



Intervention, Prohibition of

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A. Introduction: Definition and Legal Foundation

1. Definition of the Concept

1 The principle of non-intervention is an international legal norm whose violation is often alleged and which is proclaimed under completely different circumstances. As a result, the exact meaning of the principle remains unclear. In general usage, international scholars have defined intervention as the interference by a → *State* in the internal or foreign affairs of another State. It is only prohibited when it occurs in fields of State affairs which are solely the responsibility of inner State actors, takes place through forcible or dictatorial means, and aims to impose a certain conduct of consequence on a sovereign State (→ *Sovereignty*).

2 The → *International Court of Justice (ICJ)* has put forward the following definition of the non-intervention principle in the → *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v United States of America)*. An intervention is only prohibited if it is:

bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State (at para. 205).

This definition adequately restates the present → *customary international law*. However, it is not without controversy. The definition of exclusively domestic affairs that are protected by State sovereignty, as well as the determination of whether forcible means are applied, still pose problems for concrete implementation in the different cases in question.

(a) Domestic Jurisdiction

3 It is particularly difficult to determine whether an area lies solely in the responsibility of the domestic affairs of a State. In general, domestic affairs are all matters which are not regulated by an international treaty, customary international law, or other international rules (→ *Domaine réservé*). As → *globalization* leads to an international system of co-operation and → *interdependence*, where more and more problems fall into the sphere of international concern, fewer matters can be regarded as remaining purely domestic. While traditionally the choice and development of a political, economic, social, and cultural system, as well as the formulation of foreign policy remained solely within the domestic jurisdiction, today this sphere has been reduced by numerous international treaties and customary international law (see also → *International Law and Domestic [Municipal] Law*). In order to deal with international problems, co-operation has become necessary in traditionally domestic fields. Thus international rules have been formulated that have to be considered by States, eg in the fields of → *immigration law*, minority protection (→ *Minorities, International Protection*), the law of → *diplomacy*, and → *human rights law*. It is the constant tension between the decline of matters of purely national jurisdiction and the increasing international sphere that makes it impossible to lay down a permanent definition of the limits of the notion 'domestic jurisdiction'.

4 The most prominent intensive restraint on the non-intervention principle is to be found in the → *collective security system* of the → *United Nations (UN)*. According to Chapter VII → *United Nations Charter*, the Security Council of the United Nations can under certain conditions declare a matter to be a threat to international peace and security (→ *Peace, Threat to*).

(b) Forcible or Dictatorial Means

5 An intervention is only prohibited if it is conducted through forcible or dictatorial means. It requires an element of → *coercion* or at least the threat to use forcible means (→ *Use of Force, Prohibition of Threat*). The definition of this term has always been of vital importance for the concept of prohibition of intervention.

6 In the classical approach, an element of coercion was only assumed if military force was applied. The prohibition of intervention and the prohibition of force (→ *Use of Force, Prohibition of*) were identical. The aim in both cases was to protect the territorial integrity of a State (→ *Territorial Integrity and Political Independence*). In order also to protect political independence, a new approach towards intervention was developed in the 20th century. This broadening of the concept was mainly due to the increasing co-operation among nations which made it possible to interfere much more subtly and effectively without the use of force (see also → *Co-operation, International Law of*). The new and broader definition of intervention forbids not only direct military force but also indirect interference through economic, political, and diplomatic means (see *Military and Paramilitary Activities in and against Nicaragua Case*; para. 2 above). This made it difficult to distinguish between intervention, and pure and simple interference that does not fall under the non-intervention principle. Between military intervention and the offer to provide → *good offices*, which clearly does not lie within the non-intervention principle, there are many acts which States perform that touch the affairs of another State but are not clear-cut interventions. Given the lack of undisputed general criteria, different categories of cases have been developed in order to recognize possible coercions (see paras 22–27 below).

2. Legal Foundation

7 The non-intervention principle is one of the fundamental duties of the State (→ *States, Fundamental Rights and Duties*). It is part of customary international law and *ius cogens*; affirmed by the ICJ in the merits of the *Military and Paramilitary Activities in and against Nicaragua Case*, in which the ICJ states that the principle of non-intervention is ‘part and parcel of customary international law’ (at para. 202). In this context, the ICJ named different UN General Assembly resolutions which contributed to the development of the concept as customary law (see paras 18–20 below). Apart from these resolutions, the principle of non-intervention has also been expressly stated in different regional agreements (see also → *Regional Co-operation*), eg Arts 16, 18, and 19 Charter of the → *Organization of American States (OAS)*, Art. 4 Constitutive Act of the → *African Union (AU)*, Art. 8 Treaty of Friendship, Co-operation and Mutual Assistance (Pact of the → *Warsaw Treaty Organization*), Art. 1 (2) Charter of the → *Council for Mutual Economic Assistance (COMECON)* and Principle VI Final Act of the Conference for Security and Cooperation in Europe (→ *Helsinki Final Act [1975]*). Furthermore, the principle can be found in almost every friendship or co-operation treaty between States (→ *Treaties of Friendship, Commerce and Navigation*) and has been explicitly included in the charters of international organizations such as the World Bank (Art. IV Sec. 10 Articles of Agreement of the International Bank for Reconstruction and Development; → *World Bank Group*) and the UN (Art. 2 (7) UN Charter).

8 The principle of non-intervention can be violated not only by a single State but also by a group of States or an international organization. Private persons, institutions, or multinational companies cannot violate it through their behaviour. Their behaviour can, however, be attributed as State behaviour and thereby a State can be held responsible for these actions, if it tolerates a private entity acting within its official functions (→ *Responsibility of States for Private Actors*; → *State Responsibility*). The State is also responsible for the acts of private entities if its own organs have co-operated with these entities and thereby contributed to the breach of an international State obligation.

(a) State Intervention

9 Concerning inter-State relations, the non-intervention principle is not mentioned as such in the UN Charter. It can, however, implicitly be drawn from it as the corresponding duty to the principle of State sovereignty in Art. 2 (1) UN Charter. Without the prohibition of intervention, the principle of sovereignty could not be fully realized. Thereby, the *raison d'être* of the non-intervention rule is the protection of the sovereignty of the State.

10 However, the concept is not unanimously derived from Art. 2 (1) UN Charter. There are some who deduce it from the UN Charter as a whole. This is due in particular to the fact that the relevant UN resolutions refer to the UN Charter in general rather than to a specific article. Others derive it from Art. 2 (4) UN Charter, which prohibits the use of force by a State in the affairs of another State. However, this provision only states that all members 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 manner inconsistent with the purposes of the UN. It thereby prohibits the use of force, which is only one part of the prohibition of intervention. Others again are convinced that the principle of non-intervention follows from Art. 2 (3) UN Charter, providing that disputes which arise between two States shall be settled by peaceful means in such a manner that international peace, security, and justice are not endangered. This provision, however, was included in the UN Charter in order to strengthen the judicial settlement of international disputes (→ *judicial settlement of international disputes*). It is not capable of binding States to refrain from intervention as it is not a compulsory provision. This can be deduced from the wording 'shall'.

(b) Intervention by Organs of the United Nations

11 For the organs of the UN, the non-intervention principle is declared in Art. 2 (7) UN Charter. This article prohibits all organs of the UN 'to 'intervene' in matters which are essentially within the domestic jurisdiction of any State'. The term 'intervention' has to be understood in a broad sense in this context. All interferences are forbidden, irrespective of their legal effect. The rule also applies for non-binding resolutions, recommendations, and decisions (see also → *Soft Law*). On the other hand, it is not applicable for the preceding discussion on whether the topic in question is, as such, an issue which lies within the domestic jurisdiction of a State. The term 'domestic jurisdiction' has the same meaning in this context as in inter-State relations. It is forbidden to intervene in competences which lie solely within a State's responsibility. However, in practice, the UN has developed the consistent tendency to limit the scope of domestic jurisdiction by reference to human rights and the maintenance of peace and security.

12 Art. 2 (7) UN Charter explicitly applies only to the organs of the UN. It cannot be transferred to the relations between Member States, because the extent of protection against acts of UN organs and against States is not necessarily identical. Art. 2 (7) UN Charter, rather, is *lex specialis* to the general principle of non-intervention.

13 Measures under Chapter VII UN Charter (see paras 32–33 below) can be applied notwithstanding Art. 2 (7) UN Charter, as this provision explicitly states.

B. Historical Evolution of the Concept

14 Before the 19th century, intervention was a common policy instrument for the foreign affairs of a State. In ancient times, it was particularly used by the Roman Empire. In the Middle Ages, it was commonly utilized to enforce impartial and papal rules (see also → *History of International Law, Ancient Times to 1648*).

15 The first attempts to install a non-intervention policy were limited to the restraint of military interference in foreign State affairs. First to declare non-intervention as a legal principle in that sense was Vattel in 1758 in his work *Le droit des gens ou principes de la loi naturelle* (vol 1 para. 37). The first country that picked up this idea was France, whose National Assembly explicitly

integrated the non-intervention principle in Art. 4 of its constitutional act '*Sur le droit de paix et de guerre*' of 22 May 1790 (15 Archives Parlementaires [1790] 662) and in Art. 119 Acte constitutionnel du 24 juin 1793 et Déclaration des Droits de l'Homme et du Citoyen. However, the French codification of the principle cannot be understood as an attempt to limit its own interference in the inner affairs of other States, since at about the same time (19 November 1792), the French government issued a declaration in which it claimed the right to intervene in all cases where interference proved necessary to assist in other people's struggle for liberty ('*accordera fraternité et secours à tous les peuples qui voudront recouvrer leur liberté*' 53 Archives Parlementaires [1792] 474; see also → *History of International Law, 1648 to 1815*).

16 At the end of the 18th century, the idea of a non-intervention principle was brought up again by Kant in his work *Zum ewigen Frieden* (preliminary Art. 5). But at the beginning of the 19th century, States were not yet ready for the renunciation of military interference as a power instrument of international law. In Europe, the Holy Alliance was created which claimed the right to intervene in cases of European revolutionary governments for reasons of → *legitimacy* in order to *conserver ce qui est légalement établi* (→ *Holy Alliance [1815]*). On this basis, interventions were conducted, eg by Austria in Naples (1821) and by France in Spain (1823). Outside the European context, the right of intervention was established in treaties such as the Treaty between Austria-Hungary, France, Germany, Great Britain, Italy, Russia and Turkey for the Settlement of Affairs in the East, allowing European Powers to interfere in the internal affairs of Turkey and Africa.

17 It was only in the late 19th century that the non-intervention principle got support from European States. This change of view was mainly due to the situation in Latin America, which was endangered by military intervention from European Powers and the United States (see also → *Calvo Doctrine/Calvo Clause*; → *Doctrines [Monroe, Hallstein, Brezhnev, Stimson]*; → *Drago-Porter Convention [1907]*). Nevertheless, there were still numerous cases of intervention, eg the Treaty between the United States and Cuba and the Convention for the Construction of a Ship Canal (United States-Panama) of 1903 authorizing US intervention (see also → *History of International Law, 1815 to World War I*).

18 Between the two World Wars, the US expressly declared that it would not recognize changes of State borders that were achieved by forcible means ('*Stimson Doctrine*'; *Doctrines [Monroe, Hallstein, Brezhnev, Stimson]*; → *History of International Law, World War I to World War II*). At that time, the principle of non-intervention was still restricted to intervention by forcible means. It was only after World War II that it was further defined as also forbidding indirect interference through economic, political, and diplomatic means. The new and broader understanding of intervention was mainly due to the increasing co-operation among nations which made it possible to interfere much more subtly and effectively without the use of force (see also → *History of International Law, since World War II*). It was first used in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (UNGA Res 2131 [XX] [21 December 1965]), and the Charter of Economic Rights and Duties of States (1974) (UNGA Res 3281 [XXIX] [12 December 1974]).

19 The first institution which set forth non-intervention as one of the duties of a State after World War II in general was the → *International Law Commission (ILC)* in 1949 in its Draft Declaration on Rights and Duties of States. Art. 3 provided that every State has the duty to refrain from intervention in the internal or external affairs of any other State.

20 Since the establishment of the UN the development of the non-intervention principle has taken place in particular within this organization, ie in different resolutions of the UNGA. The most important UNGA resolutions in this context are: the resolution on 'The Essentials of Peace' (UNGA Res 290 [V] [1 December 1949]), in which the UNGA called upon every State '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' (at para. 2); the

Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (UNGA Res 2131 [XX] [21 December 1965]), in which the UNGA declared that 'no State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State' (at para. 1); the → *Friendly Relations Declaration [1970]* (UNGA Res 2625 [XXV] [24 October 1970]), which reiterated that armed intervention and all other forms of interference violate international law; and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (UNGA Res 42/22 [18 November 1987]), which provides that every State has the duty to refrain in its 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 UN purposes. By contrast, the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (UNGA Res 36/103 [9 December 1981]) is not helpful in this context. The broad definition of the non-intervention principle given by this resolution was passed against the will of many States and does not reflect general international opinion on the topic.

21 In addition to the UNGA, the ICJ also contributed to the development of the non-intervention principle, first in the → *Corfu Channel Case* and later in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, where it gave a distinct definition of intervention.

C. Main Forms of Intervention

22 There are different ways of possible interference in the inner affairs of another State. Interventions may take place through military, subversive, economic, or even diplomatic means.

1. Military Intervention

23 Congruent with the prohibition on the use of force (Art. 2 (4) UN Charter), the non-intervention principle prohibits interventions through military means. These traditional military interventions may take the form of military occupation of territory (→ *Occupation, Belligerent*), naval demonstration, naval → *blockade*, seizure of assets belonging to another State or its nationals, embargo, arrest and detention of foreigners, or expulsion of foreign diplomats.

2. Subversive Intervention

24 Subversive interventions denote → *propaganda* or other activities by one State with the intention of influencing the situation in another State. They are typically conducted through radio or television shows. Such interventions are prohibited, if they aim to foment revolt or civil strife in another State or are devoted to assisting illegal and violent activities (see also → *Propaganda for War, Prohibition of*). In general, it is difficult to track these actions back to a State and make it responsible, as they are usually carried out through private persons. Not prohibited by the non-intervention principle is criticism of the internal politics of another State, if this criticism is substantiated by facts.

3. Economic Coercion

25 Economic intervention (→ *Economic Coercion*) is a particularly controversial issue, as it is very difficult to draw a line between the legitimate pursuance of the State's own economic interests and illegal pressure put upon another State. Art. 1 → *Charter of Economic Rights and Duties (1974)* states that 'outside interference' of a State in the affairs of another State is forbidden 'in any form whatsoever'. This definition reaches far too wide and is not generally accepted, as following it would lead to a non-intervention principle that forbids any act which forces a State in a certain direction. It does not take into consideration that in the modern international world, States are economically linked with each other in such a way that almost every economic act a State

performs automatically affects other States and may thereby put them under pressure. In order to determine prohibited economic interventions, it can be of value to look at the motivation of a State and identify the object of the State action. However, the motivation cannot be the only criterion for the definition; others are the intensity of the measures taken, the result actually reached, and the relationship between the means and the object.

26 Because of the difficulty in drawing a general line between permitted economic pressure and prohibited intervention, different categories have been established in this field. According to these, typical economic interventions are interference with trade and shipping and the denial of access by land and water. However, the precise criteria of an illegal economic intervention remain unclear due to varying → *State practice*. Cases on the borderline in this area, though doubtful as to their legal qualification, are the imposition of sanctions, embargoes, and → *boycott[s]*. The mere refusal or termination of aid to → *developing countries* or the breach of an economic treaty do not constitute a breach of the non-intervention principle (see *Military and Paramilitary Activities in and against Nicaragua Case* para. 126). States are free to decide which other States they want to give economic support to, as a right to development aid does not exist.

4. Diplomatic Intervention

27 While diplomatic means usually do not constitute an illegal interference, they may take the form of a forbidden intervention, if they include communications of threatening tone, implying possible use of military or other coercive measures. However, most diplomatic measures against other States are declared as unfriendly acts rather than illegal interventions, eg the establishment of diplomatic relations with the German Democratic Republic by the Federal Republic of Germany ('Hallstein Doctrine'); see also → *Germany, Legal Status after World War II*). Some diplomatic measures, such as good offices, → *mediation*, and → *conciliation* cannot even be regarded as unfriendly acts, as they are clearly legal according to the Convention for the Pacific Settlement of International Disputes ('1907 Hague Convention I'); see also → *Peace, Proposals for the Preservation of*).

D. Justification of Interventions

28 The acceptance of non-intervention as a rule of law was subject to numerous exceptions from the outset. In this context, States have either claimed that their activities do not constitute an intervention, have alleged that they were invited to intervene (→ *Intervention on Invitation*), or pretended to have customary grounds of justification. → *Self-help* against breaches of international law, humanitarian grounds, and → *self-defence* are regarded as valid arguments in favour of the admissibility of interference (→ *Humanitarian Intervention*; → *Reprisals*; → *Self-Defence, Collective*; → *Self-Preservation*). These exceptions have made it difficult to define precisely the substance of the principle, as they have supported political doctrines which States put forward in order to interpret or restrict obligations following from the non-intervention principle. Examples of such political doctrines include the Johnson Doctrine justifying US intervention in the → *Dominican Republic* in 1965 and the Brezhnev Doctrine designed to prevent political changes in socialist countries.

1. Intervention by Invitation

29 An intervention is not prohibited if a State interferes in the inner affairs of another State at its request and with its consent. State consent may be given ad hoc or in advance by a treaty. The intervention is, however, preconditioned on a request for assistance by the government (*Military and Paramilitary Activities in and against Nicaragua Case* para. 246). Permission given subsequent to the interference is not sufficient for the existence of an intervention by invitation, even if the interference is in the clear interest of the State concerned. This is due to the fact that it

is often difficult to determine whether the necessary consent has been freely given to the intervening forces and is not rather the product of hidden influence or pressure by the intervening power. The latter has been suspected, for instance, concerning the US-led intervention in → *Grenada* in 1983; other examples of doubtful invitations are the Soviet Union intervention in Hungary in 1956 and the occupation of Afghanistan in 1979. A further condition for the invitation is that the request for intervention has to be made by the lawful government of the State, which is still representing the population and has not yet lost effective control over the territory. A new government can extend the invitation, if it fulfils these criteria; an interim government after an internal conflict can do so only if the invitation is approved of by all parties involved in the conflict.

2. Admissible Countermeasures by a State

30 According to the rules of international law, a State generally has the right to react to unlawful acts. Thereby, a State can counter a breach of the principle of non-intervention against itself with a reprisal. The use of force, however, is only allowed if the intervention is at the same time an → *armed attack* according to Art. 51 UN Charter. This attack must be instant, overwhelming, and leave no choice of means and no time for deliberation, according to the so-called Webster formula, affirmed by the ICJ in the *Corfu Channel Case* (see also → *Caroline, The*; → *Self-Defence, Pre-emptive*). This limitation of the use of force applies to individual States as well as to collective military measures. As less interfering measures, retorsions are allowed (→ *Retorsion*).

31 All these countermeasures are limited by the principle of → *proportionality*. For the exercise of the right of self-defence, this principle entails a limitation of means as well as a limitation in time. The means employed must be strictly confined to the removal of the breach of the principle of non-intervention and must be reasonably proportioned to that object. Further, intervention may not be continued after the UNSC has taken effective action to localize or terminate the conflict.

3. Collective Intervention

32 With the instalment of the UN system, a new justification for interventions has been introduced to international law: the collective interventions founded on the concept of collective security. According to Chapter VII UN Charter, the UNSC is empowered to take collective actions if a threat to the peace, a breach of the peace (→ *Peace, Breach of*), or an act of → *aggression* has taken place. While initially, Chapter VII UN Charter envisages that the UNSC will not use force in its collective interventions, it can employ military force if other actions do not prove adequate to deal with the situation. For example, the UNSC took such action at the beginning of the crisis in → *Korea* (1950; → *Korean War [1950–53]*; see also → *Uniting for Peace Resolution [1950]*), in Congo (1961; → *Congo, Democratic Republic of the*) and in the Gulf War (1991; → *Iraq-Kuwait War [1990–91]*).

33 In recent years, a discussion has been raised in academic circles as to whether environmental catastrophes can present an international threat to peace according to Chapter VII UN Charter and thereby be replied to with a collective intervention. At present, the UNSC has not yet based a collective intervention on an environmental matter. It has, however, significantly widened the definition of threat to peace, eg by deciding that a threat can be given in the case of individual and collective human rights violations (Northern Iraq in 1991) or in the absence of State organizational structures (Somalia in 1992; → *Somalia, Conflict*). In connection with the Libyan resolution of 1992, the UNSC further stated that ‘the non-military sources of instability in the economic, social, humanitarian, and ecological fields have become threats to peace and security’ (Note by the President of the Security Council at 3). Thus it seems possible that environmental catastrophes may justify collective interventions in the future (see also → *Duty to Protect in Cases of Natural Disasters*; → *Humanitarian Assistance in Cases of Emergency*). Given how grave the consequences of environmental casualties can be for the → *international community*, this approach seems justified.

4. Assistance for Insurgents/Right to Self-Determination

34 Since most of the conflicts since 1945 have occurred between different interest groups within one State (→ *Armed Conflict, Non-International*), the question of the legitimacy of granting assistance to insurgents (→ *Insurgency*) has become urgent. Assistance can be given in many different ways, which must be looked at separately. Financial aid (→ *Financial Assistance*), arms supply, personal training, and logistic help are prohibited interventions, if they are given to insurgent groups. The ICJ last reaffirmed this rule in its judgment in the *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, in which it held that Uganda violated the principle of non-intervention not only by invading Congo and occupying some of its territory but also by providing military, financial, and logistical support to anti-government Congolese rebels within the country.

35 Helping rebels is also forbidden, if the government is receiving the same help, as it violates the sovereignty of the State concerned. On the contrary, it is not forbidden to provide such help to a government in the case of an internal conflict. Neither does the non-intervention principle prohibit humanitarian aid for all the parties to and the people affected by a conflict, eg through medical care and the allocation of food and clothing. A prerequisite for the legitimacy of such help, however, is that it is granted to all without discrimination.

36 A matter that has to be considered separately is the right to intervene in the affairs of another State in order to help the people of that State to exercise their right of → *self-determination*. According to Art. 7 Definition of Aggression (UNGA Res 3314 [XXIX] [14 December 1974]), → *peoples* that are deprived of their right to self-determination by force have the right to struggle with all means at their disposal in order to achieve their freedom, including seeking and receiving support from other States. Therefore, it is not an intervention if a State provides such assistance.

5. Humanitarian Intervention

37 An issue of special concern in the international discussion is humanitarian intervention. Humanitarian intervention in a strict sense means an international intervention through the use of force for the protection of the inhabitants of another State who are subject to systematic abusive treatment (see also → *Gross and Systematic Human Rights Violations*) which surpasses the legal boundaries within which a government is obliged to keep according to international law. As the notion of humanitarian intervention is not accepted by all, a tendency to rename these interventions as 'interventions to protect' can be detected (see eg the → *Responsibility to Protect* Report of the International Commission on Intervention and State Sovereignty).

38 The → *North Atlantic Treaty Organization (NATO)* intervention in Yugoslavia in March 1999, in particular, brought up the question of whether massive human rights violations can legitimize interventions which imply the use of force against a sovereign State (see also → *Yugoslavia, Dissolution of*). The development of this question is closely connected to the increasing importance of the universal protection of human rights. It prospers with the growth of international humanitarian solidarity (see also → *Solidarity Rights [Development, Peace, Environment, Humanitarian Assistance]*).

39 The monitoring of human rights by international actors and the ability of the international community to react to violations, especially in cases of massive abuses, are of fundamental value to the implementation of international law. Therefore, many support interventions by a single State without UNSC authorization as a last resort, if certain—highly controversial—criteria are met. Nevertheless, humanitarian interventions by individual States cannot be justified. They are in contradiction to the prohibition of force in Art. 2 (4) UN Charter. The UN Charter clearly states that single States may only use force in the case of self-defence, defined in Art. 51 UN Charter. Customary law allowing such interventions by a single State has not yet been established. When States tried to justify their interventions through humanitarian goals, eg NATO in → *Kosovo* (1999)

and the 'coalition of the willing' in Iraq (→ *Iraq-United States War [2003]*), there were always many other States that protested, so that congruent State practice is lacking. Thus, at present, international law does not provide justification for an intervention on humanitarian grounds by single States. As urgent as international measures may be in particular cases of massive human rights violations, different means have to be found to react to these breaches of international law, ie political conciliation or new mechanisms of decision-making (see also → *United Nations Charter, Reform*).

40 The UN Secretary-General's report 'In Larger Freedom: Towards Development, Security and Human Rights for All', while not expressly ruling out the possibility of unilateral humanitarian intervention, similarly stresses the need to implement the responsibility to protect through peaceful means. It states that 'if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations' (at para. 135). Concerning the use of force, the 'task is not to find alternatives to the Security Council as a source of authority but to make it work better' (at para. 126).

41 There remains, most importantly, the competence of the UNSC to intervene through collective measures, if the situation constitutes a threat to peace (see paras 32–33 above). In this context, the ICJ stressed in its *Legality of Use of Force (Yugoslavia v United States of America)* (Provisional Measures) order of 1999 that in the case of a threat to peace, breach of the peace, or act of aggression, the UNSC has special responsibilities under Chapter VII UN Charter (see also → *Yugoslavia, Cases before the ICJ*). In this case concerning the legality of the use of force, the ICJ did not issue a decision on the matter but rejected the Yugoslavian request on the ground that in the absence of consent by the US it could not exercise jurisdiction (see also → *International Courts and Tribunals, Jurisdiction and Admissibility of Inter-State Applications*).

6. Interventions to Protect Nationals Abroad

42 The question of the legitimacy of State interventions for the protection of the State's own nationals who are on another State's territory has to be separated from humanitarian intervention in favour of individuals of other States on their own territory. From very early on, these kinds of interventions have generally been accepted as legitimate. The reason for this acceptance has never been human rights protection but rather the principle of State sovereignty and the responsibility a State has for its own nationals. However, just as with all other countermeasures, such an intervention is limited by the principle of proportionality.

43 Among other justifications, the protection of national citizens was one of the reasons given for the US intervention in Grenada in 1983. Another prominent example is the liberation of Israeli citizens in Entebbe in 1976, which many States explicitly or implicitly approved of, but others found illegal.

7. Bush Doctrine

44 With the Iraq war in 2002, the question has arisen of whether a military intervention by another State or by a group of States, which is not authorized by the UNSC, can be justified according to international law, if it is enforced against a so-called rogue State in order to eliminate its government (see also → *Iraq, Occupation after 2003*). During the Iraq conflict, the US and Great Britain, supported by a 'coalition of the willing', occupied Iraq and abolished its existing regime. To this end, they used military force according to Art. 2 (4) UN Charter.

45 Under the terms of traditional international law, no justification for this intervention could be found, although several norms were cited to that end. However, the coalition did not act in self-defence according to Art. 51 UN Charter, as the Iraqi government had not made any assault on

them. Also, a resolution of the UNSC, which could have authorized their attack, did not exist. UNSC Resolution 678 (1990) of 29 November 1990, which was issued in the context of the Iraqi occupation of Kuwait, authorized military intervention only to the end of liberating Kuwait from this occupation. The following UNSC Resolutions 687 (1991) of 3 April 1991 and 1441 (2002) of 8 November 2002 did not authorize States unilaterally to enforce the agreed obligations of Iraq by military means. Further, the intervention in Iraq had no humanitarian justification since the necessary elements for an intervention on humanitarian grounds were not given. The intervention was not rendered in order to end a continuing massacre, the coalition rather intervened in order to eliminate the Iraqi government and change the existing regime for reasons of 'democratization'.

46 The question remains whether international law knows a new justification of military interventions against so-called rogue States. In the follow up to the terrorist attacks of 11 September 2001 (see also → *Terrorism*), specifically in view of the Iraq war, voices have been raised, particularly in the US, which believe that military interventions in a rogue State can be justified in order to eliminate the existing government. The White House report *The National Security Strategy of the United States of America* of September 2002 strongly supported this new doctrine, stressing that 'rogue states and terrorists do not seek to attack us using conventional means' but 'instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction'. In order 'to forestall or prevent such hostile acts', the report announced that 'the United States will, if necessary, act pre-emptively' (at 15; see also the *National Strategy to Combat Weapons of Mass Destruction* and the *National Strategy for Combating Terrorism*). In the *National Security Strategy Report* of March 2006, the US still claims a right to use force pre-emptively, but also emphasizes alternatives to military pre-emption and reliance on multilateral actions: 'Our strong preference and common practice is to address proliferation concerns through international diplomacy, in concert with key allies and regional partners' (at 23).

47 So far, the new doctrine of pre-emptive strikes has not become part of customary international law. Despite the fact that it has found several advocates and the 'coalition of the willing' has not been sanctioned for its actions in Iraq, many States have protested against the attack through formal or other means usually used in reaction to illegal behaviour by another State. UNSC Resolution 1483 (2003) of 22 May 2003 on the reconstruction of Iraq cannot be interpreted as a recognition of the rightness of the attack on Iraq, either. It deals with the responsibilities of the occupying powers, which emerge independently of the legitimacy of the military occupation. The same is true for the authorization of the engagement of the UN in the reconstruction process in Iraq through a special representative. The situation is also different from the Kosovo conflict. In that case, a resolution in the post-war phase explicitly called for substantial participation by NATO (which had acted without authorization). UNSC Resolution 1483 (2003) of 22 May 2003 does not include such a call for the occupiers.

E. Current Significance—Including Recent Instances

48 During recent decades, discussion about the justification of interventions has gained a new aspect. Since human rights have gained a more prominent standing within the international community, the non-intervention principle has lost in importance. Many topics that were classically regarded as internal affairs of a State are now part of the international discussion. During the Kosovo conflict, when NATO intervened without the authorization of the UNSC, discussion of the justification of interventions had already gained new importance.

49 To approve the changes which have taken place in the field of intervention through the discussion of human rights does not, however, also imply approval of justification for military interventions against 'rogue States' in order to eliminate their governments. While some believe international law has been significantly changed in this direction through the Iraq war, this view cannot be shared. Although the changes that accompany the new importance of human rights issues are necessary and welcome, a change in terms of the Bush doctrine cannot be part of a

working conflict prevention mechanism that hinders the spread of force. Economic benefits and other interests of single States would be able to gain a role in the justification process of interventions. As a final consequence, the Bush doctrine could make the existing mechanisms of the UN obsolete by leading to the return to a *liberum ius ad bellum* or the right of the stronger. Thus it is not desirable to enhance the Bush doctrine in international law. In line with this argument, the ICJ appears to reject such post-September 11 sovereignty waivers in its judgment in the *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* by upholding the importance of the principle of sovereignty and holding against an erosion of the non-intervention principle.

50 Nevertheless, it has become clear during recent decades that the currently existing conflict prevention mechanisms are insufficient. In order to find ways to react to new challenges while upholding the principle of non-intervention, new mechanisms must be found.

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