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GRADATIONS OF INTERVENTION IN INTERNAL CONFLICTS

*Louis B. Sohn**

I thought I might speak about three only partly related subjects: first, a comment on Roger Clark's statement about the danger of bad precedents; second, an attempt to provide some kind of gradation of interventions; third, as Professor Wilner has suggested, a proposed definition of intervention that we might discuss.

The first point is probably obvious to all of you from your studies of history: namely, that even in modern days we have had trouble distinguishing between intervention and entry on the basis of an invitation by the government concerned. One of the recent cases which caused quite a furor was, of course, Austria. In 1938, Germany claimed that it was invited by the Austrian government in power at that time to occupy Austria so that it might be joined to the German Reich. Later, at Nuremberg, we learned from the documents that we were able to obtain from the German archives that this invitation was phony. The invitation was supposed to be forthcoming, but due to the usual inefficiency of the Austrian post office, the letter was not actually delivered to the Germans prior to the invasion. Nevertheless, the German army proceeded as if the letter had been delivered.

The second case was even more tragic. When Germany decided to be invited to Czechoslovakia in 1939, the Czech President was asked to visit the German Chancellor, Hitler, and in the friendly conversation between them, Hitler suggested that "of course, we would like to have an invitation from you for Czechoslovakia to become a German protectorate; and we would like to warn you that if you don't give us that invitation we would be obliged to invade Czechoslovakia and your beautiful city of Prague would be destroyed on the first day." The Czech President decided to issue the invitation.

The third case in that period was Finland. The Soviet Union was worried that the Finnish government was not too friendly, and perhaps even had some secret alliance with Germany, which was a po-

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tential enemy at that point (though at the end of 1939 Hitler and Stalin were supposedly friends). The following plan was then devised: some Soviet troops "accidentally" crossed the border near a Finnish village in pursuit of some escaped prisoners and entered the village in search of them. Suddenly, the Soviets announced that they found in the village a group of Finnish "public figures" (who in fact had come with the Soviet troops) that claimed to represent the "free government of Finland." This group immediately invited the Soviet Union to throw out all the usurpers in Helsinki, and the Soviet Union, in a spirit of good neighborliness, agreed to help them. A very interesting development!

In the United Nations period we also have had several cases of this kind. Hungary is a well-known example. The Soviet government first said that it was invited by the Hungarian government, but nobody could discover the government that actually invited them because the previous government had already disintegrated. Certainly, its successor, the Nagy government, did not invite them. At the last minute, a new government was established by Kadar, the third one, and that government supposedly asked for Soviet assistance. It was clear, however, that the Kadar government at this point had no actual power in any part of Hungary not controlled by Soviet troops. Similar events occurred in 1968 when the Soviet troops marched into Czechoslovakia. Again, the Soviets claimed that they were acting in response to an invitation by the Czech government. However, several members of the Czech government were outside of the country at that time and were immediately able to get in touch with their colleagues in Czechoslovakia. They assured everybody that the Czech government never issued such an invitation. The Soviet Union retreated a bit and said, "Oh, we were invited by the leaders of the people and of the party." Later, a few people were discovered who were willing to say that they had issued a letter asking for Soviet assistance, but they were certainly not the government, nor the leaders of the parliament, nor the actual leaders, at that point, of the party. The most recent example of a doubtful invitation occurred in Afghanistan, where the government which supposedly asked for Soviet intervention was immediately replaced by a government more subservient to the Soviet Union.

This experience with invitations gave a bad repute to the idea that a state is entitled to intervene if so invited by the government of the country. As Professor Moore has pointed out, it happens too often that a foreign intervention is invited by the party which is

considered by the intervenor to be the "just" one, the one that would do more for the particular country, the one that supposedly would establish that country as a beacon of democracy or as a beacon of socialism (depending on the intervenor's preference). Therefore, the intervenor believes that it is highly desirable and permissible to assist in the achievement of such a noble purpose, and a little problem about who actually governed the country at the time and was entitled to send an invitation is a minor, technical question, not worth quibbling about. In many cases the United States has had the same problem. The invitation for the United States to intervene in the Dominican Republic was issued by the Chief of Police of the City of Santo Domingo. He was not necessarily the highest office holder of the government in the country. Regardless of the merits of a particular situation, the point is clear, I hope, that an invitation by one of the parties to an internal conflict is not a sufficient justification for any intervention.

The second point that needs to be discussed is the question of what constitutes intervention. Professor Moore has noted various kinds of intervention, and it might be useful to classify more precisely what the problems are.

One gradation on an intervention scale would be activities that are rather clearly impermissible under international law. In several United Nations resolutions relating to intervention and friendly relations, unanimous agreement has been reached that assisting groups in exile by helping them to organize, equipping them, and sending them across the boundary is not permissible. Similarly, supporting guerrilla activities from abroad with various kinds of assistance or aiding terrorist activities is not permissible. Even if a foreign state is helping a government, it seems quite clear that in a case of large-scale internal conflict, a foreign state is not supposed to send combat military units or volunteers organized as armies. Beyond these points the rules start getting fuzzy. The United States for a long time held the position that limited military action in a foreign country was permissible, especially if done by naval units or by the Marines. For some reason, action by the Marines was always considered to be outside the prohibition against the use of armed forces abroad. At one point, the State Department came out with a list of some 120 cases in which Marines were used, though all were before 1930. The exception for Marines was still lingering in the Korean War era when President Truman said that he would permit the landing of Marines and the use of Air Force and Naval units against the North Koreans, but that he had

doubts about using the Army, which nevertheless went into action only a few days later after obtaining a United Nations authorization.

The next consideration is the issue of whether the use of transportation to assist the foreign government is permitted. You are not sending military people, you are simply sending transport equipment with your own pilots, military or private, for the purpose of helping with the movement of supplies from one place to another, or enabling the government to move forces to where they are badly needed in case of a civil war (e.g., to surround the rebels). Again, there seems to be a little more leeway on that issue. Supposedly even less interventionary is the simple loaning of crews and planes for the purpose of air observation. They are not going to attack anybody; they simply will provide information about the location of the enemy. This is supposed to be more permissible.

Another gradation, moving toward the permissible side of the intervention scale, is providing military advisors who do not engage in fighting. They are not supposed to be equipped with any weapons except side arms for self-defense in emergencies. They help foreign officers plan strategy, assist them in logistics, and so on.

An even more permissible gradation is military training. You invite large numbers of people to your country to train them. During the Iranian crisis a few years ago, it was discovered that there were many thousands of Iranians training in the United States for service in their own country against possible common enemies. We had some difficulty in dealing with them after the revolution started in Iran. Of course, we were also training them in methods of suppressing possible revolutions, especially those which might be stimulated by Iran's powerful neighbor. In fact, we have been training many people from various countries, especially from Latin America, in the suppression of possible internal disorder.

The problem of security assistance has also been mentioned in connection with intervention. Security assistance is mostly preventive and differs from assistance during a crisis. Some people have claimed that it is also intervention because it assists the government in suppressing the people who otherwise might succeed in removing an oppressive government.

Finally, there is the issue of arms sales or grants. Providing arms seems to be very common around the world, and it is engaged in not only by major powers, but also by many medium-sized countries.

Three general complications arise in connection with these vari-

ous types of assistance. First, some countries provide it rather openly. In the United States most cases of assistance are debated openly in Congress. Consequently, everybody knows what we are doing. On the other hand, in some other countries assistance is provided in a clandestine fashion. Consequently, you do not see what has been happening until a revolution suddenly becomes full-blown as a result of this secret assistance which is never officially admitted. We know very well that the Soviet Union has never admitted that any leftist revolution was started or supported by Communist agents, and that Cuba has never admitted to being involved in anything that has been happening in Central America (though it could not hide Cuban troops "invited" to Angola and Ethiopia). This clandestine approach is quite different from that of countries which are willing to admit that they are assisting a friendly government. As a matter of fact, often in those countries there is extensive public debate over whether assistance should be given to a particular government.

Another difficult problem is the uncertainty about the rules of international law on this subject. As often happens in international law, as well as in domestic law, there are two conflicting principles of equal importance, both trying to prevail. In particular, in the Charter of the United Nations there is one principle saying that no intervention is permissible and that no state may use force in other states,¹ while another one says that the United Nations is devoted to the principle of equal rights and self-determination of peoples.² The emphasis in the United Nations in later years on the self-determination principle led it to a point of saying that it is not only permissible, but even desirable, in fact necessary, for countries to come to the assistance of national liberation movements if they are fighting for the liberation of their country from foreign colonial domination or occupation by foreign forces. But even this approach does not go so far as to say that, simply because a government which is neither a foreign occupier nor a colonial government is oppressive, that government is entitled to help the people liberate themselves. Again, it is very much limited to a few special situations which, we hope, will disappear in a few years.

The third complication relates to the right of collective self-defense. If a state does not comply with its obligations under international law and intervenes illegally in an internal conflict in another

¹ U.N. CHARTER art. 2, para. 7.

² *Id.* art. 1, para. 2.

state, other states are entitled to remedy this situation by counter-intervention. A state violating international law cannot claim that other states, acting collectively to support the victim of intervention, are also violating the basic rule. The old equity doctrine of coming to the court with "clean hands" clearly applies here. Of course, this right of counter-intervention can also be abused, and such action should be terminated if so requested by the United Nations or an appropriate regional organization.

Finally, I promised to suggest a definition. It is a very modest one, simply trying to apply the language of article 51 of the Charter about self-defense to the problem of military intervention. It might be desirable to have at least a rule which would say: "No military intervention by one state in the internal armed conflicts in another state is permissible except in an extreme emergency requiring instant response and subject to immediate termination of such emergency action on the request of the United Nations or an appropriate regional organization."