

**Swatek-Evenstein, Mark: A History of Humanitarian Intervention.** Cambridge: Cambridge University Press, 2020. ISBN 978-1-107-06192-7 (Hardback). 286 pp. £ 85.-

Through a careful exploration of two centuries of sources, Mark Swatek-Evenstein's *A History of Humanitarian Intervention* demonstrates how advocates of "humanitarian intervention" have created historical narratives to support their agenda. He comprehensively reviews the relevant incidents and the writings of international law publicists, undermining the persistent search for historical precedents that has been a staple of the scholarship while at the same time constructively explaining the different legal and diplomatic worlds in which those incidents took place. A revised and expanded version of his *Geschichte der "Humanitären Intervention"* (Nomos 2008), Swatek-Evenstein limits himself to explicating the complicated legal and political history of humanitarian intervention, providing context that is typically lacking from the stories told by those who have claimed and constructed its legal pedigree. In particular, he helpfully places "the evolution of the doctrine of 'humanitarian intervention' in the context of the evolution of the international legal system in which the doctrine operates" (p. 4). Doing so changes our perspective, situating humanitarian intervention in its nineteenth-century form, not as the precursor of twentieth-century human rights and its protection of individuals but instead as a part of the project of creating a secular Christian "Europe" of nation-states with the Muslim Ottoman Empire as its foil. Working in the human rights field himself, Swatek-Evenstein is particularly critical of the lack of real action to protect individuals from man-made humanitarian crises despite the abundance of humanitarian talk. "How meaningful is our discussion about the legality of potential efforts to use force to prevent people from becoming victims", he asks, "if our record of helping actual victims of these atrocities is what it is?" (p. xi). While left unsaid, the book's clear implication for international lawyers is that those who wish to promote the legality of humanitarian intervention should base their arguments on policy and not history, though the author understands the persistent desire to turn to the past, even if only to mythologise it (pp. 29-31).

Swatek-Evenstein's key move is to recognise the historical context in which nineteenth-century interventions took place. Proponents of humanitarian intervention have scoured the century for examples of the practice, but in their rush to create a useable genealogy they have not considered the conditions under which those interventions were justified. Swatek-Evenstein focuses on three underappreciated circumstances. First, he recognises that "[e]arly theorists of a right of 'humanitarian intervention' operated with an underlying and often invisible assumption of an international law of unequal sovereigns" (p. 10). The inequality of states stemmed initially from religion

(Christian/non-Christian) but was subsequently replaced by (or transformed into) notions of “civilisation” (civilised/non-civilised). Though a “state”, the Ottoman Empire fell on the wrong side of the divide, and hence its legal rights as a state, including the right to be free from the intervention of other states, were not absolute. In the hierarchy of states, those in the top flight had rights *vis-a-vis* their unequal peers in the second and lower tiers.<sup>1</sup> Second, Swatek-Evenstein shows how nineteenth-century international law accepted the possibility of intervention, forcible and non-forcible, though the bounds of what, if anything, was permissible would change over the course of the century. In a world of unequal states, sovereignty and intervention were not incompatible, as they are thought to be today (p. 32). Intervention, limited by its aims, was not a threat to sovereignty, and for this reason it was part of the law of peace, not war. Indeed, intervention was a “feature”, not a violation, of the law (p. 35). It was, according to one writer, “an act of police for enforcing recognized rights, and the only means, apart from war, for enforcing the rules of International Law” (p. 37). Intervention was an entitlement, however, that was bestowed only on a select group of states. Third, Swatek-Evenstein explains that “humanitarian” was a category delimited in content by the idea of civilisation. International law was “not a law for ‘mankind’ but a law of ‘humanity’, that is the part of ‘mankind’ (explicitly) recognised as ‘human’” (p. 23). This is why certain atrocities (massacres of Christians) were considered “humanitarian” crises and others (of Muslims and Jews) were not. Putting the three points together, humanitarian intervention described the actions of the “civilised” European powers to protect Christians who lived in states outside of “Europe,” in particular the Ottoman Empire. By definition, then, humanitarian interventions could not take place between civilised states.

With this conceptual and legal framework set out, Swatek-Evenstein reviews the many claimed examples of humanitarian intervention, beginning with a chapter on the long nineteenth century that comprises half the book. Proceeding chronologically, he recounts the intervention of the great powers in the Greek war of independence (1820 s), the “intervention” (his quotation marks) in the Kingdom of the Two Sicilies (1856), the intervention in Lebanon (1860), the situations in Poland (1863) and Crete (1866), the crisis in the Balkans (1875-1878), the U.S. intervention in Cuba (1898), and finally the situations in China (1900), Macedonia (1903-1908, 1913), and Armenia

<sup>1</sup> Acknowledging Swatek-Evenstein’s *Geschichte der “Humanitären Intervention”*, Jochen von Bernstorff makes a similar point in his article “The Use of Force in International Law before World War I: On Imperial Ordering and the Ontology of the Nation-State”, EJIL 29 (2018), 233, 238.

(1915-1916), the last of which fitted the criteria for humanitarian intervention and so illustrates, through lack of action, the discretionary nature of the right to intercede. He also reviews the ways in which these episodes have been considered by publicists writing about international law and humanitarian intervention. Swatek-Evenstein's in-depth examination of this period shows the gradual, though not universal, articulation and acceptance of justifications for humanitarian intervention "by humanity" in the territory of states that "lacked" humanity, while, at the same time, the ambivalence of many to describe such interventions as law (pp. 159, 163). The right of humanitarian intervention during these years was perhaps best conceptualised as "an instrument of 'true local customary law' for European powers", one that "imposed no duties" yet "justified the violence they exercised" (p. 164). Humanitarian intervention, so defined, found its "natural habitat" in the nineteenth century (p. 165).

But this formulation of humanitarian intervention, if it ever truly held sway, quickly became outmoded in the twentieth century, as the world that once gave it life disappeared. Interventions of course did not end though, nor did the claims of humanitarian action, as Swatek-Evenstein shows in the next chapter. Japan's invasion of Manchuria in 1931-1932, Italy's annexation of Ethiopia in 1935-1936, and Germany's annexation and invasion of portions of Czechoslovakia in 1938-1939 were all justified, at least in part, in the name of humanitarianism, though they were not accepted by others as such. Nazi theorists in particular emphasised the ethnic dimensions of intervention, the right to intervene to protect co-nationals in third states in the name of humanity. Though the continued status of the nineteenth-century's version of humanitarian intervention into the first half of the twentieth century may be in doubt, there was one aspect of that tradition that certainly survived: humanitarian intervention would not be used to come to the rescue of the Jews of Europe.

The United Nations Charter would create further distance from the nineteenth-century model. Bruno Simma in *Universelles Völkerrecht* and Ian Brownlie in *International Law and the Use of Force by States* would articulate the majority view that the Charter's prohibition on the use of force extended to humanitarian intervention in the absence of Security Council authorisation. A dissenting view would emerge, best elaborated by Michael Reisman and Myres McDougal in their 1968 paper "Humanitarian Intervention to Protect the Igbo". But their efforts at persuasion have not been successful. Three decades later, the-seemingly promising Kosovo precedent, instead of a foretelling of a new world, "proved to be a dead end for 'humanitarian intervention'". Indeed, Swatek-Eventstein writes, "the future of the history of 'humanitarian intervention may very well be in the past"

(p. 240). The coalescence of ideas and practices that made humanitarian intervention explicable in its particular and limited form in nineteenth-century Europe never came together in the same way in the twentieth century.

Others have critiqued the romantic histories that intentionally or not have sought to justify the contemporary inclinations of some to use military force to protect humanity. This book, in its relentless recounting of the facts of relevant incidents going back two centuries and of the interpretations and understandings of those incidents by contemporary lawyers and later writers, should similarly give great pause to those who would base their legal arguments on that history.<sup>2</sup> The world of the past, Swatek-Evenstein shows, was one very different from our own, and we cannot base the latter on the former. In the end, his story is a sorrowful tale. The past cannot save us from the law. The past is, to exaggerate slightly, escapism. We must instead justify humanitarian interventions in our own legal ways and on our own legal terms, if we are going to do so at all.

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<sup>2</sup> Among many other recent books, one might also consult Fabian Klose (ed.), *The Emergence of Humanitarian Intervention: Ideas and Practice from the Nineteenth Century to the Present* (Cambridge: Cambridge University Press 2015); Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815-1914* (Princeton: Princeton University Press 2012).