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"INTERVENTION TO PROTECT MINORITIES"

by

Professor James Fawcett, D.S.C.

The Minority Rights Group,
36 Craven Street,
London, W.C.2.

It is a privilege for me to give this lecture for the Minority Rights Group. I have chosen the theme of intervention for the protection of minorities not least because of the current interest in the use of human rights as a instrument of foreign policy.

Intervention can be trespass. If a State is to be master in its own house, other states cannot be allowed to intervene in its internal affairs, whether by suggestions, organised persuasion, economic coercion, or armed force; and the principle of non-intervention has been long recognised as a necessary brake on foreign policy, but with exceptions. Is the State always to be master? I want to ask and to try to answer here how far the protection of minorities has been an exception, and how effective their international protection through intervention has been.

I

The principle of non-intervention is to be found in the UN Charter and other declarations by the UN. So, apart from peace-keeping measures under Chapter VII of the Charter, nothing in it is to 'authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement' under the Charter.[1] Further, the General Assembly adopted by consensus a declaration[2] on principles of international law concerning friendly relations and co-operation among States which contains the following:

> 'No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law ....'

Further,

> '.... no State shall organize, assist, foment, finance, invite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State or interfere in civil strife in another State.'

Again,

> 'Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.'

These statements are embodied without significant change in Principles VI and VII of the Helsinki Final Act. There they differ from the statement in the UN Charter in that not only are they directed against intervention by States, acting alone or in a group, in contrast to intervention by the UN, as a collectivity distinct from, though an agent of, its members; but intervention by States is more strictly proscribed than intervention by

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1 Article 2(7)

2 Resolution 2625 - XXV (14.12.1970)

the UN; for it may not be direct or indirect, or engaged in for any reason whatever, or touch on either internal or external affairs of a country. Further, despite the prohibition expressly of the use of various kinds of force, the rule against intervention is not, given its general language, confined to the use of force. But, at the same time, these declarations, in prohibiting interference in any form by one State in the choice by another State of its political or social arrangements, do not mean that that choice is to be condoned. We come then to the exceptions to the principle of non-intervention in the internal affairs of other countries.

Andrew Scott has observed that 'neither a powerful nation nor an international organisation can offer leadership and rigidly adhere to the doctrine of non-intervention at the same time. The means available to them in offering leadership constitute intervention'. UN practice illustrates this. Since its earliest days objections raised by UN members to discussions or recommendations in the General Assembly or Security Council on the ground that they interfered with the domestic policy or practices of a country, have been constantly rejected by the majority where the maintenance of human rights was seen to be in question. The reasoning broadly was that the gradual internationalisation of notions of human rights and freedoms made it no longer possible to regard them as 'essentially within the domestic jurisdiction of a State' - to use the language of the Charter restricting UN intervention. The UN, through the General Assembly and the Security Council, has then constantly intervened in countries by inquiry, discussion and recommendations on their practices involving human rights; and indeed the first compulsory order for economic sanctions by the Security Council was indirectly for the protection of human rights in Southern Rhodesia, a step which the drafters of the UN Charter would have hardly imagined.

To see whether minorities can be protected by such UN intervention or by other forms of intervention, let us look at the background. The internationalisation of common rights and freedoms and action to apply it were not of course new in 1945. Notable were the interventions in the Ottoman empire during its slow disintegration: the French expedition to Syria in 1860 after massacres in the Lebanon and interventions by Western powers in Bosnia in 1875 and Cyprus 1878, as Christian populated provinces of the Ottoman Empire. The Treaty of Berlin in 1878 sanctioned such interventions. Mr. Gladstone was able, in the Midlothian campaign, to declare that 'foreign policy should always be inspired by the love of freedom'; and in a draft code of international law prepared in 1888 by Bluntschli, the German jurist, founder of the still prestigious Institute of International Law, it was stated that, where human rights are denied in a country, there is a right of foreign intervention - the so-called <u>intervention d'humanite</u>.

This notion of a collective responsibility for the protection of common rights and freedoms not least for minorities, was further developed after the First World War in particular treaties and by the League of Nations. The protection of minorities was covered in a number of treaties: in the five so-called minorities treaties between the allied and Associated Powers and Poland - the first, which became the model - Czechoslovakia, Romania, Greece and what was to be Jugoslavia; and in special provisions in the Peace Treaties with Austria, Bulgaria, Hungary and Turkey, repeated to some extent in the Peace Treaties of 1947. Special arrangements were also agreed between Germany and Poland for the division of Upper Silesia, and for exchange of populations between Greece and Bulgaria, and between Greece and Turkey. Further, the Baltic States, Albania, Finland and Iraq made

declarations undertaking to protect their minorities on being admitted to membership of the League of Nations.

The League was to be guarantor, and a report adopted by the League Council in October 1920 stated that:

> 'the provisions for the protection of minorities are inviolable .... and cannot be modified in the sense of violating in any way rights actually recognised, and without the approval of the majority of the Council....'.

Further, the right of Members of the Council and of the minorities themselves to call the attention of the League to any infraction or danger of infraction of various treaties was recognised. But how was the right to be exercised? Some of the obstacles, familiar in the development of the European Convention on Human Rights, appeared. It was said that the League Council should not be bound to intervene and that petitions should rank as reports for information only. Again Lord Balfour sought to avoid a process which placed on individual Members of the League 'the invidious task of accusing another Member'; and Poland and Czechoslovakia both objected to petitions at all on the ground that they could contain 'one-sided information, which is often unreliable or biased .... The possibility of subsequently refuting the accusations made against them, afforded to the States concerned, does not always compensate for the injury suffered from this procedure.'

However the League gradually worked out a petition procedure for minorities. Certain conditions were laid down which had to be met if a petition was to be admitted by the League Council; in particular, a petition must not emanate from an anonymous or unauthenticated source, and it must not request 'severance of political relations' between the minority and the State of which it formed a part. Petitions were to be communicated only to members of the League Council, unless the State concerned asked for wider communication, and were examined and reported on to the Council by a Committee of Three - the President and two members, not including a representative of the State concerned or of a neighbouring State or of a State with a population majority of the same ethnic group as the minority petitioning. Publication of the result of the examination of the petition could only be made with the consent of the State concerned. In Upper Silesia, where there was a resident League High Commissioner, petitions could be brought directly to him.

About 300 petitions were received in the first ten years, of which half were found inadmissible; 8 reached the League Council, which took some action on 2. In 1933 Germany repudiated the system and Poland denounced its treaty. However, during this first period three cases involving Poland or Upper Silesia, as well as cases on the exchange of populations between Greece, Bulgaria and Turkey, went to judgment by the PCIJ. The League Council also obtained advisory opinions from that Court on the position of the minority schools in Albania and in Upper Silesia, and also the administration of Danzig.

The League as guarantor of minority rights was then not only confined to minorities in the new or substantially enlarged countries in Europe - any suggestion that the protection of minorities should be generalised even throughout Europe was vehemently opposed - but its interventions were few and of slight effect. But the influence of the minorities treaties and

declarations may still have been wider than the public record suggests. The mere existence of their provisions could have some control both of law-making and administration; and the relative confidentiality of the petition procedure through the Committee of Three and the Minorities Section of the League probably also helped this. It is the experience of the European Commission of Human Rights in the largely confidential handling of applications that not every application rejected by it has had no effect.

The system of minority protection between the two world wars was then limited in area and seen by its creators as primarily serving the balance of power in Europe. Minorities must be granted their rights so that they do not get out of hand; and C.A. Macartney ended a review of this system saying:

> 'There is ... at least some practical case for imposing these obligations only on states in which, owing to their special conditions, minority situations exist which might really endanger the peace of the world'.

But since 1945 the international climate has wholly changed; and it may be that what J.A. Froude said of the end of the fifteenth Century will come to be applied to 1945:

> 'For indeed a change was coming over the world, the meaning and direction of which is still hidden from us - the change from era to era'.

The drive for national independence which has nearly trebled the membership of the U.N; a larger sense of community between countries and peoples growing out of a recognition of common interests in the sharing of technology and natural resources, including nuclear energy with its dangers, and of the need then to set limits to territorial divisions, autonomy and secession; the instability of many regimes, induced by irredentism - all these influences have changed the international view of minorities, their character and their needs. Two axioms, widely recognised, have emerged, the one being that all peoples have a right of self-determination, and the other that any form of discrimination against any human being by category is wrong. For minorities the first opens a political approach in which collective identity - at least where a minority can be seen as a 'people' - is secured and preserved by some form of self-determination; in the second the approach is social, in which members of a minority are treated like all human beings, as having common rights and freedoms, equal exercise of them being secured by the rule of non-discrimination. These approaches could lead to two quite different relationships between a minority and the rest of the community: separation as an act of self-determination, apartheid being separation which is imposed, not chosen; and integration under the protection of non-discrimination and even some special rights. On apartheid the UN has adopted a draft international Convention, which declares that apartheid is a crime against humanity and that its operators incur an international criminal responsibility.

The first approach has been largely eliminated as far as UN intervention goes. Even in the early debates in the UN it was said that minorities deserving protection should comprise only those 'non-dominant groups in a population, which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population'; further, they must be 'loyal

to the State'. But political pressures grew after 1945 for the end of colonial rule, and the movement of countries to independence, particularly after 1955, became steadily more rapid and widespread than could have been predicted when the UN was founded. The protection of minorities became overlaid by the granting of independence to colonial peoples. The UN interest in minorities was reduced unless they could be seen as subjects of colonial rule or apartheid, and there was no intervention on their behalf save in peacekeeping operations. Self determination had in fact in UN practice become virtually identified with the achievement of independence by colonial peoples, and this has expressed itself in two ways. A distinction is made between a people, however small in number or territory, seen as capable of independence and UN membership, and nationalities or minorities living within a larger country. Self-determination is accorded to the first but not necessarily to the others. Lenin made the distinction and the policy of the USSR, at least in the UN, has followed it. He declared the support of the party for the self-determination of peoples but with the strong qualification that 'nationalities' must not be allowed to fragment the ideal of a communised society. 'We demand' he said, the freedom of self-determination, that is, independence ... the freedom of secession for oppressed nations, not because we dream of an economic parcelling out (of big States) or of an ideal of small States, but on the contrary because we want big states, and a rapprochement, even a merger, of nations on a truly democratic and internationalist basis'. An active advocate generally of the principle of non-intervention, the USSR has argued that in any colonial war the metropolitan country is the aggressor and that any intervention in support of the oppressed colonial people is justified as a way of defeating aggression. The USSR even condenmed UN intervention in the Congo as 'collective colonialism', perhaps because its own intervention had dramatically failed. The preoccupation with liberation from colonial rule has led the UN itself to come close in several declarations to approving the use of force, and foreign intervention, in conflicts over that liberation.

But the USSR, having many nationalities and minorities of its own, has been cautious over support, in principle or practice, for activist minorities in other countries, even if they have Marxist inclinations. It is equally noticeable that the newly independent countries have, as members of the UN, with India as a leading voice, been reluctant or unwilling to support its intervention directly on behalf of minorities, at least if they were seeking autonomy or secession. Loyalty to the state would be insisted on where such a minority was located in a part of the country where natural resources were concentrated, for example, Katanga; and Secretary General U Thant himself affirmed this. In practice, self-determination ends with independence, and the UN Subcommission on the Prevention of Discrimination and the Protection of Minorities - to give it is title - has given virtually no attention in the last decade to the position of minorities.

Intervention by a single country or by a small group of associated countries, aimed at minority protection is a matter of moral and political judgment, and law enters into the question whether in given circumstances it is justifiable. Further, it must not be forgotten that the protection of minorities, and indeed the maintenance generally of rights and freedoms in countries must be in the end domestic, depending on political and economic structures, and on the strength and will of government and people. International rules and standards express in part at least what may already be the domestic law and practice in many countries, and their observance may be secured through domestic machinery. But these rules and standards have an intangible influence, in and between countries, through their mere existence. The short, comprehensible and pregnant propositions of the

Universal Declaration of Human Rights have had a far greater impact around the world than its drafters could have expected; and to the extent that the international rules and standards form or declare the law of common rights and freedoms, law has a part to play in intervention for their protection. To make a perhaps fanciful comparison, the effect of law in international relations is not unlike that of gravitation in the physical world. So if States and international organisations might be regarded as units of varying mass and molecular structure, composing together a field of forces, power would be a kind of electromagnetic force directed from one unit or group of units to another, but always limited in its spatial extent. Law would then resemble gravitation in being the weakest of the forces, but yet the most extended in that nothing within the field is beyond its reach.

But where in one country - a small part of the field - power overrides the law and common rights and freedoms are denied, attempts at their enforcement from outside require intervention, ranging from persuasion to the use of coercion or force. The interveners may be, apart from international bodies, governments acting individually or in association, or non-governmental bodies such as Amnesty International or the World Council of Churches, or not least of course, the press. The decision then by a government to intervene for the protection of minority rights in another country by taking some coercive measures, or by taking a public position, or by diplomatic action, will depend on many factors.

President Theodore Roosevelt, in a message to the Senate in 1904, offered some advice which should perhaps still be listened to. 'We have' he said 'plenty of sins of our own to war against, and under ordinary circumstances we can do more for the general uplifting of humanity by striving with heart and soul to put a stop to civic corruption, to brutal lawlessness, and violent race prejudices here at home than by passing resolutions on wrongdoing elsewhere'. We must also ask whether governmental policy on intervention must be consistent or whether it can be selective of target countries. There may be also a difference kind of intervention by a country exercising its right, recognised in international law, to protect its nationals abroad, even by force within certain limits. But can this be extended to a minority sharing its language and culture, which lies beyond its frontiers? The history of German minorities in Europe shows the conflicts that can arise. The Verband deutscher Volksgruppen, founded in 1922, was taken over by the National Socialist Party after 1933, and over three hundred organisations were established outside Germany itself asserting Auslandsdeutschtum which became a political force behind German intervention in Czechoslovakia and later Poland. The movements, voluntary and involuntary, after the Second World War of the Volga Germans, who had formed an Autonomous SSR since 1924, was a reflection of it.

The principle of non-intervention set out as Principle VI of the Helsinki Final Act is designed to reduce or prevent such conflicts. But does Principle VII of the Final Act, concerned with the protection of human rights, including the rights of minorities, override Principle VI? The Final Act itself expressly states that no one Principle is to be given any priority, and, while the record of the Belgrade Conference does not disclose whether the position of minorities in Eastern or Western Europe was discussed, the disregard of the principle of non-intervention, manifested in public declarations by governments on human rights in Eastern Europe, particularly in a context of efforts at European cooperation, has not been clearly justified; though that is not to say that diplomatic action by governments, exerting pressure for human rights in, for example, the negotiation of trade agreements, or publicity given to denials of human rights by the press or non-governmental bodies are not justified. Neither

in fact are really intervention in the sense of Principle VI.

III

Is international intervention, whether collective or individual, effective in the protection of minorities in the contemporary world? Consider Rhodesia, the Palestinians, Cyprus and Belgium. In Rhodesia the non-dominant group form the majority of the population, which shows that now at least to be a minority is a matter of recognition and influence, not of numbers. Further, minority is a relative term - minority in relation to whom? The people of Rhodesia are perhaps to be seen as composed of three minorities in relation to each other; similarly in Belgium the Flemings and Walloons divided by a linguistic frontier have minority characteristics, though it might be impracticable to treat either as a minority in the traditional sense. Again the Palestinians - about 3 million in the world - are scattered over at least nine countries in the Middle East, constituting in fact more than half the population of Jordan. They are not a minority at all but a people asserting a right of self-determination. In Cyprus on the other hand the Turkish Cypriots can be seen as a minority.

But the economic inequalities must not be overlooked; and in all the communities mentioned this can spark colour prejudice and religious or language conflicts. Economic disadvantage is both a cause and a consequence of discrimination against minorities. Intervention to help or protect these various groups has taken many forms, operating sometimes simultaneously. So in Rhodesia there has been a combination of UN intervention through economic sanctions, intergovernmental negotiations involving the US, UK and neighbouring countries, and interventions in force from neighbouring territories with some support from various governmental sources. In Cyprus there has been for years a UN force, performing an essentially internal police function, then the intervention in force from Turkey in July 1974, relying on the Treaty of Guarantee (1960) between the UK, Greece and Turkey, and finally a transfer in effect of political settlement to negotiations between Greece and Turkey. In Belgium, as well as in Cyprus, there has been intervention under the European Convention on Human Rights, and the complexity of the intervention at all levels in respect of the Palestinians needs no comment.

If I can offer any suggestions on intervention at government level to protect minorities, they would be that:

Collective intervention by the UN is best limited to peace-keeping, including particularly internal policing in open civil conflicts, and not extended to active efforts at political settlement (peace-making).

Public condemnation of regimes by governments is not visibly effective, but diplomatic pressure, in for example the negotiation of trade, aid or defence agreements is and should be used to aid the protection of minorities, and it can be efective.