

University of Maryland Francis King Carey School of Law

DigitalCommons@UM Carey Law

---

Faculty Scholarship

Francis King Carey School of Law Faculty

---

1966

## The Law of Humanitarian Intervention: U.S. Policy in Cuba (1898) and in the Dominican Republic (1965)

David S. Bogen

University of Maryland School of Law, [dbogen@law.umaryland.edu](mailto:dbogen@law.umaryland.edu)

Follow this and additional works at: [https://digitalcommons.law.umaryland.edu/fac\\_pubs](https://digitalcommons.law.umaryland.edu/fac_pubs)



Part of the [Human Rights Law Commons](#), [International Humanitarian Law Commons](#), and the [International Law Commons](#)

---

### Digital Commons Citation

Bogen, David S., "The Law of Humanitarian Intervention: U.S. Policy in Cuba (1898) and in the Dominican Republic (1965)" (1966). *Faculty Scholarship*. 687.

[https://digitalcommons.law.umaryland.edu/fac\\_pubs/687](https://digitalcommons.law.umaryland.edu/fac_pubs/687)

This Article is brought to you for free and open access by the Francis King Carey School of Law Faculty at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

THE LAW OF HUMANITARIAN INTERVENTION:  
 UNITED STATES POLICY IN CUBA (1898) AND IN  
 THE DOMINICAN REPUBLIC (1965) \*

by

David S. Bogen \*\*

Just a year ago, on April 28, 1965, United States Marines entered the city of Santo Domingo in the Dominican Republic.<sup>1</sup> Such a sight was not unfamiliar to Latin Americans during the first quarter of this century. In fact, the United States had occupied the Dominican Republic itself from 1916 until 1924. Nevertheless, the event marked an innovation in recent American foreign policy, since the United States had not so intervened in Latin America for more than three decades. Furthermore, the action was in direct contravention of Article 15 of the Charter of the Organization of American States which provides: "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."

President Johnson explained this intervention as a matter of self-defense -- at first for the protection of American citizens then residing in the Dominican Republic<sup>2</sup> and later for the national security.<sup>3</sup> Within a few days the President's rationale shifted as the immediate danger assumed the character of chaos, rather than a clear communist threat.

---

\* © , 1966, by the author, reproduced herein by permission. This paper was originally presented in connection with Professor Louis Sohn's Seminar on International Protection of Human Rights.

\*\* LL.B. 1965.

1. N.Y. Times, April 29, 1965, p. 1, col. 8.
2. "For two days American forces have been in Santo Domingo in an effort to protect the lives of Americans and nationals of other states in the face of increasing violence and disorder." President Johnson, quoted in N.Y. Times, May 1, 1965, p. 6, col. 4.
3. "The American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere." President Johnson, N.Y. Times, May 3, 1965, p. 10, col. 4.

Thus, the United States began to justify its continued military presence as a stop-gap measure until the Organization of American States could effectively act.<sup>4</sup> The right to intervene became dependent upon the right of the Organization of American States to intervene. That organization did not regard its actions as measures of pure self-defense, however. In the debates before the Organization of American States, Mr. Facio, the delegate from Costa Rica, said:

But do not forget the principle of humanitarianism, the principle of democratic representation, the principle of human rights. In the Dominican Republic, even the most elemental institutions have been destroyed. There is no government. The people are threatened with death, hunger and plague. The political groups have no control. We must act collectively to solve this Dominican tragedy.<sup>5</sup>

The resolution adopted with United States support by the Organization of American States was cast in terms of restoring peace rather than of preventing the establishment of a communist government.<sup>6</sup>

Thus, the United States and troops from several Latin American countries intervened in 1965 for reasons which do not seem very different from those advanced in the late nineteenth century at the time of the Spanish-American war:

- 
4. "It is only the temporary presence of our forces in Santo Domingo which has made it possible for the Organization of American States to carry out its consultations, to organize its machinery and to take its proper place on the scene of the fighting in the Dominican Republic." Adlai Stevenson, N. Y. Times, May 6, 1965, p. 14, col. 4.  
"I based our legal right to act on the need to save lives and to preserve a situation for a period of time which would enable the Organization of American States to act collectively." Under-Secretary of State Thomas Mann, N. Y. Times, May 9, 1965, Section 4, p. E3, col. 4.
  5. Time, May 14, 1965, p. 33.
  6. "This force will have as its sole purpose, in a spirit of democratic impartiality, that of cooperating in the restoration of normal conditions in the Dominican Republic, in maintaining the security of its inhabitants and the inviolability of human rights and in the establishment of an atmosphere of peace and conciliation that will permit the functioning of democratic institutions." Organization of American States Resolution, N. Y. Times, May 7, 1965, p. 14, col. 6.

The forcible intervention of the United States as a neutral to stop the war, according to the large dictates of humanity and following many historical precedents where neighboring states have interfered to check the hopeless sacrifices of life by internecine conflicts beyond their borders, is justifiable on rational grounds. . . . In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate.<sup>7</sup>

The situation which the American President faced in 1965 was, of course, considerably different from that faced by his predecessor at the turn of the century. Two major differences are the existence of the Organization of American States and the existence of an effective Communist movement threatening established government in Latin America. Nevertheless, there are elements in common which make a study of past intervention relevant to the present decision-making process.

The first major American military intervention designed to stem political chaos in Latin America was in Cuba in 1898. That action had been conditioned by a long line of legal and political thought concerning humanitarian intervention. This article discusses the theory of humanitarian intervention and explores the problems in its application which American intervention in the Caribbean reveals.

## HUMANITARIAN INTERVENTION UNDER GENERAL PRINCIPLES OF INTERNATIONAL LAW

### 1. State Practice:

There have been numerous occasions when one country has acted directly to influence events occurring wholly within another country.<sup>8</sup> At least two military interventions were carried out by single powers in the name of humanitarian intervention: the United States intervened in Cuba in 1898;<sup>9</sup> and Russia intervened in Turkey on behalf of Bulgarian nationalists in 1877 after two years of protest by other European powers

---

7. President McKinley, [1898] Foreign Rel. 757 (1901).

8. Rougier, *La Théorie de l'Intervention d'Humanité*, 17 *Revue Générale de Droit International Public* 468 (1910); Stowell, *Intervention in International Law* (1921).

9. See p. 303 infra.

had proven fruitless.<sup>10</sup> In addition to these examples of unilateral intervention, there have also been instances of collective intervention.<sup>11</sup> During the nineteenth century the "Great Powers of Europe" determined state practice in the Western world. Thus, the intervention in 1827 of the great powers of Europe on behalf of Greek freedom showed state practice supporting the doctrine of humanitarian intervention.<sup>12</sup> Similarly, the intervention of France in Syria in 1860 was the result of agreement among the European powers.<sup>13</sup> The intervention of the great powers of Europe and Japan in China in 1900 to compel the Emperor of China to quell the "Boxer" sect has also been mentioned in this connection.<sup>14</sup>

## 2. Legal Theoreticians:

Where state practice is an imperfect guide, it is proper to turn to scholars of international law.

A number of writers from the time of Grotius to the present have clearly recognized the right of humanitarian intervention.

Intervention in the internal affairs of another state is justifiable in two classes of cases. . . . The second is when a country has fallen into such a condition of anarchy or misrule as unavoidably to disturb the peace, external or internal, of its neighbors, whatever the conduct or policy of its government may be in that respect.<sup>15</sup>

Other formulations of the right of humanitarian intervention differ from this somewhat.<sup>16</sup> Nevertheless, these formulations apparently

---

10. Rougier, supra note 8, at 474-475; Stowell, op. cit. supra note 8, at 127-136.

11. A multitude of other occasions of intervention which did not reach the stage of military action further illustrates the existence of international concern in the internal affairs of a single nation. See Rougier, supra note 8; Stowell, op. cit. supra note 8.

12. Rougier, supra note 8, at 473; Stowell, op. cit. supra note 8, at 126-127.

13. Rougier, supra note 8, at 473-474; Stowell, op. cit. supra note 8, at 63-66.

14. Rougier, supra note 8, at 470.

15. 1 Westlake, *International Law* 318-319 (2d ed. 1910).

16. Hodges, *The Doctrine of Intervention* 53-54 (1915); Grotius, *The Law of War and Peace*, Bk. II, Ch. XX, Sec. VIII, at 504

agree on two points. First, in extreme cases there is a right to intervene in the conduct of a sovereign towards his subjects. Second, this right is determined not by an invariable, objective rule, but by the subjective standards of the world community (public scandal, shock according to the sense of mankind, outrage to recognized principles of decency and humanity, barbarity of measures, or misrule disturbing to the peace of neighboring states). Thus, the fundamental human rights involved are subject to modification according to mankind's increasing sensitivity toward the individual and human rights.

Such concepts do not go unchallenged. At least one writer has denied that internal acts in one nation affect other nations:

Neighboring nations talk of the smoke of corpses rising to their nostrils; if their sense of smell is so sensitive, why aren't they trying to overcome the stink with the perfume of their own actions? They say that the stench corrupts the atmosphere, but there is a very simple way to avoid it, i. e., establish a quarantine and break off all relations with the nation that violates the laws of humanity. Instead of peaceful means, neighboring nations speak of shooting; but guns do not have, unless I am very much mistaken, the gift of diminishing the number of corpses or of disinfecting the atmosphere corrupted by their smoke.<sup>17</sup>

Yet force can halt atrocities which might otherwise continue unchecked.

Some scholars have, nevertheless, disputed the legal basis for military intervention. Theoretically, they argue, each state is independent and sovereign, and as such recognizes itself as the highest law. It is bound by treaties only because it has made them binding upon itself.<sup>18</sup> A variation on this theme is the theory that intervention is proper only in what are deemed less than "civilized" states.<sup>19</sup> These writers also argue that the "Law of nations" is merely a law between sovereign states and does not directly concern individuals.<sup>20</sup> "International law professes

---

(1646 ed. Kelsey transl. The Classics of International Law No. 3, 1925); Rougier, *supra* note 8, at 517-523; Stowell, *op. cit. supra* note 8, at 51-52; Wright, The Bombardment of Damascus 20 *Am. J. Int'l L.* 263, 269 (1926); Thomas & Thomas, *Non-Intervention* 378 (1956).

17. Tanoviceano, *Droit International de l'Intervention* 12-13 (1884).
18. See von Floeckher, *De l'Intervention en Droit International* 18-19 (1896).
19. See Dickinson, *The Equality of States in International Law* 262-263 (1920).
20. 1 Oppenheim, *International Law*, Sec. 292, at 368 (2d ed. 1912).

to be concerned only with the relations of states to each other. Tyrannical conduct of a government towards its subjects, massacres and brutality in a civil war, or religious persecution, are acts which have nothing to do directly or indirectly with such relations."<sup>21</sup>

But these objections assume the very thing which is disputed. Even if a state owes no duty to its subjects, it may owe other states a duty to grant these same subjects rights under municipal law. Under the minority system of the League of Nations some countries were made responsible to the League for the proper treatment of minorities within their borders. Other examples are found in Article 55 of the Charter of the United Nations and in the Universal Declaration of Human Rights.<sup>22</sup> Under the European Convention on Human Rights the individual in signatory states has a right to petition for redress against his own government to an international court. Thus, it is possible for international law to be concerned with the relationships between people within a single state. Indeed, the instances which have been recited, the practice of intervention, and the opinions of writers previously mentioned all indicate that international law is concerned with such relationships.

Inaction by the world community in the face of the obvious abuse of human rights has been taken to show state practice supporting the theoretical lack of any international guarantee of such rights.<sup>23</sup> Lack of accurate information has been partially responsible for this, but a second concern is the power of the violating nation. A nation must weigh the effect of the violation of the laws of humanity on its conscience against the impact which armed struggle would have upon its population. This might be ignoble, but it does not make a nullity of the doctrine.

One practical objection to humanitarian intervention is the potentiality of its being abused. In an imperfect world decision-making humans can never be absolutely certain that they are on the side which has the predominance of truth, justice, and morality. Thus, precipitate action might set a bad precedent which others might follow.<sup>24</sup> One example of such abuse is the German invasion of Czechoslovakia under a claim of intervention on behalf of the persecuted racial German minority.<sup>25</sup> Thus, the doctrine can serve

---

21. Hall, *International Law* 342 (8th ed. Higgins, 1924).

22. General Assembly Resolution 217A, Gen. Ass. Off. Rec., 3d Sess., 1st pt., Resolutions, at 71-77(A/810) (1948).

23. 1 Oppenheim, op. cit. supra note 20, Sec. 292 at 369.

24. See Bernard, *On the Principle of Non-Intervention* (1860).

25. Thomas & Thomas, op. cit. supra note 16, at 374.

to mask the true designs of aggressors.<sup>26</sup> For this reason, at least one writer would make non-intervention the legal rule. "The ordinary rule is good for ordinary cases, which, after all, make up at least ninety-nine hundredths of life. To say that it is no rule because it may laudably be ignored once or twice in a generation, is to overturn order in an attempt to exalt virtue."<sup>27</sup>

On the other hand, it may be unwise to refuse a theory legitimacy simply because it has been abused. It may be contended that forcible intervention is itself "wrong" because it creates a breach of international peace. However, contempt for human rights is perhaps a greater threat to peace than attempts to assert through intervention the sanctity of human personality. Unless the right of intervention is asserted, the persecution will continue unchecked.<sup>28</sup> Thus, the value of preventing further outrage may outweigh the harm done by intervention.

Finally, even those vociferous opponents of the legality of humanitarian intervention referred to above admit its moral justification.<sup>29</sup> For example, one such writer stated:

The law upholds as a principle the sovereignty and equality of States from the greatest to the least, and, as a corollary, prohibits intervention. Here, again, in a hundred particular cases, there may be the most powerful inducements to shake off the restraints of the rule. Nay, there may even be cases in which it becomes a positive duty to transgress it -- in which respect it does but resemble every other merely human law.<sup>30</sup>

The latest edition of Oppenheim's International Law recognizes the propriety of collective intervention. "The notion and the prohibition of intervention cannot accurately extend to collective action undertaken in the general interest of States or for the collective enforcement of International Law."<sup>31</sup>

---

26. See Hall, op. cit. supra note 21, at 344.

27. Lawrence, The Principles of International Law 129 (6th ed. 1915).

28. See Thomas & Thomas, op. cit. supra note 15, at 374; H. Lauterpacht, International Law and Human Rights 32 (1950).

29. Lawrence, op. cit. supra note 27, at 129; von Floeckher, op. cit. supra note 18, at 36; Hall, op. cit. supra note 21, at 344.

30. Bernard, op. cit. supra note 24, at 33-34.

31. 1 Oppenheim, International Law Sec. 140a at 319 (8th ed. Lauterpacht 1955).



Thus, there is virtual unanimity among writers on international law that some form of humanitarian intervention is either legally or ethically proper. It would indeed be wrong to unnecessarily brand conduct unlawful which is morally justified. The result would be to restrain legally-minded nations from acting despite an overwhelming need for action. The delay of the democracies in joining battle with Hitler's Germany has shown what a tragic mistake this can be. Therefore, since a particular intervention on behalf of humanity may be regarded with favor by virtually all those concerned with the advancement of international law, humanitarian intervention is lawful under general international law as an exception to the general rule of non-intervention. Instead of labeling the exception as unlawful, the best procedure would be to identify the problems its application involved and then establish safeguards to protect against them.

### PRACTICAL PROBLEMS:

#### THE EXAMPLE OF THE SPANISH-AMERICAN WAR

##### 1. Problem of Perception:

While humanitarian intervention in some form may be lawful, there are grave practical problems in its application, which an analysis of the United States intervention in Cuba in 1898 reveals.

The first problem is one of perception. At the time of the intervention in Cuba there were essentially three crucial parties -- the American public, the United States government, and the Spanish government. American public opinion was based on newspaper reports; the decisions of the governments of Spain and the United States were based on reports from their representatives on the island.

Sensational journalism was the primary source of information for most Americans; in fact, the reading public thrived on excitement. It is not surprising, therefore, that "newspapers reported that some four or five hundred thousand people -- a quarter of the population -- were dead, and the remainder diseased and starving."<sup>32</sup> One story has it that Frederic Remington told William Randolph Hearst he could not do battle sketches because there was no war, to which Hearst replied: "You furnish the pictures; I'll furnish the war."<sup>33</sup>

---

32. Friedel, *The Splendid Little War* 4 (1958).

33. Morgan, *William McKinley and His America* 330 (1963).

A major source of information for the newspapers was the Cuban Junta, a group of Cuban exiles and sympathizers whose purpose was to propagandize for the rebel cause.<sup>34</sup> In December 1896 the New York Journal cited many items of Spanish atrocity; all were in the form of letters or statements from "recently arrived" Cuban emigrants and generally emanated from the Junta.<sup>35</sup>

Richard Harding Davis, a Hearst correspondent, bore witness to the insubstantiality of many of these tales:

I had been kept sufficiently long in Key West to learn how large a proportion of Cuban war news is manufactured on the piazzas of the hotels of that town and of Tampa by utterly irresponsible newspaper men who accept every rumor that finds its way across the gulf, and pass these rumors on to some of the New York papers as facts coming directly from the field.<sup>36</sup>

However, after travelling throughout the island and talking with the people there, Davis sent this report: "Speaking dispassionately, and with the knowledge of the details of many butchereries, it is impossible for me to think of the Spanish guerrillas otherwise than as worse than savage animals. . . . These guerrillas murder and then laugh over it. . . . These men kill to feed their vanity."<sup>37</sup>

But the press did not confine its outcry to charges of random atrocities. The greatest clamor was directed at the policy of re-concentration instituted by General Valeriano Weyler. Davis wrote:

Thousands of human beings are now herded together around the seaport towns of Cuba who cannot be fed, who have no knowledge of cleanliness or sanitation, who have no doctors to care for them and who cannot care for themselves.

Many of them are dying of sickness and some of starvation, and this is the healthy season.<sup>38</sup>

Davis also reported that Weyler's policies did not even advance the Spanish cause. He claimed that the rural population joined the

---

34. Morgan, op. cit. supra note 33, at 331.

35. Wisan, The Cuban Crisis as Reflected in the New York Press (1895-1898) 66 (1934).

36. Davis, Cuba in War Time 103 (1897).

37. Id. at 112.

38. Id. at 54-55.

insurgents rather than let themselves be herded into the cities. Those who were forced into the towns -- women, children, the aged, the infirm -- became an added burden to the Spanish residents there. The devastation of the countryside did not succeed in hampering the insurgents since the rebels were accustomed to sleeping outdoors and foraging for themselves.<sup>39</sup> "So the order failed to distress those against whom it was aimed, but brought swift and terrible suffering to those who were and are absolutely innocent of any intent against the government, as well as to the adherents of the government."<sup>40</sup> At least one writer found in the reported treatment of the civilian population by the Spanish so severe a violation of the rules of civilized warfare that intervention was authorized.<sup>41</sup>

The resulting outcry of the American public led the President to protect Spanish conduct by means of a diplomatic note. Secretary of State Sherman sent a message to the Spanish Ambassador to the United States, Depuy de Lome, which said in part, "He [the President] is bound by the higher obligations of his representative office to protest against the uncivilized and inhumane conduct of the campaign in the island of Cuba."<sup>42</sup>

The United States depended on its representatives for information. The Consul-General in Havana, Fitzhugh Lee, held views which coincided in large measure with those held by Davis. Both men believed that the war would continue until Spain was financially exhausted or until another power intervened and that meanwhile Cuban agriculture would be destroyed causing enormous loss of life and property. Although Davis and Lee disagreed on Spanish intentions to institute reforms, they did agree that nothing approximating autonomy could actually be instituted in Cuba.<sup>43</sup>

The Consul in Matanzas, Mr. Brice, reported:

Over 2,000 (I have the list of names) have died in this city -- want of food -- since January 1 up to October 1, 1897. . . . Local authorities are powerless and unable to cope with the situation. Cities and towns are bankrupt

---

39. Davis, op. cit. supra note 36, at 42-43.

40. Id. at 43.

41. Woolsey, *America's Foreign Policy* 63-64 (1898).

42. Sherman to de Lome, June 26, 1897. *Spanish Diplomatic Correspondence and Documents* 26 (1905) [hereinafter cited as *Sp. Corr.*].

43. Morgan, op. cit. supra note 33, at 341. Davis, op. cit. supra note 36, at 37, 134-43.

and can give little or no relief to the starving thousands. . . . Allow these people to go out into the country and plant crops, and in less than sixty days all will be well and starvation a thing of the past.<sup>44</sup>

Another set of reports encouraged restraint, however. United States Ambassador Woodford in Spain urged that diplomacy could accomplish all of the ends of military intervention. As late as April of 1898 he wrote McKinley, "I believe you will get final settlement before August 1 on one of the following bases: Either such autonomy as the insurgents may agree to accept, or recognition by Spain of the independence of the island, or cession of the island to the United States."<sup>45</sup>

In late 1897 the Spanish government recalled General Weyler and sent General Blanco to Cuba. Blanco proclaimed autonomy and issued edicts against reconcentration, but the giving of the orders did not in itself insure their accomplishment. On January 8, 1898, Lee reported that reconcentration seemed as flagrant as ever despite the new edicts against the policy.<sup>46</sup>

The belief that Spanish promises did not guarantee results was strengthened by the riots which broke out in Havana on January 12, 1898. Lee telegraphed the next day: "After a day and night of excitement, all business suspended, and rioting, everything quiet at this hour. . . . Mobs shouted yesterday, 'Death to Blanco and death to autonomy,' while 'Viva Weyler' was frequently heard."<sup>47</sup> The result of the riots was a widespread conviction in the United States, shared by the President, that autonomy had failed.<sup>48</sup>

Thus, a basic lack of confidence in Spain's ability -- whatever her intentions -- to fulfill her promises caused the President to embrace the views of Lee and Brice and to reject those of Ambassador Woodford. On April 1, 1898, the President told Congress:

The long trial has proved that the object for which Spain has waged the war cannot be attained. The fire of

---

44. Report of Mr. Brice to Mr. Day, October 15, 1897. [1898] Foreign Rel. 596, 597 (1901).

45. Mr. Woodford to President McKinley, April 10, 1898. [1898] Foreign Rel. 747 (1901).

46. Morgan, op. cit. supra note 33, at 352.

47. Mr. F. Lee to Mr. Day, January 13, 1898. [1898] Foreign Rel. 1025 (1901).

48. Benton, *International Law and Diplomacy of the Spanish American War* 107 (1908).

insurrection may flame or may smolder with varying seasons, but it has not been and it is plain that it cannot be extinguished by present methods. The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba.<sup>49</sup>

Spain did not deny that the war was causing immense suffering. General Blanco wrote the Prime Minister of Spain:

The army, exhausted and anemic, filling the hospitals, without the force to fight or hardly even to hold up its weapons; more than three hundred thousand *concentrados* dying or starving, perishing from hunger and misery around the cities; the people of the countryside terrified, prey to genuine horror, forced to abandon their farms or lands, suffering under the most hideous tyranny, with no recourse to escape their terrible situation except to go strengthen the rebel ranks.<sup>50</sup>

Nevertheless, the Spanish government disagreed with the United States government in assessing blame for this situation. The Spanish felt that the rebels had no justification for starting the conflict. Their position was adopted by the American journalist, George Rea: "I lived in Cuba for five years previous to the insurrection, and spent the best part of my time in the country, and I must say that if the Cubans were oppressed, I failed to discover in what manner; for in no other country is liberty of action more enjoyed than in Cuba."<sup>51</sup> Furthermore, Spain insisted that it had been the destruction of agriculture by the rebels not the reconcentration order, which had first caused the people of the countryside to flock to the cities and towns of the island. The order itself was merely a practical political measure to isolate the rebels so that they could be identified and captured,<sup>52</sup> and similar measures had in fact been taken by the United States in the past.<sup>53</sup>

49. [1898] Foreign Rel. 759 (1901).

50. May, *Imperial Democracy; The Emergence of America as a Great Power* 163 (1961).

51. Rea, *Facts and Fakes About Cuba* 37 (1897).

52. Duke of Tetuan to de Lome, August 4, 1897. Sp. Corr. 32; Rea, *op. cit. supra* note 51, at 90-97.

53. Benton, *op. cit. supra* note 48, at 107. Fuller, *Spanish Treaty Claims Commission: Report 1901-1907* 23 (1907); See note 1 accompanying opinion of Commissioner Chandler at 271-282. Compare treatment of Indians by the United States, and devastation of the South in the Civil War. Sp. Corr. 28-35. Compare also the strategic hamlet system employed on United States advice in South Vietnam.

Unlike the United States government, the Spanish felt the war would soon end in the absence of outside interference.

The year 1898 opened with the formation of the insular government of Cuba. It was not long before its beneficial effects made themselves felt as anticipated. Many rich men who had voluntarily emigrated from Cuba returned to their homes; discord and doubt began to appear in the insurgent ranks; important adhesions took place; and so much confusion was produced in the rebel armies that it became necessary for their chiefs to impose exemplary and severe punishments and threaten with the penalty of death those who attempted to give in their adhesion.<sup>54</sup>

Spain believed that the prolongation of the war was due to the encouragement received by the rebels from the United States: "The reserve with which the new autonomous constitution was received shows that there was a preconceived plan to render it nugatory and cause it to break down in order to realize the covetous and traditional ambition of North America."<sup>55</sup>

The Spanish government was willing to rescind its policy of reconcentration, to help resettle the Cuban population, to suspend hostilities, and to grant a limited amount of autonomy; but it would not consider granting independence. "The Spanish government and the whole people of Spain maintain their absolute sovereignty over the Spanish Antilles, which were discovered, peopled, civilized, and enriched by the legitimate descendants of those who opened up the American continent to the light of progress and Christianity."<sup>56</sup>

If the United States had made it clear that it would not intervene in Cuba for any cause at any time, there might have been endless internecine warfare. On the other hand, if the insurgents had capitulated, there would have been no legitimate justification for United States intervention.<sup>57</sup> Since action was taken, the result of inaction is a matter of speculation.

---

54. Gullon to ambassadors abroad. Sp. Corr. 128.

55. Ibid.

56. Id. at 131.

57. Intervention to help a colony free itself from a colonial power may be permissible today. Cf. United Nations Resolutions on Colonialism, e. g., Gen. Ass. Resolution 1514 (XV) of December 14, 1960: United Nations support of Indonesia in freeing itself from the Netherlands; Sohn, The Role of the United Nations in Civil Wars, 57 Am. Soc. Int'l L. Proceedings 208, 209 (1963). Nevertheless, in 1898 such a right was not generally recognized. Stowell, op. cit. supra note 8, at 345-49.

The recent intervention in the Dominican Republic provides a striking parallel to our conduct in the Spanish-American War as regards the problems of perception. The views of Dominican ex-President Juan Bosch coincided with those of a large segment of, for example, the French press, which felt that the rebel movement was in no danger of a communist takeover, and that without United States intervention the rebels would quickly have won a revolutionary victory for the democratic left.<sup>58</sup> Senator William Fulbright, the Chairman of the Senate Foreign Relations Committee, held the following viewpoint:

The United States intervened forcibly in the Dominican Republic in the last week of April 1965 not primarily to save American lives, as was then contended, but to prevent the victory of a revolutionary movement which was judged to be Communist-dominated. . . . This was based on fragmentary and inadequate evidence. . . . The evidence suggests a chaotic situation in which no single faction was dominant at the outset and in which everybody, including the United States, had opportunities to influence the shape and course of the rebellion.<sup>59</sup>

On the other hand, Fulbright's colleagues on the Committee had a very different understanding of the situation. Senator Long asserted, "We had enough information to know that the Dominican revolt was a move in the direction of communism."<sup>60</sup> Senator Smathers said:

The country was on fire; people were dying; property was being destroyed; Communists were on hand and chaos was in charge. . . . The overwhelming consensus of advisors was of the belief that we had better send in enough forces to make certain that the indiscriminate shooting and looting would be stopped, and that the Communists would not take over. . . . At that time we thought that some 1,560 people were killed in the first few days. . . . It may be that there were not 1,560 people killed. However, many of them were killed, and millions of dollars worth of property was destroyed.<sup>61</sup>

Although we may speculate as to the accuracy of these varying views of the situation in the Dominican Republic, the fact of intervention prevents our discovering the extent of Communist influence and human suffering which would have existed if the United States had followed a policy of non-intervention.

---

58. Time, May 7, 1965, p. 32; L'Express, May 31-June 6, 1965, p. 32-33.

59. 111 Cong. Rec. 23002, 23003 (1965).

60. Id. at 23007.

61. Id. at 23006, 23007.

## 2. Problem of Who Should Intervene:

A second problem revealed by analysis of the Spanish-American War is, simply, who should intervene. Acquiescence in intervention may be taken as an acknowledgement of the propriety of humanitarian intervention, but the Cuban experience indicates that this is not always true. Passive acceptance by other nations of one country's assertion of right does not necessarily establish it as an accepted legal principle. The legal significance of inaction by other nations in any instance of intervention requires a study of the worldwide political situation at that time.

McKinley had known long before his intervention in Cuba that the European powers would pose no serious threat to his plan. Ambassador Woodford had sounded the depth of opinion among the continental powers and reached the conclusion that despite their pro-Spanish inclination, the continental powers would not risk war for the sake of Spain.<sup>62</sup>

Both Germany and Russia feared the potential loss in trade and investment with the United States which war with her might cause. Even more than this, they feared that other European states might take political advantage of such a war -- watching them dissipate their strength across the ocean and then attacking them.<sup>63</sup> Thus, these nations demanded that all Europe unite behind Spain before they would support her.

France feared a political and economic combination of America and England against her interests in the Far East. Thus she demanded that England be brought into the European combination before likewise joining her forces behind Spain.<sup>64</sup>

England, alone among European states, supported the United States. The ties of language, culture and similarity of interest in the Far East led the British to ignore past international political differences such as the War of 1812 and the Venezuelan Boundary Dispute. Prime Minister Balfour made it clear to Secretary of State Hay on April 6, 1898, that "neither here nor in Washington did the British Government propose to

---

62. Morgan, op. cit. supra note 33, at 343: Letter from Woodford to Sherman, Dennis, Adventures in American Diplomacy 1896-1906 67 (1928).

63. Letter from Chancellor von Bulow to Prince Eulenberg, May, op. cit. supra note 50, at 198. Report of the French Ambassador on talks with the Russian Foreign Minister, May, supra, at 210-11. Letter from Ambassador Hay to Senator Henry Cabot Lodge, Dennis, op. cit. supra note 62, at 98.

64. May, op. cit. supra note 50, at 207.



take any steps which would not be acceptable to the Government of the United States."<sup>65</sup> Thus the chain of causes which might have prevented United States intervention in Cuba was broken.

When the rest of the world refuses to take action, the decision is left to the individual nation which must proceed on the basis of subjective criteria. As a result, some atrocities go unpunished by humanitarian intervention while other atrocities are committed in the name of humanitarian intervention. Where the decision to intervene falls to a single state, it should be safeguarded by a requirement that the state be totally disinterested.

The United States, in fact, claimed to be a disinterested state in the Spanish-American conflict.<sup>66</sup> It pointed to its humanitarian concern and an express Congressional disclaimer of any intention to exercise any power of control over Cuba other than to resolve the immediate dispute. But America's claim to disinterestedness was controverted.<sup>67</sup> Public opinion was indeed largely based on humanitarian feeling, but a great many other motives have been suggested:

For one thing, it is clear that various groups saw war with Spain over Cuba as a means to solve other problems. Many agrarians viewed it as a way to monetize silver at home and thus pave the way for a general expansion of their exports to the sterling areas of the world. Some labor groups thought it would ease or resolve immediate economic difficulties. And many important businessmen, as contrasted with the editors of business publications, came to support war for specific commercial purposes as well as for general economic reasons.<sup>68</sup>

Indeed, it is frequently claimed that business interests had a significant part in urging the United States to war.<sup>69</sup> The war sentiment of "dollar diplomacy" is commonly assumed to have been prevalent at this time. Many scholars of this period, however, would now disagree with this assumption.

---

65. Dennis, op. cit. supra note 62, at 72.

66. Stowell, op. cit. supra note 8, at 121 n. 53; Straus, Humanitarian Diplomacy of the United States, 6 Am. Soc. Int'l L. Proceedings 45, 50-51 (1912); Draper, The Rescue of Cuba 52 (1899).

67. See Rougier, supra note 8, at 503.

68. Williams, The Tragedy of American Diplomacy 32 (1959).

69. Id. at 32-34.

Actually, businessmen, far from perpetrating the war, were, except for a few who made a living off Cuban investment and trade, generally more reluctant than most citizens to disturb the ordinary pattern of peace and commerce; They were largely opposed or indifferent to the selfish, material aspects of the enterprise until the acquisition of the Philippines raised great hopes for new markets.<sup>70</sup>

President McKinley was impressed by the humanitarian call to rescue Cuba from utter annihilation,<sup>71</sup> but he relied heavily on the support of leading businessmen who were at first opposed to risking war.<sup>72</sup> In time, however, the business community ceased to oppose the pressure of public opinion for intervention. The Cuban situation had caused such a disequilibrium in the United States that the risks of armed intervention seemed minor compared to the advantage of bringing peace to Cuba. Unless the businessmen had supported intervention, they would have been prone to public condemnation as cowardly, mercenary and inhumane. Since it was now clear that the European powers would not support Spain, it probably seemed safe to businessmen to follow the lead of public opinion and support McKinley in whatever he chose to do.

There was, in addition, another factor acting on both the business community and the President; namely, the small but vocal group of expansionists whose arguments helped the business community perceive the economic advantages of conquest in the Philippines.<sup>73</sup>

Sea power, new markets, new investment opportunities, protection of trade routes, territorial expansion -- all these were bound up with a genuine missionary zeal, but as far as Mahan, Roosevelt, Lodge and Albert J. Beveridge were concerned, they were probably sufficient reasons in themselves for meeting the moribund Spanish Empire in battle.<sup>74</sup>

Ambassador Woodford stated that the war began as a result of popular indignation at particular incidents -- a letter critical of McKinley by the Spanish Ambassador; the explosion of the battleship

---

70. Osgood, *Ideals and Self-Interest in America's Foreign Relations* 44 (1953). See May, *op. cit. supra* note 50, at 90.

71. Morgan, *op. cit. supra* note 33, at 335.

72. May, *op. cit. supra* note 50, at 118.

73. Morgan, *op. cit. supra* note 33, at 332.

74. Osgood, *op. cit. supra* note 71, at 45.

Maine; and, in light of widespread anti-Catholicism in the United States, the suggestion of the Spanish Minister of Foreign Affairs that the request of the Pope for an armistice was at the instance of McKinley.<sup>75</sup> But these incidents would not have caused war unless the public had been awaiting it.<sup>76</sup>

McKinley's intervention message to Congress enumerated several motives for intervention in addition to the humanitarian one -- among them were the protection of American lives and property in Cuba, the prevention of injury to the commerce of the United States, and the necessity of keeping the Cuban situation from becoming a threat to the security of the United States.<sup>77</sup>

American intervention, then, was based on varied motives. It may be that humanitarian concern was primary. Once in the war, however, more hidden motives emerged, to be reflected in the results of the experience.

Americans began the war not out of a realistic calculation of national advantage but largely as an idealistic crusade to free the Cubans from Spain's imperial shackles. Yet they ended it with a far-flung empire of their own from the Philippines to Hawaii to Puerto Rico. They undertook the war as a local action, but their victory affected the relations among all the great powers of the world.<sup>78</sup>

The results of the Spanish-American War demonstrate how hidden, selfish motives may be mingled with publicized altruistic ones and ultimately come to predominate. For this reason, it is necessary to determine whether an interested party may properly intervene at all. The authorities disagree sharply.<sup>79</sup>

Governments are not usually willing to sacrifice the lives of their own people where no compensation is involved. Even when they are shocked by the actions of another government, and would approve of measures to stop it, no single government is willing to expend the money and manpower necessary for action.

---

75. Benton, op. cit. supra note 48, at 88 n. 11.

76. Moore, *The Principles of American Diplomacy* 208 (1918).

77. [1898] *Foreign Rel.* 757 (1901).

78. Osgood, op. cit. supra note 71, at 42.

79. Stowell, op. cit. supra note 8, at 62-64 n. 14; Benton, op. cit. supra note 48, at 104.

Analysis of the Spanish-American War does not solve the problem. First, we cannot know how a failure to intervene would have resulted. Second, the results of the intervention were ambiguous. Death and disease on the island were reduced sharply, and Cuba eventually received its independence. On the other hand, the Platt Amendment, adopted in the wake of the war, led to United States intervention in the internal politics of Cuba and a history of resentment against United States economic and political control, culminating in today's phenomenon of Fidel Castro.

In the Dominican Republic, peace of some sort has also been achieved; but we do not yet know at what price to the future of our relations with the countries of Latin America and to our own sense of propriety in future actions. In the Dominican Republic itself there have been riots recently which apparently manifest a rampant anti-American feeling.<sup>80</sup> Although one might point to the action of the Organization of American States as showing a consensus among the nations of the Western Hemisphere on the propriety of the action, it is equally sound to argue that the Organization of American States acted only because the United States intervention caused what would have been a successful revolution to degenerate into a stalemated bloodbath.

### Conclusion

It would appear that the problems revealed by this study are just those considerations which the peace-keeping machinery of the Organization of American States and the United Nations was designed to meet. If a right to intervene is based on the existence of a particular situation, the situation should exist in reality and not just in the eyes of one intervening power. However, the inaccessibility of absolute truth should not bar action. Intervention on behalf of humanity may be necessary even though there is no guarantee that it is based on wholly accurate views of the situation. Knowledge of the problems involved provides a warning to establish safeguards in order to approach as closely as possible the right action.

All sides must be heard and the evidence gathered as accurately and exhaustively as possible in the time available. If a very high proportion of nations fails to agree on the same interpretation of the evidence, no action should be taken. These safeguards are found in the peace-keeping-machinery of both the United Nations and the Organization of American States. Therefore, intervention by a single state should be based on the collective findings of these organizations and not merely on its own intelligence reports.

The cessation of protracted internecine warfare resulting from intervention in Cuba in 1898 and the Dominican Republic in 1965

---

80. N. Y. Times, February 9, 1966, p. 1, col. 6.

underscore the need for a power of intervention. When inaction on the part of all other nations makes it necessary, an interested nation should be permitted to intervene. Detrimental results of those interventions indicate, on the other hand, that such action must have international approval.

In the Spanish-American War the nations of continental Europe supported Spain in principle, although they were unwilling to support their belief with force. Therefore, the unilateral intervention of the United States was unlawful. In the Dominican Republic intervention of 1965 the United States acted before world opinion had been expressed. Although the dangers of delay may require action to be taken before the evidence of the grounds for action is conclusive, principles of international law require a consensus of nations that the evidence of danger is sufficiently persuasive to warrant intervention. *Ex post facto* approval provides no safeguard to the dangers of hasty action by an interested party. Therefore, once again, the United States has acted wrongly.