The Equality of States

Quincy Wright

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The military intervention in Czechoslovakia in August, 1968, led by the Soviet Union with East Germany, Bulgaria, Hungary, and Poland participating, was contrary to the obligations of states under the United Nations Charter. It was a non-pacific means of dealing with disputes through a use of force in international relations against the territorial integrity and independence of Czechoslovakia, and an intervention in the domestic affairs of that state. None of the recognized exceptions to these obligations existed. There was no occasion for the collective self-defense of Czechoslovakia because that state had not been attacked or even threatened, nor was there any justification in the Warsaw Pact because enforcement measures can not be taken under regional arrangements without the authorization of the Security Council. In any case, neither defense nor regional arrangements would justify military assistance to Czechoslovakia unless that state consented, and no consent had been given by the Czech government.

The Soviet claim of a right to maintain socialism of the Soviet brand in Czechoslovakia and to protect world socialism runs counter to the Charter principles of the sovereign equality of all members and the self-determination of peoples, which entitle each state to determine its own political, economic and ideological system. The intervention was contrary to the Soviets' own interpretation of the basic principle of the Charter—"the peaceful coexistence of states with different social and economic systems," to the Panch Shila incorporating this principle in treaties ratified by the Soviet Union, to the recent Soviet interpretation of the principles.
principle — "no export of revolution or counter revolution," and to President Kennedy's interpretation — "A world safe for diversity." The intervention denied coexistence and secure diversity to Czechoslovakia and was an effort to export the Soviet brand of revolution to that country.

The Soviet action was also contrary to the basic principles of international law accepted by European states since the Peace of Westphalia (1648) which accepted the equal sovereignty of states and the right of each to determine, with a few exceptions, its religion, thus renouncing the religious wars which had plagued Europe for over a century. These principles implied reciprocity of relations among all sovereign states in diplomacy, treaties, and claims. What I ask of you, you can ask of me.

The formal acceptance of the principle of equality has been subject to many exceptions in practice. Equality of states was not generally accepted even in principle before the rise of modern international law in the 17th century. In the early civilizations of China, India, Classical Antiquity, Islam, and Europe in the Middle Ages, the structure was composed of superior and inferior princes, hegemonic relations, or a hierarchy with a dominant power at the top and degrees of subordinate authority below. It is true that Chinese states in the Confucian period, Greek city-states before the Macedonian conquests, and Italian cities in the late Middle Ages professed a certain equality, but these systems were exceptional and limited in area and duration. A system of unequal states has been normal in past civilizations.

Even after the principle of equality had been accepted in modern international law many exceptions were recognized. War, permitting territorial conquest, was recognized as a legal institution; military self-help (reprisal) was recognized as a legal procedure for maintaining claims if diplomacy failed to achieve agreement; and agreements achieved by threats or actual use of force against a state party to the agreement were valid. The result was that without violating international law powerful states could expand their territories by military conquest; could compel weaker states to accept unequal treaties ceding extraterritorial jurisdiction, spheres of influence, free ports, and tariff privileges as in the case of China and other eastern states; could compel weak states to accept the inferior status of protectorates, vassalages, or quasi-protectorates; and could maintain spheres of special interest permitting unilateral inter-


vention on alleged principles of self-defense, "territorial propinquity," political or ideological similarity, and regional understanding or great-power agreement.5

Inequalities were often supported by demands for reciprocity, not among all states, but among the Great Powers at the expense of the weak. Poland ceased to exist in the 1790's because of the demands of its great neighbors for the equal right to annex its territories. China nearly ceased to exist when each of the "treaty powers" demanded spheres of interest and other advantages equal to those acquired by the most voracious. Reciprocity among the great, ignoring the rights of the weak, was practiced in agreements partitioning Africa into spheres of interest: in secret agreements among the great powers concerning claims in the Far and Middle East during World War I; in agreements during World War II by the Soviet Union, first with Germany and then with Britain, concerning the fate of Eastern Europe; and by the powers at Cairo and Yalta concerning European and Far Eastern territories.

The United States' Monroe Doctrine was given a certain legal status by the provision of the League of Nations Covenant recognizing the validity of regional understandings like the Monroe Doctrine. Raymond Konan points out6 that this doctrine may have encouraged the Soviet Union to claim a Socialist sphere of Soviet domination in Eastern Europe. It certainly had encouraged Japan to claim a "co-prosperity sphere" in the Far East before World War II and had prompted Britain to claim a sphere of special interest in the Middle East in ratifying the Kellogg-Briand Peace Pact in 1929.

These exceptions to the principle of equality of states meant that in the 19th century the principle actually applied only to Europe and the United States. Asian states had been or became colonies or protectorates or were subjected to unequal treaties.7 African states were divided into spheres of influence by the European powers and, with the exception of

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5. Heinrich Triepel uses the word hegemonie or leadership to denote a form of organization less than dominance but more than influence in his book DIE HEGEMONIE, EIN BUCH VON FUERHENDEN STAATEN (1938) which so appealed to Hitler that Triepel was the only international lawyer able to stay in Germany during the Hitler regime. See also Kruszewski, Hegemony and International Law, 35 AM. POL. SCI. REV. 1127 (1941) and Germany's Lebensraum, 34 AM. POL. SCI. REV. 964 (1940); Wright, The Distinction Between Legal and Political Questions With Special Reference to the Monroe Doctrine, 1924 PROC. AM. SOCY INT'L L. 57 and Territorial Propinquity, 12 AM. J. INT'L L. 529 (1918).


7. For a detailed description of the legal situation of Far Eastern territories in 1941 see Q. Wright, Legal Problems in The Far Eastern Conflict 30 (Institute of Pacific Relations, 1941).
Ethiopia and Liberia, became colonies or colonial protectorates. Middle Eastern and North African states were, for the most part, under Turkish suzerainty which, however, disappeared as independent states emerged in Southeastern Europe under the aegis of the European powers which established colonies or protectorates in North Africa by the use of force. Latin American states, though loudest in demands for full independence and equality, were limited by claims of the United States under the Monroe Doctrine which, with the Polk and Grant interpretations and the Roosevelt Corollary, resulted in the establishment of a number of "quasi-protectorates in the Caribbean area." Even in Europe the Great Powers constituted themselves "The Concert of Europe" after the Napoleonic Wars and intervened among lesser states to deal with revolutions consequent upon those wars and later to settle the Belgian revolt from the Netherlands and the revolts of Greece and the Balkans from Turkey. These modifications of theoretical equality were so extensive that Edwin Dickinson, writing at the time of World War I, doubted whether equality, in the substantive rights of states, was actually a principle of international law. The privileged positions of the Great Powers, which after World War I included non-European states, have continued in the organs of primary political importance in the League of Nations and the United Nations.

Efforts were made, it is true, before World War I, to make legal equality a reality. The settlement of disputes by international arbitration was developed, especially after the successful arbitration of the Alabama claims between the United States and Great Britain in 1871. The refusal to recognize territorial acquisitions by conquest was accepted by the members of the Pan American Conference of 1890 with the one exception of Chile which had just engaged in a conquest. This principle was later affirmed by the Stimson Doctrine of 1932 which was accepted by the League of Nations in connection with the occupation of Man-

churia by Japan and by the United Nations in connection with the occupation of Arab territories by Israel in 1956 and 1967. General Conferences were utilized to deal with political crises at Berlin in 1878 and at Algeciras in 1906 and to reduce armaments, limit the initiation of war, and codify the international laws of war, neutrality and pacific settlement at the Paris Conference of 1856, the Geneva Conferences of 1864 and 1906, and the Hague Conferences of 1899 and 1907. Cooperation to realize the common interests of all states in transnational communication and transportation; in the prevention of epidemic diseases and inhumanities, such as the slave trade and the suffering of the sick and wounded in war; and in the solution of such problems as agriculture, labor, and trade was stimulated by the establishment of many Public International Unions.

In spite of these efforts, experience before World War I made it clear that the legal equality of states could not be generally maintained in practice as long as international law allowed the use of force by states as an instrument of policy or of self-help except in defense against clear aggression. It further indicated that in a world in which states differ greatly in actual power, a rule of law prohibiting the use of force cannot be maintained unless there is a stable balance of power, as there was in Europe during much of the 19th century, or unless international organization is effective to maintain the rule of law, as has been attempted without much success by the League of Nations and the United Nations.

In addition to the Monroe Doctrine, the Soviet Union can find precedents for its claim to a sphere of regional dominance in the Communist world in the British claim to a sphere of influence in the Middle East, in the Japanese claim to such a sphere in the Far East, and in the claims often recognized in treaties among the Great Powers to more limited spheres of interest in China and Africa. The United States, in spite of its obligations under the United Nations Charter, has continued since World War II, as Mr. Konan points out, to intervene in the Caribbean area, especially in the Dominican Republic and Cuba, under the Monroe Doctrine and the Caracas Inter-American Declaration, sometimes with the qualified support of the Organization of American States. The more extensive claims of the United States under the Truman

Doctrine of 1947, asserting a responsibility to intervene to protect democracy and to contain communism, are perhaps even more significant precedents for the Brezhnev Doctrine which asserts a Soviet responsibility to intervene to protect socialism and contain "capitalistic imperialism." The United States has sought to justify its intervention in the Caribbean by the support of the OAS, in Vietnam by the support of SEATO, and in the Middle East by its succession to the British sphere of influence in that area and by the Eisenhower Doctrine of 1957. Similarly, the Soviet government has sought to justify its Czech intervention by the support of most of the Warsaw Pact states. The United Nations Charter, however, does not permit military interventions without Security Council authorization.\(^8\)

From this review four points emerge.

1. The United Nations Charter legally sanctions the system of equality of states by formally proclaiming it, by requiring pacific settlement of disputes, by forbidding unilateral or regional use of force except in defense against armed attack and, implicitly, by refusing to recognize territorial or political advantages gained by force. It however departs from this principle by giving the "Great Powers" permanent membership and a veto in the Security Council.

2. The system of legal equality of states has proved difficult to maintain in practice because of the great inequality of states in material power. This has tended to revert the system to the older system of regional hegemonies.\(^9\)

3. Maintenance of the Charter principle of equality requires a greater understanding by peoples and governments, especially those of the Great Powers, of their national interest in maintaining this principle under the conditions of the modern world and a firmer will to maintain it.

4. Such understanding and determination can hardly be promoted by unilateral efforts to maintain a balance of military power or mutual deterrence in the nuclear age which limits major military capability to a small nuclear club, but it might be promoted by strengthening the United Nations. To that end programs are needed to educate the public to less nationalism and more internationalism; to reduce national armaments and to build the United Nations peace forces; to increase the

\(^8\) U. N. CHARTER art. 53, para. 1.

\(^9\) In the autumn of 1969, the Soviet Union submitted, in connection with the General Assembly Agenda item on Strengthening International Security, a proposal for regional security arrangements, each to include all states in the region, thus facilitating the exercise of hegemony by each "superpower" in its region and tending to convert the concept of successful coexistence among states into a concept of peaceful coexistence among regions justifying the Brezhnev Doctrine. The draft was vigorously criticized, especially by the smaller states.
financial resources of the United Nations by developing new sources of revenue and insisting that members pay their dues; and to increase the commitments of states to adjudicate legal disputes, to accept recommendations of the United Nations dealing with political disputes, and to develop the activities of the United Nations and the specialized agencies to better serve the common interests of mankind.

Without such action it seems likely that the inequality of states will increase, on the one hand, between the great powers with nuclear capability and other states, and on the other hand, between the economically developed and the underdeveloped states. Great powers will try to dominate in their geographical or ideological regions. Underdeveloped states will be dissatisfied, unstable, and the frequent victims of great power intervention. Under these conditions rivalries between the Great Powers will intensify, with grave danger of eventuating in general war.