

Draft for a Convention on the Rights and Duties of Foreign States in Cases of Civil Strife[†]

Article I

No state shall foment civil strife in another state or, save under mandate of the United Nations or a Competent Regional Organization or as provided for in Article III of this Convention, take part in such strife in another state by action designed to determine the issue of the struggle.

Commentary

This is a prohibition of participation unauthorized by a regional or universal organization even when an incumbent government asks for aid. The fomentation and support of civil strife in areas deemed strategically important are taking the place of open, declared war as a mode of maintaining or expanding national power, and active assistance to one side invites counter-assistance to the other.

It may be thought that Article I should be so drafted as to make clear that it does not prohibit assistance to an incumbent government begun before the outbreak of civil strife. The objection to this is that it would permit the continuance of military assistance of a type and volume likely to invite counter-action by other states. The civil struggle then takes on an international character and scope that gravely threatens world peace and, in this nuclear age, even human survival.

It has been suggested that we should be content at this stage with a norm prohibiting only tactical assistance to either side in civil strife (see, e.g., T.

[†]This draft convention was prepared by a special committee of The United Presbyterian Church in the U.S.A. by authority of the 180th General Assembly of the Church (1968). The members of the committee are Dr. Carey B. Joynt, a professor of International Law at Lehigh University, Chairman; George M. Aman III, of Philadelphia, Pa.; and Jay W. Jacobson, of New York, New York. The adviser to the committee is Dr. Percy E. Corbett, also of Lehigh University.

Farer's article in *Harvard Law Review*, January, 1969, pp. 511-541). There would be difficulty in securing and enforcing agreement on the meaning and scope of "tactical" — difficulty that might be no less than that of securing and enforcing agreement on a more inclusive type of control. As for any fear that the total prohibition of unilateral external aid might freeze social, economic and political development, this possibility can be met by proper arrangements in the U.N., for example within the framework of the Declaration and Covenants on Human Rights. In any event, the dangers inherent in foreign intervention are so great that the risk of impeding becomes relatively unimportant.

It is to be noted that the word "intervention" is not used in our draft. A great variety of meanings attaches to that term and any attempt at adequate definition confronts all the difficulties that have thus far defeated the attempt to define aggression.

Clearly Article I would prohibit tactical or other aid designed to determine the issue of civil strife. It would not prohibit development or humanitarian assistance. Any attempt to disguise prohibited assistance can be dealt with under Article III.

Article II

States shall use due diligence to prevent the formation or training in their territory of groups planning to initiate or participate in civil strife in a foreign state, and to prevent such groups from passing through or departing from their territory on their way to the state in which they plan to act.

Commentary

Compare Convention of Havana, 1928 on the Duties and Rights of States in the Events of Civil Strife; Draft Code of Offenses against the Peace and Security of Mankind, General Assembly Official Records, Supplement 9, 1954; and General Assembly Resolutions 2131 (XX) 1965, and 2225 (XXI) 1966.

Article III

Any state may bring to the attention of the Security Council of the United Nations for appropriate action a complaint that Article I or II of this Convention is being violated.

Pending effective action by the United Nations, the complainant state may take such counter-measures as it deems necessary to its security, or

the security of a state to which it has a treaty obligation. The reasonableness and proportionality of such counter-measures shall be subject to examination and appropriate action by the United Nations.

Commentary

The purpose of the convention is to make any external interference in civil strife a matter for collective rather than unilateral decision. Article III invites early reference to the United Nations at a stage where Great Power interests have not become involved to a point where collective decision and action becomes impossible. The Article also leaves open the possibility that the Security Council may be blocked by a veto, but can mobilize the majority sufficient for the procedural reference to the General Assembly. Finally, the text is drafted in full cognizance of the fact that states seeing a serious threat in the situation are unlikely to wait indefinitely for effective action under United Nations authority. Provision is thus made for "counter-intervention," with the proviso that it in turn may become the subject of complaint to collective authority.

It has been suggested that counter-measures by a complaining state should be limited to cases of armed attack. This goes farther than our draft, which would permit such measures, pending or failing U.N. action against massive aid designed to determine the issue of civil strife. Such aid might well take a form other than the direct supply of arms.

No mention is made in this Article of regional action. The reason is that Articles 52-54 of the United Nations Charter already require the Security Council to make use, under its general authority, of regional organizations, "for dealing with such matters relating to the maintenance of international peace as are appropriate for regional action."

Article IV

Any dispute regarding the interpretation or application of this Convention which the parties fail to settle by peaceful means of their own choice shall be referred to the International Court of Justice.

Article V

This Convention shall be open to signature by all States, members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other state invited by the General Assembly of the

United Nations to become a party to the Convention. It shall come into force thirty days after the deposit with the Secretary-General of the United Nations of instruments of ratification by France, the Union of Soviet Socialist Republics, the United Kingdom, the United States and thirty other signatories.