Humanitarian Intervention in International Law 1830–1939. The Debate

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Introduction

Humanitarian intervention was conceived in the nineteenth century, but the origins of the idea go back to the Renaissance, to Gentili⁵ and Grotius,² and arguably to Vitoria,³ Bodin⁴ and the anonymous author of Vindiciae contra tyrannos [Defense against tyrants].⁵ The humanitarian intervention doctrine was at its heyday in international law from the mid-nineteenth century until the 1930s and in particular from the 1870s onward. It held a prominent position with the majority of international lawyers (publicists) addressing the issue, for or against the use of armed force for humanitarian purposes, with a clear majority in favour.⁶

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This tendency is striking for in the period before the United Nations Charter there was no international legal ban on acts of inhumanity by states, and sovereignty and independence, including non-intervention, reigned supreme as the cornerstones of international law. On the other hand aggressive war was not prohibited and was a manifestation of sovereignty, thus taking the sting out of armed humanitarian interventions. As Oliver Ramsbotham and Tom Woodhouse point out, ‘two aspects of sovereignty, pulled in opposite directions leading... to the apparently paradoxical outcome that the greater threat to the integrity of states (waging war) was widely regarded as legitimate, but the lesser (intervention) was not’.\(^7\) As Simon Chesterman has put it, ‘in the absence of a clear distinction between intervention and war any regulation of the former could be circumvented by resort to the latter’.\(^8\) But the parallel development of humanitarian law (\textit{jus in bello}) that, among others, stressed the humane treatment of combatants and civilians buttressed the stance of jurists supportive of humanitarian intervention.

The Advent of International Law as a Science with a Civilizing Mission

But before proceeding further let us first sketch the terrain of international law scholarship in the nineteenth century. At least four points are worth making.

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