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## Introductory Note: Emerging Norms of Justified Intervention

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**T**his volume contains revised versions of the papers presented at the American Academy's conference on Emerging Norms of Justified Intervention on January 5 and 6, 1993, and the comments of the invited commentators on the initial drafts of the papers.

The conference is the first step in an ambitious program to examine the recent shifting of boundaries between the internal affairs of member states whose sovereignty is protected by the United Nations Charter and those matters which the UN and other international organizations deem to be within their cognizance. For many nations, the concept of "justified intervention" has long been a contradiction in terms. The "justification," however couched, was all too likely to be the extension of power or the projection of ideology. Yet the rapid expansion of opportunities for collective international action in the wake of the Cold War has generated UN responses to aggression in Kuwait, famine and anarchy in Somalia, civil war and military occupation in Cambodia, and dictatorship in Haiti. Our inquiry is whether these responses represent more than the temporary convergence of historical circumstances. Can they be said to reflect the emergence of new *norms*, shaped by all nations, subordinating the prerogatives of national sovereignty to the recognition of a common humanity?

The material presented here sets out an initial conceptual framework for the further steps in the program: a series of studies of the recent history of international interventions made and eschewed around the world, beginning with Latin America and Africa, and moving on to Eurasia, South Asia, and the Middle East. Each study will examine the occasions, rationalizations, and instruments of intervention, as well as the political processes that led to intervention (or, in appropriate comparison cases, that led to no action). Each of these surveys will be undertaken by an interdisciplinary working group of scholars from the United States, Canada, and countries in Western Europe (typically the nations leading and organizing interventions) and from countries in several other regions (typically the objects of intervention).

The term *international intervention*, as used here, involves two notions. First, *international* carries the sense of action taken under the aegis of the UN or one of the regional associations incorporated within the UN framework — e.g., the Organization of American States (OAS). Second, *intervention* denotes an action that is in some sense unusual, going outside the bounds of day-to-day diplomatic intercourse among nations. As we will point out, an intervention in the traditional language of international law, is an illegal action. In our exploration of changing legal concepts and evolving norms, this connotation is no longer universally appropriate.

## The Law and Politics of Intervention in Historical Perspective

Of the seven papers in this volume, the two historical treatments of the evolution of norms of intervention, by Lori Fisler Damrosch and Marc Trachtenberg, illuminate the preconditions necessary for the emergence of a stable norm concerning intervention. Damrosch examines the values underlying international legal doctrines governing nonintervention and their embodiment in the UN charter, and asks how they will accommodate some recent examples of UN action. She traces the influence of two competing clusters of values: state system values, or "the principles inherent in the international system of separate, sovereign states, including the principles of nonuse of force, political independence of states, and sovereign equality," and human rights values, or the "principles relating to the rights of individual human beings to exercise political freedoms and to participate in self-government." These values in turn underpin the twin objectives embedded in the traditional international legal norm of *nonintervention*: conflict prevention or containment, and the promotion of state autonomy.

Trachtenberg, looking chiefly at the behavior of the European powers in the last half of the nineteenth century and the first quarter of the twentieth, sees an active record of interventions, frequently unilateral, by one or another of the major powers but often with the tacit, and sometimes the explicit, support of the others. He nevertheless agrees that "the rise of nationalism and the nation-state in the nineteenth century" gave rise to "the idea that a nation should be free to determine its own destiny," which in turn "implied a general norm of nonintervention." His principal focus, however, is on the two principal exceptions to that general norm: the right to intervene to maintain the European balance of power, and "the right of powerful European states to impose their rules on countries they viewed as less civilized." These exceptions correlate neatly with Damrosch's emphasis on state system values and human rights values, suggesting that the general norm of nonintervention could be overcome when intervention was deemed to be more likely to preserve the existing peace or to protect the human rights of Europeans in non-European countries. The modern analogues to Trachtenberg's exceptions are the legitimacy of intervention to ensure nuclear nonproliferation and a tendency to sanction intervention when certain human rights norms (no longer identified as distinctively European) are violated.

Underlying this historical trajectory are deeply embedded assumptions about the principal threats to international security and the relative importance of various human rights. In both law and politics, it was assumed that the chief danger to the security and stability of the international system was the threat of external aggression by one nation against another. As Trachtenberg reminds us, Lord Castlereagh insisted that the Concert of Europe concern itself more with countering the military projection of revolutionary power than with combating ideological contamination through the spread of democratic principles. Internal conditions were thus of no concern unless they crystallized in a military threat that required a preemptive strike. On the human rights side, Damrosch and Trachtenberg agree that the primary human right to be protected was the collective right of state autonomy or self-determination, even if it was long limited to European states.

A general norm of nonintervention served both these goals simultaneously, reinforcing an image of the international state system as composed of self-contained, autonomous spheres, each minding its own business unless faced with a clear threat of external aggression. As Neta Crawford shows in her paper, this equilibrium was strengthened further by the rise of a norm of decolonization. As colonies proclaimed their right to self-determination, the norm of nonintervention was seen both to safeguard that right and to strengthen

systemic stability in the developing world by delegitimizing military intervention by former imperial powers.

### Undermining the Foundations of the Old Norm

Over the second half of the twentieth century the twin foundations of the existing norm of nonintervention have been equally shaken. The widely perceived linkage of fascism and communism with external aggression, coupled with the bipolar nuclear equilibrium of the Cold War, gradually fostered the emergence of a new paradigm of conflict. The proliferation of domestic insurgencies, rebellions, and full-fledged civil wars has superimposed an image of domestic implosion or explosion as a major challenge to the stability of the international system. At the same time, people around the world have become increasingly aware of a panoply of human rights in addition to, and often in contradiction to, the right of self-determination.

These two phenomena can combine to place even a more traditional conflict in a very different light. The Iraqi invasion of Kuwait, for instance, seemingly the epitome of old-fashioned external aggression, is immediately linked to dictatorship and widespread violation of human rights in Iraq. More generally, the simmering tension that Damrosch observes between the norm of nonintervention and the norm of self-determination in cases of internal repression is now brought to a boil by the desire to promote an entire range of human rights in addition to political autonomy. Overall, the twin sets of values that the norm of nonintervention was originally designed to promote now seem to be converging in favor of intervention.

Robert Pastor and Ernst Haas both take this changed configuration of systemic and human rights values as their point of departure, although they reach very different conclusions. Each examines the concepts and doctrines that are currently being used to justify interventions. Pastor takes a leap into the legal future, advocating an expansive view of what can and should be done. Haas counters with a string of skeptical caveats.

Pastor starts with the proposition that the basic standards of states' behavior in relation to their populations is already enshrined in international human rights law. Thus, the questions to be examined are, What happens when states do not adhere to the standards? Will the international community act against the sovereign will of an offending state? If so, when, under what circumstances, and how? In the first place, who will decide that a contravention of the standards has occurred? Pastor's view of what is already normative in international law goes beyond the human rights covered by the Geneva Convention; peace, social justice, and development are also existing norms. The central question of the whole inquiry is better posed in terms of involvement rather than intervention. The issue is not how responsibilities should be divided among international organizations and national governments, but how the international community should perceive and respond to its collective problems.

As a way of organizing the answers to these questions, Pastor presents a matrix (Figure 1, p. 139) with columns showing different types of threats and injuries to the international community. These are ordered by their seriousness, ranging from direct transborder aggression to the generation of large refugee streams, human rights violations, suppressed or manipulated elections, and departures from appropriate conduct in the areas of economic development and social justice. The rows of the matrix rank collective actions, from forcible direct intervention through economic sanctions, diplomatic isolation, collective discussion, and no response. The scheme provides a framework for the

study and comparison of particular examples of intervention — a framework that could guide regional studies and facilitate the comparison of experiences in different places and times.

Pastor outlines a comprehensive vision of a single collective security community in which nations and international organizations are all actors who must jointly maintain the conditions of peaceful and fruitful international intercourse. The International Monetary Fund puts nations into a form of economic receivership when they are unable to pay their debts, in order to permit trade to continue; it might be useful, Pastor proposes, to put governments into an analogical “political receivership” when they are unable to maintain a minimum degree of political solvency.

Haas warns against the “slippery slope” created by the acceptance of a “chain of interaction and causation” that links “ending famine in a civil war or preventing genocide” to “protecting human rights, which in turn implies the need to establish or nurture democracy.” He begins by observing that humanitarian interests and the nongovernmental organizations that serve to mobilize and express them already transcend sovereignty; they need not contravene it. But interventions based on a new syllogism between global security concerns, humanitarian interests, human rights, and democracy seem inherently expansive. Opportunities for intervention are particularly rife in what might be termed quasi states: states that are created by the patronage of the UN and that lack many of the substantive attributes of sovereignty. The general asymmetry of power — military, economic, technological, even cultural — between these new states and their patrons creates virtually unlimited possibilities of multilateral intervention.

Accordingly, for Haas, the feasibility of successful action should be a central criterion for decisions to intervene: failed efforts are worse than none, and efforts short of adequate means are certain to fail, especially those efforts that lack persistence after an initial success. The more complex the goal, the more violent the means required, the lower the probability of success. Thus, an intervention against a coup that overthrows a democratic government, especially in a society with democratic traditions, is more likely to succeed than one that seeks to impose democracy on a society with little or no experience of it. Civil society, the prerequisite of democratic government, is unlikely to be created in the midst of violent conflict, such as that which forcible intervention provokes. On the other hand, Haas maintains that intervention for democracy “is justified when each step can be defended independently as promising to be effective, and when each step is unlikely to hinder the implementation of simpler and more basic acts of helping to alleviate local suffering.”

### **From Theory to Practice: Preconditions for the Emergence of a New Norm**

Pastor and Haas project and critique a particular vision of the legal future. Yet it is not clear that any of the various justifications for intervention that they identify in fact qualify as emerging norms. Inquiry into the process whereby a norm emerges and ultimately becomes established is the necessary second component of our study. Here Neta Crawford’s case study of how the norm of decolonization both emerged from and helped shape the decolonization process is of particular relevance. She focuses on the period after the Second World War, when the UN played an explicit oversight role in the process, but also looks back to the experience of the League of Nations between the wars. It is clear that the legitimacy of colonial rule by Europeans over Africans and Asians, widely accepted in

Europe and North America in the nineteenth century, had begun to decline by the time of the First World War. By 1945 decolonization was the rising norm; within two decades it was the ruling one.

This normative change was certainly necessary for the almost complete dissolution of colonial relationships that has taken place. Yet Crawford does not see it as sufficient; she argues instead for a more nuanced account of the interrelationship between ideal and interest. Changes in the balance of economic advantage in the imperialist system and in the means of securing it, the growth of nationalism in the colonies and anticolonial agitation in the metropolis, and military struggle all coincided to enhance the acceptability — and, indeed, the attractiveness — of decolonization. At the same time, the rise of a norm of decolonization resulted from “a combination of the effective work of moral entrepreneurs and of the logical extension of arguments about what it means to be human and who belongs to the community of humans with full rights.”

Crawford’s conclusions have a number of implications for the likelihood of establishing norms of justified intervention. First is the potential for a transnational moral dialogue stimulated by nongovernmental organizations pursuing a common agenda. Second is the need for a unified stance on the part of international organizations. Third, and more broadly, is the likelihood of a perceived convergence between ideal and interest. In this third category a primary obstacle is the decolonization experience itself. Crawford emphasizes the ways in which the decolonization regime buttressed the norms of nonintervention, a corollary of the newly proclaimed sovereignty of the former colonies. She and Trachtenberg also emphasize the *stigma* attached to intervention: the implication that the state intervened against is not a full member of the international community. When the intervention is conducted by a former imperial power against a former colony, the fear of stigmatization is exacerbated by concern over the reemergence of neocolonial relations.

Virginia Gamba demonstrates the ways in which this attitude still strongly colors the Third World view of UN-initiated or UN-approved actions in which the industrialized countries are the moving parties and Third World countries are the objects of action. She distinguishes between intervention and collective security. Less-developed nations are wary of the former but are prepared to consider the use of force in the context of the latter. Nevertheless, before such collective action is possible, a new dialogue must emerge between developed and less-developed nations. Like Trachtenberg, Gamba sees the perpetuation of nineteenth-century attitudes on both sides of a wide range of current transactions in and through the UN that involve the industrialized and Third World nations. These attitudes need to be reformed on both sides; only then can the possibility of universalized norms that effectively govern international actions be realized.

### **Preliminary Observations and Questions for Further Research**

Our first round of inquiry concludes with the presentation of a world-historical vision and summarizes the obstacles to achieving such an outcome. Ernest Gellner takes a step back and presents a provocative schematic sketch of the underlying social and economic forces shaping the evolutionary path of societies. He foresees an already well-underway process of convergence to a universalist, skeptical, hedonistic, consumerist culture organized around the dominant social value: economic growth. Aggressively nationalist or fundamentalist societies whose values and behavior challenge the prevailing consensus provoke both external and internal conflict, against which the international community will intervene. Thus, he foresees that Haas’s “slippery slope of intervention” is rather the

path to a world order structured enough to be termed a world government, albeit one of limited powers in the context of a cantonal or federal system.

Against this vision, and against the deep social, economic, and political forces that may propel it, is the reality of an existing international legal regime premised on the traditional norm of nonintervention and the requirement that a change in that regime be accepted by states more likely to find themselves intervened against than intervening. The more immediate necessity of trying to achieve change within this framework poses five concrete problems and potential solutions.

### *1. Stretching Legal Categories to the Breaking Point*

Damrosch deftly demonstrates the ways in which the current legal regime is being stretched. Under the UN Charter, a determination by the Security Council that there has been an act of aggression or a breach of the peace, or that there exists a threat to the peace, explicitly justifies collective intervention over the whole spectrum, from sending a representative of the Secretary-General to discuss the issue with the offending nation(s) to engaging in the use of force. Until recently, the legitimacy of all peacekeeping activities was grounded on the consent of the subject nation and on resolutions of the Security Council or General Assembly, as was the case in the Congo, Nicaragua, El Salvador, and Cambodia. The cases of Rhodesia, South Africa, and Iraq involved Security Council enforcement actions based solely on Security Council resolutions. Yet what is the legal basis for the protection of Kurds in Iraq against repression by the central government following the forcible response to Iraqi aggression against Kuwait? Or for first an arms embargo and then various peacemaking, peacekeeping, and relief operations in the former Yugoslavia, in a situation that began as an intrastate conflict and soon became international with the recognized secession of Croatia and Bosnia-Herzegovina? Or for military intervention, for humanitarian purposes in the internal conflicts in Somalia, where no government exists to give or withhold consent?

Trachtenberg would contrast the vastly expanded definition of a threat to the peace with renewed concern on the part of the present great powers — the permanent members of the Security Council and the acknowledged nuclear-weapons states — with the spread of nuclear weapons and other weapons of mass destruction. As a realist, he sees that the great powers' concern with the balance of power is the underlying motive, as it was in the past century. His emphasis on the contemporaneous persistence of more traditional security concerns, however, raises the specter of so devaluing the threat-to-peace categories in Chapter VII of the UN Charter that they lose meaning, and hence legitimacy, for any purpose.

### *2. Unilateral versus Collective Intervention*

Damrosch contrasts the vitality of the traditional legal prohibition against unilateral intervention — “improper interference by an outside power with the territorial integrity or political independence of a state [by] invasion, intimidation, subversion, or distortion of what should be autonomous internal processes” — with the legitimacy of collective intervention undertaken within the framework of the UN Charter, when justified by actions within a state that “call on the conscience of all humanity.” What norms, applied concretely through what procedures, can or should legitimate such collective actions? In addition, the shift from prohibition against unilateral intervention to the potential legitimization of collective intervention implies a shift from prohibition to prescription. Do these norms and procedures prescribe such interventions or merely permit them? Do they establish a duty to intervene or only a right to intervene?

### 3. *The Importance of Process*

None of the papers addresses explicitly the legal and political processes by which decisions to intervene and choices among modes of intervention are made, either as a matter of historical fact or future prescription. Decisions on collective action with respect to a particular state may reflect the subjective interests of a few disproportionately powerful states rather than the objective judgment of the many less powerful states that the offending state has violated legal norms. The relative roles of UN member states, the Security Council as the forum for the interests and views of the most powerful states (although not only these), and the Secretary-General and his staff are here in question. To what extent do the Secretary-General and his staff form a separate center of observation, judgment, and action? To what extent are they merely the instruments of groups of member states?

Furthermore, what should be the role of regional organizations, and what process should they follow? Gamba argues forcefully for an enhanced role for such organizations as fora for communication and consultation, permitting meaningful participation in the evolution of a global security system. In cases in which the feared domination of a regional organization by one regional power undermines the likelihood and effectiveness of regional action, the regional organization could act in partnership with the UN.

### 4. *Organizational Composition?*

Also tied up with these questions are the ways the internal political processes of the member states, especially the democratic ones, work with respect to these issues. To what extent do nongovernmental organizations, as well as unorganized publics, made intensely aware by the media of conflicts worldwide, bypass the domestic political mechanisms of their own countries and appeal directly to the UN? Is this path effective? Is it becoming more so?

### 5. *Global Ideological Fission*

A final difficult issue is posed by the profound value conflicts between democratic and nondemocratic states of the UN. At the extreme, consider the apostles of democracy and free markets, confident that they represent the necessary and sufficient conditions for global peace and prosperity, versus the crusading Islamic fundamentalists, equally confident that democracy is but an instrument by which to reunite mosque and state. Can these two camps possibly agree on norms of justified intervention? Can the UN (or other international bodies) act in the face of disagreement? The distribution of military and economic power favors the first group; the distribution of population may not. Which criterion should, or will, be decisive?

## Conclusion

A norm prohibiting intervention is the flip side of a norm promoting sovereignty. Sovereignty is the distinctive hallmark of the modern era in international relations, the system first of states and then of nation-states ushered in by the Peace of Westphalia. New states continue to join this system in all regions of the world, anxious to proclaim their sovereignty and to bar intervention by former imperial powers. At the same time, however, the sovereignty of even the world's most powerful nations is constrained in unprecedented ways. The nations of Western Europe have voluntarily ceded much of their autonomous decision-making capacity to collective institutions; the nations of Eastern Europe clamor to join them. Moreover, well beyond the institutions of the European

Community, national policy makers recognize their inability to make, or at least to enforce, national economic, social, or environmental policy without collective consultation and deliberation with other nations and, often, with nongovernmental actors embedded in transnational society.

As conceptions of sovereignty change, so also do conceptions — and, indeed, definitions — of intervention. On the other hand, as long as some conception of sovereignty remains the baseline for participation in the international system, intervention will retain a negative connotation. In searching for emerging norms of justified intervention, this study will seek to trace the path of larger historical forces to establish whether in fact they underpin a shifting international consensus. New norms governing collective international action may indeed emerge — but they are likely to survive only as part of a larger reconceptualization of the bases and purposes of international society.