and the
giving of opinion lived on.

To speak of a British doctrine of non-intervention,
then, is not to suggest that there was one doctrine of
non-intervention which each incumbent of the Foreign
Office felt it his duty to observe. The form the
doctrine took, the sort of action it was held to require,
varied with the statesman interpreting it. Castlereagh
laid the theoretical foundation of the doctrine of
non-intervention in his 5 May 1820 State Paper,
distinguishing between actual and speculative menaces
to the European system, external and internal affairs, and between the maintenance of the territorial settlement and of the order within the territories. Canning took this paper as the basis for his own foreign policy, but added to it a neutrality and an isolation from Europe which set him apart from Castlereagh. Palmerston, in turn, claimed Canning as his master in foreign policy. But by developing a doctrine of non-intervention which allowed him to express opinions and give advice to foreign states on their domestic affairs, he departed from his master and from that part of Castlereagh's paper which had doubted the wisdom of giving advice on the ground that, unsupported by force, it was more likely to be held in contempt than heeded.

Further, the doctrine of non-intervention was variously interpreted within the foreign policies of each of these statesmen. For Castlereagh, it would exclude the intervention of any power in Spain, but in Naples it merely excluded collective intervention by the Eastern Powers not the unilateral intervention of Austria. For Canning, it meant a response in Portugal but none in Spain. Palmerston lectured both Austria and France on the Italian question in 1859, but, more faithful to the principle of balance than that of non-intervention, he would utter no protest against Russian intervention in Hungary in 1849. Measured against Cobden's principle of non-intervention, the doctrines of Castlereagh, Canning and Palmerston were all doctrines of intervention. Cobden equated British interests with non-intervention. Where Castlereagh and Canning made no such equation, but conceived of fundamental interests which might require intervention — if only exceptionally — they allowed themselves a greater flexibility in diplomacy than Cobdenism could provide. This was the more true of Palmerston as he disparaged abstract principle in favour of common-sense and prudence.

If the doctrine of non-intervention was available to each of these statesmen for his own interpretation
according to his conception of British interests, and to the situation which confronted him, to what extent can a principle of non-intervention be said to have restrained the foreign policies of any of them? In the first place, there was a domestic constraint. A British tradition of non-intervention, however ill-defined, had at least to be taken account of in the formulations of foreign policy, and departure from it required justification before a Parliament which was, in part, the guardian of the tradition. Secondly, the existence of this tradition provided a broad conception of what, in general, British interests were, and this conception was the inheritance of each foreign minister. Castlereagh's 5 May State Paper gathered together the threads of an old tradition and restated it as the British position against the European Allies, and in so doing he added to the tradition to be passed on to his successors. In this sense, the tradition itself constrained the maker of foreign policy because it provided his framework for action in international relations. And thirdly, there was an external constraint encouraging adherence to the principle of non-intervention; in some cases, Britain had no choice but to refrain from intervention if she wished to avoid war with other great powers - attention to the balance of power in Europe meant that Britain should not only act against the power which upset it, but that she should not herself upset it by a policy of intervention. Further, as Palmerston discovered, the "British" principle of non-intervention could be turned against his own interference. If it can be said that to the extent that Great Britain observed the principle of non-intervention, it was an adherence dictated by her interests, there is no need on that account to disparage the principle as a mere disguise for interest, for it is as a protection of interests that rules exist. But if the essence of law is that it should have the power to compel an actor, in any circumstance, against his will, then Britain was not restrained by the rule in this essential sense.
Non-intervention in American Doctrine and Practice.

If British ideas about international relations played some part in contributing the principle of non-intervention to the body of international law, that contribution was supplemented and strengthened by a United States practice which claimed the doctrine of non-intervention as the basis of its foreign policy. The full extent of the contribution was demonstrated when, in the twentieth century, the United States doctrine of non-intervention merged with Latin American doctrine in the proclamation of a near-absolute principle of non-intervention as a formal rule of inter-American public law. This section of the chapter will look at the birth and growth of the United States doctrine, at the practice of the United States measured against the principle of non-intervention, and at the functions performed by the doctrine of non-intervention in American foreign policy.

i) The American Doctrine of Non-Intervention.

American doctrine will be examined here through three phases: the origin of the idea of non-intervention in the thoughts of the Founding Fathers and its relation to isolationism; the working out of the rule at the time of Latin American independence and its relation to the Monroe Doctrine; and the adoption of the principle as a rule of law in the American hemisphere and its relation to the Latin American doctrine of non-intervention.

a) Origins.

"Non-intervention" has been used as a generic term encompassing the various American doctrines that have counselled aloofness from European politics, and as
a synonym for any one of them.\textsuperscript{1} The interest here is in the doctrine holding that the United States should not interfere in the domestic affairs of other sovereign states. The roots of this doctrine may be traced to the ideas about foreign policy current during Washington's second term as President, and more generally to that collection of ideas forming the "isolationist's ideal".\textsuperscript{2}

This ideal, expressing "the natural desire of every people for maximum self-determination",\textsuperscript{3} was reinforced in the United States by her sense of escape from a corrupt Old World, by the perception of extreme geographical distance from the rest of the world, and by a jealous regard for her novel institutions.\textsuperscript{4} The ideal was seen also as an interest. Arguing that dependence on Britain meant involvement in European wars, Thomas Paine, writing in 1776, urged that it was "the true interest of America to steer clear of European contentions".\textsuperscript{5} The ideal and its expression in terms of interest were rewarded on 22 April 1793 with Washington's Proclamation of Neutrality which announced that the United States was to be impartial in the war between France and the European coalition. Made in the face of massive popular support for the French cause, this policy of separation from Europe received its famous defence in Washington's Farewell Address three

\textsuperscript{1} For use as a generic term, see Charles E. Martin, The Policy of the United States as regards Intervention, (NY, 1921), pp.58-59; for use as a description for non-interference in the wars of others, see Thomas A. Bailey, The Diplomatic History of the American People, fifth edition, (NY, 1955), p.6.


\textsuperscript{3} Loc.cit.


\textsuperscript{5} Quoted in Bailey, op.cit., p.4.
years later. Repudiating "inveterate antipathies against particular nations and passionate attachments for others" as productive of a variety of evils - the incitement of jealousy at home and abroad, the perception of imaginary shared interests with other nations, involvement in the quarrels of others - Washington laid down the great rule of conduct for America in regard to foreign nations "in extending our commercial relations to have with them as little political connection as possible". The controversies of Europe were remote to the concerns of the United States, and nothing was to be gained by surrendering the advantages of her distant situation and interweaving her destiny with that of any part of Europe. It was America's true policy to avoid permanent alliances with any portion of the foreign world.

It might be said that the doctrine of non-intervention has one of its roots in this advice of Washington's that the United States should make her actual isolation the guide to her conduct in foreign relations - non-intervention in the internal affairs of other states being part of the broader doctrine of non-involvement with them. But though Washington made much, in his Address, of American remoteness from the concerns of Europe, the United States was not in fact isolated from them; Washington was referring to the situation which ought to obtain rather than to the real situation.

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1 The quotations following are taken from the extracts of the address in Henry Steele Commager, Documents of American History, fifth edition, (NY, 1949), pp.169-175.

2 Not just part of it, Julius Goebel argues, but in its beginnings nearly identical with it. He locates the origin of the doctrine of non-intervention in the debate in the Cabinet before the publication of the Proclamation of Neutrality. The principals in this debate, Hamilton and Jefferson, were agreed that the attitude of the United States towards the war in Europe should be one of neutrality; they disagreed about the recognition of France, whose Minister was on his way to Philadelphia, and about the status of the 1778 treaty with France. Hamilton argued that the treaty was void, because of the radical change in the government of France since its ratification, and he advocated that the French Minister be
The open agitation of France against Jay's Treaty with England, and on behalf of the election of the supposedly pro-French Jefferson to the Presidency, was in Washington's mind when he prepared his Address. In view of this, it is possible to regard the Address not merely as an isolationist tract advising the United States to steer clear of foreign quarrels, but as a declaration of the independence of American foreign policy, an assertion of national sovereignty against French interference in its domestic affairs. This immediate purpose of rallying the nation against European interference might be detected in Washington's phrase: "Against the insidious wiles of foreign influence...the jealousy of a free people ought to be constantly awake". Herein, a second root of the doctrine of non-intervention might be discerned, complementing the doctrine of non-participation with a doctrine addressed to the protection of the sovereignty of the United States against outside interference.

Jefferson thought the treaty still valid, it being an action taken in the name of the French nation, an authority which did not vary with the form of government. He proposed unconditional acceptance of the French Minister as an envoy of a government based on the will of a nation. Hamilton was concerned that any action or declaration by the United States which showed sympathy with France would be regarded by the European enemies of France as an interference, and give them cause to regard the United States as an enemy. Hamilton thought that "The military stipulations they (the treaties) contain are contrary to that neutrality in the quarrels of Europe which it is our true policy to cultivate and maintain." It is in this doctrine of non-participation in European affairs that Goebel sees the first flowering of the doctrine of non-intervention - they were the same, or nearly so, because the European states were the only places where the question of American interference could come up. It was only later, he adds, in the South American struggle, that the doctrine of non-intervention expanded to assume the form in which it is most generally understood. The Recognition Policy of the United States, (NY, 1915), pp.106-112.

If the germ of the idea of reciprocity, of a rule of non-intervention to be observed by the United States in its foreign policy and an expectation that other states will observe the same rule in their relations with the United States, can be traced to the Farewell Address, it can be said that Jefferson provided the conception of rights on which this reciprocity could be based. In an instruction to Pinckney, the American representative in London, about the American attitude to Revolutionary France, he wrote:

We certainly cannot deny to other nations that principle whereon our own government is founded, that every nation has a right to govern itself internally under what form it pleases and to change these forms at its own will; and externally to transact business with other nations through whatever organ it chooses, whether that be a King, Convention, Assembly, Committee, President or whatever it be. The only thing essential is the will of the nation.¹

Jefferson's idea of a right of all states to govern themselves according to whatever principles they choose may be said to imply a duty of non-intervention.²

¹Instruction of 30 December 1792, cited in Goebel, op. cit., p.104.

²Like Goebel, Charles E. Martin seems to find the origin of the American doctrine of non-intervention in the Cabinet debate which led to the Proclamation of Neutrality. Unlike Goebel, he takes Jefferson as its originator and not Hamilton. Where Hamilton argued that the carrying out of the military stipulations of the treaty with France would breach neutrality in favouring the French, Jefferson argued that the abrogation of the treaty would be a breach of neutrality against the French, giving France a just cause of war against the United States. Martin takes Jefferson's acceptance of the right of revolution, and his application of a de facto test for the existence of a government within another state, to be the first statement of the American policy of non-intervention. Op. cit., pp.41-46.
Though each of these doctrines - the doctrine of non-participation in the affairs of others, the assertion of American independence against the interference of others, and Jefferson's theory of the right of nations to choose their own form of government - can be regarded as precursors of the American doctrine of non-intervention, and taken together they provide all the elements of such a doctrine, the particular question whether or not the United States should interfere in the domestic affairs of another state had not yet confronted American statesmen. The independence movement in Latin America posed the particular question.

b) The Doctrine of Non-Intervention and the Monroe Doctrine.

Just as the French Revolution had forced Washington into a difficult foreign policy decision in 1793, so the revolution in Latin America against Spanish rule, in the first decades of the nineteenth century, confronted the American statesmen of the time with a similar dilemma. Similar but more complex, because the choice of policy now involved, as well as Europe and the United States, an additional group of Latin American actors. Both the doctrine of non-intervention and the Monroe Doctrine can be traced from the policy adopted. What follows will examine the evolution of the doctrine of non-intervention from the Spanish American revolution to its acceptance as an established principle of American foreign policy in the administrations that followed Monroe's, and it will distinguish the differences and similarities between the doctrine of non-intervention and the ideas contained in the Monroe Doctrine.

From 1811 until recognition in 1822, the official policy of the United States towards the struggle between Spain and her Latin American colonies was one of
neutrality. Thus Madison, and after him Monroe, took the same attitude to a foreign war as had Washington in 1793; this time, however, the foreign war was legally a civil conflict. For Washington the neutrality doctrine had meant non-participation in an international war, for Madison and Monroe it now meant abstention from interference in the internal affairs of another power. When American recognition of the new states came in 1822, Monroe's Secretary of State, John Quincy Adams, defended it as "an obligation of duty of the highest order" and Monroe himself spoke in terms of the duty of recognition. This transition from neutrality to recognition of statehood, while dictated by practical considerations, could at the same time be justified in theory. The settled policy of the United States not to interfere in the conflicts of others, was in no way inconsistent with America's taking notice of the outcome of those conflicts. Armed with the Jeffersonian de facto doctrine, Adams could reply to Spanish protests by asserting that American recognition was the mere acknowledgement of existing facts.

1 In fact, it was a neutrality favourable to the rebel cause, so that non-belligerency rather than neutrality was a more accurate description of American policy. Spain could object to such a policy not only because the neutrality was not impartial, but also because American recognition of the belligerency of the rebels (which was concurrent with the Proclamation of Neutrality of September 1811) could be regarded as intervention in Spanish affairs. See C.C. Griffin, The U.S. and the Disruption of the Spanish Empire 1810-1822, (NY, 1937), pp.97-98; A.P. Whitaker, The U.S. and the Independence of Latin America 1800-1830, (NY, 1962), pp.194-199.

2 Whitaker, op.cit., pp.375-376. Adams derived this "obligation of the highest order" from his non-colonization principle which he advanced in 1821. See below, p.140.

3 Adams argued that two principles were involved in the matter of the independence of a nation - one of right and one of fact. Right depended on national self-determination and fact on its successful achievement. At the same time, he asserted that American recognition of Latin American independence was not intended to violate any right of Spain. Goebel relates the Spanish position to the doctrine of monarchical legitimacy, and the Adamsonian argument to democracy and republican government to which the de facto principle is an inevitable counterpart. Op.cit., p.141.
By her neutrality, the United States would not interfere in the issue of the Latin American war of independence, but a fortiori she would not interfere by refusing to recognize governments, which were in her view, legitimate expressions of the will of the people.

The abstention of the United States from active participation in the conflict in South America and the long delay before recognition of the insurgents, were not policies which commanded a consensus within America. The Spanish objection that American policy was too favourable to the rebels confronted Monroe and Adams internationally; at home they had to face the criticism, principally from Henry Clay, that their policy was insufficiently favourable to the insurgents. While the debate between Adams and Clay can be regarded as merely the natural antagonism of two Presidential aspirants, the issues raised in it were of fundamental importance to American foreign policy. Sympathy for the cause of Latin American independence was not the point at issue, though Adams' credentials on this matter, at least at the outset, were dubious; rather the dispute was about the principles which should guide American policy towards the revolutionaries.

Clay's criticism of the Administration was that its failure to recognize the rebels as independent states was not in accord with public opinion in the United States. He argued that the Latin American rebels be supported by all means short of war in order to encourage the cause of freedom everywhere, and he advocated the formation of a counterpoise to the Holy Alliance to advance national independence and liberty by the force of example and moral influence. Adams took a caricature of these arguments of Clay as a text for destruction at an Independence Day speech in Washington in 1821, representing


2Speech at Lexington, Kentucky, 19 May 1821 upon his temporary retirement from public life, cited in Whitaker, op.cit., p.345.
Clay's views as a call to arms. He made use of the same platform to criticize an article in the Edinburgh Review of May 1820, which had called for American cooperation with British liberals for the cause of reform and liberty in Europe. ¹ To these sorts of argument Adams had two replies. In the first place, he questioned the possibility of an American role as the judge of the righteous cause in a civil war. ² Secondly, he spoke of an "inevitable tendency" of direct interference, even if undertaken in the cause of liberty, to degenerate into mere power and dominion, so that these forces, rather than liberty, provided the foundation of government. ³ He might have added Monroe's argument that if the revolting colonies could not beat Spain of their own accord, then they did not deserve to be free. ⁴

For Adams the two great principles on which American foreign policy ought to be conducted were the anti-colonial principle and the principle of non-entanglement. The anti-colonial principle, in Adams' view, provided a solid basis for the right of the United States to independence, and settled the justice of the struggle for independence in South America. ⁵ His principle of non-entanglement allowed the United States to be the "well-wisher to the freedom and independence of all" but the "champion and vindicator only of her own". ⁶ Impressed by the similarity of the situation which confronted him and that which faced Washington in his second term, Adams restated the principles of the Farewell Address and made them universal. Though the

³Whitaker, op. cit., pp.361-363, and especially p.362, n.34.
⁴Monroe to Jackson, 21 December 1818, cited in Whitaker, op. cit., p.211.
⁵Whitaker, op. cit., pp.359-361.
ideas of Adams were thus firmly in the isolationist tradition, his application of them to conflict within states as well as to international conflict, presaged the emergence of the doctrine of non-intervention, which he was to establish when he assumed the Presidency.

Monroe's message to Congress of 2 December 1823, expressed the attitude of the United States to Europe, to the newly independent states of Latin America and to the relations between these groups of powers. The message contained three declarations of principle. Firstly that the American continents were not to be considered as subjects for future colonization by any European power. In the second place, the message reiterated the traditional American policy of abstention from the affairs of Europe. Thirdly, Monroe warned the European powers against any interposition in any portion of the American hemisphere. This two worlds doctrine of Monroe was at once the confirmation of America's traditional policy of isolation and a radical departure from it: traditional in its intention to abstain from European affairs, novel in its apparent extension of United States protection to the whole of the American hemisphere.

It is possible to regard the two worlds doctrine as nothing more than the assertion of a hemispheric principle of non-intervention, by which the rule applied between continents rather than between states. The reciprocal respect required for such a rule to operate was hinted at by Adams in his description of the purpose behind the American response to threats of Russian intervention in the Americas in 1823. His view was that an America which disclaimed all intention of propagating her principles by force in Europe, or of interfering with European political affairs, could declare her "expectation and hope" that the European powers would equally abstain from the attempt to spread their principles in the

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American hemisphere.  

As well as this inter-continental doctrine of non-intervention, the Monroe Doctrine espoused a specific principle of non-intervention in three areas of inter-state relations. In the first place, the stipulation that America should abstain from European politics included a specific undertaking not to interfere in the internal concerns of any of its powers. This undertaking was due to the influence of Adams, who prevailed upon Monroe to exclude from his message any commitment to sustain liberty in Spain or Greece. Any course other than complete non-entanglement would not conform with Adams' conception of the interests and traditions of the United States.  

Secondly, Monroe's message declared that America had not and would not interfere with the existing colonies or dependencies of any European power. This commitment to non-intervention, which could be shown to be inconsistent with the non-colonization principle, seems to be part of Adams' attempted bargain by which the United States would refrain from interference in Europe if this would keep the Europeans out of those parts of the Americas that were not still colonies. Thirdly, the message suggested that it was American policy to leave the parties to the dispute in Latin America to themselves in the hope that other powers would pursue the same course. All references to the doctrine of non-intervention in Monroe's message appear, then, to have been related to the rather feeble aspiration that the European powers would follow.

1 Perkins, op.cit., p.49. Elsewhere, Perkins refers to "an appealing, if perhaps a specious, logic in the view-point that the United States, in keeping out of European affairs, had a right to demand a like forbearance from Europe with regard to the Americas", "John Quincy Adams", in Bemis (ed.), The American Secretaries of State and their Diplomacy, Vol.IV, (NY, 1958), p.71.

American example in observing the rule.\(^1\)

If the Monroe Doctrine contained elements of the doctrine of non-intervention, it also contained elements which were contrary to that doctrine as it was informed by the isolationist tradition. The assertion that any attempt by the European powers to extend their system to the American hemisphere would be considered dangerous to American peace and safety, has itself been regarded as an interventionary act on the part of the United States; interventionary, because any European interference was objected to - irrespective of its legitimacy in international law.\(^2\) Moreover, if fidelity to the hemispheric principle of non-intervention required a forcible response from the United States when any Latin American state was under threat from a European power, then this would depart from a doctrine of non-intervention that was closer to Cobden than to Mill. Again, the Monroe Doctrine remained silent on the principles which were to govern the United States in her relations with Latin America. While concerned with Latin America, the Monroe Doctrine was aimed at Europe; it remained to be seen whether the doctrine of non-intervention which was to apply between hemispheres, would also be taken as an inter-state rule within one of them.

In the decades that followed the announcement of the Monroe Doctrine, the idea that the United States should not intervene in the internal affairs of other nations, became a familiar part of American doctrine on foreign policy. The doctrine of non-intervention was invoked not merely to criticize the actions of other states, and particularly the European powers, it was also announced as the official policy of the United States towards the Latin American states.\(^3\) Practice had thus hardened into

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\(^1\) For further treatment of the notion of reciprocity, see below, pp.167-174.

\(^2\) Thomas and Thomas, Non-Intervention, p.13.

\(^3\) Adams in his annual message to Congress of 1827 alleged that towards Latin America, the U.S. was "disclaiming alike all right and all intention of interfering in those concerns which it is the prerogative of their independence to regulate as to them shall seem fit". Cited in Graber, Crisis Diplomacy, p.56.
an accepted political doctrine and doctrine in turn came to be defended on legal grounds. Secretary of State Webster, wrote the following in 1842:

The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and government, while all in their mutual intercourse are understood to submit to the established rules and principles governing such intercourse. And the perfecting of this system of communication among nations requires the strictest application to the doctrine of non-intervention of any with the domestic concerns of others.¹

c) The Doctrine of Non-Intervention as a Principle of American International Law.

At the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires in December 1936, the United States was one of the High Contracting Parties which declared "inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties".² That the United States should accept a rule of non-intervention as a guide to its relations with other American states was not of great significance, such a doctrine had a long pedigree. What was remarkable was that the United States should bind herself by treaty to the observation of an apparently absolute rule of non-intervention, allowing none of the exceptions with which she had increasingly indulged herself. By signing and ratifying such a protocol, it seemed that the United States had finally succumbed to the Latin American doctrine of non-intervention.

The assertion of the principle of non-intervention as a fundamental rule of international law has been an article of faith with the Latin American republics ever

¹Quoted in ibid., pp.54-55.

since the time of Bolivar. It was logical, given the weaknesses of the Latin American states compared with the European powers and with the United States, that they should proclaim the doctrine of complete equality of sovereign states and derive from it an absolute rule of non-intervention, in order to compensate for patent factual inequality. Economic backwardness and political instability in Latin America combined to produce two interesting interpretations of the doctrine of non-intervention. Firstly, the Argentinian jurist, Carlos Calvo, laid down the doctrine that disputes arising from contracts involving foreign nationals should be settled in the courts of the country concerned. Calvo had in mind the European interventions in Latin America to enforce private financial claims and he wished to proscribe the appeal of foreign nationals to their home country for defence of their rights. This doctrine asserted the illegality of interventions which the European powers had always considered lawful. In the second place, Latin American jurisprudence was concerned to outlaw the intervention of foreign states to protect the lives and property of their nationals when civil order crumbled sufficiently to threaten them. The problem for Latin American diplomacy was to involve the United States in an American international law which would contain a guarantee not only that the United States would refrain from intervention in the countries to her south, but would also support those countries against non-American intervention, whatever the provocation.

The reluctance of the United States to be drawn into such a position was demonstrated at the first International Conference of American States at Washington in 1889. In response to a Latin American initiative to have a variant of Calvo's doctrine incorporated as American

1 Thomas and Thomas, Non-Intervention, pp.55-56.


3 Ibid., pp.237-238.
international law, the delegate of the United States to the committee on international law objected to the phrase "American international law" and dissented from the resolution on the ground that national courts might not provide "substantial justice". This difference of outlook was characteristic of the Conferences which took place before the First World War; the reluctance to debate important issues and the mutual mistrust between the two Americas did not create an environment encouraging to the growth of neighbourliness and an American international law. This, after all, was the age of United States intervention in Latin America. After the war, in the international euphoria provided by the establishment of the League of Nations and the Permanent Court of International Justice, the project for an American international law came almost to a standstill. At the same time, there was considerable non-governmental enthusiasm for such a scheme among eminent international lawyers from both the United States and Latin America, whose collective voice was made more effective through the mouthpiece of the recently formed American Institute of International Law and the funds of the Carnegie Endowment. It was largely the work of these private individuals and institutions, and the sympathetic response from Secretary of State Hughes, which brought the project, and in particular, the doctrine of non-intervention, to the attention of the delegates to the sixth International Conference of American States held at Havana in 1928.

1 Ibid., p.233.

2 At the fifth International Conference of American States held at Santiago in 1923, Professor Alvarez, the most prominent Latin American advocate of an American international law, had put the reasons for an American doctrine of non-intervention in a way which could not be unattractive to traditional United States doctrine on foreign policy. In a report to the juridical committee, he wrote: "The States of America, even before reaching a mutual agreement, have proclaimed certain regulations or principles different and even contradictory to those prevailing in European countries, and which these latter are compelled to respect in our Continent, for instance, non-intervention and the non-occupation of territories of the states of America by ultra-continental countries." Cited in ibid., p.243.
But sympathy and willingness to discuss important issues at Havana could not resolve the conflict of perceived interests between the United States and the Latin American republics. The United States was unwilling to eschew its residual right to intervene to protect its nationals in any American republic whose government was unable to fulfil this function. Acting under instructions from the State Department, Hughes, the leader of the American delegation at Havana, could not accept the unqualified doctrine that "no state has a right to interfere in the internal affairs of another". The stand taken by Hughes at Havana was a rearguard action. At Montevideo in 1933, the United States signed, later ratified, the Convention on the Rights and Duties of States, Article 8 of which read: "No state has the right to intervene in the internal or external affairs of another". The reservation attached to signature that the United States would follow the law of nations as generally recognized and accepted, the last attempt to avoid the full implications of an American international law, disappeared with the acceptance of the Buenos Aires Protocol in 1936. Franklin Roosevelt's Good Neighbour policy had extended to the international legal relations of the American states.

The acceptance, by the United States of the Latin American doctrine of non-intervention gave the Latin Americans good cause to congratulate themselves upon a sweeping diplomatic victory. But a Latin American victory did not necessarily mean a defeat for the United States. While Latin American persistence played a significant part in the acceptance by the United States of the legal rule of non-intervention, the United States could find

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1 Ibid., pp.248-252. This was the rule as it emerged from the work of the international lawyers in their private capacity and as members of the Inter-American Commission of Jurists.

2 Cited in Gantenbein, op.cit., pp.759-763.
ample doctrinal justification for adherence to the rule in her own diplomatic history. But the most persuasive reasons for this radical change in United States foreign policy between the administrations of the two Roosevelts lies not in doctrine or in Latin American persistence, but in the changed interests, perceived and real, of the United States. It will be one of the tasks of the next section to examine the practical considerations that led the United States to bind herself to an apparently absolute principle of non-intervention.

ii) Non-intervention in United States Practice.

The intention in this section is to comment on the extent to which the United States can be said to have conducted her foreign policy according to the principle of non-intervention, and on the reasons which compelled obedience to it or divergence from it in her relations with four distinct areas: the North American continent, Latin America until the end of the First World War, Europe and the Far East. It will conclude by drawing attention to the inherent difficulties in a policy that attempts to adhere meticulously to the rule of non-intervention which were revealed by United States relations with Latin America in the inter-war period.

a) The North American Continent.

The principle of non-intervention was not generally persuasive as a guide to American policy towards those territories which stood in the path of her expansion to fill the continent of North America in the first half of the nineteenth century. The practical advantages to be had from the acquisition of territory were considered superior to the abstract advantages which were supposed to flow from a policy of self-

restraint. The strategic importance of Florida to the United States led to frequent American attempts to buy it from Spain, or to acquire it by peaceful negotiation. At the same time, American immigrants took advantage of the weakness of Spanish authority, and provoked rebellion in Florida with a view to persuading the United States herself to intervene against Spain. In 1810, West Florida was declared an independent republic by rebellious American immigrants and President Madison accepted her request to join the United States, justifying the acquisition by a dubious reference to the Louisiana Purchase. In 1812, and again in 1818, filibustering expeditions led respectively by Generals Mathews and Jackson, were carried out in Florida with the tacit support of the administrations in Washington. The first adventure was disavowed by Congress, but John Quincy Adams defended Jackson's action as taken in self-defence and he advised Spain to "control or cede" the territory of East Florida. Unable to control, Spain ratified the cession of Florida in 1821.

The expansion of the United States into every part of the North American continent was not, however, an inevitable process; mere contiguity did not presage annexation. President Van Buren's reluctance to involve the United States in a war with Britain led him to enforce vigorously the neutrality laws against Americans who were supporting the Canadian insurrectionists in their unsuccessful uprising of 1837. In other cases, the United States refrained from intervention because such a step was unnecessary. The joint occupation arrangement which the United States had with Britain in respect of the Oregon territory, allowed American

1Graber, Crisis Diplomacy, p.35.
2Bailey, Diplomatic History, pp.163-164.
3Ibid., pp.171-172.
4Ibid., pp.208-209.
immigration into the area, a decisive factor when the frontier on the 49th parallel was negotiated with Britain in 1846.\footnote{Ibid., pp.242-245.}
In Texas too, the establishment of de facto independence from Mexico did not require the official support of the United States, and for nine years from 1837 until 1846, America asserted her neutrality in the dispute between Texas and Mexico, refusing the Texan request for annexation.\footnote{Though the neutrality laws were enforced with far less vigour than had been the case in Canada, and in Bailey's judgement the Texan revolution "would probably not have succeeded without American support". Op.cit., p.252. See also Bemis, Latin American Policy, pp.78-79. One reason for the American reluctance to annex Texas was the slavery question. Annexation, it was feared, would increase the political power of slavery, set South against North and possibly split the Democratic Party. Bailey, op.cit., pp.252-253. The slavery issue was also paramount in the failure to annex Cuba in the 1850's. Ibid., pp.318-319.}
War between the United States and Mexico came after annexation, over the disputed extent of Texan territory.

In all the areas on the continent of North America which the United States annexed in the first half of the nineteenth century, three factors were significant to varying degrees. In the first place, American immigration into Oregon, Texas, California and Florida created a climate of opinion within the United States which was in the immigrants' favour when the question of annexation was raised. This was consistent with the second factor - the doctrine of Manifest Destiny - which taught that "the proper dominion" of the United States was the continent of North America.\footnote{This was the view of John Quincy Adams, quoted in Bemis, Latin American Policy, p.74. The actual phrase "Manifest Destiny" was not coined until 1845. Loc.cit.}
This doctrine was in turn reinforced by a third factor which was indeed a part of Manifest Destiny - the desire to exclude other powers from the American continent - and
it was the threat of a British guarantee of an independent Texas which in part precipitated annexation.¹ In competition with these weighty factors the principle of non-intervention while not ignored, was overridden by a more alluring doctrine.

b) Latin America to 1918.

For the greater part of the nineteenth century, the principle of non-intervention played a role as significant in directing the policy of the United States towards the emergent and new states of Latin America as it had been insignificant on the continent of North America. Though an early declaration of United States neutrality towards the war between Spain and her American colonies, and then a neutrality imperfectly adhered to, might have been taken by Spain as intervention in her internal affairs, Adams' policy did at least prevent the premature recognition of Latin American independence and the active participation of the United States in the war against Spain. For a number of reasons, abstention from open intervention was sound policy for the United States. In the first place, premature recognition would have furnished Spain with a casus belli against the United States, which might have meant war with Britain as well.² Secondly, the economic interests of the United States were not involved, as trade with South America was not significant.³ In the third place, the negotiations for the Spanish cession of Florida to the United States might have been imperilled by too energetic a policy towards Latin America.⁴ Finally, it could even be argued that by not doing anything to provoke European intervention, the United States was not

¹Ibid., pp.82-83 and p.86.

²Bemis, John Quincy Adams, p.343.


⁴Goebel, Recognition Policy of the U.S., p.142.
only keeping out of war herself, but also promoting the cause of freedom in Latin America by holding the European powers at bay.\(^1\) The risks contained in this policy of non-intervention, namely, the possibility of alienating American public opinion and of incurring the ill-will of the Latin American insurgents were small compared to the risks involved in an interventionary policy.\(^2\) When the United States decided to recognize five of the new states in 1822, it was in response to the completion of the war for independence in most Latin American countries, when failure to recognize that situation would have been an unfriendly act towards the new states. Unfriendly, and also against the American interest in cultivating good relations with the new states to the exclusion of the European powers.

The independence of the Latin American colonies being achieved, the United States declared and conformed to a policy of non-intervention respecting it. In following that policy in its isolationist mode - failing to respond to the interventions of the European powers in Latin America - the United States did not interpret Monroe's warning that such action would be taken as a manifestation of an unfriendly disposition towards the United States as requiring any positive American reply. It was not until the end of the century that new interpretations of the Monroe Doctrine coincident with the growth of American power turned the policy of non-intervention into one of intervention, the threat to the independence of the Latin American states seeming then to come as much from the United States as from across the Atlantic.

In 1895, Secretary of State Olney, commenting on the boundary dispute between Venezuela and British Guiana, foreshadowed the age of imperialism in United States foreign policy by asserting that she was "practically

\(^1\)Whitaker, United States and Latin America, pp.210-211.

\(^2\)Bailey, op.cit., pp.165-167.
sovereign" on the American continent. Three years later, the United States intervened in the civil war between Cuba and Spain, on behalf of Cuba's struggle for independence. The factors which had restrained the United States from interfering in a previous Cuban insurrection were no longer significant; in 1898 President McKinley was swept into war with Spain by a frenzied public opinion. While the doctrine of non-intervention might have influenced McKinley sufficiently for him to advance elaborate justifications for American intervention, it could not assuage a public bent on war.

The victory of the United States in the Spanish-American War and the consequent acquisition of territory in the Caribbean and in the Pacific, provoked renewed interest in the construction of an Isthmian canal. Two obstructions stood across the path of such a project. The first was the Clayton-Bulwer Treaty of 1850, by which the United States and Britain had agreed to co-operate in constructing a canal and never to fortify or exercise exclusive control over it. This obstacle was finally surmounted by the second Hay-Pauncefote Treaty of 1901, leaving the second problem of selecting and negotiating the location of the canal. Colombian reluctance to ratify

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1See below, pp.171-172.

2In 1873, for example, Spanish capture of the Virginius, which flew the American flag, on the High Seas, might have given the U.S. cause for war, but a mood of introspection, a decrepit navy and doubts about the character of the Virginius, among other things, prevented intervention. Bailey, op.cit., p.423.

3See Halle, American Foreign Policy, pp.176-214.

4Bailey, op.cit., p.533; Bemis, Latin American Policy, pp.142-143. The spoils of the Spanish-American War were the Philippines, Guam and Puerto Rico. Acquisition of these territories encouraged a hitherto hesitant America to proceed with the annexation of American Samoa (1899) and Hawaii (1898).

5Bailey, op.cit., p.291.
a treaty extorted from her Minister in Washington threatened to frustrate the enterprise until a successful revolution in Panama allowed the United States to obtain, by a treaty with the new state, the territory on which to build the canal. The United States Navy acted as midwife at the birth of the state of Panama by preventing Colombian troops from landing to stamp out the rebellion. A few days later the United States offered her guarantee of the new state by recognizing Panama. President Theodore Roosevelt justified this action as taken in the "interests of collective civilization", though eight years later he was to boast that he "took the Canal Zone and let Congress debate".\(^1\) Roosevelt's anxiety to take the Canal Zone because of its perceived strategic importance to the United States, a conception of American interests perhaps reinforced by the forthcoming Presidential election, meant that the doctrine of non-intervention rated a low priority.

If Roosevelt's action in Panama had been naked and perhaps unnecessary imperialism, his intervention in the Dominican Republic in 1904 could be represented as both justifiable and necessary. Two years earlier Roosevelt had not invoked the Monroe Doctrine to counter the collective intervention of Britain, Germany and Italy in Venezuela to enforce the collection of debts, because he did not "guarantee any state against punishment if it misconducts itself".\(^2\) Since then, however, the Hague Court of Permanent Arbitration had handed down a verdict in the Venezuela case, that the intervening powers had a right payment of claims ahead of those who had not expressed their interests by force.\(^3\) This legal sanction of the use of force confronted Roosevelt, when the Dominican Republic defaulted on its debts, with a choice between allowing European intervention or

\(^1\) Ibid., pp.544-545.

\(^2\) Annual message to Congress, 3 December 1901, cited in Gantenbein, \textit{op.cit.}, p.360.

\(^3\) Bemis, \textit{Latin American Policy}, p.151.
intervening himself to preclude such action. By occupying the Dominican customs houses, collecting revenues and instituting a customs receivership, Roosevelt opted for American intervention. The doctrine of non-intervention was perforce overridden when action was thought necessary to combat the principle of European intervention.

Roosevelt's acquisition of the Panama Canal Zone and his doctrine of preventive intervention left a legacy which was enthusiastically accepted by his successor, President Taft. As Taft's Secretary of State, Knox, put it:

The logic of political geography and of strategy, and now our tremendous national interest created by the Panama Canal, make the safety, the peace, and the prosperity of Central America and the zone of the Caribbean of paramount interest to the Government of the United States. Thus the malady of revolutions and financial collapse is most acute precisely in the region where it is most dangerous to us. It is here that we seek to apply a remedy.

One remedy lay in the use of American capital to impose a financial order, and thereby in Taft's view, a political orderliness in the Latin American states. Another remedy was the use of American marines in an attempt to fashion a political order in Nicaragua after the revolution in 1909. This intervention was to intimately involve the United States in Nicaraguan affairs for more than twenty years. The widening horizon of United States security diminished the relevance of the doctrine of non-intervention for her relations with Central America.

Taft's policy towards the revolution which erupted in Mexico in 1911 had been one of non-intervention and recognition of the de facto government in Mexico City.

1 Thomas and Thomas, Non-Intervention, p.34.

2 Speech of 19 January 1912, cited in Bailey, Diplomatic History, p.582.

3 Ibid., p.583. This is the much vaunted "Dollar Diplomacy" of Taft's, which, Bemis argues, was an "easily misusable journalistic alliteration" which tended to obscure the real motive of America's protective foreign policy. Latin American policy, p.166.
His successor, Woodrow Wilson, declared at the outset of his administration, his intention to lend American influence "of every kind" to the realization of republican principles in Latin America. Following this doctrine, Wilson refused to recognize the Huerta regime in Mexico because it had taken power unconstitutionally and avowed it to be the policy of the United States to force the usurper out of office. Armed intervention followed in 1914 and Wilson succeeded in attaining his objective of ridding Mexico of Huerta. But Huerta's fall and the succession of Carranza did not bring order to Mexico. In 1916, United States forces entered Mexico again in hot pursuit of Carranza's rival, Villa, who had carried out raids in American territory. It was preoccupation with events in Europe, rather than a settled state of affairs in Mexico, which brought Wilson's policy of intervention there to an end, with the de jure recognition of Carranza's government in 1917. Wilson's declaration of Latin American policy also sanctioned armed intervention in Haiti in 1915 and in the Dominican Republic in the following year, to establish an American order after revolutionary uprisings. Thus Wilson carried the logic of "protective imperialism" much further into practice than its inventor, Roosevelt, and justified his policy by reference to the universal value of constitutional government and an American devotion to its development.

In spite of his vigorous interventionary policy in Central America and the Caribbean, Wilson saw himself as a non-interventionist. He repudiated the Dollar Diplomacy

1"Declaration of Policy with Regard to Latin America", 11 March 1913, cited in Gantenbein, op.cit., pp.94-95.

2Thomas and Thomas, Non-Intervention, p.46.


4Bemis, Latin American Policy, p.178.
of his predecessors. It was only with "infinite distaste" that he had resorted to armed interference in Mexico. Yet his enthusiasm for constitutionalism, if it were to be indulged, led to a policy of intervention particularly, as it happened, in those countries which were located in areas strategically important to the United States. Wilson might have been a non-interventionist by conviction, but conviction served only to make his policy of non-intervention a course reluctantly pursued, it did not prevent it.

c) Europe.

Though the United States had always taken the doctrine of non-intervention into account in her relations with Latin America, it was in those relations that her interpretation of the doctrine evolved from a non-participation informed by the isolationist tradition, through to preventive intervention against the real or perceived threat of European interference in Central America and the Caribbean, and thence to the Wilsonian brand of intervention on behalf of constitutionalism. In her relations with the European powers throughout the nineteenth century, the United States maintained a policy of non-intervention free of any of the corollaries added to it in inter-American relations.

Adams had laid the doctrinal foundations for such a policy in 1821, by restating the anti-entanglement principle of Washington and Jefferson in response to a suggestion that the United States should support liberal principles in Europe. It was Adams who refused the

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1See Bailey, op.cit., pp.594-596.

2Bemis, Latin American Policy, p.178.

3In Graber's view, Wilson did not see a contradiction between non-intervention and support for constitutionalism, because pressure to protect a foreign country from dictatorship was not, to his mind, intervention at all, Crisis Diplomacy, p.198.

4See above, pp.140-142.
request of the Greek insurgents for American aid in 1823, and his influence that led to the incorporation of the principle of non-intervention in the Monroe Doctrine. Projects of interference in the internal affairs of European states were likely to provide the United States with powerful opponents, they would prejudice the survival of what little there was in the Adamsonian principle of reciprocity, and any support the United States would be able to lend was not likely to affect a situation within a European state to any significant degree.

A challenge to Adams' principle was presented by the revolution in Hungary in 1848. American sympathy for the uprising inspired the sending of a diplomatic mission to recognize the revolutionary government, but the revolt was suppressed before it arrived. When, however, the leader of the failed revolution arrived in the United States in 1851, it was made clear to him that the sympathy which made him a hero in the eyes of the American public could not lead to armed intervention on his behalf. In his message to Congress of 1852, President Fillmore emphasized the allegiance of the United States, whether she be weak or strong, to the non-intervention doctrine, and Senator Clay pointed out to Kossuth that the war which would follow from American intervention would serve the interests of neither Hungary nor the United States.

When the United States did make a decisive entry into European international politics, it was not to intervene in the domestic affairs of a state, but to assist in the defeat of Germany. That task being achieved, the place which American involvement earned for the United States in European politics and, under Wilson's guidance, in the international organization established after the

1 Bailey, op.cit., p.285.
2 Ibid., p.287.
3 Graber, op.cit., pp.120-121.
war, was spurned by the American Congress, and during the inter-war years the doctrine of non-intervention in the domestic affairs of states rested once more within the broader doctrine of isolation from Europe. The non-intervention doctrine defended the failure of the United States, along with Britain and France, to respond to the intervention of other powers in the Spanish Civil War, and it was uttered as a protest against the German conquest of Czechoslovakia in 1939. But though Roosevelt's protests against the behaviour of Germany and Italy were couched in the language of involvement, of global concern at threats to the peace anywhere, it was not until after the Second World War that the American doctrine of non-intervention was tested against American participation in European politics.

d) The Far East.

In the Far East, the United States conducted her foreign relations according to a method "peculiar to the region"; a method quite alien to the doctrine of non-intervention as it was interpreted in either the European or the Latin American case. Where, in the Latin American case, the doctrine of non-intervention had laid down at the outset a rule requiring respect for the independence of the new states, in the Far East, the claiming of extraterritorial rights and the gaining of ends by gunboat diplomacy paid little attention, even formally, to the right of the nations of the area to independence. And where towards Europe, the doctrine of non-intervention was, in part, a repudiation of the old European methods of balance of power politics, and at the same time a warning against entanglement with the European powers, in the Far East the United States was ready not merely to entangle herself with the European

1 Ibid., p.187.  
powers, but also to act according to the precepts of the balance of power. Two primary factors can be adduced to account for the lapsing of the doctrine of non-intervention in relations with the Far East; one is that the peculiar nature of the region required peculiar methods in the conduct of American relations with it; the other that America herself had a particular interest in the region which, in combination with the first factor, led to a wholly different style of diplomacy. These factors can be illustrated by reference to Caleb Cushing's mission to China to secure a trade treaty in 1844, and the mission of Commodore Perry to Japan in the years 1853 and 1854.

The United States shared the view of the European powers that if trade privileges were to be gained in China and Japan, then the threat or use of force was an indispensable means to that end, mere argument or persuasion being utterly unavailing without some imposing manifestation of power. If the United States were to secure and maintain a part of the trade of the area, then forcible intervention was the behaviour required of her. In the tradition of Positive international law, the justification for that behaviour lay in placing China and Japan beyond the pale of civilization, where the rules of the law of nations did not apply. Thus Cushing, including China among the states that did not recognize the law of nations, wrote in a despatch to the Secretary of State:

> From the greater part of Asia and Africa individual Christians are utterly excluded, either by the sanguinary barbarism of the inhabitants, or by their phrenzied bigotry, or by the narrow-minded policy of their governments; to the courts the ministers of Christian governments have no means of access except by force and at the heads of fleets and armies; as between them and us there is no community of ideas, no common law of nations, no interchange of good offices; and it is only during the present generation that treaties, most of them imposed by force of arms or by terror, have begun to bring down the

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1 Tyler Dennett, *Americans in Eastern Asia*, (NY, 1941), p.263.
great Mohammedan and Pagan governments into a state of inchoate peaceful association with Christendom.¹

But it was not just trade privileges to be gained that led the United States to involve herself in the Far East. With the expansion of the United States to the west coast of the North American continent at mid-century, the "Far East" became, for the United States, the "Farthest West" - not a remote area of which it was safe to take little notice - but an immediate area of concern for American security, particularly in view of the progressive eastward extension of the British Empire.² It was this political consideration, or the consideration that the political and the commercial were inextricably linked together, that was uppermost in the mind of Commodore Perry. He foresaw a time when the United States would be involved with Great Britain in a contest for the control of the Pacific, and for him, the task for American foreign policy was to secure ports of refuge against such a time.³ He wrote:

> though it does not belong to the spirit of our institutions to extend our dominion beyond the sea, positive necessity requires that we should protect our commercial interests in this remote part of the world [in particular, the Lew Chew Islands, south of Japan], and in doing so, to resort to measures, however strong, to counteract the schemes of powers less scrupulous than ourselves.⁴

Though Perry's designs ran ahead of official American policy, the protection of American interests in Asia involved the United States in the politics of balance - lest her failure to do anything to counteract the policy of the European powers should give them a decisive advantage at the expense of the United States. If the rule of non-intervention was held to apply at all in American relations with the Far East, it was very much a conditional application; but the doctrine did encourage

¹Cited in ibid., p.164.
²Ibid., pp.176-179.
³Ibid., p.273.
⁴Quoted in ibid., p.274.
Secretary of State Seward to inform the American representative in Ningpo, in 1862, that despite the peculiarities of the Chinese situation it was his "duty to act in the spirit which governs us in our intercourse with all friendly nations, and especially to lend no aid, encouragement, or countenance to sedition or rebellion against the Imperial authority". ¹

The problems raised by taking the principle of non-intervention as a day-to-day guide to diplomatic conduct were demonstrated during the administration of Franklin D. Roosevelt. Adherence to the rule of non-intervention in relations with Latin American states was a fundamental part of Roosevelt's "Good Neighbour" policy, and the United States proclaimed that adherence by signing and ratifying the 1936 Buenos Aires protocol on non-intervention. ² After World War 1, a number of factors had contributed to the formulation of this new policy of self-denial. In the first place, the possibility of European intervention in Latin America, which had entered so frequently into the calculations of pre-war administrations, was no longer so persuasive a guide to policy. In consequence, the Monroe Doctrine, a basically defensive and reactive dogma, became less informative as a signpost for the policy-makers. ³ Secondly, the view gained currency in both unofficial and official circles, that the clumsy weapon of forcible intervention in the affairs of Latin American states was overly expensive and failed to achieve its intended objective of educating those states in the ways of constitutional-

¹Quoted in Graber, Crisis Diplomacy, p.111.
²See above, p.144.
ism. In the third place, the resentment in Latin America caused by American intervention increasingly came to be regarded as contrary to the national interest of the United States.

This new conception of the national interest, which found expression in the policy of the Good Neighbour and in the refurbishing of the principle of non-intervention, was not only informed by the negative assessment of intervention as costly, unnecessary or ineffective. Roosevelt was also motivated by the conviction that the Good Neighbour policy, by promoting good-will, would increase trade and make possible the creation of "a kind of hemispheric partnership" which would serve a strategic purpose. But adoption of a policy of non-intervention did not mean that the United States had lost interest in the protection and fair treatment of her citizens, or their property, in Latin America. It did mean that her interests in this respect were to be pursued, not by intervention, but by the expectation of reciprocity, of a Latin American response in kind to the neighbourliness of the United States.

1 Wood, op.cit., p.7. The lesson that intervention was ineffective, Wood argues, had to be learned twice. His experience in the Nicaragua case led Stimson, Harding's Secretary of State, to doubt the wisdom of intervention because "electoral supervision and bandit fighting were time-consuming and expensive, difficult and embarrassing". On 18 April 1931, Stimson went as far as to say that "general protection of Americans" could not be undertaken in Nicaragua because it would "lead to difficulties and commitments which this Government [did] not propose to undertake". The succeeding Roosevelt Administration learned Stimson's lesson in Cuba, which inclined Cordell Hull and Sumner Welles to the view that a consistent policy of non-intervention could not be maintained unless the United States refrained from interference as well. Ibid., pp.47,41-42 and p.133. On the distinction between "intervention" and "interference", see below, p.164.

2 Ibid., pp.129 and 131.

3 Ibid., pp.7-8. Wood stresses that the American policy of non-intervention was not conditional on such reciprocity but that fair treatment of nationals was an expected response. Ibid., pp.159-161.
In her policy towards Latin American states, after Roosevelt became President in 1933, the United States distinguished between the external affairs of those states which could be legitimately influenced, and their internal affairs which could not.\(^1\) This distinction led to the formulation of a doctrine of non-interference to complement that of non-intervention.\(^2\) The policy of non-intervention required that the United States refrain from the use of armed force in her relations with Latin American states. By the doctrine of non-interference, the United States denied to herself that influence which had been formerly wielded in party and revolutionary politics - these were now allocated to the realm of domestic affairs.\(^3\) The United States would no longer interfere to inculcate democratic habits or to preserve order, because this sort of interference led too easily to that armed intervention which Roosevelt was determined to avoid.

The policy of non-interference put advice or the expression of opinion on domestic affairs out of official bounds for American diplomats, but the frontier of the permissible was hard to define. Practising diplomats, confronted with the everyday business of conducting relations with the state to which they were accredited, sought from the State Department a more flexible interpretation of non-interference. In 1934, the Minister to Nicaragua argued in a despatch to the Department, that it was in harmony with the Good Neighbour policy to use

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\(^1\)This distinction is implied in an address by Roosevelt of 28 December 1933, cited in Gantenbein, op.cit., pp.165-166; see also Wood, (op.cit., pp.136-137), who argues that by foreign affairs, the United States meant economic policy, the treatment of American nationals and property and, later, hemispheric defence.

\(^2\)Welles in a speech of 19 October 1936, referred to intervention and interference as separate phenomena; cited in Gantenbein, op.cit., pp.172-173.

\(^3\)Wood, op.cit., p.137.
personal contacts and the expression of personal views in an attempt to avert disorder.¹ Again in 1936, the Minister to El Salvador pointed out that the powerful influence of the United States was an established fact in Latin America and that failure to use it constructively might become a sin of omission and subject to misinterpretation. He urged the utility of peaceful, diplomatic cooperation by the United States in the service of liberalism and order.² To both these communications, Sumner Welles, the Assistant Secretary of State, was at first sympathetic—he seemed to think that an official policy of non-interference was consistent with an informal policy of influence in the interests of peace and order.³ But by April 1936, Welles' view had changed radically. An instruction to Ministers in Central American states sent at the end of the month, required them "to abstain from offering advice on any domestic question, and, if requested to give such advice, they should decline to do so".⁴ Thus the problem of defining the limits of the permissible was solved by making non-interference in domestic affairs absolute.

Not quite absolute however; the United States left

¹Ibid., pp.142-143.
²Ibid., p.145.
³Ibid., p.143.
⁴Instruction of 30 April 1936, cited in Wood, op.cit., p.148. This instruction pointed out, as a rationale for non-interference, the connection between advice, perception of intervention and actual intervention. The reason for Welles' conversion, Wood suggests, was the advice of Duggan, Chief of the Division of Latin American affairs, that abstention from any interference was to be preferred on three grounds: a) That no action is better than action whose consequences cannot be foreseen. b) That the opinion of a Minister is usually taken to be the considered judgement of his government, and c) That because Ministers varied in ability, it would be unwise to give them discretion in particular cases. Ibid., pp.146-147.
open the option of collective intervention if life and property were threatened by a break-down of order in a Latin American country. Furthermore, the Latin American conception of what constituted "domestic affairs" was broader than that of the United States. Consequently, the Latin American states could style more acts as interventionary than would appear so under the United States doctrines of non-intervention and non-interference. Thus, to the United States, the welfare of American corporations in Latin American states was an external affair, but to the Latin Americans it was domestic; United States action on their behalf was in her view legitimate influence, but to the Latin Americans it constituted that indirect intervention which had been outlawed at Buenos Aires. Difficulties about definition, then, plagued the Roosevelt Administration in its attempt to adhere to both non-intervention and non-interference. A century earlier, definition of the policy had been a comparatively uncomplicated task for a state which had lacked the power to exercise an interventionary option; the problem was more complex in the 1930's for a state, which, while its influence was undeniable, had nevertheless chosen to deny to itself a particular method of exercising it.

iii) The Function of the Principle of Non-Intervention in American Foreign Policy.

This section will point out the part played by the principle of non-intervention as a doctrine which the United States would have others adhere to, as a principle in terms of which the actions of others were criticized and the policy of the United States defended, and as a landmark of the domestic debate about foreign policy in the United States.

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1Bemis, op.cit., pp.277 and 292-293; Wood, op.cit., p.150.
2Wood, op.cit., pp.159-167; Thomas and Thomas, Non-Intervention, p.63.
a) Guidance and Coercion.

As well as taking the non-intervention principle as one of the standards which informed her own conduct of foreign affairs, the United States wished to encourage others, and in particular Europeans, to abide by it. This objective could be pursued in three ways. In the first place, other states could be warned off intervention in the American hemisphere by the threat, however credible or explicitly stated, of counter-intervention. Secondly, the rule could be upheld by counter-intervention against the power which had ignored the warning. In the third place, the intervention of outside powers could be forestalled by the preventive intervention of the United States. In time, the Monroe Doctrine came to be associated with each of these policies; its original concern was confined to the first of them.

Monroe's message of 1823 stated that the interposition of any European power for the purpose of oppressing or controlling the destiny of the newly independent Latin American states, would be viewed as a manifestation of an unfriendly disposition towards the United States. There was no direct threat of counter-intervention here, and Adams preferred to rely upon his notion of reciprocity. His response to the threat of intervention by the Holy Alliance to restore Spanish rule in Latin America, was to desire a quid pro quo for American good behaviour in Europe. His purpose, as it was explained to the Cabinet on 21 November 1823, was for the United States to disclaim "all interference with the political affairs of Europe" and to declare her "expectation and hope that the European powers will equally abstain from the attempt to spread their principles in the American hemisphere, or to subjugate by force any part of these continents to their will".¹

¹Quoted in Bemis, John Quincy Adams, p.387. Bemis' emphasis.
In the two decades after Monroe's message, before it came to be known as the Monroe Doctrine, its strictures, and thus Adams' aspiration of reciprocity, were ignored by the European powers and the United States took little notice of the contravention. Her weakness, preoccupation with internal politics and a feeling that her interests were not involved, led the United States to be indifferent, or at least passive in response to European adventures in the American hemisphere at this time.¹ In 1842, however, President Tyler specifically invoked the Adams doctrine in regard to the Texas question, and in the same year he warned the European powers of American displeasure if they attempted to acquire the Hawaiian Islands.² When this warning was ignored by a British officer in the following year, the United States entered a vigorous protest and later stated that she might even feel justified in intervening by force to prevent European conquest.³ By 1845, American interest in the acquisition of Texas, California and Oregon to the exclusion of European states, highlighted by the knowledge of French and British interference in La Plata, induced President Polk to restate emphatically the principles of 1823. In his annual message to Congress he denied the applicability of the European balance of power principle to the North American continent, affirmed the legitimacy of annexation by consent, and declared that no European colony or dominion should be planted on the North American continent with the consent of the United States.⁴ Polk was primarily concerned with keeping Europe out of North America; it took European activity in Central America to encourage the United States to

¹See Perkins, Hands Off, pp.66-75; Graber, Crisis Diplomacy, pp.43-49.
³Graber, op.cit., p.50.
⁴Perkins, op.cit., pp.79-81.
apply the Monroe Doctrine with more force to a wider area.¹

The United States was reluctant to counter-intervene militarily to uphold the rule of non-intervention when European powers violated it.² Either weakness ruled out such a course, or her interests did not warrant it, or her warnings were effective — intervention being prevented thereby rather than countered. Counter-intervention, anyway, was a last resort; the United States could first attempt to achieve her objectives by diplomatic means. When acquisition of California provoked renewed American interest in an Isthmian canal, the British claim to sovereignty over the eastern terminus of the proposed canal route in Nicaragua, presented a difficulty. Any conflict over the Canal Zone was averted by signature of the Clayton-Bulwer Treaty in 1850. But the treaty was ambiguous and when in 1852, Britain, in her view legitimately, declared the Honduran Bay Islands a Crown Colony, the seeds of conflict were sown once more. President Pierce, when he took office in 1853, rejected "the idea of interference or colonization on this side of the ocean by any foreign power beyond present jurisdiction as utterly inadmissible" and in so doing he inaugurated a diplomatic debate which was to last until Britain returned the Bay Islands to Honduras in 1860.³ The United States had not counter-intervened against Britain in Central America, but had made her position clear in the diplomatic negotiations.

¹Originally the Monroe Doctrine had been applied to the whole of the American hemisphere; Polk chose to stress its particular relevance to North America without denying its hemispheric applicability. See Perkins, op.cit., p.80.

²The doctrine of non-intervention, in its simple (Cobdenite) sense, could itself be used to justify American failure to uphold the rule of non-intervention by countering the intervention of others.

which were the alternative to intervention.\(^1\)

The American reaction to the debt-collecting intervention of Britain, France and Spain in Mexico in 1861 was one of studied caution. The recognized legitimacy of such an operation, and the American preoccupation with civil war at home made counter-intervention impossible. The furthest Secretary of State Seward was prepared to go was to state clearly the American position, to reiterate the Monroe Doctrine without mentioning it by name and to make the American position clearer as the French intention to set up an empire in Mexico, under Maximilian, itself became clearer.\(^2\) It was not until victory for the North in the Civil War seemed probable, that the United States directed her attention to ridding Mexico of the French.\(^3\) After Appomattox, Seward, while still cautiously avoiding threats of force, referred more pointedly to the sympathy of Americans for the "Republicans of Mexico" and to their "impatience" with the "continued intervention of France".\(^4\)

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\(^1\)The episode could be regarded as a British, not an American, diplomatic victory because Britain secured recognition of the Clayton-Bulwer Treaty and not the Monroe Doctrine as the established rule of law in Central America. Clarendon's position was that the Monroe Doctrine was the dictum of the person who announced it, not an international axiom which regulated the conduct of European states. See Bailey, Diplomatic History, p.293, n.25; Perkins, op.cit., p.100.

\(^2\)Perkins, op.cit., pp.124-127. In March 1862, Seward's subtle instruction to the American Minister in Paris expressed his confidence in the sincerity of the intervening powers that they intended no interference in the internal affairs of Mexico and pointed out that "the emancipation of this continent from European control has been the principal feature of its history during the last century". Ibid., p.126.

\(^3\)On 4 April 1864, for example, Congress passed a resolution declaring it not to be the policy of the United States to acknowledge "any monarchical Government erected on the ruins of any republican Government in America under the auspices of any European power". Cited in Perkins, op.cit., pp.127-128.

\(^4\)Perkins, op.cit., p.132.
By November 1865, Seward was regretting French unreadiness to remove the cause of disharmony between the United States and France, and by January 1866 the French were persuaded to withdraw from Mexico. The American attitude, French public opinion and the political situation in Europe joined to encourage this decision and once more the need for forcible counter-intervention was obviated by the success of diplomacy.

If Seward had been reluctant to invoke the Monroe Doctrine in the 1860's, by the 1890's, Secretary of State Olney was not only prepared to resurrect the Doctrine but also to add a notorious corollary. Referring to the boundary dispute between Britain and Venezuela which Britain refused to arbitrate, Olney asserted a doctrine of American public law which required the United States "to treat as an injury to itself the forcible assumption by an European power of political control over an American state". Such injury justified American interposition, which, in this case, took the form of insistence upon peaceful arbitration, and Olney demanded a British decision on whether she would consent to submit to it. Not content with this extension of the Monroe Doctrine, Olney added a boast that the United States was "practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition". Salisbury, the British Foreign Secretary, was slow to reply to Olney's note and when he did it was

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1 Ibid., pp.134-135.

2 The motives underlying the French withdrawal are still matters of conjecture. See Perkins, op. cit., pp.135-138; Bailey, op. cit., pp.385-388. As to American earnestness, Bemis seems to suggest that if the French troops had not been withdrawn, the U.S. would have put them out by force, Latin American Policy, p.112.

3 Olney to Bayard (U.S. Ambassador to Britain) 20 July 1895, cited in Gantenbein, Evolution of our Latin American Policy, p.350.


5 Quoted in Bemis, Latin American Policy, p.120.
to argue that the Monroe Doctrine was irrelevant to the case at issue and unsound anyway as a principle of international law.\(^1\) President Cleveland took this as his cue to suggest the sending of a boundary commission to Venezuela to report on the matter. Cleveland wrote to Congress:

> When such report is made and accepted, it will in my opinion, be the duty of the United States to resist by every means in its power as a willful aggression upon its rights and interests the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.\(^2\)

Cleveland was less cautious about threatening the use of force than Seward had been; but as with Seward, his policy was helped by a greater European interest in events elsewhere. British attention to the Venezuela problem, muted anyway by a placid public opinion, was diverted to the deteriorating situation in South Africa by a German declaration of support for the Boers, and the Venezuela case went to arbitration.\(^3\)

A third method by which the United States encouraged others to respect the non-intervention principle and the Monroe Doctrine was that of preventive intervention. The nicest expression of this policy came

\(^1\)Perkins, op.cit., pp.177-178.

\(^2\)Special message to Congress, 17 December 1895, cited in Gantenbein, op.cit., p.358.

\(^3\)Bailey, op.cit., pp.486-489. I have taken the Venezuela case as an example of American counter-intervention if not to uphold the rule of non-intervention then to uphold the Monroe Doctrine. It has also been regarded as conforming to one of Oppenheim's categories of intervention, viz. "Dictatorial interference of a third state in a difference between two states, for the purpose of settling the difference in the way demanded by the third state". See George B. Young, "Intervention under the Monroe Doctrine: The Olney Corollary", Political Science Quarterly, Vol.57, No.2, (1942), pp.279-280.
during Theodore Roosevelt's administration when American violation of the principle of non-intervention was held to be justified by its exclusion of outside powers and thereby its protection of the Monroe Doctrine. Roosevelt's policy had been foreshadowed as early as 1843 when Secretary of State Legaré spoke of interfering by force to prevent the Hawaiian islands being conquered by a European power.\(^1\) Again, in 1848, President Polk suggested the annexation of Yucatan in Central America in order to exclude the European powers.\(^2\) The threat of European intervention in the Mexican civil war in the late 1850's led not only Senator Houston but also President Buchanan to advocate preventive intervention because, in Buchanan's words, "It is a duty which we owe to ourselves to protect the integrity of Mexico's territory against the hostile interference of any other power".\(^3\)

Roosevelt's corollary to the Monroe Doctrine which was to justify United States intervention in the Dominican Republic in the following year was enunciated in his 1904 message to Congress:

> Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrong-doing or impotence, to the exercise of an international police power.\(^4\)

Roosevelt's successors in the Presidency made use of his corollary to justify interventionary policies - Taft in Nicaragua and Wilson in Haiti. In the latter case the notion of preventive intervention was taken a step further by the application of the Monroe Doctrine to

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\(^1\)Graber, *op.cit.*, p.50.


\(^3\)Quoted in *ibid.*, p.114.

\(^4\)Cited in Gantenbein, *op.cit.*, p.362. This American assumption of responsibility was encouraged by the European powers rather than being suspected by them. See Perkins, *op.cit.*, pp.232-234.
European financial control over an American state, which could be said to "impair its independence".¹

The interpretations of the Monroe Doctrine and the corollaries attached to it expanded with the growth of American power. A tentative warning to European powers not to intervene in the American hemisphere became, in time, a licence for the United States to interfere in the affairs of other American states. This growth was reflected in an American attitude to European intervention which moved from warning to the threat of coercion and thence to prevention.

b) Criticism and Defence.

The non-intervention principle and the Monroe Doctrine could be used together and served the same purpose as diplomatic weapons of criticism or protest against European interference in the American hemisphere. Before Monroe had read his message to Congress in 1823, Jefferson advised him to "protest against the atrocious violations of the rights of nations by the interference of any one in the internal affairs of another so flagitiously begun by Bonaparte, and now continued by the equally lawless Alliance calling itself Holy".²

The defence of her own actions was more complicated for the United States because the non-intervention principle and the Monroe Doctrine as separate imperatives frequently counselled divergent courses of action. The two remained consistent so long as the United States had no alternative but to refrain from intervention. They

¹Perkins, op. cit., pp.265-266.

²Quoted in Graber, op. cit., p.56. The non-intervention principle was not exclusively American property, and she was criticized by Austria in terms of the rule in 1849 over the intention to recognize the Hungarian insurgents. The Monroe Doctrine also was the subject of diplomatic debate - both Clarendon in 1853 and Salisbury in 1895, questioned its legitimacy as a principle of international law.
could be made to appear consistent so long as the United States was counter-intervening and not initiating intervention, and thereby upholding the non-intervention principle as well as the Monroe Doctrine. But when the Monroe Doctrine was interpreted in such a way as to justify American initiation of intervention, it was no longer consistent with the principle of non-intervention.

When the United States followed a policy of non-intervention, it was a simple enough matter to explain such a policy choice by reference to the principle of non-intervention. But the purpose of invoking the rule was not only to explain policy to both the international and the domestic audience; it also served to justify the policy by attaching it to a tradition of foreign policy. Frequently the non-intervention principle provided the United States with an excuse for inaction in circumstances which seemed to warrant some sort of American response. Thus the rule of non-intervention could be used to fend off Latin American requests for the alliance of the United States, or her interference on their behalf against European powers. The rule was also used to exempt the United States from invitations to join the European powers in debt-collecting expeditions in Latin America. During the civil war, the necessarily feeble reaction of the United States to French intervention in Mexico, was presented as the proper policy required by the non-intervention principle.

1 There was no attempt however, to spell out this consistency or to represent the intervention of the United States as taken to uphold the rule of non-intervention; the Monroe Doctrine or the right of self defence fulfilled the function of justification.

2 In 1859, Secretary of State Cass went so far as to invoke the principle of non-intervention to excuse the failure of the United States to render good offices in a dispute between Venezuela and France. Gräber, Crisis Diplomacy, p.101.

3 e.g., with reference to Mexico in 1860, see Gräber, op.cit., p.106.

4 Ibid., p.98.
When, on the other hand, the United States practised intervention and legitimized it in terms of the Monroe Doctrine, the principle of non-intervention was still referred to as a rule to be taken into account in the measurement of policy. Buchanan, in presenting his plan for intervention in Mexico to Congress in 1859, admitted its inconsistency with the non-intervention principle, but asked whether the present case did not constitute an exception.¹ Again, when President Roosevelt "took" the Canal Zone in 1903, he argued that departure from the generally observed principle of non-intervention was "justified and even required in the present instance".² In both these cases there was an admission of intervention and a plea of extenuating circumstances. President Wilson's use of the principle was different; seeing himself as a non-interventionist, he seemed not to regard his activity in Mexico up until 1917 as interventionary, and he invoked the rule of non-intervention in 1917 as a reason why the United States could not intervene in Mexico by force of arms.³ By narrowing the definition of intervention, Wilson saved himself the embarrassment of violating the principle of non-intervention.

In the critical armoury of the United States, both the principle of non-intervention and the Monroe Doctrine were available as weapons with which to beat the European powers. In defence, their roles were not as simple. It is possible to distinguish one phase of American foreign policy during which the non-intervention principle served as an excuse for ignoring the Monroe Doctrine. In the Imperialist phase on the other hand, the Monroe Doctrine and its corollaries were used to justify the overriding of the non-intervention principle.

¹Ibid., p.122.
²Quoted in ibid., p.138. Here Roosevelt was referring to the premature recognition of Panama.
³Ibid., pp.171-172.
c) The Domestic Dimension of Foreign Policy.

As well as its function in international relations, the non-intervention doctrine played a fundamental part in the domestic justification of foreign policy. Washington had asserted the wisdom of neutrality towards European wars and non-entanglement in European affairs against a public opinion enthusiastically for the French in the wars of the Revolution. When, in subsequent years, American statesmen perceived it to be in the interest of the United States to refrain from intervention, they could look back to Washington for doctrinal support. In his 4 July Oration of 1821, John Quincy Adams pitched his argument against intervention unmistakably in the language of the Farewell Address. In this speech, by his influence on the Monroe Doctrine, and in his view of the proper relations of the United States with Latin America, Adams solidified the tradition of non-entanglement and addressed it directly to interference in the domestic affairs of other states. As usage established the rule and tradition supported its continuation as the fixed, wise and settled policy of the United States, it was available to various administrations to justify failure to translate popular sympathy for foreign causes into a policy of intervention. Thus President Fillmore's invocation of the doctrine against the enthusiasm inspired by Kossuth's visit to the United States in 1851. President Grant, throughout his two terms of office, encouraged by his Secretary of State Fish, used the doctrine of non-intervention to stave off domestic pressure for intervention in and annexation of Cuba.  

The doctrine of non-intervention was also available to critics of the conduct of foreign policy. When John Quincy Adams, as President, decided to send delegates to the Panama Congress of American republics in 1826, his decision was fiercely criticized in Congress in terms of

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1 See, e.g., 1869 message to Congress, cited in Gantenbein, op.cit., pp.441-442.
non-entanglement and isolation.¹ In 1898, when the United States acquired Hawaii and the Philippines, the administration was accused not merely of ignoring the tradition of American foreign policy but of violating the reciprocal principle of non-intervention contained in the Monroe Doctrine. Now, it was argued, every European power had a right to acquire dominion in the American hemisphere.² When the Roosevelt Corollary was attached to the Monroe Doctrine, a critic asked whether the Latin American states would not prefer to do their own business in their own way without intervention or intermediary.³ The doctrine of non-intervention was a constraint on administrations which would depart from it, and a justification for administrations which would not.

As in the case of the "British" doctrine of non-intervention, it might be more accurate to refer to American doctrines of non-intervention than to one doctrine held, if not held to, from the outset. Though it could be represented as such by interested parties, the doctrine was not an ex cathedra teaching of the Founding Fathers which the United States could ignore only to her cost for as long as she had a foreign policy. Nor is it wholly true to say that these teachings and the doctrine of non-intervention as part of them, persisted as the ideal as intervention became increasingly the reality with the growth of international relations and the corruption of the United States by international politics; for, as frequently, non-intervention was the imposed reality and intervention the dream. In fact, as shown by its development in relations with Latin America, the doctrine of non-intervention meant abstention from any intervention in 1827; it allowed a response to the intervention of outside powers in 1895, intervention

¹Perkins, Hands Off, pp.71-72.
²Ibid., pp.193-199.
³Ibid., pp.242-243.
against the threat of European interference in 1904, and support of every kind for republican principles in 1913. By 1936, it was taken to require non-interference as well as non-intervention.

Though the interpretation of the doctrine of non-intervention changed with the growth of American power and the consequent expansion of her interests, it is a facile view which asserts that the United States refrained from intervention when it was her interest to do so and supported such a policy by reference to the principle of non-intervention, but that when interest demanded intervention excuses were found for contravention of the principle. For the doctrine of non-intervention was not just invoked or disregarded as interest determined, it formed part of the calculation of interest. Common to all the interpretations of the doctrine in relations with Latin America was the estimation that the rights of the states of the area to independence had to be taken into account, even if that right was to be overridden by a prior imperative. In policy towards the European states, the doctrine of non-intervention did not merely justify abstention from interference in their internal affairs, but, particularly in the hands of John Quincy Adams, it provided an account of what the American interest was in that area of foreign relations. In this respect, the ideas of the Founding Fathers were important in providing one persuasive account of what American interests were, and in being available to support the argument of non-intervention as it was deployed for or against the policy of any administration. And though none of these constraints prevented Roosevelt from taking the Canal Zone, it is not possible to infer from that action alone that the principle of non-intervention played no part in restraining American behaviour in foreign relations.

From this brief survey of French foreign policy after the Revolution, of the foreign policy of Britain after the Vienna Settlement, and of American foreign
relations from their beginnings to the Second World War, it is possible to draw three conclusions about the place of the principle of non-intervention in international relations. In the first place, if by analogy from the domestic model of law, it is of the essence of rules of law that they should be obeyed when it is against the interests of those to whom they apply to obey them, that the rules should be applied impartially, and that a sanction should be, almost automatically, available against the rule-breaker, then the principle of non-intervention and the international law of which it was a part failed to capture that essence. The rule of non-intervention did not persuade Palmerston to act against the perceived interests of Britain in Spain and Portugal however much it might have convinced him of the need to do the thing in a decent manner. President Cleveland, when he warned the British against aggression in Venezuela, made it clear that a response would be forthcoming after "we have determined" the right of the matter. And the want of impartiality made the notion of sanction or the upholding of the law, a doubtful one. Canning's intervention in Portugal, unimpeachable according to his doctrine of non-intervention, was not, in the minds of the statesmen of the Eastern Powers, an impartial vindication of Portuguese independence.

A second, and less pessimistic conclusion, is that while the principle of non-intervention might not have fulfilled the requirements for a rule of law on the domestic model, there is no call to dismiss it as a mere slogan. Though the French use of it at a time of extreme weakness might be said to have been desperate and ineffective opportunism, the doctrines of non-intervention elaborated by Castlereagh and Canning, by John Quincy Adams and by Franklin D. Roosevelt were not mere polished justifications of their countries' interests, but a study in and a statement of those interests - accounts of the rule as they would have it observed in international relations. The felt need on the part of statesmen to state positions and establish principles of international
conduct renders the account of international relations somewhat less dismal than the Hobbesian war of all against all. This leads on to a third conclusion about the function of the principle of non-intervention in international relations as a rule in terms of which to persuade and coerce and to criticize and defend both internationally and domestically. It was not just a principle to be pulled out, as occasion demanded, from a bagful of principles made available to statesmen by international lawyers; doctrines of non-intervention were a means by which states could communicate to each other their views about what was tolerable and what was not in international relations, and the circumstances in which they would feel obliged to intervene. Though the variation in doctrine from state to state and within one state over time made the function of the principle as a legal restraint problematical, it was not thereby deprived of its function in the language of diplomacy.
PART III  THE PRINCIPLE OF NON-INTERVENTION
IN CONTEMPORARY WORLD POLITICS

Chapter 5  The Principle of Non-Intervention
in Soviet Doctrine and Practice

A recent article by a Soviet international lawyer, traces the course of the non-interference principle from its supposed origin during the French Revolution, through its recognition and subsequent abuse by the European and American "bourgeois" states in the nineteenth and twentieth centuries, to the Soviet initiative on behalf of the inadmissibility of intervention in the General Assembly of the United Nations in 1965.1 This chapter will trace the course of the non-intervention principle in Soviet doctrine and practice, from its uneasy position in a revolutionary perspective on international relations, through the vicissitudes of the milieu in which the Soviet state had to operate, to its consecration as a shibboleth of Soviet foreign policy.

In its urging of "a just and democratic peace... without annexations...and without indemnities", the Decree on Peace passed by the second All-Russian Congress of Soviets on 8 November 1917 echoed the plea for national liberty entered by the French National Assembly in May 1790.2 The French doctrine of national sovereignty, the view that the will of the people should determine the destiny of the nation, found its Russian expression in the assertion that any nation had the right to choose freely "the constitutional forms of its national existence".3 The proclamation of a

right to national self-determination, if no longer novel in 1917, was none the less revolutionary.

Thus far, the Russian Revolution had a significance across state frontiers, might redraw them, including her own, according to the principle of self-determination, but would not do away with them. But the revolution went further; its constituency was made up of workers not bourgeois, its guiding principle one of class not of nation. In 1913, Lenin had related the attitude to be assumed towards the question of self-determination to the theory about the two stages of revolution. As the revolution moved from the first stage of national struggle against national oppression to the second stage of the breaking down of national barriers and the international unity of capital, so the Marxist position was to shift from upholding the principle of self-determination to upholding the principle of internationalism.\(^1\) In the same year Stalin had declared the aim of socialist policy to be the breaking down of national barriers and the uniting of peoples "in such a manner as to open the way for division of a different kind, division according to classes".\(^2\) At the third All-Russian Congress of Soviets in January 1918, Stalin affirmed that "the principle of self-determination must be an instrument in the struggle for socialism and must be subordinated to the principles of socialism".\(^3\) In the light of these statements, Lenin's famous injunction to turn the imperialist war into a civil war was a misnomer, for a civil war presupposes a national environment for its fighting. What appeared to be advocated was a world war between classes as opposed to a world war between states.

Though the appeal to the "class-conscious workers" of Britain, France and Germany, contained in the Decree on Peace, was a hint at rather than a strident call for social revolution, the two imperatives of peace and of revolution

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\(^2\) Quoted in *ibid.*, p.432.

\(^3\) Quoted in *ibid.*, p.272.
were inextricably mixed up in Bolshevik thought.¹ The Decree asked for help in bringing "to a successful end the cause of peace, and, together with this, the cause of the liberation of all who labour and are exploited from every kind of slavery and exploitation".² On 19 December 1917, Trotsky was more explicit. The People's Commissariat for Foreign Affairs issued an appeal to the toiling, oppressed, and exhausted peoples of Europe condemning the war and its authors and urging the workers and soldiers to "wrest the business of war and peace from the criminal hands of the bourgeoisie and take it into their own hands".³ The banner under which this was to be done was that of peace and the social revolution.

Thus the principles of peace and self-determination which conformed with the inheritance of the French Revolution were bound up with, but overridden by, the principle of proletarian revolution which did not. The world revolution, upon which the survival of the one in Russia was thought to depend, would not only despatch the ancien régime, it would also rewrite the language of world order. If men were to be citizens of the world, if their allegiance was to be to class and not to nation, then little sense could be made of the notion of foreign policy or indeed of international relations. Hence Trotsky's appreciation of his role as People's Commissar for Foreign Affairs - "I will issue a few revolutionary proclamations to the peoples of the world and then shut up shop".⁴ The principle of non-intervention might find a place in French revolutionary thought as the desirable norm in a world of national, popularly sovereign states; in Russian revolutionary doctrine, which had substituted class for nation, it appeared to find no place at all.

²Degras, op.cit., Vol. I, p.3.
³Text in ibid., pp.18-21.
Such heady doctrine notwithstanding, from the outset the Bolsheviks were prepared to mix politics with ideology. The Decree on Peace was an act as much inspired by the shop which Trotsky wanted to shut as by post-revolutionary fervour. It took account of radical opinion, particularly in the United States, and addressed itself to it.\(^1\) It struck no chord among the governments of the Allied states, however, and the promise of peace to the Russian soldiers and peasants had to be honoured.\(^2\) On 21 November 1917, the Council of People's Commissars directed General Dukhonin, the Commander-in-Chief, to propose an immediate armistice and the opening of peace negotiations with the hostile armies.\(^3\) On the same day, Trotsky addressed a note to the Allied Ambassadors in Petrograd extending the armistice proposal to all belligerent nations and their governments.\(^4\) This was a foreign policy, albeit one of weakness; Russia was behaving as a state in a world of states.

When Trotsky arrived in Petrograd on 20 January 1918 from the adjourned peace negotiations with the central powers at Brest-Litovsk, the issues of war or peace, revolution or accommodation were raised in stark relief. The hardening of the German line at Brest and the failure of the revolution to take root in Germany, or elsewhere, presented the Bolsheviks with three possible courses of action. In Lenin's summation, the first was to sign a separate, annexationist peace, the second was to wage a revolutionary war and the third was to declare the war ended and demobilize the army but not to sign the peace.\(^5\) Lenin opted for the first course in his theses on a separate and annexationist peace written on 20 January

\(^1\) Ibid., pp.22-23.
\(^3\) Text in Degras, op.cit., Vol. I, pp.3-4.
\(^4\) Text in Ibid., p.4.
\(^5\) Quoted in Fischer, op.cit., Vol. I, pp.48-49.
1918. In them, he argued the need for time to consolidate the success of the revolution in Russia "during which the hands of the Socialist Government must be absolutely free for the job of vanquishing the bourgeoisie in our own country first". In the crucial thesis, Lenin justified this position:

The situation of the Socialist revolution in Russia must form the basis of any definition of the international tasks of our Soviet state, for the international situation in the fourth year of the war is such that it is quite impossible to calculate the probable moment of outbreak of revolution or overthrow of any of the European imperialist governments (including the German). That the Socialist revolution in Europe must come, and will come, is beyond doubt.... But it would be a mistake to base the tactics of the Russian Socialist Government on an attempt to determine whether the European, and especially the German, Socialist revolution will take place in the next six months (or some such brief period), or not.

Lenin's case for a separate and annexationist peace was to prevail, but not before Trotsky's formula of "no war, no peace" had been tried at Brest and had failed with the German advance, and not before Lenin had fought for the acceptance of the German terms in the Central Executive Committee and for their ratification at the seventh Party Congress. The need for a breathing-space legitimized the acceptance of the Brest peace of 3 March 1918.

The breathing-space did not last long. Allied intervention in the Russian civil war began in Murmansk in June and continued in August, in Siberia through Vladivostok and in the North through Archangel. The rationale asserted in defence of this intervention was its contribution to the prosecution of the war against Germany. With the conclusion of the war against Germany, therefore Soviet Russia might hope for a cessation of the Allied

Text in Degras, op.cit., Vol. I, pp.34-39, from which the quotations following are taken.

For an account of the debates preceding acceptance, see Fischer, op.cit., Vol. I, pp.48-75. For extracts from the text of Lenin's speech to the seventh party congress, see Degras, op.cit., Vol. I, pp.57-61.

intervention. On the other hand, the ending of the World War might intensify Allied interest in the civil war; Lenin is reported to have said to Chicherin at this time, "Now das Weltkapital will start an offensive against us". Whatever the forecast, it was in the interests of the Soviets to take the initiative for an armistice, and on 8 November 1918, the sixth Congress of Soviets proposed that negotiations for the conclusion of peace be opened. On the day before Christmas, Litvinov renewed the plea for an end to intervention in a telegram to President Wilson. He asked how foreign countries, which had never dreamed of interfering with Tsarist barbarism and militarism, could feel justified in interfering in a Russia of working people "aiming at nothing but their own happiness and international brotherhood, constituting no menace to other nations". Wilson's reply was to send an American diplomat to talk to Litvinov, talks which produced an undertaking from Litvinov that the Russian revolutionary propaganda would end with the making of peace. Wilson used the results of these talks to support Lloyd George's call for a Russian truce, made at the Peace Conference of Paris in January 1919. An invitation to attend a conference at Prinkipo was extended to all groups exercising power in Russia. The Soviet government, accepting the invitation, took the opportunity to define its attitude. The Soviet government declared itself "so anxious to secure agreement on the cessation of hostilities" that it was prepared to make "weighty concessions" to the allies on the debt question, on interest on loans and on the exploitation of natural resources in Russia. The Soviet government was

3 Text of the telegram in ibid., pp.129-132.
5 Text of Chicherin's reply of 4 February 1919 in Degras, op.cit., Vol. I, pp.137-139, from which the quotations following are taken.
also prepared, if necessary, "to include in the general agreement with the Allied Powers an undertaking not to interfere in their internal affairs". This was a declared willingness to adhere to a rule of non-intervention at least as regards the dissemination of hostile propaganda; the offer was made as part of a package deal for peace.

The package was not at this time acceptable to the Allies. But with the waning fortunes of the anti-Soviet armies in the Russian Civil War, a shift in the British attitude evoked a quick response from the Soviets. On 5 December 1919, the seventh Congress of Soviets listed the repeated overtures for peace made by the Soviet government and renewed the call for immediate negotiations. In diplomatic correspondence, the "inviolable" principle of national self-determination was emphasized, together with respect for the independence and sovereignty of states. The reciprocity implied by any rule of non-interference was perceived and stressed. "If our capitalist partners abstain from counter-revolutionary activities in Russia", said Radek, "the Soviet Government will abstain from carrying on revolutionary activities in capitalist countries". In the negotiations for a trade treaty between the Soviet and British governments, Krasin combined earlier Soviet positions and made non-interference both conditional and reciprocal; conditional on an agreement resuming economic and commercial relations between the two countries and reciprocal in that Soviet abstention from propaganda and interference in England's political life required a similar undertaking from England with regard to Russian affairs.


3 See e.g. the Declaration of the Council of People's Commissars to the Polish government and the Polish nation, 28 January 1920, in Degras, op.cit., Vol. I, pp.179-180.


The outbreak of war between Poland and Soviet Russia in April 1920 interrupted the rapprochement which had been developing between Russia and Britain in the early months of the year. At the conclusion of the war in October, the desirability of an agreement had increased for both sides. For the Soviets the persistent expectation of revolution in the west had been disappointed and the situation at home was desperate.¹ In Britain, the perception of Russia as a supplier had now been joined by another of her as a market.²

The Anglo-Soviet trade agreement was signed in London on 16 March 1921. Its preamble contained a detailed prohibition of propaganda and other hostile action against each other's institutions. For England, these institutions included those of the British Empire and especially India and the independent state of Afghanistan. The Soviets acquired a particular undertaking in respect of the independent countries which were formerly part of the Russian Empire.³ This agreement on mutual non-intervention was the condition and symbol of the Soviet acceptance of a role as a state in a world of states, and of the acceptability of this role to at least one of the states of the old order.⁴ Revolutionary doctrine could not comfortably accommodate a rule of non-intervention, but her years as a target for intervention had concentrated the Soviet mind; doctrinal justification for acceptance of such a rule would follow.

III

By accepting her position as a state, Soviet Russia did not abandon her position as well-spring of the world revolution. As well as merely calling for revolution, the Council of People's Commissars appropriated two million

³Preamble to the Agreement quoted in Carr, op.cit., p.288.
⁴Fischer calls the agreement "the Soviet acceptance of the status quo ... a pledge not to spread the revolution by armed force". Op.cit., Vol. I, p.296.
roubles to be put at the disposal of the foreign representatives of the Commissariat for Foreign Affairs for the "needs of the revolutionary international movement." Sections for international propaganda were set up in the Soviet government soon after the revolution. Trotsky used the peace negotiations at Brest-Litovsk as a platform from which to speak revolution to the world. Even after the signature of the Brest peace and Joffe's appointment as Ambassador to Berlin, Soviet propaganda in Germany continued to flow. Indeed, acting in "perfect bad faith", Joffe made every attempt to bring about the downfall of the Imperial government.

With the Allied intervention in the Russian civil war in the summer of 1918, explicit commitment to world revolution and propaganda on its behalf were the two serviceable weapons in a Soviet armoury weak in the conventional weapons of war. Full use had to be made of them. On 1 August 1918, the Council of People's Commissars turned to the toiling masses of England, America, France, Italy and Japan in the name of the solidarity of the workers of the world and of the international revolution against the bandits of international imperialism. Propaganda at this time assumed its "crudest and most outspoken form".

The revolutionary strand in Soviet foreign policy was formalized in March 1919 with the creation of the Communist

1 For calls to revolution see, e.g., the Appeal of Sovnarkom to the Moslems of Russia and the East, 3 December 1917, in Degras, op.cit., Vol. I, pp.15-17. For the decree appropriating roubles, ibid., p.22. For comments on this "naive document" see Chamberlin, The Russian Revolution, Vol. I, p.363.


4 Ibid., pp.75-76.


International. Invitations to its first congress were sent at the same time as Soviet noises for peace were being heard at Paris. The invitation included a Soviet opinion of the aims and tactics of the International enjoining the proletariat to seize political power immediately by mass action "right up to open armed conflict with the political power of capital".\(^1\) The Comintern platform adopted by the first congress referred to an International "which subordinates so-called national interests to the interests of the international revolution".\(^2\) In the first months of its existence, the Comintern failed to honour its revolutionary promise. The Soviets, in their almost total isolation, made little effort to direct the activities of communists in other countries and saw events in them according to the revolutionary climate in Russia. Thus both Trotsky and Zinoviev prophesied the imminence of a Soviet Europe.\(^3\) Such misplaced optimism apart, the significance of the establishment of the Comintern was its establishment; it remained a monument to the revolutionary aspirations of its designers.\(^4\)

The Comintern in 1920 was a more effective organization than it had been in 1919. Its prestige was greater and the summer of the year brought with it the highest hopes for world revolution.\(^5\) The second Comintern congress assembled in Moscow at the same time as the dramatic advance of the Red Army into Poland. It was in the context of the enthusiasm generated by this state of affairs that Zinoviev called for the Comintern to become, not a mere propaganda association as it had been at its foundation, "but a fighting organ of the international

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5 On the reasons for the changes see ibid., pp.170-181. But as Borkenau points out: "the biggest effect which the Russian revolution ever had upon Europe was achieved before there was a Communist International". Op.cit., p.93.
Another delegate demanded that the Comintern grow from a series of national parties to "a single communist party having branches in different countries." On 24 July 1920, the congress approved twenty-one conditions of admission to the Communist International which required inter alia, that each party conduct propaganda in favour of the proletarian revolution, that underground organization be prepared for the coming civil war, that reformists be broken with, that iron military discipline be established in the party ranks and that all decisions of Comintern be accepted as binding. This programme for revolution was the fullest statement of the communist onslaught on the old order.

The July theses were a triumph for the principles of international socialism and of tightly centralized control over the inferior principle of national self-determination. The latter principle had already been compromised by Soviet activity in the Baltic states, in the Ukraine and elsewhere. In October 1920, Stalin rejected the demand of the border regions for secession from Russia "because it contradicts the essential interests of the popular masses", interests which would render secession "at this stage of the revolution profoundly counter-revolutionary". In policy towards the peoples of Asia, on the other hand, the Soviets could espouse the principle of national self-determination as a sound weapon against the imperialists and justify it by placing colonial emancipation in the stage of bourgeois revolution. Support for national freedom against the oppression of the imperialists was the general line pursued in Soviet relations with Asia from the December 1917 appeal

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1 Quoted in Carr, op.cit., Vol. 3, p.194.
2 Quoted at loc.cit.
3 Text of the conditions in Degras, op.cit., pp.168-172.
to the Moslems of Russia and the East onward. It occasion­
ally shaded into a proletarian rather than a national
revolutionary appeal, but at the second Comintern congress,
Lenin reaffirmed the need for "the closest union between
Soviet Russia and all the national and colonial liberation
movements".\(^2\) At the Baku Congress of the peoples of the
East in September 1920, Zinoviev evoked a tumultuous
reaction when he summoned his audience to a holy war against
British imperialism, but it was a call against oppression
rather than for the proletarian revolution.\(^3\)

While the distinction between support for proletarian
revolution in Europe, and support for bourgeois national
revolution in Asia, was significant in Soviet doctrine and
practice, support for either was unwelcome to the old order.
The slogan of national self-determination might strike a
Wilsonian chord in the United States and among liberal
opinion in Europe, but the self-consciously revolutionary
pronouncements of the Soviet regime, and of the Comintern,
seemed inimical to established principles of international
conduct like that of non-intervention.

IV

A dual foreign policy was, then, partly imposed on
and partly fashioned by the Soviets, so long as the world
revolution failed to materialize. The need to provide for
the security of the Soviet state in a hostile world and
the need to champion the revolution which was the legitima­
tion of the new regime, caused the Soviets to attempt to

\(^1\)Text of the Appeal in Degras, Soviet Documents, Vol, I,
pp.14-16.

\(^2\)Text of the Theses on National and Colonial Question
adopted by the congress in Degras, Comintern Documents,
Vol. I, pp.138-144. For shading into proletarian appeal
see Appeal from Chicherin to the workers and peasants of
Persia, 30 August 1919 in Degras, Soviet Documents, Vol, I,
pp.161-164.

\(^3\)Extracts from Zinoviev's speech cited in X.J. Eudin and
R.C. North, Soviet Russia and the East 1920-1927,
(Stanford 1957), pp.165-167.
come to terms with the capitalist governments at the same
time as trying to undermine them.  

But in Soviet doctrine, the serving of one master
did not exclude the simultaneous serving of the other. The
goal of international socialism required support for the
revolution and for the interests of the Russian state, indeed
the two were regarded as mutually dependent. A party
manifesto written to explain acceptance of the German terms
at Brest contained the following:

By upholding Soviet power we render the best
and most powerful support to the proletariat
of all countries in its unprecedentedly
difficult and onerous struggle against its
own bourgeoisie. There could be no greater
blow now to the cause of socialism than the
collapse of Soviet power in Russia.2

The twin imperatives of Soviet foreign policy were,
arguably, compatible and interdependent; they were not
indistinguishable. The various situations in which the
Soviet state found herself led to differences in emphasis.
When the Brest peace with Germany was signed, the demand
for national security was uppermost; during Allied interven­
tion in the civil war and again while the Polish war lasted
the call to revolution was stressed. With the New Economic
Policy and the signature of the trade agreement with
Britain, national security was emphasized once more.  

It is possible to establish this dualism as a theme
of Soviet foreign policy between the two wars containing a
revolutionary motif which led to interference with the
affairs of other states and a motif of accommodation which
proclaimed non-interference at the formal diplomatic level.
The revolution legitimized action on its behalf through
the communist parties, the activities of the Comintern

2Quoted in ibid, p.67.
3Borkenau characterizes the duality thus: "There is hardly
a leading man in world affairs who did not regard the
communists alternately as hopeless and insignificant
Utopians and as dangerous, unscrupulous, and hard-boiled
realists. In reality they are both at the same time". 
being considered immune from the strictures of the principle of non-intervention.\(^1\) The security of the state legitimized acceptance of the rule as a passport to the establishment of relations between governments and as a shield against intervention in Russia.

The role of the Comintern as the carrier of the international revolution was cemented at its second congress with the laying down of the ideological principles which were to govern communist policy. Objections to the "strict international centralization of the communist movement" established at the second congress were rejected by the third congress.\(^2\) Each congress thereafter, except the seventh and last in 1935, specifically reaffirmed the need for central direction of and iron discipline in the Comintern. The fourth congress in November 1922 called upon the Executive Committee of Comintern to become an international proletarian organization "built on the principle of the strictest democratic centralism".\(^3\) The fifth congress in June 1924 instructed "the Executive to demand more emphatically than before iron discipline from all sections and all party leaders".\(^4\) The programme of the Comintern adopted at the sixth congress in September 1928 required, among many other things, that:

International communist discipline must be expressed in the subordination of local and particular interests to the common and enduring interests of the movement, and in the execution without reservation of all decisions made by the leading bodies of the

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\(^1\) This immunity was claimed, not only because of the superior claims of the revolution in the legitimation of action, but also because the Comintern was held to be a non-governmental international organization and thus not liable to those obligations which accrued only to subjects of international law. Adam B. Ulam, Expansion and Coexistence, (London, 1968), p.130.


\(^3\) In the Resolution of the Congress on the Report of ECCI, in ibid., pp.378-379.

Communist International. ¹

The relationship of the Comintern to its member parties as one of superior to inferior was defined by the Comintern Praesidium in 1929 during a dispute with the Czechoslovak Communist Party. Relations between the Comintern and its sections, it declared, "are not relations between two partners who are negotiating with each other but are based on the principle of international proletarian discipline".²

This relationship was a formal one, it was contained in the statutes of the Comintern adopted at its fifth congress. Decisions of the ECCI were binding on all sections, the ECCI had the right to expel from the Comintern parties, groups, or individual members "who acted contrary to the programme, the statutes, the decisions of the world congress, or the ECCI", it also had the right to send delegates to individual sections to supervise the execution of the Comintern line.³ In the light of these provisions, it seems pedantic to speak of Comintern interference in the affairs of national communist parties and more accurate to describe such Comintern activity as the normal operation of a political party within its legitimate domain.⁴ But in those national parties, the notion of outside interference seemed to survive and force Comintern leaders to deal with it. Bukharin said that nine-tenths of the significance

¹In the Programme of the Comintern, cited in ibid., p.525.


³In Statutes of Comintern, July 1924, Degras, Comintern Documents, Vol. II, pp.119-120.

⁴The crucial question here is the definition of "legitimate", or rather, the identification of the set of standards to which the legitimation referred. The Comintern standards were those of "international proletarian discipline". The states in which the communist parties were located, however, might not adopt a similar code. In terms of the latter, Comintern direction of national parties was an interference in what were conventionally regarded as internal affairs - the domestic political process.
of the fourth congress of Comintern consisted in this, that it "interfered" in the affairs of the national sections.\(^1\)

At the same Congress, Zinoviev wrote that: "It is obvious that the Executive must "interfere" in the affairs of practically every party.... It took an active part in the preparations for every congress and conference of its principal parties.... Representatives of the Executive attended practically every important congress and gave them ideological direction".\(^2\) At the seventh Comintern congress, Pieck, a German communist who was a high official in the Comintern, went as far as to concede that the ECCI would "refrain from intervening in the internal organizational affairs of the sections", but, he added, "The Executive will, of course, continue to intervene if the work of our sections betrays serious defects".\(^3\) National parties as well as the states in which they were formed seemed, on this evidence, to have found the activities of the Comintern interventionary.

As to the motif of accommodation in Soviet foreign policy between the wars, the principle of non-intervention became a slogan adorning statements on international relations.\(^4\) But espousal of the principle also had more concrete functions. It had been one of the keys to the agreement with Britain in 1921 which had ended the isolation of the Soviets. An equally elaborate prohibition of intervention formed the fifth article of the Franco-Soviet Non-Aggression Pact signed in November 1932, which, with the other non-aggression pacts signed by the Soviet Union in the same year, registered her urgent need for peace.\(^5\) In treaties between the Soviet Union and the

\(^1\)Quoted in Degras, Comintern Documents, Vol. I, p.375.

\(^2\)Quoted in ibid., p.436.


states on her frontiers, inclusion of a rule of non-intervention had another function, which was to provide a legal barrier against their being used as bases for intervention in the Soviet Union.¹

The rule was also used as justification for foreign policies which seemed ideologically unpalatable. In September 1933, Litvinov defended the attempt to maintain good relations with Hitler by saying, "We do not interfere in the internal affairs of Germany, as we do not interfere in that of other countries, and our relations with her are conditioned not by her internal but by her external policy".² Molotov's defence of the Soviet-German Non-Aggression Pact in 1939 was similar:

...people ask, with an air of innocence, how could the Soviet Union consent to improve its political relations with a State of a fascist type? Is that possible, they ask. But they forget that it is not a question of our attitude towards the internal regime of another country but of foreign relations between two States. They forget that our position is that we do not interfere in the internal affairs of other countries and correspondingly do not tolerate interference in our own internal affairs.³

¹Ibid., p.12. See, e.g., the Non-Aggression Treaty between USSR and Afghanistan, 31 August 1926, paragraph III of which reads in part: "The high contracting parties, mutually recognizing their State sovereignty, undertake to refrain from any armed or unarmed intervention in the internal affairs of the other contracting party and they will refrain completely from assisting or participating in any intervention by a third or several third Powers which might take steps against the other contracting party. The contracting parties will not permit and will prevent on their territory the organization and activity of individuals prejudicial to the other contracting party, or which are aimed at the overthrow of the political regime of the other contracting party, or which make attempts on its territorial integrity, or which assemble and recruit forces against the other contracting party". Text in Degras, Soviet Documents, Vol. II, 1925-1932, pp.130-133.


³In Speech by Molotov to the Fourth (Special) session of the Supreme Soviet on the Negotiations with Britain and France and the Non-Aggression Pact with Germany, 31 August 1939, cited in Degras, Soviet Documents, Vol. III, 1933-1941, p.367.
At the same time, Stalin criticized "the non-aggressive countries", particularly England and France, for their misuse of the policy of non-intervention. By adopting such a policy and rejecting the policy of collective security, these countries had connived at aggression and given free reign to war. The ultimate rationale behind this policy, Stalin thought, was the desire of the non-interventionists to lure the other powers into an exhausting war and then to appear on the scene and "dictate conditions to the enfeebled belligerents". Thus the Soviets well appreciated the diverse functions of the principle of non-intervention.

The distinction made between a revolutionary strand in Soviet foreign policy which led to intervention through the communist parties and a national security strand which led to non-intervention at the government level is an oversimplification. In the first place, the activities of the Comintern on behalf of the revolution were not restricted to the communist parties. Borodin's activities in China from 1923 to 1927 were guiding a bourgeois revolution by a nationalist party - the Kuomintang. There was doctrinal basis for this sort of support in the theory that the anti-imperialist revolution was to come first in Asia and in the united front strategy adopted by the third Comintern congress. In the second place, the distinction is misleading if it suggests that the Comintern remained the chaste carrier of revolution. As Comintern grew older, it became increasingly the creature of the Russians, not only because of their financial dominance or their prevailing voice in the ECCI, but also because in Russia the revolution had happened and homage to the revolution could only be paid to Russia.

When, during the 1930's, the Comintern became the instrument of Soviet foreign policy, the revolutionary strand appeared

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1 In Stalin's Report to the 18th. Congress of the CPSU, in ibid., pp.318-319.
to lose any separate identity.  

If it is dangerous to identify the Comintern with intervention it is the more so to identify the demands of national security with adherence to the rule of non-intervention. Soviet intervention in the Transcaucasian Republics in 1920 and 1921 was as much about national security as about the encouragement of revolution. Similarly, the establishment and consolidation of Soviet influence in Outer Mongolia from 1921 was not an intervention solely inspired by the revolution. But Soviet intervention in the Spanish Civil War arose from a choice among options more complicated than those presented by the filling out of frontiers. The Popular Front had won an electoral victory in Spain in February 1936, in July the Nationalists revolted against it. Ideological solidarity demanded support for the Spanish Left, particularly as it represented the fulfilment of the new Comintern strategy of the united front. The prestige of the Soviet Union as the leader of the world revolution was involved in the war in Spain. At the same time, preservation of the good relations so recently established with Britain and particularly with France, seemed to demand acceptance of the agreement of non-intervention in Spain which those powers were canvassing. A third pressure was the perceived need to counteract German and Italian intervention in the civil war on Franco's behalf, by coming to the aid of the Republican government. Britain and France

1 Borkenau (op.cit., p.419), distinguishes three periods in the evolution of the Comintern, "During the first period the Comintern is mainly an instrument to bring about revolution. During the second period it is mainly an instrument in the Russian factional struggles. During the third period it is mainly an instrument of Russian foreign policy." (Borkenau's emphasis).


5 Cattell, Soviet Diplomacy and the Spanish Civil War, (Berkeley and Los Angeles, 1957), p.16.
wanted to keep the peace in Europe by avoiding a confronta-
tion between the powers. The Soviet Union sought the same
end by her emphasis on collective security and the thwarting
of the aggressive powers in Spain.¹ In effect, the Soviet
Union attempted to meet each of these requirements. She
signed the non-intervention agreement and maintained her
seat on the Non-Intervention Committee, but continually
pointed to the futility of asymmetrical adherence to it.²
She intervened on the Republican side, but protested the
action's conformity with international law at the same time
as trying to hide its existence.³ She intervened at all
levels in the Spanish civil war, but not to establish
communist rule which would have prejudiced the other goals
of Soviet foreign policy that the united front was carefully
cultivating.⁴ The questions of intervention and non-
intervention were not asked and answered in terms of a
simple dichotomy between world revolution and national
security.

¹Ibid., p.37.

²See, e.g., Statement on the Soviet Attitude to Non-
Intervention: Note from the Soviet Ambassador in London to
the Chairman of the Non-Intervention Committee, 23 October
1936, in Degras, Soviet Documents, Vol. III, pp.212-213,
and Reply to the British Proposal on Volunteers for Spain:
Note from Litvinov to the British Ambassador in Moscow,

³Cattell, Communism and the Spanish Civil War, p.73 and
p.75. The legal opinion of the Soviet Union was that
"the fulfilment by other States of the orders of a
legitimate government which they have recognized, including
orders for war materials, cannot be regarded as intervention,
but that, on the contrary, the supplying of arms to rebels
against a legitimate government and the arbitrary
recognition of their leaders as a government must be regarded
as flagrant intervention, inconsistent with international
practice", in Reply to the Anglo-French proposal for
mediation in the Spanish Civil War: Note from Litvinov to
the British and French Ambassadors in Moscow, 9 December

⁴Cattell, Communism and the Spanish Civil War, pp.208-212.
The principle of non-intervention was a popular phrase among the writers of Soviet diplomatic documents between the wars and any inconvenience to its espousal caused by the activities of the Comintern could be avoided by the claim that such matters were beyond the competence of the Soviet government. This convenient distinction apart, the difficulties of adhering to such a rule when other states ignored it, or preferred their own definitions of it, difficulties illustrated during the Spanish Civil War, were instructive for international politics after the Second World War.

The establishment of communist regimes in the East European states during and after the Second World War and the victory of the revolution in China in 1949, transformed the problem of communist inter-relations from one between parties to one between states. Yugoslavia and Albania apart, and with variations in degree from country to country, the Red Army acted as midwife to the establishment of communist regimes in Eastern Europe. This was not the revolution of the proletariat and the establishment of their dictatorship any more than it was the preliminary bourgeois revolution. Tito's coinage, "People's Democracy", was the phrase used to describe the process of evolution towards communism in the new entities and they became "People's Democracies" in the communist lexicon. In relations between the Soviet Union and the People's Democracies, Lenin's principle of national self-determination was not

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applicable because it belonged in the province of the bourgeois revolution. Neither was the higher principle of international socialism, not primarily because of the inferior status of the People's Democracies, but because of the strength of national feeling within them and of the need for the Soviet Union to feel her way carefully in the post-war international environment. The definition adopted for relations between the Soviet Union and the People's Democracies was a compromise. Formally, they were to be based on mutual recognition of the principles of sovereignty, equality and non-interference in domestic affairs. On the other hand, their designation as People's Democracies placed them at a less advanced stage in the building of communism than the Soviet Union, giving the latter an ideological entrée for the control of the former.

It was not long before the Soviet Union made use of this entrée. The establishment of the Cominform in September 1947 was the Russian reply to that diversity in Eastern Europe which had arisen from the reluctance to establish total Soviet control. Its declared function was the exchange of information between the member parties, it had none of the Comintern's pretensions to being the bearer of revolution. Indeed, Zhúdánóv, one of the Soviet delegates to the inaugural meeting of the Cominform, referred to the positive side of the dissolution of the Comintern:

...in that it once and for all put an end to the slanderous allegations by the enemies of Communism and of the working-class movement that Moscow was interfering in the internal affairs of other countries and that the Communist parties of the various countries acted not in accordance with the interests of their peoples but on orders from abroad.

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1 For Stalin's 1920 view on drawing East Europe together in a confederation and for his appreciation of the tactical situation there after 1945, see David J. Dallin, Soviet Foreign Policy after Stalin, (London, 1962), pp.21-23.


But Zhdanov argued, the dissolution of the Comintern should not be taken to mean breaking off all connection between the communist parties, which would be "wrong, harmful and at bottom unnatural". Zhdanov also stressed the need for the communist parties to take the lead in resisting imperialist plans for expansion and aggression in a world arena divided into two main camps. Though the speech also contained expressions of Soviet deference to the principles of sovereignty and equality in international relations, the element of guidance to "brotherly" parties was clear. A new set of rules for communist international relations was being established. The Soviet-Yugoslav dispute was to demonstrate that they existed and could be broken, its aftermath was to clarify what they were.

The roots of Soviet-Yugoslav conflict lay in Tito's fashioning of an independent revolution. In retrospect, the Yugoslavs could trace the increasing incidence of Russian misdeeds from the Soviet Union's reluctance to give aid to Yugoslavia during the war and failure to support the Yugoslav claim to Trieste just after it, through its attempts to subvert the party and the army in Yugoslavia, to its veto of the Yugoslav dream of a Balkan federation in January 1948. The Soviet Union could trace an antithetic course in Yugoslav behaviour from their parochial identification of Yugoslavia's own interests with those of international communism, through their obstinate refusal to provide information for the representatives of the Soviet Union, to their failure to make a low enough genuflection to the Russians at the foundation of the Cominform. Some of these issues were ventilated in the correspondence between the central committees of the

1 Quoted in ibid., p.218.
2 Quoted in ibid., p.218 and p.221. The two-camps doctrine seemed to be a signal for the drawing together of the one camp against the aggressive tendencies of the other.
4 See ibid., pp.69-95.
5 Ibid., pp.53-54 and p.117.
communist parties of the Soviet Union and of Yugoslavia which took place in the first six months of 1948. The real points at issue, however, were obscured in an ideological tirade from the Russians and in the injured innocence of the Yugoslav replies, replies which failed to meet the Soviet requirements and resulted in the expulsion of the Yugoslavs from the Cominform. There were some clues. The Soviet letter of 4 May 1948 went back to 1945 to find evidence of an anti-Soviet attitude on the part of the Yugoslavs and warned of the danger of underestimating "the experiences of the CPSU in matters relating to the development of socialism in Yugoslavia". It seemed that Yugoslavia's primary sin was insubordination.

The new rules governing the relations between the Soviet Union and the People's Democracies were emerging. The East European states were privy to the details of the Soviet-Yugoslav dispute, having received copies of the Soviet letters; and they were gathered together to legitimize the view that the Yugoslav party had "placed itself ... outside the ranks of the Information Bureau". By December, the content of the relationship was spelled out in a phrase reminiscent of the Comintern, "The attitude toward the Soviet Union is now the test of devotion to the cause of proletarian internationalism". The Soviet experience was to be the model for the People's Democracies and their progress was to be measured in terms of their conformity to the model. The principle of sovereignty was still proclaimed, in practice it was shown to be inferior to the principles allowing Soviet control of East Europe. Doctrines about the sovereignty of

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2 Ibid., pp.36-37 and p.42.

3 Ibid, p.69.


5 See Brzezinski, op.cit., pp.67-83.

6 Ibid., p.82.
states and non-intervention in internal affairs now seemed more the preserve of the Yugoslavs.¹

After the passing of Stalin, the relaxation of Soviet control over the People's Democracies was accompanied by a renewed emphasis on the governing principles of sovereignty and non-intervention in internal affairs. The abolition of the mixed companies, which had been the instrument of Soviet economic hegemony in Eastern Europe, was taken as evidence of that cooperation which "embodied the new type of international relations between the countries of the Socialist camp" and one of the factors lending "vital power" to these relations was observance of the rule of non-interference.² Krushchev heralded the rapprochement with Yugoslavia with a reaffirmation of the non-intervention principle, among others, as the basis of Soviet relations with other countries.³ In July 1955, at a Plenum of the Central Committee of the CPSU, Mikoyan went as far as to admit that the Soviet Union under Stalin had interfered in Yugoslavia's internal affairs and went on to establish Soviet interference as a general criticism of Stalinist policy towards the People's Democracies.⁴ New rules were again being formulated, the touch of Moscow was to be lighter in Eastern Europe, Soviet leadership was to be placed on a new basis of mutual cooperation.⁵

¹In the first draft of the 13 April 1948 letter to the CPSU, Tito included a paragraph reminding Soviet citizens in Yugoslavia that they were "in a brotherly independent country and that they should not interfere in that country's internal life". Later, Tito was to criticize the Kremlin for basely attacking the young revolution in Yugoslavia. "It was intervention in the true sense of the word, such as the October Revolution had had to endure". Vladimir Dedijer, Tito Speaks, (London, 1953), pp.347 and 391.

²Pravda, 13 November 1954, quoted in Dallin, op.cit., p.196.


⁴See Dallin, op.cit., pp.230-231.

⁵Brzezinski, op.cit., pp.181-182.
In his address to the Twentieth Party Congress, Khrushchev made this new basis for relations clearer, but still left undefined the outer limits of permissible conduct for the People's Democracies. He recognized that "Alongside the Soviet form of reconstructing society on socialist lines, we now have the form of People's Democracy" a recognition that different forms of transition to socialism were possible and legitimate. The effect in Eastern Europe of this acknowledgement of diversity and of Khrushchev's "secret" speech on Stalin was unsettling. Even more so was the placing of the Soviet imprimatur on Titoism in a Declaration on Soviet-Yugoslav relations in June 1956. The Poznan riots which broke out in Poland towards the end of June signalled the dangers of rapid liquidation of Stalin's legacy and brought a change of emphasis from the Soviet leaders. A Pravda editorial of 16 July 1956 spoke of "the principle of international proletarian unity" as the guide for the Marxist parties of the working class. In Warsaw, Bulganin criticized misguided attempts "to weaken the international ties of the Socialist camp under the banner of the so-called 'national peculiarities'".

These warnings came too late to prevent the unfolding of events in Poland and in Hungary. In Poland, the slow process of cautious response to the demands for reform, which had been going on since the death of Stalin, was jolted by the twentieth CPSU Congress and rendered untenable in the aftermath of the Poznan riots. Gomulka's resurrection and his subsequent election to the First Secretaryship of the Polish party

2 See Brzezinski, op.cit., pp.198-206.
3 Text of the Declaration of 20 June 1956 in Paul E. Zinner, (ed.), National Communism and Popular Revolt in Eastern Europe, (NY, 1956), pp.12-15. The third paragraph of the declaration reads in part: "...the path of socialist development differs in various countries and conditions ... the multiplicity of forms of socialist development tends to strengthen socialism ... any tendency of imposing one's opinion on the ways and forms of socialist development is alien to both".
4 Cited in Zinner, op.cit., p.27.
demonstrated the rout of the pro-Soviet wing of the Central Committee by the "national communist" wing. On 19 October, heeding the warnings of the pro-Soviet faction, a Soviet delegation arrived in Warsaw to confer with the Polish Central Committee. The delegation left the following day without swaying the Poles from their new line and apparently satisfied that the situation in Poland did not require Soviet armed intervention. On the same day, Gomulka blamed the cult of personality for the inequality in relations between the Soviet Union and the People's Democracies and looked forward to relations based on respect for rights of sovereignty which was "how it is beginning to be". In Hungary, three days later, military intervention occurred. The course of Hungarian history since 1953 had witnessed a more explicit division between the old Stalinists and the new national communists than had been the case in Poland. When Rakosi took the Soviet-Yugoslav Declaration of June 20 as his cue for adopting a Stalinist road to socialism, Mikoyan was sent from Moscow to explain the content of the new diversity to the Hungarian leaders. Rakosi's subsequent resignation led to a compromise regime which eschewed Stalinism without embracing Nagy. The compromise failed. Violent disorder in Budapest in October produced an appeal for Soviet assistance and on the 24th Soviet troops were used in quelling the uprising. Nagy, whose return to power on the 23rd seemed to match the return of Gomulka in Poland, called

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1 On the situation in Poland and Soviet-Polish relations at this time, see Brzezinski, op.cit., pp.239-268.


3 Imre Nagy had developed an ideology of national communism which went as far as to advocate Hungarian neutrality between the power blocs without moral distinction between them, a quite different approach from Gomulka's cautious adoption of domestic diversity, see Brzezinski, op.cit., pp.219-222.

4 The authorship of the request for help is still disputed, though the consensus is that it came from below the top echelons of party and government. Nagy, in an address on 31 October 1956, denied any responsibility for it, text in Zinner, op.cit., pp.458-459.
repeatedly for order and arranged a cease-fire on the 28th.\(^1\) With the beginning of the withdrawal of Soviet troops on the following day it seemed that the Russians were content to allow Nagy to manage the situation as best he could. But the stifling of the revolution was only temporary. On 30 October, Nagy announced the restoration of a multi-party system and a coalition government and followed this on 1 November with a proclamation of the neutrality of Hungary.\(^2\) The second Soviet military intervention followed. The Soviet justification for her action was that it had taken place at the request of the Hungarian government to restore order against the forces of reaction supported by the imperialist powers.\(^3\)

It might be concluded from these events of 1956 that Khrushchev's new order could accommodate a Gomulka whose road to socialism was paved with statements of Polish friendship for the Soviet Union, but not a Nagy whose pretension to neutrality and a plurality of parties put him, in the Soviet view, on a road away from and not towards socialism. But this is too simple. The first Soviet intervention in Hungary occurred before Nagy's statements of 30 October and 1 November and cannot be explained just in terms of the ideological apparatus Krushchev had been building since the twentieth Party Congress. The coming of the Hungarian crisis so soon after the one in Poland may have put a premium on firm Soviet action by frightening her leaders with a domino theory of "counter-revolution". Moreover, the Hungarian party did not keep control of the situation in the same way as had the Polish party, nor did it manage the united front which the Poles had presented to the Russians.

Two further considerations made intervention in Hungary more likely than in Poland. In the first place, Poland's freedom to leave the bloc was limited by the fact that of the major powers only the Soviet Union recognized her post-war frontiers - whereas Hungary had no such constraint, and secondly,

\(^1\) See ibid., pp.408, 409-411, 416-418 and 428.


\(^3\) Pravda editorial, 4 November 1956, cited in ibid., pp.498-505.
intervention in Hungary was easier; smaller than Poland and having only one third of its population, Hungary had three Soviet divisions stationed on its territory where only two were in Poland.¹

Thus, if by her action, the Soviet Union was demonstrating the limits of the permissible in the People's Democracies, the limits remained a matter of conjecture. Evidence of uncertainty and division in the ranks of the Soviet leadership casts doubt upon any idea that the Soviet Union was applying a clear set of rules for socialist international relations.² And the doctrine developed in support of the action was as equivocal. On 30 October, the Soviet government announced that the policy of peaceful coexistence found:

...its deepest and most consistent expression in the mutual relations among the socialist countries. United by the common ideals of building a socialist society and by the principles of proletarian internationalism, the countries of the great commonwealth of socialist nations can build their mutual relations only on the principles of complete equality, of respect for territorial integrity, state independence and sovereignty, and of non-interference in one another's internal affairs. Not only does this not exclude close fraternal cooperation and mutual aid among the countries of the socialist commonwealth in the economic, political, and cultural spheres; on the contrary, it presupposes these things.³

The Declaration went on to say that the Soviet Union was prepared to review the question of the expediency of the further presence of Soviet advisers in the People's Democracies and the question of the stationing of Soviet troops. Coming as it did after the Polish crisis and the first intervention in Hungary, this statement seemed to represent a real attempt at conciliation and recognition of the autonomy of the People's Democracies. It seemed that Gomulka and Nagy

¹I am indebted for these two considerations to Mr Geoffrey Jukes.
²On division in the Soviet ranks, see Brzezinski, op.cit., p.229.
were receiving the stamp of legitimacy from Moscow. A few
days later, the second intervention in Hungary occurred and
the all-encompassing nature of the doctrine of proletarian
internationalism was again demonstrated. After the second
intervention, the emphasis on non-intervention which was
characteristic of the 30 October Declaration changed to an
emphasis on "international working-class solidarity". An
article in the Moscow periodical Kommunist stressed that:

The principle of co-existence is the principle
of the peaceful association of countries which
have differing and opposing social and economic
systems. It is not difficult to see that it
would be a great mistake to carry this principle
of co-existence over to the reciprocal relations
between similar Socialist states or to the
relationships between Communist parties, which
have a common aim and a common ideology. 2

This change of emphasis did not mean a return to Stalin's
infallible orthodoxy. Gomulka, in his November talks with
the Soviet leaders in Moscow, insisted on the formula of
"full equality and regard for state sovereignty" in relations
between socialist countries. 3 The Chinese provided the
doctrine to meet the new situation with the theory of
fundamental and non-fundamental contradictions. 4 Fundamental
contradictions occurred between capitalism and communism
and within capitalism, non-fundamental contradictions
occurred between communists. The "Great Power chauvinism"
of the Soviet Union in her relations with the People's
Democracies, and the excessive nationalism of the latter were

1Not only from Moscow, but from many members of the bloc who
supported the Declaration, see Zinner, op.cit., pp.489-496.
Brzezinski argues that the Soviet declaration was "obviously
designed to prevent a Hungarian defection from the Soviet
bloc", op.cit., p.229. In summary, then, the Declaration
might be said to have recognized the diversity prevailing,
but aimed to prevent its further spread.


3See the communique on the talks, 18 November 1956, text in

4On this, see J.M. Mackintosh, Strategy and Tactics of Soviet
Foreign Policy, (London, 1962), pp.195-196, from which the
following summary of the article in People's Daily, 29
December 1956, is taken.
non-fundamental contradictions. But the Hungarian crisis became a fundamental contradiction when Hungary opted for a future away from the communist bloc and thus justified Soviet intervention. Having provided justification, the Chinese built a model for socialist international relations consisting in "ideological and political unity while recognizing the possibility of limited local diversity". This was the solution adopted by the twelve ruling communist parties in their conference in Moscow in November 1957. The Soviet Union was recognized to be at the head of the socialist countries, though Gomulka's preference "first and mightiest socialist power" was also used. The familiar five principles of equality, territorial integrity, independence, sovereignty and non-intervention were balanced by "fraternal mutual aid" as a "striking expression of socialist internationalism." The Soviet Union maintained her leading position, but her leadership was complicated and its nature changed by the persistence of Gomulka among the led.

Tito's "revisionism" was an added complication. Having established her primacy in the communist bloc, the attempt to combine unity with it led the Soviet Union to a new emphasis as between the recently balanced principles of non-intervention and socialist internationalism. It emerged as a criticism of what was regarded as wrong emphasis in the Draft Programme of the Yugoslav League of Communists. An article in Kommunist found fault with the Draft Programme for reducing proletarian internationalism exclusively to the principles of equality and non-interference in internal affairs" so that "the necessity for strengthening the unity and cooperation of the Socialist countries and the Marxist-Leninist Parties is buried in oblivion". "Under certain conditions", the article went on, "proletarian internation-

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1 Brzezinski, op cite., p.280.


alism demands the subordination of the interest of the proletarian struggle in one country to the interests of the struggle on a world-wide scale.\textsuperscript{1} Clearly, for the Soviet Union, the principle of non-intervention was not absolute, it had to be measured in a scale of competing imperatives.

With different stress according to the various situations in which the Soviet Union found herself, the principle of non-intervention was now part of Soviet doctrine on international relations between socialist states and those between states with different social systems. The Sino-Soviet split, disguised until 1960, undisguised thereafter, affected the place of the non-intervention principle in both these categories of relations. The Chinese objection to Khrushchev's doctrine of peaceful co-existence, flowing from a different perception of the place of peace and war in communist ideology, forced the Soviet Union into a sharper definition of the doctrinal position of the rule of non-intervention and even into a concession that its domain was restricted by the principle of support for wars of national liberation. On the other hand, in relations among socialist states, the main outcome of the Sino-Soviet dispute was practical before it was doctrinal. The Chinese challenge to Soviet ideological leadership and the break-up of unity in the bloc tended to make the relations between socialist states conform to that norm of non-intervention which Chinese doctrine was trying to undermine in another sphere of relations.

At the twentieth Party Congress, Khrushchev had erected peaceful co-existence as a fundamental principle of Soviet foreign policy. The victory of the socialist over the capitalist system would be won by a superior mode of production, not through armed interference. War was no longer "fatalistically inevitable" though as long as capitalism survived it might try to unleash war.\textsuperscript{2}

\textsuperscript{1}Text of this article of April 1958 in Bass and Marbury, The Soviet-Yugoslav Controversy, pp.142-166.

\textsuperscript{2}Khrushchev, Report to 20th Party Congress, pp.38-42.
his speech to the twenty-first Congress in 1959, Khrushchev went further to suggest that "even before the complete victory of socialism on earth, while capitalism still remains in part of the world, there will be an actual possibility of excluding world war from the life of society". During his visit to Peking in September 1959, Khrushchev affirmed a method of conducting international relations of which Cobden would have approved:

The socialist countries ... fire the hearts of men by the force of their example in building socialism, and thus lead them to follow in their footsteps. The question of when this or that country will take the path to socialism is decided by its own people. This, for us, is the holy of holies....

On his return to Moscow, Khrushchev, reporting to the Supreme Soviet, stressed that peaceful co-existence was not something to be desired or not desired, it was an "objective necessity" stemming from the "present situation in the world".

The comprehensive Chinese response to the Soviet position came in an article in the Peking journal Red Flag in April 1960. It asserted that "as long as the imperialist system still exists, the most acute form of violence, namely war, has by no means ended in the world". Peaceful co-existence between countries with two different systems was not denied, but at the same time support for revolutionary wars of the oppressed nations against imperialism had to be forthcoming because they were just wars. As against the Soviet emphasis on peaceful co-existence and the possibility of local war leading to nuclear conflict the Chinese stressed

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1 Extract from the speech in Hudson, Lowenthal and MacFarquhar, op.cit., pp.56-57.
2 From 30 September 1959 speech in Peking, extract in ibid., pp.61-63.
4 Text of the article "Long Live Leninism" in Hudson, Lowenthal and MacFarquhar, op.cit., pp.82-112, from which the quotations following are taken. The persistent tone of the article is the Chinese fidelity to Leninist orthodoxy, in marked and perhaps deliberate contrast to Khrushchev's references to the differences between the modern age and Lenin's time.
the justice of wars of national liberation and the view that support for armed struggle would weaken imperialism and its capabilities for war.\footnote{See Zagoria, \textit{op.cit.}, p.255.}

The Moscow Conference of the eighty-one parties in November did not resolve the differences between the Soviet Union and China. Rather, it ventilated those differences among the members of the communist world. The statement issued by the conference contained both views, with the Soviet line predominating, but not so greatly as to prevent the Chinese from deriving doctrinal comfort from the document in the years to come.\footnote{See Zagoria, \textit{op.cit.}, pp.343-369. Text of the 1960 Moscow Statement in Hudson, Lowenthal and MacFarquhar, \textit{op.cit.}, pp.177-205. The 1960 polemics established a pattern for the doctrinal debate between China and the Soviet Union. The same issues were argued, though with much greater intensity, during the 1963 correspondence between the two states. The Soviet Union emphasized the all-pervasive imperative of peaceful co-existence, the dangers and ravages of nuclear war and the significance of the "world socialist system" (as opposed to singling out one of its components - the national liberation struggle) in the struggle against imperialism. The Chinese accepted peaceful co-existence, but wanted it limited to its proper sphere; argued that the emergence of nuclear weapons did not alter the law of class struggle or the necessity of social and national revolutions and emphasized revolutionary struggle as against peaceful competition. See in particular the letter from CPP to CPSU, 14 June 1963, and the Soviet "Open Letter", 14 July 1963. Texts in William E. Griffith, \textit{The Sino-Soviet Rift}, (London, 1964), pp.259-288 and 289-325.\footnote{Text of Khrushchev's Report on the Moscow Conference in Hudson, Lowenthal and MacFarquhar, \textit{op.cit.}, pp.207-221, from which the quotations following are taken.} It was the duty of communists to fight against world war and against local war which might develop into "world thermonuclear and missile war". But wars of national liberation were not only justified, they were inevitable. They could not be identified with wars between countries, with local wars, "because the insurgent people are fighting for the right of self-determination, for their
social and independent national development". The communists supported such "sacred war" and had allowed it to prevail in Vietnam by threatening counter-intervention against the imperialists. This careful admission of the duty to uphold internal wars of national liberation appeared to modify the duty of non-intervention in the internal affairs of other states. Arguably, and strictly in terms of Khrushchev's logic in this report, this national liberation modification did not restrict the range of the non-intervention principle but upheld it. The reference to Vietnam pointed out the effect of the communist attitude in preventing intervention by the threat of counter-intervention and thus in upholding the principle of non-intervention (though it was not stated in quite these terms). If Cobden could have approved of Khrushchev's doctrine of the power of example in international relations, Mill could have approved of his exegesis of the need for counter-intervention.

The Chinese challenge to Soviet ideological authority and leadership was not a challenge to the idea of leadership itself, but rather to its nature. The Chinese attitude evolved from sponsorship of Soviet leadership according to the "unity in diversity" formula of 1957 to the announcement in 1964 that the CPSU, through its revisionism, had forfeited its position as head of the international communist movement. In 1960, the Soviet Union was still the "universally recognized vanguard" if not the head of the movement, by 1961 the only CPSU leadership recognized by China was that over the Soviet people, and in 1963, China in her 14 June letter to the CPSU, staked what amounted to her own claim to be the repository of doctrinal purity in the movement. The Soviet response to the challenge was

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1 This, written in 1961, refers to the First Indo-China War.

2 See Brzezinski, op.cit., p.420.

3 The "universally recognized vanguard" formula was used in the 1960 Moscow Statement. Chou En-Lai's recognition of CPSU leadership over the Soviet people was in his speech to the 22nd CPSU Congress on 19 October 1961, text in Alexander Dallin, (ed.), Diversity in International Communism, (NY and London, 1963), pp.45-54. The CCP letter to CPSU, 14 June 1963, is in Griffith, loc.cit.
firstly to modify doctrine about stages in the development of communism in order to fend off any claim of the Chinese to be superior in this respect as a result of the development of the communes. According to Khrushchev's speech at the 21st CPSU Congress, all bloc countries would make the transition to Communism "more or less simultaneously", a formula vague enough to accommodate precocity in the bloc and to allow continued Soviet assertion of superiority.¹

But at the 1960 Moscow Conference, the CPSU delegation proposed that the formula "that the Soviet Union stands at the head of the socialist camp" be not included in the statement, because leadership from a single centre was "both impossible and unnecessary".² This represented a Soviet refusal to accept the challenge on Chinese terms, a preference for unity through compromise as against an ideological split.³

But this Soviet attempt to remain aloof from the ideological debate in order to preserve a facade of unity within the bloc was productive of diminishing returns. Since unity in the communist world was defined in terms of ideology, and not by the mere coincidence of political interests, it was not possible for the Soviet Union to patch it up by dwelling on the latter. Hence the Chinese challenge was at length accepted and at the twenty-second CPSU Congress the Soviet reply took the form of a bitter attack on Albania. From there, the dispute developed through the open break in 1963 to one between "the restorers of capitalism" and "the petty-bourgeois Trotskyists".⁴

Leadership and unity were correlative phenomena. The Chinese challenge to Soviet leadership and doctrinal

¹ See Zagoria, op.cit., pp.130-132. At the 22nd Party Congress, this doctrine was no longer in vogue. Instead Khrushchev spoke of the Soviet Union as "the first to enter on the path of full-scale construction of communism". Krushchev's Report to 22nd Congress, 17 October 1961, Text in A. Dadlin, op.cit., pp.4-32.

² In Khrushchev's Report on the Moscow Conference, text in Hudson, Lowenthal and MacFarquhar, loc.cit.


⁴ See Brzezinski, op.cit., p.427.
authority presaged an end to unity which could be restored only if the challenge were totally vanquished or totally victorious. Soviet power prevented the latter, the limitations to her power prevented the former. Because of its failure, the Chinese challenge to Soviet leadership, undertaken in the name of her brand of ideological unity, led to increased diversity in the bloc. The East European states were among the beneficiaries of the Sino-Soviet split, their range of autonomy was increased and their heightened importance to a Moscow embattled in the East improved their political leverage. The erosion of Stalin's "two-camps" doctrine by the indications of a Soviet-American detente and increased stability in Europe, had a similar effect, the rationale for bloc solidarity now being less persuasive. But the loosening of Soviet control did not mean its abandonment. That there were residual limits to permissible diversity in Eastern Europe was demonstrated by the events in Czechoslovakia in 1968.

The Soviet invasion of Czechoslovakia on 21 August 1968 was forcible testimony to the continued existence of these limits, the rules had been broken but their content was not clear. 1956 appeared to have legitimized national roads to socialism so long as they remained within the bloc and adhered to one-party rule. Czechoslovakia's road to socialism in 1968 seemed to have understood these rules. In her foreign policy, she was "almost embarrassingly anxious to please the Soviet Union" and the draft party statutes of 10 August had explicitly disavowed factionalism in the party. But the same draft statutes would allow an outvoted group to maintain its minority views, a doctrine prejudicial to the leading role of the party. This incipient democratization

1 See ibid., pp.434-435.
3 Ibid., p.61. It has been pointed out that the abandonment of the leading role of the party together with the abolition of censorship were the two main points of criticism of Czech leaders contained in Soviet and Warsaw Pact charges. See Leopold Labedz, "Czechoslovakia and After", Survey, No. 69, (October 1968), p.8.
added to the liberalization which found one of its expressions in less rigorous censorship appeared to be the crucial factors provoking intervention. From the Soviet point of view, the danger of Czechoslovakia seemed to lie not in the 1956 problem of Hungarian defection from the bloc, but in the unsettling effects of a reformist and revisionist force within it.\(^2\)

The initial attempt by the Soviet Union to justify intervention as a response to a request for urgent assistance from Czechoslovakian party and government leaders was discredited by a statement from those leaders that the intervention occurred without their knowledge.\(^3\) The alternative and elaborate Soviet defence of her own and Allied action, which was to become famous as the "Brezhnev Doctrine", was contained in a Pravda article of 26 September 1968.\(^4\)

It set out to answer the allegations that the measures taken to "defend the socialist gains of the Czechoslovak people" contradicted "the Marxist-Leninist principle of sovereignty and the right of nations to self-determination". In its most outspoken passage the article argued:

There is no doubt that the peoples of the socialist countries and the Communist parties have and must have freedom to determine their country's path of development. However, any decision of theirs must damage neither socialism in their country, nor the fundamental

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1 The distinction between liberalization and democratization, between a measure of relaxation, reversible, and conceded from above and a less easily reversible measure allowing participation from below, is Philip Windsor's in Windsor and Roberts, op.cit., pp.9-10 and 26.


3 For the Soviet claim to an invitation, see Tass statement of 21 August 1968, text in Windsor and Roberts, op.cit., pp.176-177. For the Czechoslovak Praesidium Statement of the same date, see ibid., pp.174-175.

4 Excerpts from the article in Problems of Communism, Vol. XVII, No. 6, (Nov.-Dec. 1968), p.25, from which the quotations following are taken.
interests of the other socialist countries, nor the world-wide workers' movement, which is waging a struggle for socialism. This means that every Communist party is responsible not only to its own people but also to all the socialist countries and to the entire Communist movement. Whoever forgets this is placing sole emphasis on the autonomy and independence of Communist parties.... Each Communist party is free to apply the principles of Marxism-Leninism in its own country, but it cannot deviate from these principles.... In concrete terms this means primarily that no Communist party can fail to take into account in its activities such a decisive fact of our time as the struggle between the two antithetical social systems - capitalism and socialism....

The article went on to revive that old transformation of the principle of national self-determination into the principle of socialist self-determination which had been engineered by Lenin and Stalin in the years after the revolution. In the same way, the invasion was represented as a struggle on behalf of Czechoslovakian sovereignty against the export of counter-revolution from outside and against those who would deliver the country to the imperialists. The Allied soldiers were in Czechoslovakia to defend socialist gains, they were not interfering in the country's internal affairs.¹ Those who asserted the contrary were measuring events with the yardsticks of bourgeois law and "laws and the norms of law

¹ This protestation of non-intervention was a constant theme of Soviet statements of Czechoslovakia. It appeared, for example, in the First Moscow Communiqué of 27 August 1968 a day after the conclusion of the Soviet-Czechoslovak talks text in Windsor and Roberts, op.cit., pp.178-181. It also constituted Article 2 of the Soviet-Czechoslovak Treaty of 16 October 1968, text in ibid., pp.193-200.
are subordinated to the laws of the class struggle".  

In one sense there was little that was new about the Brezhnev Doctrine. The principles of sovereignty, independence and non-interference had always been set alongside the interests of international communism as defined by the Soviet Union. The emphasis on the latter in the Brezhnev Doctrine was an echo of the similar emphasis after Hungary in 1956 and during the second Soviet-Yugoslav dispute in 1958. What was new was the extent of the emphasis, the range of the injunction against damaging socialism. The freedom of socialist countries to determine their own paths of development meant freedom to conform with, but not to deviate from, Marxist-Leninist principles defined by the Soviet Union. Furthermore the determination of the content of the principle of sovereignty according to bloc allegiance in a divided world was made explicit in a way unfamiliar since Stalin's time. Here lay the kernel of the Soviet defence.

1 A year later, the Plenary Session of the Central Committee of the Czechoslovak Party, held 25-26 September 1969, endorsed the Brezhnev Doctrine in a resolution which admitted that: "The entry of the allied troops ... was motivated by the interests of the defence of socialism in Czechoslovakia against right-wing, anti-socialist and counter-revolutionary forces, by common interests in the security of the socialist camp, by the class interests of the workers' and communist movement. Under no circumstances was it an act of aggression against the people..." cited in Studies in Comparative Communism, Vol. 3, No. 1, (January 1970), p.111. Earlier in the year, Rude Pravo had also endorsed the Doctrine. It said that the presence of Soviet troops did not endanger Czechoslovakian sovereignty, nor did it interfere in her internal affairs. The troops were there for the defence of the western frontiers. The paper warned against "a purely abstract interpretation of sovereignty", and against a nationalistic interpretation of it, stressed its relatedness to membership in one of the world systems, and asked if the American version of sovereignty in Latin America or Asia were to be preferred. Cited in The Times, 24 June 1969.

2 This is not a formulation the Soviets would accept. Brezhnev has described the artificial opposition of the principle of proletarian internationalism to the principles of independence, sovereignty and equality as "bourgeois propaganda". See L.I. Brezhnev, "For a Greater Unity of Communists, For a Fresh Upsurge of the Anti-Imperialist Struggle", Speech to International Meeting of Communist and Workers' Parties in Moscow, 7 June 1969, (Moscow 1969), p.37.

3 See, e.g., O. Pavlov, "Proletarian Internationalism and Defence of Socialist Gains", International Affairs, (Moscow), October 1968), pp.11-16.
If a state whose sovereignty was defined by its membership of the socialist system was threatened by counter-revolution, then action in its defence did not deny its sovereignty, did not interfere in it, quite the contrary, it upheld it. Such action was not destructive but protective, not aggressive but defensive. In the light of this sort of analysis, developed logically from the false premise of the "export of counterrevolution from outside", the Soviet protestations of non-interference when she was clearly intervening in Czechoslovakian affairs become explicable.

The principle of non-intervention was a constantly repeated slogan purporting, among other principles, to govern the relations between socialist states. For the Eastern European states, it defined the perimeter of permissible independence from the Soviet Union, it marked the threshold between matters within their domestic competence and matters of international socialist concern. But the perimeter was neither stable nor clearly sign-posted. Its extent varied from the minimal independence allowed by Stalin to Khrushchev's legitimation of national roads to socialism. At one time it was drawn so as to include a Yugoslavia asserting sovereignty and independence within the bloc, at another it excluded that country for its over-emphasis of the same principles. The Sino-Soviet dispute expanded the area enclosed by the non-intervention principle, the Brezhnev Doctrine contracted it.

The Soviet doctrine of non-intervention as applied to socialist international relations was then relative rather than absolute in two senses. Understood as a discrete principle, it was cut across by competing imperatives of Soviet foreign policy embodied in phrases like "fraternal aid", "mutual assistance" and "proletarian internationalism". Understood as a principle applying to states but having a content determined by the system to which those states belonged, its application was subjected to the unpredictable demands of the system as defined by its dominant power, the Soviet Union.
As well as providing a somewhat elusive guide to the relations between socialist states, the principle of non-intervention was proclaimed as part of the formula - "peaceful co-existence" - which governed the relations between states with different social systems. In Soviet statements about foreign policy, the principle of peaceful co-existence is almost invariably connected with the name of Lenin.1 This confers ideological legitimation, while confusing the differences between Lenin's conception of peaceful co-existence as a temporary expedient and Khrushchev's conception of it as a sine qua non of contemporary international relations.2 Khrushchev's speech at the twentieth Party Congress placed a new emphasis on the requirement of peace over the requirement of revolution. For Khrushchev, there was no other way but that of peaceful co-existence, the alternative was "the most destructive war in history"; there was no third way.3 At the twenty-second Party Congress, Khrushchev stressed that peaceful co-existence was not an "unstable truce between wars" but the "mutual renunciation of war as a means of settling disputes between states".4 In his speech to the International Meeting of Communist and Workers' Parties in 1969, Brezhnev sounded like Khrushchev when he pointed out that peaceful co-existence "is not reduced simply to the absence of war between socialist and capitalist states" but that it "opened up broader possibilities for

1 The origin of the idea of peaceful co-existence has been variously attributed to Trotsky, Lenin, Chicherin and Stalin. Franklyn Griffiths argues that the slogan apparently began with Trotsky on 22 November 1917 as "peaceful living together", that it was used in various contexts by Chicherin, Lenin and Stalin and that it received official sanction in December 1927 as "peaceful co-existence" in "Origins of Peaceful Coexistence, A Historical Note", Survey, No. 50, (January 1964), pp.195-196.


expanding relations between them". Among the latter were negotiated settlement of international problems, the coordination of measures for reducing the war danger and the expansion of economic, trade, scientific, technical and cultural ties.²

The renunciation of war in the doctrine of peaceful coexistence does not, however, mean the renunciation of conflict. The struggle between the proletariat and the aggressive forces of imperialism would continue as an "intense economic, political and ideological struggle".³ As an article in Pravda put it in 1962:

Peaceful coexistence does not exclude revolutionary changes in society but presupposes them, does not slow down the world revolutionary process but accelerates it, does not preserve the capitalist order but deepens the disintegration and collapse of imperialism...⁴

Moreover, after Khrushchev's recognition of the inevitability of wars of national liberation in 1961, support for them was included under the rubric of peaceful coexistence. National liberation and social revolutions occurred within states, they were caused by internal factors, they could not serve as an obstacle to peaceful coexistence between states.⁵

In the context of the national liberation movement and the young national states, Brezhnev attached "great importance to contacts and ties between the Communist Parties and the revolutionary-democratic parties in the developing countries ..."
our fellow-fighters in the struggle against imperialism". The Soviet Union, he said, "renders firm political support and moral and material help to the peoples fighting for liberation".

Thus peaceful coexistence was a canvas or a series of canvasses upon which was painted the one fixed image of the abolition of wars between states, the area remaining was filled up with the perceived imperatives of the moment of creation. The principle of non-intervention was a recurrent theme, the struggle against capitalism was to be won without resort to armed interference in the internal affairs of other states. But support for wars of national liberation, implying intervention, was often included on the same peaceful coexistence canvas as the non-intervention principle. Seemingly, the Soviet Union wanted, simultaneously, the avoidance of potentially disastrous war and the revolutionary spoils necessary to the esteem of the first revolutionary power.

The brushwork was perhaps erratic because the painters' conception of their subject was unclear. Peaceful coexistence might be a factual statement; states with different social systems coexist and for the most part they have done so peacefully. Or it might be an aspiration, a depiction of a desirable future condition of international relations. Again it might, in Khruschev's conception, be an objective necessity of contemporary international politics, about which states have no choice if they wish to survive. Or it might define international law "as the international code

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1 Brezhnev, op.cit., p.27. Brezhnev boasted eighteen such contacts and ties between the CPSU and national-democratic parties.

2 Ibid., p.51.

3 For the attempted resolution of this apparent contradiction by Soviet international law, see below, section VII.


of peaceful coexistence".\(^1\) It is to the Soviet international law of non-intervention that the next section will address itself.

VII

Soviet international lawyers, like their bourgeois counterparts, derive the principle of non-intervention from the principle of state sovereignty.\(^2\) Unlike those counterparts, they hold that its prohibition of intervention is absolute, that it permits no exceptions.\(^3\) Not only are aggressive wars proscribed, but also indirect, economic and ideological aggression, intervention arising from unequal treaties on military aid and from the establishment of aggressive military blocs which are "used as a screen for gross interference in internal affairs".\(^4\) The ability of Soviet international lawyers to maintain such a doctrine without flinching is explicable in terms of what has been described as the standard Soviet definition of intervention:

> Intervention (is) the armed invasion or interference of one or several capitalist states in the internal affairs of another state, aimed at the suppression of a revolution, seizure of territory, acquisition of special privileges, establishing its

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\(^1\) Y. Korovin, "International Law Today", \textit{International Affairs}, (Moscow), (July 1961), pp.18-21.


\(^3\) See A. Piradov, "The Principle of Non-Interference in the Modern World", \textit{International Affairs}, (Moscow), January 1966), pp.53-58. It is absolute in another sense, too, a sense akin to Mountague Bernard's formulation of the principle (see above Chapter 2, pp.44-46). In spite of the arch-Positivity of Soviet international law, Levin can assert that the imperialist crimes of intervention "could not shake the legal force of the non-interference principle as one of the cornerstones of international relations". This is law through deduction from first principles not \textit{law from} state practice and agreement. See "The Non-Interference Principle Today", \textit{International Affairs}, (Moscow), (November 1966), p.21.

\(^4\) Piradov, \textit{op.cit.}, pp.55-57.
domination, etc...

If intervention were the exclusive sin of the capitalists, then it made sense for communists to assert an absolute principle of non-intervention.

The rule of non-intervention forms an integral part of each of the two categories of Soviet international law, the law of the "Socialist Commonwealth" and the law pertaining to the relations of states with different social systems, which were developed as a response to Khrushchev's proclamation of the political principles of socialist internationalism and peaceful coexistence. Socialist or proletarian internationalism is the guiding principle of the international law of the socialist states. This principle encompasses the principles of full equality of states, respect for territorial integrity, sovereignty and independence and non-intervention in internal affairs. But what sets the principle of socialist internationalism apart from that of peaceful coexistence, what provides its claim to the foundation of norms of a "new, higher, socialist type", is the "community of interests and goals" between the socialist states, "the close bonds of international socialist solidarity". The principle of non-intervention shared in,

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2 See Kozhevnikov, *op.cit.*, p.20. Socialist internationalism and proletarian internationalism are frequently used as interchangeable terms, but Jangotch argues, from Soviet texts, that proletarian internationalism applies to relations between the CPSU and communist parties and working people in all countries, but socialist internationalism applies only to the higher order of relations among ruling-party states. N. Jangotch, *Soviet - East European Dialogue*, (Stanford, 1968), pp.94-95.

3 G.I. Tunkin, "The 22nd Congress of the CPSU and the Tasks of the Soviet Science of International Law", *Soviet Law and Government*, (Winter 1962/1963), cited in Ramundo, *op.cit.*, p.6. See also S. Sanakoyev, "The Basis of the Relations between the Socialist Countries", *International Affairs*, (Moscow), (July, 1958), pp.23-33. These higher principles were not always formulated in this way, sometimes the preferred expression was "mutual assistance" or "the indestructible friendship and fraternal cooperation of the socialist countries". See E. Korovin, "Proletarian Internationalism in World Affairs", *International Affairs*, (Moscow), (February 1958), pp.25 and 29.
"harmoniously combined with" and was defined by the requirements of socialist internationalism:

The independence of states and nations in the socialist commonwealth is dialectically connected with fraternal mutual assistance, socialist international division of labour, broad exchange of experience in economic and state organization, the coordination of national economic plans and specialization in production. Similar measures cannot be effected in the capitalist world. All of this imparts special features to the principle of non-intervention, giving it new content which goes beyond the general democratic nature of the principles.¹

The new content of socialist internationalism consists not merely of legal principles and rules, but rules "of a much higher type compared with general international law - socialist international law principles and rules".² If the non-intervention principle had meaning only in the context of these higher principles, then they clearly provided a legitimation for escape from the strictures of the principle. The rule of non-intervention as a mere legal principle must give way before a doctrine which asserts common interests and aspirations above the law.³

Inferior to the lofty principle of socialist internationalism, but still claimed as a new and progressive principle of Soviet international law, is that of peaceful coexistence between states with different social systems. Its explication as a legal formulation was borrowed from the Pancha Shila, the five principles contained in the Sino-Indian Treaty on Tibet of April 1954. Soviet international law adopted the principles of mutual respect for territorial integrity and sovereignty, non-aggression, non-intervention, equality and mutual advantage as the content of the principle

of peaceful coexistence.¹ At the same time as proclaiming the principle of non-intervention as part of peaceful coexistence, Soviet international law affirms the legitimacy of support for just wars of national liberation. "Peaceful coexistence means abstention from armed force in relations between states so long as wars of national liberation and the struggle against aggression and colonialism are not involved."² That the two doctrines can be held together is facilitated by the Soviet definition of sovereignty. As well as that of state sovereignty, Soviet international law recognizes a right to national sovereignty, a right of each nation to self-determination and independent development whether or not it has its own statehood.³ The principle of non-intervention, far from being a barrier against support for such entities, is extended to them, so that any action against them by the states within which the rebellion is taking place, is rendered interventionary.⁴ Support for the armed struggle against colonialism does not contradict the concept of peaceful coexistence, it is an affirmation of it, because it upholds "one of the basic principles of peaceful coexistence - the right of all peoples to order their own life as they see

¹ Kozhevnikov, op.cit., p.16. It is not always clear whether these five principles are the rules of peaceful coexistence, or rules espoused in addition to the principle of peaceful coexistence and especially important to its realization. The version in the text is the formulation of Kozhevnikov and for him the foundation of peaceful coexistence is the unexceptionable one of "the principles and rules of international law which are generally recognized", ibid., p.17. Kulski calls the five principles "the slogans for peaceful coexistence", and in Soviet legal writing the juridical content of peaceful coexistence is usually taken to consist of the five principles. W.W. Kulski, Peaceful Coexistence, (Chicago, 1959), p.137.


³ Kozhevnikov, International Law, (Moscow, n.d.), p.98.

⁴ See Piradov, (op.cit., p.58), for the view that the principle of non-intervention extends to peoples and nations fighting for the exercise of their right to self-determination.
fit, to be masters in their own house".  

In its more extreme manifestations, the Soviet concept of sovereignty goes beyond the consecration of the principle of self-determination. Sovereignty has been defined as the "inalienable right of nations to build their social and state life on the most progressive principles" and as the "right of nations to throw off colonial servitude". In this mode, it is a right apprehended only in relation to the Soviet state, other "democratic" states and the oppressed and exploited. It does not extend to a regime brought about by aggression or constantly threatening it. Colonial rule is just such a regime and so participation in the struggle against it is defence against aggression. The rationale is counter-intervention not intervention, a rationale made possible by a conception of sovereignty which posits not reciprocal respect for the principle, but a right whose content is unilaterally determined. But if the manipulation of the notion of sovereignty is insufficient legal justification for supporting national-liberation wars, then such support may always be taken to arise from the principle of proletarian internationalism, again a remedy plucked from above the law.

The proclamation of non-intervention, a bourgeois principle made progressive by the touch of the Soviet Union,

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4 Loc.cit.

5 See Ramundo, Peaceful Coexistence, p.123

6 For justification of this sort, see V. Trukhanovsky, "Proletarian Internationalism and Peaceful Coexistence", International Affairs, (Moscow), (August 1966), p.56.
reflects an increasing Soviet perception of international relations as the relations between states. This is not to suggest, however, that the vague aspirations contained in the slogans of socialist internationalism and peaceful coexistence add anything concrete to the body of international law. Moreover, the existence of "Marxism-Leninism" as a corpus of legitimation for Soviet action above international law, makes the latter an uncertain guide to Soviet action.

VII

The principle of non-intervention is now a familiar part of Soviet doctrine about international relations. Its primary function is to support the foreign policy of the Soviet Union. In the fulfilment of this function, the content of the principle changes with time and circumstance and the nature of its proclamation varies with the market at which it is directed. From the first years of the revolution it has been deployed as a legal barrier against outside intervention in the Soviet Union and later anywhere in the communist world. Apart from this defensive function, it was used to buttress Soviet initiatives in foreign policy. As a formula of socialist international relations, it gave quasi-legal expression to the area of domestic competence allowed to the Eastern European states. In the international relations of peaceful coexistence, it served to demonstrate the difference between the principles guiding the action of the Soviet Union and the aggressive imperialism of the capitalist powers. As part of peaceful coexistence, the slogan of non-intervention was conspicuously attributed to its inventors in the underdeveloped world, establishing thereby the Soviet credentials as friend of the new states not exploiter.

For non-intervention as a "bourgeois democratic principle which has become more progressive" see Ramundo, The Soviet (Socialist) Theory of International Law, p.25. For the upgrading of the role of the state in recent Soviet thought on international relations, see W. Zimmerman, Soviet Perspectives on International Relations, 1956-1967, (Princeton 1969), p.80.
Its value as a slogan apart, in the Soviet view, the rule of non-intervention has a genuine content; non-intervention is the desirable situation in relations between the socialist countries themselves, and between them and the capitalist states. But there are other desirable ends, the pursuit of which is prior to the lesser principle of non-intervention, and in terms of which the principle tends to be defined. In socialist international relations, relations between parties are held to be of a different quality from relations between states, and the principle of non-intervention has to be understood against the background of the wider principles of socialist internationalism. In relations between states with different social systems, the principle of non-intervention as part of peaceful coexistence might be inferior to the principles of proletarian internationalism or international proletarian solidarity. It will be part of the task of the next chapter to examine the response of the United States to the doctrine and practice of the Soviet Union with respect to the principle of non-intervention.
Chapter 6
The Principle of Non-Intervention in Contemporary American Doctrine and Practice

By the end of the Second World War, the United States had repudiated isolationism, a repudiation symbolized by the much-vaunted conversion of Senator Vandenberg. In August 1943, he had been the motive force in the drawing-up of the Mackinac Charter which pledged Republicans to "responsible participation by the United States in post-war cooperative organization among sovereign nations to prevent military aggression and to attain permanent peace with organized justice in a free world". In his speech of 10 January 1945, Vandenberg announced that he did not believe that "any nation hereafter can immunize itself by its own exclusive action". The foreign policy debate was now to be about the nature and extent of American participation in world politics and not about the desirability of participation per se. This chapter will examine the fate of the doctrine of non-intervention in a United States foreign policy, which, having had involvement in world politics forced upon it, could no longer afford the principle of non-intervention a comfortable niche in the broader doctrine of isolationism. In Europe, in Latin America, in the Middle East and in the Far East, the actions and perceived intentions of "international communism" modified the American tradition of non-intervention as it had variously applied to these areas.

3Jones, loc.cit.
the principle of non-intervention. Indeed, much American foreign policy energy was spent, during and after the war, in attempts to build a new international politics of co-operation on the basis of the United Nations, a vision which eschewed the old order of spheres of influence, balance of power and exclusive alliances. Acceptance by the world of the new order seemed to be the price demanded by the United States for her abandonment of isolationism and assumption of responsibility in international relations. The history of United States foreign policy from Roosevelt's death to Truman's message to Congress of 12 March 1947 announcing aid to Greece and Turkey, is the history of the souring of the vision of a new order with the increased perception of Soviet intransigence. As the vision was eclipsed, so the doctrine of non-intervention, which had its roots in reflection about American relations with Europe, was modified with the apprehension of a change in the nature of those relations.

The American image of the Soviet Union as an intransigent and self-seeking power, having to be cajoled into the American pattern of international co-operation, was formed early in the Truman Presidency. The democratic institutions and free elections, prescribed for Poland and the Eastern European states at Yalta, meant something different in Moscow from the Washington interpretation. That the American interpretation was not realized could be taken as evidence of a Soviet desire to dominate Eastern Europe and of Soviet infidelity to international agreements. Suspicion about Soviet motives was reinforced by her failure to withdraw troops from Iran by the agreed date in March 1946, by her pressure on Turkey for a change.


of the regime governing the Straits and by communist aid to the insurgents in the Greek civil war. As early as August 1945, after the Potsdam Conference, Truman had come to the conclusion that the Russians were planning world conquest.\(^1\) In November, Secretary of the Navy Forrestal noted in his diary a summary of State Department despatches which referred to Soviet high-handedness, unilateral action and aggressive pressure everywhere, from Western Europe to Korea.\(^2\) With the predictions of the imminent collapse of Greece early in 1947, the signs of the previous two years were pieced together to form a picture of an aggressive Soviet Union about to break out unless checked. At a White House meeting on 27 February, Acheson spoke of the Soviet Union's most persistent and ambitious efforts to encircle Turkey and Germany and thus lay three continents open to Soviet domination.\(^3\)

The Soviet aim, in Acheson's view, was the control of the eastern Mediterranean and the Middle East and if this aim were achieved further Soviet penetration would be limitless.\(^4\)

Having built an image of an aggressive Soviet Union the United States responded to it in the only manner considered appropriate. From the American Embassy in Moscow in 1945, Harriman was advocating a "tough" policy with Russia.\(^5\) On April 23, Truman followed this advice

\(^1\) According to ibid., p.342. Two months later, as Truman records it in his memoirs, he linked together the Soviet activity in Iran and the threat of a communist coup in Greece and surmised that "this began to look like a giant pincers movement against the oil-rich areas of the Near East and the warm water ports of the Mediterranean", ibid., p.460.


\(^3\) Jones, op.cit., p.139.

\(^4\) Ibid., p.140. See this work generally for the crisis atmosphere prevailing in Washington at this time and the widespread view that a Russian "break-through" was imminent.

\(^5\) See The Forrestal Diaries, pp.55-57. For Harriman's special visit to Washington in April to ensure that Truman understood that Stalin was breaking his agreements, see Truman, op.cit., Vol.I, pp.72-75.
by speaking to Molotov on the Polish question in a fashion to which Molotov was unaccustomed. In a memorandum read to Secretary of State Byrnes on 5 January 1946, Truman took the view that "how many divisions have you?" was the only language the Russians understood and declared himself "tired of babying the Soviets". On 5 March 1946, Truman sponsored Churchill's "Iron Curtain" platform at Fulton, Missouri. Strong diplomatic pressure was brought to bear on the Soviet Union to remove her troops from Iran and a similar response to Soviet policy towards Turkey was accompanied by the sending of a gunboat to the eastern Mediterranean. It was not then surprising that the United States should take up the burden which Britain could no longer bear in Greece. What was surprising was the nature and extent of the doctrine formulated to justify the action.

The note informing the American government that Britain could no longer afford to support the governments of Turkey and Greece was delivered on 21 February 1947. On the previous day, a cable had arrived from the three American officials investigating the situation in Greece declaring Greece to be on the verge of a total collapse which would mean a take-over by armed communist bands. American aid was offered, but with the offering the United States asked what was to her the central question: "Which of the two systems currently offered the world is to survive?". Truman's message to Congress announcing aid spelled out the problem:

At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one.

1 Ibid., p.85.
2 Ibid., pp.491-493.
3 Truman, Memoirs, Vol.2, Years of Trial and Hope, 1946-1953, p.100.
4 Jones, op.cit., p.131.
5 Forrestal's words of 5 March 1947 in The Forrestal Diaries, p.245.
One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.

The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms.

I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.¹

The Truman Doctrine received its theoretical imprimatur in Kennan's strategy of containment.² Kennan saw the political action of the Soviet Union as a "fluid stream which moves constantly, wherever it is permitted to move, toward a given goal", but the stream accepted and accommodated itself to unassailable barriers. The answer for the West was to contain Soviet pressure "by the adroit and vigilant application of counter-force at a series of constantly shifting geographical and political points, corresponding to the shifts and maneuvers of Soviet policy". The fruit which this policy might bear for the West, if pursued with sufficient strength and resourcefulness, was the internal decay of Soviet power. Truman depicted a world of two systems and committed the United States to the defence of one of them, Kennan rationalized this commitment in a theory which posited the importance of drawing and holding the line against communism. If the doctrine of containment, which was to become a dominant myth of American foreign policy, was the American acceptance of the principle of the balance of power,


²In the "X" article on "The Sources of Soviet Conduct", Foreign Affairs, (July, 1947), reprinted in George F. Kennan, American Diplomacy 1900-1950, (NY, 1952), pp.89-106, from which the quotations following are taken.
it was an extravagant interpretation of that principle.\footnote{For a critique of Kennan's doctrine and an alternative suggestion for United States foreign policy within the politics of balance, see Walter Lippmann, The Cold War, (NY, 1947). The suggestion that containment became a dominant myth of American foreign policy does not mean that it excluded other, conflicting or complementary, myths, such as Acheson's "negotiations from strength" or Dulles's "containment plus" or "liberation". Nor did Kennan remain convinced of his theory of internal change in the Soviet Union. See Coral Bell, Negotiations from Strength, (London, 1962), pp.25-34.}

Intervention was foreshadowed in the theory of containment as its instrument if the line were under threat.\footnote{See H. Dinerstein, Intervention Against Communism, (Baltimore, 1967), foreword by R. Osgood, pp.v-vi.} But it would be counter-intervention, the application of counter-force to force, action against a movement first and on behalf of one only second, to uphold rather than undermine the independence of states. The Truman Doctrine was even, in Rostow's revealing phrase, part of an American "counteroffensive", not merely holding the line but doing ideological battle behind it, yet in the American view this was a response to action not its initiation.\footnote{W.W. Rostow has the Truman Doctrine as the beginning of the American counter-offensive in his The United States in the World Arena, (NY, 1960), pp.207-208. James P. Warburg, on the other hand, speaks of "Truman's offensive" and "Stalin's counter-offensive" culminating in the foundation of the Cominform in October 1947. The United States in the Postwar World, (London, 1966), pp.43-63. This is entirely plausible, particularly from the Soviet viewpoint and reflects the manner of the American acceptance of the Soviet challenge; but still to the United States, the Truman Doctrine was the acceptance of a challenge not the issue of one.}

The American response to revolution was itself revolutionary. The American championship of the new order of the United Nations did not bring power politics to an end, but the American perception of this truth did not persuade her to return to the old methods of conducting
international politics. Confronting Soviet power everywhere, interpreting the motive of that power as an ideological one, accepting the ideological challenge and responding in kind, the United States turned the relations between states into a struggle about ways of life within them. The Monroe Doctrine had been concerned about the American way of life and the exclusion from it of the old European order and had implied counter-intervention to maintain the exclusion. The Truman Doctrine committed the United States to the logic of counter-intervention, not only in the Americas, but all over the world.

II

The spectre of international communism, of the intrusion of an alien system into the American hemisphere, was to lead to a reaffirmation of the Monroe Doctrine by the United States and to the formal acceptance of the doctrine as a hemispheric principle by all members of the inter-American system. But the building of the foundations of hemispheric solidarity had begun in the years before the Second World War and accelerated with its outbreak. It was not at that time a response to the threat of communism. The Habana Meeting of Foreign Ministers in 1940 declared "that any attempt on the part of a non-American State against the integrity or inviolability of the territory, the sovereignty or political independence of an American State shall be considered as an act of aggression against the States which sign this declaration".¹

When war came to the hemisphere after Pearl Harbour, the practice of the idea of hemispheric solidarity transformed the policy of the Good Neighbour into the policy of the Good Partner, the policy of "live and let live" changed into "one for all and all for one".² A


²Roosevelt's words quoted in D.M. Dozer, Are We Good Neighbors?, (Gainsville, Florida, 1959), pp.112-113.
partnership in which the United States was a very senior partner was different from mere neighbourhood, and the United States requirements for the prosecution of the war prejudiced that scrupulous adherence to the principle of non-intervention which had characterized the Latin American policy of the Roosevelt administration in the years before the war. A new awareness of the significance, for the other American states, of United States action or non-action, raised the question of whether her influence, which existed willynilly, should not be employed as a force for democracy and against dictatorship. Such a policy would have the United States intervening, not merely to hold the ring against undesirable forces from outside, thereby preserving a negative hemispheric solidarity by exclusion, but more to infuse that hemispheric solidarity with a positive ideological oneness.

The United States government appeared, for a time, to have adopted this doctrine. In October 1944, a State Department instruction to embassies in the other American states referred to "a greater affinity and a warmer friendship for those governments which rest upon the periodically and freely expressed consent of the governed". In February 1946, the State Department produced a memorandum on "The Argentine Situation" disapproving of the "fascist-totalitarian practices" of the Argentine government and looking forward to its defeat in the forthcoming elections. This allowed that government to mount a victorious election campaign on the slogan "Braden or Peron". Earlier, Secretary of State Byrnes had stated that "the policy of non-intervention in internal affairs does not mean the approval of local tyranny". Much was made of the Good Neighbor policy as

1 Cited in ibid., p.213.
2 Peron was the effective head of the government, Braden the U.S. Ambassador in Buenos Aires. Ibid., p.215.
"the application of democracy to international affairs". 1 But the most explicit plea for a democratic hemisphere came from Uruguay, not from the United States. The Uruguayan foreign minister, Larreta, in a note to the other American republics of 22 November 1945, urged that "parallelism between democracy and peace must constitute a strict rule of action in inter-American policy". 2 The war, Larreta argued, had demonstrated that the concept of the interdependence of democracy and peace had "acquired the force of an absolute truth". The principle of non-intervention, he said, was not a shield behind which "crime may be perpetrated, law may be violated, agents and forces of the Axis may be sheltered, and binding obligations may be circumvented" and, Larreta argued, the legitimacy of multilateral action against such situations was not obviated by the rule of non-intervention. In reply to the Uruguayan note, Secretary of State Byrnes appeared to accept the Larreta Doctrine, citing parts of it with approval, but the parts which were to receive the warmest United States patronage were the advocacy of multilateral action and the taking of such action against threats to security such as the entrenchment of "Nazi-Fascist ideology in the Americas". 3 If opposition to such oppression and support for democracy were but different aspects of the

1"The Good Neighbor Policy - An Application of Democracy to International Affairs", address by Truman, 3 March 1947, in D.S.B., Vol.XVI, No.402, (16 March 1947), pp.498-499. This vague phrase could be stretched from the one extreme of upholding non-intervention as a democratic principle to the other justifying intervention for democracy.

2Note published in D.S.B., Vol.XIII, No.335, (25 November 1945), pp.864-866, from which the following quotations are taken.

same policy, nevertheless the United States chose to make more of action in response to oppression than of action for the promotion of democracy. The principle of non-intervention was still proclaimed and it was to apply with particular force to unilateral intervention. Should competing imperatives be deemed prior to the rule, then the proper response was the joint action of the American republics.

This combination of a rule of non-intervention with exceptions justifying collective action was formally expressed in the Inter-American Treaty of Reciprocal Assistance signed at Rio in 1947 and in the Charter of the Organization of American States signed at Bogotá in 1948. Article 15 of the Charter seemed to prohibit intervention absolutely, but its range was narrowed by the statement in Article 19 that measures adopted for the maintenance of peace and security in accordance with existing treaties did not constitute a violation of articles prohibiting intervention.\(^1\) Articles 3 and 6 of the Rio Treaty constituted the relevant exceptions. In Article 3, the parties agreed that an armed attack on one American state was to be considered an attack on all and each one undertook to assist in meeting the attack.\(^2\) Article 6 went further to call for a meeting of the Organ of Consultation to agree on the measures to be taken "if the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an aggression which is not an armed attack". The peace and

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1. Article 15 of the O.A.S. Charter reads: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements".

2. For the view that it was official American doctrine that an internal revolution, aided and abetted from outside and involving the use of armed force, constituted an armed attack, see A.A. Berle, Latin America - Diplomacy and Reality, (NY, 1962), pp.95-96.
security of the hemisphere was now, at least formally, the responsibility of all the American republics and not just of the United States.

The assumption that democracy within American states was a necessary condition for peace between them informed the framing of both the Rio Treaty and the O.A.S. Charter. It was part of the idea of continental solidarity. Article 5(d) of the Charter "reaffirmed" the principle that "the solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy". More an aspiration than an operative rule, this principle did not presage intervention on the sole ground that an American regime was undemocratic. But the Bogotá Conference was concerned with hostile political movements having their origin outside the hemisphere; "the political activity of international communism" was now condemned and played the role in continental solidarity once filled by "Nazi-Fascist ideology". The Fourth Meeting of Consultation of Ministers of Foreign Affairs of American States in 1951 spoke of vigorous preparation of military planning for the common defence against the aggressive activities of international communism.

1 Perhaps all that could be done on the basis of this principle alone was to exclude the offending state from the inter-American system as happened to Cuba in 1962.

2 The condemnation of communism was contained in Resolution 32 of the Final Act of the Bogotá Conference. The Resolution declared, in part, that "by its anti-democratic nature and its interventionist tendency, the political activity of international communism or any other totalitarian doctrine is incompatible with the concept of American freedom, which rests upon two undeniable postulates: the dignity of man as an individual and the sovereignty of the nation as a state". Cited in U.S. Department of State, Peace in the Americas: A Résumé of Measures undertaken through the O.A.S. to preserve Peace, Publication 3964, (Washington, October 1950), pp.25-26.

The official reaction of the United States to the perceived threat of an extension of communism to the Americas was spelled out by Assistant Secretary Miller in 1950. Any such attempt at extension, in any portion of the hemisphere, Miller said, would be considered "dangerous to our peace and safety". The actions of the United States during the era of protective intervention had "accomplished an objective equally vital to all states of the Western Hemisphere". The difference in 1950 was that the objective would be pursued jointly and not by the United States alone. The doctrine of non-intervention had never proscribed "the assumption by the organized community of a legitimate concern with any circumstances that threatened the common welfare". Such collective action did not represent intervention, rather it was "the corollary of nonintervention".

Miller's statement of the position of the United States was generalized into an inter-American doctrine and brought within the meaning of Article 6 of the Rio Treaty at the Tenth Inter-American Conference at Caracas in 1954. Secretary of State Dulles supervised the passing of a resolution which declared:

That the domination or control of the political institutions of any American State by the international communist movement, extending to this hemisphere the political system of an extracontinental power, would constitute a threat to the sovereignty and political independence of the American States, endangering the peace of America, and would call for a Meeting of Consultation to consider the adoption of appropriate action in accordance with existing treaties.


The resolution also stated, again on the initiative of Dulles, that the Declaration was made in relation to dangers originating outside the hemisphere and was "designed to protect and not to impair the inalienable right of each American State freely to choose its own form of government".\(^1\)

The passage of the resolution, with the one dissenting vote of Guatemala, was a triumph for Dulles. Though Dulles denied it at Caracas, it seemed that the triumph was required in order to legitimize action against the Arbenz regime in Guatemala which not only tolerated the participation of communists in politics, but had also given them important posts in the administration.\(^2\) Between the Caracas Conference in March and the overthrow of Arbenz in June, the United States made much of communist influence in Guatemala and the threat it presented to the hemisphere.\(^3\) As it happened, the successful ouster of Arbenz by Castillo Armas made action according to the American doctrine of collective response unnecessary, but not before a Soviet veto in the Security Council had prevented reference of the matter to the O.A.S. and the United States had denied the competence of the United Nations.\(^4\) Armas' success was, then, indebted to the impotence of international organization. It owed more to the assistance of the C.I.A., both in the training and equipment of Armas' men in Honduras and Nicaragua and in the execution of the operation.\(^5\)

\(^1\) Loc. cit.


\(^4\) Taylor, *op.cit.* , pp.798-805.

It seemed that the doctrine of collective response had fallen at the first hurdle, the United States holding that aspect of the Caracas Declaration to be inferior to its anti-communist aspect. When, too late for it to be effective, a meeting of the O.A.S. Council was convened, the representative of the United States took the opportunity to paint a dramatic picture of the relentless advance of international communism in the Balkans, in Korea, in South East Asia and now an attack on the Americas. Dulles spoke of the choice of Guatemala as a "nesting place" for international communism in the Americas, which constituted a direct challenge to the Monroe Doctrine; what concerned him was "not the power of the Arbenz government...but the power behind it". Communism in Guatemala was not distinguished from the objectives of international communism, and the United States intervened subversively in Guatemala to overthrow a regime tarred with the brush of the international movement. Officially, the United States characterized the Guatemalan affair as a civil war in which Guatemalan patriots arose to challenge the communist leadership. Officially, then, the United States did not need to call upon the Caracas Declaration; unofficially she violated it by taking unilateral action in defence of the Monroe Doctrine.  

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4 That the Monroe Doctrine remained the doctrinal bulwark against intervention from outside the hemisphere was made clear by Dulles in a News Conference Statement, "The Declaration of Caracas and the Monroe Doctrine", 16 March 1954, Intervention of International Communism in Guatemala, pp.10-11.
In Cuba, in 1961, the United States followed the precedent established in Guatemala, of unilateral intervention against the menace of communism in the Western Hemisphere. Castro's democratic revolution had been "betrayed" to the communists, American property in Cuba was expropriated in 1960 and Castro had turned Cuba away from the United States to forge political and economic links with the Soviet Union. The Eisenhower Administration, in its last year of office, made the decision to prepare the ground for an invasion of Cuba by anti-Castro exiles, and the C.I.A. was directing the preparation in Guatemala after the March 1960 decision. From Eisenhower, Kennedy inherited the invasion force and the perception of Castro's regime as an outwork of international communism. Kennedy showed little sign of disapproval of his inheritance. "The United States", he said, "would never permit the establishment of a regime dominated by international communism in the Western Hemisphere". Kennedy had taken up an extreme anti-Castro position in the campaign for the Presidency, a position which seemed to spring as much from personal antipathy for Castro as from its vote-catching potential.

Beyond presidential idiosyncrasy, the conversion to communism of a country so long considered vital to the security of the United States seemed to make a response in Cuba even more important than it had been in Guatemala.


2 For an account of the build-up to the Bay of Pigs, see Wise and Ross, *op.cit.*, pp. 23-50.


secure than it had been in Guatemala and Castro's revolution was more of a beacon to Latin American radicals than its tame counterpart in Guatemala. Nor was Castro content merely to preach by example; his attempts to create the revolution in other American republics seemed to give the United States an excuse for action against him for the matter was now properly, or improperly, international and not protected by the rule of non-intervention. A State Department White Paper summarized these pressures into a "grave and urgent challenge" which resulted from the fact that the leaders of the revolutionary regime betrayed their own revolution, delivered that revolution into the hands of powers alien to the hemisphere, and transformed it into an instrument employed with calculated effect to suppress the rekindled hopes of the Cuban people for democracy and to intervene in the internal affairs of other American Republics. Action was not only required but required urgently. The exile brigade was anxious to move, its host - the Guatemalan government - was under domestic pressure to make it move and Russian military assistance to Castro would soon make his overthrow a technical impossibility. In April, the operation began. It was a "perfect failure".

Before the operation, Kennedy, in an announcement which radically narrowed the scope of the doctrine of non-intervention, said that "there will not be, under any conditions, an intervention in Cuba by the United States Armed Forces". In terms of this doctrine, which excluded the possibility of Americans fighting Cubans,

1Ibid., p.165.

2On Castro's attempts to create revolution in other American republics, see T. Szulc, "Exporting the Cuban Revolution", in Plank, op.cit., pp.69-97.

3Cited in Draper, op.cit., pp.92-93.

4Sorensen, op.cit., p.329. See also Draper, op.cit., p.99.

5Draper, op.cit., p.59.

it was just possible for Kennedy to assert that "the basic issue in Cuba is not one between the United States and Cuba. It is between the Cubans themselves". But this assertion, by choosing to emphasize the absence of American combat forces, conveniently neglected another possible emphasis on the fact that the exile brigade was "organized, trained, armed, transported and directed" by the C.I.A.

After the operation, Kennedy introduced another modification of the doctrine of non-intervention, not necessarily narrowing its scope, but questioning that collective response to its violation which had become part of the doctrine in the Rio and Bogotá treaties:

Any unilateral American intervention, in the absence of an external attack upon ourselves or an ally, would have been contrary to our traditions and to our international obligations. But let the record show that our restraint is not inexhaustible. Should it ever appear that the inter-American doctrine of noninterference merely conceals or excuses a policy of nonaction - if the nations of this hemisphere should fail to meet their commitments against outside Communist penetration - then I want it clearly understood that this Government will not hesitate in meeting its primary obligations, which are the security of our Nation.

This was, perhaps, brave speaking after a disastrous intervention; perhaps again it was merely Dulles' Guatemalan policy made doctrinally explicit; but Kennedy's reaction to the Cuban situation made inroads into the twin pillars of the inter-American principle of non-intervention. The absolute prohibition of intervention

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1 Ibid., p.259.
2 Sorensen, op.cit., p.327.
3 "The Lessons of Cuba", address of 20 April 1961, D.S.B., Vol.XLIV, No.1141, (8 May 1961), pp.659-661. Three days earlier, Secretary Rusk had, however, said that "We shall work together with other governments of the hemisphere to meet efforts by this [communist] conspiracy to extend its penetration. News Conference 17 April, ibid., pp.686-690.
was now reduced to the exclusion of the commitment of armed forces and the principle of collective action to uphold the rule was held to be inferior to an interpretation by the United States of when "the nations of this hemisphere had failed to meet their commitments against outside Communist penetration".

President Johnson's reaction to the revolution in the Dominican Republic in April 1965 breached Kennedy's Cuban doctrine of abstention from commitment of American armed forces, but it bore out Kennedy's other declaration "that our restraint is not inexhaustible". The democratically elected government of Juan Bosch had been overthrown in September 1963 in a military coup which resulted in a new government under Reid Cabral. On 24 April 1965, a rebellion led by pro-Bosch "constitutionalist" military officers was successful in overthrowing Cabral, but failed to gain the support of the majority of the armed forces. This majority opposed the rebellion and was soon dubbed "loyalist". Conflict between the two groups for the Cabral succession continued, their fortunes fluctuating. On the 28th, American forces landed and were subsequently heavily reinforced until the establishment of an inter-American force enabled some of them to be withdrawn.

Johnson first justified the intervention on the ground that it was necessary to protect American lives, the United States having been informed by "military authorities" in the Dominican Republic that these were in danger. 2

1 "Loyal" to whom or what was not clear since they were anti-Bosch and did not seek a return of Cabral.

2 Statement by Johnson, 28 April 1965, D.S.B., Vol.LII, No.1351, (17 May 1965), pp.738-739. By "military authorities" Johnson meant the loyalists. He thus seemed to have taken sides in the conflict by deciding to anoint one faction with authority.
By 30 April, the rationale had extended from the protection of American lives to keeping order. Ambassador Bunker, addressing a Meeting of Consultation of American Ministers of Foreign Affairs, said:

We are...faced with an immediate problem of how to restore law and order in order to protect not only the citizens of foreign countries...but also to stop the excessive vandalism which many people are wrecking on their fellow Dominican citizens...We are not talking about intruding in the domestic affairs of other countries; we are talking simply about the elementary duty to save lives in a situation where there is no authority able to accept responsibility for primary law and order.\(^1\)

On the following day, Johnson spoke of United States forces having "the necessary mission of establishing a neutral zone of refuge" in Santo Domingo in the terms called for by the O.A.S. resolution.\(^2\)

The first intimation that United States troops had any other function than that of protecting life and keeping order came from Johnson on the same day as Bunker's statement to the foreign ministers. "There are signs", Johnson said, "that people trained outside the Dominican Republic are seeking to gain control".\(^3\)

On 2 May these people were communists and the revolution had taken "a tragic turn".\(^4\) Communist leaders, many of them trained in Cuba, had joined the revolution and taken increasing control so that "what began as a popular democratic revolution...was taken over and really seized and placed into the hands of a band of Communist conspirators". "The American nations cannot", Johnson declared, "must not, and will not permit the establishment

\(^1\) Statement of 30 April 1965, cited in ibid., pp.739-741. Bunker's "elementary duty" of humanitarian intervention could also sound like the assumption of that international police power so despised by Latin Americans in an earlier period of inter-American relations.


\(^3\) Statement of 30 April 1965, cited in ibid., pp.742-743.

\(^4\) Statement by Johnson, 2 May 1965, cited in ibid., pp.744-748, from which the quotations following are taken.
of another Communist government in the Western Hemisphere".

On 4 May, Johnson linked the protection of American lives with resistance to communist gains in a statement emphasizing the defensive role of the United States:

We are not the aggressor in the Dominican Republic. Forces came in there and overthrew the government and became aligned with evil persons who had been trained in overthrowing governments and in seizing governments and in establishing Communist control, and we have resisted that control and we have sought to protect our citizens against what would have taken place.  

But it was not just American citizens who were being protected by the intervention, for, Johnson said, "we know that when a Communist group seeks to exploit misery, the entire free American system is put in deadly danger". After the introduction of the anti-communist theme on 2 May, there were many variations on it. Rusk even went as far as to represent American action as the defence of democracy in the Dominican

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1 For evidence that the U.S., through her embassy, the C.I.A. and military attaches in Santo Domingo, had taken an anti-constitutionalist stand from the outset of the revolution and had worked for the establishment of a military junta in order to prevent a communist take-over, see Draper, The Dominican Revolt, (NY, 1968), pp.53-65, 72-79 and 97-124. For evidence that the President himself was contemplating armed intervention from the outset, see ibid., pp.80-86. On the difference between Johnson's doctrine that the revolution was a democratic one taken over by the communists and another official view of long Boschist involvement with the communists, see ibid., pp.86-88.


4 One variation had it that the revolution had been taken over by the communists necessitating an American response. A later variation was that American intervention had prevented such a take-over. See Rusk's television interview of 28 May 1965, D.S.B., Vol.LII, No.1355, (14 June 1965), pp.947-949 and Draper, op.cit., pp.133-142 and 159-174.
Republic.  

The United States defence of her intervention in the Dominican Republic ranged, then, from protection of the lives of nationals, through the maintenance of order to anti-communism and the safeguarding of democracy. However plausible these justifications in the light of actual American behaviour, they had to be brought into line with the conventions of the inter-American system and in particular the principle of non-intervention and the doctrine of collective action in response to its violation. The doctrine of collective action by the O.A.S. was satisfied, in part, by the creation of an inter-American force to keep the peace in the Dominican Republic. But before the creation of the force the United States had acted unilaterally "to give the inter-American system a chance to deal with the situation in the Dominican Republic".  

Far from precluding collective action, the United States argued, the continued military presence of the United States served the purpose of "preserving the capacity of the O.A.S. to function in the manner intended by the O.A.S. Charter".  

It remained to accommodate the American action to the principle of non-intervention. The Legal Adviser to the State Department argued that the external communist threat to the Dominican Republic was "by no means fancified" and constituted "the very kind of threat"

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1 In a News Conference on 26 May, he spoke of "extremist elements...attempting to capitalize on the anarchy and the disorder to seize control of the mobs and to try to assert a position of power that would destroy the democracy of the Dominican Republic", D.S.B., Vol.LII, No.1355, (14 June 1965), p.939, (my emphasis).


which the Latin American foreign ministers had had in mind when they declared at Punta del Este in 1962 that "the principles of communism are incompatible with the principles of the inter-American system". Apparently unsatisfied with the force of this justification, Meeker went on to belittle "a fundamentalist approach" which might say that "despite the exigencies of the situation on April 28, the doctrine of nonintervention precludes the United States from sending troops into Santo Domingo". Eschewing such "fundamentalism", Meeker urged a look at the facts. If United States troops had withdrawn after the evacuation of citizens, Meeker surmised, there would have been anarchy, no foothold for the O.A.S., and possibly, another thirty years of darkness for the Dominican Republic.

"In the tradition of the common law", he said, "we did not pursue some particular legal analysis or code, but instead sought a practical and satisfactory solution to a pressing problem", and he referred to the role of "experiment and innovation" in the creation of international law. This legal defence revealed an impatience with the law as it stood and an admiration for political remedies snatched from beyond the law. In its dependence on the achievement of good purposes, international agreements notwithstanding, the argument resembles the Soviet assertion of higher principles of socialist international-

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1 *Loc.cit.* The following quotations are taken from Meeker's address. His Punta del Este reference was to the 8th Meeting of Consultation of Ministers of Foreign Affairs in January 1962, which met "to consider the threats that might arise from the intervention of extracontinental powers directed toward breaking American solidarity". The meeting did not urge intervention against communism. It did urge cooperation to strengthen the capacity of the member states to counteract dangers to peace and security "resulting from the continued intervention in this hemisphere of Sino-Soviet powers", texts of resolutions in D.S.B., Vol.XLVI, No.1182, (19 February 1962), pp.278-282.

2 Having advocated "looking at the facts", then, Meeker proceeded to examine what might have happened, not what did happen.
isism prevailing over mere international law.¹

After the immediate crisis in the Dominican Republic was over, Under Secretary Mann sought to rehabilitate the principle of non-intervention, "thought by some to be an obsolete doctrine" but, in his view, a "keystone of the structure of the inter-American system".² He repudiated the view of those who would have the United States intervene - "support", he said, was the word most often used - in favour of political parties of the non-Communist left, a thesis which "overlooks the fact that countries want to solve their internal political problems in their own way". This explained why, he said, in the case of the Dominican Republic, the United States had refrained during the first days of violence from "supporting" any faction in the conflict, had worked for a cease-fire, and had offered her good offices "rather than...proposing political solutions with a 'made in U.S.A.' label on them".³ Mann's other defence of the

¹"By using the language of legal rather than political justification, the argument comes unintentionally close to the attempts made by Nazi and Communist lawyers to justify the interventionist and aggressive actions of their respective governments in terms of a legal order of the future", W. Friedmann, "United States Policy and the Crisis of International Law", American Journal of International Law, Vol.59, (1965), p.869.

²In "The Dominican Crisis: Correcting Some Misconceptions", address of 12 October 1965, D.S.B., Vol.LIII, No.1376, (8 November 1965), pp.730-738, from which the quotations following are taken. Mann had played an important role in Washington during the Dominican crisis and before that had been Assistant Secretary of State for Inter-American Affairs.

³This assertion of American neutrality was also used by Meeker. If it was true of the "first days of violence", which seems doubtful, it was certainly not true as the intervention continued, for the U.S. had ruled out one faction as communist dominated and was involved in the "unfinished business...of constituting among the Dominicans and by the Dominicans a broadly based provisional government", Rusk, News Conference, 26 May 1965, D.S.B., Vol.LII, No.1355, (14 June, 1965), pp.938-947. "By the Dominicans", Rusk said, but it was U.S. unfinished business. On Mann's penchant for constructing the straw man of U.S. intervention on behalf of left-wing parties in order to destroy it, see Draper, op.cit., pp.8-19.
The doctrine of non-intervention was that action to frustrate the intervention of a communist state was "not so much a question of intervention as it is of whether weak and fragile states should be helped to maintain their independence". The argument seemed to be that the United States had not violated the rule of non-intervention, firstly because she had not intervened in the sense of taking sides in the conflict and, secondly, if it was intervention, then it took place to uphold and not to deny independence.

Clearly, the doctrine of non-intervention had come a long way since the Buenos Aires Conference in 1936. The principle of absolute non-intervention, proclaimed in that year, had developed with the principle of collective responsibility for hemispheric security. This negative aspect of the doctrine of continental solidarity, negative in the sense that it sought to exclude extra-hemispheric threats, so predominated, during the war, over the rule of non-intervention, that the question of the desirability of intervention for democracy was raised, intervention on behalf of ideological unity - continental solidarity in its positive aspect. A common outlook, it was thought, contributed more to good neighbourliness than mere non-interference. This doctrine did not prevail. At Bogotá, non-intervention was acknowledged to be the rule, democracy the aspiration. If this revealed a reluctance, on the part of the American states, to commit themselves on what was to be included in the American system, they were not so reluctant to agree on what was to be excluded from it. At Rio, the upholding of the Monroe Doctrine was made a multilateral responsibility and as the United States later expressed it, collective intervention was the corollary of non-intervention. It was in the interpretation of this doctrine that the new challenge to non-intervention as a hemispheric principle

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1 On the legal priority of the rule of non-intervention over intervention for democracy, see Thomas and Thomas, Non-Intervention, pp.362-368.
was to take place. Collective response was a mutually tolerable doctrine so long as the states which had devised the doctrine agreed on the need for its application. To the United States, a super-power doing ideological battle with an extra-hemispheric rival, the perception of the need for a response was different from that of the Latin Americans.

From the viewpoint of the United States, the appearance of the rival ideology in the American hemisphere was the intrusion of the rival power in an area to which it did not belong.¹ Communism in Latin America was not an indigenous growth but an outside intervention. Just as the Monroe Doctrine had preached the exclusion of the old European system, so now it was reaffirmed against the alien system of communism. Such a broad apprehension of extra-hemispheric intervention suggested an equally broad doctrine of counter-intervention to meet it. Guatemala, Cuba and the Dominican Republic witnessed the application of this doctrine, the response of the United States to a threat perceived to be external. This perception was not always shared by all American states, and the doctrine of collective response suffered accordingly. Worse, action taken, in the view of the United States, to uphold the rule of non-intervention was seen elsewhere in the Americas as its violation. The intrusion of the Cold War into inter-American relations raised once more the dilemmas of the first imperial age of the United States.

¹See, e.g., Ambassador Lodge's remarks to the Security Council of the U.N. during the Guatemalan crisis, 20 June 1954: "Why does the representative of the Soviet Union, whose country is thousands and thousands of miles away from here, undertake to veto a move like that? [the move for O.A.S. rather than U.N. jurisdiction in the crisis]...how can this action of his possibly fail to make unbiased observers throughout the world come to the conclusion that the Soviet Union has designs on the American hemisphere...I say to you, representative of the Soviet Union, stay out of this hemisphere...", quoted in Intervention of International Communism in Guatemala, p.17.
The Eisenhower doctrine, proclaimed in a special message to Congress in January 1957, applied Truman's general commitment to the defence of free peoples specifically to the Middle East. Eisenhower proposed that the United States should assist any nation or group of nations "in the development of economic strength dedicated to the maintenance of national independence", undertake programmes of military assistance and cooperation with any nation or group of nations which desired such aid and include in such assistance "the employment of the armed forces of the United States to secure and protect the territorial integrity and political independence of such nations, requesting such aid, against overt armed aggression from any nation controlled by International Communism". Eisenhower explained the reason for putting these proposals to Congress to be the deterrent they would provide against communist aggression. "If power-hungry Communists", he said, "should either falsely or correctly estimate that the Middle East is inadequately defended, they might be tempted to use open measures of armed attack. If so, that would start a chain of circumstances which would almost surely involve the United States in military action". Thus the United States proclaimed her military commitment to the balance of power in the Middle East.

In July 1958, President Chamoun of the Lebanon, who had previously endorsed the Eisenhower doctrine, called upon the United States to honour her commitments under it by landing American troops. Civil strife, grounded in the imbalance between social structure and political institutions and sparked by the President's attempt to arrange for himself an unconstitutional second

2 Ibid., p.87.
term in office, had broken out in the Lebanon. Chamoun's complaint was that the rebels were not only receiving ideological comfort from outside the Lebanon, but also that Nasser was aiding them with men, arms and money. In May, his foreign minister had informed the Americans, along with the French and the British, that military assistance would be expected if required and later that month the Lebanon took the matter to the United Nations. The response of the Security Council was to despatch a United Nations Observation Group "to arrest infiltration and arms smuggling" between Syria and Lebanon. Any hopes for the success of this operation were destroyed by the overthrow, on 14 July, of the pro-Western regime in Iraq, Chamoun's appeal for troops on the same day and the American military intervention on the day following. The coup in Iraq carried the United States over the brink to which she had been brought by the situation in the Lebanon. The intervention demonstrated American fidelity to that part of the Eisenhower doctrine which promised assistance to those who requested it. More difficult was the demonstration that it had taken place against overt armed aggression from any nation controlled by International Communism.

Dulles, in the weeks before the landing of American troops, had gone some way towards accommodating the difficulties presented by these latter two requirements

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3 Ibid., pp.369 and 371. The American reply to the Lebanese pointed out that the United States was already supplying them with small arms and anti-riot weapons. At the same time, though the United States disclaimed any connection with the Lebanese problem, the American amphibious force in the Mediterranean was temporarily doubled. Ibid., pp.369-370.

4 Ibid., p.371.
by extending the Eisenhower doctrine beyond them. He made this possible by choosing to emphasize aspects of the Congressional resolution on the Middle East—the resolution resulting from Eisenhower's proposals—other than the one requiring that any American response be limited to countering the overt armed aggression of a country controlled by international communism. At a news conference on 20 May, Dulles said that he considered such an attack unlikely "under the present state of affairs", but this did not mean that nothing could be done.¹ He referred to a provision in the Middle East resolution saying that "the independence of these countries is vital to peace and the national interest of the United States", which, he argued, was "a mandate to do something if we think that peace and our vital interests are endangered from any quarter". Having asserted such a broad mandate for an American response, Dulles, in subsequent news conferences, discovered another line of argument which did not require its invocation. On 17 June, Dulles argued that "even though the disturbance assumes, in part at least, the character of a civil disturbance, it is covered by the United Nations resolution of 1949 on indirect aggression"—which had denounced external fomentation of civil strife.² A fortnight later, Dulles completed the circle back to one of the main pillars of the Eisenhower doctrine by treating indirect aggression as functionally equivalent

¹D.S.B., Vol.XXXVIII, No.989, (9 June 1958), pp.942-950, from which the quotations following are taken.

to armed attack, legitimating thereby action in collective self-defence under article 51 of the Charter of the United Nations. "Now we do not think", he said, "that the words 'armed attack' preclude treating as such an armed revolution which is fomented from abroad".1

After the American intervention, Eisenhower's defence of it rehearsed much of the Dullesian argumentation of the previous weeks, without spelling out the Dulles line on armed attack and indirect aggression. United States forces had been ordered to Lebanon, said Eisenhower, "to protect American lives and by their presence there to encourage the Lebanese government in defence of Lebanese sovereignty and integrity".2 Eisenhower added one significant argument, avoided by Dulles, which very nearly took the case for the defence back to the "international communist" aspect of the Eisenhower doctrine. It stopped short of naming the enemy and concentrated instead on his methods. "What we now see in the Middle East", Eisenhower said, "is the same pattern of conquest with which we became familiar during the period of 1945 to 1950".3 He cited the communist activity in Greece, Czechoslovakia, China, Korea and Indo-China as examples of this pattern of conquest - the taking over of a nation by means of indirect aggression, and added mysteriously, "Lebanon was selected to become a victim". At the United Nations, the United States put the case equally strongly. "If the United Nations cannot deal with indirect aggression", said Ambassador Lodge, "the United Nations will break up...if the United Nations does not meet this challenge, it will invite subversion all over the world".4 The purpose of the presence of United States


3Radio-television statement of 15 July, ibid., pp.183-186, from which the quotations following are taken.

troops, in Lodge's submission, was to stabilize the situation "until such time as the United Nations could take the steps necessary to protect the independence and political integrity of Lebanon".¹

Arguably, the dropping of anti-communism per se as a ground for American intervention, was a doctrinal advance for the United States beyond a hitherto greater concern with communism than with aggression.² But emphasis on the need for counter-intervention against indirect aggression was another hornets' nest. The Dulles equation of indirect aggression with armed attack stressed external participation in a civil war rather than its internal sources and dimensions. This involved him in a factual and in a legal controversy: a factual one about the extent of outside participation, a legal one about the sort of response allowable in the light of the answer to the factual question.³ Eisenhower deepened the controversy by placing the pattern of indirect aggression alongside the pattern of communist conquest. In Lebanon, the practical consequences of American doctrine were not disastrous. The shortcomings of a doctrine which saw no difference between indirect aggression and armed attack, justifying in consequence American counter-intervention, were to be revealed in Indo-China, where the rationale of preventing indirect aggression and that of stopping communism were joined.


²Halpern notes that some observers, at the time of the enunciation of the Eisenhower doctrine, hoped that the United States would take a stand against aggression by any nation in the Middle East and not just those under the control of international communism, in The Politics of Social Change in the Middle East and North Africa, (Princeton, 1963), p.386.

From the outset, the United States considered her involvement in Indo-China to be a response to communist aggression. Though the Americans were troubled at the prospect of helping a colonial power to put down a struggle for independence, this was not considered to be the most appropriate interpretation of the conflict in Indo-China. American aid to the French, beginning in 1950, was based on the view that the real issue there was "whether the peoples of that land will be permitted to work out their future as they see fit or whether they will be subjected to a Communist reign of terror and be absorbed by force into the new colonialism of a Soviet Communist empire". The conflict was not primarily between French imperialists and Vietnamese nationalists, but between international communism and the free world. The Eisenhower Administration continued the support for the French begun under Truman and recognized, in discussions with France, that "Communist aggressive moves in the Far East obviously are parts of the same pattern". Dulles saw the conflict in Indo-China as the southern end of a single Chinese-communist aggressive front which extended to Korea in the north, a front in the attempted communist conquest of freedom. When, the following year, the French were desperately holding the southern front against the Vietminh at Dien Bien Phu, Dulles' Under Secretary Smith referred to the battle as a "modern Thermopylae".

1 In address by Assistant Secretary Rusk, 5 November 1951, D.S.B., Vol.XXV, No.647, (19 November 1951), pp.821-825.
3 In address by Dulles, 2 September 1953, D.S.B., Vol.XXIX, No.742, (14 September 1953).
apocalyptically and with varying emphasis, this interpretation of the real issue in Indo-China as being an international one, not domestic, of global, not local, significance, about the cause of freedom everywhere, not just in Vietnam, informed the reactions of all subsequent administrations to events in Indo-China.

Though the mantle of resistance to communist aggression was spread over all the post-war American administrations, their thoughts on the nature of that aggression varied according to what was actually happening in Indo-China and according to the way the American response to those happenings was rationalized. Aggression was a word frequently used but loosely defined. It tended to be identified with the mere existence of communism, and in Vietnam, as in Latin America, that existence was not considered to be separable from the parent movement.¹

Spelling out the problem in Indo-China after the defeat of the French at Dien Bien Phu, Dulles made the concept of aggression more intelligible. He said that the situation there was not that of "open military aggression by the Chinese Communist regime" but of Chinese fomentation of disturbances in the area.² This problem of indirect aggression was not solved for the Americans by the 1954 Geneva Accords formally ending the First Indo-China War, it was merely rearranged. The temporary "regrouping zones" for the combatants, agreed upon at Geneva, the Vietminh to the north of the seventeenth parallel, the French Union forces to the south, solidified into de facto separate states. In part, this development, offending as


it did against the Geneva expectations, returned Vietnamese politics to their violent pre-Geneva patterns. A marked increase in the level of communist insurgency towards the end of the decade in South Vietnam forced on the new Kennedy Administration another assessment of the nature of the conflict there.

An assessment by the State Department in Kennedy's first year of office, placed the basic pattern of Viet-Cong activity in South Vietnam in the methodological tradition of communist attempts at take-over established in Malaya, Greece, the Philippines, Cuba and Laos.\(^1\)

It saw the conflict as an attempt by the Viet-Cong to take over the government of the South supported by an "elaborate organization" in the North. The problem for Kennedy, as it had been for Dulles, was seen to be one of indirect aggression, but the political geography of Vietnam having changed since Geneva, the principal guilt was North Vietnam's not China's.\(^2\) But in Kennedy's view the indirectness of the aggression did not make it any the less aggressive either in objective or in method.\(^3\) He rejected the communist label "wars of national liberation" as a description of the sort of conflict taking place in Laos and Vietnam, because these were "free countries living under their own governments". He did not see that such wars were less aggressive because men were "knifed in their homes and not shot in the fields"

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\(^2\) This did not mean that Kennedy perceived the problem as a discrete Vietnamese one. He took careful note of Khrushchev's speech of January 1961 announcing Soviet support for "wars of national liberation" and directed that all members of his administration read it and "consider what it portended", see R. Hilsman, *To Move a Nation*, (NY, 1967), p.414.

\(^3\) See his address to the U.N. General Assembly, 25 September 1961, D.S.B., Vol.XLV, No.1164, (16 October 1961), pp.619-625, from which the quotations following are taken.
As the war continued and escalated, the United States representation of its nature changed in one fundamental aspect. A State Department White Paper, Aggression from the North, released in February 1965, denied categorically that the war in Vietnam was "a spontaneous and local rebellion against the established government" and affirmed, equally categorically, that "a Communist government has set out deliberately to conquer a sovereign people in a neighboring state". ¹ Differences were now found where in 1961 there were similarities between the war in Vietnam and the conflicts in Greece, Malaya and the Philippines. But it was in the total refusal to admit a domestic dimension to the war in Vietnam that the Johnson Administration departed radically from its predecessors. Though both Johnson and Rusk endeavoured to bevel the sharp edges of the change in emphasis by stressing continuity and by making the new revelation retroactive - there all the time but previously unnoticed - the American image of the war was now one of "armed attack" by one state on another and not of external interference in civil strife.

As the United States image of aggression in Indo-China developed, so her response to it hardened. The failure of American aid to alleviate the waning fortunes of the French in the First Indo-China War brought the United States to the verge of active intervention with air and sea forces. ² But the enthusiasm of Dulles and the Chairman of the Joint Chiefs of Staff, Admiral

¹ Department of State Publication, 7839, p.1.
² The visit to Washington in March 1954 of the French Chief of Staff, General Ely, to warn the United States that unless she intervened, Indo-China would be lost, (see C. Roberts, "The Day We Didn't Go to War", in Raskin and Fall, op.cit., p.60), must have evoked memories in Washington of the British handing-over of the Greek and Turkish problem in 1947. Unlike 1947, it did not produce an "Eisenhower doctrine" for South East Asia.
Radford, for intervention was tempered by the insistence of Congressional leaders that any such action be taken in alliance and not unilaterally. Consequently, Dulles looked for allies who would issue, before the scheduled Geneva Conference, "a solemn declaration of their readiness to take concerted action under Article 51 of the United Nations Charter against continued interference by China in the Indo-China war". The search foundered in London. Dulles preferred to demonstrate strength rather than negotiate from weakness, Eden preferred to rescue by negotiation whatever was possible from a weak situation rather than risk world war in a dubious military exercise. The Geneva Conference met, was accompanied by "distant thunder" from the United States about American and French military action in Indo-China, and produced an armistice in Cambodia, Laos and Vietnam. The American anxiety to establish collective responsibility for the defence of the area was satisfied at Manila, after the Geneva Conference, with the signature of the South East Asia Collective Defence Treaty. Article 4 of the Treaty outlined the action to be taken should aggression by means of armed attack occur in the treaty area and the consultation which was to take place if the sovereignty and political independence of any party in the treaty area were threatened in any way other than by armed attack. A protocol to the treaty designated

1 Roberts in Raskin and Fall, op. cit., p. 59.


3 Ibid., pp. 107-140. See also D. Lancaster, "Power Politics at the Geneva Conference", in M. Gettleman, (ed.), Vietnam, (Harmondsworth, 1966), pp. 125-144. The United States did not sign the Geneva Accords, she took note of them and declared that she would "refrain from the threat or use of force to disturb them".

4 Article 4 of the SEATO treaty reads: "1. Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties or against any State or territory which the Parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet
Cambodia, Laos and "the free territory under the jurisdiction of the State of Vietnam" for the purposes of Article 4. Thus Dulles had his collective warning against aggression, direct or indirect, in Indo-China. A month later Eisenhower wrote his now-famous letter to Ngo Dinh Diem offering American aid to the "Government of Vietnam". ¹

During Kennedy's Presidency, the number of American military advisers in South Vietnam, under a programme begun by Eisenhower in 1955, increased from fewer than a thousand at the end of 1960 to more than sixteen thousand at the end of 1963. ² For the Kennedy Administration, the problem in Vietnam was one of finding an answer to "subterranean" war, the guerrilla warfare on which the communists were interpreted to be relying. ³ As Secretary of Defence McNamara expressed it in 1964, the problem was to "cope with Communist 'wars of liberation' as we have coped successfully with Communist aggression at

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\begin{align*}
\text{the common danger in accordance with its constitutional processes. Measures taken under this paragraph shall be immediately reported to the Security Council of the United Nations.} \\
\text{2. If, in the opinion of any of the Parties, the inviolability or the integrity of the territory or the sovereignty or political independence of any Party in the treaty area or of any other State or territory to which the provisions of paragraph 1 of this Article from time to time apply is threatened in any way other than by armed attack or is affected or threatened by any fact or situation which might endanger the peace of the area, the Parties shall consult immediately in order to agree on the measures which should be taken for the common defence.} \\
\text{3. It is understood that no action on the territory of any State designated by unanimous agreement under paragraph 1 of this Article or on any territory so designated shall be taken except at the invitation or with the consent of the government concerned".}
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² The exact figures - 773 and 16,500 - are quoted from the Congressional Record in T. Draper, Abuse of Power, (NY, 1967), p.52.

other levels. The Administration sought a "strategic concept" which would allow them to cope, and one result of the search was the professional counter-insurgency capability of the Special Forces. Kennedy looked for greater efficiency in closing the guerrilla war gap and increased significantly the number of American advisers in Vietnam, but he stopped short of involving troops in a combat role. This did not happen until 1965 when Johnson's decision to commit such troops and to bomb the North, transformed the limited commitment of his predecessors to the war in the South into open war between the United States and North Vietnam.

In explanation and justification of her involvement in Vietnam, the United States presented three sorts of argument - strategic and political, ideological and moral, and legal. Indo-China was strategically important because it was said to be the "key to all of Southeast Asia". South East Asia was strategically significant because its "location across east-west air and sea lanes flanks the Indian subcontinent on one side and Australia, New Zealand, and the Philippines on the other and dominates the gateway between the Pacific and Indian Oceans". The security of the United States would be

3 See Draper, op.cit., pp.62-63.
4 The arguments are separated for the purpose of analysis. In reality it is not possible to separate them since, for example, American fidelity to a rule of law and willingness to uphold it may be a demonstration of political will as well as one of moral principle.
5 In address by Assistant Secretary Allison, 1 July 1952, D.S.B., Vol.XXVII, No.682, (21 July 1952), pp.97-103.
6 McNamara's 26 March 1964 address, op.cit., p.565.
seriously threatened should the area fall into communist hands. This perceived connection between American security and that of Indo-China was strengthened by the domino theory and its variants, which posited the automatic collapse of the remaining states of South East Asia should Vietnam fall to communism. As McNamara put the American position, "to defend Southeast Asia, we must meet the challenge in South Viet-Nam".

By meeting the challenge, the United States was not only defending South East Asia, she was upholding the cause of freedom everywhere. In 1954, Dulles thought "the imposition on Southeast Asia of the political system of Communist Russia and its Chinese Communist ally" would be a grave threat to the "whole free community". For Johnson in 1964, Vietnam was not "just a jungle war, but a struggle for freedom on every front of human activity". Even after the 1968 downturn in the war and

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1 Ibid., p.565.

2 This at any rate was how the author of the theory expressed the 'falling domino' principle: "You have a row of dominoes set up, you knock over the first one, and what will happen to the last one is the certainty that it will go over very quickly". President's news conference of 7 April 1954 in The Public Papers of the Presidents of the United States, Dwight D. Eisenhower, 1954, (Washington, 1960), p.383. Two days earlier, Dulles had put the matter in terms of communist intentions: "The large purpose is not only to take over Indo-China but to dominate all of Southeast Asia. The struggle thus carries a grave threat not only to Viet-Nam, Laos, and Cambodia, but also to such friendly neighboring countries as Malaysia, Thailand, Indonesia, the Philippines, Australia and New Zealand", in address to House Foreign Affairs Committee, 5 April 1954, D.S.B., Vol.XXX, No.773, (19 April 1954), pp.579-58. In 1963, Kennedy declared his belief in the domino theory in terms of the opportunities presented to China if South Vietnam went, in television interview 9 September, D.S.B., Vol.XLIX, No.1266, (30 September 1963), pp.499-500. In a statement of 2 June 1964, Johnson declared the issue in Vietnam to be the "future of Southeast Asia as a whole", D.S.B., Vol.L, No.1303, (15 June 1964), p.953.

3 In 26 March 1964 address, op.cit., p.565.


Nixon's subsequent determination to withdraw American troops, this universalism persisted. In 1969, Nixon was anxious to avoid the first defeat in American history which would result, he thought, in "a collapse in confidence in American leadership not only in Asia but throughout the world".  

In Vietnam, the United States was committed to peace as well as to freedom, and the way to peace lay in the defeat of aggression. In 1954, Dulles would not buy peace at the price of surrender. Ten years later, Johnson described America's efforts "in Viet-Nam, in Cyprus, and in every continent", as being directed toward a world order of peaceful procedures rather than forceful settlement. In 1969, Nixon argued that the abandonment of the South Vietnamese people would jeopardize more than lives in South Vietnam, "it would threaten our longer term hopes for peace in the world". Thus the defence of South Vietnam was a demonstration of the American commitment to a peaceful world order, a "concrete demonstration that

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2 In address by Dulles, 11 June 1954, excerpt in Background Information, pp.48-50. Both Eisenhower and Dulles used analogies from the 1930's in support of the call for united action to check communist expansion in Indo-China. Eisenhower wrote to Churchill on 4 April 1954: "...we failed to halt Hirohito, Mussolini and Hitler by not acting in unity and in time. That marked the beginning of many years of stark tragedy and desperate peril. May it not be that our nations have learned something from that lesson?", Eisenhower, Mandate for Change, p.347. Eden reports that during his talks with Dulles a week later, he was not convinced by the assertion of Dulles that "the situation in Indo-China was analagous to the Japanese invasion of Manchuria in 1931 and to Hitler's reoccupation of the Rhineland", Full Circle, p.97. On the persistence of this sort of analogy in official American thinking, and in particular Rusk's view, see Schlesinger, The Bitter Heritage, (London, 1967), pp.75 and 92-101.

3 In address of 12 August 1964, excerpt in Background Information, pp.129-130.

aggression across international frontiers or demarcation lines is no longer an acceptable means of political change".\(^1\)

Apart from this general objection to aggression, the United States was concerned to provide an emphatic answer to the particular form it was taking in Indo-China. As General Maxwell Taylor put it in testimony before the Senate Committee on Foreign Relations in 1966:

> We intend to show that the "war of liberation", far from being cheap, safe, and disavowable, is costly, dangerous, and doomed to failure. We must destroy the myth of its invincibility in order to protect the independence of many weak nations which are vulnerable targets for subversive aggression - to use the proper term for the "war of liberation".\(^2\)

The United States agreed with General Giap that Vietnam was a test case for wars of national liberation and she was determined to meet the test.\(^3\) The test had to be met in order to deny the "wave of the future" in South East Asia to China and the communists.\(^4\) It had to be met because "If guerrilla warfare succeeds in Asia, it can succeed in Africa. It can succeed in Latin America. It can succeed anywhere in the world".\(^5\)

To these strategic and political arguments the United States added ideological and moral ones that were held with a tenacity which did much to explain the more

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\(^3\) See, e.g., address by Rusk of 23 April 1965, excerpt in Background Information, pp.156-160.


elaborate, but less fundamental, political and strategic doctrine. Opposition to aggression, the stronger as it was communist aggression, has been noted above as a principle guiding all post-war American administrations. At its most general level, fidelity to this principle stemmed from moral precepts - it did not arise from mere irritation with a disagreeable and alien system of rule. The moral precepts were two and both were illustrated during Eisenhower's Presidency. The first held that social relations between individuals should be so arranged as to protect the freedom of the individual, a freedom vaguely defined but thought not to be protected by the communist system. Hence Eisenhower's fear, in 1954, that a partition of Vietnam "would probably lead to Communist enslavement of millions", and the failure of the United States to sign the Geneva Accords which partitioned Vietnam. The second moral precept transposed the first to the relations between states; it held that those relations ought not to interfere with the independence of states and that aggression was just such an interference. Hence the reiteration by the United States at the final session of the Geneva Conference, of her "traditional position that peoples are entitled to determine their own future". Hence also, Eisenhower's explanation of the refusal of the United States to respond unilaterally to French pleas for help in Indo-China as "our tradition of anticolonialism". On this aspect of the principle of self-determination Eisenhower declared that "Never, throughout the long and sometimes frustrating search for an effective means of defeating the Communist struggle for power in Indochina,

1Mandate for Change, pp.357 and 370-371.

2In statement by Under Secretary Bedell Smith at the concluding session of the Geneva Conference, 21 July 1954, in Background Information, p.83.

3Mandate for Change, p.373.
did we lose sight of the importance of America's moral position".\(^1\)

As the American involvement in Vietnam continued and deepened, the involvement itself became a moral argument for its continuation. Especially under the Johnson Administration the involvement became a commitment which it was the duty of the United States to honour.\(^2\) Eisenhower's letter of 1954, offering aid to Diem, became the first point in the establishment of a moral obligation to assist South Vietnam. The need to demonstrate that "America keeps her word" became a prominent justification of United States intervention.\(^3\) Explaining, in 1965, why the United States was in Vietnam, Johnson said:

> We are there because we have a promise to keep. Since 1954 every American President has offered support to the people of South Viet-Nam. We have helped to build, and we have helped to defend. Thus, over many years, we have made a national pledge to help South Viet-Nam defend its independence. And I intend to keep that promise. To dishonor that pledge, to abandon this small and brave nation to its enemies, and to the terror that must follow, would be an unforgivable wrong.\(^4\)

In 1969, Nixon echoed the Johnson view. "A great nation", he said, "cannot renege on its pledges. A great nation must be worthy of trust".\(^5\) This conversion of a policy

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\(^1\)Ibid., p.374. N.B. My concern here is with American moral precepts as revealed by official statements in defence of action and not with whether the United States can be said to have practised them objectively - this would require a decision about the nature of the "aggression", if indeed it was such, to which the United States was responding.

\(^2\)See D. and A. Larson, "What is our "Commitment" in Viet-Nam?", in Raskin and Fall, op.cit., pp.99-108, for the emergence of the words "commitment", "obligation" and "pledge" to describe the United States' relation to Vietnam during the Johnson years.


\(^4\)In address of 17 April 1965, Background Information, pp.148-153.

choice into a moral obligation had a similar effect to the interpretation of the Vietnam war of national liberation as a test case; it made the ending of American involvement increasingly difficult.

It was during Johnson's Presidency also, that the United States addressed herself, in circumstances of mounting domestic criticism, to an explicitly legal defence of her involvement in Vietnam. The defence relied on the assertion that an armed attack had been inflicted on South Vietnam by North Vietnam. Though it was not clear when exactly North Vietnamese aggression had grown into armed attack, there was "no doubt that it had occurred before February 1965". An armed attack having been asserted if not established, the United States invoked the right, recognized in traditional international law and in Article 51 of the United Nations Charter, to individual and collective self-defence against it. This right was held to exist whether or not South Vietnam was a member of the United Nations, it being an inherent right not conferred by the Charter, and it was held to exist whether or not South Vietnam was an independent sovereign state since there was "no warrant for the suggestion that one zone of a temporarily divided state... can be legally overrun by armed forces from the other zone". The United States had fulfilled its obligations to the United Nations by reporting to the Security Council on measures taken "in countering the Communist aggression in Viet-Nam" and by submitting the Vietnam question for its consideration in 1966, but the Council had "not seen fit to act".

L. Meeker, "The Legality of United States Participation in the Defense of Viet-Nam", reprinted in Falk, (ed.), The Vietnam War and International Law, pp.583-603, from which the quotations following are taken. This document arose from criticism and led to further controversy. My concern here is to report American doctrine. Some of the controversies will be looked at in Chapter 8, section III and Chapter 9, section V.
In Vietnam, the United States was meeting commitments beyond those to the United Nations. By her signature of the S.E.A.T.O. treaty the United States was interpreted as having undertaken an international obligation to defend South Vietnam. An armed attack had taken place on a state covered by the protocol to the treaty and the United States was acting under Article IV, paragraph 1 "to meet the common danger in accordance with its constitutional processes". In addition to the S.E.A.T.O. obligation, the United States had given other undertakings against any renewal of communist aggression and several assurances of support to the government of South Vietnam.

By reference to the United Nations Charter and to the S.E.A.T.O. treaty, the United States asserted a right to act to uphold international law—her references to the Geneva Accords justified its apparent breach. From the very beginning, the United States argued, the North Vietnamese had violated the Accords, and increasing American aid to the South was justified by "the international law principle that a material breach of an agreement by one party entitles the other at least to withhold compliance with an equivalent, corresponding, or related provision until the defaulting party is prepared to honor its obligations". The failure of the South Vietnamese to consult with the North regarding the general elections agreed upon at Geneva was justified on the ground that South Vietnam did not sign the Accords and that conditions in the North were such "as to make impossible any free and meaningful expression of popular will".

The final part of the legal defence asserted Presidential authority to commit American troops to Vietnam under the domestic law of the United States. Such action was within the constitutional power of the President; it was his responsibility to decide whether an armed attack had taken place and his responsibility to determine the measures to be taken in response. In addition, the Joint Resolution of Congress of 10 August 1964, requested by Johnson on the occasion of naval engagements in the Tonkin Gulf which were represented as "further deliberate
attacks" by the North Vietnamese regime "against U.S. naval vessels operating in international waters", was taken as authority for the dramatic increase in American involvement during the following year.\(^1\) "The Congress", the defence argued, "has acted in unmistakable fashion to approve and authorize United States actions in Viet-Nam".

The crucial point on which the legal defence rested was the perception of the conflict in Vietnam as an international, not a civil, war and the related perception that armed attack had taken place, not merely indirect aggression. In December of 1966, the Legal Adviser returned to this crucial question.\(^2\) He observed that "some commentators" on Vietnam had set up three categories of situations in their legal analysis of the problem. He thought the first category - "wholly indigenous rebellion" - to be wholly inaccurate. He accepted that the second category - "large-scale intervention from outside short of armed attack" - was probably accurate "for quite some period of time". He considered the third category -

\(^1\) For Johnson's representation of the Tonkin Gulf incident, see his message to Congress of 5 August 1964, in Background Information, pp.120-122. The Congressional Resolution which resulted read, in part: "the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression". In section 2, it stated that, "Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the South East Asia Collective Defense Treaty, the United States is...prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member of protocol state of the South East Asia Collective Defense Treaty requesting assistance in defense of its freedom". Text of the Resolution in D.S.B., Vol.LI, No.1313, (26 August 1964), p.268.

"armed attack, in which one country employs its regular military forces to gain control of another country" - to be wholly accurate since the end of 1964. He seemed to concede, though tentatively, that direct action against the intervening power was unlawful in a category two situation, but argued that when an armed attack had taken place "legitimate defense includes military action against the aggressor". Thus the bombing of the North was regarded as legitimate and the domestic dimension of the war legally ignored since late 1964.

The principle of non-intervention as such, was not mentioned in the legal defence of American involvement in Vietnam, whether to extol its virtues or to deny its relevance. American intervention in Asia, unlike her intervention in Latin America, did not have to come to terms with a deep-rooted doctrine of non-intervention. Moreover, as Nixon said in 1969, "we no longer have the choice of not intervening...the urgent question today is what to do now that we are there". The choice had been made long before. In 1954, the doctrine of non-intervention, in its Cobdenite sense, had been found inferior to the competing imperative of restraining communist aggression, and since that time the question was not again asked in the stark terms of intervention or non-intervention. Yet, if the doctrine of non-intervention is understood in Mill's sense, the whole of the history of American intervention in Vietnam can be read as the history of counter-intervention to uphold the principle of non-intervention, the invocation of self-defence against armed attack, the S.E.A.T.O. commitment and the rest being but the elaboration of this primary obligation.

There is a third sense in which the rule of non-intervention seemed to have meaning in official American doctrine. Rather like Kennedy and Cuba in 1961, it drew a line around the limits of the American commitment.

\footnote{In address of 14 May 1969, D.S.B., Vol.LX, No.1562, (2 June 1969), pp.457-461.}
Kennedy's disillusionment with Diem led him to say on 2 September 1963:

I don't think that unless a greater effort is made by the Government [of South Vietnam] to win popular support that the war can be won out there. In the final analysis, it is their war. They are the ones who have to win it or lose it. We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it - the people of Viet-Nam - against the Communists.¹

In 1968, when Johnson announced the limited but unconditional cessation of the bombing of the North, the first significant downturn in the war, he said that, "Our presence there has always rested on this basic belief: The main burden of preserving their freedom must be carried out by them - by the South Viet-Namese themselves".²

Under the Nixon Administration, these earlier utterings solidified into a Nixon doctrine. Though not stated with the utmost clarity, the doctrine suggested that in future wars of the Vietnam type, the United States would expect the states in which they occurred to bear the main burden of their own defence, and would limit her support to military and economic assistance if such were requested.³

This expectation of increased local responsibility, sketching an American foreign policy for the future, was


³ As Nixon described his doctrine in an address of 3 November 1969, it had three elements: "First, the United States will keep all of its treaty commitments. - Second, we shall provide a shield if a nuclear power threatens the freedom of a nation allied with us or of a nation whose survival we consider vital to our security. - Third, in cases involving other types of aggression, we shall furnish military and economic assistance when requested in accordance with our treaty commitments. But we shall look to the nation directly threatened to assume the primary responsibility of providing the manpower for its defense", D.S.B., Vol.LXI, No.1587, (24 November 1969), p.440. On the Nixon view, see J.L.S. Girling, "The Guam Doctrine", International Affairs, Vol.46, No.1, (January 1970), pp.48-62.
also applied to Vietnam in the present. "Vietnamization" - the respectable term for American withdrawal - had an interesting history during 1970 and early 1971. In the early summer of 1970, American and South Vietnamese troops were used in an attack on Viet-Cong base areas in Cambodia, thereby allowing, in the United States view, the withdrawal to go ahead as planned. A similar operation in Laos, in February 1971, took place without American ground forces, the American participation being limited to logistics and air support. The importance attributed to not committing combat troops was reminiscent of the days before Johnson.

The doctrine of non-intervention as a doctrine defining the limits of intervention, variously interpreted by different American administrations and within them according to the circumstances which confronted them, does not reveal a constant American adherence to a well-defined principle of non-intervention. But in Vietnam, the perception that there were limits to intervention gave some sense to the doctrine of non-intervention, so defined, which transcended political calculation or the balance of domestic forces. The realization that there were limits to intervention demonstrated some awareness that the conflicts of others were not necessarily within the power of the United States to resolve, that the military solution of counter-force was not always applicable and that there were areas in the lives of other states beyond American control.

V

Truman's proud declaration, in the Spring of 1947, that it must be the policy of the United States to support free peoples resisting attempted subjugation by armed

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1 At a news conference on 30 July 1970, Nixon had stated that air power would be used in Laos to interdict the flow of enemy supplies down the Ho Chi Minh trail, but that there was "no intention of using ground forces", D.S.B., Vol.LXIII, No.1625, (10 August 1970), p.164.
minorities or by outside pressures, did not ossify in the tradition of statements made to justify a particular act of foreign policy, but developed and became the theme, even the cliché, of American foreign policy. The doctrine came of age when, shortly after taking office as Secretary of Defence, and playing an important part in reversing the direction of American policy in Vietnam, Clark Clifford restated the Truman vision and applied it to Asia. Of the American involvement in Vietnam, he said:

We are assisting that brave and beleaguered country to fight aggression, under the S.E.A.T.O. Treaty - and for the same reason that we extended our aid to Greece and Turkey over 20 years ago. This is in the tradition of the Truman doctrine, which announced 20 years ago that we would help defend the liberty of peoples who wished to defend themselves...The America that brought N.A.T.O. into being is the same America supporting freedom in Asia today - and for the Asians, not for the Americans.¹

Following the Truman theme meant forcible counter-intervention in the last resort if freedom were thought to be under a threat irremediable by other means. But the use of force did not always seem to be a last resort. Though the commitment of American troops, or the clandestine support for armed exile bands, was always motivated and explained by the need for a response to communist aggression, or to aggression from which only the communists could benefit, its timing or execution frequently laid the United States open to the charge that she was violating rather than upholding the principle of non-intervention; that, of the intervening powers, she was the "more guilty". Thus preventive intervention against the spread of communism in Latin America left the burden of proof of the existence of communists on the United States, which led to charades like the hunt for communists in the Dominican Republic and presented the United States as the imperial power she so fervently declared that she

was not. The manner of American counter-intervention in Vietnam, the eventual Americanization of the war, seemed to make nonsense of the claim that the United States was protecting independence, not destroying it. Vietnam demonstrated the limits of the Truman theme: that over-protection of freedom might mean its extinction if indeed freedom was there to be protected in the first place. It demonstrated that there was perhaps a kernel of good sense in the Cobdenite doctrine of non-intervention despite the inescapable logic of Mill's position.

The responsibilities of world power, the pressures of the Cold War, led to an American frustration with the law which had always been the doctrinal prop of the United States in international relations. Sometimes this took the form of irritation with the traditional rules of international law. Assistant Secretary Cleveland made a picturesque assault on these in 1961:

So long as we think of relations between nations, we are schooling ourselves to deal with the War of Jenkins's Ear...In the 18th and even the 19th century we could describe a country as either friendly or an enemy...We had troubles with governments from time to time but the definitions held. How do we describe Cuba, Laos and the Congo today? By our relations with the embodiment of the nation's sovereignty? Of course not. These countries are the marchlands of mutual intervention. We have friends and we have enemies in each. Yet when we seek to aid the one or oppose the other, we too often find ourselves caught in a conceptual traffic jam created by our inherited concepts of international law, while Communist guerrillas rush past us in the fast outside lane...Perhaps they [international organizations] alone offer breakthrough possibilities in rethinking the old doctrine of non-intervention in the domestic affairs of other nations. This doctrine has been the self-denying

Further, as Stanley Hoffmann points out, the United States, "Knowing concretely what it did not want but only abstractly what it wanted...found itself upholding by intervention a principle of nonintervention; this (as the Congo experience has shown) prolongs trouble without at all removing the causes that created the trouble in the first place", Gulliver's Troubles, Or the Setting of American Foreign Policy, (NY, 1968), p.138.
ordinance under which the democracies have labored throughout the 20th century, an unenforced international Sullivan Law that disarms the householder but never bothers the burglar.¹

Meeker's defence of American intervention in the Dominican Republic in terms of the creation of new law was a less persuasive development of Cleveland's sort of argument. Rusk was perplexed in a different way; not with the unreasonable restraints of traditional international law in a revolutionary age, but with an equally revealing concern that the United States was being pilloried for upholding the law, for too rigid an insistence on legal methods in international relations. "Current United States policy", he said in 1965, "arouses the criticism that it is at once too legal and too tough...Today, criticism of American attachment to the role of law is that it leads not to softness but severity...We are criticized for acting as if the Charter of the United Nations means what it says...for taking collective security too seriously".² Thus exasperation with the traditional doctrine of non-intervention, which the United States herself had played an important part in contributing to the body of rules guiding international relations, was coupled with a feeling of hurt innocence at criticism of an America that was upholding the rule in spite of herself. The comfortable nineteenth century doctrine of non-intervention conforming with an anarchical American view of international society, became distinctly uncomfortable in the age of American world power and concern for a managed world order.


²In address of 23 April 1965, D.S.B., Vol.LII, No.1350, (10 May 1965), pp.694-701. Rusk, in fact, took comfort from this criticism, interpreting it as a sign of American strength "a tribute to a blending of political purpose with legal ethic".
Chapter 7
Doctrines of Non-Intervention at the United Nations

Whether as a rule which had to be taken into account in the framing of foreign policy, as a malleable political slogan which was thought to advance the purposes of foreign policy, as a statement of a preferred pattern of conduct in international relations, or, as is most likely, a mixture of each, non-intervention was an important doctrine for both the United States and the Soviet Union. If the debates in the General Assembly of the United Nations; and the resolutions passed by that body, are any guide, it was no less important for the remainder of the states of the international community. But if a consensus existed about the importance of the principle of non-intervention, there was less agreement, beyond generalities, about its definition and range of application, about the sorts of behaviour it proscribed.

This chapter will examine the history of the principle of non-intervention at the United Nations, from its place, if any, in the Charter, to its acceptance by the General Assembly, in 1970, as one of seven principles of international law concerning friendly relations and cooperation among states. From an analysis of the place of the rule in the Charter, the chapter will go on to highlight the issues in the political and legal debate on non-intervention in the General Assembly. It will thirdly examine the case of apartheid in South Africa as the perhaps notorious example of the limits of the non-intervention principle, or indeed of its erosion. Finally, an attempt will be made to discern any patterns in the views expressed by states about the principle and to assess the legal status and political significance of the Assembly's espousal of the principle. But the primary focus of attention will be on states' doctrines of non-intervention at the United Nations and not on the United Nations' doctrine. It will be on the United Nations as a
forum and not as an actor. In addition, the application of the principle of non-intervention to the United Nations as an independent political force in international politics, as for example to its role in the Congo, will not be considered here except as it emerges from the views of individual states.

I

Nowhere in the Charter is the principle of non-intervention explicitly laid down as a rule governing the relations between the members of the United Nations. The closest the Charter comes to embracing such a rule is in Article 2, which sets out the Principles that are to guide the actions of the Organization and its members. Paragraph 4 of that article requires all members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". Territorial integrity and political independence were protected by disallowing the use of force against them. They were further protected by the phrase "in their international relations", which precluded the use of force between states but not within them, upholding thereby state sovereignty as a principle of domestic order.\(^1\)

But despite its prohibition of the use of force in international relations, Article 2, paragraph 4 is not quite a principle of non-intervention. Territorial integrity

\(^1\)See Leland M. Goodrich and Edvard Hambro, who argue that the principle "does not prevent a state from using force within its metropolitan area ... nor ... in suppressing a colonial disorder". Charter of the United Nations, second edition, (London 1949), p.103.
and political independence can be impaired by actions not directly involving the threat or use of force.¹ Further, territorial integrity - preserved so long as none of the territory of the state is taken from it - is not the same thing as territorial inviolability - "the right of a state to exercise exclusive jurisdiction within its own territory".² It was in these grey areas beyond the use of force and beyond the concept of territorial integrity that much of the United Nations debate about intervention was to centre. Indeed, for many of the members of the United Nations, intervention was to become a word used to describe the sorts of behaviour not covered by Article 2, paragraph 4, and hence non-intervention a rule not to be found there.

Article 2, paragraph 7, of the Charter, declares that:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Here is a principle of non-intervention, but it was to apply to relations between the United Nations as an Organization and its several members, and not to relations between the members themselves.³ Ostensibly, an analysis of Article 2(7) raises questions similar to those involved in an analysis of the principle of non-intervention as it applies to the relations between states. Light might be

¹ Goodrich and Hambro argue that the obligation of the paragraph is not directed against "economic and psychological methods" of coercion, op.cit., p.104.
² These definitions are in Goodrich and Hambro, op.cit., p.105.
³ See Kelsen, The Law of the United Nations, (London, 1950), p.770. This interpretation of the principle was a matter of some controversy in the General Assembly, where some states argued that the restriction on the competence of the United Nations applied a fortiori to its members. See the following sections.
shed on the principle in both these aspects by an examination of the definition of intervention and of the scope of domestic jurisdiction. But the two are not identical. It may be that the concept of intervention, as it applies to the United Nations, refers to a different range of activity from its application in inter-state relations. Whether, for example, General Assembly resolutions amount to intervention is not a question relevant to the examination of intervention between states. Again, it might be that intervention by the United Nations, being the action of the international community, will not carry the same legal or moral opprobrium as the unilateral intervention of a state in another's affairs. Similarly, the frontier drawn around the principle of domestic jurisdiction may be pushed back further when considered in relation to the activity of the United Nations than it is when considered in the context of the relations between states.

These considerations apart, the principle of non-intervention as laid down in Article 2(7), fits into a solid tradition of thought about the purpose of the principle in international relations. It echoes Canning's suspicion of the "European Areopagus", it seeks to preserve the sovereignty of the state against the emergence of a super-state - even if the latter be a benign United Nations and not a malevolent Holy Alliance.  

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1 Rajan makes a similar point in *United Nations and Domestic Jurisdiction*, p.93, n.1.

2 For some writers this is a matter for regret. Alf Ross argues that the "idea behind Article 2(7) is an interest in preserving international law at its present stage and opposing a further development of it through the efforts of the United Nations to regulate those things which are now abandoned, in anarchistic fashion, to the struggle for political power". He continues, "It is not difficult to determine which group of states is interested in this. The major powers alone can reap benefit from asserting the sovereignty principle and lawlessness at the expense of the competence of the United Nations to adjust disputes and a further development of international law. From a legal point of view, Article 2(7) is the quintessence of the tendency of the sovereignty dogma to resist progress". *Constitution of the United Nations*, (Copenhagen, 1950), p.129. (Ross' emphasis).
If the principle of non-intervention between states is nowhere explicit in the Charter, it is, in the statement of Principles, everywhere implicit. Article 2(1) bases the Organization on the "principle of the sovereign equality of all its Members". Article 2(3) demands the peaceful settlement of international disputes. The fourth paragraph of the article requires states to refrain in their international relations from the threat or use of force. This concern with the "international", not with the "domestic", was emphasized by Dulles at the San Francisco conference. Dulles thought the domestic jurisdiction principle necessary to the delineation of the function of the United Nations as an "organization which deals essentially with the governments of member-states, and through international relations" and not one "which is going to penetrate directly into the domestic life and the social economy of each one of the member-states".¹ Evatt, the leader of the Australian delegation at San Francisco, in proposing that the exception to the principle of domestic jurisdiction be limited to "the application of enforcement measures", argued that it was desirable to give states that were not members of the Security Council some of the protection against interference in domestic affairs which the permanent members enjoyed under the Security Council voting procedure.²

The Charter was, then, primarily concerned with building an order between states not within them, with eliminating international war not civil conflict.³ Its concern with human rights and fundamental freedoms, values whose defence would require an intrusion into a traditionally domestic matter, was more aspiration than legislation. It appears in the statement of the Purposes of the United Nations, and not of its Principles. In the subsequent history of the United Nations, written against the background of the popular

¹Quoted in Rajan, op.cit., p.56.


doctrine that the distinction between domestic and international politics was subject to increasing erosion, two apparently contradictory developments took place. On the one hand, a movement led by the communist states and taken up with enthusiasm by the new states, perceiving a world visited frequently by interventionary politics, sought to close a gap in the Charter by making the implicit principle of non-intervention explicit. On the other hand, the same movement placed limits on the rule. A new legitimacy developed, proclaiming non-intervention, but cutting it across with a prior insistence on the ending of colonialism in all its manifestations. The sections following will examine the working out of these doctrines at the United Nations.

II

In 1949, with the Essentials of Peace Resolution of the General Assembly, and again in 1950, with the Peace Through Deeds Resolution, the implicit non-interventionism of the Charter began to be made explicit in the practice of the United Nations. The Essentials of Peace Resolution called 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". The Peace Through Deeds Resolution condemned the "intervention of a State in the internal affairs of another State for the purpose of changing its legally established government by the threat or use of force" and went on to solemnly reaffirm that "whatever the weapons used, any aggression, whether committed openly, or by fomenting civil strife in the interests of a foreign Power, or otherwise, is the gravest of all crimes against peace and security throughout the world". Both resolutions were passed at the end of debates on an item included in the agenda of the General Assembly by the Soviet Union, which would have had

1 General Assembly Resolutions 290 (IV) of 1 December 1949 and 380(V) and 381(V) of 17 November 1950.
the Assembly declare against the preparation and threat of a new war and for the strengthening of peace. The Soviet draft resolutions, principally vehicles for the criticism of the West, were opposed by Western drafts, eventually to be accepted by the Assembly, that made more general statements about the requirements of peace while including a Western version of the objection to intervention. Neither of the resolutions was a conscious exercise in Charter "gap-filling". Both were concerned to restate Charter principles and to point them in the direction of that intervention which threatened to undermine them.

In 1957, a Soviet initiative to have the Assembly consider a "Declaration Concerning the Peaceful Co-existence of States" was more successful than its earlier declamations against Western preparation for war, in the sense that the resolution adopted after debate in the Assembly was not unlike the Soviet draft which was not pressed to a vote. The draft resolution adopted by the Assembly was sponsored jointly by India, Sweden and Yugoslavia. It realized the need to develop peaceful and tolerant relations among States, in conformity with the Charter, "based on mutual respect and benefit, non-aggression, respect for each other's sovereignty, equality and territorial integrity and non-intervention in one another's internal affairs, and to fulfil the purposes and the principles of the Charter". ¹

Thus the Pancha Shila entered the vocabulary of the United Nations, but the resolution did not make it clear whether the entry restated Charter principles or added to them. ²

It had it both ways; it called upon states "to develop

¹From General Assembly Resolution 1236(XII) of 14 December 1957.

²"Filling gaps" or "adding to" or "going beyond" the Charter are expressions used loosely here to describe Assembly resolutions which recommend that states behave in ways not strictly demanded of them in the Charter. Whether such resolutions impose obligations on states, whether the Assembly is the proper place for Charter revision, or whether its resolutions add anything to general international law are matters of legal controversy to which I shall return in the last section of this chapter.
co-operative relations and settle disputes by peaceful means as enjoined in the Charter of the United Nations and as set forth in the present resolution".

In 1965, again at the request of the Soviet Union, the question of "The inadmissibility of intervention in the domestic affairs of States and the protection of their independence and sovereignty" was considered by the General Assembly. Once more, a Soviet draft resolution on the matter was not adopted by the Assembly, but many of its ideas were incorporated in the draft Declaration which was adopted, a draft sponsored by 57 powers, mainly from Asia, Africa and Latin America.\(^1\) The preambular paragraphs of the Declaration expressed the Assembly's concern at the threat to universal peace due to intervention, equated armed intervention with aggression, considered that direct intervention, subversion and all other forms of indirect intervention constituted a violation of the Charter of the United Nations, and recognized that full observance of the principle of non-intervention was "essential to the fulfilment of the purposes and principles of the United Nations". The preamble added doctrinal support to these assertions of the importance of the principle and the gravity of its violation by reaffirming the principle as it appeared in the charters of the Organization of American States, the League of Arab States, and the Organization of African Unity, and as it was affirmed by various international conferences - of American states and of the "Third World". The particular importance of the principle to countries which had "freed themselves from colonialism" was emphasized, and, straying from the path marked out by the traditional doctrine of non-intervention, the preamble stressed the place of the principle of self-determination in the constitution of the United Nations and in subsequent General Assembly doctrine.

\(^1\)For the text of the Declaration, Resolution 2131(XX) of 21 December 1965, see Appendix 1 (a). Only Cyprus, Trinidad and Tobago and Yugoslavia of the sponsors did not fit the Asia-Africa-Latin America category geographically. It was a "Third World" draft. On the use of this term see section III of this chapter.
The first operative paragraph of the Declaration borrowed, with minor changes, the statement of the principle of non-intervention from the most ambitious source—Article 15 of the Charter of the Organization of American States. The second operative paragraph borrowed again from that Charter to disallow economic and political methods of coercion. Not content with these broad prohibitions the same paragraph went on to declare that "no State shall organize, 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". Another paragraph included the "use of force to deprive people of their national identity" in the activities proscribed by the principles of non-intervention. The sixth operative paragraph declared that:

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

Clearly, this declaration went well beyond not only the obligations of the Charter, but also beyond the most comprehensive of the traditional doctrines of non-intervention. Indeed, even in the terms of the latter, it could be held to be, by its insistence on the principle of self-determination and "absolute respect" for human rights, radically interventionary.

In the following year, again on the initiative of the Soviet Union, the Assembly considered the "Status of the implementation of the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty". The resolution resulting from the debate on the item reaffirmed all the principles and rules embodied in the Declaration of the previous year.¹ Further, the Assembly deemed it

¹General Assembly Resolution 2225(XXI) of 19 December 1966.
"to be its bounden duty" to urge the immediate cessation of intervention, whatever its form, to condemn it as a basic source of danger to the cause of world peace and to call upon all States to carry out their obligations under the Charter and the provisions of the Declaration. It seemed that the Declaration was becoming as important to the Assembly as the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

During its twenty-fifth session, the General Assembly adopted a "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". Consideration of the item leading to the Declaration had its origin in a twelve-nation proposal in 1961 that the Assembly should consider "principles of international law relating to peaceful coexistence of States". Amended to consideration of "friendly relations and co-operation among States", the item was placed on the provisional agenda of the next Assembly. After discussion in the Assembly's Sixth Committee in 1962, a resolution was passed charting a rudimentary course to be taken in the consideration of the principles of international law. It isolated seven principles of international law concerning friendly relations and co-operation among states, principles embodied in the Charter of the United Nations, which was their "fundamental statement". The third such principle was "the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the

1 General Assembly Resolution 2625(XXV) of 24 October 1970.
2 General Assembly Resolution 1686(XVI) of 18 December 1961.
3 General Assembly Resolution 1815(XVII) of 18 December 1962.
Charter. During the next eight years, the seven principles were considered and their content debated in the Sixth Committee and in a Special Committee established by a decision of the Assembly in 1963.2

The formulation of the principle of non-intervention as a legal principle commanding general agreement was a daunting task, seemingly beyond the resources of either committee. The first three meetings of the Special Committee produced no such consensus, but at the 1970 session of the Committee, an agreed formulation emerged as part of a general draft of all seven principles, and with minor changes, this draft was adopted in the Assembly's Declaration of October 1970.3 The principle of non-intervention as formulated in this Declaration was not greatly different from the 1965 Declaration on the Inadmissibility of Intervention. The influence of inter-American Law was just as

1 The remaining six principles listed in the resolution were:- The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other matter inconsistent with the purposes of the United Nations; The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; The duty of States to co-operate with one another in accordance with the Charter; The principle of equal rights and self-determination of peoples; The principle of sovereign equality of States; The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.


3 The problem of formulating the principle of non-intervention was addressed at the first three meetings of the Special Committee and at the last. According to the official reports, the Committee did not have time to discuss the principle at its 1968 session, and no reference was made to it, except to summarize past discussions, at the 1969 session, see Reports of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, 1968, UN Doc. A/7326, p.69, para. 204 and 1969, UN Doc. A/7619, p.7, para. 15.
noticeable, the wording altered only marginally and the paragraphs dropped were those which had strayed from simply stating the rule of non-intervention. Thus the Assembly placed its **imprimatur** on the non-intervention principle as a legal as well as a political principle, but it remained coy about the status of the Declaration. At the outset, the Assembly had been conscious of "the significance of the emergence of many new States and of the contribution which they are in a position to make to the progressive development and codification of international law", but had looked to the Charter for the fundamental statement of the principles of international law concerning friendly relations and co-operation. Similarly at the end, the Assembly was deeply convinced that the adoption of the Declaration constituted a "landmark in the development of international law and of relations among States", but it also emphasized the "paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the development of friendly relations and co-operation among States". Though the Assembly's principle of non-intervention had gone beyond the Charter, the Charter was still relied upon as the source of its legitimation.

1 For the text of the principle as it appeared in the Declaration, see Appendix I(b). Where the 1965 Declaration had condemned "armed intervention and all other forms of interference against the personality of the State or against its political, economic and cultural elements", the 1970 Declaration instead found them "in violation of international law". The paragraph of the 1965 Deceleration offering an opinion on the importance of the observance of the non-intervention principle for the maintenance of international peace was not included in the 1970 Declaration, nor was the paragraph calling for respect for the right of self-determination.

2 See General Assembly Resolution 1815(XVII) of 18 December 1962.

3 Preamble to General Assembly Resolution 2625(XXV) - the preamble to the Declaration not of it.
If voting in the General Assembly on the question of the principle of non-intervention can be taken as an indication of agreement in that body on its definition and interpretation, then the question must be considered distinctly uncontroversial. The 1965 Declaration on Non-Intervention was passed with but one abstention and with one state refusing to vote. The United Kingdom thought the matter required a more thorough and more expert study. Malta alone announced that the emperor was naked. Even these doubts were apparently removed by 1970, when the Assembly adopted the Declaration on Principles of International Law without a vote. And yet, the debate in the Assembly revealed the scope and content of the principle of non-intervention to be a fiercely contentious issue.

The simple explanation of the apparent discrepancy is that even unanimous voting is no indicator of consensus, that General Assembly resolutions on the matter were so vaguely worded as to allow each state to vote for its conception of their meaning without violating its principles or its interests. If this answer encompassed the whole truth, then the mere existence of consensus in the General Assembly would attest to very little except to the status of the institution as a political curiosity. This argument will be inspected in the concluding section of the chapter. The present purpose is to go beyond the resolutions to the views expressed by states in Assembly debates on the principle of non-intervention. A brief statement of the points at issue in the debates will introduce an examination of the doctrines of

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1 Other votes on matters related to the principle of non-intervention were opposed by a few only: the Essentials of Peace Resolution was passed by 50 votes to 5 with 1 abstention, the Peace Through Deeds Resolution by 53 to 5 with 1 abstention, Resolution 1236(XII) on Peaceful Coexistence by 77 to 0 with 1 abstention, Resolution 222(XXI) on the Status of the Declaration on Non-Intervention by 114 to 0 with 2 abstentions.

2 The question of the nature of the consensus in the General Assembly is the more important in strictly legal matters, in view of the argument put by some powers that without consensus "legal" principles were not properly legal.
of states considered in three broad categories - those of
the communist states, of the states of the Third World and
Latin America, and of the Western states.¹

The one thing about the principle of non-intervention
which was not at issue was its perceived importance. It was
commonly regarded as the "corner-stone of the United Nations
system".² The one issue common to all states, and taken up
by most, was that which attributed responsibility for
violation of the rule to others. The principle was part
of the doctrinal armoury of all states available for
deployment against malefactors outside their own frontiers.
Beyond the permanent presence of such political rhetoric in
the Assembly, there was substantial disagreement about the
scope and content of the principle of non-intervention. The
first conflict was about the status of the principle, about
whether it was to be considered, in its 1965 guise, an
expression of a legal obligation or a mere political
aspiration. Some states thought that the Declaration defined
a general principle of law, but did not object to "expand­
ing the area of agreement" reflected in that document; others
thought the Declaration was not intended as a legal document.³
Related to this question were the controversies about whether

¹ The categories of "communist" states and "Western" states
seem to speak for themselves. Broadly the "Third World" is
used here to describe those states which fit neither of
the first two categories - they are "non-European, non-
Communist and poor", see J.D.B. Miller, The Politics of the
advanced there for supposing the Third World to be "more
than a journalist's tag". Yugoslavia will be considered a
Third World state by dint of its posture on the non­
intervention principle. Latin America, because of its
special doctrinal contribution to non-intervention will be
taken as a special group within the Third World (or perhaps
a "Fourth World", see ibid., p.xi).

² See, e.g., Report of the Special Committee on Principles
of International Law concerning Friendly Relations and
p.115, para.211.

³ See Report of the Special Committee, 1966, UN Doc. A/6230,
p.67, paras.295-297. Still other states sought to prevent
any further consideration of the principle, believing its
1965 statement to be adequate, see P-H. Houben, "Principles
of International Law Concerning Friendly Relations and
it was the job of the Assembly to make new law or to elaborate and clarify the old, and whether the Charter was sacrosanct as the comprehensive statement of principles of international conduct or just a skeleton to which the flesh had to be added.

There were also differences about the legal basis of the principle.¹ Most states thought the principle to be implicit in the Charter. Several thought that Article 2(7) should extend a fortiori to members in their relations with each other and considered also that the rule was a corollary to Article 2(4). On the other hand, one representative argued that Article 2(7) applied only to intervention by the United Nations and that by the maxim expressio unius est exclusio alterius it could not be extended to states. It argued further that the prohibition of the use of force or its threat in Article 2(4) could not be "stretched to encompass all sorts of extraneous standards of conduct".²

Problems about definition began with conflicting views on the desirability of spelling out the activities considered to constitute intervention.³ Some states favoured a categorical statement prohibiting intervention and a list of the main types of actions which constituted it. Others took the view, reminiscent of the argument against defining aggression, that an extensive definition of intervention would stultify the growth of international co-operation

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¹ See Report of the Special Committee, 1964, UN Doc. A/5746, pp.116-117, paras. 216-219, from which the summary following is taken.


and a restrictive one would leave states without protection against real dangers, and argued from this the unwisdom of an attempt by the Special Committee to define intervention. The coercive nature of an act of interference was argued, apparently uncontroversially, to be the contingency which made that act "intervention", but problems arose again when some states wanted to make a distinction between "lawful" and "unlawful" coercion. This distinction was opposed on the ground that it was an attempt to justify the one category of "so-called" lawful intervention. When the debate moved on to the values protected by the principle of non-intervention, some states argued that, particularly for the benefit of small states, both internal and external affairs should be so protected. Others, doubtful of the meaning of "external affairs", preferred the formula "matters within the domestic jurisdiction", though the latter was itself a subject for debate.¹ This issue was rehearsed when some representatives favoured the limitation of the scope of the principle to allow the "generally recognized freedom of States to seek to influence the policies and actions of other States in accordance with international law and settled international practice".² Others feared that such a provision would legitimize intervention and argued that if international law "referred only to ordinary diplomatic and consular activities, there was no need for the provision".³ Another proposed limitation to the scope of the principle, to allow support for a victim of inter­vention by whatever means permissible under international law, and in accordance with the Charter, was called a dangerous departure from the Charter, and from international law in general, and even "tantamount to an attempt to

³Ibid., p.73, para. 332.
Thus Mill's doctrine of non-intervention was asserted in the Special Committee and countered with an extreme statement of Cobden's doctrine. The sorts of political entities entitled to the protection of the rule were also debated. Some states wanted to extend its protection to such groups as peoples and nations struggling against "the colonial yoke" - to make it a duty following from their interpretation of the right to self-determination. To these arguments that the principle "had acquired a new and universally valid dimension" and that the concept of a "people" was now recognized to be of legal importance, the reply was that the principle dealt only with the duty not to intervene in the domestic affairs of states. Nor did the argument stop there. Some states wanted to go beyond the affording of the protection of the rule to "oppressed peoples" living under "foreign domination" to legitimize intervention on their behalf and to assert such assistance as a duty. This position was opposed by other representatives who argued that it would sanction intervention whenever a state considered that elements within another state were under foreign domination.

Despite the argument of some states against any attempt by the Special Committee to define the activities constituting intervention, it spent much of the time devoted to the consideration of the principle of non-intervention on just such an exercise. The long list of "acts prohibited under the principle of non-intervention" considered by the Committee was composed of three basic

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1 Ibid., p.72, para. 326.
4 Ibid., p.71, para. 322.
5 Ibid., p.71, para. 323.
elements. The first of these consisted not of the sorts of acts prohibited by the principle, but of the aspects of the sovereignty of states against which such acts, however defined, were directed. Many states favoured such an exhaustive account of the sacred aspects of sovereignty which were to remain untouched by intervention, and the list included acts against the political, economic or social system of a state, its personality and sovereign equality, the promulgation or execution of its laws, the disposal of its natural wealth and resources and the national identity of a people. Those who opposed these elaborations on the concept of sovereignty thought terms like the "personality" of the state and the "national identity" of a people to be dubious legally, and that the expansion of the forbidden area to matters like the disposal of natural wealth and resources tended to obstruct natural and useful relations between states.

The second element in the list was composed directly of the acts considered to be prohibited by the principle of non-intervention. Among these acts were coercive measures of a political or economic nature used to obtain advantages of any kind, the threat to sever diplomatic relations in order to achieve a similar purpose and generally the use of duress by one state to gain advantages over another. Armed intervention was disapproved of whether it took the form of the organization and training of armed forces for the purpose of incursion into other states, subversive and terrorist activities or interference in civil strife in another state, or the provision of arms and materials in

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1 The Report of the 1964 Special Committee included "Acts Prohibited..." as a heading for much of the discussion; the 1966 Report had no such category but discussed the issues contained in it; the 1967 Report had the same discussion under the heading "Content of the Principle".

2 Equally sacrosanct, as seen above, were both the "internal and external" affairs of states, and the right of peoples to self-determination.

support of a rebellion within another state. Though all representatives objected to coercion, and this was the common thread running through the various views on the actions the principle disallowed, some representatives pointed out the difficulty of distinguishing between "impermissible coercion and legitimate persuasion".\footnote{Report of the Special Committee, 1967, p.52, para. 353.}

The third element in the list inverted the first. It was composed of prohibitions which would restrict rights traditionally regarded as being within the sovereign power of states rather than expanding them. Thus some representatives wanted to prohibit the imposition on a state of concessions of privileges to foreigners which went beyond the rights granted to nationals under the municipal law. In the same category fell the objection of some representatives to the use of duress to obtain or maintain territorial agreements or special advantages of any kind, and the objection to the recognition of territorial acquisitions or special advantages obtained by duress. These matters, which raised the thorny questions of _pacta sunt servanda_ and _rebus sic stantibus_, were little discussed.

Clearly, the debate in the Special Committee brought practising international lawyers no nearer to a consensus on such central questions as the definition of intervention and the scope and content of the principle proscribing it than the debate among their academic counterparts. But apart from being jurists, the members of the Special Committee were also, and more importantly, representatives of states, on whose attitudes to the principle the next section of the chapter will concentrate.

IV

That the principle of non-intervention was discussed so extensively at the United Nations was in large part due to the persistence of the Soviet Union and of the communist states in general. For those states, it seemed to be a useful peg on which to hang criticism of the Western states
and above all of the United States. In 1957, the Assembly discussed a complaint by the Soviet Union of intervention by the United States "in the domestic affairs of Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and the USSR". The Soviet delegate in the Special Political Committee thought such intervention was not a matter of chance, it was "part and parcel of United States foreign policy, the object of which was to subject the world to United States leadership, and thus, in effect, to secure the domination of the monopolies". This was a few months after Hungary. The purpose of the complaint seemed to be partly to provide a smokescreen for the Soviet intervention and partly to justify it. In 1965, there were no such recent embarrassments for the Soviet Union and it was the year of American escalation in Vietnam and intervention in the Dominican Republic. Introducing the item on the "inadmissibility of Intervention" in the General Assembly, the Soviet Union pronounced the matter urgent because of "the increasingly grave turn of world events" resulting from "certain Western powers...intervening by force in the domestic affairs of States" and for proof the Soviet Union looked to Vietnam, the Congo and the Dominican Republic. Czechoslovakia deplored the fact that the policy of intervention had been raised by the United States Government to "the status of an actual political doctrine".


2 The Czechoslovakian delegate declared that the "entire Hungarian counter-revolution had been based on a plan drawn up by the United States Intelligence Service", GAOR, 11th session, Special Political Committee, 37th meeting, (25 February 1957), p.168. However, the Soviet Union did not want the justification tested at the UN, invoking Article 2(7) against its discussion as a "gross interference in the domestic affairs of Hungary", see Year Book of the United Nations, 1956, pp.66 and 69-70.

3 GAOR, 20th session, 1st Committee, 1395th meeting, (3 December 1965), pp.243-244.

question was raised again at the next Assembly, the Soviet
Union generalized its criticism of the Western powers.
Not only was the United States disregarding the Declaration
on Non-Intervention in Vietnam, Laos, Cambodia, Korea, the
Dominican Republic and Cuba, but together with Germany and
the United Kingdom, she was doing the same in Africa.¹ In
1968, the Soviet Union decided that the lack of progress in
codifying the principles of peaceful co-existence was due
to the negative attitude of the states with misgivings about
the Declaration on Non-Intervention, misgivings which
reflected their overall policies. The answer, the Soviet
Union thought, was that those states should halt all
interference in the internal affairs of other states.²

As well as its function as a focus for criticism
of the West, the Soviet espousal of the principle of non-
intervention was also thrust forward as a sort of doctrinal
bauble with which to attract the new states of Africa and
Asia. During the 1965 debate on the "Inadmissibility of
Intervention", the Soviet Union drew attention to the plight
of the Asian, African and Latin American states as the
victims of Western intervention, deferred to the principle
of non-intervention as expressed by Third World conferences
such as those of Bandung, Belgrade and Cairo and projected
herself, through her sponsorship of the principle, as
the protector of the "vital interests of small countries
which were not in a position to defend their rights and
independence against imperialist interference".³ Soviet
sponsorship of the principle distinguished her from the
powers which had been seeking to "impede the advance of

¹The "political blackmail", "Diktat" and "economic pressure
exerted in the interest of the imperialist monopolies" of
the United States and her allies were also criticized as
methods of intervention. GAOR, 21st session, 1st Committee,
²GAOR, 23rd session, 6th Committee, 1092nd meeting,
(11 December 1968), pp.6-7.
³GAOR, 20th session, 1st Committee, 1395th meeting,
(3 December 1965), p.245.
history by aggressive acts and open intervention in the
domestic affairs of States and peoples fighting against
colonial domination, for their national liberation and
for their independent sovereign existence". Thus
criticism of the West and support for those it oppressed
were joined.

Though the legal discussion of the principle of
non-intervention in the General Assembly took place under
an item entitled "principles of international law concerning
friendly relations and co-operation among states", the
communist states preferred to refer to them as principles
of peaceful coexistence. The principle of peaceful co-
existence was thought to have "permeated contemporary
international law", the United Nations was a reflection of
its existence and its rejection would mean a "denial of the
purposes and principles" of that Organization. Its
fundamental tenet, on which the "very existence of
contemporary international law" was supposed to depend, was
the peaceful coexistence of states with different political
and social systems. Hence the principle of non-intervention,
which represented a "legal safeguard against encroachments
aimed at imposing a change in the social system".

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1 From summary of the Soviet Union's explanatory memorandum
of 24 September 1965, accompanying the request that the
"Inadmissibility of Intervention" be placed on the agenda
of the Assembly, in Year Book of the United Nations, 1965,
pp.87-88.

2 Statement by Czechoslovakian representative, GAOR, 17th
session, 6th Committee, 753rd meeting, (5 November 1962),
p.96.

3 Statement by Soviet delegate, GAOR, 17th session, 6th
Committee, 754th meeting, (6 November 1962), p.104.

4 Statement by Soviet representative, GAOR, 18th session, 6th
Committee, 802nd meeting, (29 October 1963), p.111. The
Soviet Union argued that the principle had fulfilled this
function since the time of its first formulation "by the
French bourgeoisie during their revolution, as a defence
against the absolutist feudal State", loc.cit. This aspect
of the principle, as a protector of ideology, was contained
in a Czechoslovakian draft proposal on the formulation of
the principle submitted to the 1964 Special Committee. The
same proposal contained a paragraph directed unmistakably
at the Hallstein doctrine, by which West Germany withheld
recognition from states recognizing East Germany. For the
text of the proposal see Appendix 1(c).
Beyond this general affirmation of the importance of peaceful coexistence, the communist states seemed to conceive of three categories of international law relevant to the Assembly's deliberations - the principles confirmed in the Charter of the United Nations, those which had been proclaimed "in virtue of the Charter", and those "now being worked out in the United Nations with the participation of the new States". 1 The non-intervention principle seemed to fit into each of these categories. It was a principle extant since the French Revolution, confirmed in the Charter through Article 2(7). 2 It was a principle proclaimed in virtue of the Charter - the 1965 Declaration on Non-Intervention was supported by the Soviet Union in part because it "gave more concrete form" to the principles of the Charter. 3 And it was a principle worked out with the participation of new states - the communist states explicitly extending "the inalienable right" to freedom, independence and defence of sovereignty to every people as well as to every sovereign state. 4

The principles of peaceful coexistence as proclaimed in contemporary communist legal doctrine were borrowed from the Third World. 5 From that world, Asian states in particular claimed a long pedigree for the Pancha Shila. Afghanistan considered the principle of coexistence to be

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1 GAOR, 17th session, 6th Committee, 754th meeting, (6 November 1962), p.105. This interpretation was in a Soviet commentary on a Czechoslovak draft declaration containing nineteen principles, which, in the view of most Western states, consisted of more moral and political principles than strictly legal ones.

2 See statement of Czechoslovakian representative, GAOR, 18th session, 6th Committee, 802nd meeting, (29 October 1963), p.107 and of Romanian representative, GAOR, 20th session, 1st Committee, 1403rd meeting, (8 December 1965), p.301.


5 See above Chapter V, section VII.
founded on "historic Asian principles". To its venerable age, some added a mystical quality as when Laos affirmed that "the very essence of the Buddhist religion was embodied in the Pancha Shila" and India declared that one of its component principles, that of non-intervention, was "an article of faith for the non-aligned countries". More prosaically, the United Arab Republic thought that the "principle of non-intervention had evolved from the historical experience of many small States". But whatever the thoughts about its origin, and whether or not it was considered to be part of the peaceful coexistence package, the particular importance of the non-intervention principle to the small and weak states of the Third World was averred almost without exception and its consecration in an Assembly Declaration was hailed as an "historic moment" in the annals of the United Nations.

The Third World was not unique in finding more difficulty defining intervention than in affirming the importance of preventing it. Some states dwelt upon the problem of giving precise meaning to terms like "intervention" and "domestic jurisdiction" about whose definition they were dissatisfied. Most attempted definitions resulted in a list of unfriendly acts which were considered to constitute intervention, in which any inadequacy or oversight

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1 GAOR, 17th session, 6th Committee, 762nd meeting, (19 November 1962), p.142. See also the Saudi Arabian statement that the principles underlying the concept of peaceful coexistence were "deeply rooted in Arab thinking, traditions and culture". GAOR, 12th session, 1st Committee, 936th meeting, (13 December 1957), p.410.


3 GAOR, 20th session, 1st Committee, 1403rd meeting, (8 December 1965), p.299.

4 See statement by the representative of Afghanistan, GAOR, 20th session, 1408th Plenary meeting, (21 December 1965), p.15.

5 See statement by the representative of Ceylon, GAOR, 18th session, 6th Committee, 805th meeting, (5 November 1963), pp.127-128 and of the Tunisian representative GAOR, 18th session, 6th Committee, 822nd meeting, (29 November 1963), p.233.
was covered by an absolute statement of the principle of non-intervention, prohibiting intervention by a state or group of states "directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State". It was among the states of the Third World, above all, that support was to be found for an expansive definition of sovereignty, an elaborate recording of the acts constituting intervention and, at the same time, a restriction of the claims to sovereignty of the states with the power to intervene. Frequently, the list of unfriendly acts was composed with an eye more to the behaviour of a neighbour than to the elaboration of a legal principle, as when the Laotian representative "appreciated the Soviet Union's initiative" on non-intervention in 1965, "coming as it did at a time when Laos was being invaded by North Vietnam". Similarly, though this time with a perspective beyond his own frontiers, the Tanzanian representative translated the "real issues" from principles into practice, listing as such the war in Vietnam, provocations by Portugal, aggression against the Arab countries, economic and political pressures on small states, and "the machinations of the imperialist Powers to overthrow the Governments of independent African and Asian countries that dared to oppose the interests of the monopolies". This last was a general grievance among the states of the Third World. Though seldom put with the rhetoric of the Guinean

1 From the proposal on the formulation of the principle submitted by Ghana, India and Yugoslavia to the 1964 Special Committee, text in Appendix I(d).

2 GAOR, 20th session, 1st Committee, 1399th meeting, (7 December 1965), p.269. In the same way, the behaviour of each other was uppermost in the minds of the representatives of Israel and the Arab States when the non-intervention principle was being discussed.

3 GAOR, 21st session, 1st Committee, 1480th meeting, (9 December 1966), p.332. The representative of Mali linked practice with principle by citing the action of the US and its allies in Vietnam as an example of the "deceitful pretext" of counter-intervention by which imperialist Powers sought to maintain their influence in some parts of the world, GAOR, 21st session, 1st Committee, 1480th meeting, (9 December 1966), p.332.
delegate, who spoke of "the imperialist counter-offensive against the formerly enslaved countries" by "unrepentant colonialists" and the "remote control of people's minds", the concern with economic and social, as well as political intervention, was common to all the states of the Third World.\(^1\) The adoption of the principle of non-intervention was to put an end to these manifestations of imperialism, colonialism and neo-colonialism.\(^2\)

Though these extensive claims about the content of the principle were made principally with a mind to the behaviour of the Western powers, there was a broad strand of Third World doctrine which sought to direct the principle against great powers as such and not just those of a particular political colour. Thus the United Arab Republic thought that "in the final analysis, non-intervention was for the great powers a duty, and for the small powers a right and an immunity".\(^3\) The Philippines thought the whole purpose of the principle was "to protect the weak from the depredations of the strong".\(^4\) Liberia wished to carry the immunity a stage further - to shut out the ideological quarrel between the great powers which tended to spill over into the Third World, and Tunisia "refused to regard peaceful coexistence in terms of ideological blocs, for that would inevitably destroy the

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1GAOR, 21st session, 1st Committee, 1478th meeting, (8 December 1966), pp.321-322. The distinction between political and social and economic intervention was made by the representative of Ceylon, according to the sorts of objectives pursued, the sorts of agencies responsible for pursuing them, and their methods, GAOR, 18th session, 6th Committee, 805th meeting, (5 November 1963), pp.127-128.

2See statement of the representative of the UAR, GAOR, 20th session, 1st Committee, 1403rd meeting, (8 December 1965), p.299; of Liberian representative, GAOR, 21st session, 1st Committee, 1480th meeting, (9 December 1966), p.331; of the Kenyan representative, ibid., p.335.

3GAOR, 20th session, 1st Committee, 1403rd meeting, (8 December 1965), p.299.

personality of small states". The principle of non-intervention had been a positive factor in developing the policy of non-alignment and it followed from that policy. It was a standard of conduct among the states of the Third World which they sought to apply to the powers outside it.

Most states of the Third World asserted the emphatic existence of the non-intervention principle in the Charter of the United Nations, though there were differences as to its exact location in that document. But it was also held to be part of new law adapted to a changed international order to meet "the needs of the majority of nations." According to the representative of Afghanistan, the sources of the novelty were two: firstly, the vastly

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3 See statement of the representative of Nepal, GAOR, 21st session, 1st Committee, 1477th meeting, (8 December 1966) and of the Indonesian representative, GAOR, 12th session, 1st Committee, 939th meeting, (14 December 1957), p.439, and of the Mexican representative, ibid., p.441.

4 See, e.g., Yugoslavia's assertion that the rule had been "consecrated" in Article 2(4) and (7) of the Charter, GAOR, 17th session, 6th Committee, 753rd meeting, (5 November 1962), p.98. Dahomey, among many other states, thought that Article 2(7) applied a fortiori to states, GAOR, 17th session, 6th Committee, 885th meeting, (30 November 1965), p.268. Both the UAR and Cyprus drew a distinction between Article 2(7) and the principle of non-intervention between states and asserted the wider scope of the latter. GAOR, 18th session, 6th Committee, 811th meeting, (14 November 1963), p.164 and 822nd meeting, (29 November 1963), p.230. Interpreting Article 2(4), Tanzania included economic pressure in the definition of the term "force", GAOR, 23rd session, 6th Committee, 1093rd meeting, (12 December 1968), p.14. Thailand was one of the few states of the Third World entertaining any doubts about the principle, considering it "more of a doctrine than an established principle of international law", GAOR, 17th session, 6th Committee, 763rd meeting, (20 November 1962), p.152.

increased membership of the United Nations since its foundation had rendered the Charter insufficient as a reflection of the views of the majority of states and, secondly, the role of the non-aligned states in world affairs lending weight to the principles of coexistence. ¹ For India, the status of the 1965 Declaration on Non-Intervention as a legal and not merely a political principle, was a consequence of "the modern dimensions of international law" - the declarations of Latin American conferences, those of Bandung and Belgrade and the Charter of the OAU constituting "some of the positive legal and juridical bases of the Declaration". ² A third newness was the attachment of Third World states to the concept of "people" as one having legal meaning. The principle of non-intervention was thought to be a "natural extension of the principle of self-determination" and did not apply to aid given to peoples under colonial domination on behalf of the latter principle. ³

The views of Latin American states on the principle of non-intervention were close to but marginally more conservative than the mainstream of Third World doctrine. Less radical in their protestations than such states as Guinea or Kenya, they clung no less tenaciously to the 1965 Declaration on Non-Intervention as an affirmation of legal as well as political principle. Nor was this surprising, for the Declaration was, in large part, the adoption by the international community of an inter-American principle.

¹ GAOR, 17th session, 6th Committee, 762nd meeting, (19 November 1962), p.143.

² GAOR, 21st session, 1st Committee, 1481st meeting, (10 December 1966), p.345. See also statement of Zambian representative, GAOR, 22nd session, 6th Committee, 1003rd meeting, (20 November 1967), p.270. When the draft declaration on principles of international law was nearing adoption in 1970, India urged that the words "in accordance with the Charter of the United Nations" not be included in the title on the ground that they might have a limiting effect, GAOR, 25 session, 6th Committee, 1183rd meeting, (28 September 1970), p.4.

which was "a way of life" for the peoples of Latin America.¹

It was the presence, in the late nineteenth and in the twentieth centuries, of a colossus to the North which had concentrated the Latin American mind on an absolute prohibition of intervention. By a longer tradition, which the Latin American countries shared with the United States, such a prohibition was to apply to states and their ideologies which were alien to the hemisphere. The contemporary threat to the hemisphere was posed by communism and all its works.² Latin American states favoured a definition of intervention which took account of unfriendly acts originating within and outside the hemisphere.³ The Mexican representative recognized the difficulty of defining intervention, but argued that this difficulty should not be invoked "to invalidate the principle that certain types of pressure or coercive action were unquestionably illegal and constituted forms of intervention".⁴ Mexico thought that the United Nations should explicitly prohibit these forms of intervention and in support of this view she offered a special reason. An apparent lacuna in Article 2(4) of the Charter arguably allowed the use of force when

¹See statement of Colombian representative, GAOR, 21st session, 1st Committee, (7 December 1966), p.305.

²See e.g., the Brazilian reaction to the First Solidarity Conference of the Peoples of Africa, Asia and Latin America which was thought to have called for revolution and thus to have threatened interference in the internal affairs of states. Brazil was suspicious of the "so-called national liberation movement" and concerned about the expansion of the sphere of action of communism, GAOR, 21st session, 1st Committee, 1473rd meeting, (5 December 1966), p.290. See also the statement of the Honduran representative, GAOR, 21st session, 1st Committee, (6 December 1966), p.293. Colombia saw in revolutionary and guerrilla warfare "a real conspiracy against the principle and practice of non-intervention", GAOR, 20th session, 1st Committee, 1395th meeting, (3 December 1965), p.247.

³See, e.g., the Mexican proposal on the formulation of the principle submitted to the 1964 Special Committee, text in Appendix I(e). An exception was Cuba, which wanted to point the principle in just one of those directions, GAOR, 22nd session, 6th Committee, 995th meeting, (10 November 1967), p.206.

⁴GAOR, 20th session, 6th Committee, 886th meeting, (1 December 1965), p.278.
it was not directed against the territorial integrity or political independence of any state. To close this possible loophole, Mexico advocated a legal proclamation of the principle of non-intervention in the form used by the Organization of American States.¹

The Latin American states were not reluctant to see gaps in the Charter filled, the less so as the filling came from their own law. The Chilean representative regarded the 1970 Declaration on Principles of International Law as "the most serious attempt made yet to produce a set of international legal principles" and looked forward to a "world based on the principles of natural law".² But the enthusiasm for new law between states was not matched, as it frequently was in the Third World, by an equal anxiety to extend the franchise of international law to entities other than states. Though the Peruvian representative welcomed some of the "important" ideas which had emanated from the Afro-Asian states, such as their objection to the use of force to deprive peoples of their national identity and the principle of self-determination, it was noticeable that he referred to the latter as "the right of every state to choose its political, economic, social and cultural systems without interference" and not of every people.³ On this aspect of new law, the Latin American states were closer to the West than either the communist states or the Third World.

The Western powers spent much of their time, during Assembly consideration of the principle of non-intervention, reacting to the initiatives of others - replying to their criticisms and stating a preferred view on matters of law.

¹GAOR, 18th session, 6th Committee, 806th meeting, (6 November 1963), p.134.


³GAOR, 21st session, 1st Committee, 1473rd meeting, (15 December 1966), p.289.
In 1957, the United States considered "the various false and sensational accusations" levelled against her by the Soviet Union, to be part of a propaganda offensive to "divert world attention from its own programme". ¹ When the Soviet Union launched the Assembly into consideration of non-intervention in 1965, the United States thought it was to "serve as a pretext for a violent attack on the Western States". ² The United Kingdom found the principles of peaceful coexistence "unexceptionable" and all of them contained in the Charter, but was convinced that they "meant something quite different to the Soviet Union from its own understanding of the words". ³ France stated a general Western view when she felt that "merely to recall the general principles of peaceful coexistence could not influence the actions of Member States very greatly" and that it would be more useful to attempt to define the means of arriving at the goal of "genuine peaceful coexistence". ⁴

There were concerns which the Western powers shared with those who would write extensive lists of the acts prohibited by the rule of non-intervention - such as the desire to outlaw subversive activities of any sort and to protect the inalienable right of a state to choose its own political, economic, social and cultural system without interference by another state. But it was precisely in the exceptions to the rule allowed by those who otherwise favoured an elaborately prohibited prohibition of intervention, that the Western powers saw the most danger to the international order. The asserted legitimacy of intervention on behalf of peoples living under foreign domination, the justice proclaimed for the war of national liberation, seemed to the West, to exclude the characteristically modern use of


² GAOR, 20th session, 1st Committee, 1396th meeting, (3 December 1965), p.251.

³ GAOR, 12th session, 1st Committee, 938th meeting, (13 December 1957), p.424.

⁴ GAOR, 13th session, Special Political Committee, 118th meeting, (3 December 1958), p.143.
force in international relations from legal control. Thus the Australian representative thought that "the danger of world conflict now arose more from forms of intervention short of open warfare, such as propaganda, subversion and terrorism". The United States representative considered "the aim of subversion and infiltration, which were the chief modern forms of intervention", to be "not essentially different from the aim of aggression throughout history", namely, "the overthrow of a lawful and established Government in order to set the stage for some form of external authority, overt or otherwise".  

Thus a perception, on the part of the Western powers, of the dangers of defining intervention if that exercise did not fill all the possible gaps, was added to an appreciation of the intrinsic problems involved in discovering the meaning of "intervention" and "domestic jurisdiction". Further, the United Kingdom was concerned that a consideration of the scope of "intervention" should recognize that it was "inevitable and desirable" that states should seek to influence each other's policies and actions. Making the same point, the United States argued that many acts by states had consequences in the internal affairs of other states, but that they should not thereby be considered interventional. A third Western concern, in this context, was that any prohibition of intervention should not prevent a state which was the victim of subversive activities from

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1 GAOR, 20th session, 1st Committee, 1399th meeting, (7 December 1965), p.270.

2 GAOR, 21st session, 1st Committee, 1479th meeting, (9 December 1966), p.329.

3 See the British proposal on the formulation of the principle of non-intervention submitted to the 1964 Special Committee, text in Appendix I(f).

4 Loc.cit.

5 GAOR, 18th session, 6th Committee, 825th meeting, (3 December 1963), p.250.
gaining help against such "indirect aggression".1 Awareness of the pitfalls involved in definition made the Western powers hesitant about going beyond the Charter, and in the case of the United States in 1964, reluctant to admit the presence of the non-intervention principle in the Charter.2 The defence of the less extreme of these positions seemed to be that too broad a prohibition of intervention would inhibit the exercise of the right to self-defence at the same time as restricting the "natural" interplay of international relations.

The doubts which the Western powers entertained about the "new law" championed by the communist states and by the Third World were rooted in a distinction they made between legal principles on the one hand and political and moral principles on the other. Two sorts of reasons supported the distinction. The first was that lists of generalities were not law and could not become such before being pursued into detail so that their application to particular circumstances was clear and their interpretation unambiguous.3 The 1965 Declaration on Non-Intervention, in particular, was thought not to be a juridically sound text, for the production of which a "more competent" body than the General Assembly, such as the Special Committee, was suggested.4 Furthermore, a consensus of all the

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1 Statement of British representative, GAOR, 18th session, 6th Committee, 822nd meeting, (29 November 1963), p.235. See also British proposal to 1964 Special Committee and the joint proposal on the formulation of the principle submitted to the 1966 Special Committee by Australia, Canada, France, Italy, UK and USA, text in Appendix I(g).


4 See statement of Italian representative, GAOR, 21st session, 1st Committee, 1404th meeting, (9 December 1965), p.308.
members of the Assembly was held to be important on matters of this sort, for only then could a resolution command general respect. The second reason supporting the distinction between politics and law was more fundamental. The Australian representative argued that the adoption of a resolution by the General Assembly "was not, under the Charter, a method of making international law" and that resolutions might serve as a foundation for rules of international law "only in so far as they reflected the general practice of States". The French representative took this argument further. The creation of new law, he said, "presupposed a political choice concerning orientation and methods of improvement" of existing law, and that was a power the Assembly did not have. In other words, because the Assembly was not an international legislature, its acts were not law for the international community.

Perhaps protected by these statements of Australia and France, the Western powers felt able to accept the 1970 Declaration on Principles of International Law as a "tribute to the spirit and aim of consensus", but not without making certain understandings clear. For Italy, the Declaration contained an implied reference to all the reports of the Special Committee since 1964, as "so to speak, travaux préparatoires" of the Declaration. The Dutch thought it could not be interpreted as "a carefully

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3GAOR, 22nd session, 6th Committee, 995th meeting, (10 November 1967), p.207.

4The remarks about "consensus" were those of the UK representative, Report of the 1970 Special Committee, p.111, para. 223.

5Ibid., p.85, para. 135.
drafted legal document would be interpreted". The United Kingdom maintained her position on the inevitability and desirability of influence between states, though the text of the principle referred to intervention in internal or external affairs. Towards the beginning of the eight years over which the Assembly's consideration of principles of international law concerning friendly relations and co-operation among states was spread, the French representative had looked with disfavour on "the method of stating subsidiary principles or corollaries to the principles of the Charter" because the method would weaken the Charter. At the end of the Assembly's consideration of the item, the West had not moved far from this position. "The Special Committee had not been charged with the revision of the Charter", said the United States in 1970, "but only with the spelling out, carefully and fairly, of what had already been agreed by Governments".

V

In the Assembly's discussion of the principle of non-intervention, the states of the communist world and of the Third World had taken the initiative, holding high the standard of non-intervention, while the Western powers beat a cautious retreat before them, refusing, however, to


2 The UK was also careful about the principle of self-determination, claiming that Article 2(4) of the Charter applied between states and not, "truly interpreted", to situations affecting dependent peoples. As against an extreme interpretation of the right of self-determination, she also asserted a right to limited police action to maintain law and order in dependent territories, ibid., pp.111-114, paras.228-234.

3 GAOR, 18th session, 6th Committee, 810th meeting, (13 November 1963), p.159. France thought that the Charter would be weakened "especially when the statements referred to transitory or changing situations and, above all, to political or ideological notions foreign to international law", ibid., pp.159-160.

surrender points of vital interest. On the question of apartheid in South Africa, the communist states and the Third World took up the cause with equal enthusiasm, but on this issue it was the Western powers proclaiming the virtues of non-intervention and the radical view asserting that here was an exception to the rule - a higher imperative. The exception claimed was to the principle of non-intervention as expressed in Article 2(7) of the Charter which excluded the United Nations from matters within the domestic jurisdiction of states. The claim asserted the right of the United Nations, as the representative of international society, to overrule the plea of domestic jurisdiction if standards of conduct within states fell below standards asserted to have been agreed between them.¹

The counter-claim asserted the opposite - that the domestic jurisdiction clause was prior to any claim, on the part of international society, to competence in the matter of conduct within states. Thus the debate about South Africa raised, once more, two familiar themes in international relations. The first was the debate between those who would intervene on behalf of justice and those who would refrain from intervention in the interests of

¹This claim relied upon the following articles of the Charter:- Article 1(2) and 1(3) stating the Purposes of the United Nations - "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace", and "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"; Article 13(1b) authorizing the Assembly to initiate studies and make recommendations for the purpose of "promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"; Article 55(c) authorizing the United Nations to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" and Article 56 - "All Members shall pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55".
order. The second and related theme was the concern of some to conserve the sovereignty of states against the threatened intrusions of a super-state.

The practice of the United Nations on the South African issue ran against the argument for an extreme interpretation of Article 2(7), and as the issue recurred at each Assembly, so the frontiers of domestic jurisdiction receded. In the early years of the Assembly's consideration of the question of race conflict in South Africa, the resolutions it adopted were comparatively bland. In 1952, while setting up a Commission to study the question, the Assembly did not single out South Africa as the malefactor, but merely addressed a call to all states to bring their policies into conformity with their obligations. In 1954, South Africa was singled out and "invited" to reconsider its position in the light of the

1In fact, the debate was and is more complex than this simple dichotomy would suggest as will be seen later in the chapter; see also Chapters 8 and 9 below.

2These themes inevitably arise in any discussion of the principle of non-intervention. The particular reason for selecting the issue of apartheid in South Africa to illustrate the contemporary debate on the principle is that it raises the question of intervention in internal affairs in its "pure" form. The issue is almost uncluttered with argument about aggression across international frontiers and consequent claims to the right of self-defence or counter-intervention. Though many states asserted that the South African situation was a threat to international peace and security, they could not base this assertion on evidence of international aggression but had to show that a situation within a state was a danger to international peace, which required evidence of quite a different sort. Nor was the issue one of colonialism - in the proper sense of control of a country by a metropolitan power which is not of that country - even if South Africa was widely regarded as an "internal colonialist" by virtue of her supposed racialism, (see Alan James, The Politics of Peace-Keeping, (London, 1969), p.254).

3The question was first placed on the agenda of the Assembly for its 7th session in 1952 at the request of 13 Arab-Asian states. The Assembly had been considering the question of the treatment of people of Indian origin in South Africa since its first session in 1946.

4General Assembly Resolution 616 A and B(VII) of 5 December 1952, A was passed by 35 votes to 1 with 23 abstentions and B by 24 to 1 with 34 abstentions.
"high principles" of the Charter. In 1955, she was "called upon" to observe her obligations and by 1957 the Assembly was deploiring her failure to do so. After the Sharpeville shootings in 1960, and with the increasing pressure for action from the African states in particular, the concern of the United Nations became more intense. The Security Council recognized that the situation in South Africa was one that had led to international friction and "if continued might endanger international peace and security". In the following year, the Assembly requested, with only Portugal dissenting, all states to consider such separate and collective action as was open to them in conformity with the Charter of the United Nations, to bring about the abandonment of racial policies in South Africa. This was followed up in 1962 by a much less popular request that states take particular measures against South Africa, including breaking off diplomatic relations and restraining trade, and a further request to the Security Council to impose sanctions and to consider the expulsion of South Africa from the United Nations. In 1963, the Security Council responded to the extent of solemnly calling upon all states "to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa". Now, Assembly resolutions were no longer the

1 General Assembly Resolution 820(IX) of 14 December 1954, adopted by 40 votes to 10 with 10 abstentions.

2 General Assembly Resolutions 917(X) of 6 December 1955, adopted by 41 votes to 6 with 8 abstentions and 1016(XI) of 30 January 1957, adopted by 56 votes to 5 with 12 abstentions.

3 Security Council Resolution S/4300 of 1 April 1960, adopted by 9 votes to 0 with 2 abstentions.

4 General Assembly Resolution 1598(XV) of 13 April 1961.

5 General Assembly Resolution 1761(XVII) of 6 November 1962, adopted by 67 votes to 16 with 23 abstentions.

6 Security Council Resolutions S/5386 of 7 August 1963, adopted with only Britain and France abstaining. A resolution which called less stridently for the cessation of "the sale and shipment of equipment and materials for the manufacture and maintenance of arms and ammunition in South Africa" was carried unanimously, Resolution S/5471 of 4 December 1963. In 1970, a detailed resolution aiming to strengthen the arms
restrained requests of the previous decade. The South African situation was declared to be a threat to international peace and security, demanding action under Chapter VII of the Charter, since universally applied economic sanctions were the only means to a peaceful solution. The legitimacy of the struggle of "the oppressed peoples of South Africa for the exercise of their inalienable right of self-determination" was recognized, and all states and organizations were urged to give greater assistance, moral, material and political, to the "South African liberation movement". The Assembly also turned an accusing eye in the direction of those states which were encouraging South Africa, urging them to desist from collaboration with the regime. But beyond the adoption of resounding resolutions, the setting-up of a trust fund to assist the victims of apartheid and the establishment of a precarious arms embargo, the United Nations took little action against South Africa. The Great Powers not being unanimously agreed on the existence of a threat to international peace and security, the Security Council could not authorize action under Chapter VII of the Charter.

Of the Great Powers, it was the Soviet Union that asserted the existence of such a threat. In general, however, where the communist states had led the non-intervention movement, they were content to follow the lead of the Third World on the South African issue. That the issue was an embargo against South Africa was adopted by the Security Council with France, UK and USA abstaining, Resolution 282 (1970) of 23 July 1970.

1 See, e.g., General Assembly Resolution 2054(XX) of 15 December 1965, adopted by 80 votes to 2 with 16 abstentions. This view was asserted the more strongly as South Africa was accused of military intervention and assistance to the "racist minority regime in Southern Rhodesia", see General Assembly Resolution 2396(XXIII) of 2 December 1968 adopted by 85 votes to 2 with 14 abstentions.

2 Loc.cit.

3 Loc.cit., and General Assembly Resolution 2506(XXIV) of 21 November 1969, adopted by 101 votes to 2 with 6 abstentions.
international one, not of purely domestic concern, was never doubted by the communist states, the Polish representative arguing that a United Nations duty to settle the matter was "manifest in Articles 55, 56 and 1 of the Charter". He thought South Africa's plea of domestic jurisdiction to be an attempt to transform general discussion into a debate on competence and declared that the question was "not whether the United Nations had the right to discuss the problem but whether it could possibly keep silent about it".

To their interpretations of the Charter, the communist states added political reasons for the impossibility of silence on the South African issue. Bulgaria thought that South Africa had to be compelled to reappraise its policy of apartheid because "there was an imminent danger that the race conflict would soon become acute, thus threatening world peace and security". Poland thought the international significance of the issue lay in the fact that racialism was "a venomous and contagious disease", whose gains or losses anywhere affected all humanity. And the Romanian representative invoked an analogy from the 1930's. Spotting an "inner link" between official racial policy and aggressive designs, he declared that the United Nations "must not misinterpret the principle of non-intervention as the League of Nations had".

1GAOR, 10th session, Ad Hoc Political Committee, 11th meeting, (7 November 1955), p.37. The Soviet representative argued that "to question the international nature of the issue, as the United States representative had done, was tantamount to supporting and defending the policy of discrimination against the non-white population", GAOR, 8th session, Ad Hoc Political Committee, 41st meeting, (4 December 1953), p.216.


representative of the Soviet Union saw the matter in moral terms which, at the same time, demonstrated his oneness with the under-developed world. He thought the South African policy of racial discrimination to be "an insult to the non-white peoples of Asia, Africa and South America", and that the Security Council had a duty to hear their voice. ¹

As to what to do about South Africa, the communist states listened to the voice of the Third World. The Soviet Union supported the imposition of a boycott, the severance of diplomatic relations, the discontinuance of communication and she later took up the cry for sanctions and the expulsion of South Africa from the United Nations. ²

Confident that strong measures, the translation of words into action, would bring about the desired effect in South Africa, and irritated by the view that the voice of world conscience would achieve the same end, the communist states also developed a theory to explain the persistence of apartheid in the face of United Nations opposition. In the words of the Czechoslovakian representative, "the South African regime would have found it impossible to maintain that policy had it not been for the economic, political, and military support of certain imperialist Powers". ³ This theory, which tarred the West with the racist brush, was also popular among the states of the Third World.

The states of the Third World could not possibly allow a South African claim to domestic jurisdiction, because her actions were contrary to their view of the fundamental purposes and principles of the Charter. It was absurd to speak of United Nations intervention in a matter essentially


³GAOR, 20th session, Special Political Committee, 475th meeting, (2 December 1965), p.3.
within South Africa's domestic jurisdiction, because, as
the Indian representative put it, "the question of human
rights and fundamental freedoms, having passed into the
international domain, was a matter of international concern". ¹
With less support in legal doctrine, the Iranian repre-
sentative asserted "an inherent power in the General Assembly,
as the most representative organ of the international
community, to impose its will". ² But what made the matter
incontestably one of international concern was the threat
it presented to international peace and security, in
support of which view, three sorts of evidence were offered.
Firstly, it was simply asserted that the situation in
South Africa was such that sooner or later it was bound to
threaten the world with a new conflict unless the United
Nations stepped in. ³ In the second place, peace, and in
particular racial peace, and freedom, were held to be
indivisible; if they were compromised in South Africa then
they would be compromised everywhere. ⁴ The Indian

¹GAOR, 7th session, Ad Hoc Political Committee, 18th meeting,
(17 November 1952), pp.96–97. The Iranian representative
argued that "even if the questions referred to in Article
55 [of the Charter] fell within the domestic jurisdiction of
States, Article 56 obliged the states to allow the United
Nations to intervene", GAOR, 7th session, Ad Hoc Political
Committee, 18th meeting, (17 November 1952), p.102.

²GAOR, 12th session, Special Political Committee, 50th
meeting, (21 October 1957), p.43.

³See statement of the Indian representative, GAOR, 7th
session, Ad Hoc Political Committee, 13th meeting, (12
November 1952). It was not always clear whether the states of
the Third World saw international conflict arising from the
situation in South Africa or whether they nevertheless
asserted a duty to intervene to avert an internal race con-
FLICT, see statement of the representative of Pakistan, GAOR,
7th session, Ad Hoc Political Committee, 15th meeting,
(13 November 1952), p.77 and of the representative of Burundi,
22nd session, Special Political Committee, 558th meeting,
(2 November 1967), p.35.

⁴See statement of Yugoslav representative, GAOR, 7th session,
Ad Hoc Political Committee, 18th meeting, (17th November 1952),
p.100, of the representative of Syria, GAOR, 10th session,
Ad Hoc Political Committee, 5th meeting, (26 October 1955),
pp.12–13, of the representative of Ghana, SCOR, 15th year,
853rd meeting, (31 March 1960), pp.2–3 and of the represen-
tative of Togo, GAOR, 17th session, Special Political Commit-
representative feared the spreading of the doctrine and practice of apartheid beyond the borders of South Africa and the representative of Ghana saw the creation of race hatred as a cause of war. Moreover, the Tanzanian representative thought the solution to the race conflict in South Africa "would determine the course of race relations in the future". The third sort of evidence of the danger in apartheid for international peace was the claim of the Kenyan representative that the "white supremacists of South Africa had sent armed gangsters as far as the borders of the Sudan, Uganda, Rwanda, Burundi, the United Republic of Tanzania, Zambia and the Congo" as part of "a colonial design on Africa".

Variously interpreted as originating with or produced by it, as operating with its philosophy or being its modern manifestation, apartheid was generally despised in the Third World as a species of colonialism. Its elimination was considered to be a moral duty above the law. The Pakistan representative thought the issue was "in essence a purely moral one". The Egyptian representative declared that "human solidarity could not be confined within national boundaries". And the representative of Saudi

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2 Ibid., p.11.

3 GAOR, 22nd session, Special Political Committee, 562nd meeting, (8 November 1967), p.62.

4 See statement of UAR representative, GAOR, 14th session, Special Political Committee, 140th meeting, (30 October 1959), p.69, of the Pakistan representative, SCOR, 15th year, 852nd meeting, (30 March 1960), p.31, of the Indonesian representative, GAOR, 16th session, Special Political Committee, 282nd meeting, (8 November 1961), p.113 and of Morocco, GAOR, 21st session, Special Political Committee, 532nd meeting, (5 December 1966), p.197.

5 GAOR, 10th session, Ad Hoc Political Committee, 9th meeting, (3 November 1955), p.27.

6 GAOR, 10th session, Ad Hoc Political Committee, 7th meeting, (1 November 1955), p.17.
Arabia dismissed the South African plea of domestic jurisdiction with an assertion that "the exigencies of moral law could not be sacrificed to legal questions".\(^1\)

A moral problem, moral pressure was not thought sufficient to solve it.\(^2\) The call for sanctions originated in the Third World and became more strident as the Western powers were slow to respond. For Ghana, the answer was "to ostracize South Africa from the community of civilized nations" and for many Third World states the West was the obstacle in the way of a solution.\(^3\) To the representative of Uganda "it really appeared that, for the Western states, a threat to peace and security meant a threat against their own interests and those of the white population".\(^4\) As the issue remained unresolved, the call for action escalated. Algeria declared that "the people of South Africa had no choice but to resort to armed struggle".\(^5\) The Zambian representative urged the United Nations to "support the South African freedom-fighters and find ways of inducing the masses inside South Africa to fight for their freedom".\(^6\) In the context of apartheid, the principle of non-intervention had become a totally discredited doctrine, Guinea accusing France of invoking the principle "to justify its support for

\(^{1}\)GAOR, 7th session, Ad Hoc Political Committee, 18th meeting, (17 November 1952), pp.95-96.


\(^{3}\)GAOR, 16th session, Special Political Committee, 269th meeting, (25 October 1961), p.47. The Philippines was one of the few Third World states to have doubts about sanctions, see GAOR, 11th session, Special Political Committee, 11th meeting, (11 January 1957), p.49.


\(^{5}\)GAOR, 24th session, Special Political Committee, 648th meeting, (27 October 1969), p.3.

the racist and fascist minority regime in South Africa".  

Generally more cautious than the states of the Third World, the Latin American states were no less convinced that the question of apartheid was a matter of international, and not purely domestic, concern. The representative of Ecuador argued that by their signature of the Charter states had accepted a limitation on their freedom of action in the area of human rights, and that sovereignty could not be invoked to undermine this established order. He also argued that the question of "intervention" did not arise because that was "a technical term which referred to interference in the affairs of a State and the use of force to that end"; it did not have the broad meaning ascribed to it by South Africa. The representative of Argentina disposed of the South African claim to domestic jurisdiction in more radical manner, declaring it to be inadmissible "where the majority of the people did not exercise sovereign rights". The Guatemalan representative went beyond law and the

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1 GAOR, 20th session, Special Political Committee, 469th meeting, (29 November 1965), p.4. The Liberian representative had already deplored the attitude of certain delegations which persistently sought shelter behind the "legal fiction" of non-interference in domestic affairs of states, see Year Book of the United Nations, 1960, p.150.

2 At first, Peru was an exception, asserting in 1955 that South Africa was protected by the principle of non-intervention. By 1957, her view had changed, and in 1959 her representative argued that the general principles of the Charter "by their very nature, prevailed over the narrow concept of national competence", see GAOR, 10th session, Ad Hoc Political Committee, 11th meeting, (7 November 1955), p.39 and 14th session, Special Political Committee, 143rd meeting, (4 November 1959), p.54.


4 GAOR, 10th session, Ad Hoc Political Committee, 7th meeting, (1 November 1955), pp.19-20.

interpretation of the Charter to find a justification for United Nations competence in the matter in "the moral right conferred on the Organization by a feeling of human solidarity with the non-white population of South Africa".¹

Though most Latin American states were persuaded, sooner or later, of the existence in the policy of apartheid of a threat to the peace, it took longer to convince them of the need for sanctions. In 1961, the Chilean representative "was opposed to any measure which would lead South Africa to withdraw from the Organization, since that country would then be free to intensify its policy of racial discrimination and would be beyond the reach of any moderating influence."² He was against sanctions on the ground that "an attack from outside always strengthened national unity within a country", and the Argentinian representative was against them because they "would lead to hardship for the very people whom the United Nations wished to help".³ By 1965, many of the Latin America states were responding in kind to the cries of the Third World for sanctions against South Africa.⁴ Doubt lingered, however. In 1967, the Mexican representative could still make a plea for the complexity of the issue and the need for its careful study.⁵ As to the principle of non-intervention, the Mexican representative regarded it as "significant that the representatives of States which had contributed to the

¹GAOR, 16th session, Special Political Committee, 276th meeting, (2 November 1961), p.85.
³Loc.cit. and GAOR, 16th session, Special Political Committee, 282nd meeting, (8 November 1961), p.111.
⁵GAOR, 22nd session, Special Political Committee, 562nd meeting, (8 November 1967), pp.64-65.
reinforcement of that principle should now disagree with the South African attitude" to it. But in making an exception in the case of apartheid, the Latin American states were very anxious to find doctrinal support in the Charter.

The South African interpretation of the Charter was very different. She thought, with Evatt at San Francisco, that Article 2(7) was to the smaller powers what the veto was to the great, and that the use of the word "essentially" rather than "solely" broadened rather than diminished its scope. In support of a broad definition of intervention, extending to discussion and consideration of the question of apartheid, she offered the view that if it were restricted to the meaning of "dictatorial interference" it would not apply to a measure taken by the General Assembly, which had only the power to recommend. In denying the competence of the United Nations, the South African representative drew attention to the matters to which the racial conflict related. From legislation on land tenure to combat services in the armed forces, he argued, "they covered the whole field of domestic administration in a modern state". To allow the United Nations to intervene in such matters, he continued, "was tantamount to denying the principle and attributes of national sovereignty", and it would "signal the end of the United Nations as an organization of sovereign states". Without the protection of Article 2(7), South Africa later argued, she would not have become a member of the Organization.

There was some sympathy elsewhere in the Western world for South Africa's extreme interpretation of Article 2(7). The United Kingdom, France and Australia shared

1GAOR, 8th session, Ad Hoc Political Committee, 19th meeting, (26 October 1953), p.91.

2GAOR, 7th session, Ad Hoc Political Committee, 13th meeting, (12 November 1952), p.66 and 8th session, Ad Hoc Political Committee, 32nd meeting, (23 November 1953), p.156, from which the quotations following are taken.

3GAOR, 16th session, 1014th Plenary meeting, (25 September 1961), p.70.
the view that the United Nations was not a super-state with all-embracing powers, and that the discussion of the question of race conflict in South America was beyond the Organization's competence. The French representative thought that the stipulation in Article 2(7) that "nothing contained in the present Charter shall authorize the United Nations to intervene", clearly defended domestic jurisdiction from the other articles of the Charter, and he declared that France "did not assume the right to set itself up as a judge and condemn the internal policy of a foreign government". The line taken by the United States, Canada and the Scandinavian countries was less insistent on the sanctity of domestic jurisdiction. The Norwegian representative thought that "leaving all legal aspects aside, the repercussions which...the apartheid policy...had had on world public opinion and on the relations between States had put the matter outside the realm of purely domestic problems". The United States representative thought that discussion did not contravene Article 2(7) and that the United Nations had an obligation "to be concerned with national policies in so far as they affect the world community".

In 1961, the United Kingdom defected to this more moderate school of Western thought and justified the change with an ingenious argument. A year earlier, after the Sharpeville shootings, the Italian representative had


2GAOR, 8th session, Ad Hoc Political Committee, 38th meeting, (2 December 1953), p.197 and 14th session, Special Political Committee, 146th meeting, (6 November 1959), p.93.

3GAOR, 7th session, Ad Hoc Political Committee, 13th meeting, (12 November 1952), pp.69-70.

argued that "the special political purport of the recent tragic developments...appear[s] to justify, within limits some kind of exceptional procedures" on the part of the Security Council.\(^1\) The United Kingdom representative embroidered this argument. "While the importance attached by the United Kingdom to Article 2, paragraph 7, of the Charter remained undiminished", he declared, "it regarded apartheid as being now so exceptional as to be sui generis".\(^2\) It was unique in that it involved "the deliberate adoption, retention and development of policies based entirely on racial discrimination" and the problem was now thought to cause "grave international repercussions".\(^3\) But while the Western states were now prepared to concede that the situation in South Africa was leading to "international friction", or that its continuance was "likely to endanger international peace and security", they did not concede that it was a threat to the peace within the meaning of Chapter VII of the Charter.\(^4\)

Western suggestions about solutions to the problem of apartheid reflected views held about interpretation of the Charter and about the limits of United Nations activity. In 1953, France thought that the United Nations could address recommendations to the community of states as a whole, but that improper interference began when a state was designated by name.\(^5\) In 1955, the Swedish representative did not object to the naming of names, but thought that the United Nations had no right to recommend a state to take specific action: "the General Assembly could only

1\(^{\text{Loc.cit.}}\)

2\(^{\text{See GAOR., 15th session, Special Political Committee, 242nd meeting, (5 April 1961), p.77.}}\)

3\(^{\text{Loc.cit. Australia associated herself with the views of the United Kingdom, see GAOR, 15th session, Special Political Committee, 244th meeting, (7 April 1961), p.85.}}\)

4\(^{\text{See statement of UK representative, SCOR, 18th year, 1054th meeting, (6 August 1963), pp.18-20 and of US representative, SCOR, 18th year, 1052nd meeting, (2 August 1963), p.14.}}\)

5\(^{\text{GAOR, 8th session, Ad Hoc Political Committee, 38th meeting, (2 December 1953), p.197.}}\)
point the road without issuing directives". ¹ But as the anti-apartheid movement in the Assembly swept past these restrictions, the West was forced to address it at a new level - that of stating the case against sanctions. Thus Italy thought that "excessively drastic action" would harm the interests of the African peoples whom the United Nations wished to help. ² The United Kingdom representative thought that the further isolation of South Africa would reduce the possibility of exercising influence for the better, and that the imposition of sanctions might be the final step towards destroying liberal opinion there. ³ And the Canadian representative thought that "perhaps the best argument" against sanctions was that they would "run counter to the principle established by the Charter that sanctions were intended solely for the purpose of preventing or putting an end to international hostilities". ⁴ The West preferred to rely on the force of conscience and world public opinion. ⁵ France, observing that apartheid sprang from an idea, looked for the triumph over it of another idea supported by the United Nations - the idea of the equality of races. ⁶ Italy looked for a morally effective means to solve a problem which was essentially moral. ⁷ This did not salvage the principle

¹GAOR, 10th session, Ad Hoc Political Committee, 5th meeting, (26 October 1955), p.11 and see also statement of Canadian representative, GAOR, 15th session, Special Political Committee, 243rd meeting, (5 April 1961), p.79.

²GAOR, 16th session, Special Political Committee, 272nd meeting, (30 October 1961), p.63.


⁴GAOR, 15th session, Special Political Committee, 243rd meeting, (5 April 1961), p.79.


⁶GAOR, 16th session, Special Political Committee, 277th meeting, (2 November 1961), p.89.

of non-intervention to the satisfaction of the South Africans, because the West had admitted the problem of apartheid to be one of international concern. But in holding out against the call for action under Chapter VII of the Charter, the West attempted to preserve the substance of domestic jurisdiction.

VI

The development of the United Nations doctrine of non-intervention witnessed the entrance of new states into an international community whose rules were not fashioned with their interests in mind. Among their principal foreign policy concerns was the protection of their newly-won independence against the encroachment of outsiders and the proclamation of their solidarity against colonialism and racialism - the relics of an order made redundant by their arrival. Faithful to these concerns, the new states insisted on a near-absolute principle of non-intervention but made an exception in the case of peoples struggling for their independence against the persistence of the old order. Just as the Soviet Union looked to a higher law of socialist internationalism, and as the United States came close to asserting a duty above the law during the Dominican intervention, so the new states affirmed the transcendent legitimacy of the struggle against colonialism. While the communist states swam with the tide of this new legitimacy, the West seemed taken aback by the doctrinal onslaught, consenting, for the sake of its political posture in the Third World, to disagreeable declarations and resolutions.

Revealed most clearly in the extreme positions in the debate about apartheid taken up by South Africa - insisting on domestic jurisdiction even to the extent of precluding discussion, and by the militant black African states - demanding active United Nations intervention on behalf of the black population of South Africa, but discernible also in the general positions taken up by the Western world as against the communist states and the Third World, were two different conceptions of the nature
of the international order established by the United Nations. South Africa, asserting the primacy of domestic jurisdiction and of the principle of non-intervention and emphasizing the character of the United Nations as an international body concerned with peace and security between states, warned of the collapse of the Organization as one between sovereign states, if it interfered in matters within them.¹ The militant Africans, on the other hand, emphasized respect for human rights and fundamental freedoms as the essential purpose of the United Nations. In this respect, conduct within states was a crucial concern of the Organization on which peace between states depended.² On this view, the United Nations would be "digging its own grave" if it tolerated the abuse of human rights within states - if it failed to intervene.³ Thus the controversy about the principle of non-intervention, and about the legitimate exceptions to the rule, went beyond the debate about the proper limits of United Nations activity to conflicting theories of the requirements for peace and of the relation between domestic and international conflict.

The development of a United Nations doctrine of non-intervention was not, however, a mere political game in which the stronger or the more persuasive interest prevailed, and in the course of which different opinions about the fundamentals of international order were canvassed. The General Assembly was also recording the practice of states, and while it was not empowered to legislate for the international community, it was at least providing some evidence by reference to which claims could be asserted in.

¹GAOR, 8th session, Ad Hoc Political Committee, 32nd meeting, (23 November 1953), p.156.
²See, e.g., statement of the representative of Sierra Leone, SCOR, 19th year, 1130th meeting, (12 April 1964), p.12.
international law. Given that Assembly resolutions are legally significant as well as politically interesting, it remains to discover the contribution to law made by the 1965 Declaration on Non-Intervention and the 1970 Declaration on Principles of International Law. Both borrow from the inter-American doctrine of non-intervention and both assert a near-absolute prohibition of intervention. But the term "intervention" is no nearer to a consensual definition, and the sorts of actions which escape the net of the principle of non-intervention remain a matter for the unilateral interpretation of states. Nor is the principle, in the form it takes in the 1970 Declaration, a discrete injunction readily distinguishable from the other principles proclaimed there, from the prohibition of the threat or use of force to the principle of equal rights and self-determination of peoples, the first of which seemed to absorb much of the content of the non-intervention principle and the second to constitute an exception to it. In the

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2 When the United Nations Secretariat prepared, in 1964, a "Summary of the Practice of the United Nations and of Views Expressed in the United Nations by Member States in Respect of Four of the Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations", the issues it included under the principle of non-intervention were:- the Iranian question, the Syrian and Lebanese question, the Spanish question, the Greek Frontier Incidents question, the Essentials of Peace Resolution, the question of race conflict in South Africa, the Burmese complaint against the Republic of China, the Guatemalan question, the question of Algeria, the question of Goa, and Senegal's complaint against Portugal. UN Document A/AC.119/L.2, (10 June 1964), paras.241-376.
context of the 1970 Declaration, the principle of non-intervention seemed to function as a sort of "back-stop" principle proscribing all those unfriendly acts not explicitly dealt with under other headings. In general, the principle of non-intervention at the United Nations was rather like Brierly's 'domestic jurisdiction' - a "fetish about which...little seems to be generally known, except its extreme sanctity".¹

The practice of the United Nations as an actor in world politics, rather than as a forum for them, was perhaps a surer guide to the boundaries of domestic jurisdiction and of the non-intervention principle. In one sense, a decision by the United Nations that a matter was within its jurisdiction, and not an essentially domestic matter, ruled out the question of intervention and non-intervention, for it would be absurd to speak of United Nations "intervention" in a matter within its own jurisdiction. Yet the question of intervention and non-intervention reappears in an enquiry into just how far the writ of the United Nations runs. Thus the practice of the United Nations reveals that the discussion of the question of race conflict in South Africa and the issuing of recommendations thereon do not constitute intervention in her internal affairs, but the line was drawn at mandatory sanctions under Chapter VII of the Charter. The drawing of that line has left South Africa with what might be called de facto domestic jurisdiction, but in the light of United Nations practice on human rights, the claim can no longer be asserted as of right.² More generally, the practice of states and their votes at the United Nations seem to have sanctioned a right of self-determination - at least as it applies to emancipation from colonial rule.³ In the matter of human rights and of the right to self-determination, in this limited sense, it seems that an extreme claim to domestic

²Higgins, The Development of International Law through the Political Organs, pp.120-123.
³Ibid., pp.99-102.
jurisdiction, of the sort made by South Africa, is no longer admissible. But neither the white South African, nor the black African prophecies of doom for the United Nations has yet come to pass. What has happened to the non-intervention principle as it applies between the United Nations and its members, is that it now stands legal guard over a narrower right of domestic jurisdiction.
The history of the principle of non-intervention at the United Nations revealed it to be a norm which all states, at least in their public utterances, held to be fundamental to harmonious international relations. But the deliberations and resolutions of the United Nations testified more to the perceived importance of the rule than to its content and scope. This chapter will attempt to fix the position of the principle of non-intervention, if indeed it has one, in the body of rules making up current international law. The chapter will have three parts. The first will examine the inheritance of traditional international law on the principle—the extent of its prohibition of intervention and the exceptions to the rule it allowed. The second part will look at the recent changes in the structure of international society and in theories advanced about its nature that have led many international lawyers to cast doubt upon the relevance of the non-intervention principle and upon the values of sovereignty and domestic jurisdiction which it existed to protect. In the light of argument noted in this part, the third part will go on to examine the place of the principle in contemporary international law.

The inheritance of traditional international law has not left the subject an agreed body of doctrine on the question of intervention. Indeed, one writer doubted the possibility of subjecting intervention to legal control. Sir William Harcourt, writing during the American Civil War, thought intervention to be a "question rather of policy than of law". ¹ "It is above and beyond the domain of law", he

went on, "and when wisely and equitably handled by those who have the power to give effect to it, may be the highest policy of justice and humanity." But although he recognized that intervention might "sometimes snatch a remedy beyond the reach of law", he admitted that its essence was illegality and its justification its success. Yet there was something worse than illegality: "Of all things, at once the most unjustifiable and the most impolitic is an unsuccessful intervention". The efficacy of intervention was the fundamental criterion, not its lawfulness. Lorimer, the rogue Naturalist of the nineteenth century, took exception to this doctrine, arguing that it degraded jurisprudence "by supposing it to depend on lower principles than those which govern politics". Lorimer thought the question of intervention fell "within the scope of the science of jurisprudence" and criticized Harcourt's position for its haziness as to the relation between ethics and jurisprudence. Lawrence, while he did not address himself directly to the Harcourt heresy, provided a less obscure answer to it than Lorimer. Thinking state practice to be a useless guide to legal rules about intervention, he argued that the alternative source was inference from first principles. By looking to principles which no one doubted - the right of independence or the duty of self-preservation - for legal guidance, Lawrence was able to escape the Positivists' difficulty of deciding on the rule when an appeal to the practice of states was unprofitable.

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1. [Loc.cit.]
2. [Ibid., p.41.]
3. [Loc.cit.]
5. [Ibid., pp.44-49.]
6. [Principles of International Law, p.121. See also above Chapter 2, pp.42-43.]
7. Lawrence did not state this doctrine quite as clearly as is suggested here, for he went on to agree with Harcourt that in most cases intervention was a question of policy and that only in exceptional cases was it a matter of legal right, [Loc.cit.]. Inference from first principles it seems did not necessarily bring the question of intervention into the province of the law.
While recognizing the difficulties involved in formulating rules about intervention, most writers on international law did not deny the possibility of such formulation. They did not abandon the problem to politics as Harcourt came close to doing. Wolff in the eighteenth century, and Bernard in the nineteenth, solved the problem by prohibiting intervention altogether, allowing no legal justification for breach of the principle of non-intervention. Other writers espoused such a principle but so limited its scope by allowing the doctrine of necessity to override it as to approach a position nearly opposite to that of Wolff and Bernard. Between these two positions, Winfield traced a middle course. Since state independence was the foundation of modern international law, he argued, non-intervention was the rule and intervention the exception. What follows will examine the arguments most commonly urged in justification of the exception.

Grotius did not allow subject peoples to fight for their liberty against the oppressor, requiring them, in the interests of order, to be satisfied with their lot. But he did allow others to take up arms on their behalf, to exercise "the right vested in human society". This, in Lauterpacht's words, was the "first authoritative statement of the principle of humanitarian intervention". The subsequent career of this principle was unpromising until it received some recognition in the positive international law of the twentieth century. That Grotius could espouse such a doctrine was made possible by his conception of an international society made up of individuals as well as of

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2See, e.g., Wheaton, Elements of International Law, Part II, Chapter I, section 72.
4De Jure Belli ac Pacis, Book II, Chapter XXII, section XI.
5Ibid., Book II, Chapter XXV, section VIII.
states. Individuals were members of international society not only in the ultimate sense of their being the representatives of states but also directly as recipients of rights and bearers of obligations in that society. This was not a position which the Positivists of the nineteenth century could accept, conceiving, as they did, of an international society made up exclusively of states. To intervene on humanitarian grounds on behalf of individuals was to meddle in a matter with which international relations was not concerned. It might be morally right but it was beyond the domain of law. Moreover, the moral claim was itself dubious because it was so prone to abuse by selfish ambition.

The question of humanitarian intervention was frequently raised in consideration of the proper conduct for outside states when a state was torn by civil war. Grotian doctrine allowed intervention on the just side in such a war. States were entitled to undertake war to enforce the rights of others as well as their own, and the others included the wronged subjects of a ruler. Similarly, Vattel thought that:

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1 Ibid., p.27.
3 Lawrence, op.cit., p.128. E.C. Stowell on the other hand, found support in the practice of states and in legal doctrine for his contention that humanitarian intervention could 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 or justice", Intervention in International Law, (Washington, 1921), p.53.
4 Hall, op.cit., p.343 and Phillimore, Commentaries on International Law, Volume I, Part IV, Chapter I, section CCCC.
5 De Jure Belli ac Pacis, Book II, Chapter XXV, section VII.
...if a prince, by violating the fundamental laws, gives his subjects a lawful cause for resisting him; if, by his insupportable tyranny, he brings on a national revolt against him, any foreign power may rightfully give assistance to an oppressed people who ask for its aid.¹

But this was not an immediate right. Vattel thought that in a situation of civil war it was not the part of foreign nations to decide between citizens who had taken up arms, nor between the sovereign and his subjects.² Only when the interposition of good offices, an act required by the natural law, had failed were nations entitled to "decide for themselves the merits of the case, and assist the party which seems to have justice on its side".³

The Positivist international lawyers could not follow Vattel into a decision on the merits of a case, for this, in Hall's view, was beyond the legal range of vision - it had nothing to do with the relations between states.⁴ In the eyes of the law, the excesses of a revolution and the tyranny of a sovereign were strictly equivalent.⁵ Neither the view that favoured intervention at the request of an established government, nor that which allowed support for the just party found the approval of Lawrence, who thought that either would prejudice the freedom of people to settle their own affairs in their own way.⁶ Fidelity to this doctrine required that respect be shown to the independence of states by the refusal of invitations to intervene whether they were issued by incumbents or insurgents. But if the Positivists had any bias in this respect, it was towards the established government. The bias was due to the argument that a lawful sovereign authority should not lose

¹The Law of Nations, Book II, Chapter IV, section 56.
²Ibid., Book III, Chapter XVIII, section 296.
³Loc.cit.
⁴Hall, op.cit., p.347.
⁵Ibid., p.343.
its membership in the international club and the advantages deriving from it merely because it was being challenged at home - unless and until the challenge was such as to replace the authority or to establish a separate one.¹

This last consideration, introducing as it does the factor of time, reveals the difficulties involved in the insistent non-interventionism of Lawrence, Bernard and Stowell. If the purpose of such a doctrine is to isolate domestic conflict from the purview of international law, then it fails when a rebellion forces itself upon the notice of international society by successfully establishing a new entity.² The solution of this problem for international society, and in particular for those of its members whose interests were most directly affected by any civil war, lay in that device of traditional international law which allocated rights and duties to outside states and to the warring factions according to a status assigned to the civil conflict.³ Thus Lauterpacht speaks of four conditions which, if they prevail in a situation of civil war, impose a duty of recognition of belligerency on outside states:


²Moreover, if a further purpose of the doctrine is to allow domestic events to run their course free from outside interference then absolute non-interventionism might achieve this only by depriving the established government of that international support which was regarded hitherto as altogether normal, and thus helping the insurgents by default. It may be for this reason that Wheaton speaks of outside states remaining indifferent spectators by "still continuing to treat the ancient government as sovereign, and the government de facto as a society entitled to the rights of war against its enemy", op.cit., Part I, Chapter II, section 23, p.29. This confused statement of the recognition of belligerency doctrine nevertheless indicates Wheaton's awareness that strict non-interventionism might not achieve its desired goal of international impartiality towards conflict within states.

first, there must exist within the State an armed conflict of a general (as distinguished from a purely local) character; secondly, the insurgents must occupy and administer a substantial portion of national territory; thirdly, they must conduct the hostilities in accordance with the rules of war and through organized armed forces acting under a responsible authority; fourthly, there must exist circumstances which make it necessary for outside States to define their attitude by means of recognition of belligerency.

The recognition of belligerency in turn imposes a duty of neutrality on outside states - they are bound to treat the parties to a civil conflict equally. Recognition of belligerency deprives the incumbent of its status as sole international actor for the disputed territory and admits the insurgent into membership, though not full membership, in the international club. Traditional international law also recognized a status of insurgency - "an intermediate stage between a state of tranquillity and a state of civil war".

The rights and duties involved in the allocation of the status of insurgency were unclear. Indeed, Lauterpacht took this to be one of its defining characteristics: "belligerency is a relation giving rise to definite rights and obligations, while insurgency is not". At the least it was "in essence a domestic proclamation, drawing the attention of the public to a state of fact in a foreign State which calls for special caution". At the most it was a "catch-all designation" that encompassed the practice of states which had conferred rights and imposed duties on rebellious factions without recognizing them as belligerents. But

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1 Lauterpacht, op.cit., p.176, and see the authorities he cites at pp.240-243, as recognizing an international duty of recognition of belligerency.
2 Thomas and Thomas, Non-Intervention, p.219.
3 Loc.cit.
5 Lauterpacht, op.cit., p.270.
6 Chen, op.cit., p.400.
7 Falk, op.cit., p.119. See also Lauterpacht, op.cit. pp.270-278.
while the condition of insurgency lasts the presumption for international society is in favour of the established government. This doctrine applied the more forcibly to a third category of internal conflict recognized in traditional international law - that of rebellion - of which the society of states was to take no formal notice.  

The problem of civil war, then, raised many more issues for traditional international law than just the disputed question of humanitarian intervention. In order to accommodate the interests of states affected by civil war in another state, and those of successful insurrectionists, the law admitted entities other than fully sovereign states into its purview. The international order was to be preserved in the first instance by allowing governments a free hand in keeping order within states. When that policy failed, the order was to be preserved by treating disputants as separate states.

If there was some doubt in traditional international law as to the rights and duties it accorded individuals and groups within states, there was no doubt at all about the right of states to self-defence. For Grotius, the right had its origin in "the fact that nature commits to each his own protection". The contribution of the Naturalist writers to the international law of self-defence lay in their conception of the right as one being called into play when an international wrong had been done - when "a breach of a legal duty owed to the state acting in self-defence" had


2 See Falk, *(op.cit., pp.118-119)*; Thomas and Thomas, *(op.cit., p.216)*.

3 But, as Falk points out this "functional role attributed to the distinctions between rebellion, insurgency and belligerency is more an invention of commentators than a description of state behavior"; *(op.cit., p.124)*.

4 *De Jure Belli ac Pacis*, Book II, Chapter I, section III.
occurred. In the nineteenth century, there was a tendency to break away from this restricted interpretation of the right of self-defence illustrated by the expansion of the concept to include that of self-preservation. Lawrence thought that the right of self-preservation was even more sacred than the duty of respecting the independence of others and Hall went as far as to say "in the last resort almost the whole of the duties of states are subordinated to the right of self-preservation". This doctrine of self-preservation has since been criticized on two main grounds. In the first place, it was thought to destroy the imperative character of the law by making the obligation to obey it merely conditional. Secondly, the doctrine was objected to on the ground that it was unmeaning legally; it belonged to the realm of policy and ideology not of law, providing an excuse for all manner of international lawlessness but no legal justification.

So long as the right of self-defence, or indeed of self-preservation, was invoked to justify the defence of the sovereignty of the state against outside attack, and the remedy was applied within the claimant's territorial jurisdiction, then there was little controversy in traditional international law as to the existence of the right. The

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6 So little in fact, that as Bowett points out, there was some doubt about the relevance of the rule in this instance, it being covered by the right to territorial sovereignty. *Op.cit.*, p.22.
matter of intervention in self-defence was more problematical. It raised the question of the extent to which the right of one state to self-defence held sway over the right of another to independence. Two examples, the one concerning protective intervention, the other concerning preventive intervention, will illustrate the difficulties of deciding upon the relation between these rights. A right of states well-established by their practice is that of intervention to protect the lives and property of their citizens. In the absence of agreement among states as to the standards of conduct required of their subjects, which might have given the society of states a right of intervention on this ground, the Positivist international lawyers based the protective right on that of the state to self-preservation.¹ The violation of the rights of individuals was a violation of the rights of the state of which they were nationals.² The difficulty with this doctrine lies in fixing the point at which the danger to nationals arising from any situation in another state justifies intervention on their behalf. On the question of preventive intervention or anticipatory self-defence, the doctrine of contagion espoused by the Holy Alliance as an explanation for and justification of intervention on behalf of legitimate governments, was not sanctioned in the writings of many international lawyers. Westlake stated the case against the doctrine in two ways. Firstly, international society was not one for the "mutual insurance of established governments".³ And in the second place, the Canningite

¹See Bowett, op.cit., p.92. He cites both Hall and Westlake to this effect, the latter with the proviso that an action of a trivial nature does not infringe the right, due to the maxim de minimis non curat lex. See also Thomas and Thomas who do not deal with the right as one of self-defence, but as one which concerns an international standard of justice, Op.cit., pp.303-309.

²The "rights of individuals" here means their rights as citizens of states, not of the world.

³Westlake, op.cit., p.124.
doctrine requiring proof that principles were to be propagated across frontiers by the sword before intervention could take place against them was accepted as conclusive. But though in this case Westlake found in favour of the right of independence and against that of self-preservation, the general problem of the boundary between them remained.

The Caroline case, the "locus classicus of the right of self defence", provided some guidance. On preventive intervention - a "necessity of self-defence" had to be shown, "instant, overwhelming, leaving no choice of means, and no moment for deliberation". On protective intervention - "the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it".

The guidance here lay in the plea for restraint and for the careful measuring of relative rights, there was no account of the circumstances which might give rise to the "necessity of self-defence". The variety of these, and the peculiar urgency with which states must necessarily choose to act in preventive self-defence, makes the matter easier to adjudicate after the event than to lay down precise rules for in advance.

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1 Ibid., p.126.
2 Bowett, op.cit., p.58. The Caroline incident took place in 1837 during an insurrection in Canada in which American citizens were involved. The steamer Caroline, an American vessel, was occupied in reinforcing the American force. On 29 December, a British force entered American territory, seized and destroyed the offending vessel and was responsible for the death of two American citizens. Battle was joined diplomatically after 1840 when a British subject who had taken part in the raid was arrested in the United States.
3 From Note of US Secretary of State Webster to Lord Ashburton, 27 July 1842, cited in Bowett, op.cit., p.59.
4 Loc.cit.
5 Perhaps this is what Brownlie means when he describes the Caroline formula as "primarily verbal", International Law and the Use of Force, p.260.
6 While Stowell recognizes this he tries to lay down some rules relating to preventive intervention, Intervention in International Law, pp.355-390.
Intervention in the interests of the balance of power was sometimes included in treatises on international law as an act deriving its legitimacy from the right of self-defence. More often it was included under the wider doctrine of self-preservation. Vattel, though his view amounted to the assertion of a right to self-preservation, did not rely on that right, or on that of self-defence, to establish the justice of intervention for the balance of power. He conceived of Europe as a political system whose members were independent, but were bound together by a common interest in "the maintenance of order and the preservation of liberty". This common interest had given rise to the balance of power, "an arrangement of affairs so that no State shall be in a position to have absolute mastery and dominate over the others". Nations were always justified in not allowing a powerful sovereign to increase his power by force of arms, and if the formidable prince betrayed his plans by preparations then other nations had the right to check him. Lawrence made this doctrine of Vattel's legally respectable by vesting the right of intervention for the balance of power not in the interests of the members of an international system, but in their rights as members of international society. Membership of that society implied duties, among which was abstention "from conduct that endangers the vital

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1 See Phillimore, Commentaries on International Law, Part IV, Chapter I, section CCCCII.
2 See Thomas and Thomas, op.cit., p.82. These authors point out, however, that the notion of intervention for the balance of power formed no part of the legal or political doctrine of the Americas. Westlake denied that intervention for the balance of power was part of the right of self-preservation if it meant action against the internal acquisition of power by another state, when that state had shown no sign of an intention to use it. Op.cit., pp.121-123.
3 Vattel, Law of Nations, Book III, Chapter III, section 47.
4 Loc.cit.
5 Ibid., Book III, Chapter III, section 49. Thus Vattel allowed preventive intervention on grounds other than that of the right to self-defence. He also seemed to come close to the doctrine of which Westlake disapproved - allowing intervention in internal affairs to prevent a Prince becoming too powerful, loc.cit.
interests of the society as a whole".¹ Action against a member who violated this duty was a vindication of social well-being, a service to international society.² Though they might have accepted Lawrence's notion of rights being vested in international society, other writers doubted whether the right to intervene for the balance of power could be numbered among them. Oppenheim thought of intervention on this ground as an action which could not be considered illegal, though it did not take place by right. It took place, when necessity demanded, "in default of right".³ Winfield thought that it was preferable to "regard the balance of power as a principle of international policy, not of international law".⁴

Though it might not have won general acceptance in support of a right of intervention for the balance of power, the argument of Vattel, and the more sophisticated one of Lawrence, raised the question of the legitimacy of a right on the part of international society to combat the illegal intervention of one of its members. Taken literally, the exercise of such a right would constitute an exception to the principle of non-intervention, since it would interfere in the internal affairs of a state. But the literal interpretation is absurd, for the purpose of the right of counter-intervention is to uphold the rule of non-intervention and not to subordinate it to a higher imperative.⁵ Thus Creasy thought that intervention became

¹Lawrence, Principles of International Law, pp.130-131. Lawrence called this the "new theory" of the balance of power. He rejected the "older theory" - "the assumption that the division of territory and authority among the chief states of Europe at any given time was the right and proper division, and must be maintained at all costs", ibid., p.129.
²Ibid., p.131.
⁴Winfield, "Grounds for Intervention", p.152.
⁵In the same sense that the execution of a convicted murderer is literally an exception to the general rule against killing in domestic society, but its purpose is to support that rule. Whether it achieves that purpose in the broad sense of providing an example to others is not relevant to its categorization as law enforcement and not law-breaking.
"lawful and proper, and sometimes even quite necessary, when its purpose is to prevent or to repel the wrongful intervention of others." ¹ Similarly, Hall argued that a grave infraction was committed when the independence of a state was improperly interfered with, and that in consequence "another state is at liberty to intervene in order to undo the effects of illegal intervention". ² The more cautious statement of this doctrine was that a state directly affected by an illegal intervention might intervene to remedy it, but that a general threat to the "peace and order of the international community" must exist before states not directly concerned could intervene. ³

The question of intervention to enforce non-intervention raises the more general one of the legitimacy of intervention to uphold the law. In a decentralized system, the right of self-help - not only in the particular interests of states but also in the general interests of the society formed between them - was the principal source of law enforcement. ⁴ Thus Hall argued that "International law being unprovided with the support of an organised authority, the work of police must be done by such members of the community of nations as are able to perform it". ⁵ The contrary view asserted that for a state not directly injured by a delinquency to intervene against it would be to set itself up in judgement over the actions of others,

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¹Creasy, First Platform of International Law, p.295. There is a logical difficulty here in the notion of "preventive counter-intervention", involving, in effect, the same problems as the notion of preventive self-defence.
²Hall, Treatise on International Law, p.342.
³Thomas and Thomas, op.cit., p.405.
⁴Though as Rosalyn Higgins points out, this is not the only important source of sanctions in international law, another being reciprocity - the restraint provided by the knowledge of states that a "breach of the law would incur a reciprocal response", The Development of International Law Through the Political Organs of the United Nations, p.8.
infringing thereby the principle of equality of states.\(^1\) Thomas and Thomas assert a \textit{via media} akin to their doctrine of counter-intervention. A general right to remedy a violation of the law exists if the violation is so serious as to threaten the peace and order of the community of nations.\(^2\)

Some jurists dealt with the question of the propriety of intervention on the latter ground alone - the right of collective intervention, not to undo a legal wrong, but to maintain the peace and order of the society at large. This was the doctrine under which the great powers had presided over the separation of Belgium from the Netherlands in 1831: "chaque nation a ses droits particuliers; mais l'Europe aussi a son droit: c'est l'ordre social qui le lui a donné".\(^3\)

Though Lawrence conceded that intervention carried on by the great powers of Europe was more likely to be just and beneficial than intervention by one power alone, Hall denied that the body of states had any right of control arising from their being bound together by a social tie, because the nature of that bond was so rudimentary.\(^4\) Justification for such action was moral, not legal, it relied entirely on the benefit it secured.\(^5\) Collective intervention did not become legal merely because it was collective.\(^6\)

Despite the variety, even the confusion, of justifications urged by statesmen and jurists in support of intervention - and this has been a summary of the more important - the weight of opinion was that they constituted

\(^1\)See Thomas and Thomas, who cite Accioly to this effect. \textit{Op.cit.}, p.88. As these writers go on to point out, the difficulty with this doctrine is that it would deny the possibility of deciding on the illegality of any action in international relations, because judgement itself is proscribed by the principle of equality. International law is swallowed up by the principle of equality. \textit{Ibid.}, pp.88-89.

\(^2\)\textit{Ibid.}, p.91.

\(^3\)See Stowell, \textit{op.cit.}, pp.282-283.

\(^4\)Lawrence, \textit{op.cit.}, p.134; Hall, \textit{op.cit.}, pp.347-348.

\(^5\)Hall, \textit{op.cit.}, pp.348-349.

\(^6\)See Winfield, "Grounds for Intervention", p.162; Thomas and Thomas, \textit{op.cit.}, pp.98-100.
exceptions to the principle of non-intervention, that they did not preponderate to the extent of converting that principle from the rule to the exception. One apparent curiosity in the inheritance of traditional international law was that it provided a doctrine of non-intervention, but none outlawing war. After Grotius and the Naturalists, for whom the distinction between intervention and war was either unmade or unimportant, the Positivists proscribed the lesser act but allowed the greater. Perhaps this demonstrated a "realistic" awareness on their part of the limited function of law in restraining the actions of states. But whatever the motive, they conceived of two branches of international law - the one applying to peace between states, the other to war. The non-intervention principle applied in the regime of peace. A state was obliged to observe it unless a casus belli justified transformation into the regime of war.

II

For the Positivist jurists of the nineteenth century, international law was a body of norms which applied only between states. Only states were admitted to international society and international society extended only as far as the Europe of civilized states. The domain of international law is no longer so limited. The law of European states has become, with the transformation of colonies into independent states, the law of all states. From its ad hoc organization in the nineteenth century, international society has developed to the extent of receiving a formal and permanent monument to its existence - in the institution of the League of Nations and after it the United Nations. The emergence of these institutions has unsettled the nineteenth century conception of international law as exclusively a law of states and this in turn has unsettled the traditional

1See Winfield for an exhaustive list of the various grounds urged in justification of intervention, "Grounds for Intervention", p.150.
doctrine of state sovereignty. The limited function of the United Nations as an actor in the international system and the references in the Charter of the Organization to human rights and fundamental freedoms raise the question for states of their sharing membership in the international society with individuals as well as with international organizations. If this entails any derogation from the sovereignty of states, it is compounded with the denial in the Charter as well as the Covenant of rights formerly associated with sovereignty, foremost among which was the right to go to war.

These developments in the direction of a universal international law have led one writer to see in them "the common law of mankind in an early stage of its development". Only if it is so regarded, according to Jenks, can "contemporary international law...be intelligently expounded and rationally developed". The law governing the mutual relations, "and in particular delimiting the jurisdiction", of states, forms, in Jenks' view, but one of the major divisions of contemporary international law and he argues that the development of the substance of that law in the twentieth century renders any account of the law based on this traditional formula inadequate. The formula preferred is that of the common law of mankind:

the law of an organized world community, constituted on the basis of States but discharging its community functions increasingly through a complex of international and regional institutions, guaranteeing rights to, and placing obligations upon, the individual citizen, and confronted with a wide range of economic, social, and technological problems calling for uniform regulation on an international basis which represents a growing proportion of the subject-matter of the law.

The exposition of this law is the task which Jenks sets himself. He refers to the challenge issued by Sir Alfred

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2 Ibid., p.1.
3 Ibid., pp.1-2 and 7-8.
4 Ibid., p.8.
Zimmern, who, writing in 1934, had unfavourably compared international law with that model of law provided by the Greek polis. ¹ Law for the Greek, said Zimmern, was the "formulation of the will of the community...an external manifestation of its continuing life". ² It was obeyed because men associated themselves with the object of the law-maker - the promotion of the purpose of the community and through it their own lives. ³ The problem, it appears, is to establish an association on the part of individuals with an international community. But Jenks seems to hold that the problem lies not in the building of such a community, but in the scholarly appreciation by jurists of that law which, in practice, already bears witness to the community's existence. ⁴

The concern here is not with the needs of the science of international law, but with the truth of the assertion that there is such a thing as even a rudimentary common law of mankind. It is not proposed here to examine Jenks' contention that the contemporary international system presents a challenge to legal science similar to that which confronted Grotius in the seventeenth century; ⁵ it is rather to ask whether the contemporary international society resembles more closely the Grotian conception of a universal society or the Positivist conception of a primitive society of states combining for minimum purposes, for on such an analysis hangs the place of the principle of non-intervention in contemporary international law. In particular, those who would assert the

² Loc.cit.
³ Loc.cit.
⁴ See Jenks, op. cit., p.16. For criticism of Jenks' work on the two main grounds that it not infrequently mistakes what is desired for what is and that it supposes that what is required for the realization of the common law of mankind is a mere intellectual and not a political revolution, see Julius Stone, "A common Law for Mankind?" in International Studies, (New Delhi), Vol.1, (1959-1960), pp.414-442.
continued relevance of the non-intervention principle have to meet three sorts of argument. In the first place, a principle which draws attention to and requires respect for the principle of state sovereignty has to confront the doctrine that the reserved domain of sovereignty contracts as the law binding states expands. Secondly, the argument has to be met that the emergence of international organizations has diminished the scope of the principle and in the third place, the notion that the admission of individuals to international society, through the concern of the law for human rights, is withering away the sovereign state, requires examination.

The doctrine of "relative sovereignty", the view that the sovereignty of the state is limited by rules of international law binding upon it, that sovereignty exists "within the law", has been called the "dominant doctrine" among the publicists of the twentieth century. At first sight a simple truth, without which international law would be no more than an empty phrase, its demonstration raises questions about the basis of obligation in international law and about the relationship between municipal and international law that have been the perennial preoccupation of legal science. In the accommodation of the doctrine of state sovereignty to the affirmation of the existence of international law, theories have been advanced which range from Austin's denial of international law as not emanating from the command of the sovereign and the neo-Hegelian doctrines that allow international law only as the result of


2 See Brierly, The Basis of Obligation in International Law, edited by Sir Hersch Lauterpacht and C.H.M. Waldock, (Oxford, 1958), pp.1-67. See also Alf Ross, (A Text Book of International Law, (London, 1947), p.41), who points to the "obvious absurdity" that the sovereign state is commonly characterized by the criterion of "sole subjection to International Law", and that international law is defined as the law binding upon states - a vicious circle Ross says, lying at the heart of the theory of international law.
the self-limitation of sovereign will, through Oppenheim's characterization of international law as a law between states not above them, to the Kelsenite assertion of the primacy of international law, and the denial of state sovereignty. The examination of these theories is not relevant to the discussion here which will rely upon the "dominant doctrine" of sovereignty restrained by law. The non-intervention principle serves a double purpose in relation to the principle of state sovereignty. It expresses the idea that states are to be immune from interference by other states, and it stands at the frontier between international law and domestic law — where international law respects sovereignty, but conceives it as "that competence which remains to States after due account is taken of their obligation under international law".¹

If the former purpose is a non-controverted part of the international law of sovereign states, it is the latter purpose which is of crucial significance to the present task which is to examine "the primary preoccupation of progressive thought in the field of international law since 1919", which has been "to subdue the claims of sovereignty in the interests of the rule of law",² and the implied rider that the more sovereignty is so limited the better.³ What follows will examine whether the primary preoccupation has been rewarded with the actual retreat of the claims of sovereignty in the law agreed between states and in their practice.

A familiar distinction in traditional writing on international law and relations is that between sovereignty in its external and in its internal aspect. The principal legal limitation on sovereignty in its external aspect since 1919 has been the limitation imposed on the right of states to go to war. The Covenant of the League of Nations has been described as creative of a "presumption against the legality

² Jenks, Common Law of Mankind, p.123.
³ F.J. Berber, "German Law", in Larson and Jenks, op.cit., p.92.
of war as a means of self-help". It imposed an obligation upon states to settle their disputes by peaceful means. And the members of the League undertook to "respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League". But by Article 15(7) of the Covenant, the members reserved to themselves "the right to take such action as they shall consider necessary for the maintenance of right and justice". Moreover, the obligation to settle disputes peacefully did not extend beyond the compulsory period of delay laid down in the Covenant. The Paris Pact of 1928 seemed, less equivocally, to take war from within the sovereign right of the state. By it, the parties renounced war as "an instrument of national policy" and agreed that the solution of conflict should never be sought except by peaceful means. But this was not a blanket prohibition of war. All states reserved the right of self-defence, and the United States and the United Kingdom, in particular, entered extensive reservations to this effect. The prohibition of war as an instrument of national policy left untouched the doctrine of war as a sanction - as an instrument of international policy; and the unfortunate wording of the prohibition left in doubt the legitimacy of that traditional technical category of international law - the use of force short of war.

The Charter of the United Nations seemed, from the perspective of restraining the use of force in international relations, to have improved on the Paris Pact as the Pact

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1 Brownlie, International Law and the Use of Force, p.56.
2 See Articles 12, 13 and 15.
3 Article 10.
4 Article 12.
5 See Brownlie, (op.cit., pp.74-92), for an account of the interpretations of the Pact and for his own view favouring a restrictive interpretation of it. For a "realist" inclination, taking account of the exceptions to the Pact's restraint on the use of force rather than minimizing them, see Stone, Legal Controls of International Conflict, second impression, revised, (NY, 1959), p.300.
was thought to have improved on the Covenant. Article 2(4) of the Charter proscribed not war but the use or threat of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. Force, it appears, in the post-Charter legal order, is legitimate only in self-defence under Article 51 of the Charter, or as a collective measure in response to the authorization of the competent organs of the United Nations under Chapter VII of the Charter. But again this restrictive view overlooks the possibility of the use of force which is not directed against the territorial integrity or political independence of any state and which is consistent with the purposes of the United Nations.\(^1\) Clearly, the nineteenth century doctrine that placed war within the sovereign prerogative of states and attempted to restrain only its prosecution by law, is no longer applicable. It is doubtful, however, whether the progressive doctrine of the twentieth century that war, except when conducted in self-defence or as a collective sanction is unlawful, can be said to have fully replaced it.

As to sovereignty in its internal aspect, the concept written into the Covenant and the Charter under the title of the domestic jurisdiction of states, the progressive doctrine teaches that its erosion by international law is to be welcomed or, more strongly, that the erosion is necessary to the establishment of a sound international legal order. The difficulties of defining domestic jurisdiction, whether to point out its general features or to enumerate those matters contained in the concept, are notorious, and the desirability of such an exercise has been frequently called

\(^1\) Stone argues that there is no reason why the extreme view of the prohibition of force in Article 2(4) should be the only possible exegesis of that article, or even the most likely. He points out, in this respect, that it would be a strange interpretation that allowed the violation of such principles and purposes of the Charter as the requirements of justice, the respect for the obligations of treaties and international law, and of sovereign equality, without forceful recourse. Aggression and World Order, p.97.
into question.\(^1\) For the present purpose it is sufficient to conceive, with Brierly, of domestic jurisdiction as consisting of those matters or disputes to which no rule of international law is applicable.\(^2\) An example used by Jenks, purporting to demonstrate the progressive thesis of the increasing range of applicability of rules of international law, is the acceptance of the principle of full employment. He argues, in virtue of Article 55 of the Charter and of many other international instruments since the foundation of the United Nations, that the question of full employment seems no longer a matter of domestic jurisdiction.\(^3\) He goes on to assert that while the Charter does not commit states "to a particular philosophy of the relationship between the Government and the individual", which remains a matter essentially within domestic jurisdiction, "the obligation to promote and maintain full employment is a legal obligation from which legal consequences can be drawn", and that it is in this sense no longer a matter of domestic jurisdiction.\(^4\) Among the consequences, says Jenks, is the obligation of consultation on matters of economic policy that are of international concern.\(^5\) So far as it goes, there can be no objection to Jenks' assertion of a duty of full employment and his citation of positive support for it in the agreements of states. Again from the perspective of the formal limitation of state sovereignty by international law it is an advance on nineteenth century doctrine, but there are immense practical difficulties with the doctrine which will be examined after a third sort of doctrinal assault on the concept of sovereignty has been introduced.

Assault is the wrong word. Rather, the progressive doctrine sees the law between states as members of international society being added to and outnumbered by the

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\(^2\) "Matters of Domestic Jurisdiction", in *Basis of Obligation in International Law*, p.84.


law of an international community whose subject-matter increasingly includes cross-frontier relationships of individuals, organisations, and corporate bodies which call for appropriate legal regulation on an international basis, problems of economic and technological interdependence requiring the regulation on the basis of common rules of matters which do not per se involve inter-State relations in any real sense, and rights designed to provide the individual, and in some cases organisations, with a measure of protection against the individual member States of the international community.¹

According to this view, the sovereignty of the state is not being eroded directly, but is being built over by a network of relationships that require legal control such that the law of the international community "has long since ceased to be merely, and is rapidly ceasing to be primarily, a law between States".² As Jessup puts this thesis, it is to question "the line between the international and the national...as a basis for legal classification", and to replace it with a conception of "transnational law" which would "deal out jurisdiction in the manner most conducive to the needs and convenience of all members of the international community", rather than rely on old dogmas like territoriality, sovereignty and nationality.³ Again, the remarkable growth of transnational law and relations in the twentieth century is not here in question. What is in dispute is whether the mere "outnumbering" of the law between states can be said to have led to a decline in the importance of the state in the international political order.

¹Ibid., p.17.
²Loc.cit. Among the subjects making up his presentation of the contemporary international law of peace, apart from law between states, Jenks includes:- the law governing the structure and law-making processes of the international community, human rights protected by international guarantees, property rights of a distinctively international character, common rules established by international agreement which apply to public services, corporations and individuals rather than to States, international rules governing the conflict of laws and various categories within these headings. See ibid., pp.59-60.
³Philip C. Jessup, Transnational Law, (New Haven, 1956), pp.70-71 and p.103.
The difficulty with these examples of the doctrine that sovereignty is and should be bending increasingly before international law is not that they posit norms of international conduct which are not matched by the practice of states, for if rules were perfectly observed there would be no need for their existence. It is that the gap between norm and practice is too wide. To take undue comfort from the outlawry of war is to fail to confront the familiar account of the weakness of international law in its lack of an impartial authority to judge a breach of the law and of centralized means of law enforcement. States judge and states enforce. International law is not ignored but is severally interpreted by each of the units to which it applies. Article 2(4) is a clear prohibition of the threat or use of force only if the limits of territorial integrity and political independence are indisputably clear in a particular case. Where they are not clear, and this has been characteristically the case in the post-war world of disputed frontiers and of internal war, states have been able to make diverse and plausible claims that they were upholding the values of territorial integrity and political independence rather than denying them. Because of the same lack of clarity in the distribution of territorial integrity and political independence, Article 51 of the Charter allowing individual and collective self-defence against armed attack, has been converted from an exception intended to be "not much larger than a needle's eye", into a "loophole through which armies have passed". The withdrawal of the right to make war from the category of sovereign rights of the state has had the practical effect of enlarging the category of exceptions to the withdrawal.

The problems involved in Jenks' espousal of the view that the principle of full employment is no longer a matter within the domestic jurisdiction of states, can be illustrated in terms of the deference he still shows to the

1Stanley Hoffmann, "International Law and the Control of Force", in Karl W. Deutsch and Hoffmann, (eds.), The Relevance of International Law, (Cambridge, Mass, 1968) p.29.
principle of domestic jurisdiction by distinguishing an obligation of full employment that leaves untouched the philosophy of the relationship between the government and the individual. The principle of full employment is a modern political principle which is inescapably bound up with principles of government, and its endorsement by international law is the endorsement of a "particular philosophy". But the assertion of an international legal duty makes no contribution to the problem of how to govern so as to bring about full employment. It is a worthy aspiration to which most governments are committed along with many other, often contradictory, goals, but its achievement is not dependent on international law but on governance. And this is the cardinal difficulty with the celebration of the decline of domestic jurisdiction - not only in the matter of full employment, but in all areas of political decision - that it takes little account of the effectiveness of the new international compared to the old domestic jurisdiction. A doctrinal solution might be found in a preference for monistic theories asserting the primacy of international law over domestic law, rather than dualistic theories asserting the independence of the two systems of law. A more practical solution might lie in an expanded role for domestic courts in the international legal order.\(^1\) In practice, and here and now, matters like that of full employment, which undoubtedly have international repercussions and are of international concern, are aims which the individual looks to his government to satisfy. Automatic applause for the erosion of domestic jurisdiction, and the more the better, overlooks the possible ineffectiveness or irrelevance of the formal transfer of jurisdiction, and might even prejudice the establishment of a sound legal order between states - making weak law weaker by loading it with responsibilities it is not strong enough

\(^1\)See generally, R.A. Falk, The Role of Domestic Courts in the International Legal Order, (Syracuse, 1964).
to bear. 1

As to the outnumbering of the law of sovereign states by the transnational law of the international community, though there is less distance here between doctrine and practice, 2 it cannot be taken as an unerring signal of the eclipse of sovereignty. For, as Raymond Aron has pointed out, the inter-state order remains relatively autonomous. 3 The building of bridges across international frontiers, which might very well be necessary to the ultimate construction of an international community, is not remotely sufficient to it. 4 The expansion of transnational communication in the twentieth century has not rewarded progressive thought with a simultaneous expansion in the solidarity of states and the consequent promotion of peace. 5 The principle of non-intervention is a rule which applies in the relatively autonomous order of states. As a testament to their minimal solidarity, to an agreement that the society of states is not competent, because of its rudimentary nature, to assume authority on matters within states, the doctrine of non-intervention might be closer to reality than the progressive doctrines that would unseat it.

If there are serious difficulties with the doctrine that sees sovereignty tamed increasingly by international law, regards the process as inexorable 6, and celebrates

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2 With the possible exception of the development in transnational relations between the Communist and Western worlds.


4 Loc. cit.

5 See Stone, (Legal Controls of International Conflict, pp.xli-liii), for a criticism of this aspect of progressive thought on the particular ground that the growth of physical communication does not necessarily lead to a parallel growth in "human communication".

6 Larson, "International Organizations and Conventions", in Larson and Jenks, Sovereignty within the Law, p.365.
its working out, what can be said of the view that sees international organizations as assuming those fragments of authority which international law has wrested from the sovereignty of states? In the nineteenth century, Hall and Lawrence had been doubtful about dignifying collective intervention for the peace and order of Europe with the stamp of legality. No such doubts are entertained by contemporary jurists. The Covenant of the League of Nations and the Charter of the United Nations formally endowed the proper organs of international organization with the authority to intervene on behalf of the peace of nations. The maintenance or restoration of peace and security was the province of the United Nations, in respect of which, states had no plea of domestic jurisdiction. The progressive view sees this formal advance into a regime of collective security, of social rather than individual responsibility for order, reflected in the practice of states. Thus Jenks takes Manchuria, Ethiopia and Korea as "successive landmarks in the development of international organisation". In the Manchurian case, the international community placed on record its condemnation of aggression by a great power. In the Ethiopian case, economic coercion was attempted. And in Korea, the United Nations Security Council, adapting itself to the realities of the Cold War, asked the United States to direct the forces cooperating in restraint of aggression - a "significant, and one may hope a decisive, stage in the evolution of collective security". The clear long-term trend, in Jenks' view, is in favour of collective security, every failure being "followed by a more insistent attempt to succeed".

It is, perhaps, more accurate to take the Manchurian and Ethiopian cases as evidence for the want of solidarity in the international community, rather than as landmarks in its development. Korea is a happier example in the sense that the limited military action undertaken under the flag

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2. Ibid., p.194.
3. Ibid., p.196.
of the United Nations did at least achieve the objective of keeping South Korea independent of the North. But whether it can be taken as evidence of the reality of collective security, even in embryo, is more doubtful. The unanimity required in the Security Council to launch the enterprise was provided by the fortuitous absence of the Soviet Union - solidarity by default. The United Nations action was undertaken by a Western coalition - partial solidarity. And it was undertaken against a small power - the perennial solidarity of the strong against the weak. Walter Schiffer has pointed to the central weakness of the progressive confidence in collective security in its assumption of the indivisibility of peace and of the equal interest of all peoples in the maintenance of the general peace.¹ The doctrine of collective security presupposes a solidarity in the international community which, if it existed, would make an organization to enforce peace unnecessary.² Where states remain politically divided and are free to make up their own minds about the existence of threats to their security, the prospect of an international authority taking over the states' responsibility for international order remains distant.

Primarily an organization whose function was to maintain peace between states, the United Nations included, among the purposes stated in its Charter, the promotion of values within them such as respect for human rights and fundamental freedoms. Progressive thought envisages, with regard to the latter, an extension of the competence of the United Nations to the domestic order of states, affirming the legitimacy of and advocating, in the words of one writer, "legislative intervention by the United Nations in the internal affairs of states".³ Falk would authorize intervention by the United Nations whenever civil strife threatened world peace or whenever gross abuses of

²Ibid., p.199.
fundamental human rights took place. When internal conflict threatens to provoke the cold war pattern of intervention and counter-intervention, Falk argues, United Nations action is legitimate as a means of eliminating the risks of involvement by nuclear nations, and legitimate on a broader basis where it realizes the "fundamental preferences of the international community" as in the liquidation of colonialism and institutional racism.

The primary difficulty with this doctrine is, as Falk himself recognizes, that the possibility of legislative intervention by the United Nations exists only in circumstances of almost universal consensus. Moreover, the existence of such a consensus, as for example against apartheid, does not indicate a consensus on the sort of action to be taken against it. Falk recognizes a distinction between a Western preference for persuasive interference and a preference on the part of revolutionary and ex-colonial nations for coercive interference, but minimizes the difference between them. It is perhaps in the difference between them, between the reluctance to allow authority to a "super-state" on the one hand and a willingness to coerce South Africa in fulfilment of a competing conception of international order on the other, that the lack of solidarity in the international community is still demonstrated, even on a matter about the undesirability of which nearly all states ostensibly agree. It is the difference, in a modern context and with regard to a very different segment of the political spectrum, between Castlereagh's refusal to act on abstract and speculative principles of precaution and the intervention of the Holy Allies against the contagion of revolution.

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1 Ibid., p.344. Falk is careful to point out that "authorization is concerned with the empowering of the United Nations to act, not with action itself", since considerations of prudence might rule out intervention in a particular case.
2 Ibid., pp.346-347.
3 Ibid., pp.349-351.
4 Ibid., p.348.
though both were agreed about the undesirability of revolution. Outside matters of near consensus, themselves doubtful as platforms for action, the conception of United Nations intervention as a substitute for the rivalries of the Cold War is but the latest manifestation of that pattern of progressive thought which supposed that law would be observed and reasonable conduct would prevail if only power politics did not intervene.¹

A less ambitious form of the notion of transfer of sovereignty is that which sees the emergence of regional organizations taking over some of the functions formerly allotted to the competence of states. The European Communities are the obvious example. There is no reason to doubt that such a transfer has taken place in the Europe of the Six in the area of economics and trade, where the establishment of a common market has led to the removal of commercial and tariff matters from the exclusive competence of the states. But matters of defence and foreign policy, the traditional bastions of state sovereignty, remain within the competence of the parts of an economic community, the history of which does not seem to have followed the inexorable functionalist logic of the increasing erosion of sovereignty as one area of integration "spills over" into another.² Again, Aron's distinction between transnational communication and the relative autonomy of the political order is relevant - what he calls the "great illusion of our times...that economic and technological interdependence among the various factions of humanity has definitively devalued the fact of "political sovereignties," the existence of distinct states which wish to be autonomous".³

¹ For the evolution of this pattern of thought see generally Schiffer, op.cit.
² For a critique of this logic and for an account of the survival of the nation-state in Europe, see Stanley Hoffmann, "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe", Daedalus, Vol.95, No.3, (Summer 1966), pp.862-915.
³ Peace and War, p.748.
Moreover, whether the pattern of integration advocated or pursued is functional or federal, if its end product is not the destruction of the state but its expansion from nation to region, then the progressive desire to tame the beast of sovereignty merely serves to convert it into a monster.

A third sort of argument which has to be met if the principle of non-intervention is to be held to have continuing relevance in contemporary international law, is that which sees in recent developments in the law the admission of the individual to membership in international society as a direct bearer of rights and duties without the go-between of the state. As Lauterpacht puts this argument: "in so far as international law as embodied in the Charter [of the UN] and elsewhere recognises fundamental rights of the individual independent of the law of the State, to that extent it constitutes the individual a subject of the law of nations". He goes on to assert that it is in the Charter of the United Nations "that the individual human being first appears as entitled to fundamental human rights and freedoms", that it is a legal duty of states to respect and observe them, and that this duty exists in spite of the difficulty of enforcement and the lack of clarity and precision in the definition of human rights.

1 Recent developments such as the references to human rights in the German-Polish Upper Silesian Convention, the International Military Tribunal at Nuremberg, the UN Charter and the Universal Declaration of Human Rights. For a concise summary see M. St. Korowicz, "The Problem of the International Personality of Individuals", in American Journal of International Law, Vol.50, (1956), pp.545-558.

2 International Law and Human Rights, (London, 1950), p.4. For the contrary view that individuals remain objects of international law, bearing rights only through their states, see Korowicz, op.cit., pp.548-549.

3 Lauterpacht, op.cit., p.33.

4 Ibid., p.147.

5 Ibid., pp.147-154.
The elevation of the individual to formal parity with states in the international club involves two sorts of difficulty in practice - the related problems of the solidarity of the international community and of the possibility of enforcing the law. In the first place, it is doubtful whether international society can be said to make up what Julius Stone has called a "justice constituency" in which, inter alia, individual human beings can express their felt needs or demands. Indeed, in an international environment which opposes "the nationalization of truth and justice" to such a postulated constituency, the individual tends to look for a just share or reward or compensation for injury within the frontiers of the state of which he is a citizen, and would not expect to find justice in any constituency beyond them. Hence the lack of clarity of definition of human rights in the Charter is but the tip of an iceberg, the submerged parts of which testify to a lack of consensus in international society about what human rights are, how they are to be protected and what priority within the state and the international order that protection shall enjoy. It is due to this lack of consensus that Lauterpacht's rationale for humanitarian intervention - that "ultimately, peace is more endangered by tyrannical 

2Ibid., p.428.
3The exception here, providing some grounds for confidence in at least an emergent European "justice constituency", is the European Convention on Human Rights, by which the parties declared their "common heritage of political traditions, ideals, freedom and the rule of law", and resolved "to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration". Article 25 of the Convention embodied the right of individual petition, "provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions". Eleven of the seventeen parties have recognized that competence. On this article and on European practice generally, see J.E.S. Fawcett, The Application of the European Convention on Human Rights, (Oxford 1969).
contempt for human rights than by attempts to assert, through intervention, the sanctity of human personality is open to question. It may very well be that, in an ultimate sense, peace and the protection of human rights are related, and the debates in the United Nations show how widespread are the doctrines of peace and freedom indivisible, but the weakness of the rationale for humanitarian intervention lies in the assumption that states are able to operate, or to co-operate, to uphold human rights with a surgical precision having no side-effects and no ulterior motives.

The second difficulty with the admission of the individual to international society can be illustrated by reference to Lauterpacht's interpretation of the relationship between the assertion of human rights in the Charter and Article 2(7) reserving domestic jurisdiction. He opts for a compromise between them. The "intervention" disallowed by Article 2(7) Lauterpacht takes to be a ban on "dictatorial interference in the sense of action amounting to a denial of the independence of the State". This interpretation of the term, he argues, provides a guide to the permissible limits of the action of United Nations organs in the field of the encouragement and promotion of human rights. They may discuss matters in that field, initiate studies of them and make general or specific recommendations with respect to them. What is ruled out by Article 2(7) is "direct legislative interference by the United Nations - i.e. an attempt to impose upon States rules of conduct as a matter of legal right". Here is the deference to domestic jurisdiction. And yet, Lauterpacht also asserts that the observance of human rights and freedoms has become an international obligation not essentially within the domestic jurisdiction

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1 Lauterpacht, op. cit., p.32.
2 Ibid., p.167.
3 Ibid., pp.168-169.
4 Loc. cit.
5 Ibid., p.171.
of states, in which case, why the continuing deference to domestic jurisdiction by disallowing dictatorial interference and shackling the authority of the United Nations? The answer is provided by the Charter. In order to unshackle the authority of the United Nations, it would have to be shown that a breach of human rights constituted a threat to the peace under Chapter VII of the Charter. There is no quarrel here with Lauterpacht's interpretation of the Charter; if it is illogical it reflects the document it interprets. It does show, however, the centrality of the problem of enforcement.

On this problem, Lauterpacht recognizes that "in so far as the availability of a remedy is the hallmark of a legal right, they [fundamental human rights] are imperfect legal rights". But he adds that there is, as a rule, "no compulsory jurisdiction in the matter of the fulfilment of international duties", and that even if the United Nations had no power of enforcement at all "the legal duty itself would still remain in full vigour". Certainly, it seems pedantic to cavil at the particular legal obligation to respect human rights by reference to a notorious weakness of international law in general. But the pedantry is justified for two reasons. In the first place, the gap between the possibility of a state enforcing its legal rights or carrying out its duties and the desirability of such from the point of view of legal order is less wide than is the case with an individual, for the simple reason that while the former might have the power (if not the will) to do so, the latter never has (his will does not matter). Secondly, the Charter system's overriding concern for peace and its endowing of the Security Council with certain rights in respect of its maintenance attests to the minimal, if overly optimistic at that, ambitions of the founding fathers. The adding of a "maximalist" concern for the welfare of the

1Ibid., p.177.
2Lauterpacht, op.cit., p.34.
3Loc.cit.
4Ibid., pp.166-167.
individual within the state was, to a greater extent, the imposition of a responsibility which the international society was not mature enough to administer. Lauterpacht expressed, with Emerson, the hope that "man shall treat with man as a sovereign state with a sovereign state".\textsuperscript{1} He would not, surely, have conceived of the model for those relations as the Hobbesian state of nature - a condition against which there is no guarantee if men are released from their obligations as members of states.

The weakness of the three doctrines here examined, of sovereignty increasingly retreating before the law, of international authority increasingly substituting for national authority, and of the sovereignty of the individual, can be summarized in two tendencies which typify each of them. Firstly, they tend to assume the demise of state sovereignty in a century that has witnessed an explosive growth in the number of sovereign states and in the functions which they fulfil.\textsuperscript{2} In the second place, they tend to applaud the eclipse of sovereignty which they suppose to be taking place as an unqualified good, which exposes them to the danger of overlooking the function of the principle of sovereignty as an ordering device within and hence among states.\textsuperscript{3} It may be that the values to which the principle of non-intervention draws attention and which it legally protects are more tenacious than progressive thought has allowed for.

III

If the principle of non-intervention retains a place in contemporary international law, it is not, if it ever has been, as a clear injunction against a particular act. The values it draws attention to and protects are those included under the rubric of the principle of state sovereignty,

\textsuperscript{1} Ibid., p.70.
\textsuperscript{2} See Hinsley, Sovereignty, p.226.
\textsuperscript{3} On the connection between order within and order among states, see below, Chapter 9, section I.
such as the rights of a state to territorial integrity and political independence. Standing guard over such imprecisely defined rights and requiring respect for them in a sort of legal shorthand, the principle appeals more perhaps to governments than it does to jurists. As a slogan of protest and legitimation, it recommends itself to governments as a serviceable and convenient tool of international politics. As a part of legal science, because of its very generality and imprecision, it has less to recommend it either as a tool for the juristic evaluation of the policies of states or for the building of a system of international law. Furthermore, as a piece of legal shorthand, implying as it does a clear distinction between an order between states with which international law is concerned and an order within them which is not to be interfered with, it perhaps oversimplifies. As McDougal puts the case against such oversimplification:

the interrelation of international law and national law is most realistically viewed... in terms of the interpenetration of multiple processes of authoritative decision of varying territorial compass. The rules commonly referred to as international law are but perspectives of authority - perspectives about who should decide what, with respect to whom, for the promotion of what policies, by what methods - which are constantly being created, terminated, and recreated by established decision-makers located at many different positions in the structures of authority of both states and international governmental organizations.¹

Again from the perspective of legal science and of the legal evaluation of state policy, the conception of the principle of non-intervention lying at the frontier between international and domestic jurisdiction, however true at a sufficiently general level of abstraction, is perhaps too general to be helpful.

If the principle of non-intervention can be said to be unsatisfactory on these grounds as a general principle, what can be said of it as a legal barrier to intervention

in its technical meaning of "dictatorial interference" - as one form of "force short of war in international relations"?

There is a twofold difficulty with this, supposedly technical and consensual, definition of intervention. On the one hand, the conception of intervention as force short of war in international relations, if it purports to depict a relationship of violence between states whose scale and scope is more restricted than that commonly associated with war, then the Vietnam war, a war of intervention, is the most recent example of the frailty of the distinction between war and intervention. If, on the other hand, the term intervention is restrictively understood as interference by use or threat of force, then it fails to capture those forms of coercion, such as subversion and the dissemination of hostile propaganda, which need not rely upon force. Because of the difficulties of distinguishing between a state of war and a state of peace, and, a fortiori, a third state which hovers uneasily between them, McDougal and Feliciano suggest a concept of "coercion" as a factual and seamless process described in terms of:

certain participants applying to each other coercion of alternately accelerating and decelerating intensity, for a whole spectrum of objectives, by methods which include the employment of all available instruments of policy, and under all the continually changing conditions of a world arena.

1 The supposition is Lauterpacht's in op.cit., pp.167-168
2 See on the frailty of this distinction, F.Grob, The Relativity of War and Peace, (New Haven, 1949), pp.224-237. Grob does, however, detect a "calculated political and legal design" in the use of the term "intervention" by Presidents Taft and Wilson. Politically, it was supposed to signal America's lack of land-hunger, her concern only for American lives and property and for the independence and stability of the states in the Panama Canal area as a bulwark against extra-hemispheric interference. The internal legal design was to avoid excessive Executive assumption of the war-making power formally vested in Congress. Ibid., pp.231-237.
Following this lead, another writer thinks not of intervention but of "minor international coercion". In such a framework, a principle of non-intervention seems to have no place, except again as a general notion declaring a presumption against the legitimacy of coercion across international frontiers. Moreover, the place of the principle of non-intervention as a specific injunction might seem superfluous in practice. In order to determine the legitimacy of a particular act of intervention, the question to be asked is not whether it violated the principle of non-intervention, but whether rules existed which might justify the act in that particular case. These considerations together seem to relegate the principle to an unhelpful generality.

Despite these considerations, the non-intervention principle lives on in contemporary international law as a rule which states have bound themselves to observe in various international instruments, as a slogan lodged in the minds and frequenting the sayings of statesmen, and as a doctrine which has received the *imprimatur* of the United Nations. In the writings of jurists, it persists as a description of one strand of thought in the discussion of the international law of internal war and as a *de facto* principle discerned by some writers as a rule of "inter-bloc" rather than inter-state law. The frequent appearance of the principle in international instruments has already been noticed. So also has its partly implicit, partly explicit, position in the Charter of the United Nations. This latter position is not denied by either side in the debate between the "restrictionists", who think of the legitimacy of the use of force in the post-Charter legal order in terms of the three categories of collective United Nations sanctions, delicts and actions in self-defence.

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2 See, for contemporary appearances, above Chapters 5, 6, 7.
3 See above, Chapter 7, section I.
and the "realists" who would admit the possibility of a non-delictual use of force which is neither collective sanction, nor self-defence. The difference between these two schools of thought with reference to the principle of non-intervention is one of emphasis, a difference which can be illustrated by reference to the Corfu Channel Case. Britain claimed that a minesweeping operation carried out in Albanian territorial waters after two British vessels had been mined, could be justified as intervention for the purpose of "safeguarding evidence necessary for the purposes of justice", as intervention to abate an international "nuisance" and on the grounds of "self-protection or self-help". The International Court of Justice in rejecting the British claim, held that it could only regard the alleged right of intervention as the manifestation of a policy of force, such as has in the past given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law.

The Court could not accept the particular plea of self-protection or self-help because "between independent states, respect for territorial sovereignty is an essential foundation of international relations". Here, it seemed, was confirmation of the restrictionist view of the right to use force - the right of one state to intervene was not superior to the right of another to territorial sovereignty, and for the protection of the latter the Court seemed to rely upon the outlawry of individual use of force. But the realist view does not necessarily have less regard for territorial sovereignty. It recognizes the frequency with which the practice of states has placed it under threat and allows its vindication by individual resort to force - force for right not force as a "policy". Both views can be said to endorse the principle of non-intervention, but one interprets it as ruling out the use of force even in the

1See, e.g. Stone, Aggression and World Order, pp. 92-103.
3Loc.cit.
absence of a collective response ("whatever be the present defects in international organization"), and the other would allow individual intervention to uphold the law precisely because of the defects in international organization. Whether contemporary international law imposes an absolute duty of non-intervention (intervention here in the sense of the threat or use of force) on individual states remains a disputed question. The use of the language of intervention and non-intervention in the context of the legitimacy of the use of force is a matter of convenience - it summarizes a complex debate.

The speeches of statesmen and a number of resolutions adopted by the General Assembly constitute a second area occupied by the principle of non-intervention in contemporary international politics. Homage paid to the principle in the former has carried over into its more formal acknowledgement in the latter. This widespread deference can be said to demonstrate the common concern of all states for the values embodied in the principle of state sovereignty for which the principle of non-intervention requires respect. But each state tends to expound a doctrine of non-intervention which is framed with reference to those particular forces in world politics which seem to present a challenge, actual or potential, to its own sovereignty or, more broadly, to the maintenance or propagation of its conception of international order. Ubiquitous declaratory deference to the principle then, obscures sometimes fundamental differences between states as to the values protected by it and the sorts of actions it proscribes. In this respect, the differences between Western, Communist and Third World doctrine have already been described.\(^1\) That one of the few points of similarity between these doctrines might be that they share the same title as principles of non-intervention, does not justify the dismissal of the principle as a mere political slogan, having a propaganda function as a weapon of diplomacy, lightly used and just as easily discarded. For

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\(^1\) See above Chapter 7, sections IV and V.
it is no surprise that the scope and content of the principle should vary according to the conception of international order, however well articulated, of which it is a part. The different interpretations of the principle do, however, point up the problems for an international law which would transcend the peculiarities in the doctrines of particular states and apply equally to them all. In particular, the debate at the United Nations about the principle of non-intervention and generally about the principles which were to guide friendly relations and co-operation among states, threw two such problems into relief. In the first place, a Western preference for a pragmatic, problem by problem approach to international law, wary of precise definition and suspicious of abstract doctrine, was opposed to a marked Third World (and Latin American) preference for a detailed spelling-out of the actions ruled out by the principle of non-intervention and by a preference among the Communist states for a general endorsement of the five principles of peaceful coexistence. Secondly, Western reluctance to leave the doctrinal umbrella of the Charter and doubt as to the legal status of General Assembly resolutions, confronted Third World enthusiasm for such resolutions as representative of a new international law which the newly independent states had helped to fashion, and the Communist states joined in this turning away from the European inheritance by extending the new law to peoples as well as to states. Though differences were apparent when doctrine was pursued into detail, the general and abstract character of the formal proclamations of non-intervention by the United Nations allowed each state to adhere to them without violating its preferred interpretation.

A third area occupied by the principle of non-intervention in contemporary international law is that beyond the specific range of the injunctions of the Charter. In particular, this is an occupation, or partly so, of two areas. Firstly, Article 2(4) refers only to the threat or use of force against territorial integrity or political independence. This formulation neglects the possibility of these values being threatened by activities other than the use or threat of force, such as subversion or the dissemination of hostile propaganda, and the principle of non-intervention has been invoked as a legal safeguard against such threats. ¹

The principle has, in the second place, been called in to supplement the Charter in the area of internal war - the typically modern instrument of change in international society. ² But the circumstances of its invocation are more complex than is the case with the simple extension of Article 2(4). Traditional international law relied on non-interventionist norms in regard to internal war. It was a domestic affair which international law formally ignored. When a successful rebellion forced itself upon the notice of the law, it attempted to preserve a neutralist stance serving the purposes of non-intervention by allowing the working out of domestic affairs without external influence. Thus a government was not to be discriminated against by international society when facing a mere rebellion, but

¹ Bowett, in arguing that the duty of non-intervention is a broader duty than that imposed upon states by Article 2(4), correlates the right of political independence with the duty of non-intervention and shows how the former can be impaired (and the latter breached) by actions other than the use of force or its threat. He does add, however, that the extent of the right of political independence and the duty to respect it are unclear. Op. cit., pp. 44-50.

neither was a rebellion to be discriminated against if it matured through insurgency to belligerency. When the internal war arrived at the latter status, international law was to secure a non-interventionary effect by requiring equal treatment for each belligerent. The difficulty with this model was that it assumed that internal war could somehow remain internal, that a convulsion could take place within a state in isolation from international society, and that all that society would and could do was to award the prize of membership in it to the victor. Where, as in the contemporary world, international politics take place within as well as between states, with rival states seeking to award the prize of membership on grounds quite other than success in an internal war, sparking off thereby the cycle of intervention and counter-intervention, the old model, if it ever was in working order, seems so no longer.

The Charter did not produce a new model. It assumed a tolerably clear distinction between matters domestic and matters international. It sought to restrict and regulate conflict between states not within them. Its inflexibility in this respect is illustrated in Article 51 which imagined war as the massive use of force across international frontiers, and made no reference to action other than "armed attack". Any form of conduct whose intensity or extent can be said to be less than armed attack, no matter how much it might impair the sovereignty of its victim, does not formally trigger the right of self-defence. The Charter does, of course, disallow the use or threat of force in Article 2(4), but permits no individual recourse where it is below the threshold of armed attack. Whether or not the wording of the Charter is responsible, revisionist states or groups within them have typically depended, in the post-Charter world, on methods short of overt and blatant armed attack to implement change in the international system. On the other hand, the status quo powers have been encouraged to upgrade any hostile threat or use of force into armed attack, reading into Article 51 the prohibition contained in Article 2(4) in order to legitimize action in individual or collective self-defence. Where these related developments coincide in a
situation of internal war, they illustrate the breakdown of the traditional dichotomy between domestic and international affairs. One solution to the problem this presents to the law might be simply to import the norms about international conflict into the domestic arena. Another might be to rely hopefully on traditional non-interventionist norms. A third might consist in meeting the new complexity in international relations with a more sophisticated legal response. It is in this third area that the principle of non-intervention has reappeared as a prescription de lege ferenda in respect of one category of conflict. The issue of how to cope with the difficulties presented by internal war has been joined as a by-product of the scholarly debate on the legality of American participation in the Vietnam war.

In order to clarify the debate about the Vietnam war and to guide thought about the problem of internal war in general, Falk has distinguished between three types of violent conflict and between the corresponding remedies available to states when they occur.¹ Type I conflict involves the direct and massive use of military force across international frontiers, for which the appropriate remedy is either the use of force in self-defence or the organization of collective action on a regional or global basis. Type II conflict involves substantial military participation by one or more foreign states in a struggle for control within a state. The proper response to this situation, after the exhaustion of procedures for peaceful settlement and machinery for collective security, is the taking of offsetting military action confined to the internal arena. Type III conflict involves internal struggle for the control of a national society, a circumstance in which it is

¹"International Law and the United States Role in the Vietnam War", in Falk, (ed.), The Vietnam War and International Law, pp.366-367, from which the summary following is taken. Falk points out that his "types" are analytical rather than empirical in character and that in the real world a particular occasion of violence is a mixture of types, classification depending on the nature of the mixture. Ibid., p.366, n.16.
inappropriate for any outside state to use military power to influence the outcome.¹

Looking at the Vietnam war in terms of these categories, Falk identifies the conflict as an example of Type III but goes on to argue that it has been converted to Type II primarily through the participation of the United States.² The government of the United States, not without some scholarly support from academic international lawyers, sees the Vietnam war as Type I conflict with aggression coming from the North.³ The assessment of the Vietnam conflict in terms of Falk's categories depends partly upon interpretation of the facts. But it also depends upon the normative construction to be put upon the facts from the point of view of world order.⁴ Assuming that the choice of category has been made, and the crucial issue in making it is the decision whether infiltration of men and arms across a civil war cease-fire line intended to be temporary but made less so by events, is to be considered an armed attack, what are the legal consequences of the choice? If Hanoi's participation in the war in the South is regarded as tantamount to armed attack (Type I) across an international frontier, then the norms which are to apply are those of international conflict. Article 51 is preferred to any admission of the civil strife aspects of the war. If, on the other hand, Hanoi's

¹In a subsequent elaboration, Falk adds a fourth category of conflict which exists "whenever a competent international organization of global (IVA) or regional (IVb) dimensions authorizes the use of force", "International Law and the United States Role in Viet Nam: A Response to Professor Moore", in Falk, op.cit., pp.456-457.
³For the US Government position see above Chapter 6, section IV. For scholarly support for that position see J.N. Moore, "International Law and the United States Role in Viet Nam: A Reply", in Falk, op.cit., pp.401-444, and "The Lawfulness of Military Assistance to the Republic of Viet-Nam", in ibid., pp.237-270.
⁴This order aspect will be examined in greater detail in Chapter 9, section V. Here the purpose is merely to locate the areas occupied by the principle in contemporary international law and for this purpose a factual enquiry into the Vietnam conflict is superfluous.
participation in the war in the South is regarded either as involvement in a civil war between North and South (Type III) or as intervention in a civil war in the South (Type II), then the norms which are to apply cannot be found in Article 51 of the Charter, and the only guidance provided by the Charter is a general presumption against intervention and the use of force and for collective action in the event of its breach.

Taking the aspects of this debate which are of general significance in evaluating the principle of non-intervention beyond the Vietnam context, Falk's conception of Type II and Type III conflict represents a plea on behalf of maintaining a distinction between internal and international war as a device for the limitation of conflict, and a plea also for the clarification of the rules which are to apply to intervention in civil strife. In the event of Type III conflict, a principle of non-intervention is to apply, not merely as a general Charter assumption but as a rule relevant to a specific situation. It requires an outside state to refrain from intervention in an internal war provided all other states have done so - it seeks to hold the ring around civil strife.\(^1\) Falk's Type II conflict readmits intervention as a technical term describing a form of coercion short of armed attack, and having an explicitly normative connotation in the sense that it allows a forcible remedial response provided it is confined to the internal arena - it seeks to restore the ring around internal conflict. But in allowing intervention to uphold the principle of non-intervention, Type II rules out a

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\(^1\) The difficulty here, of course, is the definition of intervention. Falk refers to the "use of military power". Recognizing the unrealistic character of a flat prohibition of intervention, Tom. J. Farer, ("Intervention in Civil War: A Modest Proposal" in Falk, \textit{op.cit.}, pp.509-522 and "Problems of an International Law of Intervention", in Stanford Journal of International Studies, Vol.III, (June 1968), pp.20-26), suggests a "prohibition of tactical support" which would exclude foreign troops from active involvement in an internal war-zone. A state could give aid to either incumbent or insurgent but this should stop short of sending personnel for actual combat. Here is a similarity to one aspect of official United States doctrine examined above in Chapter 6, section IV.
punitive attack on the other intervening state or states, for such would require not only a finding that an armed attack had taken place, but also that the response was necessary to effective self-defence. If this technical interpretation of Type II were accepted, it would rule out, for example, the propriety of a United States claim that her participation in the Vietnam war was counter-intervention to uphold the principle of non-intervention because by bombing the North she exceeded the legitimate response.

If these areas beyond the reach of the Charter, to cover which the principle of non-intervention has been pressed into service, are precisely the areas into which international politics have probed the most deeply, setting legal doctrine and state practice apart from each other, there is a final area in which the principle can be described as a ground-rule reflecting state practice rather than being set over against it. But here it operates as a principle of inter-bloc rather than inter-state law. Where the predominance of the United States in the American hemisphere and that of the Soviet Union in Eastern Europe is recognized, and the recognition demonstrated by the restraint of each from intervention in the sphere of influence of the other, it is possible to discern an inter-bloc principle of non-intervention as a ground-rule of relations between the super-powers. Neither the Soviet assertion of her predominance in Hungary and in Czechoslovakia, nor the American assertion of her predominance in Guatemala, Cuba and in the Dominican Republic was actively challenged by the rival power. Eastern European and Latin American states have no

1See McWhinney, "Peaceful Coexistence", pp.92-94. There is a precedent for this development in the assertion by the United States of the Monroe Doctrine as an inter-hemispheric principle precluding European intervention in the Americas and American intervention in Europe. See above Chapter 4, section III.

2"Cuba" here means the Bay of Pigs adventure of 1961. The Cuba Crisis of 1962 can be regarded as the demonstration of the ground-rule by the willingness of the United States to defend it rather than its invalidation by a Soviet challenge. See McWhinney, op.cit., p.94.
access to counter-intervention from outside their blocs to uphold the principle of non-intervention within them because of the superimposition of prior inter-bloc norms on inter-state norms.¹

Outside the spheres of influence of the superpowers, the ground-rules are less clear. The tacit agreement between the United States and the Soviet Union not to confront each other in those areas where their respective preponderance has been established, provides no guidance beyond those areas where competitive interference, the attempt to establish preponderance, has characterized post-war international politics. Thus the United States participation in the Vietnam War might be represented as an attempt to pre-empt the establishment of a Chinese sphere of influence in South East Asia.² In the Afro-Asian world, outside the spheres of influence, established or inchoate, of the super-powers, Falk suggests a rule of mutual non-intervention allowing the inter-state order to prevail without the attempted superimposition of bloc norms by the super-powers.³ In terms of Falk's categories of conflict, this norm would disallow the conversion of Type III conflict into any other category except Type IV which would authorize intervention by a regional or global organization.⁴ A rule of non-intervention in this area, however, commands less

¹This has not meant the extinction of the principle of non-intervention within the blocs, though it has rendered it more fragile and more prone to being overridden by higher imperatives. It certainly has not discouraged the assertion of the rule by Latin American states and by Yugoslavia as an intra-bloc as well as an inter-bloc norm. See McWhinney, "Friendly Relations and Cooperation among States (Coexistence), and the Principle of Non-Intervention", pp.79-80 and above Chapters 5, 6 and 7.


⁴"A Response to Professor Moore", pp.498-499.
support in the practice of states than is the case with the inter-bloc norm of non-intervention.

IV

International law as inherited from the nineteenth century conceived of the principle of non-intervention as a general rule which was cut across by more pressing imperatives justifying its breach in particular cases. The Charter of the United Nations seemed to abandon the specific notions of non-intervention and sometimes justifiable intervention by speaking instead in the language of the legitimacy of the use of force. And yet the principle has survived this transformation. It survives in the form of a general assumption about the nature of international society which the Positivists of the nineteenth century received from their Naturalist predecessors and handed on to the twentieth century. The assumption takes two forms: firstly, that the world is a world of states accepting no authority above them except that of international law - non-intervention as the rejection of a super-state, and secondly, that in a world of sovereign states there must be a rule recognizing and requiring respect for the allocation of authority between them - non-intervention as a necessary rule in an inter-state order. The post-Charter legal order has not significantly shaken either of these assumptions, though it has gathered adherents to the view that it carries the germ of a different and better world order. The principle has certainly survived as a favourite phrase of statesmen and the United Nations General Assembly has endorsed it as a fundamental principle of international law, although the canvas of the principle tends to be filled in according to states' particular proclivities about what is desirable and what is not in international politics. Nailing down the specific areas of application of the principle, some international lawyers and much state practice acknowledge its particular if shadowy existence beyond the margins of Article 2(4), its relevance and effectiveness are debated in the context of internal war, and it exists as a quasi-legal norm of international politics conducted between blocs.
Chapter 9
The Principle of Non-Intervention and International Order

The foregoing chapters have been mainly concerned with doctrines of non-intervention held by individual states or by groups of states, though the theme of a principle of non-intervention as a legal rule applying to all states, independent of the peculiarities of national interpretation, has been traced through them. It remains to invert this procedure: to consider the principle in terms of the function it fulfils in the international system, the contribution (if any) it makes to international order, rather than the part it plays in the foreign policy of states. Clearly, the two procedures are not mutually exclusive - the part the principle plays in the foreign policy of a great power may determine its function in the international system to the extent that the fiat of that power prevails - but the focus of this chapter will be on the international system and not on the states which make it up. To establish this focus the chapter will first introduce a notion of international order. It will go on to examine the sense or senses in which the principle may be said to be functional to that order and whether the concept of "function" sheds any light on how the principle contributes to international order. The third section of the chapter will place the principle of non-intervention alongside some other imperatives or ground-rules of international relations that are normally associated with the maintenance of order in international society in order to discover or suggest the extent to which the principle may be said to cohere with them in an harmonious system. The fourth section of the chapter will rehearse the principal challenges presented to the sovereign-state order by contemporary international politics, and if these challenges render the position of the non-intervention principle uncomfortable and confused the fifth section will explore a place for the principle in conceptions of international order, or if "international" is an inappropriate adjective,
world order, other than the one which informs this work. Finally, the threads of the various approaches, political and legal, historical and functional, state-centred and system-centred, will be drawn together in a summary of the places inhabited, some would say infested, by the principle of non-intervention in thought about international relations, of the purposes its espousal has served and in a conclusion as to its effectiveness as a rule which would restrain the entities to which it applies: a conclusion in particular as to whether international society has moved beyond the era in which its writ could possibly run.

Order, in an elementary sense, denotes "regular, methodical or harmonious arrangement in the position of the things contained in any space or area, or composing any group or body". But harmony is a more exacting condition than the others implying more than mere regularity. It requires not only that the arrangement of things be regular or methodical, but that they should form together an agreeable whole. The conductor of an orchestra expects his players to keep time and to be the masters of their instruments, but he expects too that the sounds they make should combine in a pleasing way - to produce symphony and not cacophany. To achieve the purpose of harmony, to provide for that particular end, the things contained in any space or area, group or body, must occupy their "proper place" and perform their "proper functions" - order in a less elementary sense than just regularity. The task in regard to order in social life is to discover in what this proper disposition

1 Oxford English Dictionary. The phrases in inverted commas in this paragraph are taken from the O.E.D.. As to the central conception of order to be developed here, I owe its main outline to ideas obtained from Professor Hedley Bull, though he might not fully recognize the form which they now take.
consists, by what principle the propriety is to be judged or, in other words, the discovery of the purposes for the achievement of which the pattern of social relations is arranged.

Regularity and method may be discerned in social life if it is conducted according to rules. Order in this elementary sense may be said to exist if the relations between men or groups are not simply fortuitous but show a degree of conformity to common standards of conduct. But to define order in social life as conformity to rules fails to capture fully the purposive connotation of order, the goals which the rules are designed to achieve, except to the extent that rules are obeyed for their own sake, their mere existence compelling their observance. No need here to speculate on the reasons impelling men to gather together in society, but it is possible to isolate three purposes whose achievement, in some degree, seems necessary if not sufficient to the existence of social life. In the first place, life itself must be secure against violence. Secondly, there must be confidence among the members of a society that contracts made between them will be honoured. And in the third place, there must be some arrangement for the existing distribution of property, public or private, to endure and not be subject to plunder or forcible annexation. None of these requirements for social life is absolute in the sense that each must be perfectly observed all the time before it is possible to say that order prevails in society. Indeed, they may at times, even frequently, conflict with one another, the life of one man being found inferior to the defence of the property of another, or the concern of one man for his life being superior to

1 In the same way, Stanley Hoffmann relates that the Bellagio Conference on Conditions of World Order, which met in June 1965, chose, at Raymond Aron's suggestion, to think of order as the "minimum conditions for existence" or the "minimum conditions for coexistence", see Hoffmann, (ed.), Conditions of World Order, (Boston, 1968), p.2.
the expectation of another that he be honest with him. Other values which men hold dear, such as the yearning for ideological oneness, may override any of these values in a particular case. But without some degree of respect for them, life in society, cooperation among its members and the development of industry in it hardly seem possible. This is a static conception of order. It may be that flexibility - the maintenance, for example, of stability of possession over time by making provision for it to change hands peacefully, or legitimacy - the securing of assent to social arrangements once made - are as important to continuing order. But these dynamic requirements can apply only once the conditions for static order have been to some extent satisfied.

If order in any society is dependent upon the realization of these primary goals, it might be said that order in the relations between states does not exist, that the pattern of relations formed between them does not justify the attachment of the label "society". The account of the elements of order, or of the reasons for disorder, among states traditionally begins where the account of order within states finishes, the consequence of order within states is taken to be anarchy between them. Whether the international anarchy is more bearable as compared to anarchy between men, as in Hobbes' account, or less so, as Rousseau suggested, order among states is a precarious condition. Expectations about the lives of

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1 Thus Hoffmann has it that order is achieved in any political system if the three requirements of security, satisfaction and flexibility are met, "International Systems and International Law", in The State of War, (NY, 1965), p.97.

2 Or, of course, it might be said that it is possible to speak of order in international relations, if order is defined in a less rigorous sense than that used here.

3 On the differences between Hobbes and Rousseau in this respect see Hoffmann, "Rousseau on War and Peace", in op.cit., pp.60-70.
individual men in the arena of international relations are not that they will find protection there, but that they will be laid down there in the service of some higher imperative. Contracts, the sanctity of promises in international relations, are but words unless swords are drawn to enforce them. And possession, in the international state of nature, is stable only so long as considerations of power do not intervene to unsettle it, a stability obtaining only under constant threat of disruption.

If, however, the account of the elements of order between states begins not where the order established within them finishes, but includes these islands of order as an integral part of the conception of international order, then that account emerges somewhat from the classical gloom which accompanies it. The goals of the security of human life, of the sanctity of contracts and of the stability of possession of property, are not pursued directly by men in international society, they are not the immediate tasks of that society, but are matters which are principally delegated to the responsibility of individual states. Men look to their states for the realization of these primary goals and the intervention of the state as the provider of order in domestic society renders the task of a rudimentary international order to that extent less demanding. Such a rudimentary order can be said to exist in international relations if states accept rules which acknowledge the delegation of authority among them. In this respect, a principle of non-intervention is fundamental. If international society is accurately described as being split up into islands of order, the distribution of which is determined by the principle of state sovereignty, then it is the function of the rule of non-intervention to draw attention to that distribution and require respect for it. It is a first principle, an elementary rule of orderly international relations because its observation would demonstrate the recognition by states of the existence of others, and the legitimacy of their separateness in
a society bound together only by mutual acknowledgement of the autonomy of its parts. It is fundamental to order in a society without government because it stands guard over the established enclaves of order. So long as international society is primarily composed of sovereign states, observance of a general rule of non-intervention can be regarded as a minimum condition for their orderly coexistence.

The principle of state sovereignty can be said to serve the purpose of stabilizing possession in international relations, just as rules about property do within the state. The principle of non-intervention placed at the frontiers of state sovereignty fulfills an analogous function to that of a "No Trespassing" sign standing at the perimeter of a piece of property held under domestic law. The analogy is imperfect. The decline of the theory of the patrimonial state led to a distinction between the imperium of the right of sovereignty and the dominium of the right of property, the former conveying the idea of supreme authority over territory, but not of ownership of it as in the latter.\(^1\) If imperium is in this sense a more restricted right than dominium, the right of sale or gift being less generally associated with sovereignty than it is with property, there are other senses in which sovereignty is a more pervasive and complex right than property.\(^2\) Whereas property rights over a piece of land imply no rights over people except in strict relation to that land, the right of territorial sovereignty is a right directly over people, albeit people within a given territory. Further, the owner

\(^1\) Though in Soviet law the two notions are joined in the sense that the state exercises simultaneously (with the abolition of private property) both dominium and imperium over its territory, see T.A. Taracouzio, *The Soviet Union and International Law*, (NY, 1935), pp.49-53.

of a piece of land draws attention to his rights in just one dimension by the erection of his "No Trespassing" sign. The sovereign state, on the other hand, draws attention to its rights not only in the dimension of territorial integrity, but also in the less clearly defined dimension of political independence - the rule of non-intervention is not just a reminder about the distribution of property in international life. Despite these important differences, the primary functions of the rights of property and sovereignty and of the duties not to trespass or intervene are similar. They distinguish between "mine and thine" in social life and require respect for the distinction. "The reaction against patrimonial ideas", wrote Lauterpacht, "cannot obliterate the fact that the two notions are essentially analogous on account of the exclusiveness of enjoyment and disposition which is in law the main formal characteristic of both private property and territorial sovereignty". ¹

If the sovereign state is the principal guarantor of the values of the security of life, the sanctity of contracts and the stability of possession, and if the analogy between sovereignty and property is at all accurate, it can be said that of the three goals of order, it is the stability of possession which is fundamental to international life, prior in that environment to the other two. It is then possible to put a different construction on the dismal account of the international anarchy. If the laying down of life in international politics takes place for the defence of order within the state, or for the defence of a system of states based on the minimal uniting principle that the order within them is not to be interfered with, or if covenants are broken for the same purpose, then the international anarchy is not as desperate as it first appears - because it witnesses the laying down of life to protect life. The unhappy events which accompany anarchy between states

might at least serve a recognizable purpose and are not necessarily futile sacrifices to an insatiable and unreasonable god of conflict.

It is clearly not the case that observance of a principle of non-intervention would exhaust the requirements for international order. That could only hold true in an international environment that was not only anarchical but also populated by states that were totally isolated from each other, so that international relations became an agreement not to relate as well as not to intervene. Where this isolation does not obtain, but where various degrees of separateness and independence do, the requirements for order are more complex, and indeed the closest approximation to order between states might require the ending of international relations - the imposition of a government over states just as it has required the institution of government within them. Beyond isolation, where non-intervention is a rule perfectly observed, and short of world government in which a rule of non-intervention has no place, minimum order among states depends upon their recognition that their interests are generally served by mutual toleration. Tolerance not only of the existence of each other but of diverse behaviour within them - so long as it presents no international threat. The rule of non-intervention is in this respect not only a protector of the right of sovereignty, but it also points out the limits of that right. Unlike the right of self-preservation which is a state-centred imperative tending to swallow up international law, the rule of non-intervention has its origin in the society of states - it arises from their coexistence and provides for their continued coexistence.

Whether the practice of states meets these minimum requirements of order is a question on which this chapter will conclude. Meanwhile, this analysis of order does at least demonstrate that while the international anarchy suggests a generally gloomy outlook for world order, it is not possible on that account to say that no element of order is to be discovered in international relations.
II

If the function of the non-intervention principle is to draw attention to and require respect for the principle of state sovereignty, what does "function" mean and how does it illustrate the part played by the principle in international society, the contribution it makes to international order? The notion of "function" as the use or purpose of anything has been used in this work to analyse the place of the principle in the foreign policies of states, to identify the various ways in which the principle furthered the objectives of diplomacy - by rationalizing policy, by legitimizing it at home and abroad, by criticizing the actions of others and by informing others of the sticking-places of the proclaiming state. More generally, some international lawyers have been concerned to point out the functions of international law in more than just the one dimension of restraint of state action. It has been said to afford "a framework, a pattern, a fabric for international society, grown out of relations between nations in a real world and ordering these relations in turn". It has been described as an "institutional device for communicating to the policy-makers of various states a consensus on the nature of the international system", and as preparing the conceptual ground for building world order "by shaping attitudes about the nature and promise of international political reality". One of its major contributions in conflict situations has been regarded as the provision of a "regular and

1 See above, Chapter 4, and in particular the sections on British and American doctrine and practice.


3 W.D. Coplin, "International Law and Assumptions about the State System", World Politics, Vol.XVII, No.4, (July 1965), pp.617 and 634. See also the same author's, The Functions of International Law, (Chicago, 1966).
highly articulated procedure for the assertion and refutation of national claims", enabling "precise communication to take place in a horizontal authority structure". It might be said then that the principle of non-intervention functions so as to communicate ideas about the structure of the international system, about the continuing importance of the values of sovereignty and, in some interpretations, of self-determination. By the exchange of information and the entry into debate about the principle of non-intervention states might be made aware of each other's attitudes, and in being aware, restrained, at least by the knowledge of each other's positions. But though communication in terms of international law might serve an important political function at the same time as demonstrating that states regard international law as something whose language has to be talked, this communication function does not substitute for the function of legal restraint, and to place too much stress on it might be to fall into the error of supposing that it does. The different interpretations of the principle of non-intervention from state to state, and from bloc to bloc, and particularly the fundamental differences about the exceptions allowable to the rule, render confidence about states' general allegiance to a principle of non-intervention misplaced when generality is pursued into detail.

If the concept of function is taken beyond its everyday meaning of use or purpose to the "special kind of activity proper to anything - the mode of action by which it fulfils its purpose; especially as contrasted to structure", a link can be discerned between it and

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2 Hoffmann, "International Law and the Control of Force", in Deutsch and Hoffmann, (eds.), The Relevance of International Law, p.24.

3 O.E.D.
the concept of order. Order, it was suggested in the previous section, is a pattern or whole in which the parts fit into their proper place. The parts might now be said to be "functional" to that pattern or whole if they not only fit into their proper place but also operate properly so as to maintain the whole - to fulfil that purpose. The discussion of social institutions in terms of the part they play in the society as a whole is the method which distinguishes the "functionalist" approach in social science. Before examining the principle of non-intervention in terms of the approach, it will be necessary to outline the main tenets of the functionalist school of thought.¹

The core concept of functionalism is the assertion of the primacy of system, the unity of the whole as opposed to the multiplicity of the parts - not only as a way of looking at society, but also in the assignment of causal priority to the whole over the parts. The existence of a social structure, item, activity, ritual or norm is explained by the part it plays in the maintenance of the whole. The "functions" of these items are the parts they play in social life and those parts are taken to maintain the continuity of the whole. Linking social items having functions to the whole of society is the notion of need or necessary conditions of existence. Social items are held to be responses either to the needs of individuals or to the necessary conditions of existence of society. A second, less distinctive, precept of functionalist thought is the notion of the inter-relatedness of the parts of society. A "functional unity" of society is asserted, in which all parts of the social system work together with a degree of harmony and internal consistency without producing persistent conflicts which can neither be resolved nor regulated.

¹In order not to stray from the theme of the chapter, the outline here will be a very brief one. A fuller, documented, critique of functionalist theory is contained in Appendix II.
Functionalism may be criticized for its logical and definitional weaknesses, for its imperfect correspondence with the facts of social life and thus its inadequate explanation of them. With regard to the logical and definitional problems, it can be shown that the central precept of functionalist theory is either false or true only by definition. If it is said of any recurrent activity in society that its function is the part it plays in the social life as a whole and therefore the contribution it makes to the maintenance of the structural continuity, the problem with the statement lies in the "therefore". The observation that a recurrent pattern of activity plays a part in society provides no proof that it contributes to the maintenance of its structural continuity - such a proposition can only be verified by empirical research. If it is true, it is so only tautologically - recurrent activity being by definition a part of the continuity to which it contributes simply by recurring. The definitional problem with functionalism lies in the meaning of "survival", "maintenance" or "continuity". Since most societies survive, since, for example, Italian society continued after the decline and fall of the Roman Empire, it is difficult to discover the significance of terms like "survival" in functionalist thought.

Objections of a second sort are not directed at the functionalists' logic, but at the inadequacy of their theories when brought to the bar of practice. In the first place, the postulated functional unity of society can be rapidly shown to be contrary to fact. The common functionalist assertion that religion has an integrative function in society would hardly appeal to a sociologist working in Belfast. Secondly, the extreme functionalist view that all social items fulfil sociological functions can be controverted by the observation that the taboo against spilling salt in our society hardly has a social function. And in the third place, the equally extreme doctrine that every social item plays an indispensable part within a working whole
can be simply refuted by pointing out the dispensability of particular cultural items in any society over time, and the functional equivalence of different items at the same time.

Even if functionalist theory did approximate to the real world, its value as an explanatory theory has been questioned on the ground that the explanation it offers is a teleological one and thus not really explanatory at all. This sort of criticism holds that to explain some social institution in terms of the need it responds to is to neglect the efficient cause of the institution in favour of the final cause of it. Thus, while it might be true that the institution of religion in any society is a response to a need - that it serves the purpose of spiritual satisfaction among men - such a formulation cannot begin to explain why a particular individual prefers one creed to another, or to comprehend the problem of conflict between religious groups. In short, this objection is that if functionalism offers any explanation at all, it is one that is likely to miss the important and complex problems of social enquiry.

It is, however, when the concept of function is used in an explicitly purposive sense, and the consequent limitations to its explanatory power recognized, that it is of some value. It might serve, as an introductory and general apprehension of the social universe, to place social items on a teleological map. H.L.A. Hart has demonstrated that much of the teleological point of view survives in some of the ways in which we think and speak of human beings. It is latent, Hart says, in our identification of certain things as human needs which it is good to satisfy. Food and rest are needs of this sort, whose fulfilment is not a mere convention or human prescription. When we say that it is the function

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1 The Concept of Law, p.186. The summary following is taken from pp.186-195 of this book.
of the heart to circulate the blood, we imply that there is something good and natural about it. What makes sense of this mode of thought, Hart argues, is the tacit assumption that the proper end of human activity is survival, resting on the simple contingent fact that most men, most of the time wish to continue existence. Survival is a goal because men desire it and it is the general wish to live that gives meaning to terms like need and function.

It is then possible for Hart to show that so long as certain simple truisms about human nature and the world in which men live hold good, there are certain rules of conduct which any social organization must contain if it is to be viable. These truisms he calls the "minimum content of Natural Law", and he isolates five of them.\(^1\) Firstly, because of human vulnerability, for social life to be possible there must be some rules restricting the use of violence in killing or inflicting bodily harm. In the second place, the approximate equality of men, no one man being sufficiently powerful to subdue others for any length of time, makes necessary a system of mutual forbearance and compromise to prevent the war of all against all. Thirdly, this system of mutual forbearances is made both necessary and possible through man's limited altruism. If men were angels, rules to guide their relations would be superfluous. If they were devils, life according to a code of rules would be impossible. Because they are neither, but somewhere in between, rules to govern their conduct are required and general adherence to them is possible. Fourthly, limited resources make necessary some minimal form of the institution of property in order that

\(^1\)Hart acknowledges Hobbes, *Leviathan*, chapters 14 and 15, and Hume, *Treatise on Human Nature*, Book III, part 2, especially sections 2 and 4-7, as the bases for his empirical version of natural law.
resources may be won from the environment. Lastly, man's limited understanding and strength of will mean that sanctions are required as a guarantee that those who would voluntarily obey the law shall not be sacrificed to those who would not.

Thus, Hart provides a teleological conception of survival as a goal or purpose which requires that men adhere to certain fundamental rules if they are to live together in society. If these rules are conceived of as cultural items whose function it is to contribute to the survival of the society of which they are part, this is the core of the functionalists' thesis reduced, in Hart's analysis, to formal statements or truisms. Survival is the ultimate purpose, but there is an ambiguity here. Does survival mean society's survival as an integrated whole or man's survival as a biological organism? Nadel argues that the two can be reduced to a common denominator by inverting the functionalists' formula and saying that society exists for the survival of man. Though this is empirically undemonstrable because man everywhere exists in society, it is possible to say that every society is designed for human survival and that its self-organization implies the prospect of survival.²

If the survival of men in society is generally provided for by the state, what can be said of the survival of states in international society? What can be said of a functionalist formulation of the principle

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¹Hart adds here that the division of labour which all but the smallest groups must develop in order to obtain adequate supplies, brings with it the need for dynamic rules allowing individuals to create obligations and vary their incidence. He goes on to identify minimum forms of protection for persons, property and promises as indispensable features of municipal law. Op.cit., pp.193 and 195. This is similar to the notion of minimum order outlined in the first section of this chapter which encompassed the conditions logically necessary for social life, but Hart has added the simple statements about the nature of men which explain why they can be considered such.

of non-intervention that might describe it as a social
item whose function is the contribution it makes to the
survival of the sovereign state system of which it is a
part? In the section defining order, it was suggested
that rules about state sovereignty and non-intervention
could be considered primary or fundamental to international
order because it was within the territory of the state
that order among individual men was achieved, and that
the minimum requirement for order between states was the
preservation of order within them. But the simple
truism that apply to individuals and indicate those
rules which must apply if society is to be formed between
them do not hold good for states. In particular,
sovereign states do not share with men the attribute of
approximate equality. The rule of non-intervention is a
rule of mutual forbearance; it requires that states
shall respect each other's sovereignty, that they shall
treat each other in this respect as equals. But where
this formal equality does not reflect the facts of
international life, it remains a question whether an
international order based upon the fiction of state
equality is not a very tenuous one. International
order could be conceived of in circumstances of actual
inequality between states in two ways. It could be
imagined firstly if states would, like

The heavens themselves, the planets, and this centre,
Observe degree, priority and place,
Insisture, course, proportion, season, form,
Office, and custom, in all line of order...  

But if states would not accept Ulysses' strictures about
"neglection of degree", the cruder ordering device is the
principle that might is right, "a system in which the
weak submitted to the strong on the best terms they
could make and lived under their 'protection'".  
Neither of these systems need necessarily eclipse the principle
of state sovereignty as a guarantor of internal order.

1 From Ulysses' speech in Shakespeare's Troilus and Cressida,
   Act I, Scene iii.

2 Hart, op. cit., p.194.
Indeed the former might establish sovereigns in a rigid hierarchy that would include a principle of non-intervention between its levels subject to a rule of intervention should one of them fail to observe degree, priority and place. And ordering according to the principle that might is right need not generally disrespect the order of sovereign states except to determine the outcome in a conflict between weak and strong. But in either case the sovereignty of the weak is held as it were under licence from the strong; the mutual forbearance of non-intervention might prevail, but it is not a forbearance dictated by reason in the same elementary sense as requires tolerance between individuals. It is still possible to declare that order between states is dependent upon mutual recognition of order within them, but no "minimum content of Natural Law" can be invoked to establish its necessity.

Herein lies the difficulty of applying the functionalists' thesis to international relations. The truism that between men some minimal form of the institution of property is required before they can live together in society is more difficult to establish of states in international society. Whereas men are permanent and irreducible units - the basic atoms of social life - states as the inventions of men have no such natural existence. There is no reason to suppose that men must always choose to live together in states, and no warrant for the claim that there is some natural law suggesting the necessary conditions of existence for international society. All that can be asserted is that the state is, in contemporary international politics, the "owner" of property, and that while international society is populated mainly by sovereign states, observation in some degree of the principle of non-intervention is a necessary condition for their survival. If this explains the place of the principle by reference to the purpose it serves, it is also tautological since respect for sovereignty excludes intervention by definition, and to say that the principle of non-intervention contributes to the survival of sovereign states is merely to
repeat the definition without shedding any light on the real world. It does not, for example, show how allegiance to or violation of the rule might contribute to system-maintenance in a particular circumstance. The simple statement that adherence to the rule serves the purpose of protecting sovereignty gives no guidance as to right conduct for states, from the point of view of system-maintenance, when one of their number has broken the rule—should it be counter-intervention or non-intervention?

Another difficulty involved in talking functionalists' language about the principle of non-intervention contributing to the survival of the system of which it is a part, is the identification of the system. It is possible to say that the non-intervention principle is functional to the sovereign-state system, but important ingredients of the international system may be found elsewhere than in the account of its parts as sovereign. Distribution of power among the parts may be more significant to the system than their formal sovereignty. And if the power of states is taken as the vantage point from which the international system is viewed, if what is considered is not the "sovereign-state" system but the "balance of power" system or the "loose bipolar" system, then a very different account of the function of the principle of non-intervention might emerge. So the simple formula which renders the principle functional to the system will not do unless the system is clearly identified.1

1This is not a criticism of functional analysis itself, but merely a demonstration of the difficulties of applying it in this particular case. It may be that an abstract notion of system has as much to offer the analysis of international relations as do generalizations based upon the common-sense notion of a system of inter-acting states. The system may be looked at, for example, as a centre of flows, inputs flowing into the system and functions converting them into outputs. A functionalist model of the domestic political system has demand inputs being articulated, aggregated, converted into authoritative rules, applied as rules to concrete situations, adjudicated when disputed, and information about all these activities disseminated in the political system to fulfil its socialization function. For
Examination of the notion of function then, will not greatly advance the discussion of the relationship between the principle of non-intervention and international order, except perhaps to show what cannot be borrowed from the discussion of order between individuals. The next section will examine how well the principle of non-intervention relates with other rules of the interstate order which have been regarded as indispensable to its working. And from this look into the individual mechanisms of the international system, the chapter will go on to look at the system itself — at the challenges which contemporary international politics present to the order of sovereign states.

III

It has been said earlier in the chapter that adherence to the principle of non-intervention would exhaust the requirements for order between states only if they were totally isolated from each other. Where this is not the case, where there are international relations, the rule must share the field with competing imperatives of order, or at least with imperatives that are not necessarily in harmony with it. To illustrate the place of the principle in this more complex environment, this section will examine its relation to three distinct doctrines for which there is a tradition of championship as imperatives of order between states, but which have stopped short of advocating the overthrow of the states system and its replacement by some superior

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a concise summary of this model see R.E. Jones, The Functional Analysis of Politics, (London, 1967), pp.19-39. If this is an accurate model of the part government plays in domestic society, its categories might usefully be applied to international relations to determine whether, in the absence of international government, some of its functions are nevertheless fulfilled.

1See above, p.396.
order. The principle will be placed firstly alongside the doctrine which teaches that order between states is to be maintained by the preservation of legitimate governments within them. In the second place, it will be examined in relation to the doctrine which holds that international order is best provided for by the maintenance of a balance of power between states. And thirdly, the place of the principle will be analysed in the light of the doctrine that the realization of justice within states is the only guarantee of order among them.¹

Ordering the relations between states according to the principle of non-intervention supposes that the character of the order established within them is not the proper concern of states in their international relations. Order between states is dependent upon order within them, but not upon a particular kind of order. It is a conservative principle, but it seeks to conserve sovereign states not sovereigns. It is Castlereagh's theory of foreign policy not Metternich's. Castlereagh held that it was sufficient for European order to uphold the territorial settlement of 1815, and he adhered to a principle of non-intervention which allowed an exception to be made only when that settlement was under threat.² Metternich found Castlereagh's doctrine necessary but not sufficient to a European order, and to fill the more exacting bill of sufficiency the dynastic arrangements legitimized by the Congress of Vienna had to be preserved. Metternich's scheme for European order was social as well as political. Revolution within a state challenged not merely the local regime but the social

¹Holbraad, in his The Concert of Europe, has distinguished these three broad traditions of thought about the functions of the Concert of Europe in German and British international theory, labelling them the conservative group of ideas, the balance of power group, and the progressive group. They will be taken here as general ideas about how order is to be maintained in international society and not specifically related to the Concert.

²See above, Chapter 4, pp.90-104.
order of Europe, the disease of revolution spreading both by contagion and by the deliberate injection of conspirators. Rather than wait for revolution to manifest itself internationally in aggression, the powers of Europe had a right of intervention to stamp out the social threat at its source. Metternich acknowledged the distribution of territorial sovereigns, but added to this conception of an international political order a trans-national or Europe-wide conception of social order - the European civilization of which the great powers were the custodians.

This solidarist notion of international order stands opposed to the pluralist notion in which the doctrine of non-intervention has meaning. In a world of Metternich's designing, the only functions remaining to a doctrine of non-intervention would seem to be either as a principle gracing an international order within which the objective of sustaining the legitimacy of thrones had been fully realized, or as a protest uttered against an international order which presumed too greatly on the independence of states. In so far as the American interventions of the post-war world, however well or ill-disguised as counter-interventions to uphold the principle of non-intervention, have been motivated by the desire to protect "legitimate" democratic governments within states, or simply to maintain established governments of whatever non-communist colour against the threat of revolution, they have followed in the tradition of Metternich rather than of Castlereagh.² And the doctrine of non-intervention

²The American doctrine of non-intervention has never in fact conformed to that clinical neutrality between competing political principles which is suggested for the principle here. In that part of American doctrine which excluded European states from meddling in the American hemisphere was contained also the idea of excluding the monarchical system of the European powers. See above, Chapter 4, section III. If Britain came closer to this clinical neutrality, at least in the time of Castlereagh and Canning, it has been seen how this reflected her interests as the great power isolated from the social upheavals of Europe. See above, Chapter 4, section II.
has been available to the critics of American foreign policy, among whom it has perhaps sat more comfortably than in the version it has taken in the formal justifications of the United States.

If the balance of power is thought of as Castlereagh understood it, as the principle by which the great powers would join together against any state which actively set out to disturb the established distribution of territorial sovereignties, then it need not be an imperative demanding a different pattern of conduct from that required by the principle of non-intervention. Both are designed to protect the independence of states, and action taken in accordance with the doctrine that counter-intervention is legitimate to uphold the principle of non-intervention might coincide in a particular case with action taken to redress a balance of power identified with the territorial status quo. Moreover, ordering according to the principle of balance, moving now beyond Castlereagh's territorial conception of it, might supplement the principle of non-intervention precisely where it has its most conspicuous weakness as a rule of order - in its fictional assumption of the equality of states. If the balance of power is thought of not as an equal distribution of power between the states of the international system, but as an approximate equilibrium of power in the system as a whole, the working of such a system might provide for the independence of the small "unequal" states in three ways. Firstly, the independence of small states might be preserved in an equilibrium system by the attention of the great to the demands of balance. Any one great power might be deterred from encroaching on the independence of small states from fear that by thus upsetting the overall balance it would unite a coalition against it. Or, in the second place, such a balance of power system might allow for the independence of small states by giving them a vital role in its working. For in any instance it might be a small state which holds the balance, or maintains it
by opting for one coalition rather than another. And thirdly, if balance is maintained by shifting alliances, then the internal order of states need not be touched by the vicissitudes of international politics.

But the move away from Castlereagh's principle of balance to a conception of balance as overall equilibrium in the system, as a move from a static balance based on the status quo to a dynamic balance taking account of changes in power relations and adjusting to meet them, from concern with the independence of the several parts of the system to the maintenance of the system as a whole, means also a move away from the principle of non-intervention as a rule conserving the established territorial order. Order is still an order of sovereign states, but one in which an equilibrium of power in the system, whose arrangement is primarily the responsibility of the great powers, takes priority over the concern for the sovereignty of each member of the system. It was at the shrine of balance that Poland was notoriously sacrificed. Martin Wight has distinguished one of nine distinct meanings of the "balance of power" as "the principle of equal aggrandizement of the Great Powers at the expense of the weak". So the mere fact that both the principle of non-intervention and the principle of balance of power can be said to serve the same ultimate purpose of preserving the independence and integrity of states cannot be taken as a sign of their

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1 See H. Butterfield, "The Balance of Power", in Butterfield and Wight, Diplomatic Investigations, pp.142-143.

2 Independence, then, in three distinct senses: independence in the first case because it is convenient to the great powers - independence by accident of the system; independence in the second case for the foreign policy of small states - independence by design of the system; and independence in the third case in the internal affairs of states - independence outside the system.

necessary compatibility in a particular case.¹ The two may be said to coexist with greater harmony than do the principle of non-intervention and that of intervention for dynastic legitimacy. But just as one of the functions for the doctrine of non-intervention to be salvaged from a world of the latter design was that of a protest against it, so Cobden's doctrine of non-intervention was opposed to the notion of balance of power as one of England's "stock pretences" paraded as an excuse for interfering in the affairs of others, when her real motive was lust for conquest.²

A state adhering to an absolute principle of non-intervention must tolerate injustice, such as the abuse of human rights, within another state because to interfere against it would be to violate the principle of state sovereignty; the values associated with statehood would be deemed superior to the plea for humanitarian intervention. By the same token, however, adherence to the rule of non-intervention would allow a just and successful rebellion against a tyrannical prince to run its course. It might be said then, that the principle is neither just nor unjust, that the morality of adhering to it can only be judged by reference to the circumstances of a particular case. But this is misleading if it suggests that no general moral judgement can be made about the principle of non-intervention. For the principle, in requiring mutual toleration by states of what happens in their domestic affairs, in so placing order between states before justice for individuals within them, allows states to avoid the responsibility of making a decision as to whether an act or institution within any of them is just.

¹This discussion of the relationship between the two principles has assumed a multiple balance. What happens to the principle of non-intervention when the international system can be described in terms of a balance of two will be examined in the next section.

²See above, Chapter 3, p.58.
or unjust. It provides the state also with a convenient legal excuse for ignoring considerations of justice for individuals within other states. A general moral judgement might be then, that the principle of non-intervention is an amoral rule - that it might serve a moral purpose only accidentally and not by design.

Nor does this conclusion provide a final judgement on the morality of the principle of non-intervention. It is worth remembering that those who first expounded the doctrine of non-intervention thought of it as primarily a principle of justice, either arising from or being part of the doctrine of the fundamental rights of states. The rights of states to equality, liberty and independence, and thus the duty of non-intervention, were the expression in international life of the natural rights and duties of individual men. Though it is not generally possible to identify morality between individuals with morality between states, one useful analogy between them might illustrate the moral content of the principle of non-intervention. Just as the moral criterion of respect for persons as having ends of their own, and not just as objects of the will of others, suggests a rule that the pursuit of those ends is not to be interfered with so long as it does not itself interfere with the equal rights of others, so a similar rule might be applied to states as "associations of individuals with their own common interests and aspirations, expressed within a common tradition". And in international relations there

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1 Indeed, in its absolute form, the principle of non-intervention requires a state to abstain from sitting in judgement over the internal affairs of others.

2 See above, Chapter 2, pp.28-33.


4 Benn and Peters, Social Principles and the Democratic State, p.361. See also Chapters 10 and 13 of this work. The authors note the similarity between the principle of non-interference in international morality and Mill's 'self-protection principle' which he regarded as fundamental to personal liberty.
are three reasons for supposing the rule of non-intervention to be superior in a moral scale to any principle of intervention. In the first place, there is no guarantee of the impartiality of the state which intervenes in the internal affairs of another. More likely, it intervenes for some interest of its own, the target state being the object of its will, rather than the arena for the realization of some moral good. Secondly, even if it were possible to guarantee the impartiality of the intervening state, intervention might be unwelcome simply because it stemmed from abroad, because it was foreign to whatever common culture united the citizens of the target state. The moral purpose of the intervening state, obedient to the values of its own culture, might appear to the target as "moralism" in foreign policy - the attempted imposition of alien values. It was one of Cobden's favourite shafts against England's foreign policy to satirize its arrogant enforcement of "the behests of the Almighty in every part of the globe". The third reason for thinking the non-intervention principle superior to any principle of intervention is the lack of a common Almighty, of a coherent and pervasive morality which transcends international frontiers and which might then inform and justify particular acts of intervention. The argument that the principle of non-intervention is morally destitute because it neglects the claims to just treatment of individuals within states, does not then bear examination. True it does rule out the

1 Benn and Peters, op.cit., p.361. There is no reason why the interests of the intervening state and the realization of some moral good should not coincide in a particular case, but there is no guarantee of their coincidence.

2 Benn and Peters, op.cit., p.362. This fact of difference in cultures is clearly uppermost in Halpern's mind when he accepts the necessity of intervention but stresses the relevance of knowledge and the efficient use of power to moral intervention. "The Morality and Politics of Intervention", in Falk, (ed.), The Vietnam War and International Law, pp.39-78.

3 See above, Chapter 3, p.61.
claim of an individual to any recourse beyond the state in favour of the requirements of order between states, but it can be argued that it is by safeguarding that order that the possibility of justice within the state is established.

Though the principle of non-intervention may be shown thus to have a moral content, it is nevertheless opposed by the doctrine that states are bound by higher duties than that of abstaining from interference in each other's affairs. This doctrine may take the form of exceptions asserted to a generally admitted principle of non-intervention as, for example, the view that when a state by its behaviour so outrages the conscience of mankind no doctrine can be deployed to defend it against intervention. Thus it might be argued that states had not only a right but a duty to overrule the principle of non-intervention in order to defend the Jews against Nazi persecution, and a parallel is drawn and a similar argument urged in support of intervention against the institution of apartheid in present-day South Africa.\(^1\)

This doctrine, by urging the legitimacy of certain exceptions to the rule, asserts that there are internationally sanctioned minimum standards of human conduct and that the state failing to meet them has no recourse to the principle of non-intervention.

Three doctrines tending to "maximize" these minimum standards of conduct, inverting the order before justice formula of the principle of non-intervention and at the same time diminishing its range, have appeared in the post-war world. In the first place, the doctrine that respect for human rights and fundamental freedoms was not a mere aspiration of the Charter signatories but a substantive legal duty imposed upon states would render these matters no longer ones for domestic jurisdiction.\(^2\) Secondly, the

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\(^1\) See above, Chapter 7, section V, for argument to this effect in the General Assembly of the United Nations.

\(^2\) See above, Chapter 8, section II, for an examination of this doctrine.
Third World doctrine of self-determination, were it to become the rule, would more drastically undermine the principle of non-intervention by extending the franchise of sovereignty to groups within states, though when the doctrine is used to mean anti-colonialism or anti-racism it accepts the inter-state order and merely requires states to avoid undesirable forms of order within them. ¹ And in the third place, the affirmation by the communist states of the justice of wars of national liberation, by raising anew the doctrine of the legitimacy of intervention on the just side in a civil war, would prejudice the function of the principle of non-intervention as a device for limiting conflict whatever the merits of the case.² By their expectation of a particular order, a "just" order, within states each of these doctrines resembles Metternich's doctrine of legitimacy; all of them would subordinate "the inviolability of frontiers... to the illimitability of truth".³ Against these contemporary solidarist doctrines, the principle of non-intervention might once more be invoked as a protest, though in this case the standard of non-intervention would be raised in defence of the old order, and not, as in Cobden's case, in opposition to it.

It can be said then, of the relationship between the principle of non-intervention and these other imperatives which have been regarded as indispensable to international order, that it is characterized as much by discord as by harmony. None of them, however, countenanced the overthrow of the order of states. It will be the task of the next section to examine the place of the principle of non-intervention in the contemporary international system, particularly in the light of the technological and political challenges it presents to an order of sovereign states.

¹ See above, Chapter 7, sections III and IV.
² But see on the caution with which the Soviet Union expounded this doctrine, above, Chapter 5, sections VI and VII.
³ Wight, "Western Values in International Relations", in Butterfield and Wight, op.cit., p.113.
IV

Whether or not their realization in the eclipse of state sovereignty could be said to be desirable, those progressive doctrines which saw the sovereignty of states receding before the expansion of international law, or being superseded by the emergence of international organizations, or undermined by the admission of the individual to international society, were found wanting as evidence that the eclipse had taken place or that it was imminent.\(^1\) One of the primary objections to these doctrines was that they set the standard for conduct in international relations impossibly high, that the gap between norm and practice was too wide.\(^2\) In the light of recent developments in the international system - the advent of nuclear weapons, the polarization of power, ideological conflict between the principals in the system and the combination of these factors in the phenomenon of internal war as an instrument of international change - the same question suggests itself of rules about state sovereignty and non-intervention: whether they are not too widely divorced from international practice to have any relevance as standards of conduct.\(^3\)

The underlying factor accounting for "the peculiar unity, coherence, or compactness of the modern nation-state", providing the factual basis for norms like that of non-intervention, has been identified as its "impermeability", or "impenetrability", or simply its "territoriality".\(^4\) The state was the ultimate unit for the protection of those living within its boundaries, surrounded as it was by a "hard shell" defending it against foreign penetration.\(^5\) The basic political unit throughout

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\(^1\)See above, Chapter 8, section II.

\(^2\)See above, Chapter 8, section II, p.363.

\(^3\)Not too progressive, but too reactionary.


\(^5\)Loc.cit.
history, the argument runs, has been that which has been in a position to afford security to human beings, peace within and security from without.¹ Thus the castle or the fortified town of the Middle Ages gave way under the impact of the gunpowder revolution to the modern territorial state with the "hard shell" at its frontiers.² Nuclear weapons are the gunpowder of the contemporary international system, and it is their appearance which has signalled, above all other developments, the passing of the age of territoriality and with it the usefulness of all its associated and resultant concepts such as sovereignty, independence and non-intervention: at any rate "the chief external function of the modern state seems to have vanished".³ But unlike the gunpowder revolution, the nuclear revolution has brought with it the potential of universal destruction. The walled city might remain impermeable to the long-bow, and the territorial state to weapons using gunpowder, but no conceivable political unit could remain impermeable to weapons of mass destruction.⁴ So while it is true that the territorial state is strategically obsolete, its defensive "hard shell" being no longer impenetrable, the nuclear revolution does not foreshadow some new entity, as with hindsight the gunpowder revolution did the territorial state, because that too would be penetrable. The nation-state holds the field as the most sophisticated unit of political organization and as the primary actor in international politics in spite of the nuclear revolution.

Moreover, while the super-powers in possession of nuclear weapons outclass the lesser powers to an extent which the great powers of the past might have envied, it

¹Loc.cit.
²Ibid., pp.13, 43-48 and 51.
³Ibid., pp.22 and 42. Herz adds the possibility of economic blockade, ideological-politic penetration and air warfare as factors reducing the impermeability of the territorial state. Ibid., pp.96-108.
⁴Ibid., p.13.
is not a negotiable power in the sense that the most impressive weapon of the great powers of the past was. For the super-powers in their relationship of deterrence direct their overwhelming power at each other, and for one of them to make use of nuclear weapons outside that relationship to reap the traditional spoils of power in international relations would be to invite retaliation and mutual destruction. So "under the umbrella of the nuclear stalemate", the old international politics of "sovereign" states continues and even flourishes on the assumption that the ultima ratio of nuclear power will not be used, that the nuclear umbrella will not close over them. ¹ Permeable though it is, the nation-state survives.

The international politics of the present have been depicted in terms of a "loose bipolar" model of the international system, and compared to a "balance of power" model taken to approximate the international politics of the eighteenth and nineteenth centuries. ² In the balance of power system, nation-states are the members of international society; they provide for the survival of the individuals within them, and it is on the survival of nation-states that the account of the behaviour of the important participants in the balance of power system model is predicated. In the relations between nation-

¹ Hoffmann, "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe", in Hoffmann, (ed.), Conditions of World Order, p.114. Herz also recognizes this fact when he speaks of the decline of the impermeable state and not of the state as such, and of a "preatomic, or extraatomic, level of power relations, the level on which powers will go on facing each other as territorial units". Op.cit., pp.97 and 222. "Sovereign" is in inverted commas in the text to draw attention to independence without impermeability.

² M. Kaplan and N. Katzenbach, The Political Foundations of International Law, (NY, 1961), pp.30-55, from which the summary following is taken.
states, the attention of each to its own security is paramount. Each state must be prepared to move from one alliance to another if such a move conduces to the achievement of that goal. But the pursuit of security has an essential limitation; restraint in victory is a characteristic of the system. For each strong nation has an interest in maintaining the existence of other strong nations to ensure future allies against possible disagreements with present ones. For the working of the system, the more strong nations the better, as a guarantee that the actor which sees its interest in the conquest of others shall be outnumbered by nations with an equal interest in seeing it fail in its endeavours.¹

"Sovereignty" as an enforceable norm reflects the essential needs of the system. Each nation, organized territorially on the basis of existing culture groups, is an independent unit, not subject to conquest or domination, preserving for itself that independent foreign policy necessary to the flexibility of alignment.² The formal sovereignty and equality of states posited by the international lawyers are not doctrines set over against the practice of states but are integral features of the system. Non-interference in the internal affairs of another nation characterized the historic balance of power system and meets the requirements of the model because to allow interference would be to sacrifice the independence essential to its operation. But equality of rights and freedom from intervention were necessities only for the great nations; a great power could intervene when such action did not threaten the security of other

¹"In the "balance of power" system a minimum number of five nations probably was necessary for stability". Ibid., p.51.

²Here the authors add that international organization would have hampered this flexibility, and that the ideology of nationalism and the political and technical difficulties of one state exercising control over another tended to support rather than detract from equilibrium in the system. Ibid., pp.33-35.
strong nations. In the balance of power system, the rule of non-intervention applied among the great powers but intervention was the rule outside Europe.

The loose bipolar system is composed not only of nation-states, but of two major blocs, a large number of uncommitted nations and a universal organization like the United Nations. The blocs are more than alliances, having supranational characteristics. The immediate but system-limited interest in its own security displayed by the nation-state in the balance of power system is replaced in the loose bipolar system by the pooling of long-term interests in the integrity of the bloc - nation-states do not shift from one alliance to another to preserve the balance but gather for protection around the bloc leaders. If the Western powers had followed the rules of the balance of power system in the years after the Second World War, they would have provided the Communist bloc with a decisive gain in influence in international affairs.¹

Since the members of one bloc have no interest in maintaining the independence of the members of the competing bloc in order to preserve future allies, the motives that existed in the balance of power system for limited objectives and non-interference do not obtain; obedience to the rule of non-intervention and reaction to its violation are no longer vital to the system.² Not only does the overwhelming power of the bloc leaders make it very difficult for them not to intervene, they also have a positive interest in interference to prevent defections from the bloc. An important factor making for stability in the system is "the integration of the bloc - and not merely the "sovereign" independence of its members".³

¹Ibid., p.48.

²Objectives are not system-limited in the sense that they were in the balance of power system. "Rivalry is direct and is limited primarily by the horrors of thermonuclear war". Ibid., p.51.

Moreover, because of the importance of bloc integration, intervention does not occur in the colonial, dependent, or minor areas of the world as it did under the balance of power system. In the loose bipolar system it is more likely to occur in the major allied bloc nations than in the uncommitted nations. Organic forms of union will reduce barriers among bloc members while the new nations will jealously guard their independence of the blocs - a drive to some extent provided for in the system by a tenuous balance between the United States and the Soviet Union in areas beyond the blocs. So where the balance of power system had non-intervention among the great powers of Europe, but interference outside the continent, the loose bipolar system has intervention within the blocs, non-intervention between them, and a tenuous non-intervention prevailing outside them.

If the model of loose bipolarity is at all accurate as a representation of the contemporary international system, the rule of non-intervention as a norm of inter-state rather than inter-bloc relations would seem to have a possible function only in the narrow domain of relations between uncommitted nations, or as a protest made by those states whose independence has been compromised against their own bloc leaders, or as homage paid by vice to virtue by the super-powers themselves. But the

1 As demonstrated by the case of Hungary: the United States tolerated Soviet intervention there because Hungary's defection from the communist bloc would have constituted a vital threat to the Soviet Union, but failure to exploit the loss was not a serious threat to the United States. Kaplan and Katzenbach, op. cit., p.54.

2 Non-intervention here of the super-powers outside their blocs, making possible a rule of non-intervention between uncommitted states. But the latter might not be so committed to non-intervention between themselves as they are to the exclusion of outsiders. Ibid., p.55.
model is not wholly accurate. In the first place, the defections of Yugoslavia and Albania from the Soviet bloc, Cuba from the Western bloc, are events which fit only uncomfortably into the predictions of the model. True, the American reaction to the Cuban defection and that of the Soviet Union to the lèse-majesté of the Yugoslavs might have conformed initially to the requirements of the model. But neither super-power succeeded in disciplining the insubordinate junior, both bowed to the old-fashioned politics of nation-states. True also that only Yugoslavia has managed to survive as a non-aligned nation independent of either bloc, Cuba looking towards the Soviet Union for aid and comfort, and Albania towards China. But the independence of Cuba and of Albania has not been totally extinguished even if it is only the independence of the servant free to change his master.

A second criticism of the model is that it is insensitive to "gradations of dependency" within the blocs. Insensitive in the case of the Communist bloc to the extent to which different members can take their own roads to socialism, and in the case of the Western bloc to the extent to which members can lay down the terms on which they will accept the American alliance.

1 It might be objected here that in questioning the correspondence of a model first published in 1957 (Kaplan, System and Process in International Politics, (NY, 1957)), and claiming only to be the counterpart of the politics of that time, to the international politics of 1971 is to set up a straw man in order to destroy him. But so influential has the loose bipolar model been in thinking about international relations, that it remains relevant to deal with it.

2 Though Kaplan and Katzenbach assert that a nation once having joined the Communist bloc would find it very difficult to leave "the example of Yugoslavia to the contrary notwithstanding". Op.cit., p.48. Certainly this seems to be borne out by the Soviet Union's reaction after Yugoslavia's departure. See above, Chapter 5, section V.

3 Herz, op.cit., pp.128-129.

4 Herz distinguishes in this respect between a Norway refusing to be garrisoned by the United States and a Greece opening its territory to American armed forces. Op.cit., pp.131-132.
If this is again the independence of the servant which does not upset the idea of a master-servant relationship, a more significant challenge to the dominance of the super-powers, stifling the logic of bipolarity, might be perceived through the introduction of the nuclear factor into the model. Thus the unrivalled superiority of the super-powers might be impaired by the non-negotiability of the nuclear weapons which mark their superiority, and at the same time by the acquisition of those emblems of superiority by third powers. The account of the integration of the bloc as opposed to the independence of its members has been compromised in the West by a France suspicious of the bloc rationale, doubting the credibility of the American deterrent and developing her own nuclear armoury. This has not taken France out of the bloc, but it has cast doubt on the model's assumption that states will sacrifice immediate interests for long-term gains, and in this respect the policy of France is more like "balance of power" behaviour than "loose bipolar" behaviour.

The Sino-Soviet dispute has been more severe on the assumptions of the loose bipolar model. The challenge of China to the leader of the Communist bloc has belied the assumption of the integration of the communist world which first inspired "bloc thought", and her emergence as a potential super-power, armed with nuclear weapons, confronts the central assumption of "bipolarity" with the prospect of a third irresistible node of power in the international system. And if such a prospect were to materialize, China gathering a bloc of nations around herself as their protector, it is possible to imagine bloc non-intervention between three super-powers where before it applied between two. Certainly this does not necessarily foreshadow a return to the old international politics of nation-states, though it might enhance the independence of small states by allowing them a wider range of choice in foreign policy. But whatever the pattern of relations between the great powers, and however difficult it is to chart the major features of those relations in an international system.
witnessing constant change, it can be said that the nation-state has survived as the "lowest common denominator" in the competition between the great. Though that close similarity between the rules required for an order of sovereign states and the precepts of a balance of power system, of which the principle of non-intervention has been taken as an example, might no longer be discerned in contemporary international politics, the changed and changing distribution of power in the system has not yet overthrown the order of sovereign states.

A third form of doubt about the feasibility of the principle of non-intervention in contemporary international politics stems from the observation that the super-powers confront each other not merely as powers but as crusaders on behalf of competing ideologies. When President Truman, in his response to the Greek crisis in 1947, set the tone for a generation of American foreign policy by distinguishing between two ways of life and attaching the American reputation to one of them, he ruled out the option of unilateral non-intervention and proclaimed a doctrine of intervention on behalf of "free peoples...resisting subjugation". It might be argued that so long as the American response to the Soviet threat was indeed a response to the prior intervention of the Soviet Union, then the ideological motivation for American foreign policy did not impugn the order of sovereign states but was an inducement to support it - counter-intervention helping free peoples at the same time as upholding the principle of non-intervention. But the argument of counter-intervention, the claim to be supporting the struggle for national liberation, this time against imperialist intervention, was also a feature of Soviet doctrine. Where the ideological dispute between the principals in the system overlaid state frontiers,

1Hoffmann, "Obstinate or Obsolete?", p.114.
2See above, Chapter 6, section I.
3See above, Chapter 5, section V.
painting local conflicts with colours provided by the principals, the crucial distinction in the order of sovereign states between one exclusive competence and the next became blurred. In such a situation, where both sides could make a more or less plausible claim to be counter-intervening against the intervention of the other, it seems feeble indeed to place any confidence in the restraining function of the principle of non-intervention. In both American and Soviet foreign policy, the superficial respectability of the claim of counter-intervention came to be discredited as but a thin disguise for interference undertaken on other grounds. And even if the claim could be said to be just in a particular case, the other side always had an ideological ground on which to dismiss it.

This does not mean that there are no limits to the ideological conflict, and that the principle of non-intervention will always do service as a mere slogan in its fighting. The anxiety of the super-powers not to confront each other directly because of the nuclear danger tends to mute any ideologically motivated extravagance by one power within the bloc of the other.\(^1\) The emergence of China as a potential super-power has complicated the perception of world politics as the implacable hostility of two rival systems, by the admission of a variant to the one which was wont to claim the totality of truth. This admission makes possible for each of the super-powers a conception of its interest which is not subsumed in the universality of its ideological mission. To put it another way, the question of intervention or non-intervention need not be couched as in the days of the rivalry of two in terms of "we or they?", because each super-power now has two "theys" to consider. Where before the question was posed in the stark terms of not intervening and allowing the aggressor the spoils or intervening and

\(^{1}\) Falk refers to a moral necessity on the part of the United States to meet the double challenge of totalitarian encroachment and nuclear devastation, and seeks a solution to the problem of balancing the two imperatives in *Law, Morality, and War in the Contemporary World* (Princeton, 1963), pp.45-65.
risking escalation, now non-intervention might be a rational policy for any one power standing off from the rivalry of the other two. This argument cannot be taken far in support of a principle of non-intervention because the rivalry about forms of government within states, a rivalry which conduct according to the principle of non-intervention would rule out, has not disappeared from the system but has merely taken on a more complicated aspect. Outside the blocs, the ideologies of the super-powers are blunted against a doctrine of national self-determination which asserts the values of mostly new statehood against the competing doctrines about how government within the state is to be carried on. And though the uncommitted nations cannot avoid accepting aid from the super-powers or from other members of the competing blocs, they can attempt to arrange the acceptance in such a way as to avoid becoming the prisoner of any one of them. Clearly, the uncommitted nations are not able to insulate themselves from the ideological battles of the committed, but an astute diplomacy might save them from becoming committed themselves.

Though it might be said, then, that the order of sovereign states shows through the fabric of the contemporary political order in a number of places, and that the advent of nuclear weapons, the polarization of power in the system and the clash of hostile ideologies, do not always join in an unequivocal repudiation of that order, they do seem to despatch the principle of non-intervention as a device for the insulation of internal war from the purview of international relations. Thus it has been argued that the recognition on the part of the super-powers that a direct confrontation between them could lead to nuclear catastrophe has persuaded them to seek less risky avenues of competition, and that the chronic instability of many of the vastly increased number of states making up international society provides such an avenue by giving the super-powers the opportunity to compete vicariously - through interfering in the conflicts of
others. The account of the polarization of power in the system, subordinating the independence of states to bloc integration suggests intervention in internal war, especially when conflict within a bloc-nation portends, if the insurgent should prevail, the departure of that state from the bloc. And an ideological dispute of universal dimensions between the principals in the system suggests that their interests will be tied to the outcome of any particular internal conflict. In such a situation, if any one great power or group of powers is unready or unwilling to interfere in a particular internal war, it runs the risk of leaving the field to the opposition. The non-intervention agreement erected as a facade over the reluctance of the democracies to counter the intervention of Germany and France in the Spanish Civil War, has stigmatized the principle of non-intervention as a cowardly doctrine, and is also taken as a pre-war lesson to the post-war world on the impossibility of non-intervention in a system containing an important aggressor. This lesson is the more compelling if "warfare between states now most frequently takes place within a single national society".

Even the widespread participation of outside states, however, does not allow the total disregard for the internal aspects of internal war. The greater caution of the superpowers outside their blocs than within them, and the anxiety of the uncommitted powers to remain uncommitted, are factors which the authors most critical of the


traditional doctrines of state sovereignty and non-intervention concede as having some force in restraining unlimited intervention everywhere. But it is not just upon the accident of great power abstention, or on the efficacy of their ideologies against those of the blocs, that small states depend for the maintenance of a degree of independence. The circumstances of internal war in which guerrilla bands face nuclear powers and make nonsense of their technical superiority, circumstances in which "the kind of violence that prevails...favors the porcupine over the elephant", render the small less unequal. Where the internal conflicts of the small remain intractable to the ministrations of the strong, the reality of "internalness" or simply "otherness" to which the doctrine of non-intervention draws attention has not altogether disappeared.

To return to Herz's coinage - the "impermeability" of the state as its essential and life-giving characteristic -

1 Kaplan, "Intervention in Internal War", p.120. Kaplan argues that, in terms of the loose bipolar model, the uncommitted nations would have an interest in adhering to a rule of non-intervention between themselves in order not to undermine the rule forbidding bloc intervention, but counters this with the observation that in the real world, the uncommitted nations have motivations overriding this apparent interest. Ibid., pp.107-108 and 113-116. For an account of Falk's proposals for an international law of internal war, formulated in the context of the Vietnam War, including bloc non-intervention and to a lesser extent non-intervention between states, see above, Chapter 8, section III.

2 Hoffmann, "Obstinate or Obsolete?", p.114.

3 U. Schwartz goes so far as to conclude that "intervention has had its day, that it has ceased to be a rational weapon in the great power's panoply", because of the ineffectiveness of military power against the political power of the nation, and because of the almost universal condemnation of it by public opinion. Great Power Intervention in the Modern World, Adelphi Paper No.55, (London, March 1969), p.41.
it is clear that the coming of nuclear weapons has denied the state its strategic impermeability, that the preeminence of the super-powers has compromised the political impermeability of the lesser powers, and that the doctrine *cuius regio eius religio* as a protection against the penetration of hostile ideologies is more applicable to blocs than to states in the contemporary world. And where civil wars, in these circumstances, are made international, the "spatial approach to international relations" assuming the "hermetic reality of the national unit" which underlay rules like that of non-intervention,¹ seems particularly impoverished. If all these factors, together with others examined above like the growth of interdependence and of transnational communication,² render the sovereign-state obsolete, particularly in the case of the small, economically and defensively unviable, new states, then the assertion of a continued domain for the principle of non-intervention seems a rather obscure piece of romanticism.

But in some respects, what is striking about the contemporary international system is not its revolutionary newness, but the familiarity of the techniques by which states carry on their international relations. Certainly, nuclear weapons have no historical counterpart, but if blocs are thought of as "spheres of influence" and the ideological dispute discussed in terms of the subordination of state frontiers on the one hand to the legitimacy of established governments, and on the other to the legitimacy of revolution which knows no frontiers, then the contemporary international system can be said to have its historical antecedents. The plight of the small state in a system where might tends to determine right is not of recent invention - its foreign policy is largely taken up by the problem of securing the best arrangement from the strong. The inter-state order "has always been

²See above, Chapter 8, section II.
anarchical and oligarchical"," and the contemporary dyarchy is a variation on that theme. Moreover, in two respects it is a variation in which the small state is less unequal. In the first place, nuclear weapons are valueless in counter-insurgency warfare, giving the weak the advantage of the inhibitions of the strong, and even sophisticated conventional weapons are blunted against the tactics of the guerrilla. And secondly, the factual inequality of states is offset by the consecration of the doctrine of the formal equality of states by and at the United Nations. The claims of the super-powers about the proper form of government within states assert universality but do not achieve it. Only the sovereign-state order has received the imprint of all the members of international society, and of all the aspirant members. Economically and defensively inviable though they may be, it is to this universally recognized legitimacy that the lesser states cling.

Though there are, in the contemporary international system, powerful forces impelling states to find the principle of non-intervention inferior to competing imperatives in a number of situations, that should not be taken to mean that "the present world is not a world in which non-intervention is possible". A policy of non-intervention may be both possible and desirable for a super-power in any particular circumstance. Of many of the post-war American interventions it can be said, with hindsight, that the better policy from the point of view of her interests was the opposite and "impossible" course of non-intervention. As a principle of interstate conduct, the general presumption it creates against the legitimacy of interference by one state in the affairs of another, gives legal pause to the great power which has

1Aron, "The Anarchical Order of Power", in Hoffmann, (ed.), Conditions of World Order, p.47.
2Ibid., pp.46-47.
3Kaplan, United States Foreign Policy in a Revolutionary Age, Policy Memorandum No.25, (Princeton 1961), p.43.
to find good reasons for overriding it. In the rush to work out a new international law to meet the new political facts of the post-war world, it is worth remembering the principles established in an old sovereign-state order, which, if it is obsolescent, is taking a long time dying.

Though it is premature to celebrate the passing of the order of sovereign states, it is possible to speculate about the conditions for a better world order and to advocate policies which might achieve it. Indeed, the assessment of the lawfulness of any important and controversial piece of state behaviour is not just a matter of measuring the existing rules of international law. For in a society in which the behaviour of states, and particularly that of the great powers, is quasi-legislative or precedent-setting, the assessment of legality depends also upon the conception of world legal order espoused by the assessor. The close relationship between conceptions of order and assessment of legality is illustrated by the debate about the lawfulness of American participation in the Vietnam War.

The crucial issue dividing those who regard the American involvement in Vietnam as lawful and those who do not is that of the proper characterization of the conflict as civil or international. One side views the war as fundamentally an internal struggle for the control

1"Better world order" here meaning an arrangement of international relations which satisfies more than the minimal requirements for order suggested in the first section of this chapter - that states should recognize each other's right to separate existence. "World" rather than "international" order - since the arrangement might envisage a move away from the state as the primary unit of international relations.

of a national society, at most a civil war with significant outside participation, and finds the United States principally responsible for internationalizing the war.¹ The view which supports the American commitment, on the other hand, rejects as oversimplified this emphasis on the internal aspects of the struggle, and insists that the conflict combines with these aspects features of the Cold War "divided nation problem" and of "aggression from the North".²

From these different perceptions of the nature of the war, and of Hanoi's participation in it, two different accounts of the legitimate response follow. For Moore, an important part of contemporary international law is the prohibition of coercion as "a strategy of major change" in international relations.³ Its prevention is no less important because it takes place across a de facto boundary about whose legitimacy there is some dispute. And where such a boundary or cease-fire line has become, as in the case of the seventeenth parallel in Vietnam, a boundary separating the "major contending public order systems", the label "civil strife" is misleading and dangerous to long run community interests if it allows unilateral military coercion to prevail.⁴ The view which clinches for this side the legitimacy of American participation in the war holds that "coercive threats to fundamental values can be effectuated as realistically by covert invasion and by significant military assistance to insurgents as by armies on the march".⁵ Since Hanoi's


³Ibid., p.404.

⁴Ibid., p.405.

⁵Ibid., pp.419-420.
participation in the war is tantamount to armed attack, the maximum self-defensive response is available to the South and to her allies and this includes the bombing of the North.¹

The other side, unsympathetic to the American commitment and to the arguments presented in its support, is more sensitive to "permissible levels of coercion" in international relations.² It draws attention to the stakes of the First Indo-China War as a conflict fought for the control of the whole of Vietnam, and argues that even granting the de facto independence of the two parts of Vietnam after a Geneva settlement which envisaged reunification, the participation of the North in the war in the South cannot be regarded as coercion across an international boundary.³ According to this view, armed intervention is not equivalent to armed attack, a plea of self-defence is therefore impermissible and the maximum response available to the United States is counter-intervention limited to the territory of South Vietnam - ruling out the legitimacy of the bombing of the North.⁴

The different conceptions of world order underlying this debate amount, to put the matter at its simplest, to a disagreement between the view which insists on the right of self-defence against any coercive activity which has an international aspect and which reaches significant proportions, and an alternative view which entertains more doubts about expanding the right of self-defence. Both sides affirm the need to minimize coercion, but one seeks to combat it when it occurs while the other is both less trustful of a unilateral response and more receptive to any just claims of those who break the peace. Moore asserts that essentially all uses of force

¹Ibid., p.418.
other than those pursuant to the right of individual or collective self-defence or authorized under Charter peacekeeping machinery are unlawful. And where the latter is not effectively available, he sees the right of defence as a "major source of control and sanction against aggression".\(^1\) Falk, on the other hand, sees the minimization of violence and the localization of conflict better served by a United States which respects the outcome of what can be counted as internal political struggles.\(^2\) He argues that to regard hostile intervention as armed attack not only tends to escalate any particular conflict but so broadens the notion of armed attack as to allow a plausible invocation of the right of self-defence in any protracted internal war.\(^3\) This comes close, Falk argues, to abolishing the legal significance of the distinction between internal war and international war, thereby weakening the territorial restraint on the scope of conflict and setting at the same time "an unfortunate precedent in international affairs".\(^4\)

If Moore's doctrine of unilateral judgement and enforcement can be said to represent a very rough approximation to legal order in a world in which the interests of states predominate over those of the international community, Falk looks forward to the substitution of community authority for state authority. He argues that "the whole effort of international law in the area of war and peace since the end of World War I has been to deny sovereign states the kind of unilateral discretion to employ force in foreign affairs that the United States has exercised in Viet Nam".\(^5\) And to allow states wide

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\(^1\) Moore, "A Reply", ibid., p.404.
\(^3\) Ibid., p.377.
\(^4\) Ibid., pp.377 and 397-398. The particularly unfortunate precedent Falk sees as the bombing of North Vietnam by the United States. Ibid., p.398.
\(^5\) A Response to Professor Moore", ibid., p.447.
discretion in deciding for themselves when aggression has taken place and in responding as they think fit, detracts from this design. ¹ Falk goes on to argue that the conversion of an internal conflict into an international war, allowing the sort of response taken by the United States in the Vietnam War, should take place only under community authorization - regional or universal - but at any rate a community wide enough to include "principal divergent elements". ² It remains to examine the place of the principle of non-intervention in this conception of order which envisages progress beyond the sovereign state, but first a look at Moore's conception of its place in the existing order.

Addressing himself to Falk's conception of "Type III" conflict - an internal struggle for the control of a national society the outcome of which is virtually independent of external participation - Moore sees two principal policies relevant to an enquiry into the permissibility of outside participation in internal war: self-determination and the maintenance of minimum public order. ³ Self-determination is defined as "the right of peoples within an entity to choose their own institutions and form of government" and Moore argues that it is a basic policy of the world community reflected in that community's condemnation of intervention and colonialism. But he goes on to show that in any particular circumstance intervention may or may not bring about self-determination and he rejects the "simplistic" view of Hall that states should be left alone in all circumstances to work out their own form of government. For, Moore says, self-determination might be compromised as much by a government's ruthless suppression of its people or by the take-over of government

¹Ibid., pp.447-454.
²Ibid., p.492 and n.119 on that page, and pp.456-457.
³Moore, "A Reply", ibid., pp.430-438, from which the summary following is taken.
by a terrorist minority as by outside intervention.¹

A supposedly "neutral" norm of non-intervention then, is in Moore's view, unpersuasive as a requirement of self-determination. From the other policy angle, that of the maintenance of minimum public order, Moore has two basic reasons for arguing that a rule favouring discrimination in favour of established governments is to be preferred to a neutral norm or a norm favouring aid to insurgents. In the first place, such a rule is to be preferred because it is the function of governments to maintain order and stability both internationally and domestically, and secondly, such a rule is a realistic one in the Cold War context. Thus Moore finds a neutral principle of non-intervention wanting on the ground that it is no guarantee of self-determination and that it detracts from the maintenance of order.²

Each of these conceptions of order revealed in the course of the Vietnam debate can, and both do, make a claim to "realism". Moore, observing the weakness of international organizations as providers of legal order, allows discretion to states as the only available alternative, and finds support for established governments to be a norm most likely to be observed by states in the contemporary international system. Falk has an equal claim

¹Clearly Moore has in mind here (and he takes his cue from Falk) a principle or right of self-determination which is not synonymous with that of state sovereignty. The latter principle implies a rule of non-intervention however objectionable the form of government within a state. Moore's principle of self-determination does not say another state's affairs are its own business, but that its people should be free to choose their own form of government, which is not quite the same thing. This allows him to speak of intervention on behalf of self-determination where it would not be possible to assert intervention on behalf of state sovereignty or non-intervention unless there were prior intervention by an outside state. The tradition is older which attaches the principle of non-intervention to that of state sovereignty rather than to the modern political principle of self-determination.

²An account of Falk's geopolitical reply to this criticism of his model of "Type III" conflict is in Chapter 8 above, section III.
to "realism" when he observes that a legal order which depends upon states judging and acting in their own cause is a poor substitute for objective law impartially applied, and that only a transfer of authority to community institutions can approximate this impartial model of law.¹ Both conceptions seem also to dismiss the principle of non-intervention as a principle of international conduct, Moore's by finding in favour of governments, Falk's by wishing to substitute community for state authority. Moore's conception is a contemporary example of the doctrine of the legitimacy of thrones which has already been examined, and it is Falk's conception of order which is of interest here.

On closer examination, Falk's conception would not dismiss the principle of non-intervention, but would reinforce it in one sense by providing a community reaction in the event of its serious violation. It would still be a general rule of inter-state conduct, but with the one significant departure from contemporary patterns of international politics that international organizations would decide on the circumstances of its breach and authorize any response to it. Regional or universal international institutions would be the guarantors of the rule that their members should not interfere in each other's affairs.² Pursuing this conception of order further, it is possible to imagine a world federal

¹Falk argues in another place that there is a need for "a new cynicism which turns out to look curiously like idealism" and that "a contemporary Machiavelli, perceiving this novel necessity for a community of mankind, might be dismissed by the best minds as recklessly utopian". "The International Law of Internal War", in Legal Order in a Violent World, pp.114-115.

²Falk observes that "a policy of insulation was the original idea of a policy of nonintervention with respect to foreign civil strife: the role of the United Nations would be to assure mutual compliance with duties to refrain from intervention". "The Regulation of International Conflict by Means of Law", in Legal Order in a Violent World, p.71.
government which had a rule of non-intervention between its constituents much as the States of Australia respect each other's autonomy today. But in such a socially developed world the function of the principle of non-intervention as a keeper of order in a primitive and rudimentary international society would be fulfilled by federal intervention.

The difficulty with this conception of order is revealed when attention is paid to another meaning traditionally attached to the doctrine of non-intervention. It has been observed above that the principle has a double aspect - non-intervention between the parts of international society and the exclusion of any "super-state" established over those parts. Though Falk is far from advocating the establishment of a super-state, he does stress the need to subordinate national policy to regional and global policy particularly in the peace-keeping area, and generally to downgrade the role of the state in world politics. But the demonstration of the need for a reformed or revolutionized world order cannot by itself bring the change about.

Though the intellectual tasks of charting that want of solidarity in international society which renders international law weak law, and of framing policies which might build a sense of community in international relations, are necessary to the realization of a better world order, they are not remotely sufficient to it. The values

1 See above, Chapter 1, section II; Chapter 7, section V; Chapter 8, section IV.


3 Falk is the first to recognize these points while urging the need for change. See, e.g., "The International Law of Internal War", in Legal Order in a Violent World, pp.114-115; "Gaps and Biases in Contemporary Theories of International Law", in The Status of Law in International Society, pp.22-23; and on the persistence of the Westphalia order of sovereign states, see generally, "The Interplay of Westphalia and Charter Conceptions of the International
associated with statehood which still give meaning to the doctrine of non-intervention as it would exclude any authority above the state, militate against that centralization of the control of force in international relations which might better safeguard non-intervention in its other sense - the exclusion of one state from the affairs of another.

VI

Those who would deny the possibility of any legal order among states of unequal power existing together in the absence of government, might dismiss the assertion of a principle of non-intervention, or indeed of any legal principle of international conduct, as a mere delusion, existing in the mind of the person who asserts it but bearing no relation to reality. If it were pointed out to the doubter that most states most of the time did in fact behave as if there were a rule of non-intervention prevailing between them, he might ascribe this pattern of behaviour to the common prudence of states and not to their feeling legally obliged to refrain from interference. If it were further pointed out to him that the assertion of a principle of non-intervention obliging states to refrain from interference in each other's affairs was made as frequently by statesmen as by wishful commentators, he might declare that it was simply a slogan covering the real motives of states with a spurious legitimacy. But the felt need on the part of statesmen to justify and criticize in legal language attests to the existence of a community, however fragile, beyond the state, and the view which ascribes the actions of states to motives other than that of obedience to law falsely separates the political from the legal. For the predictability and stability provided by common standards, standards which

it is the function of international law to codify, are part of the political motive for action in international relations. The question - "What is the lawful course of action?" is part of the wider question - "What is our interest?", for any state contemplating an initiative in international relations, even if it is only put in the debased form of "How are we to justify our action?". That the guidance offered by the law might not be accepted in any particular circumstance, provides no warrant for the dismissal of international law as a factor in international relations.

If the principle of non-intervention is taken as part of a law which is law, however weak, its impartiality between contending political doctrines might be said to recommend it as a legal norm. By opposing, in circumstances of conflict within a state, a neutral norm of abstention to political partisanship on behalf of one or other of the factions, it satisfies the legal requirement of impartiality. But its very impartiality, together with its generality, has rendered it politically promiscuous - available for use across the spectrum of political positions. In the debate about British foreign policy in the nineteenth century, it found proponents among Whigs, Tories and Radicals. The advocates of a policy of non-intervention in the days of America's isolation were of a very different political persuasion from those who have advocated such a policy in the days of the Pax Americana.

It matters little, perhaps, from the point of view of maintaining the order of non-intervening sovereign states, that the doctrine of non-intervention gathers together strange bed-fellows. Indeed it is in allowing the coexistence of strange bed-fellows in international relations that the principle has its rationale. But this supposes that while the principle is adhered to for very different reasons, and by states with radically different systems of government, the sorts of activity it proscribes remain the same. Where the principle is defined differently according to the conception of world order in which it finds a place, its impartiality no longer obtains. Its vaunted
impartiality, it might be said, is anyway a quality ascribed to it by British foreign policy in the nineteenth century when, protected by the Royal Navy and confident in her unique institutions, impartiality between contending political and social doctrines was precisely the interest of England - a very partial impartiality. In the Americas, the "impartiality" of the principle of non-intervention was rarely proclaimed as its primary virtue, since the American doctrine excluded the European system of government as well as alien intervention, regarding the former as a species of the latter. In the contemporary international system, the variation in interpretation of the principle of non-intervention with the contending conceptions of world order is particularly striking. The Western powers tend to limit the scope of the principle to the prohibition of the threat or use of force in international relations, include indirect aggression in this prohibition, and assert the legitimacy of a response to it when it occurs. The Communist states proclaim the principle as an essential part of peaceful coexistence between states, find the chief threat to its observance in imperialist oppression and assert the legitimacy of wars of national liberation against it. The states of the Third World assert the principle as an article of faith, erect it over their recently secured independence, find the principal threat to it in the neo-colonialism of the Western powers and declare the legitimacy of the struggle against all manifestations of colonialism and its offspring racialism.

These conceptions of world order are similar in the sense that each is a more or less ambitious vision of a preferred order and not an attempt to describe the elements of order discoverable in the system as it is. For the principle of non-intervention to be an operable rule of conduct between states, it might be argued, the triumph of one of these visions is required. Both Kant and Mazzini made varieties of this doctrine explicit without espousing it whole-heartedly themselves. The principle of non-intervention might be necessary to the
maintenance of peace and order among states, but that order requires first that all states should conform to a particular pattern. If the primary requirement for order among states is that republican government be established within them, or that nations should everywhere coincide with states, then until these conditions prevail, intervention might be legitimate to bring them about. The principle of non-intervention is not here an impartial rule between contending political doctrines. Indeed, adherence to it is made possible only by the adoption of one particular doctrine by all states.

If the vision of world order looks forward not to the establishment of a particular pattern within states, but to the establishment of a superior authority over them, or even to the total demise of the state, then the function of the principle of non-intervention is reduced pari passu with the waning of the institution it is designed to protect. One form of this doctrine relies upon the establishment of the authority of the law over states. It would not dispense with the state, but tame its sovereignty by bringing it increasingly within the law. The principle of non-intervention would be part of that law as it required states to refrain from interference in each other's affairs, but it would not be a doctrine available for invocation against the expansion of international law itself, and in this sense it would stand guard over an increasingly narrow domain of domestic jurisdiction. A second form of this doctrine might hold that the achievement of world order requires the establishment of government over states, much as the Hobbesian account of order between individual men. If such a government were federal, a rule of non-intervention might apply between the still existing states, but a local infraction of the rule would bring federal intervention. A third form of this doctrine, looking to the withering away of the state, would admit individual men to a great society of mankind in which the principle of non-intervention would have no place.
In the existing imperfect and fragile order of states as they are and not as some would have them become, there is equal difficulty in relying for the maintenance of international order on the principle of non-intervention in Cobden's and in Mill's interpretation of it. The problem with Cobden's near-absolute doctrine of non-intervention is that it provides no guarantee that those who would voluntarily adhere to the principle will be protected from those who would not. The weakness of Cobden's doctrine is that there is no sanction to deter the rule-breaker. But if Mill compensates for this weakness by affirming the legitimacy of counter-intervention to uphold the principle of non-intervention, the difficulty with this doctrine in turn is its assumption that states will disinterestedly uphold the law. Mill himself recognized that counter-intervention was not always prudent if always rightful. It could be argued that the history of American foreign policy since the Second World War has been an extended demonstration of the limits and ultimate poverty of Mill's doctrine and of a core of good sense in the Cobden view. If Cobden's anarchical conception is an abdication of responsibility for order in international relations, the Mill view assumes a solidarity in the international community which does not yet exist, for it remains a community in which the responsibility of one great power is the irresponsible pursuit of selfish interest to another.

The nature of the contemporary international system, it can be argued, is such that the questions that Cobden and Mill asked themselves - to intervene or not to intervene, to uphold by intervention the principle of non-intervention or to act according to a narrower conception of interest - are no longer the relevant ones, and that to persist in asking them is to be the prisoner of a nineteenth century inheritance. The relevant question today, it might be said, is not whether to intervene, but what kind of intervention and how much and how best to control it when it occurs. This is the view that the sovereign state order is no longer supplemented by a
balance of power among many, but that the rules of such
an order are overridden by the systemic imperatives of an
unstable balance of two. When, furthermore, the two are
armed with nuclear weapons and oppose each other as the
leaders of ideologically hostile camps, the function of
the principle of non-intervention seems to be reduced to
a more or less feeble protest against inevitable
interference. The only area, on this view, in which the
principle of non-intervention is honoured in fact and not
merely in name, is in its application as a ground-rule
of inter-bloc and not of inter-state relations.

True, a return to that pristine order of sovereign
states each observing a rule of non-intervention, if
indeed it ever did exist, is not in prospect where
international society is populated by international
organizations, regional and universal, as well as by
states, and where international politics are as much
inter-bloc politics as properly international. But the
state remains as the fundamental entity of international
relations despite the demonstration of its obsolescence.
So long as it continues to win the allegiance of men,
the doctrine of non-intervention bears a closer relation
to reality than the progressive doctrines predicated
upon the disappearance of the state, or its civilization
by law, or the establishment of physical authority over
it. Though it is not possible, with any pretension to
total accuracy, to describe international society in
terms of those islands of order which were held to
provide the primary rationale for a principle of non-
intervention, nor is it yet the case that the islands
have merged into a solid continent which makes any
reference to their separateness irrelevant.
Appendix I

a) Declaration on Inadmissibility of Intervention in Domestic Affairs of States and Protection of their Independence and Sovereignty.

General Assembly Resolution 2131 (XX), 21 December 1965.

"The General Assembly,
"Deeply concerned at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

"Considering that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

"Recognizing that, in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in Resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development,

"Recalling that in the Universal Declaration of Human Rights the General Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,"
"Reaffirming the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and the Organization of African Unity and affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Co-operation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion at Accra by the Heads of State and Government of the African States,

"Recognizing that full observance of the principle of the non-intervention of States in the internal affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

"Considering that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

"Considering further that direct intervention, subversion and all forms of indirect intervention are contrary to these principles and, consequently, constitute a violation of the Charter of the United Nations,

"Mindful that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

"Fully aware of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

"In the light of the foregoing considerations, solemnly declares:

"1. 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, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

"2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

"3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

"4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

"5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

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

"7. For the purpose of the present Declaration, the term 'State' covers both individual States and groups of 'States'.

"8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those
b) Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.

General Assembly Resolution 2625 (XXV), 24 October 1970.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive people of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.
c) Proposal on Formulation of the Principle of Non-Intervention by Czechoslovakia.


"The Principle of Non-Intervention.

"1. States shall refrain from any direct or indirect intervention under any pretext in the internal or external affairs of any other State. In particular, any interference or pressure by one State or a group of States for the purpose of changing the social or political order in another State shall be prohibited.

"2. States shall refrain from any acts, manifestations or attempts aimed at a violation of the territorial integrity or inviolability of any State.

"3. States shall refrain from exerting pressure by any means, including the threat to sever diplomatic relations, in order to compel one State not to recognize another State."

d) Proposal on Formulation of the Principle of Non-Intervention by Ghana, India and Yugoslavia.


"Principle C: Non-intervention.

"1. No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State; nor to interfere in the right of any State to choose and develop its own political, economic and social order in the manner most suited to the genius of its own people.

"2. Accordingly no State may use or encourage the use of coercive measures of an economic or political character to force the sovereign will of another State and obtain from it advantages of any kind. In particular States shall not:
(a) organize, assist, foment, incite, or tolerate subversive or terrorist activities against another State or interfere in civil strife in another State;
(b) interfere with or hinder, in any form or manner, the promulgation or execution of laws in regard to matters essentially within the competence of any State;
(c) use duress to obtain or maintain territorial agreements or special advantages of any kind; and
(d) recognize territorial acquisitions or special advantages obtained by duress of any kind by another State."

e) Proposal on the Formulation of the Principle of Non-Intervention by Mexico.


"Principle C: The duty not to intervene...in accordance with the Charter.

1. Every State has the duty to refrain from intervening, alone or in concert with other States, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits any form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.

2. Consequently, every State has the duty to refrain from any of the acts specified hereunder, as also any other acts which may possibly be characterized as intervention:

(1). The use or the encouragement of the use of coercive measures of an economic or political nature in order to force the sovereign will of another State and obtain from the latter advantages of any kind;

(2). Permitting, in the areas subject to its jurisdiction, or promoting or financing anywhere:

(a). The organization or training of land, sea or air armed forces of any type having as their purpose incursions into other States;

(b). Contributing, supplying or providing arms or war materials to be used for promoting or aiding a rebellion or seditious movement in any State, even if the latter's
Government is not recognized; and

(c). The organization of subversive or terrorist activities against another State;

"(3). Making the recognition of Governments or the maintenance of diplomatic relations dependent on the receipt of special advantages;

"(4). Preventing or attempting to prevent a State from freely disposing of its natural riches or resources;

"(5). Imposing or attempting to impose on a State a specific form of organization or government;

"(6). Imposing or attempting to impose on a State the concession to foreigners of a privileged situation going beyond the rights, means of redress and safeguards granted under the municipal law to nationals."

f) Proposal on the Formulation of the Principle of Non-Intervention by the United Kingdom.

A/AC.119/L.8 in Report of the 1964 Special Committee, para.205.

"Statement of Principles.

"1. Every State has the right to political independence and territorial integrity.

"2. Every State has the duty to respect the rights enjoyed by other States in accordance with international law, and to refrain from intervention in matters within the domestic jurisdiction of any other State."

"Commentary

"Non-Intervention.

"(1). The basic principle in paragraph 1 is reflected in the United Nations Charter, for example, in Article 2, paragraph 4.

"(2). The first part of paragraph 2 expresses the duty of States correlative to the rights enjoyed by them under paragraph 1.

"The second part of paragraph 2, which expresses the classical doctrine of non-intervention to be found in numerous multilateral, regional and bilateral treaties, is a particular application of the first part. The wording does, however, leave certain questions unresolved, as, for example, what
is meant by 'intervention' and what is meant by 'matters within the domestic jurisdiction'. In the context of inter-State relations, 'intervention' connotes in general forcible or dictatorial interference.

"(3). In considering the scope of 'intervention', it should be recognized that in an interdependent world, it is inevitable and desirable that States will be concerned with and will seek to influence the actions and policies of other States, and that the objective of international law is not to prevent such activity but rather to ensure that it is compatible with the sovereign equality of States and the self-determination of their peoples.

"(4). It would, therefore, be impossible to give an exhaustive definition of what constitutes 'intervention'. Much of the classic conception of intervention has been absorbed by the prohibition of the threat or use of force against the political independence or territorial integrity of States in accordance with Article 2, paragraph 4 of the Charter. There are, however, other forms of intervention, in particular the use of clandestine activities to encompass the overthrow of the Government of another State, or to secure an alteration in the political and economic structure of that State, which illustrate the danger of attempting an exhaustive definition of what constitutes 'intervention'.

"(5). In the event that a State becomes a victim of unlawful intervention practised or supported by the Government of another State, it has the right to request aid and assistance from third States, which are correspondingly entitled to grant the aid and assistance requested. Such aid and assistance may, if the unlawful intervention has taken the form of subversive activities leading to civil strife in which the dissident elements are receiving external support and encouragement, include armed assistance for the purpose of restoring normal conditions."
g) **Proposal on the Formulation of the Principle of Non-Intervention by Australia, Canada, France, Italy, the United Kingdom and the United States.**


"1. Every State has the duty to refrain from intervening, directly or indirectly, in matters within the domestic jurisdiction of any State. Every State has an inalienable right freely to choose its political, economic, social or cultural systems, without intervention by another State, and the right freely to choose the form and degree of its association with other States, subject to its international obligations.

"2. In accordance with the foregoing principle:

A. Every State shall refrain from the threat or use of force against the territorial integrity or political independence of any other State.

B. No State shall take action of such design and effect as to impair or destroy the political independence or territorial integrity of another State.

C. Accordingly, no State shall instigate, foment, organize or otherwise encourage subversive activities directed toward the violent overthrow of the régime of another State, whether by invasion, armed attack, infiltration of personnel, terrorism, clandestine supply of arms, the fomenting of civil strife, or other forcible means. In particular, States shall not employ such means to impose or attempt to impose upon another State a specific form of Government or mode of social organization.

D. The right of States in accordance with international law to take appropriate measures to defend themselves individually or collectively against intervention is a fundamental element of the inherent right of self-defence.

"3. Nothing in the foregoing shall be interpreted as derogating from
A. The generally recognized freedom of States to seek to influence the policies and actions of other States, in accordance with international law and settled international practice and in a manner compatible with the principle of sovereign equality of States and the duty to co-operate in accordance with the Charter;

B. The relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters IV through VIII."
Appendix II

A Critique of Functionalist Theory.

Functionalist thought seeks to explain the existence of a social structure, item, activity, ritual or norm by reference to the part it plays in the maintenance of the whole; social items are system-determined and system-maintaining.¹ The core concept of functionalism is the assertion of the primacy of system, the unity of the whole as opposed to the multiplicity of the parts - not only as a way of looking at society but also in the assignment of causal priority to the whole over the parts.² Its second, less distinctive, precept is the notion of the interrelatedness of the parts of society.³ Functionalist thought had its origin in the comparison between society and a biological organism. Aristotle asserted that society ought to be like an organism or that it was organic in design.⁴ This normative organicism did not satisfy the positivist organicists of the nineteenth century, like Herbert Spencer, who, in their search for a science of society, wanted to say that society was an organism and not merely that it was like an organism.⁵ Though they did not accept Spencer's extreme

²Ibid., p.447.
³Kingsley Davis has argued that the two central suggestions of functionalism - that we relate parts of society to the whole and one part to another - are simply a description of what all social scientists do, and that as such functionalism cannot be said to constitute a distinct approach. "The Myth of Functional Analysis as a Special Method in Sociology and Anthropology", American Sociological Review, Vol.24, No.6, (December 1959), p.758. This argument neglects the functionalists' claim to explain social phenomena in terms of their ends or consequences.
⁵Ibid., pp.30-43.
view, the comparison between the body physical and the body social survived in the work of functionalist social anthropologists like Malinowski and Radcliffe-Brown.

For Malinowski, culture was a unity in which the various elements - artifacts, goods, technical processes, ideas, habits and values - were interdependent. Study of any particular cultural item, Malinowski claimed, was meaningless unless it was carried on in the context of the whole and the other inter-related parts. The commodities and instruments, customs and mental habits extant in a society, worked, directly or indirectly, for the satisfaction of human needs. The laws which governed the cultural process were to be found in the function of the real elements of culture, in the part which they played within a system of human activities.¹

Malinowski worked out his theory in the following manner. The biological needs of individuals for metabolism, reproduction, bodily comforts, safety, movement, growth and health caused modes of behaviour to arise whose function it was to solve these primary problems of human beings. The manner of this solution, this "cultural satisfaction of biological needs", giving rise to the institution of the family, the household, the local community and the tribal organization, created new "derived" needs for law, political control and education. This analysis was developed until the whole social context was explained in terms of a system of functional responses to a hierarchy of primary and derived needs.² In Malinowski's theory, at whatever level the interpretation of social phenomena was initiated, ultimately the analysis could be driven back to a primary biological need of individuals.

Malinowski used "function" to relate cultural items to needs. Radcliffe-Brown used the same concept to relate social structure to social process.³ He too wanted to refer

¹B. Malinowski, "Culture", in Encyclopaedia of the Social Sciences, (NY, 1931), p.625.
²Ibid., pp.626-629 and 633.
to needs, but seeking to avoid a teleological explanation, he introduced the concept of "necessary conditions of existence" of a social organism, which, he argued, were discoverable by scientific enquiry. But the notion of need was not as central for Radcliffe-Brown as it was for Malinowski. What was central was the notion of "system" (a set of actions and interactions), the theoretical significance of which was that the first step in understanding "a regular feature of a form of social life...is to discover its place in the system of which it is a part". For Radcliffe-Brown, the function of "any recurrent activity such as the punishment of a crime, or a funeral ceremony, is the part it plays in the social life as a whole and therefore the contribution it makes to the maintenance of the structural continuity". He went further to assert a "functional unity" of society, a "condition in which all parts of the social system work together with a sufficient degree of harmony or internal consistency" - without producing persistent conflicts which can neither be resolved nor regulated.

It is possible to caricature the approach of the functionalist social anthropologists by reducing what they have to say to three postulates. Firstly, standardized social activities are supposed to be functional for the entire system. In the second place, all such cultural items are taken to fulfil sociological functions. And thirdly, all cultural items are regarded as indispensable to the maintenance of society. It is on these three postulates

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1 Ibid., p.178.
2 Ibid., p.6.
3 Ibid., p.180.
4 Ibid., p.181. Radcliffe-Brown stressed that his functionalist approach was an hypothesis to be tested in the field and not a mere academic exercise. He used it himself to explain the phenomenon of the "mother's brother" which existed among many primitive peoples and in particular the Ba Thonga people of South Africa. Ibid., pp.15-31.
5 This was done by R.K. Merton, in Social Theory and Social Structure, (Illinois, 1949), pp.27-38.
that most of the criticism of functionalism has centred;\footnote{They do caricature the functionalist approach, however, and the caricature is more accurate in the case of Malinowski than in that of Radcliffe-Brown.} criticism which has revealed logical and definitional weaknesses in functionalist doctrine, its imperfect correspondence with the facts of social life, and the suspicion that it is ideologically blinkered.

With regard to the logical and definitional problems, more than one writer has pointed out that the central precept of functionalist theory is either false or true only by definition.\footnote{W.G. Runciman, Social Science and Political Theory, second edition, (Cambridge, 1969), p.111.} Thus, when Radcliffe-Brown asserts that the "function of any recurrent activity...is the part it plays in the social life as a whole and therefore the contribution it makes to the maintenance of the structural community", the problem with the formulation lies in the "therefore". It cannot be said of a recurrent activity that because it plays a part in the social life as a whole, it therefore contributes to the maintenance of a structural continuity; such a proposition can only be verified by empirical research.\footnote{G.C. Homans, The Human Group, (London, 1951), p.271.} If it is true, it is only so tautologically - recurrent activity being by definition a part of the continuity to which it contributes simply by recurring.\footnote{Runciman, op.cit., p.111.} A second logical difficulty with the functionalist approach concerns the assertion of "necessary conditions of existence" for a society. If such conditions are logically necessary to the existence of society, then no society will be found without them and empirical research to verify them is a futile exercise.\footnote{Though in the case of a postulated international society, the postulate might be proved or disproved by the examination of the extent to which the pattern of relations between states fulfilled the necessary conditions for existence.} It is not clear, in other words, whether the necessary conditions are truisms or hypotheses. The definitional problem with functionalism...
lies in the meaning of "survival", "maintenance" or "continuity". Since most societies "survive", since, for example, Italian society continued after the decline and fall of the Roman Empire, it is difficult to discover the significance of terms like "survival" in functionalist thought.1

Objections of a second sort are not directed at the functionalists' logic, but at the inadequacy of their theories when brought to the bar of practice. Thus the postulated functional unity of society can be rapidly shown to be contrary to fact. The common functionalist assertion that religion has an integrative function in society would hardly appeal to a sociologist working in Belfast. The second postulate, one of Malinowski's, that all social items fulfil vital functions, was refuted by Radcliffe-Brown himself when he pointed out that the taboo against spilling salt in our own society could not be said to have a social function.2 The third postulate, again Malinowski's, that in every type of civilization "every custom, every material object, idea and belief fulfils some vital function, ...represents an indispensable part within a working whole",3 is open to all sorts of criticism. Briefly, if Malinowski really meant that all cultural items are indispensable, then such an assertion can be simply controverted by indicating the dispensability of particular cultural items in any society over time and the functional equivalence of different items at the same time.

Even if functionalist theory did approximate to the real world, its value as an explanatory theory has been questioned on the ground that the explanation it offers is a teleological one and thus not really explanatory at all.4 This sort of criticism holds that to explain some social

1 Homans, op.cit., pp.269-270.
2 Radcliffe-Brown, op.cit., p.145.
3 Quoted in Merton, op.cit., p.32.
institution in terms of the need it responds to is to neglect the efficient cause of the institution in favour of the final cause of it.¹ Even if functionalists drop the crude notion of need, they still want to explain social phenomena by reference to their consequences or effects on the system of which they are part. They want to say that x exists "in order that" y may be maintained and not that x exists "because" there were forces a, b, c, tending to produce it. Moreover, the functionalists' conception of society as an organic whole is not one that commands general acceptance. The arch-nominalists, those who assert that society is a mere "name", would object to the notion that society is a real entity, a unity rather than a multiplicity. To the nominalists, the functionalists' view of society as a reality ontologically prior to the individuals who make it up is simply absurd.²

The third sort of criticism of functionalism is that which considers its concentration on the unity of society, and on the existence of structures within it which contribute to its maintenance, as constituting an intrinsic bias towards a conservative ideology. On this view, functionalism is merely an elaborate justification of the existing order. But the approach has also been considered inherently radical,³ and the ideological attack possibly says more about the critic than the criticized. It remains true, however, that the functionalist scheme, particularly in the case of Malinowski, was ill-designed to account for change in a social system.

The functionalism of the social anthropologists, while claiming to be a general theory of society - or at least the first step towards such a theory - was developed in relation to primitive society. Its shortcomings have been demonstrated more in the application to advanced societies than to primitive ones. More recent sociological functionalists have attempted to build more sophistication into the

¹Homans, op.cit., p.271.
²Stark, op.cit., pp.1-3 and 91-106.
³See Merton, op.cit., p.40.
crude framework inherited from an earlier generation of anthropologists. To avoid the logical and definitional problems of this inheritance, contemporary functionalists ask whether structures do function so as to maintain systems rather than defining them as doing so. Radcliffe-Brown's necessary conditions of existence have become "functional prerequisites" in the work of Parsons; they describe what is required "if a system is to constitute a persistent order". The unhelpful concept of survival or continuity has been replaced by the notion of "system-adaptation" or "adjustment".

The want of correspondence between theory and practice, and in particular the difficulty with Radcliffe-Brown's assertion of the functional unity of society, are apparently simply solved by modern functionalism with the introduction of the concepts of eufunction and dysfunction. A cultural or social item, or recurrent pattern of activity, is eufunctional or simply functional if the consequence of the pattern of activity makes for the adaptation or adjustment of the system, dysfunctional if it does not, and non-functional if it has no observable consequences for the system. By these means, the absolutism of Malinowski's functionalism is tempered. Not all social items fulfil social functions, some do just the opposite, and they are not necessarily an indispensable part of the whole.

To the objection that functionalism seeks to explain by reference to final rather than efficient causes, Levy has replied that the notion of function can be purged of its teleological connotation by defining it objectively as "any condition, any state of affairs resulting from the operation of a structure". But if any explanatory equality is assigned

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3. Marion J. Levy, "Structural-Functional Analysis", in *Encyclopaedia of the Social Sciences*, (NY, 1968), pp.21-29. Merton has distinguished between the purpose of a social item and its effect in his conception of "manifest" and "latent" functions. Manifest functions are those consequences contributing to the adjustment of the system, which are intended and recognized by the participants in the system.
to such a resultant state of affairs, the teleological objection seems to apply no less strongly. Nadel comes closer to laying the teleological ghost by pointing out that explanation according to end states does not exclude classical causality. Thus an annual holiday, he argues, is purposive in that it is taken to recharge the batteries and obviate boredom and fatigue. It is at the same time caused, since uninterrupted application to routine tasks does indeed cause boredom and fatigue.\(^1\)

None of these refinements seems to enhance significantly the light shed on the nature of society by exploration of the notion of function. The new vocabulary, functional prerequisites for needs, system-adaptation for survival, does not necessarily indicate new insight. Moreover, if the central logical difficulty with crude functionalism is to be overcome by empirical enquiry into whether social institutions do operate so as to maintain systems, the precepts of functionalism provide no special guide as to how to go about this research. Further, the introduction of the notions of eufunction and dysfunction, superficially an attractive sophistication, depends for its usefulness on the elucidation of the concept of system-adaptation to which they contribute or from which they detract. Function is an elementary notion which has some value when used in an explicitly teleological sense. It has at least the value of giving direction to the much criticized view of society as a "mass of gears all turning and grinding each other", endlessly, confusingly and presumably to no purpose.\(^2\) But it serves only as an introductory and general apprehension

Latent functions are those which are neither intended nor recognized. Thus a participant in a rain-making ceremony, if asked what his purpose was, might answer, "to bring rain". But the observer might conclude that the latent function of the enterprise was to reinforce group solidarity, whether or not it succeeded in its manifest function. Op.cit., pp.51 and 61-81. Radcliffe-Brown recognized this distinction without using Merton's terms. Op.cit., pp.144-145.


\(^2\) Ibid., p.367.
of the social universe, as a placing of items on a teleological map. Its application is limited because "cultures are much richer and more complex than can be shown by exhibiting them as mere realizations of functions", and on these more complex issues, "to pronounce at once upon the ultimate functions subserved by social facts, is to short-circuit explanation".  

\[\text{Ibid., p. 375.}\]
This bibliography contains most of the works cited in the thesis, omitting those that contributed only in a minor way to the development of the argument, but including other sources which were important but general. In the "Articles, Essays and Pamphlets" section, I have not included material published in works listed in the "Books" section. In the section on "Documents", United States Department of State Bulletins have not been included, nor have United Nations Official Records; both are fully recorded in the text.

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