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Invitations to Intervene after the Cold War

Towards a New Collective Model

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I. INTRODUCTION

The argument supporting a right to intervene at a government's request would seem straightforward. The UN Charter endows a state with a virtually absolute right to bar outside forces from entering upon its territory. But a government, as the state's agent, has broad discretion to exercise this right or not to do so – and, if not, to invite foreigners to assist in any actions the government could lawfully undertake itself. That choice is simply an example of states' general ability to consent to actions otherwise considered unlawful. Consent – so the argument goes – precludes the wrongfulness of the foreigners' presence and vitiates any violation of the state's territorial integrity.

Despite this appealing logic, few scholars believe the claim accurately describes contemporary international law.[1] The debates are legion and wide-ranging. Some address doctrinal issues, such as the disagreement about how a regime's consent to intervention operates: as conduct simply not prohibited by the primary norm against aggressive force, or as a

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[1] See the citations collected in Antonio Coco and Jean-Baptiste Maillart, 'The Conflict with Islamic State: A Critical Review of International Legal Issues', in Annyssa Bellal (ed.), *The War Report: Armed Conflict in 2014* (Oxford: OUP 2015), 388–419 (394, fn. 27); Erika de Wet, 'The Modern Practice of Intervention by Invitation in Africa and Its Implications for the Prohibition of the Use of Force', *European Journal of International Law* 26 (2016), 979–98 (992, fn. 80); Benjamin Nussberger, 'Military Strikes in Yemen in 2015: Intervention by Invitation and Self-Defence in the Course of Yemen's "Model Transitional Process"', *Journal on the Use of Force and International Law* 4 (2017), 110–60 (130, fn. 124). But see Yoram Dinstein, *Non-International Armed Conflicts in International Law* (Cambridge: CUP 2014), 76–81 (supporting the consent theory).

circumstance precluding wrongfulness under the secondary norm of state responsibility.[2] Others concern how the consent theory relates to cognate principles of international law. For example, the prohibition on the use of military force across borders is widely recognised as a ius cogens norm, prohibiting contrary agreements;[3] if that is correct, then – by definition – a state cannot consent to the violation of its own territorial integrity by inviting outside forces.[4] But a broad ius cogens prohibition on consensual intervention is not widely accepted,[5] and indeed the problem may be avoided altogether if one views lack of consent as an element of the primary norm against aggressive force, since then consent would not operate to set aside a purportedly absolute rule.

Another criticism drawing on a cognate doctrine concerns the interests to be furthered by an invitation. The consent theory is agnostic on the reasons why an invitation is issued and the goals to be sought by the intervening state. An internal conflict may involve a pure contest of power and not implicate any significant interests of international law apart from ending the human

[2] International Law Commission (ILC) Special Rapporteur James Crawford took the former view, arguing that the Articles on State Responsibility should not include a consent defence. 'It seems that to treat consent in advance as a circumstance precluding wrongfulness is to confuse the content of the substantive obligation with the operation of the secondary rules of responsibility, whereas to treat consent given in arrears as such a circumstance is to confuse the origins of responsibility with its implementation (mise en oeuvre)': James Crawford, *Second Report on State Responsibility*, UN Doc. A/CN.4/498, 30 April 1999, 2401st Meeting, Add.1–4. But the ILC ultimately rejected this idea and provided, in Art. 20, that consent is a circumstance precluding wrongfulness, relying on a variety of practical and theoretical arguments: ILC, *Report on the Work of Its Fifty-Third Session*, UN Doc. A/56/10, 121, Art. 20 (2001). See Federica Paddeu, *Justification and Excuse in International Law* (Cambridge: CUP 2018), 152–3. See also Florian Kriener, 'Invitation: Excluding ab Initio a Breach of Art. 2(4) UNCh or a Preclusion of Wrongfulness?', *Heidelberg Journal of International Law* 80 (2020), 643–6; Jure Vidmar, 'The Use of Force and Defences in the Law of State Responsibility', Jean Monnet Working Paper 05/15 (2015), 4–6; Cliff Farhang, 'The Notion of Consent in Part One of the Draft Articles on State Responsibility', *Leiden Journal of International Law* 27 (2014), 55–73 (69–71).

[3] See ILC, Articles on the Responsibility of States for Internationally Wrongful Acts, GAOR, 56th Sess., Suppl. 10, 43 *et seq*., Art. 26, cmt. 5, 85, UN Doc. A/56/10 (2001) (ILC Draft Articles).

[4] See Paddeu, *Justification and Excuse* (n. 2), 163–4. The United States took the position that if a treaty between the Soviet Union and Afghanistan were understood to authorise the 1979 Soviet intervention, that treaty would be void as contrary to ius cogens. See Olivier Corten, *The Law against War* (Oxford: Hart 2010, transl. by Christopher Sutcliffe), 257. The argument is more widely accepted in reference to treaties that allow consent to interventions prospectively. See Brad R. Roth, 'The Illegality of "Pro-Democratic" Invasion Pacts', in Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law* (Cambridge: CUP 2000), 328–42.

[5] The ILC noted, in commentary to Art. 26 of the Articles on State Responsibility, concerning peremptory norms, that 'in applying some peremptory norms the consent of a particular State may be relevant. For example, a State may validly consent to a foreign military presence on its territory for a lawful purpose.' See ILC Draft Articles (n. 3), Art. 26, cmt. 6.

tragedy that attends any war. But other conflicts may implicate those objectives directly. A government may be challenged by rebels tied to transnational terrorist networks.[6] Or a legitimately elected leader may be ousted from power and take up arms to regain her office.[7] Or an insurgency may challenge a regime engaged in mass human rights violations.[8] All these scenarios raise the question of whether international law should be concerned not with the simple *fact* of intervention by invitation but with the *reasons for* intervention.[9] The consent theory set out above does not take such substantive objectives into account.

A third set of critiques focus on the policy consequences of consent theory. One argues that a party to an internal conflict is most likely to seek assistance at precisely the time outside intervention in national politics is least desirable. Governments and opposition parties to an internal conflict need help when they are unable to prevail on their own. But such weakness, especially on the part of incumbent governments, evidences a deep division among citizens on fundamental questions of national policy and leadership.[10] Should the balance in such circumstances be tipped by outside forces? Or should the principle of internal self-determination protect the citizenry as a whole from intrusions on their political autonomy?[11] Relatedly, if external assistance enhances the strength of the weaker party, then the addition of foreign forces is likely to prolong the conflict.[12] Some argue that civil wars

[6] See Karine Bannelier and Theodore Christakis, 'Under the UN Security Council's Watchful Eyes: Military Intervention by Invitation in the Malian Conflict', *Leiden Journal of International Law* 26 (2013), 855–74 (866) (arguing that 'external intervention by invitation is normally legal when the purpose of the intervening state is not to settle an internal political strife in favour of the established government, but to realize other objectives, such as helping the requesting government in the fight against terrorism').

[7] See David Wippman, 'Pro-Democratic Intervention by Invitation', in Fox and Roth, *Democratic Governance* (n. 4), 293–327.

[8] See Oona A. Hathaway, Rebecca Crootof, Daniel Hessel, Julia Shu and Sarah Weiner, 'Consent Is Not Enough: Why States Must Respect the Intensity Threshold in Transnational Conflict', *University of Pennsylvania Law Review* 165 (2016), 1–47 (34) (arguing that '[just as a principal cannot delegate authority to an agent that the principal does not have, a host state cannot grant an extraterritorial state permission to act in contravention of the host state's human rights obligations').

[9] See Olivier Corten, 'Intervention by Invitation: The Expanding Role of the UN Security Council', Chapter 2 in this volume, section I.A.

[10] See de Wet, 'Modern Practice of Intervention by Invitation' (n. 1), 995.

[11] See Simone van den Driest, '"Pro-Democratic" Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom', *Netherlands International Law Review* 29 (2010), 57–72.

[12] Patrick M. Regan, 'Third-Party Interventions and the Duration of Intrastate Conflicts', *Journal of Conflict Resolution* 46 (2002), 55–73.

fought to conclusion solely among national parties are both shorter and less likely to reoccur.[13]

A final critique, cutting across all categories, is that a rule permitting consensual intervention is ripe for abuse.[14] Requests for assistance may come after the fact or, as happened during the Cold War, from groups created specifically for the purposes of issuing invitations.[15] In some conflicts, it may be difficult to tell which faction is in effective control of the state and thus, under traditional doctrine, empowered to issue an invitation.[16] A solution that relies on the extent to which one faction or another is recognised by other states only replicates the problem in another legal domain, since an intervening state will almost certainly recognise the faction issuing the invitation as the target state's legitimate government.

If there is unity in the criticism of consensual intervention – or at least the version described above – there is little in describing the actual content of contemporary international law.[17] Primary sources, state practice, and

[13] See Edward N. Luttwak, 'Give War a Chance', *Foreign Affairs* 78 (1999), 36–44; Robert Harrison Wagner, 'The Causes of Peace', in Roy Licklider (ed.), *Stopping the Killing: How Civil Wars End* (New York: New York University Press 1993), 235–68. For a critique of this view, see Monica Duffy Toft, 'Ending Civil Wars: A Case for Rebel Victory?', *International Security* 34 (2010), 7–36.

[14] Georg Nolte, 'Intervention by Invitation', in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopaedia of Public International Law* (Oxford: OUP, online edn 2010): 'The possibility of abuse has always been one of the main objections against the permissibility of invitations by governments as a justification for intervention.' The 1979 Soviet invasion of Afghanistan is one of the more notorious examples. 'The UN did not bother to question the credentials of the Afghan delegation, despite substantial evidence that the recognized (Communist) government of Afghanistan on the date of the invasion had not consented to and had in fact been overthrown by the Soviet troop presence, and the new government issuing those credentials had actually been installed by the Soviet invasion': Brad R. Roth, *Governmental Illegitimacy in International Law* (Oxford: Clarendon Press 1999), 289.

[15] An example is the invitation supposedly issued to Vietnam to intervene in Cambodia in late 1978 by the United Front for the Salvation of Kampuchea. See Gregory H. Fox, 'Vietnamese Intervention in Cambodia 1978', in Tom Ruys, Olivier Corten and Alexandra Hofer (eds), *The Use of Force in International Law: A Case-Based Approach* (Oxford: Oxford University Press 2018), 242–54.

[16] See Masoud Zamani and Majid Nikouei, 'Intervention by Invitation, Collective Self-Defence and the Enigma of Effective Control', *Chinese Journal of International Law* 16 (2017), 663–94; Brad R. Roth, 'Secessions, Coups, and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine', *Melbourne Journal of International Law* 11 (2010), 393–440.

[17] Gerhard Hafner, 'II. 10th Commission: Present Problems of the Use of Force in International Law – sub-group: Intervention by Invitation', *Annuaire de l'Institut de droit international* 73 (2009), 302–447 (304): '[T]he only matter that is undisputed is that present international law does not provide an unequivocal answer to the question of the rules governing such activities. Doctrine is divided into a wide variety of opinions on this issue, reaching from the admissibility of such intervention, to their admissibility only under certain narrowly described circumstances and to the total exclusion.' See also Ashley S. Deeks, 'Consent to the Use of Force and International Law

scholarship on this topic have been described as 'scattered and incomplete,'[18] 'profoundly divided,'[19] 'all over the map,'[20] 'a tangle of opinions',[21] and providing 'no conclusive guidance'.[22] How is one to find coherence, for example, among:

- statements in three UN General Assembly resolutions prohibiting 'interference in civil strife in another State' and 'assisting or participating in acts of civil strife';[23]
- the UN Security Council's proclamation of 'the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other State or group of States';[24] and
- the unqualified statement of the International Court of Justice (ICJ) that intervention is 'allowable at the request of the government of a State'?[25]

The lessons of recent state practice are particularly contested, and one finds authors citing the same practice to support completely opposite views of the law.[26] In 2011, the Institut de droit international (IDI) decided to revisit its 1975 Wiesbaden Resolution III, which famously forbade assistance to

Supremacy', *Harvard International Law Journal* 54 (2013), 2–60 (15): 'The limited governmental and scholarly discussion of consent to the use of force in international law has produced disagreement and imprecision.' This is not to say that all aspects of the doctrine are contested. There seems to be consensus, for example, that invitations from sub-state entities or entities whose claim to statehood is dubious cannot constitute valid consent. This appears to be the lesson of international reaction to the alleged invitation to Russia from Crimea in 2014 and the invitation from South Ossetia to Russia in 2008. See Thomas D. Grant, *Aggression against Ukraine: Territory, Responsibility, and International Law* (London: Palgrave MacMillan 2015).

[18] Heini Tuura, 'Intervention by Invitation and the Principle of Self-Determination in the Crimean Crisis', *Finnish Yearbook of International Law* 24 (2013–14), 183–226 (189).

[19] Karine Bannelier, 'Military Interventions against ISIL in Iraq, Syria and Libya and the Legal Basis of Consent', *Leiden Journal of International Law* 29 (2014), 743–75 (746).

[20] Monica Hakimi, 'The Jus ad Bellum's Regulatory Format', *American Journal of International Law* 112 (2018), 151–90 (169).

[21] Nussberger, 'Military Strikes in Yemen in 2015' (n. 1), 126.

[22] Independent International Fact-Finding Mission on the Conflict in Georgia (IFFMCG), Report, vol. II, September 2009, 278 (referring to state practice). See also Zamani and Nikouei, 'Intervention by Invitation' (n. 16), 663: 'If one ever endeavours to state one uncontroversial fact about the practice of intervention by invitation, that statement must certainly be along the lines of "everything about intervention by invitation is controversial".'

[23] UN General Assembly (UN GA) Res. 2131 (XX) of 21 December 1965, 1–2; UN GA Res. 2625 (XXV) of 24 October 1970, 1–2; UN GA Res. 36/103 of 9 December 1981, 1, Art. 1–2.

[24] UN SC Res. 387 of 31 March 1976.

[25] ICJ, *Case Concerning Military and Paramilitary Operations in and against Nicaragua* (Nicaragua v. United States of America), merits, judgment of 27 June 1986, ICJ Reports 1986, 14, para. 246.

[26] Compare, e.g., Maziar Jamnejad and Michael Wood, 'Current Legal Developments: The Principle of Non-intervention', *Leiden Journal of International Law* 22 (2009), 345–81 (378) ('It is sometimes suggested that intervention in a civil war on the side of the government and at its

governments engaged in civil wars.[27] But divisions among IDI members effectively led to its paralysis and the new 2011 Rhodes Resolution II did not even address the permissibility of intervention in civil wars.[28]

One steps gingerly into such swirling waters. There seems little point in another effort to harmonise the small set of canonical sources that have so far defied synthesis. And an effort to find coherence among scholars – among whom disagreement abounds – seems even more futile. Instead, this chapter will focus on two aspects of consensual interventions that recent scholarship has not addressed at length. First, it will ask whether any of the various theories of consent find support in a comprehensive assessment of post-Cold War practice. To my knowledge, no effort has been made to compile all examples of consensual intervention after the end of the Cold War and examine systematically how the United Nations, regional organisations, and leading states have reacted. The discussion of this practice will rely on a new dataset compiled for this purpose.

Second, the chapter will focus particular attention on the practice of the UN Security Council. The data reveal that the Council has issued resolutions or presidential statements on an overwhelming proportion (82 per cent) of consensual interventions since 1990. Many scholars have focused on the international community's inability to agree on factual aspects of contested interventions. These include whether an invitation was in fact issued, whether the inviting party exercised effective control over a state, and whether a conflict had reached the level of a 'civil war'. But controversies over these factual predicates for a valid invitation are rendered largely irrelevant through collective determinations by the Council, which enjoys an authority to characterise legally significant facts and to distinguish between lawful and unlawful uses of force.

request is unlawful but there is little support for this view in practice') with Gabor Kajtar, 'The Use of Force against ISIL in Iraq and Syria: A Legal Battlefield', *Wisconsin International Law Journal* 34 (2017), 535–84 (560) ('[T]he view that a government can issue a valid invitation even in civil war … seems to contradict state practice').

[27] Institut de droit international (IDI), 'The Principle of Non-Intervention in Civil Wars' (Wiesbaden Resolution III), *Annuaire de l'Institut de droit international* 56 (1975), 545–9.

[28] Hafner, 'II. 10th Commission' (n. 17); Georg Nolte, 'The Resolution of the Institut de Droit International on Military Assistance on Request', *Revue Belge de Droit International* 45 (2012), 241–62 (255) ('The most notable question left open [by the 2011 Resolution] is whether military assistance can be requested by a government which is implicated in a non-international armed conflict. This is, in fact, the most important question of the topic, and the decision to exclude it from the scope of the resolution reduces its value most significantly.').

The Council's heretofore unexamined record on consensual interventions also provides important support for this chapter's particular focus on the post-Cold War era. The view that governments cannot invite outside forces to assist in a civil war came to prominence in the mid-to-late Cold War, building on older belligerency doctrine,[29] but drawing new support from a series of General Assembly resolutions on the right to internal self-determination and two widely cited secondary sources: the IDI's 1975 Wiesbaden Resolution III and Louise Doswald-Beck's extraordinary 1986 article in the *British Yearbook of International Law*.[30] Both the IDI and, in particular, Doswald-Beck proceeded from the then widely shared (and objectively correct) observation that – as a matter of fact, not law – no international organisation – especially the Security Council – could effectively review the factual basis for claimed consensual interventions. The very reason why consensual intervention was highly problematic in practice – the polarised camps in the Cold War made a series of dubious claims of invitation to secure and further their spheres of influence – was also the reason why international organisations were paralysed and unable to react.[31] The IDI and Doswald-Beck advocated a strong prophylactic rule intended to reach the most consequential interventions (when the government feared it might be losing a civil war) and render them all unlawful, regardless of the purported justification. The need for 'objective' review by an international organisation was thereby diminished.

[29] Belligerency doctrine described three levels of domestic unrest: rebellion, insurgency, and belligerency. 'A rebellion was an uprising of limited duration and intensity which could have been successfully resolved with regular police action. Insurgency involved "the existence of an armed revolt of grave character and the incapacity, at least temporarily, of the lawful Government to maintain public order and exercise authority over all parts of the national territory"': Marko Milanovic and Vidan Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict', in Nigel White and Christian Henderson (eds), *Research Handbook on International Conflict and Security Law: Jus ad Bellum, Jus in Bello and Jus Post Bellum* (Cheltenham: Edward Elgar: 2013), 256–314 (263), quoting a pre-press version of Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford: OUP 2012). A belligerency was achieved when a conflict passed a threshold indicated by a series of objective criteria: Yair M. Lotsteen, 'The Concept of Belligerency in International Law', *Military Law Review* 166 (2000), 109–41 (114). Recognition of a belligerency triggered neutrality obligation for third parties: *ibid.*, 112. The doctrine is generally understood to have fallen into disuse and rendered obsolete, because no belligerency has been officially recognised since the American Civil War: Christopher J. Le Mon, 'Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested', *New York University Journal of International Law and Politics* 35 (2003), 741–93 (748–9).

[30] Louise Doswald-Beck, 'The Legal Validity of Military Intervention by the Invitation of the Government', *British Yearbook of International Law* 56 (1986), 189–252; IDI, Wiesbaden Resolution III (n. 27).

[31] Corten, *The Law against War* (n. 4), 301.

But we are no longer in an era in which the Security Council and other international organisations are mere peripheral players in legal determinations on the use of force.[32] To the contrary, the Security Council now regularly addresses almost all non-international armed conflicts (NIACs), long the most prevalent form of conflict.[33] From 1990 to 2013, the Council passed resolutions on 76 per cent of all NIACs, increasing to 80 per cent for conflicts that began after 1990.[34] Further, the Council aggressively shaped the legal framework for ending and remediating NIACs by imposing a series of binding legal obligations on the conflict parties that, in some cases, deviated from existing international law.[35] Of course, the Council has remained deadlocked on Crimea and Syria, two widely discussed cases that share many attributes of superpower interventions during the Cold War. But the data show these to be a distinct minority. While the Council's reactions in the majority of cases have varied, the critical point is that, in most cases, the Council faces few political obstacles to engagement. As a result, not only has Council paralysis ended in responding to NIACs, but also the Council has become aggressive and omnipresent.

The new Council activism vastly complicates the assumptions of Cold War-era doctrine on consensual interventions. If the Council is, in theory, available to pass judgment on the legality of interventions, is the prophylactic rule advocated by the IDI and Doswald-Beck still necessary? One may well answer 'yes' if a conflict involves one or more of the five permanent members of the Council or their close allies. But the data will show that these are in a distinct minority, meaning that whatever rule exists in customary law, the Council can override it in the majority of conflicts. The utility of a rule that actually ends up governing few conflicts is certainly open to question.

Further, if the Council regularly approves certain types of request for assistance but not others, should we not only reassess a general prohibition on interventions in civil wars but also ask whether customary international law should now be understood as allowing, or even favouring, interventions to accomplish particular goals? Post-Cold War international law has coalesced

[32] See Nolte, 'The Resolution of the Institut de Droit International' (n. 28), 243: 'While the Cold War types of internal conflicts often divided other states and the international community at large into different camps, post-Cold War types of conflict have often generated a common effort in their resolution.'

[33] See Gregory H. Fox, Kristen Boon and Isaac Jenkins, 'The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary International Law', *American University Law Review* 67 (2018), 649–732.

[34] *Ibid.*, 663.

[35] *Ibid.*, 667–92.

around a series of policy objectives unknown in the prior era. Collective action against terrorist groups and the promotion of democratic elections are two examples, both of which find support in Council practice. Has customary law, so understood, moved towards supporting interventions in furtherance of those policies?

In sum, Security Council activism in the post-Cold War era makes examining its record essential to understanding the content of international law. While this chapter will review older practice and scholarship for the purposes of understanding the various theories contending for pre-eminence, it will focus most of its attention on new Council practice and the conclusions to be drawn from aggregated data about that practice.

After first discussing in more detail the reasons for focusing exclusively on the post-Cold War era, this chapter will review the major theories on intervention by invitation (section II). After explaining the methodology used in collecting and sorting the data (section III), it will then test each of these theories by asking whether the record of Security Council reactions supports or negates each theory or does not point in either direction (sections IV–V). Finally, it will ask how the new Council practice should be seen as affecting international law (sections VI and VII): as a self-enclosed lex specialis, or as evidence of customary international law of a particularly useful kind?

II. THE STATE OF DEBATE

One can discern three critical periods in the Charter era during which doctrine on intervention by invitation evolved in tandem with the legal and political landscape of the times: (i) the mid to late-Cold War era; (ii) the post-Cold War era up to the 9/11 terror attacks; and (iii) the post-9/11 period. While this typology may be inexact at the margins, each period is readily identified with political developments that spurred legal innovations. Understanding how each doctrinal shift corresponded to these specific challenges is important, since there is a tendency in the literature to present the current lack of legal clarity as an inexplicable set of contradictions – a rift between groups of states with competing interests, or simply an unfortunate failure of political will. Each of the four major theories identified in the literature – discussed in this section and then tested against international reaction – bears a clear mark of the era in which it emerged.

Two preliminary observations are necessary. First, the four major theories described are not equal in terms of the scope of actions they encompass; rather, they are partially overlapping. The final three involve circumstances that

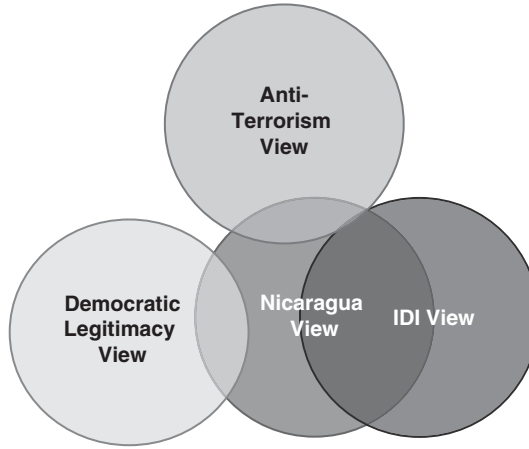

FIGURE 3.1. Interrelation between Major Theories on Consensual Intervention

represent subsets of the conditions encompassed by the first. Their relationship is illustrated in Figure 3.1.

- The first, the '*Nicaragua* view',[36] which permits invitations by governments in all cases, is the broadest theory.
- The second, the 'IDI view', addresses a subset of cases permitted by *Nicaragua* in which a government invites outside forces into a conflict that has not yet reached the level of a 'civil war'. Invitations to intervene in civil wars are thus encompassed (and permitted) by the *Nicaragua* view but not the IDI view.
- The third, the 'democratic legitimacy view', permits interventions only when requested by governments or rebel groups that have won an election verified as free and fair by credible international actors. This is best seen as another subset of the *Nicaragua* view since, as I will argue, the civil war threshold imposed by the IDI view is not consistent with the fully legitimising nature of an invitation from an elected government. However, the democratic legitimacy view covers fewer cases than the IDI view.
- Finally, the 'anti-terrorism view' also represents a small subset of the *Nicaragua* view, but that subset is different from those captured by the IDI view. The IDI view permits interventions in domestic conflicts not rising to the level of a civil war, such as riots or widespread criminal

[36] See ICJ, *Nicaragua* (n. 25).

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activity. While the anti-terrorism view also does not legitimise intervention in a civil war either, the reason is different: the terrorist groups involved are almost always transnational in nature. Their challenge to governments does not involve the fracturing of *domestic* political opinion that is the hallmark of a civil war.

The second observation is that the descriptions of the various theories here provided are not intended to be comprehensive. Such efforts have been ably undertaken by other scholars. Instead, the descriptions are designed only to highlight the central question raised by the data on international reaction to modern invitations: do the theories' underlying assumptions and circumstances of origin remain relevant to contemporary state and international organisation practice?

A. *The Cold War Setting*

The fracturing of international law on invitations to intervene into various doctrinal and policy-driven schools did not emerge in a vacuum; rather, it followed a period during the mid-to-late Cold War in which scholars struggled to find coherence in shifting normative currents.[37] Some writers invoked pre-Charter doctrine as effectively unchanged – in particular, the rules of belligerency.[38] According to Wolfgang Friedman, writing in 1965, '[w]hat is probably still the prevailing view is that the incumbent government, but not insurgents, has the right to ask for assistance from foreign governments, at least as long as insurgents are not recognised as "belligerents" or "insurgents"'.[39] Others recognised that belligerency doctrine had fallen into desuetude and that the UN Charter pointed towards a collective response to internal conflicts through decisions of the Security Council, but they bemoaned its dysfunction.[40] Still others focused

[37] See, e.g., Ian Brownlie, *International Law and the Use of Force by States* (Oxford: OUP 1981), 326–7 ('It would be presumptuous to essay any statement of the legal position which purported to be definitive after a survey of such diverse and contradictory trends in the practice of states'); Arnold Fraleigh, 'The Algerian Revolution as a Case Study in International Law', in Richard A. Falk (ed.), *The International Law of Civil War (Foundations of the Laws of War)* (Baltimore: Johns Hopkins University Press 2010), 179–243 (179–80).

[38] See, e.g., Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, vol. 2 (London: Stevens and Sons 1968), 673–719; Lassa Oppenheim, *International Law: A Treatise*, vol. 2 (Hersch Lauterpacht ed.) (London: Longman 7th edn 1948), 209–10.

[39] Wolfgang Friedman, 'Intervention, Civil War and the Role of International Law', *Proceedings of the American Society of International Law* 59 (1965), 67–75 (72).

[40] John Norton Moore, 'The Control of Foreign Intervention in Internal Conflict', *Virginia Journal of International Law* 9 (1969), 205–342 (274) (classic belligerency doctrine 'is vague, outdated for current internal conflict, and suspect in that belligerency was never really

primarily on the stark disconnect between prohibitions of intervention on either the government or rebel side and the avalanche of interventions practised by the competing East–West camps.[41] Finally, many found, in the recent rise of decolonisation and norms of self-determination, fresh justifications for the prohibitory approach of belligerency doctrine, but they expressed caution about their salience in the face of so much contrary state practice.[42]

The scholarship of this era was hesitant, uncertain about how to reconcile the cacophony of new and old norms and state practice that could arguably support multiple positions.[43] Many concluded their review of this unhappy situation with suggestions that law should follow wise policy and minimise the spread of violence by replicating the old belligerency rules, albeit without the futile requirement of recognition.[44]

intended as an absolute bar to participation'); Tom Farer, 'Intervention in Civil Wars: A Modest Proposal', *Columbia Law Review* 67 (1967), 266–79 (271) (classical belligerency doctrine 'is wholly out of joint with actual practice'); Schwarzenberger, *International Law as Applied by International Courts and Tribunals* (n. 38), 716 ('The impact of the Charter of the United Nations on the law of internal armed conflicts is contradictory, indirect and potential, rather than actual').

41 Friedman, *Intervention, Civil War* (n. 39), 72 ('So deep are the political conflicts leading to intervention and counter-intervention, that in this writer's submission, the distinction between the rights of incumbent governments and of substantial movements of rebellion has lost all meaning'); Farer, *Intervention in Civil Wars* (n. 40), 273 ('The central truth of the matter is that today there are no real norms governing intervention by third parties in civil wars, and, as long as the United States insists on its right to intervene in any revolution with whatever scale of force is required to suppress it, no coherent norm for the regulation of intervention can be articulated').

42 Fraleigh, *The Algerian Revolution* (n. 37), 10; Michael Akehurst, *A Modern Introduction to International Law* (Winchester: Allen & Unwin 4th edn 1982), 246.

43 John Norton Moore well summarised the state of play in 1969:

> The traditional rule is said to be that it is lawful to assist a widely recognized government at its request, at least until belligerency is attained. Presumably once belligerency is attained it is lawful to aid either side if the assisting state is willing itself to become a belligerent. A competing rule first espoused by Sir William Hall at about the turn of the century, and subsequently echoed by a number of contemporary scholars, is that it is unlawful to assist either the recognized government or insurgents once an insurgency breaks out and the outcome is uncertain. Newer theories espoused by a few scholars or officials also include those proscribing all intervention absent prior United Nations authorization, proscribing tactical assistance only, and legitimating intervention for purposes of wars of national liberation, modernization, anti-colonialism, or 'socialist self-determination.' The impact of the Charter on the customary law or on these newer proposals has largely been ignored – a strange testament to the duality of the framework for appraisal of intervention.

Moore, 'The Control of Foreign Intervention in Internal Conflict' (n. 40), 245–6 (footnotes omitted).

44 See, e.g., Akehurst, *A Modern Introduction to International Law* (n. 42), 243.

B. *The* Nicaragua *View*

The first view I will test using Security Council practice arose during the late Cold War era. It categorically favours governmental requests for assistance over those of opposition groups.[45] This view is most closely associated with a brief passage in the ICJ's 1986 *Nicaragua* decision:

> [T]he principle of non-intervention derives from customary international law. It would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State – supposing such a request to have actually been made by an opposition to the regime in Nicaragua in this instance. Indeed. It is difficult to see what would remain of the principle of non-intervention in international law if intervention *which is already allowable at the request of the government of a State*, were also to be allowed at the request of the opposition. This would permit any State to intervene at any moment in the internal affairs of another State, whether at the request of the government or at the request of its opposition. Such a situation does not in the Court's view correspond to the present state of international law.[46]

The passage is famously cryptic and there are good reasons why its normative value might be seen as limited.[47] Yet when the Court had an opportunity to clarify the *Nicaragua* language almost twenty years later in its *Congo/Uganda*

[45] Some scholars have argued that international law emphasises the 'purpose' or 'object and effect' of an intervention, finding interventions permissible when their purpose or object is not to interfere in the self-determination of the state's population. See Corten, 'Intervention by Invitation', Chapter 2 in this volume, section I.B. I do not test this view for several reasons. First, given this chapter's focus on the Security Council, one would need to determine this view's presence or absence in Council resolutions and debates. But the Council and its members do not speak of the 'purpose' of interventions in general terms; rather, they focus on the specific objective being sought in each case. I do test for those objectives, such as supporting a government, supporting rebels, fighting terrorism, and supported democratically legitimate regimes. Second, determining the purpose of a given intervention would simply return the inquiry to these more specific purposes, since only ascertaining the specific purpose involved can answer the question of whether the intervention is intended to interfere with citizens' self-determination. Finally, the view of self-determination invoked by the purpose-based theory appears to be that of the IDI's 1975 Wiesbaden Resolution III (n. 27): complete abstention from inquiry into whether a regime inviting military assistance finds support among citizens. I argue that while this abstention view was an understandable reaction to the zero-sum logic of Cold War interventions, it has become anachronistic in an era of omnipresent information about citizens' *actual* preferences.

[46] ICJ, *Nicaragua* (n. 25), para. 246 (emphasis added).

[47] Since the United States did not seek to justify its assistance to Nicaraguan opposition groups on the basis of their having issued an invitation, the passage is clearly dicta. In addition, the

case, it failed to do so.[48] The question in that case was whether, at certain points in time, Ugandan troops were lawfully present on Congolese territory. The Court found that, in an early period, the Democratic Republic of the Congo had failed to object to the troops' presence and thus effectively gave its consent, which it could have withdrawn at any time.[49] The Court thoroughly reviewed the record of negotiation and the agreement between the two parties, and it determined that a later modus operandi for the withdrawal of Ugandan troops did not embody consent to their continued presence. It concluded that Congo had in fact withdrawn its consent.[50] The *Congo/Uganda* opinion thus assumed the validity of a governmental invitation in the same underanalysed manner as *Nicaragua*.

The *Nicaragua* view is grounded in the idea that the ius ad bellum of UN Charter Article 2(4) and its progeny exist to secure states against coercive intrusions upon their political independence and territorial integrity. Neither, this view argues, is infringed by a consensual intervention.[51] This view is echoed in language in the General Assembly's 1970 Friendly Relations Declaration[52] and its 1974 Definition of Aggression,[53] both of which juxtapose the consensual and non-consensual presence of foreign troops, singling out

reference to a governmental invitation is simply an aside to the main point being made. Finally, because the Court was not presented with a claim of invitation, it had no need (or, apparently, inclination) to specify whether a government's right to assistance is valid in all cases or, in accordance with the IDI view, ends when the civil war threshold is reached. An invitation claim by the United States would presumably have forced the Court to specify the scope of the right more precisely.

48 ICJ, *Case Concerning Armed Activities on the Territory of the Congo* (DR Congo v. Uganda), merits, judgment of 19 December 2005, ICJ Reports 2005, 168, paras 46–7.

49 *Ibid.*

50 *Ibid.*, paras 46–9, 95–106. The Court also referred to consent as a valid basis for the Ugandan presence: *ibid.*, paras 113 and 149.

51 Ademola Abass, 'Consent Precluding State Responsibility: A Critical Analysis', *International and Comparative Law Quarterly* 53 (2004), 211–25 (224): 'States have the power to consent to limitations on their independence, and may surrender their independence altogether to merge with other states. Therefore, it would seem strange if a state could not consent to a less drastic curtailment of its sovereignty by releasing its right of non-intervention' (notes and internal quotes omitted). See also Dinstein, *Non-International Armed Conflicts in International Law* (n. 1), 119; Coco and Maillart, 'The Conflict with Islamic State' (n. 1), 5.

52 UN GA Res. 36/103 (n. 23), §II(d) (describing '[t]he duty of a State to refrain from any economic, political or military activity in the territory of another State without its consent').

53 GA Res 3314 (XXIX) of 14 December 1974, Art. 3(e), describing as an act of aggression '[t]he use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement'. See Hafner, 'II. 10th Commission' (n. 17), 9: '[T]his language in the Definition of Aggression obviously attests [to] the legality of the use of armed forces of a State within the territory of a foreign State provided that this use is in conformity with the latter's consent.'

the latter as impermissible.[54] The legitimacy of consent would also seem to underlie every bilateral and multilateral status-of-forces agreement, which remain in force during civil wars, as well as UN and regional peacekeeping missions that are frequently based (at least in part) on governmental consent and which are either initially sent to states in which civil wars are ongoing or remain in place after civil wars break out.[55]

Finally, the *Nicaragua* view is arguably consistent with the general role of consent in state responsibility law as a circumstance precluding wrongfulness of state action.[56] The requirements that consent be given authoritatively by a state, that it be given freely, and that the acts in question stay within the bounds of the consent are reflected in Article 20 of the International Law Commission (ILC) Articles on State Responsibility.[57] A host of questions specific to consent to the use of force are widely debated and will be addressed in this chapter – but few argue that these principles of consent do not apply as a general matter to the use of force.[58]

Given the categorical phrasing of the General Assembly resolutions and the two ICJ decisions, the *Nicaragua* view has come to connote a blanket approval of governmental invitations and a blanket disapproval of invitations from

[54] See also UN SC Res. 387 of 31 March 1976, in which the Security Council recalls 'the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other State or group of States'.

[55] The many UN-based missions with Chapter VII authorisations would obviously not rely on consent as their sole legal basis. But the fact that the United Nations has always sought such consent even when a Chapter VII mandate is forthcoming suggests that the organisation finds it to be legally significant. See Ian Johnstone, 'Managing Consent in Contemporary Peacekeeping Operations', *International Peacekeeping* 18 (2011), 168–82.

[56] ILC Draft Articles (n. 3), Art. 20. But see Deeks, 'Consent to the Use of Force and International Law Supremacy' (n. 17), 15–16: '[I]n certain contemporary contexts, an assertion that consent may validate an otherwise unlawful use of force is at best incomplete and at worst inaccurate.'

[57] ILC Draft Articles (n. 3), 72. Article 20 provides in full: 'Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.' See generally Affef Ben Mansour, 'Circumstances Precluding Wrongfulness in the ILC Articles on State Responsibility: Consent', in James Crawford, Alain Pellet, Simon Olleson and Kate Parlet (eds), *The Law of International Responsibility* (Oxford: OUP 2010), 439–47.

[58] For example, the ILC's commentary to its Articles on State Responsibility, in addressing consent as a circumstance precluding wrongfulness, consistently uses examples of the use of force to illustrate elements of the consent defence: see ILC Draft Articles (n. 3), Art. 20, comments 5, 8, 9. See also Corten, *The Law against War* (n. 4), 250: 'During its work on State responsibility, the International Law Commission envisaged a State's consent as a circumstance precluding wrongfulness, citing by way of example cases of military interventions that had been consented to.'

opposition groups.[59] Three doctrinal consequences would seem to follow. First, the *Nicaragua* view is incompatible with both pre-Charter belligerency doctrine and the IDI view, both of which hold that when a conflict reaches a certain intensity threshold, intervention at the request of the government is prohibited.[60] Some argue that because the Court in *Nicaragua* was concerned, first and foremost, with non-intervention doctrine, its language referred to invitations in general and not specifically to civil wars, which would have required it to address the existence, or not, of an intensity threshold. But this view is hard to square with the Court's sweeping language, not to mention its failure to limit that language in the *Congo/Uganda* case.[61] Moreover, just twelve pages earlier, the Court had found that hostilities between the contras and the Nicaraguan government amounted to a

[59] Bannelier, 'Military Interventions against ISIL' (n. 19), 27. Both Olivier Corten and Dino Kritsiotis suggest a more limited reading, arguing that, by stating intervention is 'allowable' rather than 'allowed', the Court suggested that additional conditions must be met before a government's invitation is deemed lawful. See Dino Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume, section IV.A.; Corten, 'Intervention by Invitation', Chapter 2 in this volume, section I.A. Could this reading render the *Nicaragua* opinion consistent with the IDI view? The claim would be that an 'allowable' invitation is 'allowed' only if a conflict has not reached the civil war threshold. This is a plausible reading but not, in my view, a persuasive one. First, if this enormously important doctrinal distinction were lurking in the *Nicaragua* language, the Court certainly would have clarified its meaning in the subsequent *Congo/Uganda* case, which it did not. Second, even if one were to accept that an 'allowable' invitation has an additional contingency, why would it not be the more obvious and widely-accepted one that an invitation must be genuine (i.e., not fictitious and come from an entity plausibly claiming to be the government)? Third, because, in an earlier portion of its opinion, the *Nicaragua* Court had found the war to be a NIAC for IHL purposes, the effect of reading the IDI view into the subsequent passage would be that the Nicaraguan government could not itself have lawfully received assistance from Cuba. The opinion is replete with references to Cuban assistance, but the Court nowhere suggests it was unlawful. Finally, the categorical nature of the *Nicaragua* holding, while frustratingly cursory, is accepted by many scholars. See, e.g., Cóman Kenny and Seán Butler, 'The Legality of "Intervention by Invitation" in Situations of R2P Violations', *New York University Journal of International Law and Politics* 51 (2018), 135–78 (140) (' Most strikingly, the Court suggested no limitations to the asserted right of a government to invite intervention'); Hafner, 'II. 10th Commission' (n. 17), 306 ('this phrase which speaks of intervention on request does not provide any limit to such activities'). It is important to note that reaching a definitive understanding of the *Nicaragua* language is not critical to my conclusions in this chapter. I use the '*Nicaragua* view' (and the other three theories of consensual intervention) as hypotheses to be tested by the data, not as authoritative descriptions of prevailing law. If one believes that the *Nicaragua* opinion is, in fact, coextensive with the IDI view, then one can simply focus on the data testing the viability of IDI.

[60] Zamani and Nikouei, 'Intervention by Invitation' (n. 16), 668: '[G]iven the ICJ's categorical denunciation of foreign aid to armed groups in conflicts of non-international character, it seems that the Nicaragua case really puts an end to the belligerency doctrine.' See also Le Mon, 'Unilateral Intervention by Invitation in Civil Wars' (n. 29), 751.

[61] Kajtar, 'The Use of Force against ISIL in Iraq and Syria' (n. 26), 560.

NIAC.[62] It seems unlikely that the Court would have crafted the rest of its opinion without regard to its prior legal characterisation of the conflict.

Second, the *Nicaragua* view is incompatible with limitations on consent based on the argument that an inviting or invited state is pursuing an unlawful objective. Some have suggested that a request to assist in committing widespread human rights abuses would contravene the legal obligations of both states.[63] The request would be incompatible with the requesting state's obligations to its own citizens under customary and treaty-based human rights norms. For the invited state, two arguments are possible: that it would incur responsibility for assisting in the inviting state's violation of the latter's human rights obligations within its own territory; or that the invited state's own human rights obligations would apply extraterritorially.[64] Such qualitative limitations on the reach of state consent are compelling, but they would need to be grounded in sources other than the *Nicaragua* opinion itself, which contains no limitation on invitations based on the objective the invited state would seek to achieve.[65]

Third, *Nicaragua* has an uncertain relationship with norms more directly concerned with the legitimacy of inviting governments. The categorical nature of the *Nicaragua* view does not necessarily validate all invitations issued by 'the government'. The not-uncommon scenario in which competing factions claim to speak for a state during a civil war was one of the critical factors underlying the belligerency doctrine, as well as the IDI view (discussed next). The *Nicaragua* view does not itself resolve competition among different would-be governing factions, since the United States simply did not raise the question of governmental legitimacy before the ICJ nor did the Court address the issue in its brief aside. To adopt the *Nicaragua* view, then, is simply to default to an entirely separate set of norms on questions of governmental legitimacy. Much scholarship on intervention by invitation takes a significant

[62] ICJ, *Nicaragua* (n. 25), para. 219: 'The conflict between the contras' forces and those of the Government of *Nicaragua* is an armed conflict which is "not of an international character".'

[63] De Wet, 'Modern Practice of Intervention by Invitation' (n. 1), 290–1; Claus Kress, 'Major Post-Westphalian Shifts and Some Important Neo-Westphalian Hesitations in the State Practice on the International Law on the Use of Force', *Journal on the Use of Force and International Law* 1 (2014), 11–54 (26).

[64] For the requisites of aid or assistance in the commission of an internationally wrongful act, see ILC Draft Articles (n. 3), Art. 16; de Wet, 'Modern Practice of Intervention by Invitation' (n. 1), 296–308. For a discussion of extraterritorial human rights obligations in the context of a request for intervention, see Hathaway et al., 'Consent Is Not Enough' (n. 8), 21.

[65] Given that human rights law in general and the idea that an intervening state might be bound by its human rights obligations extraterritorially were both in their infancy in 1986, this omission from the *Nicaragua* opinion is hardly surprising.

detour to discuss this question. Whether a specific theory of governmental legitimacy might apply to certain invitations is the subject of section D. But *Nicaragua* itself should be understood as agnostic on the subject.

Can one ascribe a particular worldview or historical provenance to the *Nicaragua* view? Given the opinion's extraordinary brevity, one can only speculate. But in light of (i) the ICJ's traditional aversion to advancing the law in bold leaps, (ii) the relatively new and unsettled nature in 1986 of the self-determination limitation on intervention in civil wars, and (iii) the Court's determination that the *Nicaragua* conflict constituted a NIAC, one could argue the following. The Court was addressing the permissibility of invitations by rebel groups, which it wanted to reject in no uncertain terms. How better to make clear the destabilising and unacceptably intrusive nature of invitations to rebels than to place them in stark contrast to the right of the government to invite assistance? If one assumes the Court was well aware that many NIACs during the Cold War were internationalised by assistance to rebels, one might understand its language as an effort to address rampant interventionism without departing in any significant way from existing law. The Court could well have understood the law of the time not to have absorbed the self-determination view but to have left belligerency doctrine behind. That combination would result in no extant limit on interventions based on a civil war threshold. In addition, even Louise Doswald-Beck (whose article was published in the same year as the *Nicaragua* judgment) believed that international law accorded a presumption of continuity to governments that had lost territory to rebels.[66] So a rule (such as *Nicaragua*) containing no civil war threshold might, in practice, produce results only marginally different from a situation in which a government did not lose its authority to act for the state even when rebels controlled significant portions of territory. In other words, the categorical *Nicaragua* approach might not, in fact, permit more interventions supporting governments than did existing law on recognition. Both *Nicaragua* and international law on recognition in the 1980s would continue to view a government as legitimate (and thus empowered to invite foreign forces) even when it was in conflict with a well-organised rebel force in control of substantial territory.

C. *The IDI View*

The second view involves a full prohibition of intervention in civil wars. Once a conflict becomes a 'civil war', the government joins opposition groups in being unable to invite external assistance. This view encompasses a subset of cases

[66] Doswald-Beck, 'The Legal Validity of Military Intervention' (n. 30), 199.

captured by the *Nicaragua* view by excluding those invitations by governments that *Nicaragua* would permit. This view was most famously articulated in the IDI's 1975 Wiesbaden Resolution III: 'Third States shall refrain from giving assistance to parties to a civil war which is being fought in the territory of another State.'[67] I shall refer to this as the 'IDI view'.

While the IDI view shared much in common with traditional belligerency doctrine, which required third-party neutrality when rebels reached a certain level of organisation and territorial control, it emerged from a new set of concerns. Coming to fruition in the mid-Cold War period, the IDI view arose in reaction to the superpowers' use of invitations as a pretext under which to maintain or expand their spheres of influence in the developing world. The conflicts in which 'invitations' were cited as justification were seen by the superpowers as zero-sum contests: either an allied government was threatened by opponents seen as sympathetic to the other superpower, in which case the country might be 'lost', or a government allied with the other side was threatened by ideologically sympathetic opponents, in which case the country might be 'gained'. In either case, the niceties of an invitation to defend the government were decidedly secondary to the perceived need to intervene and 'save' the state for one's own side.[68] Invitations not infrequently came from groups not actually exercising any governmental authority.[69] Some such groups were created for the specific purpose of issuing an invitation.[70] Some issued invitations after the fact.[71] Some invitations were coerced.[72] The point of creating the appearance of consent was to align the purpose of the intervention with 'the will of the people'. External support thus became not a break with legitimate government but support for the true 'legitimate authority', whose claim to a popular mandate was somehow superior to that of the regime being ousted. Of course, such claims of legitimacy were purely instrumental.

[67] IDI, Wiesbaden Resolution III (n. 27), Art. 2(1).

[68] Roger Fisher's 1968 summary of the US approach encapsulates this view. 'Simply to refrain from intervention ourselves is not likely to produce restraint in other governments. Our bad example will surely be followed; our good example, by itself, will not': Roger Fisher, 'Intervention: Three Problems of Law and Policy', in Richard A. Falk (ed.), *The Vietnam War and International Law*, vol. 1 (Princeton, NJ: Princeton University Press 1968), 135–50 (140).

[69] See Nabil Hajjami, 'The Intervention of the United States and other Eastern Caribbean States in Grenada – 1983', in Ruys et al., *The Use of Force in International Law* (n. 15), 385–94 (385).

[70] See Fox, 'Vietnamese Intervention in Cambodia 1978' (n. 15).

[71] See Georg Nolte and Janina Barkholdt, 'The Soviet Intervention in Afghanistan – 1979–1980', in Ruys et al., *The Use of Force in International Law* (n. 15), 297–305 (301); Corten, *The Law against War* (n. 4), 268 (Kadar government in Hungary said to have requested 1956 Soviet intervention 'was formed *after* the beginning of the military operation, which explains why the argument was not accepted in the UN', emphasis original).

[72] Corten, *The Law against War* (n. 4), 269–70 (discussing the 1968 Czech interventions).

Given the zero-sum terms in which the Cold War protagonists viewed internal conflicts, as well as the lengths they were willing to go to ensure favourable outcomes, a rule that permitted interventions at the invitation of the government was doomed to ineffectiveness. Requirements of effective control and issuance by appropriate authorities simply led to the elaborate fictions noted above.[73] Continuing to permit consensual interventions in those circumstances would end up undermining a value it purported to protect: a 'legitimate' government's freedom to control the presence of foreign troops on its territory. What was needed was a rule that prohibited interventions by invitation once it was clear that civil authority in a state had broken down or was imminently threatened – that is, when the Cold War camp aligned with that authority was most likely to intervene.

The rise of the right to self-determination in the late 1950s – culminating in its codification in common Art. 1 of the United Nations' International Covenants on Civil and Political Rights (ICCPR), and on Economic, Social, and Cultural Rights (ICESCR) in 1966 – provided an important doctrinal foundation for this view.[74] First and foremost, self-determination was the legal vehicle facilitating decolonisation. But, in the view of newly independent states (and many others), external independence was hardly adequate to protect autonomous political decision-making. Continued interference by former colonial powers and Cold War antagonists deprived citizens of the ability to choose their own political direction. That choice might be manifest in the relatively orderly conduct

[73] See Doswald-Beck, 'The Legal Validity of Military Intervention' (n. 30), 213: 'Instances of intervention where there is serious doubt as to both the existence of an invitation and the legal capacity of the allegedly inviting regime to request military aid are those in Hungary 1956, the Dominican Republic 1965, Afghanistan 1979 and Grenada 1983.'

[74] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 Art. 1(1) ('All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'); International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, Art. 1(1) (same). For collected citations to scholars supporting a prohibition on intervention based on self-determination, see Coco and Maillart, 'The Conflict with Islamic State' (n. 1), 394; Erika de Wet, 'Complicity in Violations of Human Rights and Humanitarian Law by Incumbent Governments through Direct Military Assistance on Request', *International and Comparative Law Quarterly* 67 (2018), 287–313 (300, fn. 80); Bannelier and Christakis, 'Under the UN Security Council's Watchful Eyes' (n. 6), 862; Bannelier, 'Military Interventions against ISIL' (n. 19), 747. Interestingly, the IDI Resolution itself did not mention self-determination as goal to be furthered by non-intervention; rather, it focused on the metastasising effect of intervention to assist one civil war party, which 'often leads in practice to interference for the benefit of the opposite party'. See IDI, Wiesbaden Resolution III (n. 27).

of elections or in the violent outcome of a civil war. However citizens manifested their choice, it was theirs to make. What, after all, is the point of joining the ranks of autonomous states if the most fundamental act of sovereignty – choosing the national leadership – is influenced or indeed fully determined by outsiders?

It is important to emphasise that the IDI view protected the *opportunity* for national choice of regimes rather than any actual choice. The idea that non-democratic means of choosing a government might nonetheless represent a legitimate choice by citizens sits uneasily with international law's contemporary emphasis on free and fair elections. But the argument by proponents of the IDI view stressed 'the absence of outside interference rather than the quality of internal government'.[75]

The self-determination rationale for prohibiting assistance to governments in civil wars also created a useful symmetry with the wholly non-controversial prohibition of assisting rebel groups: 'Once a considerable [number] of people starts a civil rebellion in an attempt to change its political status, intervening from the outside on the government's side would mean meddling in that State's internal affairs as much as helping the rebels.'[76]

But not all instances of unrest are manifestations of discontent with an incumbent government. Riots, other kinds of low-level disturbances, or widespread criminal activity do not necessarily indicate a fundamental rift in the body politic. Proponents of the IDI view thus mirrored belligerency doctrine – which they acknowledged had fallen into desuetude[77] – by imposing a threshold of a civil war.[78] The Wiesbaden Resolution III itself provided that its prohibition did not apply to 'local disorders or riots' but rather required armed conflict not of an international character for control of the state.[79]

[75] Doswald-Beck, 'The Legal Validity of Military Intervention' (n. 30), 207.

[76] Coco and Maillart, 'The Conflict with Islamic State' (n. 1), 394.

[77] Doswald-Beck, 'The Legal Validity of Military Intervention' (n. 30), 197 (likely reason for lack of belligerency recognition 'is the replacement of the doctrine of belligerency in modern international law by the doctrine of non-intervention in the internal affairs of States'). See also Corten, *The Law against War* (n. 4), 260 (belligerency doctrine 'has not been applied in practice since the UN Charter was adopted').

[78] Christine Gray, *International Law and the Use of Force* (Cambridge: CUP 4th edn 2018), 85.

[79] IDI, Wiesbaden Resolution III (n. 27), Art. 1(2)(a) and (b). This could take the form of opposition between either 'the established government and one or more insurgent movements whose aim is to overthrow the government or the political, economic or social order of the State, or to achieve secession or self-government for any part of that State,' or 'two or more groups which in the absence of any established government contend with one another for the control of the State'.

Once that level of organised and sustained violence was reached, the government lost its capacity to invite outside forces.[80] Stated another way, up to the point of civil war, a government could validly represent the state externally for purposes of issuing an invitation; past that point, the interests of the government and the interests of the people were deemed to be presumptively at odds. While a government generally enjoys a presumption of continued legitimacy even when its effective control is diminished, once a civil war commences, the government loses its ability to subordinate the interest of (again potentially) a majority of its people to its own interest in survival.[81]

The genesis for the self-determination rationale lay in a series of General Assembly resolutions passed between 1965 and 1981.[82] Each of these resolutions articulated a prohibition of intervention in states' internal affairs, including interference in 'civil strife'.[83] Each also grounded this prohibition in every state's 'inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State'. The Friendly Relations Declaration of 1970 most famously linked these non-interference principles to the right of self-determination: 'By virtue of the principle of equal rights and self-determination of peoples enshrined in the Chapter of the UN, all peoples have the right to determine, without external interference, their political status.'[84]

The Wiesbaden Resolution III – in opaque, but hardly obscure, language – also cited pervasive Cold War realities as justification: the zero-sum way in

[80] Zamani and Nikouei, 'Intervention by Invitation' (n. 16), 677: '[I]f the privileges of a government really flow from its territorial control, then it is only reasonable to expect the loss of such privileges once a government's control is eradicated.'

[81] Hafner, 'II. 10th Commission' (n. 17), 336: 'Since the right to self-determination is a right appertaining to the people the State cannot dispose of it by its consent to military assistance.'

[82] Some authors also cite supportive statements by France and the United Kingdom. See Declaration of the President of France on the Occasion of the Sixteenth Conference of Heads of States of France and Africa, La Baule, 19–21 June 1990 ('[N]otre rôle à nous, pays étranger, fut-il ami, n'est pas d'intervenir dans les conflits intérieurs. Dans ce cas là, la France, en accord avec les dirigeants, veillera à protéger ses concitoyens, ses ressortissants; mais elle n'entend pas arbitrer les conflits'); Foreign Policy Document No. 148, 57 *British Yearbook of International Law* 57 (1986), 614–20 (616), Par. II.7 ('[A]ny form of interference or assistance is prohibited (except possibly of a humanitarian kind) when a civil war is taking place and control of the State's territory is divided between warring parties. But it is widely accepted that outside interference in favour of one party to the struggle permits counter-intervention on behalf of the other, as happened in the Spanish Civil War and, more recently, in Angola'). Both statements are cited by Corten, *The Law against War* (n. 4), 306, fn. 377 (France), 290 (the United Kingdom).

[83] UN GA Res. 2131 (XX) of 21 December 1965, Arts 1 and 2; UN GA Res. 36/103 (n. 23); UN GA Res. 2625 (XXV) of 24 October 1970.

[84] *Ibid*.

which the superpowers viewed civil wars and the reality that intervention on one side inevitably led to counter-intervention on the other.[85] While the IDI's members were far from unanimous and Special Rapporteur Dietrich Schindler expressed doubt that the Resolution accurately reflected settled law,[86] it has acquired a semi-authoritative status. The IDI view also found resonance in a widely cited report, commissioned by the European Union, of the Independent International Fact-Finding Mission on the Conflict in Georgia (IFFMCG). After reviewing the canonical sources and acknowledging their uncertainty, the report articulated a 'negative equality' principle that parallels the IDI view: '[A] military intervention by a third state in a state torn by civil war will always remain an illegal use of force, which cannot be justified by an invitation.'[87] Like Cold War-era sources, the IFFMCG justifies its position as a response to self-interested interventions. Negative equality, it asserts, 'removes the pretext of "invitation" relied on by third states in order to camouflage interventions motivated by their own policy objectives' and 'relieves lawyers of the difficult task of identifying and proving a valid invitation'.[88]

D. *The Democratic Legitimacy View*

The third theory posits that principles of democratic legitimacy should play a limited, but significant, role in evaluating the lawfulness of invitations.[89] The theory is limited because it is restricted to cases in which one party (usually the opposition) claims an electoral mandate to govern but is prevented from taking office or is ousted from office. The theory is nonetheless significant because traditional international law emphatically rejected democratic legitimacy criteria in favour of the effective control doctrine in evaluating a

[85] IDI, Wiesbaden Resolution III (n. 27), 1: '[A]ny civil war may affect the interests of other States and may therefore result in an international conflict if no provision is made for very stringent obligations of non-intervention'; '[T]he violation of the principle of non-intervention for the benefit of a party to a civil war often leads in practice to interference for the benefit of the opposite party.'

[86] See Nolte, 'The Resolution of the Institut de Droit International' (n. 28), 242–3. The vote on the 1975 Resolution was sixteen in favour, six against, and sixteen abstaining: Hafner, 'II. 10th Commission' (n. 17), 7, fn. 11.

[87] IFFMCG, *Report* (n. 22), 278. The Report cites the IDI Resolution in support of this principle: *ibid.*

[88] *Ibid.*, 279.

[89] See generally David Wippman, 'Pro-Democratic Intervention', in Marc Weller (ed.), *The Oxford Handbook on the Use of Force in International Law* (Oxford: OUP 2015), 797–815 (805).

regime's capacity to issue invitations.[90] The new theory does precisely the opposite.

Advocates of the democratic legitimacy approach – and they are few – ground their claim in the pervasiveness of democratic principles in international law after the end of the Cold War. Three trends are particularly relevant. The first is the pervasiveness of election monitoring. As Susan Hyde reports, as of 2011, '80% of all national elections are now monitored' by international observers.[91] The chances that any given regime's claim to democratic legitimacy can be empirically validated are thus substantially higher than they were in the Cold War period. The second is the modest, but real, impact that principles of democratic legitimacy have had on state practice in the recognition of states and of governments.[92] Regional organisations such as the Organization of American States (OAS), the European Union, the African Union, the Southern Common Market (Mercado Común del Sur, or Mercosur), and the Economic Community of West African States (ECOWAS) have established 'democracy protection' mechanisms that permit the collective non-recognition of regimes that depose or otherwise interrupt elected governments.[93]

These regional mechanisms complement election monitoring in two ways. First, they seek prospectively to ensure the stability of elected governments after they take office by threatening to sanction anti-democratic actors who undermine or overthrow those governments.[94] In other words, they address anti-democratic events well beyond the election itself. Second, they provide collective judgments on when democratic

[90] Roth, *Governmental Illegitimacy* (n. 14), 289.

[91] Susan D. Hyde, 'Catch Us If You Can: Election Monitoring and International Norm Diffusion', *American Journal of Political Science* 55 (2011) 356–69 (356). The figure was somewhat higher (albeit during a slightly different period) for newly democratic states. See Christina Binder, 'Two Decades of International Electoral Support: Challenges and Added Value', *Max Planck Yearbook of United Nations Law* 13 (2009), 213–46 (214): 'Between 1987 and 2002, observers were present for 86 per cent of the national elections in 95 newly democratic or semi-authoritarian regimes.'

[92] See generally Sean D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments', in Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law* (Cambridge: CUP 2000), 123–54.

[93] See Patrick J. Glen, 'Institutionalizing Democracy in Africa: A Comment on the African Charter on Democracy, Elections and Governance', *African Journal of Legal Studies* 5 (2012), 119–46; Thomas Legler and Thomas Kwasi Tieku, 'What Difference Can a Path Make? Regional Democracy Promotion Regimes in the Americas and Africa', *Democratization* 17 (2010), 465–91; Gregory H. Fox, 'Democracy, Right to, International Protection', in Peters and Wolfrum, *Max Planck Encyclopaedia*, online edn (n. 14).

[94] See Jacob Wobig, 'Defending Democracy with International Law: Preventing Coup Attempts with Democracy Clauses', *Democratization* 22 (2015), 631–54.

governance has been interrupted. The question of when a regime, once elected, loses its 'democratic' character has remained highly controversial.[95] Military coups are obvious cases, but what of suspending civil liberties, removing judges, dissolving the legislature or closing opposition media outlets? If international law is now expressing a preference for 'democratic' governments, then whether one characterises any or all of these actions as 'non-democratic' takes on great significance. The regional regimes avoid the cacophony of individual states answering these questions by providing for collective determinations, undertaken by bodies such as the African Union Peace and Security Council or the OAS Permanent Council.[96] Just as election monitoring is intended to move the question of a new government's entitlement to hold power from the domestic to the international realm, the democracy protection regimes similarly internationalise the question of an elected regime's *ongoing* democratic bona fides.

The third trend underlying the democratic legitimacy view is the practice of UN-sponsored post-conflict missions to states emerging from NIACs, which have consistently emphasised the importance of elections, human rights, and other democratic principles in the new institutions they help to establish.[97] The Security Council has unanimously approved most of these missions.

This ascension of democratic legitimacy criteria inevitably leads to the following question: why should the legitimacy of an elected regime not include a capacity to invite foreign forces to uphold an electoral

[95] In the case of Venezuela, for example, it has been argued that, despite Presidents Chavez and Maduro being elected by substantial majorities, the government has 'dismantled all democratic institutions': Diego A. Zambrano, 'The Constitutional Path to Dictatorship in Venezuela', *Lawfare*, 8 March 2019, available at www.lawfareblog.com/constitutional-path-dictatorship-venezuela.

[96] The African Charter on Democracy, Elections and Governance provides a list of 'illegal means of accessing or maintaining power' that constitute an 'an unconstitutional change of government': African Charter on Democracy, Elections and Good Governance, 30 January 2007, available at www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf, Art. 23. When the Peace and Security Council finds that there has been an unconstitutional change of government, it 'shall suspend the said State Party from the exercise of its right to participate in the activities of the Union': *ibid*. Art. 25(1). The Inter-American Democratic Charter refers to an 'unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state': Inter-American Democratic Charter, 11 September 2001, OAS Doc. OEA/SerP/AG/Res.1,40 I.L.M. 1289 (2001), Art. 20. When the OAS General Assembly 'determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS': *ibid*. Art. 21.

[97] See Gregory H. Fox, *Humanitarian Occupation* (Cambridge: CUP 2008), 52–8.

outcome?[98] If the effective control principle was challenged in other contexts, why not here? Sceptics of the democratic legitimacy approach are probably correct that these trends do not supersede some, or even all, competing values in evaluating invitations to intervene.[99] Glaring failures to challenge coups in cases such as Egypt (2013) or Thailand (2014), as well as the recent 'democratic recession', are common critiques. But democracy is a sufficiently significant presence in Security Council practices, in particular, to justify their empirical study.

The specific role accorded to democratic legitimacy depends on the nature of each case and how one understands the reach of the 'democratic entitlement' in international law more broadly.[100] There may be interventions in which democratic principles play no role whatever, such as where both an incumbent regime and opposition groups lack an electoral mandate, and the opposition group makes no promise of democracy once in power. From that 'democratic vacuum', one can imagine a continuum of increasingly well-grounded claims of democratic legitimacy on which an invitation to intervene might be based:

(i) one side in a conflict was elected at some point in the past without international monitors;
(ii) one side was elected recently, with international monitors certifying the process as free and fair; and
(iii) not only did one side win an internationally monitored election, but also international organisations – perhaps including the Security Council – affirmed their support for that side as the legitimate government.

[98] As Brad Roth put it, '[a]s the norm of popular sovereignty becomes more fully elaborated in the international system, one would expect an assessment of the legality of an invited intervention (along with the associated recognition decision) to turn expressly on an empirical evaluation of the representativeness of the regime soliciting foreign assistance, as compared to the representativeness of its opponent': Roth, *Governmental Illegitimacy* (n. 14), 289.

[99] Corten, *The Law against War* (n. 4), 36; de Wet, 'Modern Practice of Intervention by Invitation' (n. 1), 983–90; Mohamed Helal, 'The ECOWAS Intervention in The Gambia – 2017', The Ohio State University Moritz College of Law Public Law and Legal Theory Working Paper No. 414 (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3046628, 12.

[100] This phrase was famously coined by Thomas Franck, 'The Emerging Right to Democratic Governance', *American Journal of International Law* 86 (1992), 46–91. For a contemporary assessment of Franck's article, see the recent collection of essays in the 'Symposium on Thomas Franck's "Emerging Right to Democratic Governance"', *AJIL Unbound* 112 (2018), 64–93.

Which of these scenarios should qualify as validating an invitation because it furthers the democratic legitimacy view?

In addition, the question of *when* a government may issue an invitation is separate from the question of *who* qualifies as the government of a state for the purposes of issuing an invitation. Democratic legitimacy criteria clearly answer the latter question but not necessarily the former. The questions of 'who' and 'when' could interact in several different ways. In each instance, let us assume the paradigmatic case of an elected regime ousted in a military coup. That regime then takes up arms to regain power. The conflict then becomes a civil war. Therefore, the regime invites in foreign forces.

First, the law could contain a civil war intensity threshold but (unlike under the IDI view) find it satisfied by the electoral mandate. In other words, the electoral mandate resolves the question of whether the state is actually divided over its future leadership, which was the basis for the IDI/self-determination rule of abstention during civil wars. This approach would thus conclude that electoral mandate both qualifies the regime as the legitimate government and endows it with authority to invite foreign support, despite the conflict having crossed the civil war threshold.

Second, the democratic legitimacy view, paired with the *Nicaragua* view, would also permit assistance to the ousted elected regime. This is because no intensity threshold would be imposed, thus making the existence of a civil war irrelevant to the validity of the invitation. The democratic legitimacy view would designate the ousted group as 'the government' for the purposes of issuing an invitation, despite it not exercising actual power.

Third, the elected, but ousted, group would qualify as the 'government' but, pursuant to the IDI view, still not be permitted to issue an invitation. This view would emphasise that internal self-determination is not equivalent to democratic choice and instead functions as a shield for states to resolve their internal disputes by any and all means, free from outside influence. That this particular dispute was resolved by the forceful removal of an elected regime is of no consequence.

Any one of these modes of integrating democracy criteria is plausible. One might look for guidance in the few cases in which they have been invoked – namely, the ECOWAS interventions in Liberia in 1992, the ECOWAS intervention in Sierra Leone in 1998, and the threatened ECOWAS intervention in

The Gambia in 2017.[101] But these cases are so factually distinct from one another that one cannot imply a common legal template for the use of a democracy justification. In Liberia in 1992, besieged President Samuel Doe consented to the ECOWAS intervention in the midst of a NIAC, but his democratic bona fides were highly questionable.[102] In Sierra Leone in 1998, the Security Council praised the ECOWAS intervention that restored elected President Ahmed Tejan Kabbah to power.[103] A NIAC was in progress at the time of the intervention, and the Council had previously denounced a military coup that deposed the elected Kabbah government and called for that government to be restored.[104] President Kabbah appealed from exile to the chair of ECOWAS for assistance.[105] After the ECOWAS action, the Council issued a presidential statement welcoming 'the fact that the rule of the military junta has been brought to an end', and commended 'the important role' of ECOWAS.[106] Some have questioned whether the Council statement amounted to an ex post ratification of the ECOWAS intervention.[107]

Finally, in The Gambia in 2017, Adama Barrow defeated long-time President Yahya Jammeh in an election that Jammeh initially conceded but later denounced, refusing to leave office.[108] Barrow, after somehow being sworn into office in the Gambian Embassy in Senegal on 17 January 2017, asked the United Nations, the African Union, and ECOWAS for assistance in taking office.[109] On 19 January, the Security Council adopted a resolution condemning Jammeh's refusal to leave office and urging respect

[101] While the Security Council's 1994 authorisation of the use of force to restore President Aristide to the presidency of Haiti is an important case, it is not helpful on this question, because Haiti was not experiencing armed conflict at the time of the authorisation.

[102] See Peter Blackburn, 'Fraud Charged in Liberia's First One-Man, One-Vote Election', *Christian Science Monitor* 25 October 1985, available at www.csmonitor.com/1985/1025/olib.html. See also 'Liberia: Election and Coup Attempt – 1985', *Global Security*, n.d., available at www.globalsecurity.org/military/world/war/liberia-1985.htm.

[103] See generally Karsten Nowrot and Emily W. Schabacker, 'The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone', *American University of International Law Review* 14 (1998), 321–412.

[104] UN SC Res. 1132 of 8 October 1997.

[105] Nowrot and Schabacker, 'The Use of Force to Restore Democracy' (n. 103), 386.

[106] UN Doc. S/PST/1998/5, 26 February 1998.

[107] See Nowrot and Schabacker, The Use of Force to Restore Democracy' (n. 103), 364–5.

[108] Helal, 'The ECOWAS Intervention in The Gambia' (n. 99), 2–3. Many international observers criticised the elections for procedural irregularities. See Corten, 'Intervention by Invitation', Chapter 2 in this volume, section V.C. But these problems were all observed to favour the incumbent Jammeh. It is therefore difficult to claim that Barrow lacked a clear democratic mandate because the election was unfair; he had a clear democratic mandate *despite* the election being unfairly rigged against him.

[109] Antenor Hallo de Wolf, 'Rattling Sabers to Save Democracy in The Gambia', *EJIL:Talk!*, 1 February 2017, available at www.ejiltalk.org/rattling-sabers-to-save-democracy-in-the-gambia/.

for the electoral results, urging 'all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognised Adama Barrow as the President-elect of the Gambia'.[110] The Council tied its conclusions to similar determinations by regional international organisations, endorsing 'the decisions of ECOWAS and the African Union to recognise Mr. Adama Barrow as president of the Gambia'.[111] The Council did not, however, authorise the use of force. With ECOWAS troops massing in Senegal on the Gambian border, Jammeh left the country on 21 January. The significant factors in the Gambian case that differ from those of Liberia and Sierra Leone are that no foreign troops actually entered the territory and the person issuing the invitation had never actually held power.

Despite this ambiguity in state practice – essentially a problem of too many variables to support a one-size-fits-all rule – one can make a strong argument for a version of the first option above. This is the claim that a democratically legitimate regime ousted from power can still issue a valid invitation despite the existence of a NIAC. The central objections to this view fall into two categories. The first is doctrinal – that the international law of recognition of governments still favours the effective control test, even if that support has weakened in the post-Cold War era; the second is normative – during a NIAC, no outsider can presume to judge which competing faction should be permitted to entrench itself in power by inviting outside forces, and external efforts to designate one faction as legitimate are likely to be more subjectively political than empirically objective. Both of these critiques originated prior to the end of the Cold War and the rise of democratic legitimacy criteria.[112] More importantly, neither of the critiques appears valid where an international organisation – often the Security Council, but also a regional organisation – determines that an electoral result entitles one faction to hold power and the other not. The first objection, relying on the effective control test, would have to argue that such a collective determination of legitimacy would be valid for all purposes *except* inviting outside forces. Prior such determinations by

[110] UN SC Res. 2337 of 19 January 2017.

[111] *Ibid.*

[112] In 1963, arguing against the lawfulness of invitations, Brownlie assumed that the legitimacy of an inviting government could be determined only by reference to the state's domestic law – and since 'there is in international law no definition of "legitimate government"', this would put outsiders in the improper position of making their own determinations about how the internal law should operate in times of extreme crisis: Brownlie, *International Law and the Use of Force by States* (n. 37), 324.

international organisations contain no such distinction.[113] On what basis could the winning faction, for example, be entitled to appoint ambassadors, enter into treaties or exercise diplomatic protection, but not consent to the use of force on its territory? The entire purpose of multilateral validation of one faction's entitlement to rule is to grant it exclusive access to all aspects of the state's sovereign prerogatives.

The second critique – that outsiders simply cannot presume to judge the legitimacy or illegitimacy of competing national factions – is simply of no consequence if an international organisation has already observed an election and determined the winner. The intervening state does not make its own subjective determination that the inviting regime is democratically legitimate; it simply acts on a prior determination by an international organisation to that effect.[114]

This multilateral component is, of course, critical. Such validations would (hopefully) remove the feared politicisation of a recognition decision. Cases with no involvement by an international organisation would be more susceptible to Cold War critiques. But in cases addressed by the Security Council and/or regional 'democracy protection regimes' – under which member states agree in advance to non-recognition and sanctions where democratic government is interrupted – recognition would be less political and a matter of legal obligation.[115] That the losing faction resists such a determination and begins

[113] See, e.g., UN SC Res. 867 of 23 September 1993, para. 12 (describing 'the legally constituted Government of Haiti'); UN SC Pres. Statement on Sierra Leone, S/PRST/1997/36, 11 July 1997 ('the attempt to overthrow the democratically elected [Liberian] Government of President Ahmad Tejan Kabbah is unacceptable and [the Security Council] calls again for the immediate and unconditional restoration of constitutional order in the country'); UN SC Res. 1962 of 20 December 2010 (in which the Council 'Urges all the Ivorian parties and stakeholders to respect the will of the people and the outcome of the election in view of ECOWAS and African Union's recognition of Alassane Dramane Ouattara as President-elect of Côte d'Ivoire and representative of the freely expressed voice of the Ivorian people as proclaimed by the Independent Electoral Commission'); UN SC Res. 2337 of 19 January 2017, para. 1 (in which the Council 'Urges all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognized Adama Barrow as President-elect of The Gambia and representative of the freely expressed voice of the Gambian people as proclaimed by the Independent Electoral Commission').

[114] Thus the admitted indeterminacy of 'democracy' as a general philosophical concept, as well as the related problem of multiple factions in a state potentially claiming the mantle of 'democratic legitimacy', are not reasons to critique the standard suggested here. See Corten, 'Intervention by Invitation', Chapter 2 in this volume, section V.A. The intervention would have taken place only after outside observers had empirically verified the inviting regime's democratic bona fides.

[115] The regional regimes are discussed in Enrique Lagos and Timothy D. Rudy, 'In Defense of Democracy', *University of Miami Inter-American Law Review* 35 (2004), 283–309; Patrick J. Glen, 'Institutionalizing Democracy in Africa: A Comment on the African Charter on

an armed resistance is not a reason for the international organisation to retract its legitimacy determination.[116]

If the democratic legitimacy view is thus seen as not subject to the IDI view's exclusion of invitations issued in civil wars, it represents a subset of cases coming within the *Nicaragua* view. That subset would likely include some cases of civil war and thus, as shown in Figure 3.1, the democratic legitimacy view overlaps with in both the IDI and *Nicaragua* categories.

E. *Anti-Terrorist Operations*

The final view holds that invitations to assist governments in conflict with transnational terrorist groups are legitimate in all cases.[117] This claim is perhaps the least controversial of the four presented.[118] While there is some question as to whether counter-terrorism was the sole reason for some interventions in the dataset, there is little, if any, evidence of state reaction against the legitimacy of counter-terrorist intervention.

Democracy, Elections and Governance', *African Journal of Legal Studies* 5 (2012), 119–46; Eliav Lieblich, 'Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements', *Boston University in International Law Journal* 29 (2011), 337–82 (ECOWAS).

[116] To capture all cases that arguably support a democratic legitimacy element in assessing invitations, the dataset counted all cases in which the intervening party made such a claim. But, in assessing the weight of those cases, I will emphasise those with multilateral determinations.

[117] For discussions, see Bannelier and Christakis, 'Under the UN Security Council's Watchful Eyes' (n. 6), 12; Kajtar, 'The Use of Force against ISIL in Iraq and Syria (n. 26), 30; Nussberger, 'Military Strikes in Yemen in 2015' (n. 1), 27.

[118] Dino Kritsiotis adds a layer of complexity when discussing the 2011 US raid in Pakistan that killed Osama bin Laden: see Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume, section III.C. Although Pakistan had consented to earlier US strikes on its territory against terrorist targets, it publicly condemned the bin Laden raid. Without a public invitation, the United States relied on other legal grounds in defending its operation: *ibid*. Kritsiotis argues that 'the episode revealed the abiding worth of consent in the dynamics of the laws of the ius ad bellum, but it also spoke to its fragility: its presence cannot be assumed or extended. Its function cannot be generalised but is instead wrapped in the politics and normativity of the particular': *ibid*. (footnotes omitted). It is certainly true that, absent explicit consent, outside observers seeking to place an episode in the 'invitation' category must be careful that theoretical constructs do not overtake facts on the ground. But this is a problem with any reliance on consent, not only that for anti-terrorist operations. The bin Laden episode is particularly fraught, with Pakistan in the years since 2001 frequently giving private consent to US operations on its territory but publicly condemning them as unlawful: see Sean D. Murphy, 'The International Legality of U.S. Military Cross-Border Operations from Afghanistan into Pakistan', *Israel Yearbook on Human Rights* 39 (2009), 281–314 (289).

The terrorism view is primarily asserted as an exception to the IDI view. Unlike rebel groups representing some portion of a state's citizens dissatisfied with their government, terrorist groups frequently count foreign fighters among their ranks and operate across different states simultaneously.[119] As a result, 'terrorist groups cannot be regarded as a "People", denying any claim to the right of self-determination'.[120] The IDI view, seeking to secure the integrity of autonomous political decision-making within states, is unaffected by assistance to governments in conflict with groups not part of the national body politic.[121]

A rule permitting counter-terrorist interventions confronts the common problem of the term's lack of a clear definition.[122] The malleability and highly political nature of a 'terrorist' designation presents the obvious danger of incentivising governments to label their civil war opponents 'terrorists' to legitimise external assistance. Definitional ambiguity also creates problems for coding: if one were to count as relevant state practice all cases in which the inviting state designated its opponents 'terrorists', one could not ensure uniformity across cases.

Fortunately, the cases in the dataset coded as anti-terrorist interventions do not suffer from definitional ambiguity. Since 1999, the Security Council's 1267 Committee has maintained a list of individuals and organisations associated with the Taliban and Al-Qaeda.[123] Those on the list are subject to a comprehensive set of sanctions, overseen by the Committee.[124] The list began as an effort to combat the harbouring of terrorist groups in Afghanistan and was later expanded to encompass many 'associated' groups elsewhere, including so-called Islamic State in Iraq and the Levant (ISIL) in 2015.[125]

[119] Bannelier and Christakis, 'Under the UN Security Council's Watchful Eyes' (n. 6), 854: 'If external intervention by invitation is normally unlawful when its objective is to settle an exclusively internal political strife in favour of the established government, it goes otherwise when the purpose of the intervention is different.'

[120] Kajtar, 'The Use of Force against ISIL in Iraq and Syria' (n. 26), 563.

[121] See Corten, 'Intervention by Invitation', Chapter 2 in this volume, section III.A.

[122] See Christian Walter, 'Terrorism', in Peters and Wolfrum, *Max Planck Encyclopaedia*, online edn (n. 14), para. 1: 'International law has been grappling with the definition of terrorism ever since it first started to deal with the issue.'

[123] See Dire Tladi and Gillian Taylor, 'On the Al Qaida/Taliban Sanctions Regime: Due Process and Sunsetting', *Chinese Journal of International Law* 10 (2011), 771–89.

[124] See Security Council Committee Pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015) Concerning ISIL (Da'esh) Al-Qaeda and Associated Individuals Groups Undertakings and Entities, available at www.un.org/securitycouncil/sanctions/1267.

[125] See UN SC Res. 2253 of 17 December 2015; UN SC Res. 1267 of 15 October 1999. For the lengthy list of sanctioned individuals and groups, see UN Security Council, 'Narrative Summaries of Reasons for Listing', available at www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries.

The Council has articulated criteria for listing individuals and groups, and it created an ombudsperson to review requests for delisting from those who claim to have been listed erroneously.[126] The 1267 sanctions list, in other words, reflects a collective effort to identify and sanction specific 'terrorists' in the name of the international community as a whole. The Council repeatedly underlines this latter point by employing the terminology of international criminal law and the ius ad bellum to describe the acts of listed terrorists.[127]

As detailed in Table 3.1, all but three of the non-state-conflict parties in interventions coded as 'anti-terrorist' have appeared on the 1267 list. The three exceptions do not involve disagreements over whether the groups involved were 'terrorists'.[128] Of course, future conflicts may involve non-listed groups, or alleged terrorist groups may participate in conflicts the Security Council has not yet addressed. But, for the purposes of assessing Council practice to date, the definitional debates plaguing other areas of international law are not a complicating factor here.

[126] As described in UN SC Res. 2368 of 20 July 2017, para. 2, for the purposes of being added to the sanctions list, acts indicating an individual or group is associated with Al-Qaeda or ISIL include:

(a) Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
(b) Supplying, selling or transferring arms and related materiel to;
(c) Recruiting for; or otherwise supporting acts or activities of Al-Qaida, ISIL, or any cell, affiliate, splinter group or derivative thereof.

The Office of the Ombudsperson was established by UN SC Res. 1904 of 17 December 2009. See the discussion of the Ombudsperson in Tladi and Taylor, 'On the Al Qaida/Taliban Sanctions Regime' (n. 123), 782.

[127] See, e.g., UN SC Res. 2379 of 21 September 2017 (ISIL acts in Iraq 'may amount to crimes against humanity'); UN SC Res. 2347 of 24 March 2017 (condemning attacks by listed groups against cultural sites and buildings and affirming that such attacks 'may constitute, under certain circumstances and pursuant to international law a war crime'); UN SC Res. 2379 of 21 September 2017 (condemning litany of acts by ISIL and expressing determination that 'those responsible in this group for such acts, including those that may amount to war crimes, crimes against humanity, and genocide, must be held accountable'); UN SC Res. 1390 of 28 January 2002 ('Reaffirming further that acts of international terrorism constitute a threat to international peace and security').

[128] One group, Hizb-I Islami-yi Afghanistan, was much more akin to a traditional rebel group than transnational terrorism. See Institute for the Study of War, 'Hizb-I Islami-yi Afghanistan', available at www.understandingwar.org/hizb-i-islami-gulbuddin-hig. The other two – the Lord's Resistance Army and the Allied Democratic Forces, both active in Uganda – were subject to separate sanctions regimes: see UN SC Res. 2078 of 28 November 2021; UN SC Res. 2262 of 27 January 2016.

TABLE 3.1 *Terrorist Groups Participating in Coded Conflicts*

Conflict Name	Terrorist Groups	1267 List [Y if on the list; N if not on the list]	Criteria for Inclusion*
Afghanistan	Taleban	Y	1, 2, 3
	Hizb-I Islami-yi Afghanistan	N	
Afghanistan	IS	Y	1, 2, 3
Algeria	AQIM	Y	1
Cameroon	Jama'atu	Y	1
Cameroon	IS	Y	1, 2, 3
Libya	IS	Y	1, 2, 3
Mali	Ansar Dine	Y	1, 2, 3
	AQIM	Y	1
	MUJAO	Y	1
	Signed-in-Blood Battalion	Y	1, 3
	al-Murabitum	Y	1, 3
Mauritania	AQIM	Y	1
Niger	IS	Y	1, 2, 3
Nigeria	Jama'atu	Y	1
Nigeria	IS	Y	1, 2, 3
Syria v. IS	IS	Y	1, 2, 3
Uganda	LRA	*N [Listed instead pursuant to Res. 2262 (2016)]	
	ADF	*N [Listed instead pursuant to Res. 2078 (2012)]	
Uzbekistan	IMU	Y	1, 2, 3
Yemen (North Yemen)	AQAP	Y	1, 2, 3

Note

Listing criteria taken from UN Security Council, 'Sanctions: Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities – Summary of Listing Criteria', available at www.un.org/securitycouncil/sanctions/1267#listing_criteria:

1. Participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of –
2. Supplying, selling or transferring arms and related material to –
3. Recruiting for –

or otherwise supporting acts or activities of, ISIL (Da'esh), Al-Qaida or any cell, affiliate, splinter group or derivative thereof.

III. METHODOLOGY FOR ASSESSING RECENT STATE PRACTICE

We have now reviewed four theories that can plausibly claim grounding in contemporary international law: the IDI view, the *Nicaragua* view, the democratic legitimacy view, and the anti-terrorism view. How have these theories been received by the international community in practice since the end of the Cold War? To answer this question, we coded interventions in armed conflicts from 1990 to 2017 and the reaction of critical international actors to those interventions.[129] Among international organisations, we coded the UN Security Council and General Assembly, the European Union, the OAS and the African Union. Among states, we coded the United States, the United Kingdom, France, South Africa, Argentina, Australia, and Japan. For each intervention, we asked whether each actor approved, disapproved or issued a statement evidencing neither approval nor disapproval.[130]

Before discussing the data, it is first important to describe how the cases of consensual intervention were selected, with attention to two aspects in particular.

A. *Selecting Conflicts*

All cases included in the dataset are taken from the Uppsala Conflict Data Program (UCDP), which creates widely used compilations of historical and contemporary data about armed conflict.[131] We began with the UCDP External Support Dataset, which provides 'information on the existence, type, and provider of external support for all warring parties (actors) coded as

[129] A detailed explanation of the coding method can be found in Appendix I, the Coding Manual. In summary, the coding was divided into two parts: the first concerns the characteristics of the intervention – the purpose of the intervention, the nature of the conflict, the severity of the conflict, and the length of the conflict; the second concerns international reaction to the intervention. For all the actors whose reactions we measured, we asked if they approved an intervention, disapproved an intervention, issued a statement containing neither approval nor disapproval, or issued no statement at all.

[130] Because of the Security Council's ability to issue authoritative determinations on uses of force and because every state has the opportunity to vote in the General Assembly, we did not go on to code reactions by individual states if either of those bodies reacted to an intervention.

[131] See Uppsala Conflict Data Program, available at http://ucdp.uu.se/. For an overview of this and other conflict datasets, see Charles H. Anderton and John R. Carter, 'Conflict Datasets: A Primer for Academics, Policymakers, and Practitioners', *Defence and Peace Economics* 22 (2011), 21–42. In some cases, Uppsala identifies more than one conflict as occurring in a single country. Sometimes, this is simply a matter of different conflicts with different parties erupting at different times; at other times, it is a matter of distinct parties fighting each other at the same time. The DR Congo and Syria are two countries that Uppsala and the dataset for this chapter list as hosting more than one conflict.

active in UCDP data, on an annual basis, between 1975 and 2009'.[132] The dataset for this chapter is modified in three ways.

1. We eliminated all cases prior to 1990, using that year as a proxy for the end of the Cold War and the beginning of an era in which the UN Security Council was capable (with obvious and notable exceptions) of addressing most armed conflicts around the world.
2. Although the UCDP codes a wide variety of forms of external support for warring parties, our dataset includes only cases in which troops were supplied to a primary warring party.[133]
3. Because the Uppsala External Support dataset ends in 2009, our dataset adds post-2009 NIACs from a second Uppsala dataset. We used the UCDP's main dataset – UCDP/PRIO Armed Conflict Dataset, version 17.2 – to supply cases of external support from 2009 through its end date of 31 December 2016 (as of 22 January 2018).[134] Because this later data includes international armed conflicts and NIACs, we eliminated the former from our data.[135]
4. Finally, the UCDP does not code for whether the interventions in either dataset were invited or not. However, a member of the Uppsala project clarified that an intervention in an NIAC would not have been coded as such unless the party receiving assistance consented to that assistance.[136] That assurance meant that all the interventions we coded using these criteria were consensual interventions.

[132] UCDP External Support Dataset, available at http://ucdp.uu.se/downloads/.

[133] Uppsala also codes for support in the form of granting access to territory, access to military or intelligence infrastructure, weapons, materiel/logistics, training/expertise, funding/economic support, and intelligence material: UCDP External Support Project Primary Warring Party Dataset Codebook, version I-2011 8 (2011), available at http://ucdp.uu.se/downloads/extsup/ucdp_external_support_primary_warring_party_codebook_1.0.pdf.

[134] Since this data was originally accessed, it has been updated to version 18.1, available at http://ucdp.uu.se/downloads/ucdpprio/ucdp-prio-acd-181.xlsx. This dataset indicates external involvement using two variables: 'Side a 2nd' and 'Side b 2nd'. The 'a' and 'b' designations indicate which side in the conflict is supported by an external actor; '2nd' refers to second-party support. UCDP codes intervention in these categories only if (i) the intervention takes the form of supplying troops and (ii) the external supporter is a state. We eliminated all conflicts except those in either of these two categories.

[135] The 2010–16 dataset contains four types of conflict: extrasystemic, interstate, internal, and internationalised internal. Only the third and fourth of these involve the conflicts implicated by the non-intervention norm in international law, so we eliminated conflicts in the first and second categories. See UCDP/PRIO Armed Conflict Dataset Codebook, version 18.1, (2018), available at http://ucdp.uu.se/downloads/ucdpprio/ucdp-prio-acd-181.pdf, 9–10.

[136] Email dated 30 May 2018, from Therése Pettersson, project leader of the Uppsala Conflict Data Program (on file with author).

The final set of cases resulting from these modifications is set out as Appendix II. That table includes information on the invited and inviting states, the party being supported, the nature of the intervention, and the reaction, if any, by the UN Security Council.

B. *Defining Civil Wars*

The second methodological question involves how to define a 'civil war'. To investigate the IDI view prohibiting interventions in civil wars, it is necessary to define which conflicts in our data set qualify as such. The IDI's 1975 Wiesbaden Resolution III itself employs a definition with three elements: rebels must have a minimum level of organisation; the conflict must pass an 'intensity threshold'; and the rebel groups must have certain specific goals.[137] But whether the IDI view aligns with how the international community generally – and the Security Council in particular – defines 'civil wars' is an exceedingly complex question.[138]

'Civil war' is not a term of art in international law.[139] International humanitarian law (IHL) refers instead to NIACs, with competing definitions

[137] The full definition appears in Art. 1 of the Resolution:

> For the purposes of this Resolution, the term 'civil war' shall apply to any armed conflict, not of an international character, which breaks out in the territory of a State and in which there is opposition between:
>
> a) the established government and one or more insurgent movements whose aim is to overthrow the government or the political, economic or social order of the State, or to achieve secession or self-government for any part of that State, or
> b) two or more groups which in the absence of any established government contend with one another for the control of the State.
>
> 2. Within the meaning of this Resolution, the term 'civil war' shall not cover:
>
> a) local disorders or riots;
> b) armed conflicts between political entities which are separated by an international demarcation line or which have existed de facto as States over a prolonged period of time, or conflicts between any such entity and a State;
> c) conflicts arising from decolonization.

IDI, Wiesbaden Resolution III (n. 27), 1–2.

[138] This is true not least because it is possible for an international armed conflict and a NIAC to exist simultaneously in the same state: Thomas Liefländer, 'The *Lubanga* Judgment of the ICC: More Than Just the First Step?', *Cambridge Journal of International and Comparative Law* 1 (2012), 191–212 (194) (discussing these circumstances as analysed in ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Judgment Pursuant to Art. 74 of the Statute, 14 March 2012).

[139] Eliav Lieblich, *International Law and Civil Wars: Intervention and Consent* (London: Routledge 2013), 161–2 (term 'seems incompatible with modern law'). Traditional belligerency

grounded in two different international instruments.[140] The first is common Article 3 to the four Geneva Conventions of 1949, which refers to 'armed conflict not of an international character occurring in the territory of one of the High Contracting Parties'.[141] The most widely accepted definition of a NIAC as the term is used in common Article 3 appears in the 1995 *Tadić* decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) – that is, 'protracted armed violence between governmental authorities and organised armed groups or between such groups within a State'.[142]

The second is found in the Additional Protocol II (AP II) on Non-International Armed Conflicts, which sets out narrower criteria for application than those found in *Tadić*. The Protocol applies to armed conflicts:

> … which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.[143]

The *Tadić* definition and AP II criteria share two common elements: the opposition groups must have some minimum level of organisation or

doctrine also fails to provide definitional clarity: see Milanovic and Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' (n. 29), 264 ('Internal armed struggles came to be seen through three legal categories – rebellion, insurgency and belligerency. Any one of these could have been characterised in common parlance as a civil war'). Even political scientists who compile conflict datasets employ a wide range of definitions: see Nicholas Sambanis, 'What Is Civil War? Conceptual and Empirical Complexities of an Operational Definition', *Journal of Conflict Resolution* 48 (2004), 814–58 (814–15) ('Currently, about a dozen research projects have produced civil war lists based on apparently divergent definitions of civil war').

[140] The San Remo Manual on Non-International Armed Conflicts provides yet another definition that is much less precise: 'Non-international armed conflicts are armed confrontations occurring within the territory of a single State and in which the armed forces of no other State are engaged against the central government'. See International Institute of Humanitarian Law (IIHL), *The Manual on the Law of Non-International Armed Conflict* (San Remo: IIHL 2006), 2, quoted in Rogier Bartels, 'Timelines, Borderlines and Conflicts: The Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts', *International Review of the Red Cross* 873 (2009), 35–67 (39).

[141] See, e.g., Geneva Convention [No. IV] Relative to the Protection of Civilian Persons in Time of War, Art. 3, 12 August 1949, 75 UNTS 287.

[142] ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1, decision on defence motion for interlocutory appeal on jurisdiction of 2 October 1995, para. 70.

[143] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, Art. 1(1) (8 June 1977).

structure;[144] and the conflicts must have reached a certain level of intensity.[145] The Protocol adds a third: the rebel groups must exert control over a part of the state's territory. Each definition seeks to distinguish internal armed conflicts from lower-level disturbances, which few doubt a government can quell with external assistance.[146]

While the *Tadić* test is widely understood as reflecting customary international law, its use as a metric to identify the NIACs in our dataset presents a number of difficulties.[147] First, the specific factors relevant to the 'intensity threshold' are quite unclear and thus that aspect of the definition is not easily quantified.[148] One metric that would seem especially well-suited to clear line-drawing – the number of fatalities at the time of an intervention – is not uniformly employed by tribunals applying the *Tadić* test.[149]

[144] The opposition must consist of 'organized armed groups' for *Tadić* and must be 'under responsible command' for AP II.

[145] *Tadić* (n. 142) requires that there be 'protracted armed violence'; AP II provides in Art. 1(2) that the Protocol shall 'not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature', meaning that NIACs must involve a greater degree of violence.

[146] See ICTY, *Tadić*, Case No. IT-94-1-T, opinion and judgment in Trial Chamber (7 May 1997), para. 562 (NIAC test employed 'for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law').

[147] The International Committee of the Red Cross (ICRC) has endorsed *Tadić* in its explanation of what constitutes a NIAC: ICRC, *How Is the Term 'Armed Conflict' Defined in International Humanitarian Law?*, Opinion paper, 17 March 2008, 3, fn. 10, available at www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf. See also Milanovic and Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' (n. 29), 24–5.

[148] In the *Boškoski* case, the ICTY reviewed a long list of factors to determine whether the level of violence had met the *Tadić* intensity threshold: the seriousness of the conflict; the increase and spread of clashes over territory and time; the distribution and type of weapons employed; the presence of government forces and their use of force; the number of casualties; the incidence of civilians fleeing from the combat zone; the extent of destruction; the blocking, besieging, and heavy shelling of towns; the existence and change of front lines; the occupation of territory; the imposition of road closures; and the attention of the UN Security Council. See ICTY, *Prosecutor v. Boškoski*, Case No. IT-04-82-T, judgment of 10 July 2008, para. 177. But many other decisions issued by the ICTY and the International Criminal Court (ICC), applying the *Tadić* definition, discussed only a few of these factors. See ICTY, *Prosecutor v. Haradinaj*, Case No. IT-04-84-T, Trial Chamber I judgment of 3 April 2008, paras 49, 90–100; ICTY, *Prosecutor v. Limaj*, Case No. IT-03-66-T, Trial Chamber II judgment of 30 November 2005, paras 135–73; ICTY, *Prosecutor v. Mucic*, Case No. IT-96-21-T, Trial Chamber judgment of 16 November 1998, paras 186–92.

[149] ICTY opinions in *Limaj*, *Tadić*, *Boškoski*, and *Kordic and Cerkez* looked to casualty levels, while opinions in *Haradinaj*, *Matrić*, and *Mucic* did not. See *Limaj* (n. 148), paras 135, 138, 140, 141, 147, 155, 157; *Tadić* (n. 146), para. 565; *Boškoski* (n. 148), para. 239; ICTY, *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-A, Appeals Chamber judgment of 17 December 2004, para. 339; *Haradinaj* (n. 148); *Prosecutor v. Matrić*, Case No. IT-95-11-T, Trial Chamber I judgment of 12 June 2007; *Mucic* (n. 148).

Second, it is not at all clear that a test developed for IHL purposes is appropriate for defining a 'civil war' for ius ad bellum purposes. The argument for applying IHL to an internal conflict is that the individuals affected – civilians in particular – deserve protection from violence in which they play no role. This concern for individual dignity, it is argued, remains compelling whether a conflict is inter-state or intra-state.[150] By contrast, the ius ad bellum argument for prohibiting external assistance during 'civil wars' rests on the collective entitlement of a citizenry to determine its political future during periods of extreme polarisation. One could well imagine the threshold for recognising such polarisation being much higher than the threshold for applying individual IHL protections. The point at which the level of individual suffering becomes intolerable, such that IHL protections are necessary, could be much lower than the level at which it is clear that a substantial portion of the population finds the government so unacceptable that its violent removal becomes justified.[151]

Third, it seems unlikely that states and international organisations regularly employ a legal test for civil wars when issuing political reactions to interventions. Even if they did, it would be unclear which of the two tests (*Tadić* or AP II) they would use.

Given this lack of clarity on legal thresholds, this chapter will employ the rather straightforward UCDP definition of an 'internal armed conflict'[152] – namely, that it is one that 'occurs between the government of a state and one or more internal opposition group(s)',[153] with two additional characteristics: it must involve at least twenty-five battle-related deaths in a calendar

[150] See Milanovic and Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' (n. 29), 28.

[151] Dino Kritsiotis makes a similar point concerning the 1975 IDI Wiesbaden Resolution III adopting a IHL definition of civil war: Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume, section IV.B.

[152] Two additional factors serve as a robustness check on the Uppsala definition. First, many international tribunals applying the *Tadić* test look to whether the United Nations engaged with the conflict in analysing the intensity threshold. See *Matrić* (n. 149); ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Public with annexes I, II, and A to F, judgment pursuant to Art. 74 of the Statute of 21 March 2016. As discussed below, the UN Security Council has been involved in the overwhelming percentage of conflicts in our dataset. Second, many of the more recent conflicts in the dataset have been designated as NIACs by the Geneva Academy of International Humanitarian Law and Human Rights for IHL purposes. The Geneva Academy uses the *Tadić* test. See Annyssa Bellal, 'The War Report: Armed Conflicts in 2017', in *Geneva Academy War Report 2017*. (Geneva: The Geneva Academy of International Humanitarian Law and Human Rights 2018), available at www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202017.pdf, 24.

[153] UCDP/PRIO Armed Conflict Dataset Codebook (n. 133), §3.14, 10. The UCDP further subdivides internal armed conflicts into those with and without external intervention. This distinction has implications for data on the IDI view, which are discussed below.

year;[154] and the dispute must concern *government* (the 'type of political system, the replacement of the central government or the change of its composition') or *territory* ('the change of the state in control of a certain territory (interstate conflict), secession or autonomy (intrastate conflict)').

The UCDP definition does not include the first element of the *Tadić* test concerning the opposition group's level of organisation. But the requirement that the conflict be about either government or territory can be seen as making up for this omission in performing the similar function of distinguishing politically oriented violence from mere criminal activity or low-level unrest. Uppsala requires that conflicts concern either government or territory because those are the root causes of most significant armed conflicts. To the extent that the international community seeks to resolve those conflicts, it must also engage with issues of territory or governance. The types of internal conflict that Uppsala codes, in other words, are those most likely to engage the international community.[155]

In sum, the problem of defining civil wars arises because of the need to test the IDI view, which relies on a particular definition of 'civil war'. But unless the Uppsala definition employed here is coextensive with the IDI definition, showing international approval of interventions in 'civil wars' would not necessarily demonstrate disapproval of the IDI view. Is that the case?

Table 3.2 shows how each of the definitions of civil war discussed above – Uppsala, IDI, common Article 3/*Tadić*, APII – employs the four elements common to some, but not all, of them: the rebels' level of organisation, the conflict's intensity threshold, whether rebels hold significant territory, and the rebels' goals. The critical comparison of the Uppsala and IDI definitions, located in the third column in the table, shows that the two largely overlap. Neither requires rebel control of territory. The nature of the rebels' goals is virtually identical. The differences in the rebels' level of organisation is marginal: IDI has no such requirement and Uppsala requires only that the rebels be an 'internal opposition group'.

[154] While the death-count threshold is the minimum for inclusion in the Uppsala dataset, conflicts are further categorised depending on the number of deaths. See Peter Wallensteen, *Understanding Conflict Resolution* (London: Sage 4th edn 2002), 24: '*Minor armed conflicts*, conflicts are those with more than twenty-five deaths, but less than 1,000 for the year and for the duration of the conflict. *Intermediate armed conflicts*, conflicts with more than twenty-five deaths, less than 1,000 for a year, but more than 1,000 for the duration of the conflict; and *wars*, conflicts with more than 1,000 battle-related deaths in one year.'

[155] *Ibid.*, 25: 'Conflict exists, the parties will say, because there are particular grievances and, thus, the conflict cannot end until such grievances are resolved, ended or at least attended to. With its categories, the Uppsala project attempts to capture some such basic grievances.'

TABLE 3.2 *Civil War Definitions*

Criteria	Uppsala	IDI	Uppsala or IDI Broader?	CA 3/*Tadić*	AP II
Rebels have minimum level of organisation	Rebels must be 'internal opposition group'	None	IDI	Rebels must be 'organised armed groups'	Rebels must be 'under responsible command'
Intensity threshold	At least 25 battle-related deaths per conflict year	Does not cover 'local disorders or riots'	Unclear	Must be 'protracted armed violence'	Instrument does 'not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature'
Rebel control of territory	None	None	Same	Rebels must 'exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol'	None

Rebel goals	Conflict must concern either the 'type of political system, the replacement of the central government or the change of its composition' or 'the change of the state in control of a certain territory (interstate conflict), secession or autonomy (intrastate conflict)'	'[O]ne or more insurgent movements whose aim is to overthrow the government or the political, economic or social order of the State, or to achieve secession or self-government for any part of that State'	Same	None	None

There is arguably a divergence in the final factor, the intensity threshold. For IDI, conflicts must rise above 'local disorders or riots'; Uppsala requires at least twenty-five battle-related deaths per conflict year. One could argue that conflicts which are somewhat more intense than local riots or disorders would not produce twenty-five deaths per year, meaning that using the IDI definition would produce more conflicts than Uppsala's – but this difference is again marginal.

The comparison between the Uppsala and IDI definitions is the only one that matters. Their virtual identity ensures that data employing Uppsala can properly be used to assess international approval or disapproval of interventions in civil wars.

IV. POST-COLD WAR PRACTICE: AN OVERVIEW

What does the data show about post-Cold War practice?[156] Using the criteria described above, we coded a total of forty-four interventions by invitation in conflicts that were ongoing between 1990 and 2016. The most important conclusion to emerge is that the UN Security Council and General Assembly made statements on an overwhelming number of these interventions. As shown on Chart 3.1, the Council reacted to 82 per cent (36/44) of the

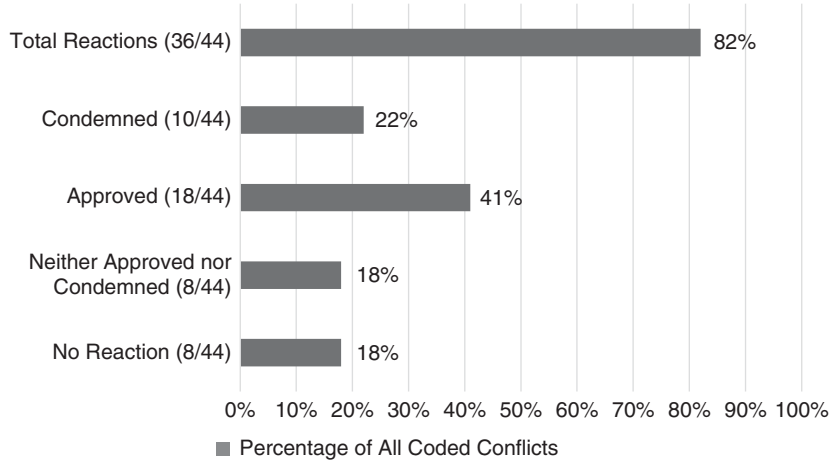
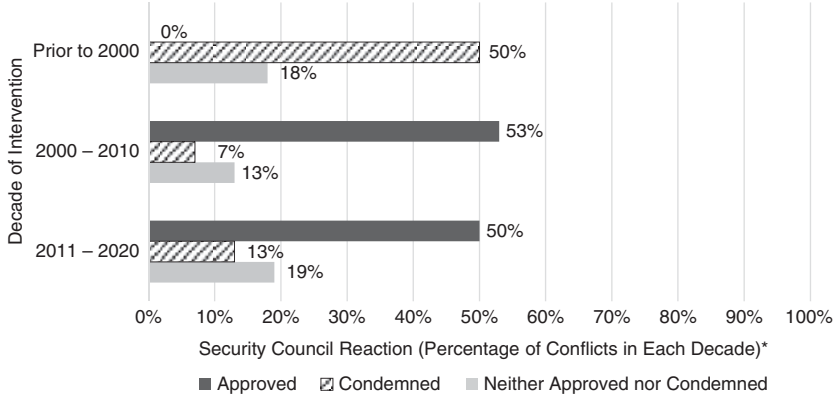


CHART 3.1 Overview of Security Council Reaction to Interventions

[156] Each coded case is described in some detail in Appendix II, including the Security Council reaction, if any, to each intervention.



*The percentage of conflicts to which the Council had no reaction is omitted.

CHART 3.2 Security Council Reaction to Interventions by Decade

interventions, condemning 22 per cent (10/44), approving 41 per cent (18/44), and issuing statements that neither approved nor condemned in 18 per cent (8/44).[157] The Council had no reaction to 18 per cent (8/44) of the interventions, none of which began after 2010.[158]

The second conclusion is that patterns in Council actions are difficult to discern. As shown on Chart 3.2, the Council most frequently condemned interventions that began prior to 2000 (50 per cent). It most frequently approved interventions from 2000 to 2010 (53 per cent), although this was quite close to its approval of 50 per cent of the interventions it addressed from 2011 to 2020. The Council's decision to approve or condemn does not appear connected to the severity of the conflicts, measured by the number of fatalities at the time of the intervention.[159] As shown in Chart 3.3, the Council approved of 50 per cent of the interventions it addressed in conflicts with 500–1,000 fatalities and 35 per cent in conflicts with 1,000–5,000 fatalities. The Council reviewed only four interventions in conflicts with more than 5,000 fatalities

[157] All percentages noted in this chapter are rounded down to the nearest whole digit.

[158] Five of these interventions about which the Council issued no statement occurred in the 1990s (Mozambique, Rwanda v. FPR, Sri Lanka, Abkhazia, and Lesotho); five began between 2000 and 2010 (Algeria, Mauritania, Uganda, Yemen, and South Ossetia); one began in 2013 (South Sudan).

[159] Fatality figures for each conflict year are provided by the UCDP in the extended view version of the summary of each conflict. For example, figures on the Iraq-al-Mahdi Army conflict are available at http://ucdp.uu.se/additionalinfo?id=13891&entityType=4.

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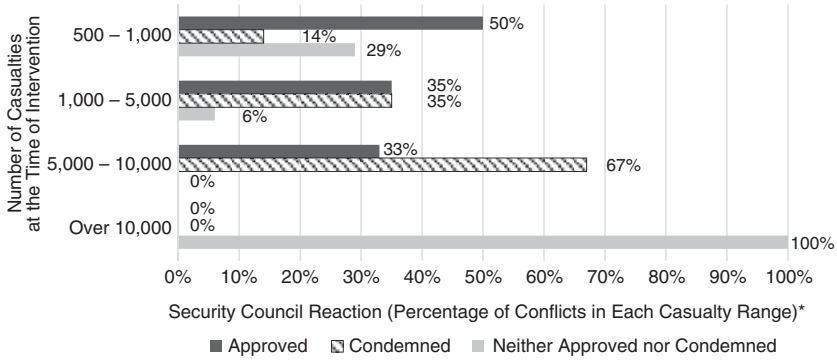


*The percentage of conflicts to which the Council had no reaction is omitted.

CHART 3.3 Security Council Reaction to Interventions by Severity of Conflict

and one cannot say the greater severity was correlated with a specific Council reaction.[160]

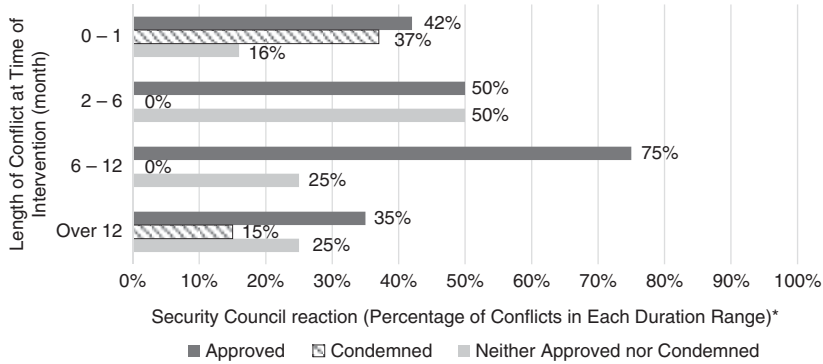
Third, patterns are also difficult to discern based on conflict length. The vast majority of conflicts were either of short or long duration at the time of the intervention: twenty-one had been active less than one month and eighteen had been active for more than twelve months.[161] As shown in Chart 3.4, for conflicts spanning up to one month, the Council condemned 37 per cent of those interventions and approved of 42 per cent.[162] For conflicts lasting twelve months or longer, the Council condemned 15 per cent, approved 35 per cent, and either made no statement or a non-committal statement in 25 per cent.

The General Assembly reacted to fewer of the interventions, passing resolutions in 34 per cent (15/44) of the cases. None of these reactions came in the eleven cases in which the Council did not issue a statement. Indeed, the six cases met with silence by the two UN bodies were also

[160] For conflicts with 5,000–10,000 fatalities, the Council condemned one intervention (Republic of Congo) and approved of two (Angola and Afghanistan v. Taliban). The Council issued a non-committal statement in the only conflict with more than 10,000 fatalities (Syria v. Syrian Insurgents).

[161] Two conflicts were active for between two and six months; three were active for between six and twelve months.

[162] The Council made no statement in three conflicts of this duration and issued non-committal statements in two others.



*The percentage of conflicts to which the Council had no reaction is omitted.

CHART 3.4 Security Council Reaction to Interventions by Duration of Conflict

ignored in all but a few instances by major regional organisations and states whose reactions we also coded.[163]

Of the forty-four cases of intervention, the largest groupings consisted of assistance to governments in conflict with rebels seeking to overthrow that government – 36 per cent (16/44) – and assistance to governments in a conflict with one or more terrorist organisations – 32 per cent (14/44) (see Chart 3.5). Next were cases of assistance to rebels seeking to overthrow a government, which occurred in 22 per cent (10/44) of the cases. Finally, assistance to an individual or group not in effective control of the government but which claimed an electoral mandate to hold office, or assistance to a regime that is in effective control and claims a democratic mandate occurred in 9 per cent (4/44) of the cases.

What general conclusions can we draw from these data? First, the Security Council has been a central player in reacting to post-Cold War consensual interventions. It has issued statements in the overwhelming majority of conflicts coded (82 per cent), condemning 22 per cent of the interventions it addressed (10/44) and approving 41 per cent (18/44) of those interventions (see Chart 3.1). The post-Cold War era has thus been dominated by a collective approach to interventions, in stark contrast to the atomised reactions of earlier eras, when

[163] The United States alone issued a statement on Mali, Niger, and Chad's intervention to support the Algerian government, and it was neither supportive nor condemnatory; South Africa, not surprisingly, supported its own intervention in support of the Government of Lesotho in 1998; the United States alone issued a statement (neither supportive nor condemnatory) on France's support of the Mauritanian government in 2010.

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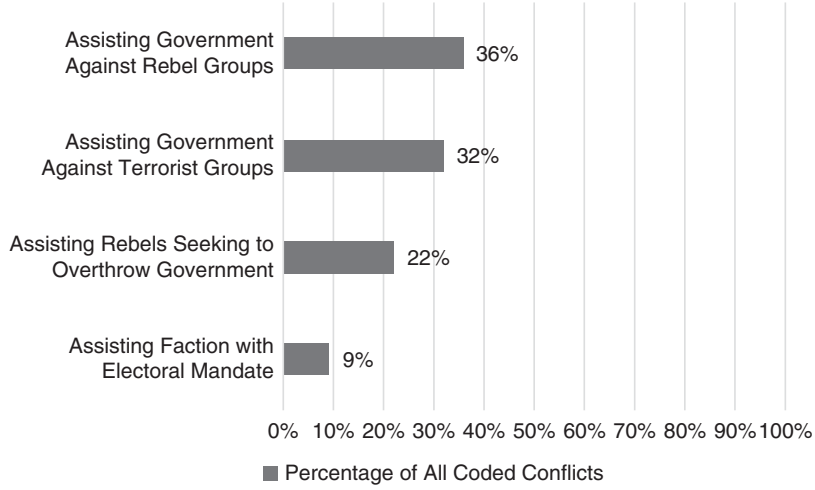

CHART 3.5 Purpose of Intervention

either no mechanism for collective reaction existed (pre-1945) or such mechanisms were effectively paralysed (1945–90).

Second, because the Council either condemned or approved of 63 per cent (28/44) of the interventions it addressed, a strong argument can be made that Council practice ought to inform our understanding of contemporary norms. If the Council had been non-committal in reacting to most interventions – which one could well understand, given the delicate diplomacy necessary to resolve NIACs – then its reactions could be seen as simply an example of largely extralegal diplomatic manoeuvring. Instead, the Council took clear positions on most interventions.

Third, as we might have predicted, Council reactions appear to be case-specific. One might have predicted that the length and severity of conflicts in which interventions occurred would have been important factors in determining (i) whether the Council reacted and (ii) the nature of its reaction. But those factors are more or less evenly distributed across the conflicts we coded.

V. UN SECURITY COUNCIL VIEWS ON THE PREVALENT LEGAL THEORIES

None of this general analysis tells us whether the Council has affirmed or rejected the major legal theories on consensual intervention. In this section, we will assess the relevance of Council practice to each theory.

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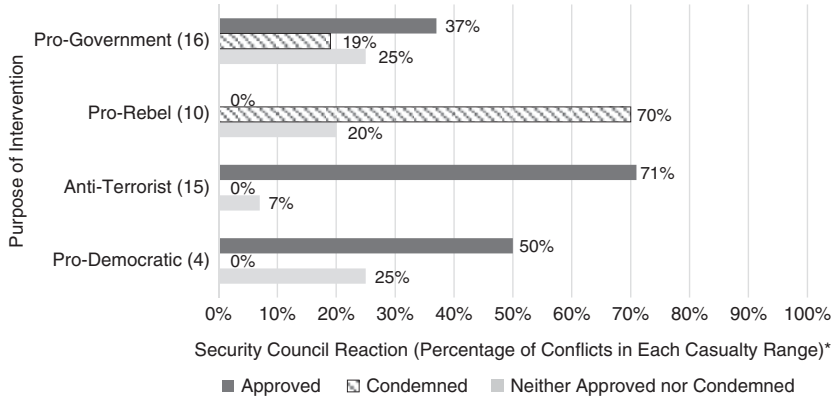

*The percentage of conflicts to which the Council had no reaction is omitted.

CHART 3.6 Security Council Reaction to Different Types of Intervention

A. *The* Nicaragua *View*

The first is the *Nicaragua* view, which would permit a government to invite foreign forces in all circumstances and never permit rebel groups to do so. The government portion of this view has not been borne out by Council practice. As shown on Chart 3.6, in the sixteen cases of assistance to a government in conflict with rebel groups, the Council condemned 19 per cent (3/16), approved of 37 per cent (6/16), and neither approved nor condemned in 25 per cent (4/16).[164] Clearly, there are circumstances in which the Council believes governmental invitations are permissible and others in which they are not.

The United States' support for the government of Iraq from 2004 to 2008 provides a good example of the Council's approving aid to a government fighting rebels in the midst of a NIAC. The Iraqi government was in conflict with the Al-Mahdi Army, a group formed in 2003 by Shi'a cleric Moqtada Al-Sadr.[165] Critical indicators of a NIAC were present: the International Committee of the Red Cross (ICRC) concluded that IHL applied to the conflict and the UCDP estimates the conflict resulted in 1,258 fatalities that year, undoubtedly meeting the intensity threshold.[166]

[164] The cases in which the Council issued documents that neither condemned nor approved of the interventions were Angola, the Central African Republic, Sudan, and Syria v. Syrian Insurgents.

[165] See UCDP, 'al-Mahdi Army', available at http://ucdp.uu.se/#/actor/5659.

[166] See ICRC, *Annual Report 2004*, June 2005, 281, available at https://reliefweb.int/sites/reliefweb.int/files/resources/6F2862481BBD26C88525717F0064680C-icrc-global-31may.pdf, 281 ("The ICRC reminded all those involved in the armed confrontation in Iraq that IHL prohibits targeted attacks against civilians who are not taking a direct part in hostilities"); UCDP,

Following the official end of the US/UK occupation of Iraq on 30 June 2004 and after the Coalition Provisional Authority handed governmental control over to an elected Iraqi regime, the Security Council approved a continued US presence under the umbrella of a 'multinational force'.[167] The resolution was accompanied by a letter from the US secretary of state offering military assistance and a letter from the Iraqi prime minister accepting the offer. The United States' letter described the troop's mission as involving, among other tasks, 'combat operations against members of these groups, internment where this is necessary for imperative reasons of security, and the continued search for and securing of weapons that threaten Iraq's security'.[168] This authorisation was renewed several times until 31 December 2008.[169]

A second example of Council support for the *Nicaragua* view is the 2006 Ethiopian intervention in Somalia, which involved tacit, rather than explicit, Council approval.[170] After the anarchy of the 1990s, a regional initiative established a Transitional Federal Government (TFG) for Somalia. But it failed to exercise any substantial control over Somali territory and the TFG fell into conflict with the Islamic Courts Union (ICU), an extremist Islamist group.[171] In 2004, the leader of the TFG requested the deployment of regional forces to assist his regime – a request that was soon endorsed by most member states of the Intergovernmental Authority on Development (IGAD), a Horn of

'Government of Iraq – al-Mahdi Army', available at http://ucdp.uu.se/additionalinfo?id=13891&entityType=4#2004.

167 UN SC Res. 1546 of 8 June 2004.

168 *Ibid.*, Annex, 11. The United States' letter described the 'groups' concerned as 'forces seeking to influence Iraq's political future through violence': *ibid.* In his first report to the Security Council pursuant to Resolution 1546, the UN Secretary-General observed that 'notwithstanding the restoration of sovereignty and the holding of the National Conference, the overall security environment has not seen any significant improvement. Coupled with a tragic pattern of hostage-takings and indiscriminate killings of innocent civilians, there has been renewed activity on the part of various insurgent groups throughout the country': Report of the Secretary-General Pursuant to Paragraph 30 of Resolution 1546 of 3 September 2004, UN Doc. S/2004/710, 13.

169 See UN SC Res. 1790 of 18 December 2007; UN SC Res. 1723 of 28 November 2006; UN SC Res. 1637 of 11 November 2005. In 2008, the United States and Iraq entered into a status-of-forces agreement, which lasted until 2011. See Sahar Issa, Jenan Hussein and Hussein Kadhim, 'Unofficial Translation of U.S.–Iraq Troop Agreement from the Arabic Text', *McClatchy Newspapers*, 18 November 2008, available at www.mcclatchydc.com/news/nation-world/world/article24511081.html. The Agreement provided that Council authorisation under Chapter VII of the UN Charter for the US presence would terminate on 31 December 2008: *ibid.*, 4, Art. 25.

170 See generally Lieblich, 'International Law and Civil Wars' (n. 139), 165–9.

171 See *ibid.*, 165–6.

Africa regional organisation, as well as a body of the African Union.[172] The UN Security Council had previously imposed an arms embargo on Somalia and such an intervention would require that an exception be made to the embargo. This exception came in the form of Resolution 1725, in which the Council permitted the deployment of an IGAD peacekeeping mission to Somalia.[173]

While this process played out, Ethiopian troops entered the country to support the TFG.[174] Their presence allowed the TFG to survive.[175] It seems virtually inconceivable that Ethiopian forces were in Somalia without the consent of the TFG. In several reports to the Council, the UN Secretary-General noted that TFG forces were frequently supported by Ethiopian troops in key battles.[176] Ethiopian forces provided crucial support for the TFG while it waited for, first, the IGAD and, then, the African Union to deploy forces. For its part, the UN Security Council had numerous opportunities to condemn the Ethiopian presence, which the UN Secretary-General specifically noted in his reports – yet it issued no such condemnation. As Eliav Lieblich concludes,

[172] International Crisis Group, *Can the Somali Crisis Be Contained?*, Africa Report No. 116, 10 August 2006, available at www.crisisgroup.org/africa/horn-africa/somalia/can-somali-crisis-be-contained.

[173] UN SC Res. 1725 of 6 December 2006. The IGAD troops were never deployed and, in February 2007, the Security Council approved an African Union mission with an identical mandate: UN SC Res. 1744 of 21 February 2007.

[174] See UCDP, http://ucdp.uu.se/#/statebased/749.

[175] See International Crisis Group, *Somalia: The Tough Part Is Ahead*, Africa Briefing No. 45, 26 January 2007, available at www.crisisgroup.org/africa/horn-africa/somalia/somalia-tough-part-ahead, 2: 'Its military intervention has achieved Ethiopia's primary objective: to eliminate the immediate security threat posed by the Islamic Courts.' In August 2006, the International Crisis Group reported that '[t]he single most important foreign actor in Somali affairs, Ethiopia, is the TFG's patron and principal advocate in the international community': International Crisis Group, *Can the Somalia Crisis Be Contained?* (n. 172), 19.

[176] Report of the Secretary-General on the Situation in Somalia pursuant to paragraphs 3 and 9 of Security Council Resolution 1744, UN Doc. S/2007/204 (20 April 2007), paras 19 ('On 22 December 2006, intense fighting broke out near Baidoa between the Union and Transitional Federal Government forces supported by Ethiopian troops') and 23 ('On 21 March 2007, Transitional Federal Government forces, supported by Ethiopian troops, commenced operations in Mogadishu with the aim of disarming militias and the population and removing insurgents'). See also *ibid.*, para. 21 (noting that government and Ethiopian troops were housed together); Report of the Secretary-General on the Situation in Somalia, UN Doc. S/2007/115 (28 February 2007), paras 1 (describing 'the dislodging of the Union of Islamic Courts by the forces of the Transitional Federal Government assisted by Ethiopian troops'), 5 ('The Transitional Federal Government forces, supported by Ethiopian ground and air forces, engaged with the Union of Islamic Courts forces on a front stretching more than 400 km, from the lower Juba Valley in the south to the region of Galkayo in central Somalia') and 6 (referring to the 'Transitional Federal Government/Ethiopian coalition').

'[t]he international response to the intervention by Ethiopia was largely one of acquiescence'.[177]

An example of the Council acting *inconsistently* with the *Nicaragua* view is its reaction to Senegal's assistance to the government of Guinea-Bissau. While the Council did not reiterate the self-determination rationale for disapproving of the intervention, its actions tracked one of the classic arguments against the *Nicaragua* view: that foreign assistance to a government will simply prolong a conflict. The 1998 conflict in Guinea-Bissau involved a military junta seeking to dislodge increasingly unpopular President João Bernardo Vieira. Vieira had earlier halted his country's support for rebels in neighbouring Senegal and, in recognition of this action, the Senegalese government provided 2,000 troops to support Vieira within 48 hours of the junta's rebellion.[178] At one point, government forces managed to hold the presidential palace only with the assistance of Senegalese soldiers.[179] After the parties signed a series of peace documents in mid-to-late 1998, the Security Council commended the end of violence and called for 'the withdrawal of all foreign troops in Guinea-Bissau'.[180]

In contrast to its failure to follow the *Nicaragua* view on assistance to governments, the Council does appear to agree with *Nicaragua*'s blanket disapproval of assistance to rebel groups. The Council did not approve any of the nine interventions assisting rebel groups and specifically disapproved of seven.[181] The Council used quite general language in many of these cases, condemning all outside intervention in the states.[182]

[177] Lieblich, 'International Law and Civil Wars' (n. 139), 168. For a contrary view, see Olivier Corten, 'La licéité douteuse de l'action militaire de l'Ethiopie en Somalie et ses implications sur l'argument de l'intervention consentie', *Revue Générale de Droit Internationale Public* 111 (2007), 513–37.

[178] UCDP, 'Government of Guinea-Bissau: Military Junta for the Consolidation of Democracy, Peace and Justice', available at http://ucdp.uu.se/#/statebased/866.

[179] *Ibid.*

[180] UN SC Res. 1216 of 21 December 1998.

[181] The Council condemned interventions favouring rebels in Angola, DR Congo v. M23, DR Congo v. RCD, DR Congo v. RCD/ML, DR Congo v. MLC, DR Congo v. AFDL, and Congo. The Council issued no statement in one other case and issued non-committal statements in the remaining two cases.

[182] See, e.g., UN SC Res. 804 of 29 January 1993 (expressing concern over 'foreign support for and involvement in military actions in Angola'). See also UN SC Pres. Statement on the Great Lakes Region, S/PRST/1996/44, 1 November 1996 (including DR Congo), 'call[ing] on all States to respect the sovereignty and territorial integrity of neighbouring States in accordance with their obligations under the United Nations Charter. In this connection, it urges all parties to refrain from the use of force as well as cross-border incursions and to engage in a process of negotiation.'

B. *The IDI View*

The second view is the IDI claim that responding to invitations from governments is permissible up until a conflict becomes a civil war. The IDI view would permit intervention in only a subset of conflicts encompassed by the *Nicaragua* view. On first blush, the Council seems to have almost wholly ignored the IDI 'civil war' limitation. As noted earlier, all cases in the dataset qualify as internal conflicts, according to Uppsala criteria, which I argue largely correlate to the contemporary understanding of a NIAC in international law. The Council approved 41 per cent (18/44) of all interventions in the dataset (see Chart 3.1). Even limiting our examination to the cases in which interventions are designed to assist governments fighting rebels – the same cases considered for the *Nicaragua* view – the Council approved 37 per cent.[183] As a result, one could well conclude that the IDI view finds no support in Council practice.[184]

But this obscures a difficulty in testing the IDI view. Although all forty-four cases qualify as internal conflicts according to UCDP, Uppsala classified 84 per cent (37/44) of those conflicts as 'internationalised internal conflicts' – that is, as internal conflicts 'with intervention from other states … on one or both sides'.[185] Of course, one would assume that these conflicts were 'internationalised' because of the consensual intervention – but that is not the case: Uppsala codes six conflicts in the dataset as pure 'internal conflicts' despite the presence of a consensual intervention.[186] And the Council approved only one of

[183] As noted above, the Council's full record in cases of assistance to governments in conflict with rebel groups is as follows: of the sixteen total cases, the Council condemned 18 per cent (3/16), approved of 37 per cent (6/16), issued equivocal statements in 25 per cent (4/16), and issued no statement in 18 per cent (3/15).

[184] This would be consistent with some commentators' view of state practice more generally. See Dapo Akande, 'Would It Be Lawful for European (or Other) States to Provide Arms to the Syrian Opposition?', *EJIL:Talk!*, 17 January 2013, available at www.ejiltalk.org/would-it-be-lawful-for-european-or-other-states-to-provide-arms-to-the-syrian-opposition/: 'There seems to be limited evidence that States accept that they are obliged not to support governments in a civil war situation.'

[185] Gleditsch et al., UCDP/PRIO Armed Conflict Dataset Codebook, version 18 (January 2018), available at http://ucdp.uu.se/downloads/ucdpprio/ucdp-prio-acd-181.pdf, 11, §3.14. While Uppsala codes many types of intervention (e.g., supplying materiel, airspace, military advisers), it considers an internal conflict 'internationalized' only if another state supplies troops: Therése Pettersson and Peter Wallensteen, 'Armed Conflicts, 1946–2014', *Journal of Peace Research* 52 (2015), 536–50 (549).

[186] UCDP coded the following conflicts as purely internal: Angola, Sri Lanka, Sudan, Algeria, Georgia (Abkhazia), and Central African Republic.

those interventions (in the Central African Republic[187]), suggesting that an IDI civil war limitation might be operating in cases of 'pure' internal conflict.

An alternative view is that these conflicts were internationalised because of an intervention to assist rebel groups that preceded the consensual intervention on the government side. Under the Uppsala coding scheme, this seems unlikely.[188] But if there were a prior intervention supporting rebels, the government would not need to invoke the intervention by invitation doctrine to support a counter-intervention in its favour; it could rely instead on collective self-defence in response to the armed attack represented by the initial assistance to the rebels.[189]

These considerations do not, however, alter the conclusion that the Council has not disapproved of intervention in civil war – that is, that it has not adopted the IDI limitation. First, the Council's views on an invitation justification are not made irrelevant by the existence of an alternative theory of justification. Indeed, if one were to insist that the only legally useful cases were those in which an invitation was the *sole* justification advanced for the use of force, one would be left with very little state practice at all.[190] Second, it is not clear in these cases that the Council was aware of prior interventions when it gave its approval, or that any prior interventions rose to the level of an 'armed attack' triggering a right of collective self-defence.[191] Finally, if the IDI view truly guided Council actions, then the Council would have disapproved of all six interventions in 'pure internal conflicts'. In fact, the Council disapproved only in the case of Angola.[192]

Another way of approaching how the IDI view fared in Council practice is to ask whether, in any of the three cases in which the Council disapproved of pro-government interventions, it did so because the conflict had reached the threshold of a 'civil war'. The Council did not do so explicitly. Its resolutions on South Sudan, Guinea-Bissau, and DR Congo (Kabila) condemned

[187] Security Council Press Statement on Central African Republic, SC/10880-AFR/2503, 11 January 2013.

[188] Uppsala also codes interventions at the invitation of rebel groups, and such interventions would be coded along with any later counter-intervention on the government side. In the case of DR Congo (Kabila), for example, included in this dataset, interventions are coded both for the government and rebel sides in the same conflict – designated as 'DR Congo (Kabila) 1' and 'DR Congo (Kabila) 2'. Uppsala did not code a prior intervention in support of rebels in any of the cases of invitation by governments that were approved by the Security Council.

[189] ICJ, *Nicaragua* (n. 25), para. 193. This claim would also need to demonstrate that support for the rebels rose to the level of an 'armed attack'.

[190] See Lieblich, 'International Law and Civil Wars' (n. 139), 13: '[I]n most scenarios of consensual interventions the consent justification will frequently be explicitly or implicitly advanced in conjunction with other, substantive justifications for the intervention.'

[191] Art. 51 UN Charter.

[192] The Council had no reaction in three of those cases and issued equivocal reactions in another two.

external intervention as part of an overall condemnation of ongoing or renewed conflict.[193] One might interpret the Council's call for ending hostilities as consistent with favouring an indigenous resolution to the conflicts, free from the skewing effect of foreign support for the government. But bringing an end to fighting and facilitating peace negotiations are goals the Council pursues in *every* NIAC, whether or not foreign forces are involved.[194] The involvement of foreign forces in these civil wars, in other words, does not appear to be the reason the Council condemned the interventions.

The case of France's 2013 intervention in Mali has been cited both as an example of the Security Council rejecting the IDI view and as an example of its endorsement of the anti-terrorist view.[195] A review of the Council's reaction and that of its members suggests that the case may plausibly support both theories. The Mali case begins with discontent on the part of the Tuareg people, a nomadic group with origins in northern Mali, near the borders of Algeria, Niger, and Libya.[196] After the overthrow and death of Libyan leader Muammar Gaddafi in 2011, many Tuareg who had been living in Libya returned to northern Mali and founded a Tuareg separatist group, the National Movement for the Liberation of Azawad (MNLA). Those forming the MNLA rejected a potential leader, Iyad Ag Ghali, alienating him from the group.[197] Shortly thereafter, Ghali formed Ansar Dine, a group that was also predominantly Tuareg but which sought to bring a fundamentalist form of Islam to Mali. Despite their separate origins, MNLA and Ansar Dine both

[193] See Security Council Press Statement on South Sudan, SC/11244-AFR/2792, 10 January 2014 (for South Sudan, '[t]he members of the Security Council also strongly discouraged external intervention that could exacerbate the military and political tensions'); UN SC Res. 1216 of 21 December 1998, para. ii (in which the Council calls for 'withdrawal of all foreign troops in Guinea-Bissau' as part of a long list of requests designed to de-escalate the conflict); One might view the Council's statement on the withdrawal of foreign forces not as acondemnation of the initial intervention but simply as a remedial step needed to restore peace in Guinea-Bissau. UN SC Res. 1304 of 16 June 2000 (for DR Congo, the Council expresses 'deep concern at the continuation of the hostilities in the country' and its 'outrage at renewed fighting between Ugandan and Rwandan forces in Kisangani, Democratic Republic of the Congo', and demands 'that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay').

[194] See Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33), 683–92 (detailing Council's evident support for a ius ad bellum-type norm for NIACs).

[195] See Gregory H. Fox, 'Intervention by Invitation', in Weller, *Use of Force* (n. 89), 816–40 (824–6) (rejecting the IDI view); Bannelier and Christakis, 'Under the UN Security Council's Watchful Eyes' (n. 6), 866 (supporting the anti-terrorism view).

[196] Stephanie Pezard and Michael Shurkin, *Toward a Secure and Stable Northern Mali: Approaches to Engaging Local Actors* (Washington, D.C.: Rand Corporation 2013), 6.

[197] UCDP, 'Government of Mali v. AQIM', available at http://ucdp.uu.se/#/statebased/12575.

fought against Malian troops in the north. By mid-March 2012, the Malian Army had lost a third of the country's territory to the two rebel groups.[198]

The growing lack of confidence in the Malian government led to protests in Bamako, culminating in a coup d'état on 22 March 2012.[199] Malian Army Captain Amadou Sanogo and his followers seized power and suspended Mali's constitution.[200] The coup was widely condemned and, after negotiations led by ECOWAS, Sanogo agreed to a transitional political process under the leadership of interim President Dioncounda Traoré.[201]

On 6 April 2012, having occupied a series of towns in the north, the MNLA declared independence for the state of Azawad.[202] From this point, the dynamics of the conflict became fluid. In May, Ansar Dine and several other Islamist groups fighting in the north formed an alliance with the MNLA.[203] Shortly thereafter, the relationship soured. Ansar Dine had secured support from Al-Qaeda in the Islamic Maghreb (AQIM) and its splinter group MUJAO. In June, these groups forced MNLA out of many of the occupied towns in the north of the country and began advancing south.[204]

The UN Security Council began to react in the spring of 2012. Its resolutions and presidential statements initially addressed only the rebel groups, but then later expanded to address both rebel and 'terrorist' groups.[205] Critically, in other words, the Council did not refer to 'rebel' and 'terrorist'

198 *Ibid.*

199 *Ibid.*

200 Andy Morgan, 'Coup Threatens to Plunge Mali Back into the Darkness of Dictatorship', *The Guardian*, 23 March 2012, available at www.theguardian.com/commentisfree/2012/mar/23/coup-mali-dictatorship-tuareg.

201 'ECOWAS Threatens Mali Coup Leaders with New Sanctions', *BBC News*, 14 May 2012, available at www.bbc.com/news/world-africa-18065684; 'Mali Profile: Timeline', *BBC News*, 26 August 2020, available at www.bbc.com/news/world-africa-13881978.

202 Dan E. Stigall, 'The French Military Intervention in Mali, Counter-Terrorism, and the Law of Armed Conflict', *Military Law Review* 223 (2015), 1–40 (10–11).

203 *Ibid.*, 11.

204 Laura Grossman, 'Into the Abyss in Mali', *Journal of International Security Affairs* 25 (2013), 65–74 (68).

205 See UN SC Pres. Statement on Peace and Security in Africa, S/PRST/2012/7, 26 March 2012 ('The Security Council condemns the attacks initiated and carried out by rebel groups against Malian Government forces and calls on the rebels to cease all violence and to seek a peaceful solution through appropriate political dialogue'); UN SC Pres. Statement on Peace and Security in Africa, S/PRST/2012/9, 3 April 2012 ('The Security Council strongly condemns the continued attacks, looting and seizure of territory carried out by rebel groups in the North of Mali and demands an immediate cessation of hostilities. The Council is alarmed by the presence in the region of the terrorist group Al Qaida in the Islamic Maghreb, which could lead to a further destabilization of the security situation.').

groups as one and the same, but as distinct. In Resolution 2056 on 5 July, for example, the Council expressed its 'categorical rejection of statements made by the National Movement for the Liberation of Azawad (MNLA) regarding the so-called "independence" of Northern Mali, and further reiterating that it considers such announcements as null and void'.[206] In the same Resolution, it called on all groups in northern Mali, including the MNLA, Ansar Dine, and foreign combatants on Malian soil, 'to renounce all affiliations incompatible with peace, security, the rule of law and the territorial integrity of Mali'.[207] As the terrorist groups advanced south, they became the focus of Council attention, although it still occasionally mentioned the 'rebels'.[208]

With the security situation in the north deteriorating, the transitional authorities requested military assistance from ECOWAS on 1 September 2012.[209] This was followed by requests from both the transitional authorities and ECOWAS that the UN Security Council authorise the deployment of an international military force.[210] On 12 October, the Security Council did so, in Resolution 2071.[211] On 20 December, the Council created the African-led International Support Mission in Mali (AFISMA), '[t]o support the Malian authorities in recovering the areas in the north of its territory under the control of *terrorist, extremist and armed groups*'.[212] The disjunctive listing of the three types of group suggests that the Council did not consider them one and the same.

But the international force came together slowly and, by early January 2013, the armed groups were only 700 kilometres from Bamako. On 11 January, French President François Hollande announced that he had received a

[206] UN SC Res. 2056 of 5 July 2012, cons. 9.

[207] *Ibid.*, para. 10.

[208] See UN SC Res. 2071 of 12 October 2012, paras 1 (where the Council '[u]rges the Transitional authorities of Mali, the Malian rebel groups and legitimate representatives of the local population in the north of Mali, to engage, as soon as possible') and 2 (where the Council '[c]alls upon Malian rebel groups to cut off all ties to terrorist organizations, notably AQIM and affiliated groups'); UN SC Res. 2085 of 20 December 2012 (in which the Council '[d]emands that Malian rebel groups cut off all ties to terrorist organizations, notably Al-Qaida in Islamic Maghreb (AQIM) and associated groups').

[209] Report of the Secretary-General on the Situation in Mali, UN Doc. S/2012/894, 28 November 2012, para. 49.

[210] *Ibid.*

[211] UN SC Res. 2071 of 12 October 2012, para. 7: 'Request[ing] the Secretary-General to immediately provide military and security planners to assist ECOWAS and the African Union … to respond to the request of the Transitional authorities of Mali regarding an international military force.'

[212] UN SC Res. 2085 of 20 December 2012, cons. 4 (emphasis added).

request for assistance from the transitional government and that France had agreed to help.[213] The intervention effectively stopped the groups' advances.[214] The Council discussed the French intervention on 22 January. Many speakers praised the French action only for halting 'terrorist' advances.[215] Others, following the Council's lead, referred to both terrorist and rebel groups.[216]

In Resolution 2100, the UN Security Council welcomed 'the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of *terrorist, extremist and armed groups* towards the south of Mali'.[217] The Permanent Representative from Mali repeated the distinction between terrorist-affiliated groups, on the one hand, and the Tuareg separatists, on the other, describing the French intervention as supporting the government in opposing both.[218] The Council did not authorise the French intervention: although Resolution 2100 invoked Chapter VII of the UN Charter, the French action is mentioned only in the preambular

[213] 'France Launches Mali Military Intervention', *Al Jazeera*, 11 January 2013, available at www.aljazeera.com/news/africa/2013/01/201311113565983634 5.html.

[214] Stigall, 'The French Military Intervention in Mali' (n. 202), 14.

[215] UN SCOR, 68th Session, 6905th Meeting, UN Doc. S/PV.6905, 22 January 2013, 9 (the ECOWAS representative describes '[t]he intervention of French troops, at the request of the legal authorities of Mali, to assist the Malian armed forces in beating back the offensive by terrorist groups underscores the urgent need for such international solidarity'); *ibid.*, 6 (the Malian representative thanks France and the French president, who, 'taking stock of the threat posed by the southward march of the terrorist groups, immediately granted the Malian President's request, thereby making it possible to save Mali as a State and to restore hope to the people and the army of Mali'); *ibid.*, 11 (Senegal 'welcome[s] the rapid intervention by one of Mali's historic allies – France – upon that country's request and with the support of countries of the subregion, to halt and neutralize the jihadists' offensive against the large urban centres of the country'); *ibid.*, 13 (Burkina Faso 'takes this opportunity to thank France for its diligent response to Mali's requests to contain the advance of terrorist groups').

[216] *Ibid.*, 6 (Mali describes how 'terrorist and extremist groups, as well as irredentist movements and criminal networks, continue to defy the international community'); *ibid.*, 10 ('ECOWAS would like to reiterate that the Tuareg issue and the question of the north of Mali cannot be hijacked by terrorist forces. All mingling between Tuareg and narco-terrorists must be avoided, and the settlement of the underlying causes of the conflict must be approached with pragmatism'); *ibid.*, 14–15 (Benin describes the situation in Mali as a result of 'the inflow of hegemonistic outside elements with ties to criminal networks and religious extremists, who have sought to subjugate a free and independent State by making use of a tiny subgroup of one of the ethnic minorities').

[217] UN SC Res. 2100 of 25 April 2013, cons. 5 (emphasis added).

[218] UN SCOR, 68th Session, 6952nd Meeting, UN Doc. S/PV.6952, 22 January 2013, 3 (the Malian ambassador describes the Resolution as 'an important step in a process to stem the activities of terrorists and rebel groups in Mali – Al-Qaida in the Islamic Maghreb, the Movement for Unity and Jihad in Western Africa, Ansar Dine and the National Movement for the Liberation of Azawad').

paragraphs in the language quoted above. Legal authority for the request could thus emanate only from the invitation by the Malian transitional authorities. Despite the transitional regime being unelected and the Council urging it 'to hold free, fair, transparent and inclusive presidential and legislative elections as soon as technically possible,'[219] Resolution 2100 does not treat them as incapable of issuing the invitation.

Thus the Council and its members clearly distinguished between the two sets of antagonists in Mali. There was good reason for them to do so: as noted, the Tuareg-focused MNLA had broken with the jihadist-focused groups (Ansar Dine and MUJAO) prior the French intervention, and the two factions began fighting with each other even as they were also fighting with the Malian Army and its French allies.[220] It is thus difficult to conclude that the Council viewed the French intervention as assisting only in repelling the Islamist groups. Moreover, Mali is not a case in which ordinary rebels were rebranded as 'terrorists', so that the government could gain international support. The Council had already distinguished the groups by listing both AQIM and MUAO, but not MNLA, as terrorist groups subject to sanctions under Resolution 1267.[221]

Finally, the ongoing efforts by various international actors to facilitate a political solution to the conflict appears incompatible with viewing Mali as solely an intervention concerned with terrorism. As the Under-Secretary-General for Political Affairs told the Council on 5 December 2012, the Secretary-General's Special Representative:

> … has significantly increased his political engagement with the authorities in Mali and key regional stakeholders to provide momentum to a Malian-owned political process focused on three main objectives: first, broad-based and inclusive national dialogue aimed at formulating a road map for the transition;

[219] UN SC Res. 2100 of 25 April 2013, para. 3.

[220] As Stigall recounts:

> The opposing alliance of non-state armed groups also degraded and splintered. The relationship had already begun to deteriorate between the more secular MNLA and the more Islamist groups, Ansar Dine and MUJAO – and, after a schism emerged, the Islamists expelled MNLA from the city of Gao. Reports further indicate that Ansar Dine and MUJAO began fighting one another. In fact, by the time the French were intervening in Mali, Ansar Dine had abandoned Timbuktu to MUJAO, and MNLA was openly seeking an alliance with French forces.

Stigall, 'The French Military Intervention in Mali' (n. 202), 14–15 (footnotes omitted).

[221] See UN Security Council, 'The Organization of Al-Qaida in the Islamic Maghreb', available at www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/the-organization-of-al-qaida-in-the-islamic. Ansar Dine was listed as being 'associated' with Al-Qaeda: UN Security Council, 'Ansar Eddine', available at www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/ansar-eddine.

> secondly, negotiations with armed groups in the north that renounce violence and terrorism; and thirdly, preparations for the holding of elections.[222]

Critically, that peace process is described as one involving reconciliation among competing Malian opposition groups:

> Despite concerted international efforts, the political landscape in Mali remains complex and fragmented. It is critical that the key political actors arrive at a unified vision as soon as possible if they are to effectively focus efforts on the main transition challenges, in particular national dialogue and negotiations with the armed groups. The support of the international community will continue to be critical in helping the Malians to bridge differences and arrive at a national consensus.[223]

A conflict involving a 'complex and fragmented' political landscape that requires citizens to 'bridge differences and arrive at a national consensus' sounds very much like a civil war.[224] Terrorist groups, as noted, are generally seen as operating outside such a process of national self-determination. Anti-terrorism was certainly an objective articulated by virtually all international actors who characterised the intervention – but it was decidedly not the only objective. Mali thus stands as a substantial obstacle to grounding the IDI view in Council practice.

C. *The Democratic Legitimacy View*

The third theory is the democratic legitimacy view, finding invitations to be valid when they come from individuals or parties with a clear electoral mandate, who have been denied their office. One drawback of the data on

[222] UN Doc. S/PV.6879 (5 December 2012), 3 (statement of Jeffrey Feltman, Under-Secretary-General for Political Affairs).

[223] *Ibid.*

[224] The UN Secretary-General's vision of political reconciliation in Mali, submitted to the Council several months after the French intervention, similarly focused on creating political processes that would bridge deep gaps between conflicting national groups:

> It will be equally important to support Malian efforts to establish a political order that enjoys the consent of the governed on the basis of inclusive dialogue, political participation, accountable governance and safeguards for all communities. A critical factor, in this regard, is the restoration of constitutional order through free, fair, credible and peaceful presidential, legislative and municipal elections. Political dialogue at the local and national levels will need to result in a greater consensus around the reforms needed to address the root causes of the conflict.

Report of the Secretary-General on the Situation in Mali, UN Doc. S/2013/189, 26 March 2013, para. 66.

this question is the small number of coded cases involving claims of democratic legitimacy: the Central African Republic (2002), Lesotho (1998), Sierra Leone (1997), and Yemen (2015) (see Appendix II).[225]

The record from this small sample size is mixed. The Council approved two pro-democratic interventions (Sierra Leone and Yemen) and either issued no statement or an equivocal statement for the remaining two.

1. Sierra Leone (2000)

The United Kingdom intervened in Sierra Leone in May 2000, after the failure of a peace agreement between the elected government of Ahmad Tejan Kabbah and the brutal Revolutionary United Front (RUF).[226] With RUF forces threatening both Kabbah's hold on the presidency and a newly deployed UN peacekeeping mission, the United Kingdom made a series of troop deployments with the consent of the Kabbah regime.[227] The deployments are credited with halting a RUF advance that would almost certainly have toppled the regime.[228] It also brought the RUF back to the negotiating table and eventually led to new elections in 2002.[229] Protection of the elected regime was one of several justifications given by the UK government.[230] Importantly, when Kabbah consented to the UK intervention, the RUF controlled at least 40 per cent of the country – one factor in the NIAC threshold.[231] Although the UN Security Council did not refer to the UK intervention in a resolution or presidential statement, the overwhelming number of states present expressed their approval at a Council meeting on 11

[225] While the case of Haiti (1994) is often cited in support of the propriety of invitations issued by elected governments in exile, Haiti is not included in our dataset because no troops were sent to Haitian territory. The sending of troops – as opposed to other forms of assistance – was one of my central coding criteria. The 2011 invitation by President-Elect Alassane Ouattara of Côte d'Ivoire is also not included here because the invitation was issued to a regional organisation (ECOWAS), not an individual state. See the discussion in Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume, section V.C.

[226] See David H. Ucko, 'Can Limited Intervention Work? Lessons from Britain's Success Story in Sierra Leone', *Journal of Strategic Studies* 39 (2016), 847–77.

[227] UN Secretary-General, *Implementing the Responsibility to Protect*, UN Doc. A/63/677, 12 January 2009, para. 42: 'In 2000, with the consent of the Government, a modest British-led intervention force helped to protect Freetown, boost the [UN Peacekeeping] Mission and restore stability to the beleaguered West African State.'

[228] Gray, *International Law and the Use of Force* (n. 78), **327**; Ucko, 'Can Limited Intervention Work?' (n. 226), 853 (Sierra Leone's army at the time 'numbered only 2000–3000 poorly trained soldiers and crumbled in the face of the rebel advance').

[229] Ucko, 'Can Limited Intervention Work?' (n. 226), 851.

[230] *Ibid.*, 855.

[231] *Ibid.*, 850.

May 2000.[232] Many also described the RUF as threatening, in the words of the United States, 'yet again to undermine the democratically elected government of President Kabbah'.[233] The lack of a collective endorsement weakens Sierra Leone as support for the democratic legitimacy theory, but it does not undermine it altogether.

2. Yemen (2015)

The 2015 intervention in Yemen followed a three-year long deterioration in the country's internal security. In November 2011, in the midst of the Arab Spring uprisings, President Ali Abdullah Saleh resigned pursuant to a Gulf Cooperation Council (GCC) initiative that included a long-term political transition process.[234] Then Vice-President Hadi stood for election on 21 February 2012 and won, with 99.8 per cent of the vote.[235] Hadi then formed a government of national unity.[236]

The UN Security Council gave its full support to the GCC-led transition process in its Resolution 2014.[237] However, the Houthis (a Zaydist group based in the north of Yemen) rejected the GCC process, claiming it did not include the entire Yemeni people, and boycotted the election.[238] The Houthis aligned themselves with the still-influential former President Saleh and his remaining supporters.[239] They soon moved from the north to expand their territorial

[232] UN SCOR, 55th Session, 4139th Meeting, UN Doc. S/PV.4139, 11 May 2000, 8 (Canada), 11 (United States), 14 (Namibia), 15 (Argentina), 18 (Ukraine and France), and 22 (Portugal, speaking on behalf of the European Union, Slovakia, Hungary, the Czech Republic, and Poland). See also *ibid.*, 2, where the UN Secretary-General states that 'the United Kingdom has made an invaluable contribution by securing the airport. The presence of British troops, even for a limited time and with a limited mandate, is a very important stabilizing factor.'

[233] *Ibid.*, 11. See also *ibid.*, 14 (Namibia), 15 (Argentina), 18 (France), and 26 (Japan).

[234] Marwa Rashad, 'Yemen's Saleh Signs Deal to Give up Power', *Reuters*, 23 November 2011, available at www.reuters.com/article/us-yemen/yemens-saleh-signs-deal-to-give-up-power-idUSTRE7AM0D020111123.

[235] AFP, 'Yémen: Hadi élu président (99,8%)', *Le Figaro*, 24 February 2012, available at www.lefigaro.fr/flash-actu/2012/02/24/97001-20120224FILWWW00604-yemen-hadi-president-elu-a-998-des-voix.php.

[236] Decree No. 184 for the Year 2011 to Form a Government of National Reconciliation, 7 December 2011, Abdo Rabbo Mansour Hadi (Yemen).

[237] UN SC Res. 2014 of 21 October 2011. The Council repeated this support the next year in Resolution 2051 of 12 June 2012.

[238] Zachary Vermeer, 'The Jus ad Bellum and the Airstrikes in Yemen: Double Standards for Decamping Presidents?', *EJIL:Talk!*, 30 April 2015, available at www.ejiltalk.org/the-jus-ad-bellum-and-the-airstrikes-in-yemen-double-standards-for-decamping-presidents/.

[239] See letter dated 20 February 2015 from the Panel of Experts on Yemen established pursuant to Security Council Resolution 2140 (2014), addressed to the President of the Security Council, UN Doc. S/2015/125 of 20 February 2015, paras 72–81 (setting out Saleh's role).

control.[240] By September, the Houthis had taken control of the capital, Sana'a.[241] The Security Council condemned the Houthis' action, imposed sanctions, and maintained its support for Hadi.[242]

Against this background, on 21 September 2014, Hadi's government and the Houthis signed the Peace and National Partnership Agreement (PNPA), which was intended to create a unity government with Houthi representation in the cabinet.[243] The Security Council welcomed the agreement, and it once again stressed that 'Hadi is the legitimate authority based on election results and the terms of the GCC Initiative and Implementation Mechanism'.[244]

But the Houthis failed to realign their forces, as required in the agreement,[245] and rejected a draft constitution submitted to Hadi on 7 January 2015.[246] In early 2015, President Hadi and his cabinet were put under house arrest, and they collectively resigned on 22 January. Houthi forces once again took control of Sana'a.[247] In February, an expert panel created by the Security Council concluded that the Yemeni conflict had risen to 'the threshold of internal armed conflict in accordance with the international definition'.[248] On 6 February, the Houthis terminated the then-ongoing UN-led negotiations, and announced the dissolution of Parliament and the establishment of a 'presidential council' to run the country temporarily.[249] On 24 March, President Hadi requested military assistance from the GCC.[250] Two days later, Saudi Arabia and other GCC states launched Operation 'Decisive

[240] *Ibid.*, paras 84–93.

[241] 'How Yemen's Capital Sanaa Was Seized by Houthi Rebels', *BBC News*, 27 September 2014, available at www.bbc.com/news/world-29380668.

[242] See UN SC Res. 2051 of 12 June 2012; UN SC Pres. Statement on the Situation in the Middle East, S/PRST/2013/3, 15 February 2013; UN SC Pres. Statement on the Middle East, S/PRST/2014/18, 29 August 2014; Security Council Press Statement on Fighting in Yemen, SC/11470, 11 July 2014.

[243] Peace and National Partnership Agreement, 21 September 2014, Art. 1, available at http://peacemaker.un.org/yemen-national-partnership-2014; Mareike Transfeld, 'Gescheiterte Transformation im Jemen', *SWP-Aktuell*, February 2015, available at www.swp-berlin.org/fileadmin/contents/products/aktuell/2015A08_tfd.pdf.

[244] Security Council Press Statement on Yemen, SC/11578, 23 September 2014.

[245] See Letter from the Panel of Experts on Yemen (n. 239), para. 39.

[246] United Nations, Human Rights Office of the High Commissioner, Situation of Human Rights in Yemen: Report of the OHCHR, UN Doc. A/HRC/30/31, 7 September 2015, para 12.

[247] The Security Council condemned these actions in UN SC Res. 2201 of 15 February 2015.

[248] Letter from the Panel of Experts on Yemen (n. 239), paras 60, 62.

[249] Houthi Constitutional Declaration issued in Yemen on 6 February 2015, International IDEA (6 February 2015), available at www.constitutionnet.org/vl/item/yemen-revolutionary-committee-issues-constitutional-declaration-organize-foundations.

[250] Identical letters dated 26 March 2015 from the Permanent Representative of Qatar to the United Nations, addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2015/217 (Enclosure to Annex) (Hadi Letters).

Storm'.[251] The intervention tilted the balance of the civil war in favour of the exiled government forces.[252]

In his letter requesting intervention, Hadi referred, first and foremost, to the acts of 'Houthi coup orchestrators'.[253] Hadi stated that while he had sought a peaceful solution to the conflict, 'our peaceful and constant efforts have been categorically rejected by the Houthi coup orchestrators, who are continuing their campaign of aggression aimed at subjugating the rest of the country's regions, particularly the south'.[254] The Houthi actions are described as 'acts of aggression' – a phrase from the UN Charter normally applied to inter-state actions. While the letter then continues to focus on Houthi actions, it also states that the Houthis were supported 'by internal forces that have sold their souls and are concerned only with their own interests'. This appears to be a reference to Al-Qaeda in the Arabian Peninsula (AQAP). Finally, Hadi states that the Houthis were 'being supported by regional Powers that are seeking to impose their control over the country and turn it into a tool by which they can extend their influence in the region'.[255] This appears to be a reference to Iran.

At the end of the letter, Hadi summarised his request to the GCC thus:

> I urge you, in accordance with the right of self-defence set forth in Article 51 of the Charter of the United Nations, and with the Charter of the League of Arab States and the Treaty on Joint Defence, to provide immediate support in every form and take the necessary measures, including military intervention, to protect Yemen and its people from the ongoing Houthi aggression, repel the attack that is expected at any moment on Aden and the other cities of the South, and help Yemen to confront Al-Qaida and Islamic State in Iraq and the Levant.[256]

Saudi Arabia and the other GCC states described their acceptance of Hadi's invitation in the same document submitted to the Security Council. The relevant passages are worth quoting in full:

> We note the contents of President Hadi's letter, which asks for immediate support in every form and for the necessary action to be taken in order to protect Yemen and its people from the aggression of the Houthi militias.

[251] Luca Ferro and Tom Ruys, 'The Military Intervention in Yemen's Civil War', in Ruys et al., *The Use of Force in International Law* (n. 15), 899–911 (900).

[252] 'Anti-Houthi Forces Retake Yemen's Largest Army Base', *Al Jazeera*, 4 August 2015, available at www.aljazeera.com/news/2015/8/4/anti-houthi-forces-retake-yemens-largest-army-base.

[253] Hadi Letters (n. 250), 3.

[254] *Ibid.*, 4.

[255] *Ibid.*

[256] *Ibid.*, 4–5.

> The latter are supported by regional forces, which are seeking to extend their hegemony over Yemen and use the country as a base from which to influence the region. The threat is therefore not only to the security, stability and sovereignty of Yemen, but also to the security of the region as a whole and to international peace and security. President Hadi has also appealed for help in confronting terrorist organizations.
>
> The Houthi militias have failed to respond to repeated warnings from the States members of the Gulf Cooperation Council and the Security Council. They have continued to violate international law and norms, and to build up a military presence, including heavy weapons and missiles, on the border of Saudi Arabia. They recently carried out large-scale military exercises using medium and heavy weapons, with live ammunition, near the Saudi Arabian border. The Houthi militias have already carried out a bare-faced and unjustified attack on the territory of Saudi Arabia, in November 2009, and their current actions make it clear that they intend to do so again. Our countries have therefore decided to respond to President Hadi's appeal to protect Yemen and its great people from the aggression of the Houthi militias, which have always been a tool of outside forces that have constantly sought to undermine the safety and stability of Yemen.[257]

Resolution 2216 – the first adopted after the Saudi-led intervention – did not explicitly support the military action, although it noted Hadi's request and the Saudi response.[258] The Council did reiterate 'its support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi', and called for the end to any actions that undermine 'the legitimacy of the President of Yemen'.[259] The Council also declared its 'support for the efforts of the Gulf Cooperation Council in assisting the political transition in Yemen and commend[] its engagement in this regard'.[260] In a debate over the Resolution, 'no single Council member (not even Russia) explicitly questioned the legality of Operation Decisive Storm'.[261] The United Kingdom was the only state to address the Saudi intervention directly: it expressed support and tied the intervention to Houthi aggression.[262]

[257] *Ibid.*, 5.
[258] UN SC Res. 2216 of 14 April 2015, cons. 2.
[259] *Ibid.*
[260] *Ibid.*, cons. 1.
[261] Tom Ruys and Luca Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen', *International and Comparative Law Quarterly* 65 (2016), 61–98 (70).
[262] UN Doc. S/PV.7426 (14 April 2015), 2: 'In February, the Security Council made it very clear that further measures would be taken if the Houthis failed to cease their intimidation, aggression and expansion. As their actions have shown, the Houthis ignored this warning.

How should the Yemen intervention be classified? Hadi's request and the Saudi response articulated three grounds for the intervention: defending the legitimate government against Houthi advances, countering terrorist forces, and responding to a prior intervention by 'regional powers' (i.e., Iran). Of these three, the claim of support for Hadi's legitimate governmental authority best accords with the facts described in the letters, the reactions of other states, and the facts on the ground. For that reason, Yemen is coded as a pro-democracy intervention. But because both Hadi and the Saudis also mention 'external' intervention, Yemen may also be seen as a counter-intervention. This is a tenuous claim at best, however, as discussed below.

A) HADI'S INVITATION AND THE SAUDI RESPONSE The two letters from Hadi and Saudi Arabia (on behalf of the GCC) are overwhelmingly devoted to buttressing the legitimacy of Hadi's presidency and countering the threat of the Houthi offensive. Hadi describes the threat as coming from 'Houthi coup orchestrators'. The references to terrorist groups and external support for the Houthis are almost afterthoughts, asserted without supporting facts. Indeed, the closing paragraph of Hadi's letter, while citing Article 51 of the UN Charter, makes no reference to an attack by Iran or any other state. Similarly, the Saudi letter summarises Hadi's request as seeking 'immediate support in every form and for the necessary action to be taken in order to protect Yemen and its people from the aggression of the Houthi militias'. The Saudis speak of their decision 'to respond to President Hadi's appeal to protect Yemen and its great people from the aggression of the Houthi militias'. While the Saudis also refer vaguely to 'support' from 'regional forces', they do not describe this support as involving troops or as a military intervention. The letter also notes that 'President Hadi has also appealed for help in confronting terrorist organizations', but says no more about the threat posed.[263]

B) STATE REACTION TO THE INTERVENTION An assessment of state reaction to the intervention begins with that of the UN Security Council itself. As Ruys and Ferro note, Resolution 2216 supported the two essential predicates for the democratic legitimacy rationale: the legitimacy of President Hadi;[264]

The United Kingdom therefore supports the Saudi-led military intervention in Yemen taking place at the request of President Hadi.'

263 Hadi Letters (n. 250), 5.

264 UN SC Res. 2216 of 14 April 2015, cons. 8: Council reaffirms 'its support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi, and reiterating its call to all parties and Member States to refrain from taking any actions that undermine the unity, sovereignty, independence and territorial integrity of Yemen, and the legitimacy of the President of Yemen'.

and the illegitimacy of Houthi actions (including a demand that they cease 'all actions that are exclusively within the authority of the legitimate Government of Yemen').[265] The Resolution's first operative paragraph focused on the Houthi threat to the democratic transition process.[266] The Council imposed sanctions only on Houthi leaders, not on terrorist groups or Iran.[267] Indeed, the Resolution makes no mention whatsoever of Iran, external support for the Houthis or Yemen's right to self-defence.[268] The Resolution condemns acts by AQAP but takes no action in response.

Outside the Council setting, the states supporting the intervention based their position largely on the Houthi threat to Hadi's legitimate government. Most did not refer to terrorism or a prior intervention. This was true of the Arab League,[269] the United States,[270] the United

[265] Ruys and Ferro, 'Weathering the Storm' (n. 261), 69–70 (quoting UN SC Res. 2216 of 14 April 2015, para. 1(d)).

[266] UN SC Res. 2216 of 14 April 2015, para. 1: Council '[d]emands that all Yemeni parties, in particular the Houthis … refrain from further unilateral actions that could undermine the political transition in Yemen'.

[267] *Ibid*., para. 3.

[268] Corten, 'Intervention by Invitation', Chapter 2 in this volume, section II.D.

[269] In its Resolution, the Arab League decided:

> To assert its ongoing support for the constitutional authorities represented by His Excellency President Abdrabuh Mansour Hadi Mansour of the Republic of Yemen and his patriotic endeavour to preserve the Yemeni State and institutions and to re-launch the political process;
>
> 3. To reject and condemn the steps taken by the Houthi group in an act of unilateral escalation, steps that amount to a coup, ignore constitutional authority and the popular will as expressed in the outcomes of the National Dialogue Conference, and obstruct the political transition process.
>
> 4. To fully welcome and support the military operations in defence of legitimate authority in Yemen undertaken, at the invitation of the President of the Republic of Yemen, by the coalition composed of the States members of the Gulf Cooperation Council and a number of Arab States. Such action is grounded in the Arab Treaty of Joint Defence and Art. 51 of the Charter of the United Nations. It stems from the coalition's responsibility to preserve the safety, national unity, sovereignty and independence of the Arab countries.

Permanent Observer of the League of Arab States to the United Nations, Note verbale dated 2 April 2015 from the Permanent Observer of the League of Arab States to the United Nations, addressed to the President of the Security Council, UN Doc. S/2015/232 (15 April 2015), 14.

[270] The US National Security Council stated:

> The United States strongly condemns ongoing military actions taken by the Houthis against the elected government of Yemen. These actions have caused widespread instability and chaos that threaten the safety and well-being of all Yemeni citizens. The United States has been in close contact with President Hadi and our regional

Kingdom,[271] France,[272] and Canada,[273] among others. Russia and the European Union criticised the intervention but focused on the potential for escalation rather than the invalidity of Hadi's invitation.[274] Importantly, none of the critics argued that the intervention was unlawful because the Yemen conflict had passed the NIAC threshold. A UN expert panel had determined one month prior to the intervention that the

> partners. In response to the deteriorating security situation, Saudi Arabia, Gulf Cooperation Council (GCC) members, and others will undertake military action to defend Saudi Arabia's border and to protect Yemen's legitimate government. As announced by GCC members earlier tonight, they are taking this action at the request of Yemeni President Abdo Rabbo Mansour Hadi.

White House Office of the Press Secretary, 'Statement by NSC Spokesperson Bernadette Meehan on the Situation in Yemen', 25 March 2015, available at https://obamawhitehouse.archives.gov/the-press-office/2015/03/25/statement-nsc-spokesperson-bernadette-meehan-situation-yemen.

[271] Recounting the prime minister's call with the Saudi king, the United Kingdom stated:

> The Prime Minister emphasised the UK's firm political support for the Saudi action in Yemen, noting that it was right to do everything possible to deter Houthi aggression, to support President Hadi and his legitimate government. They both expressed concern that Houthi action would lead to an escalation in terrorism and extremism enabling AQAP and ISIL to find a foothold in Yemen, which would pose a serious threat to both our nations.

Prime Minister's Office, 'PM Call with King Salman of Saudi Arabia', 27 March 2015, available at www.gov.uk/government/news/pm-call-with-king-salman-of-saudi-arabia-27-march-2015. Note that the threat from AQAP and ISIL is described as a possible *consequence* of Houthi action and not itself the threat being addressed by the intervention.

[272] France Diplomatie, 'Yemen – Situation', 26 March 2015, available at www.diplomatie.gouv.fr/en/country-files/yemen/events/article/yemen-situation-26-03-15:

> Military operations were carried out last night by several countries in the region in response to the request by the legitimate authorities of Yemen. France reaffirms its support for Yemen's government and for President Hadi. It strongly condemns the destabilizing actions by the Houthi rebels and calls on their supporters to immediately disassociate themselves from the rebels and to return to the political process.

[273] Canada Department of Foreign Affairs, Trade and Development, 'Minister Nicholson Concerned by Crisis in Yemen', 27 March 2015, http://news.gc.ca/web/article-en.do?nid=956649: 'Canada supports the military action by Saudi Arabia and its Gulf Cooperation Council [GCC] partners and others to defend Saudi Arabia's border and to protect Yemen's recognized government at the request of the Yemeni president.'

[274] Naharnet Newsdesk, 'EU Says Military Action Not the Solution in Yemen', *Naharnet*, 26 March 2015, available at www.naharnet.com/stories/en/173220; Damien Sharkov, 'Saudi Arabia Accuse Putin of Hypocrisy after Letter to Arab League', *Newsweek*, 20 March 2015, available at www.newsweek.com/saudi-arabia-accuse-putin-hypocrisy-after-letter-arab-league-317899.

Yemen conflict constituted a NIAC.[275] Yemen may thus contribute to the view that the democratic legitimacy theory – to the extent that it is accepted – is not constrained by the IDI view.

Since the intervention, the Council has continued to demand that the Houthis abide by the GCC transition process and has reaffirmed the centrality of that process to political reconciliation in Yemen.[276] In particular, at the time of writing, the Council has not deviated from its support in Resolution 2216 for 'the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi'.[277]

c) FACTS ON THE GROUND Finally, do the facts described by independent observers support the offhand, yet undeniably articulated, counter-intervention and anti-terrorist justifications for the Saudi intervention? The UCDP does not list an intervention by Iran (or any other state) prior to the Saudi intervention. The UN Panel of Experts on Yemen also does not mention an Iranian intervention in its 2015 and 2016 reports.[278] The Panel did find that anti-tank missiles supplied to the Houthis were 'likely to have been maintained or overhauled in the Islamic Republic of Iran', but it did not mention Iranian personnel in Yemen.[279] External observers of the war's origins describe Iranian assistance to the Houthis as 'minor and irrelevant to the balance of power in the ongoing war'.[280] Some suggest that Saudi

[275] Letter from the Panel of Experts on Yemen (n. 239), 16: 'Because of intensity of the armed violence, the level of organization of the involved armed groups and the duration of the violence, these incidents have reached the threshold of internal armed conflicts in accordance with the international definition.'

[276] See UN SC Res. 2456 of 26 February 2019; UN SC Res. 2216 of 14 April 2015; UN SC Res. 2201 of 15 February 2015.

[277] UN SC Res. 2451 of 21 December 2018, in which the Council reaffirms 'that the conflict in Yemen can be resolved only through an inclusive political process, as called for by relevant Security Council resolutions, including its resolution 2216 (2015)'.

[278] Letter from the Panel of Experts on Yemen (n. 239); *Final Report of the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140 (2014)*, UN Doc. S/2018/192, 26 January 2016.

[279] *Final Report of the Panel of Experts* (n. 278), para. 82.

[280] Hubert Swietek, 'The Yemen War: A Proxy War, or a Self-Fulfilling Prophecy', *Polish Quarterly of International Affairs* 26 (2017), 38–54 (52). See also International Crisis Group, *Yemen at War*, Middle East and North Africa Briefing No. 45, 28 March 2015, available at www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemen-war, 2 (Houthis 'are less dependent on Tehran than Hadi and his allies are on Riyadh, but on today's trajectory, their relative self-sufficiency will not last long'); International Crisis Group, *Yemen: Is Peace Possible?*, Middle East and North Africa Report No. 167, 9 February 2016, available at www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemen-peace-possible, 10–11; Thomas Juneau, 'Iran's Policy towards the Houthis in Yemen: A

Arabia in fact exaggerated Iranian assistance to the Houthis to further justify its intervention.[281]

As for AQAP, the UCDP does not list it as a party to the Yemeni conflict. The Panel of Experts describes AQAP as primarily engaged in conflict with the Houthis, complicating an anti-terrorism rationale on the part of the Saudis, who were also fighting the Houthis.[282] It appears that AQAP was not so much a presence in the main conflict between supporters of Hadi and the Houthis as it was a beneficiary of the power vacuum left by the breakdown of state authority brought on by the war.[283]

D) ASSESSING THE YEMENI CASE The rationale dominating Hadi's request for assistance was support for his government against a Houthi rebellion that undermined the GCC- and UN-backed transitional process. That rationale also dominates the Saudi response, the response of the UN Security Council, and the reaction of other states to the Saudi intervention. It is also the view most consistent with the facts on the ground. The UCDP does not identify either Iran or AQAP as party to the Yemeni conflict. Their absence is consistent with the marginal status of the counter-intervention and anti-terrorism justifications in the Hadi and Saudi letters.

Yet if Yemen is not a weak case for the democratic legitimacy view, neither is it an unambiguously strong one. First, Yemen presents the difficult question of how international law should process rationales for intervention that are either pretextual or only minimally grounded in fact. The Saudi claims to have responded to terrorists or a prior Iranian intervention simply are not supported by the facts. During the Cold War, such abuses of intervention by invitation were the primary justification for the restrictive IDI approach. I have argued that such factual conflicts are precisely the ones the Council can now resolve, meaning that the IDI limitations have lost much of their rationale.

Limited Return on a Modest Investment', *International Affairs* 92 (2016), 647–63 (658) (evidence supports 'the assessment that Iran started providing the Houthis with very limited amounts of military and financial support some time in 2009 and has probably increased this assistance in recent years, especially after 2014. Yet whatever the precise nature of Iran's budding relationship with the Houthis, by all indications its support remains limited and unlikely to buy Iran more than marginal influence.').

[281] Swietek, 'The Yemen War' (n. 280), 49: 'It is Saudi Arabia that has imposed the dominant interpretation of the conflict in Yemen, as a proxy war conducted by Iran through its protégés in furtherance of its own interests.'

[282] Letter from the Panel of Experts on Yemen (n. 239), paras 24–6.

[283] *Ibid.*, para. 47; Razvan Munteanu, 'Saudi Arabia, Iran and the Geopolitical Game in Yemen', *Research and Science Today* 10 (2015), 57–62 (57–61).

Second, while the Council did not explicitly approve the GCC action, it did affirm the essential elements of the democratic invitation theory: the democratic legitimacy of the Hadi regime, the unacceptability (owing to the lack of democratic bona fides) of Houthi control, the continuing validity of Hadi's claim to power despite his lack of effective control, and the validity (i.e., non-fictitious nature of) his invitation to the GCC states. That all of these factors were affirmed by the Council, as opposed to only the intervening state, adds credibility to the claim.

Third, much international support for Hadi and, by extension, his GCC benefactors was phrased not as favouring democratic legitimacy as such but as supporting the transitional process that the Houthi offensive had interrupted. That process was intended to culminate in a 'democratic' constitution and elections, so this may be a distinction without a difference. But it does somewhat attenuate the invention from a specific democratic outcome.

In sum, at a minimum, both Sierra Leone and Yemen presented the Council with opportunities to reject the democratic legitimacy theory in favour of the traditional effective control test. The Council did not do so in either case.

D. *Anti-Terrorism*

The fourth theory supports invitations by governments for assistance in conflicts with transnational terrorist groups. In the fourteen such cases in the dataset, the Council approved intervention in 71 per cent (10/14) and disapproved none (see Chart 3.6).[284] In the case of the United States aiding the government of Yemen in its conflict with AQAP, while the Council issued no statement, the European Union approved of the action. If one were to take the EU approval as indicative of larger international opinion, the percentage of anti-terrorist interventions receiving international approval would rise to 78 per cent (11/14).

Since the Council appears to have accepted anti-terrorism interventions, there is little need to review individual cases. As noted above and shown in Table 3.1, all but three of the groups involved in anti-terrorist interventions had appeared on the Council's 1267 list of terrorist organisations.[285] The interventions have ranged from troops provided by one state (Mali), to troops provided by a small group of states (the Multinational Joint Task force that sent Chadian forces into Cameroon in 2015 to counter Boko Haram[286]), to troops provided

[284] The Council issued no statement in three cases (Algeria, Mauritania, and Uzbekistan) and issued a non-committal statement in one case (Syria v. IS).

[285] See text accompanying nn. 121–6, above.

[286] UN SC Pres. Statement on Threats to International Peace and Security Caused by Terrorist Acts, S/PRST/2015/14, 28 July 2015.

by a larger group of states (the United States and its allies in Afghanistan, to counter the Taliban and other groups[287]).

E. *Conclusions*

Security Council practice does not reveal a preference for one dominant theory. The Council's consistent approval of counter-terrorism interventions is obviously relevant only to a limited number of cases, as is its approval of pro-democracy interventions. Both the *Nicaragua* and IDI views are applicable to all possible conflicts, but the Council has not unequivocally endorsed either one.

VI. A NEW PARADIGM? THE MULTILATERALISATION OF CONSENSUAL INTERVENTIONS

Both general theories of consensual intervention – IDI and *Nicaragua* – emerged during the Cold War. I argue that while the rise of UN Security Council practice does not resolve the competition between the two on their merits, it does reveal that their historically bound assumptions have been substantially eroded. I will argue further that, as a result, the international community should be open to treating Security Council practice as important evidence of customary international law in evaluating the lawfulness of consensual interventions.

A. *The Demise of Rules for a Polarised World*

1. The IDI and *Nicaragua* Views in Contemporary Context

Section II described how both the IDI and *Nicaragua* views were deeply embedded in the realities of Cold War politics.

Those realities have changed and the theories built upon their assumed continuation face two important challenges. First, both theories were premised on the absence of collective mechanisms to sort legitimate from illegitimate invitations. Despite the obvious desirability of centralised decision-making by the United Nations, the organisation was all but irrelevant to most NIACs.[288] Individual states, largely divided into Cold War camps, were left

[287] UN SC Res. 1386 of 20 December 2001.

[288] See Edwin Brown Firmage, 'Summary and Interpretation', in Richard Falk (ed.), *The International Law of Civil War* (Baltimore: Johns Hopkins University Press 1971), 405–28 (426): 'There is a compelling necessity for increased community control over the

to judge the legality of interventions for themselves. The solution devised by the IDI was to impose a broad prophylactic rule to minimise the number of divisive factual questions surrounding interventions. Highly politicised issues, such as whether an invitation was real or fictitious, whether a government exercised effective control, and whether a regime had 'popular mandate', were not to be entrusted to the self-judgment of states invested in the conflict; instead, they were made irrelevant in the most consequential cases – when a civil war had broken out. Taking the opposite approach, the *Nicaragua* view dealt with these divisive questions by ignoring them.

With the end of Cold War polarisation, multilateral engagement with NIACs increased as superpower investment in their outcomes receded. As the data has shown, the Council and some regional organisations regularly take positions on NIACs, including on questions of regime legitimacy. They have done so in a variety of ways: by condemning foreign intervention, by supporting particular sides in NIACs, by supervising elections in post-conflict states, and by designating the winners of those elections as the legitimate leaders of the state. In each case, the unilateral and self-interested views of Cold War antagonists have been replaced by a collective judgment. As a result, categorical prophylactic rules such as the IDI and *Nicaragua* views seem unnecessary to check the good faith of the antagonist states.

The diminished importance of the two theories may be seen as an illustration of Thomas Franck's distinction between the legitimacy of 'categorical rules' and 'complex elastic rules'.[289] Franck argued that categorical rules, addressing problems with a simple and definite clarity, are most useful when no 'authoritative interpreter' of a norm is available – that is, when no entity is empowered to apply a complex scheme of rules to unclear facts and reach a determinate conclusion. Simple rules can effectively apply themselves and thus have less need of adjudicatory or evaluative institutions to achieve compliance. When such credible institutions do exist, however, more nuanced rules can be substituted if the institution is perceived as legitimate. Such 'process legitimacy' may 'credibly mitigate the elastic quality' of more complex rules.[290]

The IDI and *Nicaragua* views have the virtue of simplicity and clarity. Their lack of complexity minimised states' ability to evade compliance. During the

international aspects of civil strife. There has also emerged, however, the essential inability of international and regional organizations to meet this need, caused not only by their structural deficiencies but more basically by the unwillingness of states to cede sufficient power to them to permit effective action.'

[289] Thomas M. Franck, *The Power of Legitimacy among Nations* (Oxford: OUP 1990), 85–90.

[290] *Ibid.*, 88.

Cold War, those attributes were clearly essential. But since the Security Council has emerged as the authoritative interpreter of ius ad bellum norms (obviously not all cases), more nuanced rules may be appropriate.

Second, the more widely subscribed IDI view rests on a needlessly shallow conception of state autonomy. The IDI view prevents an inquiry into the question of how states actually choose their leaders, substituting the legal fiction that prohibiting foreign intervention allows a national 'choice' to be made. As Brad Roth has observed, conventional wisdom during the Cold War 'held that empirical investigations to ascertain public opinion in a foreign state was most often impracticable; that "popular will" itself was a complex and normatively loaded concept; and that any imposition from abroad of procedures calculated to measure "popular will" was presumptuous at best, and a usurpation at worst'.[291] Preserving 'autonomy' through non-intervention, in other words, involved not creating opportunities for actual popular choice but indulging a presumption that any leadership in effective control had, for the rest of the international community, been acceptably 'chosen'.

In an era when disagreements on theories of political legitimacy lay at the very heart of the superpower divide, this disinterest made sense. International law of the period did not 'generally address domestic constitutional issues, such as how a national government is formed'.[292] Moreover, most, if not all, superpower interventions at the behest of 'legitimate' governments were assumed to support unpopular regimes that might otherwise fall. In such circumstances, a rule permitting intervention would become 'an instrument to prevent social change, which is a vital aspect of national self-determination'.[293]

But international law is no longer deliberately indifferent to questions of regime legitimacy and how governments treat (or mistreat) their citizens.[294] In an era of normative commitment to democratic elections and human rights, as well as the omnipresence of election monitors and human rights reporting, deliberately avoiding the question of whether a given regime is actually

[291] Brad R. Roth, *Sovereign Equality and Moral Disagreement* (Oxford: OUP 2011), 140.

[292] American Law Institute, *Restatement (Third) of the Foreign Relations Law of the United States* (1987), §203, comment e.

[293] Wolfgang Friedmann, 'United States Policy and the Crisis of International Law', *American Journal of International Law* 59 (1965), 857–68 (866).

[294] See the discussion of the various legal developments underpinning the democratic legitimacy view in the text accompanying nn. 89–112, above. See also Guidance Note of the Secretary-General on Democracy (2009), setting out 'the United Nations framework for democracy based on universal principles, norms and standards, emphasizing the internationally agreed normative content'.

supported by its citizens seems anachronistic.[295] Certainly, the Council has not practised democratic avoidance: 'Since 1993 approximately a hundred resolutions referred to "democracy" as a form of governance that needs to be enhanced, strengthened or supported.'[296] Consider the remarkable growth in election monitoring since the end of the Cold War, which has made information on most elections available for external scrutiny: 'During the Cold War, only one in five elections outside of the consolidated democracies was monitored by international observers, whereas by 2010 the share of monitored elections increased to four in five.'[297] Even when elections have been successfully stolen or an elected regime ousted from power, states, international organisations, and non-government organisations frequently (although not always) issue critiques that make it clear that international standards have been violated.[298] In some cases, their reactions result in the restoration of elected regimes; in other cases, not. But the success of these critiques is not the relevant measure of how legitimacy pronouncements affect the non-intervention doctrine; rather, it is that international standards of regime legitimacy, are consistently reaffirmed and demands made that they be respected. The IDI

[295] See Christina Binder and Christian Pippan, 'Election Monitoring, International', in Peters and Wolfrum, *Max Planck Encyclopaedia*, online edn (n. 14).

[296] Francesco Mancini, 'Promoting Democracy', in Sebastian von Einsiedel, David M. Malone and Bruno Stagno Ugarte (eds), *The UN Security Council in the 21st Century* (London: Lynne Rienner 2016), 235–57 (235). One could hardly find a clearer example of the distinction between democratically legitimate and illegitimate regimes than Council Resolution 2337 on The Gambia, in which the Council '[s]trongly condemn[ed] the statement by former President Jammeh, on 9 December rejecting the 1 December official election results' and urged 'all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognized Adama Barrow as President-elect of The Gambia and representative of the freely expressed voice of the Gambian people as proclaimed by the Independent Electoral Commission'. The Council made clear that its engagement with the question of which leader had won the election was an effort to respect the will of the Gambian people as a whole. The Council condemned 'in the strongest possible terms the attempts to usurp the will of the people and undermine the integrity of the electoral process in The Gambia': UN SC Res. 2337 of 19 January 2017.

[297] Zhaotian Luo and Arturas Rozenas, 'The Election Monitor's Curse', *American Journal of Political Science* 62 (2017), 148–60 (148–9).

[298] Consider two examples of anti-democratic coups often cited as evidence of a 'democratic regression': the 2014 coup in Thailand and the 2013 coup in Egypt. In the case of Egypt, the African Union Peace and Security Council condemned 'the overthrow of the democratically elected President' Mohammed Morsi and suspended Egypt 'until the restoration of constitutional order': Peace and Security Council of the African Union, Communiqué of the 384th Meeting of the Peace and Security Council, PSC/PR/COMM (CCCLXXXIV) (5 July 2013). In the case of Thailand, the United States, Australia, and Japan individually condemned the coup, as did the European Union collectively: Pavin Chachavalpongpun, 'The Politics of International Sanctions: The 2014 Coup in Thailand', *Journal of International Affairs* 68 (2014), 169–85 (173–6).

policy of deliberate indifference is difficult to reconcile with this body of state and international organisation practice.

It is true that, in the past decade, there has been a widely noted decline in both electoral democracy and human rights observance.[299] But the effect of these developments should not be overstated. In particular, they do not support a claim that international law has returned to the era of IDI's agnosticism on regime legitimacy. First, these developments have not involved states repudiating the regional 'democracy protection' regimes that most clearly codify principles of regime legitimacy. The OAS regime, for example, was employed in 2019 to deny a seat to the ambassador appointed by Venezuelan President Nicolas Maduro on the grounds that Maduro's election 'lacked legitimacy'.[300] Also in 2019, the African Union regime was used to condemn 'the overthrow of the democratically elected President' of Sudan.[301]

Second, recent anti-democratic practices may be seen as adaptive strategies that reflect the success of the first generation of pro-democratic norms and institutions. The two most important events those norms sought to confront – military coups and blatant election-day fraud – have dramatically declined in recent years.[302] Military coups have been replaced in many instances by what Nancy Bermo has called 'promissory coups', in which regimes 'frame the ouster of an elected government as a defence of democratic legality and make a public promise to hold elections and restore democracy as soon as

[299] See Larry Diamond, 'Facing up to the Democratic Recession', *Journal of Democracy* 26 (2015), 141–55; Freedom House, *Freedom in the World 2019* (2019), available at https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf.

[300] OAS Permanent Council, Resolution on the Situation in Venezuela, OEA/Ser.G, CP/RES. 1124 (2217/19), 10 April 2019, corr. 1, where the OAS General Council seats the ambassador appointed by the leader of Venezuelan National Assembly, rather than the ambassador appointed by the president, based on view that the 'May 20, 2018 electoral process in Venezuela lacked legitimacy for not having included the participation of all Venezuelan political actors, its failure to comply with international standards, and for being carried out without the necessary guarantees for a free, fair, transparent, and democratic process'.

[301] Communiqué adopted by the African Union Peace and Security Council at its 840th Meeting held on 15 April 2019 on the Situation in Sudan, AU Doc. PSC/PR/COMM. (DCCCXL), 15 April 2019, in which it '[a]ffirms that the overthrow of the democratically elected President does not conform to the relevant provisions of the July 2005 Sudanese Constitution and, therefore, falls under the definition of an unconstitutional change of Government as provided for in the AU instruments mentioned above'.

[302] '[T]he probability that a democracy will be targeted by any sort of coup has … reached a thirty-year low after 1995, and although it rose slightly as the first decade of the new century ended, it is still significantly less than it was during the 1960s': Nancy Bermo, 'On Democratic Backsliding', *Journal of Democracy* 27 (2016), 5–19 (7). '[O]pen fraud on election day has decreased': *ibid.*, 8.

possible'.[303] Election-day fraud has diminished in the face of extensive international election monitoring. It has been replaced as a tool of democratic usurpation by 'a range of actions aimed at tilting the electoral playing field in favour of incumbents'.[304] If the decline of coups and blatant election fraud is understood as a 'rational response[] to local and international incentives',[305] then international law confronts not a wholesale challenge to democratic legitimacy principles but a problem of normative and institutional design. Instruments such as the Inter-American Democratic Charter, invoked in the Venezuela case, may need to be reworked to confront the rise of smarter and more adaptive anti-democratic actors.

Third, the relevant baseline for purposes of reassessing the IDI view is not the mid-2000s, when the 'democratic recession' arguably began; rather, it is the Cold War era in which democratic legitimacy and liberal principles of governance were almost wholly absent from international legal discourse.[306] This was the legal milieu in which IDI's mandatory agnosticism arose. None of the legal infrastructure now supporting democratic legitimacy existed (or could have existed) at that time.

Finally, the argument for a departure from IDI and *Nicaragua* is not that every NIAC presents a clear binary choice between democratically legitimate and illegitimate factions; rather, it is that there is enough international consensus on democratic and human rights norms, as well as enough information from reliable sources on their implementation, that international law need no longer avoid, in every case, asking whether a regime is democratically legitimate. That the Security Council cannot make a binary choice in *all* cases is not a reason to return to the Cold War approach of not giving an answer in *any* case.

2. The Defence of the IDI View

Olivier Corten argues that the IDI's 1975 Wiesbaden Resolution III 'reflects established practice' because 'states never avowedly support a government acting against its own population'.[307] But this claim begs two questions.

[303] *Ibid.*

[304] *Ibid.*, 14: 'These include hampering media access, using government funds for incumbent campaigns, keeping opposition candidates off the ballot, hampering voter registration, packing electoral commissions, changing electoral rules to favor incumbents, and harassing opponents – but all done in such a way that the elections themselves do not appear fraudulent.'

[305] *Ibid.*, 15.

[306] See Henry J. Steiner, 'Political Participation as a Human Right', *Harvard Human Rights Yearbook* 1 (1988), 77–134.

[307] Corten, 'Intervention by Invitation', Chapter 2 in this volume, section I.A.

First, which practice is being consulted? During the Cold War, the major powers intervened regularly to support favoured governments and insurgents. Commentators, as noted earlier, despaired that this practice rendered the law incoherent.[308] The IDI Resolution was, in effect, a remedial response to these interventions.

Whatever one thinks of the wisdom of this approach, the 1975 Resolution cannot be cited as a *reflection* of custom; it was instead a *reaction to* uncertain and unhelpful state practice. Division among members of the IDI reflected the law's uncertainty. The vote was sixteen in favour, six opposed, and sixteen abstaining.[309] Then Special Rapporteur Dietrich Schindler believed that the prohibition of assistance to governments during civil wars under Article 2 of the Resolution 'deviates from the classical rule, according to which assistance to the established government is lawful, at least until when the third state recognizes the insurgents as belligerent'.[310] Gerhard Hafner, the next IDI Special Rapporteur on the subject, believed that 'there was no certainty on whether the [1975] resolution reflected lex lata or proposed articles de lege ferenda'.[311] Reviewing the 1975 Resolution and its 2011 successor, the Rhodes Resolution II, Georg Nolte similarly concluded that, because of divisions among IDI members, 'the 1975 resolution of the Institut did not lead to a clarification of existing law'.[312]

What of practice since 1975? Corten reviews 'a few emblematic cases'.[313] In each – Yemen, Iraq and Syria, Mali, and The Gambia – he analyses the reaction of states and international organisations separately, with no explanation of how the two relate to each other. The practice of international organisations seems not to enter into the legal conclusions to be drawn from each case. This is a highly incomplete picture. These four cases in fact demonstrate the *importance* of international organisation practice.

The UN Security Council was deeply involved in each case and, contrary to the IDI view, did not condemn any of the invited interventions. Indeed, as Corten notes, recent Council practice evidences 'a new arrangement consisting of the informal *validation* of interventions by consent'.[314]

[308] See text accompanying nn. 38–44, above.
[309] *Annuaire de l'Institut de Droit International* 56 (1975), 474.
[310] *Ibid.*, 413 (in the original French, 's'écarte de la règle classique, d'après laquelle l'assistance au gouvernement établi est licite, du moins jusqu'au moment où l'État tiers reconnaît les insurgés comme belligérants').
[311] Hafner, 'II. 10th Commission' (n. 17), 303.
[312] Nolte, 'The Resolution of the Institut de Droit International' (n. 28), 243.
[313] Corten, 'Intervention by Invitation', Chapter 2 in this volume, section I.B.
[314] *Ibid.* (emphasis original).

Take the 2017 ECOWAS intervention in The Gambia. ECOWAS, the African Union, and the Security Council all condemned President Yahya Jammeh's refusal to leave office after losing an election to Adama Barrow. Each international organisation also declared Barrow the legitimate president of the country.[315] ECOWAS troops responded to Barrow's request for assistance, precipitating Jammeh's departure. Shortly thereafter, the Security Council expressed support for the ECOWAS process and for the African Union Peace and Security Council's declaration that 'outgoing President, Yahya Jammeh, will cease to be recognized by the AU as legitimate President of the Republic of the Gambia'.[316] Surely the most distinctive feature of the Gambian episode is the absence of individual states as the dominant actors. Two regional and one global international organisation spoke essentially in unison, from the initial declaration of Jammeh's illegitimacy to their support for an intervention. Yet Corten excludes these collective actions from relevant practice.

In sum, an assessment of practice that (i) assumes the 1975 IDI Resolution reflected customary law of the time, (ii) focuses on a few high-profile recent cases, and (iii) wholly excludes the reaction of international organisations is simply incomplete. Why not assess all practice, both of individual states and of international organisations? The need for such a holistic, empirical assessment, done with methodological rigour, is the starting premise of this chapter.

The second question raised by reliance on the IDI Resolution is why the mere fact of external support for 'a government against its own population' should violate citizens' right to self-determination. Corten endorses the IDI view of self-determination as a legal fiction, which supports the *opportunity* for citizens to choose their own government but ignores any *actual* choice they may have made. According to this view, while elections may be acts of *internal* self-determination, they do not alter the barrier erected by *external* self-determination to exclude invitations by those who win elections.[317]

This distinction, rooted in the Cold War, was attractive when claims of democratic legitimacy were often little more than subjective assertions by the

[315] The UN Security Council notably deferred to the African Union's and ECOWAS's prior decisions 'to recognize Mr. Adama Barrow as President of the Gambia': UN SC Res. 2337 of 19 January 2017, preamble.

[316] UN SC Pres. Statement on Peace Consolidation in West Africa, S/PRST/2017/2, 20 January 2017.

[317] See Corten, 'Intervention by Invitation', Chapter 2 in this volume, section V.A: '[E]ach people has the right to determine its own political regime, including the ability to choose its own conception of democracy and the individuals who are best able to embody it. Third states cannot therefore use, as a pretext, the supposedly democratic character of one or other party, whether they are rebels or government authorities, to interfere in this debate.'

intervening states. But the post-Cold War era has mostly (although not completely) erased the line between internal and external notions of democratic legitimacy. Most elections in emerging or nascent democracies are monitored by outside groups. Regional organisations in the Americas and Africa have well-established legal regimes to respond to interruptions of democratic government. The Security Council regularly congratulates electoral winners and emphasises that their victories bestow an entitlement to govern.

In such cases, there is no need to invoke self-determination as a legal fiction to protect a hypothetical popular 'choice'. Citizens voting in an election will have made an *actual* choice. The legitimacy of that choice will have been verified by multilateral actors. The international community is thus fully aware of citizens' preferences in a conflict pitting 'a government against its own population'. To pretend that choice is unknowable to outsiders, and therefore in need of protection against their subjective judgments, is to ignore the immense body of international practice directed precisely at that resolving question. To put it another way, there is no need, in such cases, to invoke external self-determination to protect the integrity of internal self-determination.

The Gambia is again illustrative. ECOWAS and the African Union invoked their democracy protection regimes to declare Barrow the winner of the election. Those regimes, when invoked, are premised on the organisations' ability to distinguish between democratically legitimate and illegitimate regimes. Following on from those determinations, the UN Security Council affirmed, in Resolution 2337, the primacy of actual electoral choice, urging 'all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognized Adama Barrow as President-elect of the Gambia and representative of the freely expressed voice of the Gambian people as proclaimed by the Independent Electoral Commission'.[318] And the Council extended this internal act of self-determination externally, urging 'countries in the region' to 'cooperate with President Barrow in his efforts to realize the transition of power'.[319]

Of course, these are the easy cases. Others exist on a spectrum, ranging from cases of undoubtedly free and fair elections monitored by objective observers, the results of which are affirmed by international organisations, to those in which election outcomes are disputed and no multilateral institutions identify victory by one party or another. Then there are breakdowns in democratic institutions short of defying electoral outcomes. In such cases, the nature of

[318] UN SC Res. 2337 of 19 January 2017, para. 1.
[319] *Ibid.*, para. 3.

the popular choice is much less clear. As a result, the lawfulness of an intervention by one of the disputing parties will have only a tenuous connection to principles of democratic legitimacy.

But this distinction between easy and harder cases is one of fact. All internal conflicts are not the same. An inquiry, where possible, into the fairness of elections and the position of international organisations should allow principled distinctions to be made. Where international opinion is united, no further resort to the legal fiction of protecting 'choice' is necessary.

B. *The Contribution of UN Security Council Practice*

The data discussed earlier makes clear that the Security Council is now a consistent presence in evaluating the lawfulness of invitations. As Olivier Corten highlights in his chapter title, the recent era has been marked by 'the expanding role of the UN Security Council'.[320] This is a marked change from the pre-1990 period. But the data do not reveal any consistent patterns in Council views on IDI and *Nicaragua*, the two theories that might cover all cases. This is in contrast to evident Council support for anti-terrorist interventions and, in an admittedly few cases, pro-democratic interventions.

How should international law react to, and perhaps assimilate, this body of Council practice? Because Council practice on consensual intervention is not yet uniform, this question is one of legal process and not substantive doctrine. In this section, I discuss two possible responses: viewing the practice as a lex specialis, with no relevance to the ius ad bellum; or – quite differently – viewing the practice as evidence of customary law directly relevant to the ius ad bellum.

1. Council Practice as Lex Specialis

The first position sees Council practice as a lex specialis, deriving from the Council's unique power to bind conflict parties and to legitimise or delegitimise particular uses of force. The practice can be seen as a lex specialis in that its effects are limited to the conflicts and actors the Council addresses in specific resolutions. Council practice, according to this view, would have no effect on the direction or substance of customary international law.

The UN Charter describes the Security Council has having competence to deal with particular incidents threatening or breaching international peace and security, not authority to alter the law applicable to state behaviour more

[320] Corten, 'Intervention by Invitation', Chapter 2 in this volume.

generally.[321] To be sure, the Council has extraordinarily broad political authority to resolve particular conflicts. But, the lex specialis view would assert, one should not mistake a broad authority to resolve particular conflicts for an authority to reach beyond their resolution and shape the direction of the customary ius ad bellum. If that were the case, one would expect some evidence of opinio iuris. But neither the Charter nor the resolutions underlying the data contain any evidence of an intent to affect the content of custom.

The core of the lex specialis argument is a distinction between the powers of the Council and those of states acting individually. The Council enjoys the unique authority to deem an intervention lawful or unlawful. In Thomas Franck's description, when the Council addresses an armed conflict, it acts as a kind of jury, hearing evidence both for and against the legality of state action and coming to an authoritative conclusion.[322] This unique power is by design. The Council's expansive powers derive precisely from it *not* being a self-interested state with a national policy agenda and territory to protect.[323] The Council, by definition, cannot materially benefit from its decisions, either in specific cases or more generally through the interpretations of international law underlying its decisions. Unlike states, whose authority to use force is extraordinarily limited precisely because their self-interest poses a danger of abuse, the

[321] Art. 39 UN Charter, setting out the jurisdiction prerequisites for the Council to utilise Chapter VII powers, refers only to specific incidents. While the Council has passed several so-called legislative resolutions, the lex specialis view would distinguish these few (three, to date) deliberate impositions of obligations on all states from the vast majority of resolutions, which are directed at specific actors in specific conflicts. See Stefan Talmon, 'The Security Council as World Legislature', *American Journal of International Law* 99 (2005), 175–93.

[322] Thomas M. Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (Cambridge: CUP 2002), 187. Franck also extends this view to the General Assembly in certain circumstances. See also Ian Johnstone, 'The Security Council and International Law', in von Einsiedel et al., *The UN Security Council in the 21st Century* (n. 296), 771–91 (777), describing how the Council has 'acted like a court. It has done this in two ways: by determining legal liability and by interpreting the law.'

[323] Art. 24 UN Charter provides in relevant part:

> 1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
> 2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

Council's authority is broad because it is understood to lack narrow self-interest.[324]

The separate domains of state and Council authority to judge and utilise military force, the argument goes, should extend to the normative consequences of their respective actions. If the Council has vastly more discretion to authorise or employ force, how can its actions inform the narrower legal grounds governing state behaviour? A Council decision to permit an elected, but ousted, regime to invite foreign assistance, for example, does not support that regime's ability to issue an identical invitation absent Council authority. The collective judgment of the Council in such a case cannot be delegated to states, which would be the consequence of interpolating Council practice into the ius ad bellum. Indeed, the Council's ability to authorise force in circumstances in which a state could not act is an important argument against expanding the realm of unilateral action. Why expand that realm, with all its attendant dangers of self-judgement and motivated reasoning, when a much safer multilateral option exists? This point is often made in reference to humanitarian intervention: it is precisely the Council's willingness, in some cases, to authorise force in response to mass human rights violations that negates the existence of states' unilateral right to engage in the same action.[325]

Beyond the argument that the Council and states inhabit separate normative domains, there are also process-based critiques of treating Council actions as evidence of customary international law. As the United States argued in a comment to the ILC:

> It is axiomatic that customary international law results from the general and consistent practice of *States* followed by them out of a sense of legal obligation. This basic requirement has long been reflected in the jurisprudence of the International Court of Justice. It is also reflected in the practice of States

[324] Even the authority reserved to states is suffused with deference to the Council's primary position. It is telling that one of the only two lawful grounds for state use of force in the UN Charter is authorisation by the Security Council. A state benefiting from such an authorisation obviously does not control the scope of the authorisation. As for the other – self-defence – at least one proposal to expand its scope by allowing pre-emptive action has been rejected because it would grant states authority properly reserved to the Council. *See* Report of the High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, 2 December 2004, para. 191: '[I]f there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorise such action if it chooses to.'

[325] See, e.g., Sean D. Murphy, *Humanitarian Intervention* (Philadelphia: University of Pennsylvania Press 1996), 381–2.

> in their own statements about the elements required to establish the existence of a rule of customary international law.[326]

More specifically, one can argue that Security Council resolutions lack critical attributes that have led the ICJ and others to treat certain General Assembly resolutions as evidence of customary international law.[327] Those General Assembly resolutions are structured much like treaties, setting out broad and prospective rules of general application. Articulating broad standards is precisely the purpose of General Assembly resolutions such as the Friendly Relations Declaration.[328] Council resolutions, however, are almost always conflict-specific. Moreover, while every state in the world may vote on a General Assembly resolution, the Council is a small, elite body.

Finally, knowing that Council resolutions may affect custom might cause some Council members to vote against resolutions they might otherwise support. Many conflicts on the Council's agenda are of marginal strategic significance to at least some Council members. Those members may nonetheless support Council initiatives for the simple reason that there are no compelling reasons to withhold their support. But knowing that provisions of such resolutions may become building blocks for new or enhanced customary norms could change that calculus and lead to negative votes.

Although the lex specialis view is clear about the role Security Council practice on consensual interventions *should not* play, it is less clear about how it *should* be relevant, if at all, to international law. Perhaps it could serve a quasi-precedential function – not in the sense of formal *stare decisis*, but as a repertoire of successful best practices. If the Council is, as is often remarked, an essentially political body, perhaps this kind of political consensus on acceptable grounds for invitations is the most the body can offer.

2. Council Practice as Evidence of Customary International Law

The second view takes the opposite perspective: Council practice *can* serve as evidence of customary international law for purposes of understanding

[326] Comments from the United States on the International Law Commission's Draft Conclusions on the Identification of Customary International Law as Adopted by the Commission in 2016 on First Reading, 2018, available at http://legal.un.org/docs/?path=./ilc/sessions/70/pdfs/english/icil_usa.pdf&lang=E, 2 (emphasis original).

[327] For a discussion of how the ICJ has used General Assembly resolutions, see Marko Divac Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ', *European Journal of International Law* 16 (2005), 879–906.

[328] UN GA Res. 2625 (XXV) of 24 October 1970.

norms on consensual intervention.[329] This view, which colleagues and I have discussed at length elsewhere, relies on three propositions.[330] First, when the Council imposes obligations on conflict parties, it acts as an agent for all UN member states. Article 24(1) of the UN Charter provides that member states 'confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council *acts on their behalf*'.[331] Viewing the Council as an agent for member states embodies the logic of the Charter's collective security regime. The Charter famously discarded the traditional view of armed conflict as primarily (and often solely) the concern of the warring parties, providing instead that all member states share an interest in maintaining the peace.[332] The agency theory ensures that the official positions of member states on conflicts do not diverge from executive decisions of the Council on the same conflicts by making the two legally indistinguishable. The Special Court for Sierra Leone relied on an Article 24(1) agency theory to hold that an agreement between Sierra Leone and the United Nations was, as a result of Council approval, 'an agreement between *all* members of the United Nations and Sierra Leone'.[333]

Does the agency theory mean that member states have delegated to the Council a capacity to contribute to customary international law? In its ILC submission, the United States argued emphatically not: the mandates of

[329] The following section derives from Gregory H. Fox, 'Security Council Resolutions as Evidence of Customary International Law', *EJIL:Talk!*, 1 March 2018, available at www.ejiltalk.org/security-council-resolutions-as-evidence-of-customary-international-law/.

[330] See Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33).

[331] Art. 24(1) UN Charter (emphasis added). Early in the United Nations' history, several member states explicitly adopted an agency view of the Council; more recently, others have taken a more indirect approach: Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33), 708.

[332] See Nicholas Tsagourias and Nigel D. White, *Collective Security: Theory, Law and Practice* (Cambridge: CUP 2013), 26. Of course, traditional law prescribed an extensive set of rules for neutral states. But the law of neutrality did not give third states an interest in the cessation or outcome of the conflicts.

[333] The passage provides in full:

> It is to be observed that in carrying out its duties under its responsibilities for the maintenance of international peace and security, the Security Council acts on behalf of the Members of the United Nations. The Agreement between the United Nations and Sierra Leone is thus an agreement between *all* members of the United Nations and Sierra Leone. This fact makes the agreement an expression of the will of the international community. The Special Court established in such circumstances is truly international.

Special Court for Sierra Leone, *Prosecutor v. Taylor*, Case No. SCSL-2003-01-I, decision on immunity from jurisdiction of 31 May 2004, para. 38 (emphasis original).

international organisations are 'carefully negotiated treaties' that 'rarely, if ever', provide an express authorisation 'that the organization exercise the powers of member states to generate practice for purposes of customary international law'.[334] This was obviously true when the UN Charter was negotiated, but the US position seems anachronistic today.

First, consider the consequences, since 1990, of states having delegated to the Council the *authority* to address an extraordinary range of legal questions arising from NIACs but withholding any customary international law *consequences* of that delegation. Those consequences (i.e., evidence of custom) would not be attributable to the Council. But neither would they be attributable to member states who delegated authority to the Council to act on their behalf. For customary international law purposes, they would be neither acts of the Council nor acts of individual member states. An entire realm of rich international practice on NIACs would be lost to customary international law. That idea would lead to an unacceptable result, as my co-authors and I have written elsewhere:

> For member states to authorize the Council to act on their behalf but withhold normative consequences of that action would consign the 'acts concerned' to a legal black hole: U.N. member states would not be acting in their own capacities, and thus no 'state practice' would be created, but, with normative consequences withheld, the Council's corporate acts would make no contribution to customary law. As a result, no actor could claim as its own the potentially significant contributions to custom.[335]

Second, new data show the Council has been involved in almost all contemporary NIACs.[336] The Council has addressed NIACs in every year, in every region, of varying duration, of varying numbers of actors, of varying battle deaths and civilian casualties, at various points in the conflicts, and both inside and outside the spheres of influence of every hegemonic state. No state or group of states comes close to matching this breadth of practice. The Council's involvement in NIACs has also been remarkably deep, ranging from simply imposing obligations of conduct, to dispatching peacekeeping missions, to imposing sanctions. To take sanctions as an example, only four of the sixteen Council sanctions regimes in place in 2017 targeted state actors exclusively; the rest targeted non-state actors or both state and non-state actors. Obviously, no state or group of states has addressed NIACS more broadly or more comprehensively.

[334] Comments from the United States (n. 326), 4.
[335] Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33), 712–13.
[336] For details on the points in this paragraph, see *ibid.*, 714–18.

Viewing Council practice as evidence of custom may appear controversial when applied to customary norms not directly linked to the Council's core set of competences. For example, the Council now regularly takes positions on issues of human rights, IHL, and treaty law. The Charter prescribes no special role for the Council in these areas. But finding evidence of custom should be much less controversial when the Council addresses the ius ad bellum. The UN Charter both revolutionised the substance of that law and empowered the Council to respond to virtually every significant use of force. Of course, the Charter's scheme for authorised force was never implemented, but the UN system's evolutionary adaptations – primarily peacekeeping and 'authorised operations' – have retained the Security Council as the central decision-maker.[337] The idea of Security Council primacy in evaluating uses of force is even accepted by those states that have, on occasion, supported unilateral force when the Council is unable or unwilling to act.[338]

Thus Council actions and inaction have become central to debates over the non-annexation norm,[339] self-defence against non-state actors,[340] humanitarian intervention,[341] and other ius ad bellum questions. Participants in these debates do not argue that while the Council is the central actor in contemporary peace and security law, its views are irrelevant to the substance of that law when applied purely between states.

Of course, not all Council resolutions can be understood as interpretations or applications of Article 2(4) and its doctrinal progeny. Many scholars argue that, when the Council describes state acts as 'threats to the peace' under Charter Article 39, it may venture beyond the ius ad bellum and exercise a general discretion that is unmoored from specific norms restricting state behaviour.[342] But it is difficult to argue that the legality of an invitation to intervene falls into a zone of Council discretion beyond the ius ad bellum. Among other problems with such a claim is that none of the condemnatory resolutions in the dataset describes the interventions as a 'threat to the peace'.

[337] See Scott Sheeran, 'The Use of Force in United Nations Peacekeeping Operations', in Weller, *The Oxford Handbook on the Use of Force* (n. 89), 347–74; Neils Blokker, 'Outsourcing the Use of Force: Towards More Security Council Control of Authorized Operations', in Weller, *The Oxford Handbook on the Use of Force* (n. 89), 202–26 (202).

[338] See Monica Hakimi and Jacob Katz Cogan, 'Two Codes on the Use of Force', *European Journal of International Law* 27 (2016), 257–91 (267–8).

[339] Grant, *Aggression against Ukraine* (n. 17), 127–8.

[340] Tom Ruys, *'Armed Attack' and Article 51 of the UN Charter* (Cambridge: CUP 2010), 433–43.

[341] Gray, *International Law and the Use of Force* (n. 78), **xxx–xx**.

[342] See Nicholas Tsagourias and Nigel D. White, *Collective Security: Theory, Law and Practice* (Cambridge: CUP 2013), 95–8.

3. Critiques of Council Practice as Evidence of Custom

Olivier Corten's position on the legal significance of Security Council practice is puzzling. On the one hand, he argues in his contribution to this volume that the Council has become a central actor in addressing invitations to intervene. In the case of Iraq, for example, he describes the Council as playing a 'decisive' role.[343] On the other hand, he consigns that practice to a lex specialis, walled off from the development of customary international law. This view – that the Council is politically paramount but legally irrelevant – presents several problems.

First, it stifles the development of customary law, disconnecting its evolution from the reality of international practice. The Security Council has passed resolutions on 80 per cent of NIACs started after 1990.[344] More specifically, it has been omnipresent in three of the four conflicts Corten analyses: Yemen (twelve resolutions since 2015[345]), Mali (thirteen resolutions since 2013[346]), and The Gambia (one critical resolution in 2017 endorsing the ECOWAS intervention[347]).[348] As Corten himself observes, 'the Security Council intervened in all the recent case studies on which this chapter [focuses]. By adopting resolutions, it pronounced on the authority that was entitled to give its consent, and in parallel on the legitimacy of the object and effects of the intervention.'[349]

States, in other words, have chosen the Council as their vehicle for articulating and executing policies towards these conflicts. Did they also choose to deprive Council actions of any relevance to custom? No evidence exists to support this claim. If it did, the results would be unfortunate. The customary law on invitations would either stagnate (because it would not take into account the most consequential actor involved in NIACs) or develop in directions reflecting only minority views (because it would credit only acts of the few states directly engaged with NIACs independently of the Council).

343 Corten, 'Intervention by Invitation', Chapter 2 in this volume, section III.D.1.

344 Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33), 663.

345 Security Council Report, 'UN Documents for Yemen: Security Council Resolutions', available at www.securitycouncilreport.org/un_documents_type/security-council-resolutions/?ctype=Yemen&cbtype=yemen.

346 Security Council Report, 'UN Documents for Mali: Security Council Resolutions', available at www.securitycouncilreport.org/un_documents_type/security-council-resolutions/?ctype=Mali&cbtype=mali.

347 UN SC Res. 2337 of 19 January 2017.

348 While the Council has passed twenty-six resolutions on Syria (Corten's fourth case study) since the civil war started in 2011, the Council has not addressed the invitations by the government to Iran and Russia: Security Council Report, 'UN Documents for Syria: Security Council Resolutions', available at www.securitycouncilreport.org/un_documents_type/security-council-resolutions/page/1?ctype=Syria&cbtype=syria#038;cbtype=syria.

349 Corten, 'Intervention by Invitation', Chapter 2 in this volume, section I.B.

In either case, custom would become marginalised as it diverges from the reality of international practice. Perhaps for this reason, international courts and other bodies have regularly cited Security Council practice as evidence of customary law.[350]

Second, and relatedly, analysing interventions without reference to legal frameworks established by the Council allows arguments to be raised that the Council had already foreclosed. In Mali, for example, the Council determined that the transitional government was competent to invite both a regional force and French troops. This was despite the government not controlling substantial portions of the national territory and lacking democratic legitimacy. In Yemen, the Council repeatedly supported the legitimacy of President Hadi, who issued the invitation to the GCC. Similarly, in The Gambia, the Council sided with two regional organisations in affirming the democratic bona fides of elected President Barrow. And in Iraq, the Council directly approved the post-occupation government's invitation to a multinational force to assist in its internal conflict with the Al-Mahdi Army and other forces.[351] With the exception of Resolution 2337 on The Gambia, all of these determinations came in the form of resolutions passed under Chapter VII of the UN Charter.[352]

What legal issues are left for individual states to resolve after the Council took these steps? Very few – and that was the Council's intent. In each case, the Council sought to unify the international community around a single legal conclusion. Yet, without using Council practice as evidence of custom, the issues decided by the Council can be treated (as does Corten) as open questions. In the case of The Gambia, for example, Corten asks whether the election won by Adama Barrow was really free and fair, and whether Barrow's

[350] See Fox et al., 'The Contributions of United Nations Security Council Resolutions' (n. 33), 657 (collecting citations to Council resolutions by the ICJ, the ICRC, the ICTY, the ILC, and the Inter-American Court of Human Rights).

[351] UN SC Res. 1546 of 3 September 2004.

[352] Resolution 2337 was nonetheless remarkably clear on the question of Barrow's democratic legitimacy. The Council urged 'all Gambian parties and stakeholders to respect the will of the people and the outcome of the election which recognized Adama Barrow as President-elect of The Gambia and representative of the freely expressed voice of the Gambian people as proclaimed by the Independent Electoral Commission': UN SC Res. 2337 of 19 January 2017, para. 1. The Council further sought to ensure that states with the greatest interest in the election would take the same position, calling on 'the countries in the region and the relevant regional organisation to cooperate with President Barrow in his efforts to realize the transition of power': *ibid*., para. 3. Senegal, the sponsor of Resolution 2337, described it as 'part and parcel of the ongoing diplomatic and political efforts of ECOWAS, the African Union and the United Nations to find a solution to the post-electoral situation in the sisterly Islamic Republic of The Gambia': UN Doc. S/PV.7866, 10 January 2017, 2. The Resolution was thus intended to universalise the recognition of Barrow.

failure to control Gambian territory at the time he invited in ECOWAS troops presented 'a problem with respect to the condition of effective control being exercised by the inviting authority'.[353] But the Council had addressed both these issues and hence the result is confusion. How can Council decisions reflect consensus views of the international community at the moment they are issued but remain open to criticism for the purposes of assessing their customary law consequences?

Third, ignoring Council practice seeks to prioritise state practice that may not, in fact, exist, or may exist only at the margins. When the Security Council addresses NIACs in a comprehensive fashion, states have less of a need to take their own unilateral actions, or even to comment on actions by other states. It is quite telling that Corten's comprehensive review of the four cases contains no mention of unilateral actions or statements by Germany, Italy, Spain, Turkey, Japan, Nigeria, South Africa, Canada, Australia, Brazil, Mexico, Pakistan, Indonesia, or North or South Korea (to mention only a few major military powers). The single cited statements by China, Egypt, and India relate only to Mali, and they do not address the French intervention. No statements of Saudi Arabia appear beyond those related to its own intervention in Yemen.

This should not be surprising. With these and other states ceding leadership to the Council, any need for unilateral action on the four conflicts diminished substantially. So customary law will not be shaped by these states' actions or statements. But if Council actions are excluded, the authority they ceded to the Council will also not produce relevant practice. As a result, *there will be little or no international practice* relevant to custom emerging from these cases. This is a highly troubling outcome. It is the legal black hole to which I referred earlier.

One might respond that statements in debate over Council resolutions represent individual state practice. But there are two problems with this response: first, only fifteen states sit on the Council, meaning its debate cannot contain a representative sampling of state opinions on a given conflict; and, second, these are statements divorced from state action. Any acts resulting from Council debate would be corporate acts of the United Nations, not of the individual states making the statements.

VII. CONCLUSIONS

The four prevalent theories on the legitimacy of intervention by invitation emerged from specific historical circumstances. Those settings carried with them a set of assumptions about the relations between inviting and intervening

[353] Corten, 'Intervention by Invitation', Chapter 2 in this volume, section V.C.

states, the capacity of the international community to respond collectively to such interventions, and the propriety of pursuing certain substantive goals by military force. We have not yet left the historical moments in which the anti-terrorism and democratic legitimacy theories were incubated. Perhaps as a result, as the data shows, the Security Council has been favourably disposed towards both, although it has not accepted the democratic legitimacy view in all cases.

The anti-terrorism and democratic legitimacy views, however, apply only in a narrow set of circumstances. The IDI and *Nicaragua* views are the main competitors for a general framework regulating consensual interventions, potentially applicable to all interventions. The IDI view appears inconsistent not only with the Security Council's approval of several interventions in NIACs but also its own record of intervening in NIACs in a variety of ways. This practice simply cannot be reconciled with the idea that civil wars are purely internal affairs. After almost thirty years of the Council finding NIACs to be a 'threat to the peace' and recommending liberal democratic institutions for post-conflict societies, can it really be said that all locally chosen options for governance are due equal respect?

But neither is the *Nicaragua* view wholly supported by Council practice. In several cases, the Council has disapproved of interventions requested by governments in effective control of their territories. While the *Nicaragua* view rejects the IDI view that governments in civil wars lack the capacity to invite outside forces, it defers questions of legitimate governance to other bodies of international law. As a result, *Nicaragua* may not, in practice, result in approving all interventions requested by a regime in effective control. International law on recognition of governments could well deem some of those requests illegitimate.

But the international reaction to post-Cold War interventions is not significant primarily for its acceptance or rejection of either theory; rather, it demonstrates that the Security Council has assumed a central role in passing on the legality of particular interventions. This collectivisation of global reaction requires us to be sceptical of theories premised precisely on the unavailability of such mechanisms. While one might dismiss Council practice as a lex specialis of limited relevance to norms resulting solely from state practice, this is not, in my view, the most compelling approach. Instead, Council practice should occupy a position in customary international law commensurate with the primacy UN member states have accorded the Council in responding to NIACs.

Appendix I Coding Manual

COLUMNS AND CODES

A. **Conflict Name**: Taken from Uppsala Conflict Data Program (UCDP).
B. **Conflict ID**: Taken from UCDP.
C. **Warring Party**: Taken from UCDP.
D. **Year of Intervention**: Taken from UCDP.
E. **Party Receiving Support**: Taken from UCDP. The party that is the recipient of assistance from the intervening party.
F. **ID of Actor Receiving Support**: Taken from UCDP.
G. **Invitation**: Whether the intervening party sent troops on to the territory of the target state with the consent of one or more warring parties. The consent can be given in advance of the intervention or at the time of the intervention. Consent cannot be given after the fact.
H. **Purpose of the Intervention:** What is the reason for the intervention? Five options are given below.
    1. If purpose is to assist government in conflict with rebels seeking to overthrow the government or to secede from the state, code as 1.
    2. If purpose is to assist the government in putting down low-level disturbances, such as riots or crime, code as 2.
    3. If purpose is to assist government in conflict with terrorist organisation(s), code as 3.
    4. If purpose is to assist rebels seeking to overthrow the government or to secede from the state, code as 4.
    5. If the purpose is to assist an individual or group not in effective control of the government but which claims an electoral mandate to hold office, **or** to assist a regime that is in effective control and claims a democratic mandate and seeks to defend that mandate against an opposition group or groups, code as 5.
    6. If there is another purpose for the intervention not described above, code as 6.
I. **Severity of the Conflict – Number of casualties as of the date of the intervention:** This involves the number of fatalities in the conflict at the time of the intervention.
    - If the number of casualties is 0–500, code as 1.
    - If the number of casualties is 500–1,000, code as 2.
    - If the number of casualties is 1,000–5,000, code as 3.

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- If the number of casualties is 5,000–10,000, code as 4.
- If the number of casualties is more than 10,000, code as 5.

J. **Length of the Conflict**: Taken from UCDP. This variable asks for the length of the conflict at the time of the intervention. One of the criteria for determining whether a conflict has become a 'civil war' is its length. Several sources say that a conflict needs to be 'protracted' to qualify as such.
   - If on the date of intervention, the conflict has lasted 0–1 month, code as 1.
   - If on the date of intervention, the conflict has lasted 2–6 months, code as 2.
   - If on the date of intervention, the conflict has lasted 6–12 months, code as 3.
   - If on the date of intervention, the conflict has lasted more than 12 months, code as 4.

K. **Level of Organisation of Rebel Group**: Following the criteria for a NIAC set out in Common Article 3 of the Geneva Conventions and Additional Protocol II to those Conventions, this variable asks whether (i) the rebel group has an overall command structure, apart from having just one single leader, (ii) whether orders are given through the command structure, and (iii) whether those orders are usually obeyed.
   - If the rebel group involved in the conflict is well organised, code as 1.
   - If the rebel group involved in the conflict is moderately organised, code as 2.
   - If the rebel group involved in the conflict is disorganised, code as 3.

L. **International Reaction**: How did international organisations (global or regional) and individual states react to the intervention? The question here is whether ANY international actor condemned or supported the intervention. Columns below deal with how *individual international actors* responded.
   - If at least one international actor condemns the intervention, code as 1.
   - If at least one international actor supports the intervention, code as 2.
   - If at least one international actor issues a statement/resolution/comment that expresses neither condemnation nor support, code as 3.
   - If no international actor reacts, code as 0.

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M. **Who is Reacting to an Intervention?** Which international actor or actors reacted to an intervention, either positively or negatively. The coding covers both situations in which only a single actor reacts and those in which more than one actor reacts.
- If no international actor reacts, code as 0.
- If the UN Security Council reacts, code as 1.
- If only the UN General Assembly reacts, code as 2.
- If both the UN Security Council and the UN General Assembly react, code as 3.
- If only one or more regional organisation reacts, code as 4.
- If one or more regional organisations and at least one state reacts, code as 5.
- If only one or more states react, code as 6.

N. **Reaction by the UN Security Council**: The Council's reaction can come in either a resolution or a presidential statement. We looked for reactions no more than six months after the date of the intervention.
- If the Council condemns an intervention, code as 1.
- If the Council supports or approves of an intervention, code as 2.
- If the Council issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the Council issues no statement at all on an intervention, code as 0.

O. **Reaction by the UN General Assembly**: If the Council did not comment, we coded for relevant UN General Assembly resolutions. We looked for resolutions issued up to one year after the date of the intervention.
- If the General Assembly condemns an intervention, code as 1.
- If the General Assembly supports or approves of an intervention, code as 2.
- If the General Assembly issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the General Assembly issues no statement at all on an intervention, code as 0.

P. **Reaction by the European Union**: The reaction could come in any document issued by an EU body or official authorised to comment on foreign relations matters. We looked for such documents issued within 6 months of the date of the intervention.
- If the European Union condemns an intervention, code as 1.

- If the European Union supports or approves of an intervention, code as 2.
- If the European Union issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the European Union issues no statement at all on an intervention, code as 0.

Q. **Reaction by the African Union**: The reaction could come in any document issued by an AU body or official authorised to comment on foreign relations matters. We looked for such documents issued within 6 months of the date of the intervention.
- If the African Union condemns an intervention, code as 1.
- If the African Union supports or approves of an intervention, code as 2.
- If the African Union issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the African Union issues no statement at all on an intervention, code as 0.

R. **Reaction by the Organization of American States**: The reaction may come in any document issued by an OAS body or official authorised to comment on foreign relations matters. We looked for such documents issued within 6 months of the date of the intervention.
- If the OAS condemns an intervention, code as 1.
- If the OAS supports or approves of an intervention, code as 2.
- If the OAS issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the OAS issues no statement at all on an intervention, code as 0.

S. **Reaction by the United States**: The reaction may come from any agency or official authorised to comment on behalf of the United States on foreign relations matters.
- If the United States condemns an intervention, code as 1.
- If the United States supports or approves of an intervention, code as 2.
- If the United States issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the United States issues no statement at all on an intervention, code as 0.

T. **Reaction by Russia**: The reaction may come from any agency or official authorised to comment on behalf of Russia on foreign relations matters.
- If Russia condemns an intervention, code as 1.
- If Russia supports or approves of an intervention, code as 2.
- If Russia issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If Russia issues no statement at all on an intervention, code as 0.

U. **Reaction by China**: The reaction may come from any agency or official authorised to comment on behalf of China on foreign relations matters.
- If China condemns an intervention, code as 1.
- If China supports or approves of an intervention, code as 2.
- If China issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If China issues no statement at all on an intervention, code as 0.

V. **Reaction by the United Kingdom**: The reaction may come from any agency or official authorised to comment on behalf of the United Kingdom on foreign relations matters.
- If the United Kingdom condemns an intervention, code as 1.
- If the United Kingdom supports or approves of an intervention, code as 2.
- If the United Kingdom issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If the United Kingdom issues no statement at all on an intervention, code as 0.

W. **Reaction by France:** The reaction may come from any agency or official authorised to comment on behalf of France on foreign relations matters.
- If France condemns an intervention, code as 1.
- If France supports or approves of an intervention, code as 2.
- If France issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If France issues no statement at all on an intervention, code as 0.

X. **Reaction by Argentina**: The reaction may come from any agency or official authorised to comment on behalf of Argentina on foreign relations matters.
- If Argentina condemns an intervention, code as 1.

- If Argentina supports or approves of an intervention, code as 2.
- If Argentina issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If Argentina issues no statement at all on an intervention, code as 0.

Y. **Reaction by South Africa**: The reaction may come from any agency or official authorised to comment on behalf of South Africa on foreign relations matters.
- If South Africa condemns an intervention, code as 1.
- If South Africa supports or approves of an intervention, code as 2.
- If South Africa issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If South Africa issues no statement at all on an intervention, code as 0.

Z. **Reaction by Australia**: The reaction may come from any agency or official authorised to comment on behalf of Australia on foreign relations matters.
- If Australia condemns an intervention, code as 1.
- If Australia supports or approves of an intervention, code as 2.
- If Australia issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If Australia issues no statement at all on an intervention, code as 0.

AA. **Reaction by Japan**: The reaction may come from any agency or official authorised to comment on behalf of Japan on foreign relations matters.
- If Japan condemns an intervention, code as 1.
- If Japan supports or approves of an intervention, code as 2.
- If Japan issues a statement, resolution or other document that neither condemns nor approves of an intervention, code as 3.
- If Japan issues no statement at all on an intervention, code as 0.

AB. **State of Intra-State Conflict**: Taken from UCDP.

AC. **Location ID**: Taken from UCDP.

AD. **Dyad in Which Primary Warring Party Involved**: Taken from UCDP.

AE. **Name of Dyad in Which Primary Warring Party Involved:** Taken from UCDP. The name of the dyad in which the primary warring party is involved, as listed in the UCDP Dyadic Dataset.

AF. **External Supporter:** Taken from UCDP.

AG. **External Type:** Taken from UCDP.

AH. **External Type X:** Taken from UCDP. Contains an English-language description of external supporters, together with the types of support they provided, for added legibility of the dataset. Each type of support

provided by an external supporter is listed in the cell using standardised phrasing. The general format of the text is: '(It is alleged that) external supporter 1 supported receiver of support with types of support. (It is alleged that) external supporter 2 supported receiver of support with types of support.'

AI. **External Comments:** Taken from UCDP.

AJ. **Changes Made:** Taken from UCDP.

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Appendix II Cases of Intervention by Invitation, 1990–2017

State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention[354]	Description	Security Council Reaction
Afghanistan	Government of Afghanistan v. Taliban & Hizb-i Islami-yi Afghanistan	Government of Afghanistan	United States and coalition of 42 other states	2001–present	(3) Counter-terrorism [outlined in Bonn Agreement]	Bonn Agreement, Annex 1, para. 3 : 'Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force.'[355]	UN SC Res. 1378 calls for international assistance to Afghanistan. UN SC Res. 1378 is cited in §V(5) of the Bonn Agreement. Council endorses the Bonn Agreement in UN SC Res. 1383. Council responds to Bonn Annex 1, para. 3, in UN SC Res. 1386, which creates ISAF.

[354] The numbers at the start of this column are the designations used in the Coding Manual: (1) if the purpose is to assist government in conflict with rebels seeking to overthrow the government or to secede from the state; (2) if the purpose is to assist the government in putting down low-level disturbances, such as riots or crime; (3) if the purpose is to assist government in conflict with terrorist organisation(s); (4) if the purpose is to assist rebels seeking to overthrow the government or to secede from the state; (5) if the purpose is to assist an individual or group not in effective control of the government but which claims an electoral mandate to hold office, or to assist a regime that is in effective control and claims a democratic mandate and seeks to defend that mandate against an opposition group or groups; (6) if there is another purpose for the intervention not described above.

[355] https://peacemaker.un.org/afghanistan-bonnagreement2001.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Afghanistan	Government of Afghanistan v. IS	Government of Afghanistan	Pakistan, United States	2015–17	(3) Counter-terrorism [outlined in US–Afghan and Afghan–NATO Agreements]	United States and Afghanistan entered into a security agreement on 30 September 2014.[356] Afghanistan and NATO entered into a status-of-force agreement on 30 September 2014.[357]	Council commends Afghan–NATO partnership in UN SC Res. 2210. UN SC Res. 2274 '*calls upon* the Afghan Government, with the assistance of the international community, to continue to address the threat to the security and stability of Afghanistan posed by the Taliban, including the Haqqani Network, as well as Al-Qaida and other violent and extremist groups'.
Algeria	Government of Algeria v. AQIM	Government of Algeria	Mali, Niger, Chad	2004, 2009	(3) Counter-terrorism [described in agreement]	The governments of Chad, Niger, and Algeria signed an agreement in early	None

[356] www.afghanistan-analysts.org/wp-content/uploads/2014/10/BSA-ENGLISH-AFG.pdf.

[357] North Atlantic Treaty Organization (NATO), Agreement between the North Atlantic Treaty Organization and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-Led Activities in Afghanistan, 30 September 2014, available at www.nato.int/cps/en/natohq/official_texts_116072.htm?selectedLocale=en.

						July 2003 on cooperation and joint operations for counter terrorism. The governments of Mali and Algeria agreed to coordinate their counter-terrorism efforts along their shared borders.[358]	
Angola	Government of Angola v. UNITA	Government of Angola, UNITA	Soviet Union, Cuba, South Africa, United States	1975–88, 2000–01	Support to government against UNITA and FNLA rebels Support to UNITA against government	The MPLA government received substantial military assistance from the Soviet Union and, during the first half of 1975, Cuban troops had already begun to arrive in aid of the leftist movement. They would remain in the country over the next 14 years, increasing in number until reaching a peak of 50,000 in 1988.	In S/Res/626 (1988) and S/Res/628 (1989), the Council noted 'the decision of Angola and Cuba to conclude a bilateral agreement … for the redeployment to the north and the staged and total withdrawal of Cuban troops from Angola' and emphasised 'the importance of these … agreements in strengthening international peace and security'. It did not condemn or approve of this intervention in any of its resolutions.

[358] S. Ellis, 'Briefing: the Pan-Sahel Initiative', *African Affairs: The Journal of the Royal African Society* 103 (2004), 459–64, available at https://hdl.handle.net/1887/9538.

(*continued*)

State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						The United States and South Africa supplied the FNLA (UNITA's predecessor), and then UNITA, with troops. The South African assistance to the FNLA/UNITA came first, and was followed by Cuban and Soviet aid to the government.[359]	
Cameroon	Government of Cameroon v. Jama'atu Ahlis Sunna Lidda'awati wal-Jihad (Boko Haram)	Government of Cameroon	Chad	2015	(3) Anti-terrorism [UN SC Pres. Statement 2015/14]	Fighting started with Cameroon supporting Nigeria against Boko Haram in 2014. In January 2015, Boko Haram demanded that Cameroon scrap its	'The Security Council commends the LCBC Member States [which include Chad] and Benin for their continued efforts to fully operationalize the MNJTF in order to collectively enhance regional military

[359] http://ucdp.uu.se/#statebased/714.

						constitution and embrace Islam. In the following two months, Cameroon fought battles with supporting troops from Chad.[360]	cooperation and coordination to more effectively combat the threat posed by the Boko Haram terrorist group to the Lake Chad Basin region.'[361]
Cameroon	Government of Government of Cameroon v. IS	Government of Cameroon	Chad	2015	(3) Counter-terrorism [Chad as part of AU Multinational Joint Task Force, which was created '[i]n response to the rising threat posed by Boko Haram'][362]	'In response to the rising threat posed by Boko Haram, the African Union Peace and Security Council authorized, on 29 January, the deployment of the Multinational Joint Task Force for an initial period of 12 months, with a mandated strength of up to 7,500 military personnel.'[363]	See above.

[360] https://ucdp.uu.se/#/statebased/12422.

[361] UN SC Pres. Statement on Threats to International Peace and Security Caused by Terrorist Acts, S/PRST/2015/14, 28 July 2015.

[362] Report of the Secretary-General on the Situation in Central Africa and the Activities of the United Nations Regional Office for Central Africa, UN Doc. S/2015/339, 14 May 2015, para. 14.

[363] *Ibid.*, para. 15.

(*continued*)

State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Central African Republic	Government of CAR v. Forces of André Kolingba; Forces of François Bozizé; UFDR	Government of Central African Republic	Chad, Libya, France	2001, 2002, 2006	(1) Forces from Libya supported the president against a challenge by rebels[364] Forces from Sudan and Djibouti announced as supporting democratic institutions[365] French forces supported President Patassé in conflict with rebel group UFDR, which broke away from the forces of François Bozizé[366]	Libyan forces in 2001 supported President Patassé in conflict with forces led by former Army Chief of Staff François Bozizé. Sudan and Djibouti sent forces pursuant to decisions by two regional organisations, Community of Sahel and Saharan States (CEN-SAD) and Central African Economic and Monetary Community (CEMAC).[367]	None

[364] http://ucdp.uu.se/#/statebased/874.

[365] *Ibid.*: 'In December 2001 CEN-SAD held an extraordinary summit in Khartoum where it was decided that a small contingent was to be dispatched to CAR in view to safeguard the democratically elected institutions of the country.'

[366] UCDP, 'External Support: Primary Warring Party Dataset', available at http://ucdp.uu.se/downloads/extsup/extsup_small.xls.

[367] https://ucdp.uu.se/#/statebased/874.

						Pursuant to a military accord, France had troops stationed in the CAR and 220 French troops were deployed in 2006 against the UFDR.	
Central African Republic	Government of CAR v. Seleka	Government of CAR	Chad	2012	(1) To support government offensive against the UFDR	'Elements of the Chadian National Army crossed into the Central African Republic in the Ouham prefecture on 17 December at the request of the Government of the Central African Republic to support the counteroffensive of the Central African Armed Forces (FACA).'[368]	'The Members of the Security Council commended the swift efforts made by the Economic Community of the Central African States, by the African Union and by the countries in the region to solve the recent crisis.'[369]

[368] Report of the Secretary-General on the Situation in the Central African Republic and on the Activities of the United Nations Integrated Peacebuilding Office in That Country, UN Doc. S/2012/956, 21 December 2012, para. 9.

[369] Security Council Press Statement on Central African Republic, SC/10880-AFR/2503, 11 January 2013. See also UN SC Res. 2088 of 24 January 2013 (same language).

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Republic of Congo	Sassaou (Cobras; later Govt of Congo) v. Lissouba (Cocoyes; former Govt of Congo), Ntsiloulous	Sassou – at the time, a rebel leader	Angola, Chad	1997–99, 2002	(4) Angola joined the fight on the side of Sassou because Lissouba's government had supported UNITA, a rebel group fighting against the Angolan government Chadian troops also joined and supported Sassou, because he was France's president of choice in earlier years[370]	Sassou sought to overthrow Lissouba's elected regime, which he did in October 1997.[371] In 2002, fighting erupted between Sassou and the Ntsiloulous rebels. 'The remains of 2002 and the first three months of 2003 saw low-scale fighting … Only at one point was Ntoumi able to seriously threaten Sassou's regime; when his Ntsiloulous launched a surprise attack on	Council 'condemns all external interference in the Republic of the Congo, including the intervention of foreign forces, in violation of the Charter of the United Nations, and calls for the immediate withdrawal of all foreign forces including mercenaries'.[372]

[370] http://ucdp.uu.se/#/statebased/861.
[371] *Ibid.*
[372] UN SC Pres. Statement on Republic of the Congo, S/PRST/1997/47, 16 October 1997.

						Brazzaville's Maya-Maya Airport in June. After heavy fighting, the Cobra elements, supported by Angolan troops and army artillery fire, were able to push the Ntsiloulous back into the bush.'[373]	
DR Congo	Government of Zaire – AFDL (the First Congo War)	AFDL	Uganda, Rwanda, Angola	1997	(4) Three states support Laurent Kabila's AFDL, which sought to oust President Mobutu	Uganda provided troops to AFDL Most analysts conclude that Uganda's involvement was mainly based on security concerns, as anti-Museveni rebel groups operated out of Zairian territory.[374] Rwandan troops assisted AFDL, aiming both to root out the Hutu	'The Council calls on all States to respect the sovereignty and territorial integrity of neighbouring States in accordance with their obligations under the United Nations Charter. In this connection, it urges all parties to refrain from the use of force as well as cross-border incursions and to engage in a process of negotiation.'[375]

[373] http://ucdp.uu.se/#/statebased/861.

[374] http://ucdp.uu.se/#/statebased/584.

[375] UN SC Pres. Statement on Republic of the Congo, S/PRST/1996/44, 1 November 1996. See also UN SC Res. 1097 of 18 February 1997 (Council '[r]eaffirm[s] the obligation to respect national sovereignty and territorial integrity of the States of the Great Lakes region and the need for the States of the region to refrain from any interference in each other's internal affairs …' and 'Endorses … Withdrawal of all external forces, including mercenaries').

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						militia operating from Zairian territory and to topple Mobutu, who had supported the previous regime in Rwanda, and who accepted the presence of the armed Hutu groups on Zairian soil.[376] The only state openly admitting to sending troops in aid of AFDL was Angola, who had the same motivation as Rwanda and Uganda. Mobutu had for years supported Angolan rebel	

[376] *Ibid.*

						group UNITA, allowing the rebels to launch attacks from Zairian territory.[377]	
DR Congo	Government of DR Congo v. RCD	RCD	Rwanda, Uganda	1998	(4) To overthrow Kabila regime, which had turned hostile to Rwanda and Uganda[378]	After assuming power, Kabila quickly alienated many of his former allies and external supporters. In August 1998, the RCD was formed. It was a group composed of various political elements opposing the government. When the fighting began in August 1998, alliances had shifted, and Kabila's former main backers Rwanda and Uganda now supported the rebels.[379]	'The Security Council reaffirms the obligation to respect the territorial integrity and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for all States to refrain from any interference in each other's internal affairs.'[380]

[377] *Ibid.*
[378] John F. Clark, 'Ugandan Intervention in Congo: Evidence and Interpretations', *Journal of Modern African Studies* 39 (2001), 261–87.
[379] http://ucdp.uu.se/#/statebased/586.
[380] UN SC Pres. Statement on Democratic Republic of the Congo, S/PRST/1998/26, 31 August 1998.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
DR Congo[381]	Government of DR Congo v. RCD	Government of DR Congo	Chad, Angola, Zimbabwe, Namibia	1998	(1) To support Kabilia government's war against multiple rebel groups	Chad had 'no clear reason' for supporting the government.' Angola, Zimbabwe, and Namibia sent troops under a SADC banner. Angola intervened to refuse UNITA a safe haven on Congolese territory and also because of DR Congo's diamond sector. Re Zimbabwe: while Mugabe claimed the troops were protecting central Zimbabwean interests such as a vital electricity supply line, it is also obvious	'The Security Council reaffirms the obligation to respect the territorial integrity and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for all States to refrain from any interference in each other's internal affairs.'[382]

[381] This is the same conflict as the prior conflict on this table. The first entry concerns intervention to support the rebels; the second concerns intervention to support the government.

[382] UN SC Pres. Statement on Democratic Republic of the Congo, S/PRST/1998/26, 31 August 1998.

						that the support given proved very beneficial economically for the country. Namibia's troop deployment was the smallest.[383]	
DR Congo	Government of DR Congo – RCD-ML	RCD–ML	Uganda	1999–2002	(4) The conflict grew increasingly complex during its second phase, as former allies turned on each other and new groups and supporters emerged. When the fighting began in August 1998, alliances had shifted and Kabila's former main backers Rwanda and Uganda now supported the rebels.[384]	Originally, one of the main causes behind the internal splits was divisions between the movement's main backers, Uganda and Rwanda. Subsequently, in May 1999, RCD split into the two groups: RCD-Goma, which in this database is seen as the continuation of RCD; and RCD-ML. The former was backed by Rwanda and the latter, by Uganda.[385]	Council '[d]eplores the continuing fighting and the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with the principles of the Charter of the United Nations'.[386]

[383] http://ucdp.uu.se/#/statebased/586.

[384] *Ibid*.

[385] *Ibid*.

[386] UN SC Res. 1234 of 9 April 1999, para. 2. See also UN SC Res. 1304 of 16 June 2000, para. 4 (Council demands 'that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay' and that 'all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end in conformity with the provisions of the Ceasefire Agreement').

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
DR Congo	Government of DR Congo – MLC	MLC	Uganda	1999	(4) To assist rebel group seeking to topple Kabila government.	Created by Jean-Pierre Bemba in September 1998 with the aim of overthrowing Kabila, MLC launched its rebellion in November the same year. In mid-2002, an agreement was signed by the government, MLC, and most of the opposition parties, under which rebel leader Jean Pierre Bemba was to become prime minister in a new transitional government. Negotiations continued in late 2002, aiming	Council '[d]eplores the continuing fighting and the presence of forces of foreign States in the Democratic Republic of the Congo in a manner inconsistent with the principles of the Charter of the United Nations.'[387]

[387] UN SC Res. 1234 of 9 April 1999, para. 2. See also UN SC Res. 1304 of 16 June 2000, para. 4 (Council demands 'that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay' and that 'all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end in conformity with the provisions of the Ceasefire Agreement').

						to also include the various RCD groups in the accord and, in December, an all-inclusive agreement was reached.[388]	
DR Congo	Government of DR Congo v. M23	M23	Rwanda, Uganda	2012–13	(4) On 2 July 2012, Lieutenant Colonel Vianney Kazarama, M23's military spokesman, told Think Africa Press: '[W]e are upset by the Congolese government's fraudulent election and failure to improve the living conditions of the Congolese people; we want to chase the government in Kinshasa from power. We are calling for a revolution.'[389]	M23 was an armed group active in the North Kivu Province of DR Congo. The group was formed by defectors from the Congolese Army, most of whom had been part of the former rebel group CNDP that had been allowed to integrate into the Congolese Army as part of the 23 March 2009 Peace Agreement.[390]	Council '[expresses deep concern at reports indicating that external support continues to be provided to the M23, including through troop reinforcement, tactical advice and the supply of equipment, causing a significant increase of the military abilities of the M23, and reiterates its demand that any and all outside support to the M23 cease immediately'.[391]

[388] http://ucdp.uu.se/#/statebased/585.
[389] http://ucdp.uu.se/#/actor/1160.
[390] *Ibid.*
[391] UN SC Res. 2078 of 28 November 2012, para. 8.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Georgia	Government of Georgia v. Republic of Abkhazia	Republic of Abkhazia	Russia	1992–93	(4) Support for Abkhaz independence, although Russia acted inconsistently	Russia's role in the conflict was widely perceived to be inconsistent. Divisions between factions within the Russian government resulted in a situation in which, at some points, both sides to the conflict received substantial help.[392]	Council '[w]elcomes … the continued efforts of the Secretary-General … and with the assistance of the Government of the Russian Federation as facilitator, to carry forward the peace process with the aim of achieving an overall political settlement'.[393]
Georgia	Government of Georgia v. Republic of South Ossetia	Republic of South Ossetia	Russia	1998	(4) Russia justified its intervention on both humanitarian grounds and upon consent of the breakaway authorities of South Ossetia[394]	After a few clashes between South Ossetian and Georgian troops in the first days of August, tensions culminated on 7 August 2008.	None

[392] http://ucdp.uu.se/#statebased/839.
[393] UN SC Res. 881 of 4 November 1993.
[394] Eliav Lieblich, *International Law and Civil Wars: Intervention and Consent* (London: Routledge 2014), 14.

						Georgian President Saakashvili launched a large-scale military offensive on Tskhinvali, the capital of South Ossetia. Immediately, Russia sent troops, tanks, and bomber planes to repel the Georgian Army.[395]	
Guinea-Bissau	Government of Guinea-Bissau v. Military Junta for the Consolidation of Democracy, Peace and Justice (MJDC)	Government of Guinea-Bissau	Senegal, Guinea	1998–99	(1) Senegal and Guinea support government in aspect of conflict with MJDC[396]	The conflict concerned Senegalese rebels in Casamançe, which borders Guinea-Bissau. Guinean Army offices in MJDC had supported Casamançe rebels. President Veira reversed prior policy and opposed the rebels. Senegal and Guinea sent troops to assist Viera's efforts.[397]	Security Council '[c]alls upon the Government and the Self-Proclaimed Military Junta to implement fully all the provisions of the agreements, including … in cooperation with all concerned, the withdrawal of all foreign troops in Guinea-Bissau'.[398]

[395] http://ucdp.uu.se/#/statebased/840.
[396] http://ucdp.uu.se/#/statebased/866.
[397] *Ibid.*
[398] UN SC Res. 1216 of 21 December 1998.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Iraq	Government of Iraq v. Ansar al-Islam	Government of Iraq	United States and others[399]	2004–08	(1) To support the Iraqi government against an insurgency movement	In 2004–09, the Iraqi government was supported by troops from a multinational coalition headed by the United States. During these years, the foreign troops provided the majority of the military and security forces on the government side. In early 2007, the Iraqi government and the US supporting troops initiated an offensive against insurgents, as well as other violent actors. This so-called surge led to an intensification of the	Council approves of presence of multinational force in Iraq. UN SC Res. 1546 is accompanied by a letter from the United States offering assistance and a letter from Iraq accepting that assistance.[400]

[399] http://ucdp.uu.se/#/statebased/523. The other states supporting the Iraqi government with troops were: Albania; Australia; Azerbaijan; Bulgaria; Czech Republic; Denmark; Dominican Republic; Egypt; El Salvador; Estonia; Georgia; Honduras; Italy; Jordan; Kazakhstan; Latvia; Lithuania; Macedonia; Mongolia; Netherlands; Norway; Philippines; Poland; Portugal; Romania; Slovakia; South Korea; Spain; Tonga; Ukraine; United Arab Emirates; United Kingdom.

[400] UN SC Res. 1546 of 8 June 2004.

						conflict as insurgents were being pushed north from Baghdad.[401]	
Lebanon	Government of Lebanon v. Forces of Michel Aoun	Government of Lebanon	Syria	1990	(1) To support the government of Sunni Muslim Prime Minister Selim Hoss in a conflict with Michel Aoun, leader of the mainly Christian Lebanese Army.[402]	Fighting between the Lebanese Army under Aoun and the Government of Lebanon began in early March, as the Lebanese Army launched a blockade on what it considered to be illegal militia posts in Beirut. In response, forces controlled by Syria and the Hoss government attacked Lebanese Army positions with mortars and artillery.[403] The new and the old governments claimed that they	In 1990, the Council '[r]eiterates its strong support for the territorial integrity, sovereignty and independence of Lebanon within its internationally recognized boundaries'.[404] In 2004, the Council repeated this language in a preambular paragraph, reaffirming 'its call for the strict respect of the sovereignty, territorial integrity, unity, and political independence of Lebanon under the sole and exclusive authority of the Government of Lebanon throughout Lebanon', and calling upon 'all remaining foreign forces

[401] http://ucdp.uu.se/#/statebased/523.
[402] http://ucdp.uu.se/#statebased/532.
[403] *Ibid*.
[404] UN SC Res. 659 of 31 July 1990, para. 2.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						had acted according to constitutional law. The constitution did not provide an immediate solution to the problem, because it was tradition that dictated that the president should be a Christian and the prime minister a Sunni Muslim. Internationally, the government led by Hoss came to be seen as having the most legitimacy; UCDP also treats the Hoss-led administration as the government of Lebanon.[405]	to withdraw from Lebanon'.[406]

[405] http://ucdp.uu.se/#statebased/532.
[406] UN SC Res. 1559 of 2 September 2004.

Lesotho	Government of Lesotho v. Military faction (Lesotho)	Government of Lesotho	South Africa, Botswana	1998	(5) South African and Botswanan troops supported elected government in challenge by mutinous army officers dissatisfied with electoral results[407]	In 1998, conflict arose in Lesotho as a controversy over election results and the dismissal of a colonel triggered a mutiny within the armed forces. Even though independent observers declared the process to have been free and fair, it provoked legal challenges from the main opposition parties in 20 constituencies. The government of Lesotho called for assistance from SADC countries and, following the deployment of South African and Botswanan troops, the mutinous military faction could eventually be contained.[408]	None

[407] http://ucdp.uu.se/#statebased/867.
[408] *Ibid.*

(*continued*)

State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Libya	Government of Libya v. IS	Government of Libya	United States	2016	(3) To support Libyan Government of National Accord in conflict with IS[409]	A critical turning point in the conflict came in May 2016, when IS fighters attacked government-loyal militias from the town of Misrata at Abu Grein. By June, the Misratan forces loyal to the Government of Libya were deeply engaged in fierce street battles against IS inside Sirte. On 1 August, US aircraft and naval forces began bombing targets in Sirte. The fighting continued for several months, amid more US airstrikes, before the Bunyan Marsous	On 14 June 2016, the Council, in a resolution concerning Libya, '[u]rge[d] Member States to combat by all means, in accordance with their obligations under the Charter of the United Nations and other obligations under international law, including international human rights law, international refugee law and international humanitarian law, threats to international peace and security caused by terrorist acts'.[410] The Resolution further welcomed the Vienna Communiqué of 16 May 2016, which declares that '[t]he GNA [Government of National Accord] is the sole legitimate recipient of international security

[409] http://ucdp.uu.se/#statebased/14745.
[410] UN SC Res. 2292 of 14 June 2016.

						Operations Room finally captured Sirte on 6 December.[411]	assistance' and that '[w]e fully support the PC's requests for security assistance to counter Da'esh and other UN-designated terrorist groups for a united national security force'.[412] This favourable statement came three months prior to the commencement of the US bombing campaign.
Mali	Government of Mali v. Ansar Dine, AQIM, MUJAO, Signed-in-Blood Battalion, al-Murabitun; CMA; MNLA	Government of Mali	France	2013	(1) (3) Anti-terrorism and support of Malian government against Tuareg rebel movement[413]	Malian government faced challenge in the north from both Tuareg rebel groups and Islamist groups. After first the Tuaregs and then the Islamists took control of significant portions of the country, a transitional government requested and received assistance from France.[414]	Council welcomed 'the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of terrorist, extremist and armed groups towards the south of Mali'.[415]

[411] *Ibid.*

[412] The communiqué was issued on behalf of Algeria, Canada, Chad, China, Egypt, France, Germany, Jordan, Italy, Malta, Morocco, Niger, Qatar, Russia, Saudi Arabia, Spain, Sudan, Tunisia, Turkey, the United Arab Emirates, the United Kingdom, the United States, the European Union, United Nations, the League of Arab States, and the African Union. See Joint Communiqué on Libya, 22 September 2016, available at https://reliefweb.int/report/libya/joint-communique-libya-22-september-2016.

[413] UN SC Res. 2056 of 5 July 2012, 1; UN SC Res. 2071 of 12 October 2012; UN SC Res. 2085 of 20 December 2012; UN SC Res. 2100 of 25 April 2013.

[414] http://ucdp.uu.se/#statebased/12575; http://ucdp.uu.se/#/statebased/11985.

[415] UN SC Res. 2100 of 25 April 2013.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Mauritania	Government of Mauritania v. AQIM	Government of Mauritania	France	2010	(3) Assist Mauritanian government in attacking AQIM enclave and rescue a French citizen held hostage[416]	On 22 June 2010, the Mauritanian military attacked AQIM in neighbouring Mali, in what was officially claimed to be a pre-emptive strike attempting to deter a suspected AQIM attack on strategic Mauritanian interests. French troops took part in the operation, with a goal of releasing Michel Germaneau, a French aid worker taken captive by AQIM in Niger and held in Mali.[417]	None

[416] http://ucdp.uu.se/#statebased/909; Modibo Goita, 'West Africa's Growing Terrorist Threat: Confronting AQIM's Sahelian Strategy', Africa Security Brief No. 11, February 2011, available at www.files.ethz.ch/isn/133688/AfricaBriefFinal_11.pdf.

[417] http://ucdp.uu.se/#statebased/909.

Mozambique	Government of Mozambique v. Renamo	Government of Mozambique	Zimbabwe, USSR, Tanzania, United Kingdom	1985–92	(1) Provided combat troops and military advisers to Frelimo government in conflict with Renamo rebels[418]	Three neighbouring states – Zimbabwe, Tanzania, and Malawi – eventually deployed troops into Mozambique to defend their own economic interests against Renamo attacks. Until 1991, the Soviet Union, together with other Eastern bloc countries constituted the Mozambican government's main backers. From the mid-1980s, military aid was also forthcoming from a number of Western countries, of which the United Kingdom was the leading one.[419]	None
Niger	Government of Niger v. IS	Government of Niger	Chad, Nigeria	2015–16	(3) Formed multinational joint forces, first against	Soon after Boko Haram's transformation into IS, the	Security Council issued a presidential statement reaffirming 'Member States'

[418] http://ucdp.uu.se/#/statebased/722.
[419] *Ibid*.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
					Boko Haram, later against IS	group's attacks on Niger intensified. Late March and April saw the most large-scale attacks in 2015. On 30 March, IS fighters launched a significant cross-border attack on Bosso village from Nigeria, but they were pushed back after sustaining heavy losses. In early June, Bosso once again became the target of an IS attack; hundreds of heavily armed IS fighters were able to temporarily defeat the Army and briefly occupy the town.	determination to continue to do all they can to resolve conflict and to deny terrorist groups the ability to put down roots and establish safe havens to address better the growing threat posed by terrorism'. Council also 'expresse[d] its concern at the continued threat posed to international peace and security by Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad (also known as "Boko Haram") … and all other individuals, groups, undertakings and entities associated with Al-Qaida'.[420]

[420] UN SC Pres. Statement on Threats to International Peace and Security Caused by Terrorist Acts, S/PRST/2015/14, 28 July 2015.

						Subsequently, the Army launched a large-scale counter-attack, using air and land forces, succeeding in pushing the militants out of Bosso. The following months also saw high levels of violence, with a government offensive scoring victories against the Islamists.[421]	
Nigeria	Government of Nigeria v. Jama'atu Ahlis Sunna Lidda'awati wal-Jihad (Boko Haram)	Government of Nigeria	Chad, Niger, Cameroon	2015–16	(3) The three states formed a so-called Multinational Joint Task Force (MNJTF), first against Boko Haram, later against IS	In January 2015, Boko Haram carried out an attack on the town of Baga and its surrounding area, which was the base of the so-called MNJTF. In late January, a major unified offensive was launched from Chad and Nigeria.	The Council stated it was '[w]elcoming the commitment expressed by the Governments in the Region to combat Boko Haram, in order to create a safe and secure environment for civilians'.[422]

[421] http://ucdp.uu.se/#statebased/14668.
[422] UN SC Res. 2349 of 31 March 2017.

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						A few days later, Niger joined in. Boko Haram reformed in 2016 after splitting from IS. With the split in the movement, analysts agree that IS is mostly based in the Nigeria–Niger–Chad–Cameroon border region. In December 2016, the government announced that the last Boko Haram base had been captured.[423]	
Nigeria	Government of Nigeria v. IS	Government of Nigeria	Chad, Niger, Cameroon	2015–16	(3) See above	See above.[424]	See above.[425]

[423] http://ucdp.uu.se/#statebased/640.
[424] http://ucdp.uu.se/#statebased/14669.
[425] UN SC Res. 2349 of 31 March 2017.

Rwanda	Government of Rwanda v. FDLR	Government of Rwanda	DR Congo	2009–16	(1) Formed regional alliance against FDLR and a Congolese rebel group previously supported by Rwanda DR Congo then seen as a secondary warring party supporting the Rwandan side in the conflict	In 2009, a new regional alliance was built as Rwanda signed an agreement with the government of DR Congo. DR Congo (Zaire) was then seen as a secondary warring party supporting the Rwandan side in the conflict. This alliance continued between 2010 and 2012, when the regional context again changed dramatically. On 23 September 2015, Rwanda and DR Congo (Zaire) launched a fresh round of security talks to start 'a new chapter' in their bilateral relations. Clashes between the Congolese	Council stated that it was '[e]ncouraging the countries of the Great Lakes region to maintain a high level of commitment to jointly promote peace and stability in the region and welcoming the recent improvements in the relations between the Governments of the Democratic Republic of the Congo and Rwanda, Uganda and Burundi'.[426]

[426] UN SC Res. 1906 of 23 December 2009.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						government and FDLR in the Nord Kivu Province of DR Congo (Zaire) activated the conflict again in 2016.[427]	
Rwanda	Government of Rwanda v. FPR	Government of Rwanda	France, Zaire	1990	(1) French troops were deployed at checkpoints and also interrogated military prisoners, provided military intelligence, and trained the presidential guard, as well as other troops. In addition, France was also Rwanda's main arms provider.	Since 1975, France had a military cooperation agreement with Rwanda, and relations between the presidents of the respective countries were close. Thus, when FPR launched its invasion, President Habyarimana invoked the agreement, and France subsequently sent troops in aid of the government.[428]	None

[427] http://ucdp.uu.se/#statebased/12102.
[428] http://ucdp.uu.se/#statebased/804.

Sierra Leone	Government of Sierra Leone v. RUF	Government of Sierra Leone	United Kingdom	2000	(5) British forces engaged in an escalating series of acts to support the Lomé peace agreement and counter spoiler activity by the RUF	In May 2000, the Lomé peace accord unravelled. The United Kingdom, a chief sponsor of the peace in Sierra Leone, deployed a reconnaissance team in early May to prepare to evacuate its citizens. The UK forces first secured the airport and then began to support UNAMSIL and the Sierra Leone Army against RUF. They were successful in pushing RUF forces eastwards. In mid-June, the UK force was replaced with a 200-strong advice-and-assist team. In September, they successfully rescued	No collective statement issued on UK intervention, but support given at 11 May 2000 Council meeting by Secretary-General and nine member states, including Portugal speaking for the European Union.[429]

[429] UN SCOR, 55th Session, 4139th Meeting, UN Doc. S/PV.4139, 11 May 2000, 8 (supportive statements by the UN Secretary-General, Canada, Namibia, Argentina, Ukraine, France, Portugal [speaking for European Union], Malaysia, the United States, and Jamaica).

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						British hostages taken by another faction. British elements then remained in Sierra Leone to advise the Sierra Leonean government and military, to support the growing UN mission, and to send a clear signal to any force intent on renewed violence.[430]	
Somalia	Government of Somalia v. ARS/UIC; Al-Shabaab	Government of Somalia	Ethiopia	2006–08	(1) (3) Ethiopian troops supported the Transitional Federal Government (TFG) against challenges by the Union of Islamic Courts and Al-Shebab	In 2004, the TFG was created, but it almost immediately fell into conflict with a series of Islamist groups. In that same year, the TFG requested the deployment of regional forces from	Council had numerous opportunities to condemn the Ethiopian presence, which the Secretary-General specifically noted in his reports. Yet it issued no such condemnation.[431]

[430] http://ucdp.uu.se/#/statebased/818. See also David H. Ucko, 'Can Limited Intervention Work? Lessons from Britain's Success Story in Sierra Leone', *Journal of Strategic Studies* 39 (2016), 847–77.

[431] Report of the Secretary-General on the Situation in Somalia pursuant to paragraphs 3 and 9 of Security Council Resolution 1744, UN Doc. S/2007/204, 20 April 2007, para. 19; Report of the Secretary-General on the Situation in Somalia, UN Doc. S/2007/115, 28 February 2007, para. 1.

the Intergovernmental Authority on Development (IGAD) and the African Union.

The Security Council had previously imposed an arms embargo on Somalia, and such an intervention would require that an exception be made. This exception came in UN SC Res. 1725, in which the Council permitted the deployment of an IGAD peacekeeping mission to Somalia.

While this process played out, Ethiopian troops entered the country to support the TFG and played a decisive role in conflicts, first with the Union of Islamic Courts and, after 2007, with Al-Shebab.[432]

[432] http://ucdp.uu.se/#statebased/750.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
South Sudan	Government of South Sudan v. Sudan People's Liberation Movement/ Army (SPLM/A) in Opposition	Government of Sudan	Uganda	2013–15	(1) Uganda sent troops into South Sudan five days after the fighting had broken out and claimed that the government of South Sudan extended an invitation to intervene	With the help of Ugandan troops, government forces wrested control of the towns of Bor, Bentiu, and Malakal back from rebel troops.[433]	'The members of the Security Council also strongly discouraged external intervention that could exacerbate the military and political tensions.'[434]
Sri Lanka (Eelam)	Government of Sri Lanka (Ceylon) v. Liberation Tigers of Tamil Eelam (LTTE, or Tamil Tigers)	Government of Sri Lanka	India	1987–90	(1) Indian Peacekeeping Force (IPKF), numbering 75,000–90,000 troops, engaged in fighting in Sri Lanka	On 29 July 1987, the Indo–Sri Lankan Accord was signed. The terms of the truce specified that the Sri Lankan troops withdraw from the north and the Tamil rebels disarm. It also provided for the introduction of the	None

[433] Kasaija P. Apuuli, 'Explaining the (Il)legality of Uganda's Intervention in the Current South Sudan Conflict', *African Security Review* 23 (2014), 352–69.
[434] Security Council Press Statement on South Sudan, SC/11244-AFR/2792, 10 January 2014.

						IPKF in Sri Lanka. The Indo–Sri Lanka Accord, however, did not include LTTE and, soon after it arrived, the IPKF became deeply entangled in regular warfare with the Tamil Tigers. The last IPKF troops withdrew from Sri Lanka in March 1990.[435]	
Sudan	Government of Sudan v. SPLM/A	SPLM/A	Chad	2003/ 2004–06	(1) Chad deployed troops in Darfur which fought, together with the Sudanese government, against the SPLM/A	The SPLM/A, a rebel group based in southern Sudan, took up arms against the Khartoum regime in 1983. Chadian troops fought, together with the Sudanese government, in Darfur against the SPLM/A in 2003.[436]	Council praises the efforts by the African Union to facilitate peace talks in Sudan, as well as the 'humanitarian forces' that have been deployed to Sudan and Darfur specifically. But although the Council takes note of Chad's efforts, it offers no specific condemnation or approval of Chad's military support of Sudan.[437]

[435] http://ucdp.uu.se/#statebased/776.
[436] https://ucdp.uu.se/#/statebased/663.
[437] UN SC Res. 1574 of 19 November 2004.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
Syria	Government of Syria v. IS	Government of Syria	Russia, Iran	2015–16	(3) Military aid to government to counter rebel and jihadist groups	Syria lost territory to ISIS. On 29 June 2014, ISIS proclaimed a caliphate; at the same time, it changed its name to the 'Islamic State'. Russia intervened in the Syrian conflicts on 30 September 2015 after an official request from the Assad government. Russian planes conducted air strikes. From the outset, Teheran supported several pro-regime militia groups, which were transformed into the National Defense Forces in 2013 with the help	Council addresses a variety of issues in the conflict but not external intervention by states.[438]

[438] UN SC Res. 2249 of 20 November 2015; UN SC Res. 2254 of 18 December 2015; UN SC Res. 2258 of 22 December 2015; UN SC Res. 2268 of 26 February 2015.

						and training from Iran. Further, the Lebanese group Hezbollah and various Shi'ite groupings hailing from Iraq, as well as from within Syria, also participated on the government's side. These were considered Iranian proxy forces.[439]	
Syria	Syria v. Syrian insurgents	Government of Syria	Russia, Iran	2015–16	(1) While Russia and Iran's stated goal was to counter IS insurgents, they also targeted non-IS rebel groups	Russia received invitation from Assad government. The 'Syrian insurgents' includes actors with different ideological perspectives – from relative moderates to Salafi hardliners (including al-Qaeda affiliates).[440]	Council adopted multiple resolutions in regard to Syria during this time. It '[r]eaffirm[ed] the primary responsibility of the Syrian authorities to protect the population in Syria and, reiterat[ed] that parties to armed conflict must take all feasible steps to protect civilians'. It '[s]trongly condemn[ed] the arbitrary detention and torture of individuals in Syria,

[439] https://ucdp.uu.se/#statebased/14620.
[440] https://ucdp.uu.se/#/actor/4456.

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							notably in prisons and detention facilities, as well as the kidnappings, abductions, hostage taking and forced disappearances'.[441]
Uganda	Government of Uganda v. Lord's Resistance Army (LRA)	Government of Uganda	South Sudan, DR Congo	2008–09	(3) The armed forces of Uganda, DR Congo, and Southern Sudan launched Operation Lightning Thunder to push out the LRA members	In 2002, Uganda and Sudan signed an agreement aimed at containing the LRA. On 14 December 2008, the armed forces of Uganda, DR Congo, and South Sudan launched Operation Lightning Thunder, beginning with a surprise air strike against Camp Swahili, LRA's main camp in the DR Congo.	'The Security Council strongly condemns the recent attacks by the LRA in the Democratic Republic of the Congo and Southern Sudan, which pose a continuing threat to regional security … The Security Council commends the States in the region for their increased cooperation, and welcomes the joint efforts they have made to address the security threat posed by the LRA.'[442]

[441] UN SC Pres. Statement on the Central African Region, S/PRST/2012/18, 29 June 2012.
[442] UN SC Pres. Statement on the Great Lakes Region, S/PRST/2008/48, 22 December 2008.

						Operation Lightning Thunder continued through the rest of December and into 2009, amidst massive violence carried out by LRA against the civilian Congolese population. Operation Lightning Thunder was ended on 15 March 2009, and the Ugandan troops officially left DR Congo. The armed campaign continued through the rest of the year, however, albeit more covertly.[443]	
Uzbekistan	Government of Uzbekistan v. Islamic Movement of Uzbekistan (IMU)	Government of Uzbekistan	Kyrgyzstan	2000	(3) Forming a new cooperative security initiative; pushing out IMU	IMU is an Uzbek rebel group fighting for the establishment of an Islamic state in Uzbekistan. However, its operations have taken place not only in	None

[443] https://ucdp.uu.se/#statebased/688.

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State in Which Intervention Occurred	Conflict	Party Being Supported	Intervening State(s)	Date(s) of Intervention	Purpose(s) of Intervention	Description	Security Council Reaction
						Uzbekistan but in the whole region of Central Asia. The two-year conflict in Uzbekistan was fought as much in the neighbouring countries as in Uzbekistan itself. The IMU had bases in Tajikistan, and several clashes took place between IMU and the Kyrgyz Army on Kyrgyz territory.[444]	
Yemen	Government of Yemen v. Forces of Hadi	Forces of Hadi	Bahrain, UAE, Egypt, Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Sudan	2015–16	(5) Gulf Cooperation Council (GCC), led by Saudi Arabia, responded to an invitation from President Hadi to assist in fighting against Huthi rebels[445]	Then Vice-President Hadi stood for election on 21 February 2012 and won 99.8% of votes. However, the Houthis (a Zaydi Shi'ite group based in the north of Yemen) rejected the GCC process,	In Resolution 2216, the Council affirmed the democratic legitimacy of Hadi's government and condemned Houthi actions that could undermine the transition. However, the Council did not explicitly endorse the GCC action.[446]

[444] https://ucdp.uu.se/#actor/359.
[445] Statement issued by the Kingdom of Saudi Arabia, the United Arab Emirates, the Kingdom of Bahrain, the State of Qatar and the State of Kuwait, UN Doc. S/2015/217 (Annex), 3.
[446] UN SC Res. 2216 of 14 April 2015.

claiming it did not represent the entire Yemeni people, and boycotted the election. The Houthis aligned themselves with still-influential former President Saleh and his remaining supporters, and moved from the north to expand their territorial control. By September, the Houthis had taken control of the capital, Sana'a. The Houthis later signed, but then violated, a peace agreement.

On 24 March 2015, President Hadi requested foreign military aid from the GCC.

Two days later, Saudi Arabia and other GCC states launched Operation 'Decisive Storm'.[447]

[447] https://ucdp.uu.se/#statebased/14595. See also Luca Ferro and Tom Ruys, 'The Military Intervention in Yemen's Civil War', in Tom Ruys, Olivier Corten and Alexandra Hofer (eds), *The Use of Force in International Law: A Case-Based Approach* (Oxford: OUP 2018), 899–911 (899–900).

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Yugoslavia	Government of Yugoslavia v. Kosovo Liberation Army (UKC)	Government of Yugoslavia	NATO	1999	(4) Supported Kosovo against Serbian military incursions	On 24 March 1999, NATO launched an air bombardment campaign on Yugoslavian military installations in Kosovo and Serbia. The offensive was designed to force Yugoslavian capitulation to a peace plan.[448]	Council passed a series of resolutions demanding a halt to Serbian actions and, after the bombing campaign ended, effectively put Kosovo under an international trustreeship. But it never explicitly approved or disapproved of the NATO action – although a Russian resolution to disapprove was defeated.[449]

[448] https://ucdp.uu.se/#conflict/412.

[449] UN SC Res. 1160 of 31 March 1998; UN SC Res. 1199 of 23 September 1998; UN SC Res. 1203 of 24 October 1998; UN SC Res. 1239 of 14 May 1999; UN SC Res. 1244 of 10 June 1999.