university of groningen

University Medical Center Groningen

University of Groningen

Economic development peace and international law

Verwey, Willem Dirk

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
1972

Link to publication in University of Groningen/UMCG research database

Citation for published version (APA):
Verwey, W. D. (1972). *Economic development peace and international law*. s.n.

Copyright
Other than for strictly personal use, it is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license (like Creative Commons).

The publication may also be distributed here under the terms of Article 25fa of the Dutch Copyright Act, indicated by the “Taverne” license. More information can be found on the University of Groningen website: https://www.rug.nl/library/open-access/self-archiving-pure/taverne-amendment.

Take-down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Downloaded from the University of Groningen/UMCG research database (Pure): http://www.rug.nl/research/portal. For technical reasons the number of authors shown on this cover page is limited to 10 maximum.

Download date: 04-06-2022

Appendix

Non-Intervention

It might perhaps be possible to find a new approach for the complex problem of intervention within the framework of the strategy outlined above.
On December 21, 1965, the UN General Assembly, worried by the increasing practice of intervention into the internal affairs particularly of the young countries, adopted the general Declaration on the Inadmissibility of Intervention (Res. 2131 (XX)). Herein, the Members of the United Nations expressed themselves,

'*deeply concerned* at the gravity of the international situation and the increasing threat soaring over universal peace due to armed intervention and other direct and indirect forms of interference threatening the sovereign personality and the political independence of States.'

1⁰. Because intervention – whether upon request or not – in its manifold manifestations has become, as has been discussed in Ch. II, the main method of power politics in relation to the Third World, and because through interventionary practices on different levels the Super Powers are plunged into an increasing number of direct and indirect confrontations, intervention has become – together with the nuclear arms race – the most dangerous phenomenon of post-War politics. That explains the manifold efforts made by international lawyers to find a legal construction contributing to its restriction.
The complexity of this problem and the variety of approaches have resulted in a great deal of confusion among international lawyers today. Generalizing somewhat, it can be said that legal thinking has been concentrated primarily on intervention in civil wars, and that three main legal theories have been developed in this respect, all of which have their proponents among present-day authors.

1. First, there is the theory according to which international law must protect international order and thus cannot allow for assistance to

anti-status quo forces. In case of civil war, only the 'legal' government may be the object of foreign assistance. This theory, adopted by the Institut de Droit International in 1900 in its 'Réglement concernant l'intervention,'[1] was propagated in 1937 by Garner in relation to the Spanish civil war. He wrote:

'There is no rule of international law which forbids the government of a state from rendering assistance to the established legitimate government of another state with a view of enabling it to suppress on insurrection against its authority'; (whereas) 'the assistance furnished (the Spanish) rebels.... is an act of unjustified intervention in the internal affairs.'

The same theory has been adopted in general by – among others – Verdross, Schwarzenberger, Briggs, Ross, Scelle and Rousseau.[2] Recently, Moore has expressed the same point of view in relation to the Vietnam war. He links – as all pupils of Mc. Dougal do – the right to intervene to a 'minimum world public order, that is, the avoidance of unilateral coercion as a modality of major change'; and concludes that

'it is not surprising, then, that prevailing international law seems to permit assistance to the recognized government but not to the insurgents.'[3]

2. Another theory which refers to the dangers of any kind of intervention and/or the unjustness of the first theory; by allowing assistance to an existing government and withholding assistance from the anti-status quo factions, one could impede the right of self-determination in cases where the existing government is little more than a ruling dictatorship and the 'rebels' have the support of the population of the country. This theory, therefore, forbids any interference with an ongoing civil struggle, in case – as Falk puts it – the 'control of a national society' is at stake. As Brownlie writes:

[1] Annuaire de l'Institut de Droit International (1900) p. 227; its article 2 forbids to supply weapons, munitions and other military assistance to rebels. Only if rebels satisfy the classical conditions concerning the status of belligerents, the rules of neutrality should be applied.

[2] J. W. Garner – 'Questions of International Law in the Spanish Civil War,' 31 AJIL ('37) p. 68; A. Verdross – 'Völkerrecht' ('64) p. 205; G. Schwarzenberger – 'A Manual of International Law' ('60) I pp. 200-202; H. W. Briggs – 'The Law of Nations' ('52) pp. 999-1000; A. Ross – 'A Textbook of International Law' ('47) p. 122; G. Scelle in Rev. Gen. D. Int. P. ('39) p. 197; C. Rousseau in Rev. D.I. Lég. Comp. ('38) p. 2.

[3] N. J. Moore – 'The Lawfulness of Military Assistance to the Republic of Vietnam,' 61 AJIL ('67) p. 31.

'foreign intervention would increase chaos and create an even more serious threat to the peace as a result of the introduction of foreign forces and resulting suspicions on the part of third states.'[4]

In this sense Wright denounces the assistance given by the United States to Chamoun in Lebanon in 1958, this government being not 'in firm possession of the territory.'[5] This theory is advocated further by Murti, Hyde, Lawrence, Hall, Starke, Fischer, Stowell, Wehberg and Lauterpacht.[6]

3.1. A third theory exists which is based on political practice and which revives to some extent the thinking of de Vattel who taught:

'foreign nations may assist that one of the two parties which seems to have justice on its side.'[7]

His theory equated the right to intervene with the just war doctrine. Perhaps in those days (18th century) a certain *communis opinio* concerning the merits of a 'just' war still existed. Today, however, opinions concerning a 'just cause' are so divergent, that little has been left of that common opinion.
The young countries claim that they have the right to use force against colonial Powers and white minority régimes, since colonialism and apartheid are considered to be a permanent form of aggression against which they would have the right of collective defence.
The communist countries claim the right to assist 'wars of national liberation,' since Western imperialism impedes the right of self-determination.
The Western countries claim the right to assist 'legal' governments against any communist threat.
Today we have what Julius Stone has called 'the national version of truth and justice.'[8] When one uses a 'iusta causa' as a basis for uni-

[4] R. A. Falk – 'International Law and the US role in the VietNam war,' 75 Yale L.J. ('66) pp. 1122ff; J. Brownlie – 'International Law and the Use of Force by States' ('63) p. 323.
[5] Q. Wright – 'US Intervention in the Lebanon,' 53 AJIL ('59) p. 119.
[6] B. S. N. Murti – 'The Vietnam Conflict; A legal perspective,' 7 Ind. J.I.L. ('67) pp. 369ff; C. Hyde – 'Intervention in Theory and Practice' ('11) pp. 9-10; G. Lawrence – 'Principles of International Law' ('30) pp. 131-132; W. E. Hall – 'International Law' ('24) pp. 346-347; J. J. Starke – 'An Introduction to International Law' ('63) pp. 97-98; R. Fischer – 'Intervention: Three problems of Policy and Law,' in R. J. Stanger (Ed.) – 'Essays on Intervention' ('64) p. 7; E. C. Stowell – 'Intervention in International Law' ('21) p. 329; H. Wehberg – 'La guerre civile et le droit international,' 63 Rec. Cours ('38) p. 57; E. Lauterpacht – 'Intervention by Invitation,' VII Int. Comp. L.Q. ('58) p. 103.
[7] E. de Vattel – 'The Law of Nations' (1758) II par. 56, p. 151 (in 'Classics of International Law' ('16) vol. III).
[8] J. Stone – 'Aggression and World Order' ('58) p. 148.

lateral intervention today, the risk of provoking counter-intervention and of escalation of an internal into an international conflict is inherent.

3.2. This third theory has culminated in the post-War period into a fourth one, embodied in the so-called 'Johnson-doctrine' for Latin America on the American, and in the so-called 'Breznhev-doctrine' for Eastern Europe on the Russian side. These doctrines based on the defence of democracy and communism respectively as an overriding 'just cause,' have added an important element to the third theory: the Super Powers claim the right to decide for themselves if they will intervene in the internal affairs of a 'state under their protection,' a preceding invitation by the local government being no longer considered as a necessary precondition for a legal intervention. In legal literature today, the reasoning of the Johnson-doctrine has been defended among others by Alford. He states that the United States would not even be obliged to leave Vietnam if the Vietnamese population wished them to go:

> 'an official request for withdrawal, even if backed by unverified claims of widespread South Vietnamese support, should not necessarily result in cessation of US military action, and we would probably have to strengthen US forces in South Vietnam to prop up a wavering government and achieve whatever policies *US officials* now have in view.'[9]

This seems also to be Mc.Dougal's way of thinking in connection to his famous 'international law of human dignities.' He writes, for instance:

> 'it is not the particular physical modality of destruction that is relevant to law and policy, but rather the purposes and effects to the value of a free world society.'[10]

Chayes states that the legal system is an entity 'which must provide satisfying legal support for the proposed action,' which cannot be unlawful, according to his opinion, as long as the action defends accepted (American) values.[11]
This opinion explains the confusion over the difference between intervention and collective self-defense today. Since any endeavour to achieve a leftist government in Latin America is considered to be the beginning of an imposed communist take-over, the United States and the Latin American governments have declared that the OAS has the

[9] N. Alford – 'The Legality of American Military Involvement in Vietnam: A Broader Perspective,' 75 Yale Law Journal 7 ('66) p. 50.
[10] M. S. McDougall c.s. – 'Studies in World Public Order' ('60) p. 817.
[11] A. Chayes in Proc. Am. Soc. I.L. ('63) p. 11.

right to use armed force against any such movement. Since democracy is considered as the ultimate desire of all peoples, and communism per definition is perceived as the result of dictatorial aggression or subversion, interventions as in Guatemala and the Dominican Republic – although communists were hardly involved here – are said to constitute not 'interventions' but 'collective self-defense': thus, any intervention is legalized as an act of self-defense. Thomas, Fenwick and Murdock are among the lawyers who accept this reasoning as legally correct.[12]

ad 1. The first theory has been deprived of all sense in practice, because of the impossibility of solving the problem of determining who the 'legal' government is. The dilemma today has dramatically been illustrated by the fact that the Soviet Union and China accept the NLF as the legal representative of the South Vietnamese people, whereas the Western countries denounce the NLF as a group of rebels and instead accept the Saigon régime as the legal representative. Accepting this theory in the present era of ideological confrontation would open the doors to unrestricted interventionist policies – the more so, as the policy of the intervening Powers is not consistent. The United States, for instance, has proclaimed its right and duty to assist legal governments against rebels; but in Iran in 1951, and in Indonesia in 1965, it supported the rebels against the existing régime, when *that* course of action was in the American interest.
In fact, this theory would result today in returning to the times of the Holy Alliance; with the difference that now several 'Holy' Alliances confront each other.

ad 3. The third theory entails likewise the inherent danger of counter-intervention. Its acceptation bears the risk of internationalizing every internal conflict. Indeed, this theory, being based on subjectively and differently interpreted Human Rights and ideological values, threatens to throw the world back into the era of the religious wars. This is true of the fourth theory to an even larger degree.

ad 2. The second theory seems to be the only one serving the cause of national self-determination and world peace. But, alas, present day policy has deprived it of its practical value. Innovations like the 'demarcation line' have clouded the distinction between internal strife and international war, and accusations of external assistance – serving

[12] A. J. Thomas jr. – 'The OAS and Subversive Intervention,' Proc. Am. Soc. I.L. ('61) pp. 19-24; C. G. Fenwick – 'Intervention and the Inter-American Rule of Law,' 53 A.J.I.L. ('59) pp. 873-876; J. O. Murdock – 'Collective Security Distinguished from Intervention,' 56 A.J.I.L. ('62) pp. 503-505.

as a justification for intervention – is easily made and difficult to refute. The fear that the opponent might profit in case of non-activity has made intervention a daily tool of power politics.

2⁰. What is the practical value in the prevailing circumstances of general UN Declarations such as the one on the illegality of intervention? In the 'Declaration on the granting of Independence to Colonial Countries and Peoples' the General Assembly states that

> 'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;'

and in the Declaration on the Inadmissibility of Intervention it is said:

> '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.'

What ever could be reached by such general statements *if not circumstances are created preventing those situations to arise which sooner or later provoke intervention*?
Moreover, there is the problem to determine what exactly constitutes 'unlawful intervention,' as contrasted to lawful practices – like economic boycot – which may severely interfere with the internal affairs of other states. It can even be said – thinking of President Nixon's 10% as an extreme case – that the countries of the world have become interdependent to such an extent that every important national economic measure is bound to have effects abroad. Even deliberate omittance of action may have so serious results that they are considered interference in the affairs of other states. Where is the line of demarcation, where is the point where interventionary activities become unlawful?

Hitherto, the discussion on the problem of intervention has taken place largely within a political context and in connection to civil war. Economic forms of interference (inside as well as outside the scope of internal war) have, however, become as important as military or political interference. The mere concentration on military and political intervention – probably both the result of fear of war, and of the defense of economic liberalism – has led to the intolerable situation that, as Friedmann puts it, 'any national measures that effect another nation's economic life are legitimate, even though they may starve it to death. The slightest act of physical violation of sovereignty is not.'[13]

[13] W. Friedmann – 'Intervention, Civil War and the Role of International Law,' Proc. Am. Soc. I.L. ('65) p. 69.

In view of the daily practices of economic and political life and their often hidden interdependence, it seems a useless endeavour to try to draw a theoretical line between legal interference and illegal intervention. It seems more useful to take *practical steps* appropriate to improve the chances of restricting intervention and Cold War confrontation.

A strategy of global welfare, realized through global co-operation, would decrease the opportunity of exploiting economic assistance as a political medium in the Cold War. It has proved to be little helpful to try to prevent interventionary practices by means of solemn Declarations forbidding political and military intervention; it might be much more effective to take first practical measures impeding *economic* intervention. When social and economic conditions in the developing countries have become such that they contribute to stability and peace and thus remove a major opportunity for *interventionary practices in general*, the legal discussion on political and military intervention might become more relevant and useful.