

# UNILATERAL INTERVENTION BY INVITATION IN CIVIL WARS: THE EFFECTIVE CONTROL TEST TESTED

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## I. INTRODUCTION

Civil wars often result in many of the problems that dominate contemporary discussions of international affairs, including refugee flows, terrorism, gross human rights violations, and famine. As many governments beleaguered by insurgencies are incapable of controlling their internal conflicts unaided, unilateral invited intervention<sup>1</sup> exists as a means of fore-

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1. There exists no shortage of definitions for this highly charged term. I have chosen the following: “‘Intervention’ refers to organized and systematic activities directed across recognized boundaries and aimed at affecting the political authority structures of the target.” Oran R. Young, *Systemic Bases of Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 111, 111 (John Norton Moore ed., 1974). Alternatively, Oppenheim defines intervention as “dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things.” LASSA P. OPPENHEIM, 1 *INTERNATIONAL LAW* § 134 (Sir Hersch Lauterpacht ed., 8th ed. 1955). I choose Young’s definition partially for its emphasis on systematic behavior, which thus ignores more casual or sporadic actions that are more accurately deemed “interference.” Additionally, Oppenheim’s requirement of a “dictatorial” intervention would seem to exclude intervention by invitation, since the inviting state’s authority to expel the invited forces negates any question of control.

This Note focuses on unilateral invited intervention in civil wars; it does not examine interventions occurring outside of civil wars, nor does it include cases in which the intervening state either coordinates its actions with other states or intervenes under the auspices of a supranational organization.

stalling degeneration into civil war. Unilateral intervention by invitation is fundamentally different from endeavors undertaken by alliances or coalitions of states, for only the inviting state's sovereign authority—the very quality that is challenged when civil war breaks out—can legally justify such intervention.

Invited military intervention focuses on the consent of the inviting state to justify action that would, absent such consent, constitute an illegal use of force by one state within the territory of another. As such, a determination of the legality of an intervention by invitation centers on the external legitimacy of the inviting government regarding the exercise of the sovereign rights of the state. The aim of this Note is to utilize state behavior, United Nations Charter-body practice, and a decision of the International Court of Justice in order to establish the key determinants of legality for unilateral invited interventions in civil wars. As questions regarding the legitimacy of an inviting government by their nature rely on rules of governmental recognition, Part II discusses the theories surrounding the recognition of states and governments, necessarily implicated by a discussion of intervention by invitation in civil wars, and aims to reconcile the multiple viewpoints that have emerged. Part III notes the pre-Charter international law on intervention in civil wars, while Part IV analyzes the decision of the ICJ in *Nicaragua v. United States*,<sup>2</sup> noting its enunciation of limitations on the right to request intervention in times of civil strife. Part V looks to the various General Assembly resolutions that aim to clarify the relevant provisions of the United Nations Charter.

Part VI turns to those instances in which an outside state has intervened in a civil war at the request of one of the parties to the conflict, analyzing the political and military background to these situations and the international reaction to ascertain how the international community views unilateral intervention by invitation in civil wars. The conclusion draws out the terms of what has become the post-Charter international law on intervention by invitation in civil wars, arguing that external regime legitimacy is the key determinant of the legality of intervention by invitation. Additionally, it asks whether the aban-

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2. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27) [hereinafter *Military and Paramilitary Activities*].

donment of one aspect of pre-Charter traditional international law—the standards of belligerency—does not render incoherent continued adherence to another dated principle of international law—the effective control test for governmental recognition.

## II. INVITED INTERVENTION AND GOVERNMENTAL RECOGNITION

The sovereign right of a government to invite foreign troops onto its soil is not questioned in times unmarked by civil strife within the state's territory.<sup>3</sup> Besides the question of invitations made under coercion,<sup>4</sup> such an introduction of troops causes no injury to the recipient state's sovereignty. Rather, the very ability to make such a request reinforces the inviting state's authority.<sup>5</sup> The question of the legality of invited intervention only crops up when the legitimacy of the inviting party is drawn into question. As Brownlie notes, the "difficulty arises when the legal status of the government which is alleged to have given consent is a matter of doubt."<sup>6</sup>

The question of how the legal status of a government is determined has evoked much debate. The adoption of a specific theory of recognition can affect the determination of a government's legality. This determination, in turn, is crucial for establishing whether an intervention invited by that regime is legal. There is a causal path, then, from modalities of recognition to legality of intervention. This Note thus first examines competing theories of recognition before turning to analysis of past interventions by invitation.

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3. *Id.* ¶ 246 ("intervention . . . is already allowable at the request of the government of a State").

4. See Vienna Convention on the Law of Treaties, May 23, 1969, art. 52, 1155 U.N.T.S. 331, 344 (deeming treaties void if they are "procured by the threat or use of force").

5. See Thomas C. Heller & Abraham D. Sofaer, *Sovereignty: The Practitioner's Prospective*, in PROBLEMATIC SOVEREIGNTY: CONTESTED RULES AND POLITICAL POSSIBILITIES 24, 25 (Stephen D. Krasner ed., 2001) [hereinafter PROBLEMATIC SOVEREIGNTY]; see also Stephen D. Krasner, *Problematic Sovereignty*, in PROBLEMATIC SOVEREIGNTY, *supra*, at 1, 11 (distinguishing between different theories of sovereignty and noting that "voluntary actions by rulers, or invitations, do not violate international legal sovereignty but can violate Westphalian sovereignty").

6. IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 317 (1963).

### A. *Recognition of States and Governments*

Two schools of thought predominate traditional discussion of state recognition.<sup>7</sup> Advanced by positivists, the “constitutive” model holds that a state springs into legal existence at the moment of recognition by other states; it is the very act of recognition that creates the state. The constitutive view is premised on a view of international law in which state consent lies at the core of the international system, and implies “a world arena absent rights or rules.”<sup>8</sup> Contrarily, the voluntarist perspective on international law asserts a “declaratory” view of state recognition, in which the act of recognizing a state merely acknowledges the presence of a preexisting factual situation in which the entity in question has already satisfied the legal requirements for statehood.<sup>9</sup>

Adherents of the two models assert divergent views of the international system: the constitutive model emphasizes the centrality of the state, while the declaratory one locates that state within a system of law and rules. One could mollify both sides by asserting that while the legal rights of statehood may be triggered independent of collective recognition by other states, attempts to exercise such rights will be ineffective, at best, absent decisions by other states to extend recognition. The recognition process, therefore, internalizes the theory underlying the declaratory view, but the inability of an entity that otherwise satisfies the criteria for statehood to exercise the associated sovereign rights indicates the continued relevance of the constitutive theory of recognition.<sup>10</sup>

Given that sovereign rights attach themselves to states, not governments, the question of recognizing a government, rather than a state, might seem improper. Governments, the argument goes, come and go; while they are capable of exercising the sovereign rights of the state, those sovereign rights

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7. See PETER MALANCZUK, *AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW* 83-5 (7th ed. 1997).

8. THOMAS D. GRANT, *THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION* 2-3 (1999).

9. The generally-accepted enunciation of the criteria for statehood is four-fold: a permanent population, a defined territory, a government, and a capacity to enter into relations with other states. See *Montevideo Convention on the Rights and Duties of States*, Dec. 26, 1933, art. 1, 165 L.N.T.S. 3802.

10. See BRAD R. ROTH, *GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW* 129 (2000).

exist independent of any government that may exercise them. Though international legal relations exist between states, not governments, questions emerge when multiple competing factions claim to be the legitimate government of a recognized state. Whenever such a situation presents itself, other states must determine which faction is deemed to legally represent the state. Such decisions will be more predictable and sound if they are made in line with a legal doctrine regarding governmental recognition.

### B. *The Effective Control Test and Its Detractors*

The traditional determination of a government's legality as representative for its state asks whether the government exerts de facto control over the state's territory. The effective control test involves no legal inquiry into how the putative government gained control; if it can fulfill the functions of the state, it will be considered the legal government.<sup>11</sup> Recognition of governments under the effective control test does not permit extensive flexibility. While a state might withhold recognition by disputing the factual question of whether the putative entity actually exerts control over its territory, there remains little room for consideration of the would-be government's policies or principles. This has troubled scholars and practitioners alike.

Indeed, democratic challenges to the theory of effective control as the basis for recognition have emerged. Academics have suggested that internal democratic legitimacy does play a role in the legal question of external legitimacy.<sup>12</sup> The Security Council, going further, has acted under Chapter VII to restore to power the democratically-elected government of Haiti

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11. See SIR HERSCH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 98 (1947).

12. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992); Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992). The Reagan Doctrine had earlier injected a requirement of democratic consent into the determination of governmental legitimacy, thus seemingly rejecting the effective control test. See Jeane J. Kirkpatrick & Allan Gerson, *The Reagan Doctrine, Human Rights, and International Law*, in *RIGHT V. MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE* 19, 23 (Louis Henkin ed., 1991) ("[T]he Reagan Doctrine rests on the claim that legitimate government depends on the consent of the governed . . . . A government is not legitimate merely because it exists.").

after it was forced out in a coup d'état.<sup>13</sup> The view that the effective control test ignores the principle of self-determination relies, perhaps, on an overly simplistic definition of what constitutes "control": proponents of the doctrine note a requirement of popular acceptance of the putative regime in order that such a body be deemed in "effective" control.<sup>14</sup> The effective control test, excluding as it does situations in which the population has made clear its opposition to the supposed government through violent revolution, is perhaps a rough attempt to parallel determinations of popular consent. As such, it is not antithetical to the notion of an "emerging right to democratic governance," but is perhaps simply less ambitious.

### III. PRE-CHARTER TRADITIONAL INTERNATIONAL LAW: THE STANDARDS OF BELLIGERENCY

As earlier noted, traditional pre-Charter customary international law regarding invited intervention in civil wars looked primarily to a determination of the degree of control exerted by the government and the insurgent forces. The direct relationship between the control over territory exerted by the parties to an internal conflict and their legal status is essentially a corollary to the effective control test for state recognition, essentially extending the effective control test for state recognition to situations of civil war.<sup>15</sup> Under the pre-Charter system, the rights and duties of other states toward the parties to an internal conflict depended on a classification of the conflict into one of three categories: rebellion, insurgency, or belligerency.

The early stage of an internal conflict, in which the recognized government maintained control over almost the entirety of the state's territory, was termed a "rebellion." At this point, the conflict remained entirely a matter of domestic jurisdiction, and third states thus retained the right to aid the recog-

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13. See S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg. ¶ 4, U.N. Doc. S/RES/940 (1994) (authorizing states to "use all necessary means" to restore the Aristide government).

14. See ROTH, *supra* note 10, at 138-41.

15. See *supra* Part II(B); *infra* Part VII.

nized government and a duty not to aid the rebels.<sup>16</sup> While a situation characterized as a rebellion enunciated an objection to the existing government, it did not constitute a valid challenge to that government's legitimacy. Intervention following governmental invitation was therefore well within the rights of states that faced a rebellion.

If the nonstate forces succeeded in acquiring control over a significant portion of the country, the conflict advanced to a state of "insurgency." At this stage, the government's inability to control the entirety of its territory made its claim to legitimacy uncertain. Third states were thus expected to refrain from offering assistance to either side in the conflict, as any assistance would likely influence the outcome of the civil war.<sup>17</sup>

In the event that the insurgent continued to acquire territory, so that its degree of control matched or exceeded that of the previously-recognized government, the civil war was characterized as a "belligerency." Such a progression required that outside states recognize the parties to the conflict as belligerents.<sup>18</sup> Once a state of belligerency was recognized, an invitation to intervene or offer assistance was legally valid, regardless of whether the inviting party was the previously-recognized government or the anti-government forces.<sup>19</sup> Through such

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16. See Richard Falk, *Janus Tormented: The International Law of Internal War*, in *INTERNATIONAL ASPECTS OF CIVIL STRIFE* 185, 197-98 (James N. Rosenau ed., 1964).

17. See LASSA OPPENHEIM, *INTERNATIONAL LAW* 161-76 (Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. 1992). For another overview of the various stages of civil wars under pre-Charter international law invoking the standards of belligerency, see Falk, *supra* note 16, at 197-206.

18. Oppenheim notes four "conditions of fact" required for a recognition of a state of belligerency to be considered legal:

the existence of a civil war accompanied by a state of general hostilities; occupation and measures of orderly administration of a substantial part of national territory by the insurgents; observance of the rules of warfare on the part of the insurgent forces acting under a responsible authority; the practical necessity for third States to define their attitude to the civil war . . . .

He adds that when these somewhat objective conditions are not present, "recognition of belligerency constitutes illicit interference in the affairs of the State affected by civil disorders." LASSA P. OPPENHEIM, 2 *INTERNATIONAL LAW* § 76 (Sir Hersch Lauterpacht ed., 7th ed. 1952).

19. One author has contrarily stated that the "usual view" is in fact that recognition of belligerency requires strict neutrality and a duty of noninter-

intervention or assistance, the intervening state would be identified as an ally of the recipient faction; its legal rights and duties would thus be the same as if it were engaged in an interstate war. Those states not choosing to ally themselves were forbidden from assisting either the insurgents or the government and were required to remain strictly neutral. As Lauterpacht noted, "according to the present strict conception of neutrality, the duty of impartiality . . . comprises abstention from any active or passive co-operation with belligerents."<sup>20</sup>

The legality of intervention in recognized internal conflicts was therefore limited by both the subjective determination of the degree of control exerted by the parties to the conflict and the decisions of other states to remain neutral. Political considerations were thus critical to the substantive law; once an internal conflict had advanced to a state of belligerency, an external state was free to decide which side it favored and to lavish unlimited assistance upon that side.<sup>21</sup>

The pre-Charter customary international law that invoked gradations of duties and responsibilities based on the level of combat, however, seems to have fallen into desuetude.<sup>22</sup> No official recognition of a state of belligerency in an internal

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vention vis-à-vis both sides to the conflict, but fails to reference or support this minority perspective. See ROTH, *supra* note 10, at 177.

20. OPPENHEIM, *supra* note 18, § 316.

21. Richard Falk has noted that the normative indeterminacy of the pre-Charter system necessarily created a "distinction between the facts *as impartially perceived* and *as characterized by national officials* holding heavy stakes in the outcome of a particular internal war." Falk, *supra* note 16, at 212. This inevitably resulted in the incorporation of questions of policy in determinations of legal status.

22. See ROTH, *supra* note 10, at 173; Richard Falk, *Introduction, in* INTERNATIONAL LAW OF CIVIL WAR 1, 14 (1971) ("There is almost no reliance in recent diplomatic practice upon the gradation of civil-war situations implicit in the scale of rebellion, insurgency, and belligerency."). But see U.N. SCOR, 20th Sess., 1265th mtg. ¶ 30, U.N. Doc. S/PV.1265 (1965) (recording the representative of Côte d'Ivoire's hint at the continued validity of pre-Charter law by noting that "those were rebels who could not defend themselves, but those who defended themselves stoutly were not rebels"). Not all commentators view the standards' passage into desuetude as a positive development. See, e.g., Robert W. Gomulkiewicz, *International Law Governing Aid to Opposition Groups in Civil War: Resurrecting the Standards of Belligerency*, 63 WASH. L. REV. 43, 49-57 (1988) (advocating a return to the standards as a means of reducing the discretion of individual states).



conflict has taken place since the American Civil War.<sup>23</sup> The abandonment of these standards, however, requires closer examination, given their corollary relationship with the effective control test. If the standards of belligerency have been eliminated as the legal framework through which the international community answers questions of factional legitimacy in a civil war, one must ask whether continued adherence to the effective control test in non-civil war situations creates incoherence within the law.

#### IV. ENTER THE ICJ: THE RULING IN *MILITARY & PARAMILITARY ACTIVITIES*

In *Military and Paramilitary Activities*, the International Court of Justice took up the question of the legality of the American use of force, both direct and indirect, against the Nicaraguan government and in support of the rebel forces known as the *Contras*.<sup>24</sup> In what has become one of the Court's highest-profile and most controversial cases, it considered whether intervention on the side of the internal opposition in a civil war was ever lawful, and examined the legal complexities of the right of self-defense, especially collective self-defense.<sup>25</sup> At the same time, it provided a road map for determinations of the legality of intervention in civil wars.

Having determined that customary international law strictly prohibited intervention on the side of a nonstate party

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23. Furthermore, the International Court of Justice made no mention of the standards of belligerency in *Military and Paramilitary Activities*, *supra* note 2, even though it based its decision entirely on the customary international law in force at the time. *See infra* Part IV.

24. *See Military and Paramilitary Activities*, *supra* note 2. For several discussions of the ICJ's ruling, see generally *Appraisals of the ICJ's Decision: Nicaragua v. United States (Merits)*, 81 AM. J. INT'L L. 77 (1987) [hereinafter *Appraisals of the ICJ's Decision*].

25. Though it should be noted that the ICJ based its ruling on customary international law, and not directly on the various relevant provisions of the United Nations Charter, it determined that the two bases were substantively identical, the latter having incorporated the former. *See Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, 1984 I.C.J. 392, 422-25 (Jurisdiction and Admissibility Decision of Nov. 26). Though the bases of evidence would differ formally—state practice versus Charter-body custom—the substantive similarity seems to allow parallels to be drawn between the Court's interpretation of customary international law and an implied assessment of the law of the Charter.

to an internal conflict, the Court went on to conclude that there was insufficient state practice to justify a modification of this rule.<sup>26</sup> It furthermore stressed the risk that any contrary rule would pose to the international system, warning "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."<sup>27</sup> This expressly contradicted the traditional international law involving standards of belligerency, in which aid to the nonstate party to an internal conflict was permissible once the conflict reached the stage of belligerency.<sup>28</sup>

The Court laid out the requirements for an emerging rule of customary international law, noting the importance of strong *opinio juris* regarding the creation of such a new rule. Absent such state opinion, the Court noted, breaches of customary international law would be treated as violations and not as assertions of a new rule of international law.<sup>29</sup> With regard to intervention, the Court determined that "States have not justified their conduct by reference to a new right of intervention or a new exception to the principle of its prohibition . . . . The Court therefore finds that no such general right of intervention, in support of an opposition within another State, exists in contemporary international law."<sup>30</sup> No statement could have been clearer. The Court's decision not to discuss the standards of belligerency indicated that this system of gradations had likely been abandoned by the time of the adoption of the United Nations Charter.

Since the ICJ determined that the customary international law on the use of force was identical to that put forth by

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26. See *Military and Paramilitary Activities*, *supra* note 2, ¶ 209 ("The Court therefore finds that no such general right of intervention, in support of opposition within another State, exists in contemporary international law.")

27. *Id.* ¶ 246.

28. See *supra* Part III.

29. See *Military and Paramilitary Activities*, *supra* note 2, ¶ 186 ("If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule.")

30. *Id.* ¶¶ 207, 209.

the Charter, there seemed to be no room for the standards of belligerency, which would allow third states to choose equally between governmental and nonstate forces once the situation deteriorated into widespread strife. The attention paid to the nonstate party to the Nicaraguan civil war is instructive in this regard. The Court found that the *Contra* force was, during at least one period of time, "so dependent on the United States that it could not conduct its crucial or most significant military and paramilitary activities without the multi-faceted support of the United States."<sup>31</sup> This stage of the conflict would have classified as a rebellion under the standards of belligerency, thus rendering American assistance illegal.<sup>32</sup> Yet the Court made no mention of this basis for deeming unlawful the actions of the United States. Given the ICJ's pronouncement that intervention in civil wars on the side of the opposition was patently unlawful despite the continued legality of intervention by invitation of the recognized government, the Court seems to have enunciated a clear rule of nonintervention except by invitation of the legally-recognized government.

#### V. THE GENERAL ASSEMBLY AND THE QUESTION OF INTERVENTION

On several occasions, the United Nations General Assembly has addressed the question of intervention. In each of the resolutions that followed, the General Assembly attempted to clarify the Charter's position on the topic. While not significant enough to form the basis for a rule of international law,<sup>33</sup> General Assembly resolutions can serve as interpretive guides to otherwise vague sections of the Charter. Though an examination of General Assembly resolutions cannot be conclusive, it can clarify ambiguous Charter provisions. Additionally, resolutions passed unanimously or with a wide majority of states can be indicative of states' *opinio juris*.<sup>34</sup>

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31. *Id.* ¶ 111.

32. *See supra* note 18.

33. *See* Statute of the International Court of Justice, June 26, 1945, art. 38(1), 59 Stat. 1055, T.S. No. 933 (listing as a source of law "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states").

34. *Compare* Michael Akehurst, *Custom as a Source of International Law*, 47 BRIT. Y.B. INT'L L. 1, 39 (1974-75) (stating the unimportance of motive in determining *opinio juris* and instead emphasizing state pronouncements),

General Assembly Resolution 2131<sup>35</sup> specifically condemned any third-state interference or intervention of any state in a civil war taking place within another state, and defined forcible intervention, subversion, and incitement as prohibited actions.<sup>36</sup> This list of unlawful acts implied that "interference" or "intervention" would necessarily be in favor of nonstate actors against the government. Intervention in support of a government was not mentioned at all and seems to have been excluded based upon the references to incitement or subversion. However, it would be hasty to place too much legal significance on negative inferences stemming from this resolution, and scholars have indeed detracted from the resolution's strength<sup>37</sup> and wisdom.<sup>38</sup>

Resolution 2625<sup>39</sup> reiterated the General Assembly's assertion that intervention or support for subversive activities was

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with Anthony D'Amato, *Nicaragua and International Law: The "Academic" and the "Real,"* 79 AM. J. INT'L L. 657, 662-63 (1985) (arguing that an independent academic analysis of the actual motives for state action is necessary, since state pronouncements are often shaped less by actual belief than by the desire to avoid criticism).

35. *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, G.A. Res. 2131, U.N. GAOR, 20th Sess., Supp. No. 14, at 11, U.N. Doc. A/6014 (1965).

36. *Id.* pmb. ¶¶ 2, 8.

37. See Thomas M. Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L L. 809, 819 (1970) ("[T]his resolution is not binding and it has not notably inhibited Member States' conduct.").

38. See Falk, *supra* note 22, at 7 ("[T]his resolution affirms a principle of absolute endorsement of state sovereignty at a time when conflicting views of political legitimacy make it unrealistic, and probably undesirable, to regulate behavior by an unconditional acceptance of the precepts of nonintervention."). But see G.A. Res. 2131, *supra* note 35, ¶¶ 3, 6 ("The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention . . . . All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect to human rights and fundamental freedoms."). The former statement, omitting any requirement that the condemned use of force must be undertaken by an outside state, raises the question of the interplay between the right to self-determination and the prohibition on forcible intervention.

39. *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc. A/8082 (1970).

unlawful.<sup>40</sup> While its language was more forceful than that found in Resolution 2131, it was perhaps self-defeating: the first “principle” set forth in the resolution noted the “duty” of states to refrain from the use of force in their international relations but added that none of its provisions “shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.”<sup>41</sup> Nonetheless, the resolution confirmed the General Assembly’s previously-stated view that intervention to assist nonstate parties to an internal conflict violated the Charter, and it serves as a guideline for interpreting and applying the text of Article 2(4) of the Charter.<sup>42</sup> As evidence of states’ *opinio juris*, these two resolutions strongly indicate the rejection of the standards of belligerency as incompatible with the view of sovereignty put forth by the Charter.<sup>43</sup>

Perhaps the most explicit statement in support of the lawfulness of intervention by invitation of the government is found within General Assembly Resolution 3314.<sup>44</sup> The General Assembly, in its attempt to define “aggression,” listed various actions that would constitute this offense. One such act listed within the definition was “[t]he use of armed forces . . . 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.”<sup>45</sup> This statement, it would seem, impliedly recognizes the legality of the use of armed

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40. *Id.* at 123.

41. *Id.* ¶ 8. Following Michael Akehurst’s maxim that a General Assembly resolution “cannot be regarded as declaratory of customary law if it is not phrased in declaratory terms,” this would seem to minimize the weight according to this resolution in any determination of customary international law. Akehurst, *supra* note 34, at 7.

42. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” U.N. CHARTER art. 2, para. 4.

43. *But see* Thomas M. Franck, *Appraisals of the ICJ’s Decision*, *supra* note 24, at 119 (disputing the weight often given to states’ comments or voting record in the General Assembly as evidence of *opinio juris* by postulating that “*opinio juris* is not evidence of practice, unless the verbal behavior of states in the Assembly is to be presumed to attest to their actual behavior in the ‘real world’”).

44. *See* G.A. Res. 3314, U.N. GAOR, 29th Sess., Supp. No. 31, at 142, U.N. Doc. A/9631 (1974).

45. *Id.* at art. 3(e).

forces within the territory of another state by agreement, so long as the terms of the agreement are respected. As Article 2(4) already prohibits the use of force on the territory of another state without its consent, Resolution 3314 further notes the illegality of exceeding the agreed-upon limits to an invited intervention. The only action without a specific rule prohibiting its undertaking is intervention by invitation of the government in which the intervening state respects the terms of the invitation. Resolution 3314 further defined the general prohibition contained on the use of force, without going so far as to classify interventions by invitation as patently violating the right of self-determination; this omission reinforces a Charter interpretation permitting intervention by invitation at the request of the recognized government.

While General Assembly resolutions cannot declare *lex lata*, they are nonetheless illustrative of the collective *opinio juris* of member-states and can inform interpretations of the Charter. To this end, the relevant resolutions of the General Assembly seem to recognize the lawfulness of unilateral intervention by invitation of the government through their consistent omission of this activity from lists of prohibited forms of intervention.

## VI. POST-CHARTER STATE ACTION IN CIVIL WARS: INTERVENTIONS BY INVITATION

While traditional international law regarding foreign intervention in civil wars restricted the introduction of foreign interveners once the rebellion had achieved some degree of success,<sup>46</sup> modern international law regarding intervention by invitation in a civil war views as critical the inviting party's international external legitimacy. An inviting party lacking legal recognition as the legitimate government can confer no rights upon the invited state, as it lacks such rights itself. A military intervention based upon illegitimate invitation, then, would be unlawful under the proscription on the use of force contained in customary international law and Article 2(4) of the Charter.

In considering six case studies—Lebanon (1958), the Dominican Republic (1965), Chad (1966-89), Afghanistan (1979-89), Sri Lanka (1987-90), and Tajikistan (1992-97)—this Note

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46. See *supra* Part III.

will evaluate the reactions of the international community to the interventions in question, looking especially to the compatibility of these reactions with competing theories regarding the legal standards for intervention by invitation in civil wars.

#### A. *Lebanon Asks the United States to Keep the Peace (1958)*

The timing of the Lebanese civil war, perhaps more than anything else, transformed an otherwise local matter into an international concern that eventually led to the creation of a United Nations monitoring body and the landing of American Marines on the beaches of Beirut. While the United States and its allies might have otherwise ignored Lebanon's internal discord, the overthrow of the Western-leaning king of Iraq in July 1958 focused attention on the potential instability of other Middle Eastern states.<sup>47</sup>

Lebanon's political stability had long been based on a balancing act that recognized the country's historical ties to Europe and its physical proximity to the Arab world.<sup>48</sup> Rumor that then-President Camille Chamoun intended to amend the Lebanese constitution so as to allow himself a second term in office thus caused serious concern among many Lebanese.<sup>49</sup> In May 1958, suspected government involvement in the mur-

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47. See MIDDLE EAST.—*Army Revolt in Iraq.—Assassination of King Faisal, Prince Abdul Ilah, and General Nuri es-Said.*, 11 KEESING'S CONTEMP. ARCHIVES 16,305, 16,305 (July 26-Aug. 2, 1958) (noting revolution in Iraq); see also Message to the Congress, July 15, 1958, DEP'T ST. BULL., Aug. 1958, at 182 (informing Congress of President Eisenhower's view that preliminary action taken by the United Nations was sufficient until the Iraqi Revolution, when "[t]he situation was radically changed").

48. This balance had been achieved through a system in which representation in the Lebanese Parliament would be divided between Christians and Muslims, and positions of political leadership unofficially reserved by religion (i.e., a Maronite Christian President, Sunni Muslim Prime Minister, and Shiite Muslim Speaker of the Parliament). DAVID McDOWALL, MINORITY RIGHTS GROUP, REP. NO. 61, LEBANON: A CONFLICT OF MINORITIES 11 (1983).

49. See LEBANON.—*New Government.*, 11 KEESING'S CONTEMP. ARCHIVES 16,108, 16,108 (Apr. 5-12, 1958). While there was never an official announcement of such plans, Chamoun had earlier forced many of his political rivals to resign. *Id.* These moves were viewed as destabilizing to the aforementioned precarious political balance within Lebanon. Chamoun officially denied any plans to seek a second term in an interview on July 8, 1958, one week prior to the American intervention. See LEBANON.—*Complaint to Security Council Against Alleged Interference by United Arab Republic.*—

der of an opposition journalist sparked clashes between groups supporting Chamoun and militias opposed to his continued rule.<sup>50</sup> While the militias succeeded in wresting some territory from governmental control, the decision of the small Lebanese army not to take sides ensured that the division of territory between the government and the militias was quickly frozen. The military's limited involvement, the small number of forces on each side, and the separation of the parties meant that while the tumult did not explode into violent civil war, it nevertheless quickly became deadlocked, with government control over many of the border regions nonexistent.<sup>51</sup>

Chamoun alleged that the insurgents were receiving support from the Syrian portion of the United Arab Republic (U.A.R.),<sup>52</sup> and appealed to both the League of Arab States and the Security Council for support.<sup>53</sup> In response, the U.A.R. criticized what it regarded as an inappropriate internationalization of Chamoun's domestic woes.<sup>54</sup> The Security

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*Creation of U.N. Observation Group in the Lebanon.*, KEESING'S CONTEMP. ARCHIVES 16,293, 16,293 (July 19-26, 1958).

50. *LEBANON.—Insurrection in Beirut and Tripoli.—Syrian Infiltrations into Lebanon.*, 11 KEESING'S CONTEMP. ARCHIVES 16,181, 16,181 (May 17-24, 1958).

51. See Malcolm Kerr, *The Lebanese Civil War*, in *THE INTERNATIONAL REGULATION OF CIVIL WARS* 65, 74-5 (Evan Luard ed., 1972).

52. See U.N. SCOR, 13th Sess., Supp. for Apr.-June 1958, at 33, U.N. Doc. S/4007 (1958) (recording Lebanon's assertion of participation by U.A.R. nationals in the insurrection and accusation of the U.A.R.'s "waging [of] a violent radio and press campaign in the United Arab Republic calling for . . . the overthrow of the established authorities in Lebanon and . . . other provocative acts"); *LEBANON.—Insurrection in Beirut and Tripoli.*, *supra* note 50, at 16,182.

53. See U.N. SCOR, 13th Sess., Supp. for Apr.-June 1958, at 44, U.N. Doc. S/4018 (1958) (recording Lebanon's request for postponement of Security Council consideration to attempt Arab League mediation). The Arab League failed to conclude the dispute, and the Security Council thus became seized of the matter. See *LEBANON.—Complaint to Security Council.*, *supra* note 49, at 16,294.

54. See U.N. SCOR, 13th Sess., 823d mtg. ¶ 76, U.N. Doc. S/PV.823 (1958). The United Nations Observation Group in Lebanon (UNOGIL) characterized the conflict as an internal one in its first report. See *First report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 9, U.N. Doc S/4040 (1958) ("[T]here is little doubt, however, that the vast majority [of the armed men observed] was in any case composed of Lebanese."). But see *Official Comments of the Government of Lebanon on the First Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 18, U.N. Doc. S/4043



Council, hampered by American and British support for Lebanon and Soviet support for the U.A.R., nevertheless issued Resolution 128,<sup>55</sup> which dispatched the United Nations Observation Group in Lebanon (UNOGIL) "so as to ensure that there is no illegal infiltration of personnel or supply of arms or other matériel across the Lebanese borders."<sup>56</sup>

Despite the presence of this small group of observers deployed over the following month, the skirmishes within Lebanon continued without interruption.<sup>57</sup> Chamoun extended an invitation for American intervention following the Iraqi revolution on July 14, 1958, and the United States agreed to send troops the following day.<sup>58</sup> American soldiers limited the scope of their actions while in Lebanon, pointedly avoiding direct engagement with the rebels and instead maintaining the existing divisions. One author has described the presence of American troops as existing mainly "to exert a calming psychological influence that would enable the Lebanese . . . to set their own house in order."<sup>59</sup> This was indeed the American position when the intervention was raised in the Security Council.

Before the Security Council, the United States asserted the legality of its intervention based on the invitation by the unquestionably legitimate government of Lebanon.<sup>60</sup> Interna-

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(1958) (containing the Lebanese opinion that the Group's conclusions were "either inconclusive or misleading or unwarranted"). UNOGIL later conceded that it was quite possible that cross-border movements of arms and personnel had taken place. See *Third Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 137, U.N. Doc. S/4085 (1958).

55. S.C. Res. 128, U.N. SCOR, 13th Sess., 825th mtg., U.N. Doc. S/4023 (1958).

56. *Id.*

57. See *Second Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 79, U.N. Doc. S/4069 (1958).

58. See FAHIM I. QUBAIN, *CRISIS IN LEBANON* 115, 121, 127-28 (1961); *MIDDLE EAST.—Army Revolt in Iraq.*, *supra* note 47, at 16,307. The United States notified the Security Council that it was acceding to the Lebanese request for intervention on July 15. See U.N. SCOR, 13th Sess., 827th mtg. ¶ 34, U.N. Doc. S/PV.827 (1958).

59. Kerr, *supra* note 51, at 82.

60. In the first meeting following the introduction of American troops, the United States emphasized the "specific request of the duly constituted Government of Lebanon." U.N. SCOR, 827th mtg., *supra* note 58, ¶ 44. The

tional reaction to the intervention was initially mixed. Western allies supported the American position, as did Iraq, Panama, and Japan. The U.A.R. did not dispute the legality of the intervention, but instead challenged the truth of Lebanon's allegations that Syria had provided arms and training to the insurgents.<sup>61</sup> The Soviet Union, however, did contest the legitimacy of the American intervention, though it failed on two occasions to pass a resolution censuring the United States.<sup>62</sup> By contrast, an American draft resolution making reference to the Lebanese government's legitimate request for American intervention and noting the stated American goal of "help[ing to] maintain the territorial integrity and political independence of Lebanon"<sup>63</sup> received nine votes in favor but was vetoed by the Soviet Union.<sup>64</sup> After a recess of over two weeks in which the East-West deadlock remained, the Security Council referred the question to the General Assembly,<sup>65</sup> under the terms of the "Uniting for Peace" resolution.<sup>66</sup> The General Assembly resolution that emerged<sup>67</sup> tracked much of the lan-

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American representative added that the United States was "proceeding in accordance with the traditional rules of international law." *Id.* ¶ 26. In subsequent debates the United States affixed the right to request intervention to sovereignty, asserting "it is a justified exercise of the inherent right of nations to call for assistance when threatened." U.N. SCOR, 13th Sess., 831st mtg. ¶ 35, U.N. Doc. S/PV.831 (1958).

61. *See, e.g.*, U.N. SCOR, 13th Sess., 824th mtg. ¶¶ 10-24, U.N. Doc. S/PV.824 (1958).

62. For the text of the Soviet-sponsored draft resolution, see U.N. Doc. S/4047/Rev.1, *printed in* U.N. SCOR, 827th mtg., *supra* note 58, ¶ 123. The U.S.S.R. later proposed similar condemnatory amendments to a neutral Japanese resolution, with the same failed result. *See* U.N. SCOR, 13th Sess., 836th mtg. ¶ 13, U.N. Doc. S/PV.836 (1958). Neither of the Soviet efforts received any support from other members of the Security Council. U.N. SCOR, 13th Sess., 834th mtg. ¶ 67, U.N. Doc. S/PV.834 (1958) (vote on Soviet-sponsored resolution); U.N. SCOR, 13th Sess., 837th mtg. ¶ 8, U.N. Doc. S/PV.837 (1958) (vote on Soviet-sponsored amendments to Japanese resolution).

63. U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 32, U.N. Doc. S/4050/Rev.1 (1958).

64. U.N. SCOR, 834th mtg., *supra* note 62, at 46.

65. *See* S.C. Res. 129, U.N. SCOR, 13th Sess., U.N. Doc. S/4083 (1958).

66. G.A. Res. 377(V), U.N. GAOR, 5th Sess., Supp. No. 20, at 10, U.N. Doc. A/RES/377(V) (1950).

67. *See* G.A. Res. 1237(ES-III), U.N. GAOR, 3d Emergency Special Sess., Supp. No. 1, at 1, U.N. Doc. A/RES/1237(ES-III) (1958).

guage in the vetoed American resolution and was eventually passed unanimously.<sup>68</sup>

Besides what was perceived as the sovereign right of a state to request outside intervention, there was also some discussion at the time of categorizing the American action as collective self-defense under Article 51 of the Charter.<sup>69</sup> If this had been generally accepted as the legal basis for action, the Lebanon crisis would have provided little insight into an analysis of the legality of intervention by invitation. Many states, however, found this legal claim troublesome, given the specifics of the Lebanon case. Lebanon's claim to be acting within its inherent rights under Article 51<sup>70</sup> was criticized by the Soviet representative, who claimed a requirement that measures taken for self-defense cease once the Security Council took action to restore international peace and security.<sup>71</sup> The U.S.S.R. thus viewed the American intervention, coming as it did after the passage of Resolution 128 creating UNOGIL, as incompatible with the wording of Article 51. Additionally, the Swedish delegate noted that since Article 51 requires the occurrence of "an armed attack" and UNOGIL had not, by that time, found sufficient evidence to support the claim that such an attack had taken place, reliance on a legal claim of collective self-defense was improper.<sup>72</sup> In its defense, Lebanon asserted that Article 51 was not specifically limited to "direct armed attack" and argued that the article also applied to an "indirect armed attack"—namely, the material assistance and

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68. *Id.* at 182.

69. "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." U.N. CHARTER art. 51.

70. See U.N. SCOR, 827th mtg., *supra* note 58, ¶ 84.

71. See *id.* ¶¶ 114-16.

72. See U.N. SCOR, 13th Sess., 830th mtg. ¶¶ 47-48, U.N. Doc. S/PV.830 (1958). Sweden went on to note that since the conflict was not international in character, it was not properly before the Security Council, given the prescription of Article 2(7). This view seems not to have been shared by other members of the Security Council. *Id.*

propaganda emanating from the U.A.R. that it had alleged in its complaint to the Security Council.<sup>73</sup>

The United States asserted that the introduction of American troops was intended "for the sole purpose of helping the Government of Lebanon at its request in its efforts to stabilize the situation brought on by threats from outside until such time as the United Nations can take the steps necessary to protect the independence and political integrity of Lebanon."<sup>74</sup> The American language generally tracked the wording of Article 51 of the Charter, though it did not make an explicit reference. The United States, therefore, viewed the instability as instigated by external threats, though it was unwilling to assert that there had been an armed attack against Lebanon. It would thus have been difficult for the United States to characterize its intervention as collective self-defense within the text of Article 51.

The American decision to intervene militarily after the Security Council had already taken more limited action raises an intriguing legal question, namely whether invited intervention, considered either as an exercise of collective self-defense or a right inherent in the nature of sovereignty, must cease when the Security Council proscribes a solution short of peacekeeping.<sup>75</sup> The American representative, in tracking the

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73. See U.N. SCOR, 13th Sess., 833d mtg., ¶ 10, U.N. Doc. S/PV.833 (1958). In *Military and Paramilitary Activities*, the ICJ noted the possibility of a lesser use of force not rising to the level of an armed attack, and noted that such "indirect armed attack," to use the Lebanese phrase, allowed for the victim state to take "proportionate counter-measures . . . [but] could not justify counter-measures taken by a third State . . . and particularly could not justify intervention [against the aggressor state] involving the use of force." See *Military and Paramilitary Activities*, *supra* note 2, ¶ 249. As no action was taken against the alleged aggressor state in the Lebanon example (i.e., the U.A.R.), the American intervention would likely not have run afoul of this standard.

74. U.N. SCOR, 827th mtg., *supra* note 58, ¶ 35. The legal framework employed by Lebanon in analyzing the legality of the intervention specifically focused on the legitimacy of the inviting state and its sovereign right to request intervention, while emphasizing that such action was in accordance with the Charter. See U.N. SCOR, 833d mtg., *supra* note 73, ¶¶ 8-10.

75. In Lebanon, the Security Council had passed a resolution creating UNOGIL over a month prior to the introduction of American forces. UNOGIL had complained that the introduction of American troops caused a "set-back" in their ability to carry out their mandate, as rebel groups conflated the American and U.N. motives and thus viewed the U.N. mission as

language of Article 51, seemed to indicate a belief that while there could exist a future point at which unilateral action need bow to a U.N. peacekeeping force, sufficient steps had not been taken as of July 15 that would estop the United States from introducing forces pursuant to the Lebanese request.<sup>76</sup>

In the Lebanon incident, both the Security Council and the General Assembly seem to have accepted the American legal justification for intervention. While the American draft resolution in the Security Council failed due to a Soviet veto, the General Assembly's resolution closely tracked the language of the American draft resolution and thus endorsed the American position. The near-passage of a draft resolution introduced by the intervening state itself, prevented only by the veto of its ideological opponent and Cold War adversary, evinces the acceptance by the international community of the American justifications for intervention. The General Assembly's unanimous passage of a resolution containing similar language to the American draft Security Council resolution only reinforces this interpretation.

The question of self-defense ran the risk of muddying what was otherwise a clear example of support for the legality of invited unilateral intervention. If much of the acceptance of the American position had been based upon the belief that the United States was acting under the rubric of Article 51, this would detract from the ability of the Lebanon example to display international support for the legality of intervention by invitation.

Several factors, however, seem to weigh against a finding that those supporting American action relied on the classification of such action as falling within Article 51. First, the inability of UNOGIL to confirm substantial foreign involvement in the conflict must be seen as influencing the beliefs of those engaged in the debate at the Security Council: Without an international conflict, there cannot be collective self-defense. Second, several states made astute comments regarding the shortcomings of any legal claim to action under Article 51. Finally, the United States never in fact claimed that its action was a collective self-defense action but noted instead that the

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pro-Chamoun. See *Third Report of the United Nations Observation Group in Lebanon*, *supra* note 54, ¶¶ 3, 39.

76. See U.N. SCOR, 827th mtg., *supra* note 58, ¶ 36.

American military presence was designed to promote internal stability.

While the question of self-defense was disputed, and the issue of a unilateral intervention following limited Security Council action was left unanswered, the American intervention in Lebanon is nevertheless useful as a control case against which other interventions can be measured. The application of the standards of belligerency would likely have labeled the Lebanese civil war as a rebellion, for the defiant militias were not organized and controlled little territory. Were the standards of belligerency still valid law, then the American action would not have violated international law. An examination of the international reaction in the Security Council and General Assembly reaches the same conclusion. With universal recognition of the legitimacy of the Lebanese government came near-universal acceptance of the legality of American intervention by invitation from that government. Subsequent interventions by invitation, and the international community's reaction, can thus be compared against the Lebanese example.

B. *The United States "Restores Order" to the Dominican Republic (1965)*

The American intervention in the Dominican Republic raised the question of whether an invitation by a party that is not recognized as the legitimate exerciser of the sovereign rights of the state can nonetheless be legal. In the mixed reaction to the American intervention, one witnesses the difficulty of making legal determinations without clear international reaction.

The movement toward civil war in the Dominican Republic began with the assassination of President Rafael Trujillo on May 30, 1961, whose absolute rule originated with a coup d'état in 1930.<sup>77</sup> The short-lived regime of Juan Bosch, which had good relations with the Kennedy Administration, was overthrown in a military coup on September 25, 1963, and the new junta suspended and later abrogated the Dominican constitu-

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77. See DOMINICAN REPUBLIC.—Assassination of Generalissimo Trujillo.—Control Assumed by General Rafael Trujillo Jr.—O.A.S. Inquiry Mission to Dominican Republic., 13 KEESING'S CONTEMP. ARCHIVES 18,175, 18,175 (July 1-8, 1961).

tion.<sup>78</sup> The Dominican civil war began in earnest on April 24, 1965, when army forces led by Colonel Francisco Caamaño attempted to reinstall Bosch and were counterattacked by military units loyal to the junta and led by Colonel Bartolomé Benoit. The military itself was split by the outbreak of hostilities, with Caamaño's forces comprised primarily of army units while Benoit commanded the support of the air force and the miniscule Dominican navy.<sup>79</sup>

The United States took its first public action on 26 April, sending a Marine amphibious assault ship to a position off the coast of the Dominican Republic while simultaneously announcing that it harbored no intention of intervening in the conflict.<sup>80</sup> This stance was reversed two days later, when a White House press release declared a need to protect American nationals and added that the United States Government "has been informed by military authorities in the Dominican Republic that American lives are in danger. These authorities are no longer able to guarantee [Americans'] safety and they reported that the assistance of military personnel is now needed for that purpose."<sup>81</sup> Indeed, Benoit had sent the American embassy a note stating "American lives are in danger" but went on to ask "for temporary intervention and assistance in restoring order in this country"<sup>82</sup> without specifically restricting the request solely to actions intended to safeguard

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78. See *DOMINICAN REPUBLIC.—Military Overthrow of President Bosch's Government.—Establishment of Civilian Right-Wing Regime.*, 14 KEESING'S CONTEMP. ARCHIVES 19,714, 19,714 (Oct. 26-Nov. 2, 1963).

79. See *DOMINICAN REPUBLIC.—Outbreak of Civil War.—Collapse of Central Government.*, 15 KEESING'S CONTEMP. ARCHIVES 20,813, 20,813 (June 26-July 3, 1965).

80. See *Boxer Was in Caribbean*, N.Y. TIMES, Apr. 27, 1965, at 2 ("The State Department . . . emphasized that there was no intention of using the 1,500-man Marine battalion aboard the Boxer [United States Navy amphibious assault ship, deployed to Dominican coast] to 'intervene' in the Dominican political situation.").

81. Statement by President Johnson, Apr. 28, 1965, DEP'T ST. BULL., May 1965, at 738. For an example of early accounts that implied a limited mandate, see Charles Mohr, *President Sends Marines to Rescue Citizens of U.S. from Dominican Fighting*, N.Y. TIMES, Apr. 29, 1965, at 1 ("Officials . . . stressed that the marines were not to take sides in the struggle between Dominican political and military factions.").

82. The text of the note from Benoit, dated 28 April 1965, is reprinted in U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 137, U.N. Doc. S/6364 (1965). The United States had informed the Security Council that it was

American nationals. The invitation, and subsequent intervention, took place as the question of who exerted control on the ground remained unclear. Much subsequent attention was focused on the question of the authority of the inviting party to speak for the Dominican state, again displaying the importance of the legitimacy of the inviting party.

Early in the struggle, the United Nations recognized neither faction as the legitimate representative of the Dominican Republic. When, in early May, both factions claimed the Dominican seat at the U.N., the Security Council requested that the Secretary-General prepare a report analyzing the competing claims of legitimacy, in accordance with the Security Council's provisional rules of procedure. The Secretary-General, in reporting his conclusions, noted the receipt of competing requests for accreditation but determined that neither faction clearly constituted the legitimate successor government of the Dominican Republic.<sup>83</sup> This determination accurately reflected the situation on the ground. While the pro-Bosch regime had certainly lost control over the capital and the countryside by April 26, Benoit's forces had not yet filled the power vacuum created by Caamaño's forced withdrawal.

The Security Council, by consensus, did allow statements to be made by representatives of both factions *qua* factions, while recognizing neither as the representative of the Dominican Republic.<sup>84</sup> Rubén Brache, the envoy of the Caamaño faction, condemned the American military intervention and asserted that forces loyal to Bosch were assured of victory until the United States intervened. He did not, however, contest

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sending troops to the Dominican Republic on 29 April 1965. See U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 65, U.N. Doc. S/6310 (1965).

83. See *Report of the Secretary-General Concerning the Credentials of Representatives of the Dominican Republic*, U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 120, U.N. Doc. S/6353 (1965) ("[I]t is apparent that the situation in that country [the Dominican Republic] is still unclear as to which of the contending authorities constitutes the government of the country. Furthermore, no information is available as to which of the contending authorities is regarded as the Government by a majority of States Members of the United Nations."). The Secretary-General subsequently noted that he lacked sufficient information "to formulate . . . any opinion as to the adequacy of the provisional credentials which have been submitted [by both factions]." *Id.*

84. See U.N. SCOR, 20th Sess., 1209th mtg. ¶¶ 40-41, 51, U.N. Doc. S/PV.1209 (1965).



the Security Council's decision not to seat him as the Dominican representative.<sup>85</sup> By contrast, Guaroa Valázquez, speaking as the representative of the Benoit regime, asserted a right to be heard as the lawful representative of the Dominican Republic, claiming that his faction was the most legitimate within the country.<sup>86</sup> The Security Council did not relent, however, and no state objected when the Secretary-General repeatedly referred to the two groups as "factions" before the Security Council and in his periodic reports.<sup>87</sup> The decision by the Security Council to support the findings of the Secretary-General displayed that the international community accepted as inconclusive the two factions' competing claims to legitimacy.

Since the Benoit faction was not deemed to be the legal successor government in Santo Domingo, a prima facie assumption existed that it lacked the sovereign rights associated with such status—including the right to request outside intervention. The United States, supported by the United Kingdom, therefore depended on a slightly different justification for its action. While it did not object to the Secretary-General's report on credentials, the United States maintained that its invitation to intervene had emanated from a valid source of authority and thus remained legal. The American argument depended on the notion of "best authority"—namely, that even in the absence of a clear successor government, there can exist a faction exercising control over a portion of territory significant enough to afford it some of the rights normally associated with state sovereignty.<sup>88</sup> During the Security Council proceedings, the United States noted that the request for intervention came from "Dominican law enforcement and military

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85. See U.N. SCOR, 20th Sess., 1212th mtg. ¶¶ 210-18, U.N. Doc. S/PV.1212 (1965).

86. See *id.* ¶¶ 221-40.

87. See, e.g., U.N. SCOR, 20th Sess., 1214th mtg. ¶¶ 8-9, U.N. Doc. S/PV.1214 (1965). The issue of Dominican credentials was eventually resolved after OAS-supervised elections in 1966 produced a new government, headed by Joaquín Balaguer. See *DOMINICAN REPUBLIC.—Developments Under Provisional Regime of President Garcia Godoy.—Fresh Clashes in Santo Domingo and Other Centres.—Left-wing and Right-wing Military Leaders Exiled.—Dr. Balaguer Elected President of the Republic*, 15 *KEESING'S CONTEMP. ARCHIVES* 21,481, 21,481 (July 2-9, 1966).

88. See U.N. SCOR, 20th Sess., 1200th mtg. ¶¶ 17-18, U.N. Doc S/PV.1200 (1965).

officials”;<sup>89</sup> assumedly, the right of police officials to enforce order would not be questioned despite their lack of ultimate political superiors. While one might question American claims of disinterestedness,<sup>90</sup> the fact that such contentions were made displayed the American view that a party lacking any external legitimacy could not invite intervention in its civil war.

Throughout the Security Council debate, the Soviet representative continually condemned the American intervention as a violation of the United Nations Charter, at one point specifically citing Article 2(4) and calling the American action a “criminal invasion of the territory of another country.”<sup>91</sup> The U.S.S.R. introduced a draft resolution that condemned the American action as illegal under the Charter and called for an immediate withdrawal of American troops from Dominican soil.<sup>92</sup> When a vote was finally taken on this draft several weeks

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89. *Id.* at ¶ 67.

90. *See, e.g.*, U.N. SCOR, 20th Sess., 1196th mtg. ¶ 93, U.N. Doc. S/PV.1196 (1965) (recording the United States’ claim that it supported “no single group of men in the Dominican Republic”).

91. U.N. SCOR, 1196th mtg., *supra* note 90, ¶ 27; *see also* “*Intervention Denounced by Moscow*,” N.Y. TIMES, Apr. 30, 1965, at 14 (reprinting excerpts of Tass (U.S.S.R.) and A.D.N. (East Germany) condemnations). Other states joined the Soviet Union in condemning the intervention in Article 2(4) terms; though none specifically addressed the question of invitation, their condemnation in spite of this American justification implies that such justification was not accepted. *See, e.g.*, U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 106, U.N. Doc. S/6339 (1965) (recording Poland’s utilization of Article 2(4) language in noting its “protest against this aggressive action which constitutes a flagrant violation of the national sovereignty and territorial integrity of the Dominican Republic in contravention of the United Nations Charter”); U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 109, U.N. Doc. S/6341 (1965) (recording Mongolia’s statement that “[t]he United States invasion of the territory of the sovereign Dominican Republic . . . can only be described as a new and flagrant violation of the rules of international law and as brutally flouting the principles of the United Nations Charter”); U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 89, U.N. Doc. S/6330 (1965) (recording Yugoslavia’s attacking of “American interference into the internal affairs of an independent country”); U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 113, U.N. Doc. S/6347 (1965) (recording Cambodia’s condemnation of the “intolerable interference in the domestic affairs of the Dominican Republic, in violation of the sovereignty of an independent State and of the Charter of the United Nations”).

92. *See* U.N. Doc. S/6328, *printed in* U.N. SCOR, 20th Sess., 1198th mtg. ¶ 3, U.N. Doc. S/PV.1198 (1965).

later, it failed to achieve the required number of positive votes.<sup>93</sup> This failure to condemn the American intervention indicates the ambiguous reaction of the international community.

The Soviet Union later sponsored amendments to a neutral Uruguayan draft resolution, attempting to introduce a condemnation of "the armed intervention of the United States of America in the internal affairs of the Dominican Republic as a gross violation of the Charter of the United Nations."<sup>94</sup> When the damning Soviet amendments were voted upon, however, the Security Council overwhelmingly rejected them.<sup>95</sup> Notably, the Latin American members of the Security Council, Bolivia and Uruguay, voted against the amendments despite having earlier asserted the essentiality of the principle of non-intervention. The only decisions actually taken by the Security Council, Resolutions 203 and 205,<sup>96</sup> focused on mitigating the violence in the Dominican Republic and discussed the functions of the in-country representative of the Secretary-General; neither one made any reference to the American intervention or called for the removal of American soldiers from the territory of the Dominican Republic.

Adherence to the standards of belligerency would have permitted American intervention in the Dominican Republic; the antigovernment forces had so effectively challenged the authority of the government that the two became indistinguishable in their relative control over the state. The conflict had no doubt advanced to a state of belligerency, and either side would thus have possessed the right to invite intervention.

Early in the debate, the representative of Uruguay declared his belief that "the principle of non-intervention" laid at the heart of the interstate system.<sup>97</sup> He nonetheless submitted a draft resolution appealing to the Dominican factions to re-

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93. Only the Soviet Union and Jordan voted in favor of the condemnatory resolution. See U.N. SCOR, 1214th mtg., *supra* note 87, ¶¶ 123-25.

94. See U.N. SCOR, 20th Sess., 1216th mtg. ¶ 40, U.N. Doc. S/PV.1216 (1965).

95. See *id.* ¶ 50. Again, no state other than Jordan and the Soviet Union cast votes in favor of any of the amendments. See *id.* ¶¶ 44-49.

96. S.C. Res. 203, U.N. SCOR, 20th Sess., U.N. Doc. S/6355 (1965); S.C. Res. 205, U.N. SCOR, 20th Sess., U.N. Doc. S/6376 (1965).

97. U.N. SCOR, 20th Sess., 1198th mtg. ¶ 10, U.N. Doc. S/PV.1198 (1965).

spect a cease-fire, mentioning the intervention only to note the American explanation for such.<sup>98</sup> It is noteworthy that such a staunch advocate of a strict principle of nonintervention would decline to condemn the American intervention. Yet such an emphasis—on a solution to the violence rather than a condemnation of the United States—reflects the general attitude within the Security Council that its most important task was to end the strife within the Dominican Republic, not to assess the legality of the American intervention. Given this focus and the failure of the various Soviet condemnations to achieve significant support, to unequivocally dismiss the American intervention in the Dominican Republic on legal grounds would be to ignore the conflicting assessments put forth in the Security Council.

### C. *France and Libya Take Sides in Chad (1966-89)*

In Chad the question of regime legitimacy was again critical. The question of authority to invite intervention requires twice the examination, however, since both sides to the civil war in Chad brought in outside states to fight alongside them. Both France and Libya argued that their interventions were legal, claiming that the legitimate government of Chad had invited them; they differed, of course, in their determinations of exactly which faction constituted that government. Furthermore, the self-imposed limits placed by France on its intervention reflect a nuanced statement of its view regarding the international law on the subject.

Internal conflict in Chad has raged on and off since 1966, crippling the young republic and baffling observers with its oft-changing alliances between domestic forces and foreign allies. The conflict originally centered on attempts to redistribute political authority within the state, though eventually both local and extra-continental powers became involved. After evolving into a primarily interstate conflict between Chad and Libya, it later became the subject of proceedings before the International Court of Justice.<sup>99</sup>

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98. See U.N. SCOR, 20th Sess., 1204th mtg. ¶ 4, U.N. Doc. S/PV.1204 (1965).

99. The ICJ heard the dispute between the two states regarding ownership of the Aouzou Strip. Territorial Dispute (Libya v. Chad), 1994 I.C.J. 6,

Instability in Chad first erupted in 1966, when resentment of President François Tombalbaye's increasingly authoritarian control of the government led to the organization of a guerilla movement known as Frolinat (National Liberation Front of Chad).<sup>100</sup> Tombalbaye requested French assistance to put down the rebellion, claiming that Frolinat was receiving foreign sponsorship, but as France believed the conflict to be an internal matter it provided only limited military assistance that was primarily administrative and advisory in nature.<sup>101</sup> This narrow introduction of French troops in the northern part of the country was sufficient to rout the disorganized rebels; however, it also drove them into the arms of Libya for support.<sup>102</sup>

Tombalbaye had limited success convincing Libya to curtail its assistance to Frolinat, reportedly ceding the Aouzou Strip to Libya in a secret agreement.<sup>103</sup> Civil strife again heated up in 1975, when Tombalbaye was killed in a military coup in which General Felix Malloum became president.<sup>104</sup> Changes within Frolinat, rooted in a split between factions over the question of sovereignty in the Aouzou Strip, caused Hissan Habré to break off with one faction while Goukouni Oueddei took control of those rebels that remained.<sup>105</sup> Upon

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at 6 (Feb. 3). As this territorial issue is only tangentially related to Chad's civil war, it receives minimal attention herein.

100. See I. William Zartman, *Conflict in Chad*, in *ESCALATION AND INTERVENTION: MULTILATERAL SECURITY AND ITS ALTERNATIVES* 13, 14 (Arthur R. Day & Michael W. Doyle eds., 1986).

101. *CHAD.—Government Regains Control of Most Rebel-held Areas.—Restoration of Regional Powers to Traditional Chiefs.*, 17 *KEESING'S CONTEMP. ARCHIVES* 24,035, 24,035 (June 1970). This was not the first time France acceded to a request from one of its former African colonies for assistance, having intervened in Gabon five years earlier at the request of the vice-president, after the president of Gabon was imprisoned in a coup. The reaction had been positive, with Algeria leading the few states that had criticized the French action as interference in Gabon's internal affairs. See *GABOON.—Abortive Military Coup.—Intervention by French Forces.—General Elections.*, 14 *KEESING'S CONTEMP. ARCHIVES* 20,024, 20,024 (Apr. 18-25, 1964).

102. See George Joffé, *Chad: Power Vacuum or Geopolitical Focus*, in *LAND-LOCKED STATES OF AFRICA AND ASIA* 25, 35 (Dick Hooder et al. eds., 1998).

103. Zartman, *supra* note 100, at 15.

104. *CHAD.—Military Coup.—Killing of President Tombalbaye.*, 21 *KEESING'S CONTEMP. ARCHIVES* 27,100, 27,100 (Apr.-May 1975).

105. See KEITH SOMERVILLE, *FOREIGN MILITARY INTERVENTION IN AFRICA* 63-4 (1990); *CHAD—Closure of Border with Libya—Internal Security Developments*, 23 *KEESING'S CONTEMP. ARCHIVES* 28,136, 28,136 (Jan. 7, 1977).

negotiating a new agreement in 1976 regarding the status of France's forces within Chad, then-French Prime Minister Jacques Chirac explicitly announced that French troops would "not intervene directly against the rebellion" in Chad.<sup>106</sup> When France again sent troops in 1978, the French defense minister denied sending combat troops, with the media reporting that French soldiers had been deployed primarily for training purposes.<sup>107</sup> A national unity government (GUNT) including Habré and Malloum was negotiated in August 1978, and the two leaders' forces were combined.<sup>108</sup> Oueddei's forces nevertheless made gains with Libyan assistance, despite French support for the government-Habré troops.<sup>109</sup> Unfortunately for the cause of stability, the Habré-Malloum alliance soon crumbled, due primarily to personal rivalries.<sup>110</sup>

A full-blown tripartite civil war was avoided through the appointment of another transition unity government in November 1979, following an agreement negotiated in Lagos in August of that year. Oueddei became provisional president, Malloum lieutenant vice-president, and Habré received the defense portfolio.<sup>111</sup> This attempt at unification failed as well, and fighting between the forces of Habré and Oueddei began in March 1980 and ended with the defeat of Habré's forces in December, due in no small part to Libyan support for Oueddei.<sup>112</sup> Both Oueddei and Habré requested French interven-

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106. *CHAD—New Co-operation Agreements with France—Continued Activities by Rebels*, 22 KEESING'S CONTEMP. ARCHIVES 27,744, 27,744 (May 28, 1976).

107. *CHAD—Internal Security Developments—Relations with Libya*, 24 KEESING'S CONTEMP. ARCHIVES 28,976, 28,977 (May 12, 1978).

108. *CHAD—Government Malloum Confirmed as President—Appointment of Former Rebel Leader as Prime Minister—Formation of New Government—Renewed Hostilities in Rebel War—French Military Involvement—Libyan and Cuban Support for Rebels—Co-operation with Iraq and China*, 25 KEESING'S CONTEMP. ARCHIVES 29,397, 29,397 (Jan. 12, 1979).

109. *Id.* at 29,397-98.

110. See Zartman, *supra* note 100, at 15.

111. See *Lagos Accord on National Reconciliation in Chad*, U.N. SCOR, 36th Sess., Supp. for Jan.-Mar. 1981, at 45, U.N. Doc. S/14378/Annex 1 (1981) [hereinafter *Lagos Accord*]; see also *CHAD—Internal Security and Political Developments—Mediation by Neighboring and Other Countries*, 26 KEESING'S CONTEMP. ARCHIVES 30,064, 30,067 (Feb. 1, 1980).

112. *CHAD—Developments March to December 1980—Resurgence of Civil War*, 27 KEESING'S CONTEMP. ARCHIVES 30,693, 30,693-95 (Dec. 1981). The partnership between Oueddei and Libyan president Mohammad Qaddafi did not last. While at one point a plan for the unification of Libya and Chad was

tion during this round of fighting, but France provided only medical assistance and humanitarian relief for those displaced by combat.<sup>113</sup>

The second period of civil war in Chad began after the Libyan withdrawal. Habré's forces, reinvigorated by assistance from Egypt and Sudan (and with financial backing from the United States), took over N'djamena, Chad's capital, in early June 1982, and two weeks later installed Habré as head of state.<sup>114</sup> When fighting resumed in mid-1983, Habré again invited French troops to assist his fledgling government; by January 1984, France had officially determined that Libyan troops were doing battle alongside Oueddei's forces and sent its soldiers into combat.<sup>115</sup> After Habré made territorial gains against the rebels in late 1984, with logistical assistance and air support from the French armed forces, Libya suggested that both outside powers withdraw their troops,<sup>116</sup> and French and Libyan forces left Chad by November 1984.<sup>117</sup>

Oueddei lost the support of several of the factions comprising GUNT in October 1985,<sup>118</sup> and was expelled as its leader by November 1986;<sup>119</sup> by January 1987, in a display of

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announced, see *CHAD—Proposed Union Between Chad and Libya—Hostile Reaction of France and OAU*, 1981 KEESING'S CONTEMP. ARCHIVES 31,159, 31,159 (Oct. 1981), Oueddei seems to have tired of his junior status, stating in September 1980 that the proposed union would not go forward, see *id.* at 31,161. By November 1981 Libyan troops had withdrawn from Chad at Oueddei's request. See Joffé, *supra* note 102, at 36; SOMERVILLE, *supra* note 105, at 68; *CHAD—Civil War—Withdrawal of Libyan Forces*, 28 KEESING'S CONTEMP. ARCHIVES 31,677, 31,677 (Sept. 1982).

113. *CHAD—Developments March to December 1980*, *supra* note 112, at 30,694.

114. *CHAD—Civil War—Withdrawal of Libyan Forces*, *supra* note 112, at 31,679. Both the O.A.U. and the U.N. recognized Habré's government as the legitimate successor to GUNT, no doubt due to his attempts to create stability through inclusion of many of Chad's numerous factions. See Zartman, *supra* note 100, at 16-17.

115. See *CHAD—Diplomatic Efforts to End Civil Conflict—Continuing Military Activity*, 30 KEESING'S CONEMP. ARCHIVES 33,006, 33,007 (July 1984).

116. See *id.* at 33,008.

117. *CHAD—Franco-Libyan Troop Withdrawal Agreement—Factional Changes—Famine and Continuing Fighting—Unsuccessful Reconciliation Talks*, 30 KEESING'S CONTEMP. ARCHIVES 33,311, 33,311 (Dec. 1984).

118. See *CHAD—Continuing Civil War—Factional Developments—French and Libyan Involvement*, 33 KEESING'S REC. OF WORLD EVENTS 34,914, 34,914 (Feb. 1987).

119. *Id.* at 34,916.

Chad's ever-changing factions, the reconstituted GUNT announced that it had merged with the forces of the Habré government in order to combat Libya and its remaining local allies.<sup>120</sup> Though clashes continued through 1986 and 1987, the 16th parallel emerged as the demarcation line between the two factions and their patrons.<sup>121</sup> France announced that it would not allow rebel or Libyan forces to penetrate this boundary, but added that it would not aid the Habré government in its operations north of the sixteenth parallel.<sup>122</sup> Though diplomatic efforts to end the conflict continued throughout the late 1980s, little progress was made at the negotiating table or on the battlefield.

The Security Council devoted little time to the civil war in Chad. While each side sent many letters to the Secretary-General and the President of the Security Council during the second period of conflict in the early 1980s, the Security Council spent but a few meetings in March, April, and August 1983 addressing the issue.<sup>123</sup> While much of the Security Council's discussion involved the dispute over the Aouzou Strip, some attention was paid to the conflict within Chad.

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120. *Id.* at 34,917.

121. See *CHAD—Continued Libyan Involvement—Factional Divisions— Situation in South*, 31 KEESING'S CONTEMP. ARCHIVES 33,833, 33,833 (Sept. 1985).

122. See *CHAD—Continuing Civil War*, *supra* note 118, at 34,916. Furthermore, in August 1987 France expressly refused to provide air cover for Chad forces attempting to retake a town in the Aouzou Strip. See *MAJOR WORLD EVENTS—AUGUST 1987*, 33 KEESING'S REC. OF WORLD EVENTS 35,360, 35,360 (Sept. 1987). But see *CHAD—Border Fighting with Libya—Efforts at National Reconciliation*, 34 KEESING'S REC. OF WORLD EVENTS 35,876, 35,878 (May 1988) (noting that France, while refusing to assist in attacks on the Aouzou Strip, nevertheless moved elements of its forces within Chad to positions north of the sixteenth parallel).

123. See generally U.N. SCOR, 38th Sess., 2419th mtg., U.N. Doc. S/PV.2419 (1983); U.N. SCOR, 38th Sess., 2428th mtg., U.N. Doc. S/PV.2428 (1983); U.N. SCOR, 38th Sess., 2429th mtg., U.N. Doc. S/PV.2429 (1983); U.N. SCOR, 38th Sess., 2430th mtg., U.N. Doc. S/PV.2430 (1983); U.N. SCOR, 38th Sess., 2462d mtg., U.N. Doc. S/PV.2462 (1983); U.N. SCOR, 38th Sess., 2463d mtg., U.N. Doc. S/PV.2463 (1983); U.N. SCOR, 38th Sess., 2465 mtg., U.N. Doc. S/PV.2465 (1983); U.N. SCOR, 38th Sess., 2467 mtg., U.N. Doc. S/PV.2467 (1983); U.N. SCOR, 38th Sess., 2469th mtg., U.N. Doc. S/PV.2469 (1983).



Though Libya challenged the credentials of the Habré government in a letter to the Security Council,<sup>124</sup> the legality of the Habré government was never seriously doubted at the United Nations.<sup>125</sup> The Libyan challenge to the legitimacy of the Habré government was an attempt to cast the French intervention as unlawful; questions involving the legitimacy of the inviting party would necessarily cast doubt upon the legality of assistance to that government. In that vein, Libya insisted that the Oueddei government of national unity had invited the intervention,<sup>126</sup> stating that “Libyan forces went to Chad at the request of the legitimate Government.”<sup>127</sup>

The only official action taken by the Security Council regarding the civil war in Chad was a March 1983 statement by the president, which called for a peaceful settlement of the dispute between Chad and Libya without noting separately the internal conflict within Chad. The statement was neutral and did not allocate blame or guilt on either state, nor did it refer

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124. See U.N. SCOR, 38th Sess., Supp. for Jan.-Mar. 1983, at 62, U.N. Doc. S/15645 (1983).

125. The Organization of African Unity had implicitly recognized the legitimacy of the Habré regime in June of 1983 by inviting it to take part in the Assembly of Heads of State and Government of the OAU. Cf. *Resolution on the Chad/Libya Dispute*, OAU/AHG Res. 106(XIX), 19th Ordinary Sess., at 1, OAU Doc. AHG/Res. 106 (XIX) (June 1983) (noting participation of Minister of Foreign Affairs and Co-operation of Chad). While it is true that the Habré regime was not entirely in control of Chad’s territory, there seems to have been little dispute that it was the recognized government of Chad. The President of the Security Council confirmed this during the debates therein. See U.N. SCOR, 38th Sess., 2463d mtg. ¶ 178, U.N. Doc. S/PV.2463 (1983).

126. See U.N. SCOR, 38th Sess., 2462d mtg. ¶¶ 41, 81, U.N. Doc. S/PV.2462 (1983). The Libyan government had characterized the conflict in Chad as purely domestic in nature, contending that the “ongoing conflict in Chad is among nationals of Chad and in the territory of Chad.” U.N. SCOR, 38th Sess., Supp. for Apr.-June 1983, at 128, U.N. Doc. S/15844 (1983); see also U.N. SCOR, 38th Sess., 2462d mtg., *supra*, ¶ 50 (recording Libya’s assertion that “[w]hat is happening in Chad is an internal issue which concerns the people of Chad only”).

127. *Id.* ¶¶ 41, 81. Yet Libya stated in December 1985 that it “was prepared to deal with President Habré ‘on an equal footing’ with Mr. Oueddei.” *CHAD—Continuing Civil War*, *supra* note 118, at 34,914. It was not until 1988 that Libya recognized the Habré government as the legitimate representative of Chad. *MAJOR WORLD EVENTS—MAY 1988*, 34 KEESENG’S REC. OF WORLD EVENTS 35,937, 35,939 (June 1988).

to any issue of foreign intervention.<sup>128</sup> Additionally, the Lagos Accord had specifically addressed the French intervention into Chad: It called for a withdrawal, deeming "the continued presence of French troops in Chad . . . an impediment to finding a peaceful reconciliation and solution to the Chadian problems."<sup>129</sup> The continued validity of this document was questionable, however, as it was signed just prior to the infighting that disabled the transitional government in 1980 and was disavowed by the Habré government once it took power.<sup>130</sup>

At the same time, France asserted its right to assist at the invitation of a sovereign state and said that such aid was in conformity with international law, rooted in the United Nations Charter, regarding self-defense.<sup>131</sup> France's decisions regarding the intent and scope of its assistance to various Chad governments also offered insight into France's views regarding the legality of invited intervention. France insisted that its involvement was nothing more than simple assistance from one government to another, as provided for by agreement.<sup>132</sup> France made the connection between legitimacy of government and legality of invitation, proffering that recognition of a

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128. See U.N. SCOR, 38th Sess., 2430th mtg. ¶ 4, U.N. Doc. S/PV.2430 (1983) ("The members of the Council . . . call on the parties to settle these differences without undue delay and by peaceful means, on the basis of the relevant principles of the Charter of the United Nations, and the Charter of the Organization of African Unity, which demand respect for political independence, sovereignty, and territorial integrity."). The presidential statement was the end result of a draft resolution introduced a week earlier. See U.N. SCOR, 38th Sess., Supp. for Jan.-Mar. 1983, at 96, U.N. Doc. S/15672 (1983).

129. *Lagos Accord*, *supra* note 111, at para. 7.

130. This point was made by the representative of Zaire to the Security Council. See U.N. SCOR, 2463d mtg., *supra* note 125, ¶ 59 ("[O]ne must be honest enough to recognize that the Lagos Accord . . . [is] no longer applicable.").

131. See U.N. SCOR, 38th Sess., 2465th mtg. ¶ 136, U.N. Doc. S/PV.2465 (1983). The French defense minister had earlier responded to the Libyan withdrawal proposal by asserting that "we will not leave Chad so long as there is one Libyan soldier remaining south of the Aouzou strip." *CHAD—Franco-Libyan Troop Withdrawal Agreement—Factional Changes*, 30 KESING'S CONTEMP. ARCHIVES 33,308, 33,310 (Dec. 1984).

132. See U.N. SCOR, 2465th mtg., *supra* note 131, ¶ 134.

government implicitly includes recognition of its right to receive assistance from other states.<sup>133</sup>

France's legal justifications for its intervention into Chad seem to rely on Article 51 language of collective self-defense, rather than an explicit right of governments to invite military intervention during a civil war. When France could not verify Libyan involvement early in the conflict, it offered only limited military support for the government. It was only with sufficient evidence of Libyan troops in combat alongside Oued-dei's forces that France sent its soldiers into battle. Legally, such action seems more in line with a definition of collective self-defense: Chad was the victim of an armed attack by Libyan forces, and France was acting to defend its ally from such a territorial infringement.<sup>134</sup> If this were the rubric through which one was to view France's action, it would fall within Article 51 of the Charter. Indeed, France asserted in 1983 that its assistance to Chad was in the name of self-defense.<sup>135</sup> This stated reliance on self-defense language belies the French belief that invitation might prove insufficient as legal basis for intervention. Other states, however, were not so hesitant.

Over the course of the August 1983 debates at the Security Council, many states condemned the foreign intervention in Chad generally. Most of these comments, however, were directed toward the Libyan aggression and were not aimed at French assistance to the Habré regime.<sup>136</sup> Several Member

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133. See U.N. SCOR, 38th Sess., 2466th mtg. ¶ 104, U.N. Doc. S/PV.2466 (1983).

134. Supporting this assertion is a statement made by then-President Mitterrand in which he warned that France would take action to defend Chad against Libyan aggression within Chad's borders. *CHAD—Continuing Civil War—Factional Development—French and Libyan Involvement—Libyan Defeats in North*, 33 KESING'S REC. OF WORLD EVENTS 34,914, 34,914 (Feb. 1987).

135. See *supra* note 131 and accompanying text. Yet neither France nor Chad made any report to the Security Council as required by Article 51. For the text of Article 51, see *supra* note 69. The ICJ later reaffirmed the essentiality of the reporting requirement. See *Military and Paramilitary Activities*, *supra* note 2, ¶ 195.

136. See, e.g., U.N. SCOR, 2465th mtg., *supra* note 131, ¶ 48 (Niger). Iran was the only state besides Libya to deride French assistance to Chad. However, its representative also noted Iran's praise of the Libyan effort "to seek an Islamic Government for the people of Chad." U.N. SCOR, 38th Sess., 2429th mtg. ¶¶ 54, 58, U.N. Doc. S/PV.2429 (1983). Given this praise for the notion of outside imposition of a government upon another sovereign state, it is no surprise that Iran found itself without support for this position.

States clearly distinguished the French intervention—which they viewed as legal, either under a theory of intervention by invitation or counterintervention to combat Libya—from the offensive Libyan campaign.<sup>137</sup> The Liberian delegate implicitly legitimated the French intervention by invitation, stating unequivocally “all *uninvited* foreign forces [in Chad] must be withdrawn immediately.”<sup>138</sup> The British representative went further, attempting to defuse claims that French intervention hampered the self-determination of Chad by noting that the principle of self-determination requires that sovereign states be allowed to deal with their own internal problems “with such outside assistance as they themselves may request.”<sup>139</sup>

The Security Council met once in 1985 to address continuing complaints by Chad of Libyan interference. Libya again repeated its charges that the Habré regime was illegal, though the President of the Security Council reminded the Libyan representative that the United Nations had already recognized the credentials of the Habré regime and had no intention of amending that decision.<sup>140</sup> The Zairian delegate, while noting the unfortunate means by which the Habré government took power, nevertheless stressed the need to avoid confusing “legality with legitimacy.” While the seizure of power in Chad might be subject to condemnation, he argued, the fact that the Habré regime had, in fact, asserted such control was rea-

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137. The representative of the Ivory Coast deemed it essential that the Security Council “not put on the same footing the aggressor and the victim of aggression.” U.N. SCOR, 2465th mtg., *supra* note 131, ¶ 199. Similarly, the Netherlands cautioned against viewing Libyan and French assistance as reciprocal and thus bestowing legitimacy on both:

On the one hand, there is the provision, at the request of its legitimate Government, of military assistance to a country acting in self-defense. On the other hand, we witness an instance of armed intervention in the affairs of a neighbouring State, in clear violation of the Charter of the United Nations. This distinction must be maintained.

U.N. SCOR, 38th Sess., 2467th mtg. ¶ 14, U.N. Doc. S/PV.2467 (1983).

138. U.N. SCOR, 2465th mtg., *supra* note 131, ¶ 9 (emphasis added).

139. U.N. SCOR, 38th Sess., 2469th mtg. ¶ 14, U.N. Doc. S/PV.2469 (1983).

140. See U.N. SCOR, 40th Sess., 2567th mtg. ¶ 70, U.N. Doc. S/PV.2567 (1985).

son enough to recognize it as the legal representative of the state of Chad.<sup>141</sup>

In sum, France's military involvement in Chad seemed to be legally based in notions of self-defense. While France did provide limited assistance to the Habré government in order to help quell internal tumult, it was only after confirmation of the active involvement of Libyan troops in Chad's territory that France sent its soldiers into combat alongside Chad's military. This reflected an assessment by France that while military participation in a purely internal conflict might violate international law, limited assistance to a government that was embroiled in a civil war was not prohibited. Other states, and the Security Council itself, supported this assessment by failing to question the narrow French assistance. Moreover, multiple states mentioned the validity of assistance from one recognized government to another while in the same breath condemning what they viewed as Libyan aggression against Chad. While these statements might be viewed as dicta in a domestic court, they warrant mention as indicia of international opinion on this legal question. Libya's legal justification, namely its invitation by the faction it viewed as the legitimate government of Chad, failed to achieve any support at the international level.

Under the traditional standards of belligerency, the widespread strife within Chad would justify states' decisions to ally themselves with any party to the conflict. The views expressed by the Security Council, then, clearly do not lend themselves to reinforcing the traditional pre-Charter law. In the statements condemning intervention on behalf of the nonstate party to a conflict in which there was a recognized government, one once again witnesses the apparent causal link between determinations of a regime's legitimacy and an invited intervention's legality. Given the attention paid within the Security Council to the legal status of the Habré government, rather than the question of control on the ground, it seems that states other than France or Libya were uniform in their assessment of the legal rights of the recognized government of Chad.

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141. See U.N. SCOR, 38th Sess., 2463d mtg. ¶¶ 55-56, U.N. Doc. S/PV.2463 (1983). This statement seems to rely on the effective control test in order to determine governmental legitimacy.

D. *Soviet Intervention at the Behest of a Dubious Afghan Government (1979-89)*

Soviet intervention into the civil war in Afghanistan again illustrates the critical role that the legitimacy of the inviting party plays in determining the legality of an intervention. While Moscow justified Soviet action in Afghanistan by reference to an invitation from a prime minister whom the Soviets themselves essentially crowned, there was extensive condemnation at the United Nations of what many states viewed as an illegal Soviet invasion. The Afghans themselves seemed to share this disparaging view of their Soviet-imposed government. Despite possessing one of the strongest militaries in the world, the U.S.S.R.'s attempt to enforce control over Afghanistan ended in 1989 after a decade of failure.

The internal conflict in Afghanistan began in earnest in 1978. The government at the time was led by Mohammad Daud Khan, a Marxist who had come to power in a 1973 coup. Daud had previously been Prime Minister from 1953-64 and had at that time been highly dependent on Soviet aid. By late 1977, however, Daud had altered this policy, decreasing reliance on material assistance from the U.S.S.R. while simultaneously removing opposition within his party.<sup>142</sup> Daud's decision to arrest left-wing leaders led to another coup, toppling him from power on April 27, 1978, and resulting in his death.<sup>143</sup>

Three bitter rivals emerged as dominant political figures in the post-coup regime: Prime Minister Nur Mohammad Taraki, Foreign Minister Hafizullah Amin, and Deputy Prime Minister Babrak Karmal.<sup>144</sup> Infighting between these three men and their supporters led Taraki to send Karmal and his allies abroad as Afghan ambassadors. Taraki was thus able to consolidate power in Kabul.<sup>145</sup> Attempts by the Taraki regime

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142. ANTHONY ARNOLD, *AFGHANISTAN: THE SOVIET INVASION IN PERSPECTIVE* 62-66 (rev. ed. 1985).

143. See *AFGHANISTAN—Overthrow of Regime of President Daud—Establishment of Democratic Republic of Afghanistan and Government of (Pro-Communist) People's Democratic Party*, 24 *KEESING'S CONTEMP. ARCHIVES* 29,037, 29,037 (June 23, 1978).

144. *Id.*

145. See ANTHONY HYMAN, *AFGHANISTAN UNDER SOVIET DOMINATION, 1964-81*, at 81-85 (1982); *AFGHANISTAN—Government Changes—Measures Taken by Revolutionary Council—Foreign Relations, Aid and Co-operation*, 24 *KEESING'S CONTEMP. ARCHIVES* 29,198, 29,198 (Sept. 15, 1978).

to institute land reform in the countryside angered local elites, whose surprising ability to mobilize the rural population led to widespread civil strife by mid-1979; in several instances, mutinous soldiers joined the fray.<sup>146</sup> Indeed, disenchantment spread even to Kabul, where a large anti-government demonstration in June had to be quashed by heavily armed soldiers.<sup>147</sup>

Soviet aid to the Taraki regime increased dramatically as internal opposition grew, despite public denials of such increased dependence by both Taraki and Amin.<sup>148</sup> At the same time, both leaders asserted that there had been "armed imperialist involvement" alongside the insurgents.<sup>149</sup> As Taraki had proved incapable of quelling the extensive disenchantment within Afghanistan, Amin began to acquire more power.<sup>150</sup> After an unsuccessful army rebellion and a series of guerrilla attacks in September 1979 were met with inaction, Amin took over as president. In October, Taraki was found dead under mysterious circumstances.<sup>151</sup>

The Soviet Union amassed forces along its border with Afghanistan throughout autumn, and on December 24, 1979, it began an airlift of Soviet troops into Kabul.<sup>152</sup> Amin had retreated to the presidential palace roughly a week earlier and

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146. AFGHANISTAN—*Intensification of Warfare Between Government Forces and Moslem Rebels*, 25 KEESING'S CONTEMP. ARCHIVES 29,878, 29,878 (Oct. 12, 1979).

147. See HYMAN, *supra* note 145, at 149.

148. See AFGHANISTAN—*Government Changes*, *supra* note 145, at 29,199 (noting that "during the period from May to July 1978," over 25 new agreements were concluded between Afghanistan and the Soviet Union, "mainly for the supply of Soviet machinery and materials").

149. The Soviet newspaper *Pravda* identified the United States, Egypt, West Germany, and Pakistan as the provocateurs. AFGHANISTAN—*Appointment of Cabinet Under New Prime Minister—Establishment of Supreme Defence Council*, 25 KEESING'S CONTEMP. ARCHIVES 29,641, 29,642 (June 1, 1979).

150. In March 1979 Amin took over as prime minister. Taraki, who had previously been president, prime minister, and defense minister, retained the presidency and defense portfolio. See HENRY R. BRADSHER, AFGHAN COMMUNISM AND SOVIET INTERVENTION 54 (1999).

151. AFGHANISTAN—*Replacement of President Taraki by Mr. Hafizullah Amin—Death of ex-President Taraki*, 26 KEESING'S CONTEMP. ARCHIVES 30,031, 30,031 (Jan. 1980). As Amin remained prime minister and held the defense portfolio, his position as head of state and of government thus became seemingly absolute.

152. HYMAN, *supra* note 145, at 159.

was killed in an armed clash at the palace that occurred contemporaneously with the announcement of a coup in Afghanistan on December 27.<sup>153</sup> That night, both Radio Kabul and *Tass* announced that Karmal had been named president.<sup>154</sup>

In the Security Council debate that followed, the representative of the Karmal regime insisted that his government had repeated a request for Soviet intervention that had already been issued by both Taraki and Amin.<sup>155</sup> The representative went on to assert that the "main purpose of this limited military assistance is to remove the threats posed from abroad to . . . Afghanistan and to repel foreign armed attacks and acts of aggression against our country."<sup>156</sup> This seemed to cast the intervention as within the domain of collective self-defense, and the representative of Afghanistan subsequently referred to the applicability of Article 51.<sup>157</sup> The Soviet Union also emphasized the presence of an invitation, explicitly reminding the Security Council of the legality of invited intervention.<sup>158</sup> However, this account of the facts seems highly unlikely, given the pointed attempts that the Taraki and Amin governments had made to reduce Soviet assistance to, and influence in, Afghanistan and the failure to prove that an armed attack, or indeed any intervention from the West, had actually occurred.

Unlike previous instances of intervention, in which long periods of divisive debate in the Security Council betrayed any front of unified condemnation, it took but two days of discussion in January 1980 for the Security Council to vote on a draft

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153. AFGHANISTAN—*Entry of Soviet Troops—Overthrow of President Amin*, 26 KEESING'S CONTEMP. ARCHIVES 30,229, 30,229-30 (May 1980).

154. *Id.* at 30,229.

155. See U.N. SCOR, 35th Sess., 2185th mtg. ¶ 100, U.N. Doc. S/PV.2185 (1980).

156. *Id.* ¶ 101.

157. See *id.* ¶ 104.

158. U.N. SCOR, 35th Sess., 2186th mtg. ¶¶ 22-23, U.N. Doc. S/PV.2186 (1980). For the Soviet representative's concise view of the right to invite intervention, see U.N. SCOR, 35th Sess., 2190th mtg. ¶ 111, U.N. Doc. S/PV.2190 (1980) (stating "the dispatch of a military contingent by one State to the territory of another State at its request . . . does not belong to that category of measures [included within Article 51]"). The U.S.S.R.'s allies also relied on the right to invite intervention. See, e.g., U.N. SCOR, 35th Sess., 2189th mtg. ¶ 108, U.N. Doc. S/PV.2189 (1980) (noting Lao PDR's assertion that the Charter "authorizes peoples to seek or receive support" through foreign intervention; citing G.A. Res. 2625, *supra* note 39, at 11).



resolution that censured the Soviet Union for its action.<sup>159</sup> While the resolution deploring the Soviet intervention achieved thirteen of fifteen votes, it was vetoed by the Soviet Union.<sup>160</sup> The Security Council then referred the question to an emergency special session of the General Assembly.<sup>161</sup> The General Assembly was not deadlocked by the veto power of the aggressor and overwhelmingly passed a resolution denouncing the Soviet intervention.<sup>162</sup> The operative paragraphs in the General Assembly resolution condemning the Soviet Union were identical to those proposed earlier in the draft resolution that the Soviet Union had vetoed in the Security Council.<sup>163</sup> Comparing the language to the only other intervention that warranted an emergency special session of the General Assembly—the Lebanon crisis—one finds a radical difference in the evaluation of the claims of the Soviet Union and the United States.<sup>164</sup> In Lebanon, the General Assembly had supported the United States, the alleged aggressor; in Afghanistan, it took the opposite tack in condemning the Soviet Union.

Most of the states within the Security Council had agreed with the General Assembly's disapproval, viewing the Soviet intervention as an audacious affront to the principles of non-interference and nonintervention. Many states explicitly doubted the presence of an invitation from the Amin government, noting that as he had been opposed to increased ties with the Soviet Union, it was unlikely he would have invited it to intervene in his country.<sup>165</sup> The Italian representative, in a

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159. See U.N. SCOR, 35th Sess., Supp. for Jan.-Mar. 1980, at 4, U.N. Doc. S/13729 (1980). The draft resolution "deeply deplore[d] the recent armed intervention in Afghanistan" calling it "inconsistent" with the principle of sovereignty, and called for "the immediate and unconditional withdrawal of all foreign troops from Afghanistan." *Id.* ¶¶ 2, 4.

160. U.N. SCOR, 2190th mtg., *supra* note 158, ¶ 140.

161. S.C. Res. 462, U.N. SCOR, 35th Sess., 2190th mtg., U.N. Doc. S/RES/462 (1980).

162. See G.A. Res. ES-6/2, U.N. GAOR, 6th Emergency Spec. Sess., Supp. No. 1, at 2, U.N. Doc. A/ES-6/2 (1980).

163. Compare *id.* ¶¶ 2, 4, with U.N. SCOR, Supp. for Jan.-Mar. 1980, *supra* note 159, ¶¶ 2, 4 (The only textual difference between the two paragraphs of the draft and final resolutions being that the second paragraph of the Security Council draft resolution begins "*Deeply deplores*" while the General Assembly Resolution notes that it "*Strongly deplores*.").

164. See *supra* notes 61-68 and accompanying text.

165. See, e.g., U.N. SCOR, 2185th mtg., *supra* note 155, ¶ 76 (recording Pakistan's comment that "[i]t does not stand to logic that a Government

typical comment, called the intervention “open interference in a situation characterized by an internal conflict but not by foreign aggression.”<sup>166</sup> The status of the conflict within Afghanistan seems to have played little role in the denunciations of the Soviet Union’s intervention. Attention was instead centered on whether an invitation was actually issued, with the aim of determining whether any potential invitation emanated from a legitimate source.

#### E. *The Indo-Sri Lankan Bilateral Intervention Accord (1987-90)*

The Sri Lankan civil war provides one of the clearest examples of a protracted internal conflict in which one ethnicity has been pitted against the other. India based its decision to intervene on determinations of geographical proximity, historical guilt, and international political goals. Sri Lanka, though perhaps pressured by its larger neighbor, sought a means of ending an internal conflict that had already ripped apart its diverse population.

After spending Sri Lanka’s first few post-independence years establishing a vibrant democracy and relatively high standard of living, Sinhalese political parties in the 1960s and 1970s began a race toward extremism in their competition for the Sinhalese vote.<sup>167</sup> The result was the constitutional imposition of Sinhala as the national language, as well as other measures viewed by Tamils as discriminatory.<sup>168</sup> The continued dissatisfaction with concessions made by the Sinhalese-dominated government led to the emergence of militant Tamil separatists, dominated by the Liberation Tigers of Tamil Eelam (LTTE, known commonly as the Tamil Tigers).<sup>169</sup> An extensive campaign of vicious attacks on Sri Lankan military forces

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should have invited foreign troops to liquidate itself”); U.N. SCOR, 35th Sess., 2187th mtg. ¶ 61, U.N. Doc. S/PV.2187 (1980) (recording Spain’s agreement with Pakistan that “[i]t is scarcely logical for a Government to call in foreign troops to be annihilated by them”).

166. U.N. SCOR, 2187th mtg., *supra* note 165, ¶ 108.

167. See Erin K. Jenne, *Sri Lanka: A Fragmented State, in STATE FAILURE AND STATE WEAKNESS IN A TIME OF TERROR* 219, 226-27 (Robert I. Rotberg ed., 2003).

168. See David M. Rothenberg, *Negotiation and Dispute Resolution in the Sri Lankan Context: Lessons From 1994-1995 Peace Talks*, 22 *FORDHAM INT’L L.J.* 505, 515-519 (1998).

169. See Jenne, *supra* note 167, at 227-28.

in July 1983 led to anti-Tamil riots in the capital of Colombo, in which several hundred Tamils were killed.<sup>170</sup> With the resignation from government of all Tamil members of parliament, the country was effectively split between a northern Tamil zone, in which terror reigned, and the government-controlled, majority-Sinhalese southern portion of the island.<sup>171</sup>

The government of Indira Gandhi held the nonaligned status of states in the region as a core tenet of its foreign policy. India's stated goals of nonalignment were thus threatened by Sri Lanka's open attempts to join ASEAN and stated desire to seek cooperation with, at various times, the United States, China, and Pakistan.<sup>172</sup> As a result, India involved itself heavily in the Sri Lankan civil war. Besides seeking to advance its goal of a nonaligned region, India was motivated by the support of the heavily Tamil-populated southern Indian state of Tamil Nadu for Indian action in order to impose a peace in Sri Lanka.<sup>173</sup>

Despite escalating civilian casualties caused by the Sri Lankan government's campaign to eradicate the LTTE, the Sri Lankan navy turned away an unarmed Indian aid convoy in June 1987. India responded to this act by initiating an airdrop of humanitarian aid, with an escort of fighter aircraft making India's determination obvious.<sup>174</sup> In late July 1987 India and Sri Lanka hastily negotiated a cease-fire accord under which Sri Lankan forces were to return to barracks, India was to close Tamil bases within Indian territory, and Tamil rebel groups were to surrender their arms.<sup>175</sup> The agreement also provided for Indian military assistance at the request of the Sri Lankan

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170. See Rothenberg, *supra* note 168, at 519-20.

171. See Mahnaz Ispahani, *India's Role in Sri Lanka's Ethnic Conflict*, in FOREIGN MILITARY INTERVENTION: THE DYNAMICS OF PROTRACTED CONFLICT 209, 213 (Levite et al. eds., 1992).

172. See A. MARK WEISBURD, *USE OF FORCE: THE PRACTICE OF STATES SINCE WORLD WAR II* 232 (1997); Ispahani, *supra* note 171, at 215.

173. See Jenne, *supra* note 167, at 227-28.

174. See WEISBURD, *supra* note 172, at 232.

175. See SRI LANKA—*Agreement with India on Settlement of Tamil Issue—Internal Security—Appointments*, 33 KEESING'S REC. OF WORLD EVENTS 35,312, 35,312-13 (Aug. 1987).

government, and this provision was invoked by Sri Lanka on July 30, 1987, the day after the agreement became effective.<sup>176</sup>

The refusal of the LTTE to surrender its arms, as per the accord, required India to undertake its treaty responsibility to disarm the group forcibly. Within six months, a violent Indian campaign against the LTTE had caused seven thousand deaths but had failed to impair significantly the ability of the LTTE to carry out its terror campaign. Distrust for the Indian Peace-Keeping Force (IPKF) among the population of northern and northeastern Sri Lanka ran high, and the war against the LTTE quickly settled into a stalemate.<sup>177</sup>

The legality of the Indian intervention entered a murky state when Sri Lankan president Ranasinghe Premadasa, who had campaigned on a platform of Indian withdrawal, requested the departure of Indian troops from Sri Lanka in June 1989.<sup>178</sup> India initially refused, arguing that its role as guarantor of the cease-fire accord did not allow Sri Lanka unilaterally to demand India's departure. Since it had intervened to complete a specific task, India argued, the terms of the agreement permitted India to remain until the completion of its charge.<sup>179</sup> Sri Lanka contended that it possessed the sovereign right to terminate the presence of foreign troops on its terri-

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176. For the text of the accord, see 26 I.L.M. 1175 (1987). See also *Sri Lanka—Agreement with India on Settlement of Tamil Issue*, *supra* note 175, at 35,313.

177. See Ispahani, *supra* note 171, at 224-26.

178. See *SRI LANKA: Pressure for Indian Troop Withdrawal*, 35 KEESING'S REC. OF WORLD EVENTS 36,735, 36,735 (June 1989). At least one author openly has questioned the presence of Sri Lanka's voluntary consent to the 1987 accord, citing the difficulty in negotiating Indian withdrawal as evidence of the pressure India exerted on Sri Lanka to accept the accord. See CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 61-2 (2000). A showing of pressure, however, would be insufficient grounds for declaring the accord invalid, though coercion is a valid grounds for abrogation. See Vienna Convention on the Law of Treaties, *supra* note 4, at art. 52, 1155 U.N.T.S. at 344. Without the treaty basis for its intervention and assuming a lack of immediate Sri Lankan consent, the Indian action would be considered an illegal use of force under Article 2(4) of the Charter. But, as discussed below, the Sri Lankan government expressly validated the intervention. See *infra* discussion accompanying note 184.

179. See WEISBURD, *supra* note 172, at 232. India's desire to avoid a loss of international prestige, coupled with domestic political concerns, required that it speak strongly against withdrawal while quietly removing its troops from Sri Lanka. See *id.*; Ispahani, *supra* note 171, at 228-31.

tory.<sup>180</sup> The two sides eventually agreed on a timetable for Indian withdrawal in September 1989, and India removed its last troops by March 1990.<sup>181</sup> The civil war in Sri Lanka has continued to rage for more than a decade since the Indian withdrawal, and a real possibility for lasting peace has emerged only at the beginning of the twenty-first century.<sup>182</sup>

The failure of the Security Council to address the Indian intervention denotes its general acceptance. Given the Security Council's apparent ability to overcome the political difficulty involved in investigating the interventions of permanent members, it seems unlikely that India's relatively small amount of political clout was the cause for the total lack of attention paid to the intervention. The intervention itself was mentioned but once, as part of Security Council proceedings surrounding the situation in Cyprus. In late 1987, Turkey attempted to defend its incursion into Cyprus by analogizing to the Indian intervention in Sri Lanka.<sup>183</sup> Both India and Sri Lanka, however, swiftly rejected the comparison. India stated unequivocally "the Indian Peace-Keeping Force is in Sri Lanka in response to a specific request from the Government of Sri Lanka and in full conformity with international law."<sup>184</sup> Sri Lanka echoed this statement, reminding the Security Council that "[t]he Indian Peace-Keeping Force is in Sri Lanka at the request of the Government of Sri Lanka to implement the Indo-Sri Lanka Agreement."<sup>185</sup> Both sides thus cited the invitation from the Sri Lankan government as the sole legal justification for the Indian intervention, and both viewed such invitation as legally sufficient.

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180. See *SRI LANKA—Pressure for Indian Troop Withdrawal*, *supra* note 178, at 36,735.

181. See *SRI LANKA: Agreement on Troop Withdrawal*, 35 KEESING'S REC. OF WORLD EVENTS 36,893, 36,893 (Sept. 1989); *SRI LANKA: Extension of Deadline for Troop Withdrawal*, 35 KEESING'S REC. OF WORLD EVENTS, 37,126, 37,126 (Dec. 1989); *SRI LANKA: New Cabinet—IPKF Withdrawal*, 36 KEESING'S REC. OF WORLD EVENTS 37,316, 37,316 (Mar. 1990).

182. See generally Amy Waldman, *Talks Open in Sri-Lanka Today to End 19-Year War*, N.Y. TIMES, Sept. 16, 2002, at A8.

183. See U.N. SCOR, 42d Sess., 2771st mtg., at 54-55, U.N. Doc. S/PV.2771 (1987).

184. U.N. SCOR, 42d Sess., Supp. for Oct.-Dec. 1987, at 135, U.N. Doc. S/19354 (1987).

185. U.N. SCOR, 42d Sess., Supp. for Oct.-Dec. 1987, at 135, U.N. Doc. S/19355 (1987).

As the Sri Lankan government had lost control over much of the northern peninsula, including the city of Jaffna, the classification of the conflict under the standards of belligerency would probably lean toward an insurgency. The government no longer exercised its functions in a significant portion of the country, and had not done so for some time; additionally, the LTTE sought to partition the island and establish a Tamil homeland.<sup>186</sup> Yet the inability of the LTTE or its cohorts to govern the north effectively would have lent credence to the argument that the Sri Lankan conflict was merely an extended rebellion. As this conflict seems to straddle the cusp between the two categories, it is perhaps less helpful as insight into legal bases for state action than as a simple reminder of the inherent subjectivity of the determinations made when applying the standards of belligerency.

#### F. *Russian Deployment Forestalls Tajikistan's Collapse (1992-97)*

Along with most of the former Soviet Union (FSU), Tajikistan declared its independence from the Soviet Union in September 1991.<sup>187</sup> It stands out from the other FSU states in that it refused to abandon the communism so quickly rejected by the other fourteen former Soviet republics. Even today, stability in Tajikistan remains elusive, as a civil war crippled the new state's chances for development during its first five years. Russian troops, present under an accord between Moscow and Dushanbe, continue to serve an essential security function, though their very presence draws into question Tajikistan's viability as a stable and functioning state.<sup>188</sup>

186. See WEISBURD, *supra* note 172, at 232.

187. See *TAJIKISTAN: Independence Declaration—"Communist Coup,"* 37 KEESING'S REC. OF WORLD EVENTS 38,418, 38,418 (Sept. 1991).

188. See DIANNE L. SMITH, *OPENING PANDORA'S BOX: ETHNICITY AND CENTRAL ASIAN MILITARIES* 23 (1998) (asserting that without "military support from the Russian Federation and fellow Central Asian CIS members," the Rakhmanov regime "would likely cease to exist"); see also Coit Blacker & Condoleezza Rice, *Belarus and the Flight from Sovereignty*, in *PROBLEMATIC SOVEREIGNTY*, *supra* note 5, at 224, 236 (noting that the presence of Russian troops on Tajik soil prevents Tajikistan from attaining "true Westphalian sovereignty"). One author has gone even further, asserting not only that stability in Tajikistan is dependent on the presence of Russian forces, but also that "we need to ask whether there is an alternative to Moscow's engagement in Tajikistan. No other country or organisation can provide the degree of military stability necessary to prevent another civil war." Olivier A.J. Bren-

The civil war within Tajikistan is often cast as one of Communist forces battling Islamic insurgents, but it is more accurately a complex ideological battle between the old guard and a diverse group of reformers, with intra-Tajik regional disputes also factoring into the calculus of conflict.<sup>189</sup> Violence commenced in the spring of 1992, after competing demonstrations in the capital city of Dushanbe degenerated into widespread riots, and strife spread quickly across the small country. A peace agreement between the government and opposition forces was signed in July 1992, but instability nonetheless continued.<sup>190</sup> The Tajik Supreme Soviet, meeting in November 1992, chose Emomali Rakhmanov as Supreme Soviet Chairman, and thus de facto president. The Islamic-led coalition government accepted him as well and stepped down in order to validate his election.<sup>191</sup>

Russian forces within Tajikistan remained under Russian control after the fall of the Soviet Union. While their status was questionable during the first few months of independence, it quickly became clear that their presence constituted Russian protection of the Tajik government.<sup>192</sup> When fighting broke out in Dushanbe in October 1992, Russian troops within the city remained neutral, refusing to battle alongside government troops but also retaining control of several strategic objectives including the airport, which Russian soldiers had earlier retaken from insurgents.<sup>193</sup> Troops loyal to the

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ninkmeijer, *International Concern for Tajikistan: UN and OSCE Efforts to Promote Peace-Building and Democratisation*, in *TAJIKISTAN: THE TRIALS OF INDEPENDENCE* 180, 186 (Mohammad-Reza Djalili et al. eds., 1997).

189. See HUMAN RIGHTS WATCH, *HUMAN RIGHTS IN TAJIKISTAN: IN THE WAKE OF CIVIL WAR* xv (1993) [hereinafter HRW TAJIKISTAN REPORT]; Irina Zviagelskaya, *The Tajik Conflict: Problems of Regulation*, in *TAJIKISTAN: THE TRIALS OF INDEPENDENCE*, *supra* note 188, at 161, 162-63.

190. See *TAJIKISTAN: Ousting of President Nabyev*, 38 KEESING'S REC. OF WORLD EVENTS 39,097, 39,097 (Nov. 1992).

191. See HRW TAJIKISTAN REPORT, *supra* note 189, at xvii; *TAJIKISTAN: New Government—Ceasefire Agreement*, 38 KEESING'S REC. OF WORLD EVENTS 39,192, 39,192 (Nov. 1992).

192. See Michael Orr, *The Russian Army and the War in Tajikistan*, in *TAJIKISTAN: THE TRIALS OF INDEPENDENCE*, *supra* note 188, at 151, 158 ("Russian policy has been based on support for Rakhmanov.")

193. See *TAJIKISTAN: Rebel Attack on Dushanbe*, 38 KEESING'S REC. OF WORLD EVENTS, 39,147, 39,147 (Oct. 1992); U.N. SCOR, 47th Sess., Supp. for Oct.-Dec. 1992, at 2, U.N. Doc. S/24725 (1992) (noting Russia's comment that "Russian troops in Tajikistan . . . continue to maintain their neutrality").

Rakhmanov government recaptured Dushanbe in early December while simultaneously negotiating with Islamic rebels.<sup>194</sup>

At a conference in Kyrgyzstan in late 1992, the leaders of the Commonwealth of Independent States (CIS) countries noted their intention to send peacekeeping forces to Tajikistan.<sup>195</sup> The multilateralization, however, lasted but briefly; the CIS joint command was abolished in December 1993, and replaced with a system under which Russia took control of CIS forces currently assigned to peacekeeping operations within member states.<sup>196</sup> Russia continued to act as proxy for the Rakhmanov government rather than as impartial arbiter, with the commander of the Russian division in Tajikistan stating “[t]he 201st [division, a heavy tank force,] is a forward position for Russia in Tajikistan.”<sup>197</sup> After the Rakhmanov government, backed by Russian troops, recaptured several opposition strongholds,<sup>198</sup> a stalemate ensued. The civil war in Tajikistan simmered over the next three years, with antigovernment forces reduced to staging border skirmishes from within Af-

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194. See *TAJIKISTAN: Resumption of Fighting*, 38 KEESING'S REC. OF WORLD EVENTS 39,237, 39,237 (Dec. 1992).

195. See *COMMONWEALTH OF INDEPENDENT STATES: Bishkek Summit*, 38 KEESING'S REC. OF WORLD EVENTS 39,153, 39,153 (Oct. 1992). It was not until October 1993 that Russian forces already within Tajikistan were joined by limited contingents from other Central Asian CIS members, in order that the troops be placed under the auspices of a CIS peacekeeping mission. See U.N. SCOR, 48th Sess., Supp. for Oct.-Dec. 1993, at 2, U.N. Doc. S/26610 (1993) (referring to the establishment of CIS “coalition defence forces in the Republic of Tajikistan,” and viewing such forces as a Chapter VIII arrangement); see also *TAJIKISTAN: Government Offensive*, 39 KEESING'S REC. OF WORLD EVENTS 39,272, 39,272 (Jan. 1993). The series of bilateral agreements signed two months later effectively recast the intervention as unilateral, since Russia regained control over the forces within Tajikistan. See *infra* note 196 and accompanying text.

196. See Sergei Parkhomenko, *Moscow Extends Military Role*, THE INDEP. (LONDON), Dec. 24, 1993, at 8.

197. *Russia props up Tajik regime*, THE INDEP. (LONDON), Feb. 8, 1993, at 11. Tajikistan also expressed its official “gratitude” to Russia “for [its] support to the Tajik people in this difficult time.” U.N. SCOR, 48th Sess., Supp. for July-Sept. 1993, at 3, U.N. Doc. S/26092 (1993).

198. See *TAJIKISTAN: Creation of New Ministry*, 29 KEESING'S REC. OF WORLD EVENTS 39,320, 39,320 (Feb. 1993); see also Hugh Pope, *Russia Takes Sides in Tajikistan War*, THE INDEP. (LONDON), Feb. 17, 1993, at 10.



ghanistan.<sup>199</sup> Heavy fighting resumed in April 1995 as government forces, supported by Russian troops, broke the cease-fire by advancing into the opposition-held Gorno-Badakhshan region.<sup>200</sup>

Early in the Tajik civil war, the official reasons for Russian assistance to the government were elucidated. Russian Foreign Minister Andrei Kozyrev stated that Russia intended to prevent the return of full-fledged civil war, to provide security for Tajikistan's citizens, to promote democratic government and national reconciliation, and to ensure that religious extremism did not take root in Central Asia.<sup>201</sup> Regarding Russian opinion of the legal situation surrounding the conflict, the first rationale is perhaps the most enlightening. If the Russian government saw its presence as necessary to forestall the degeneration of the situation into a chaotic internal conflict, Russia must have viewed the Rakhmanov government as incapable of controlling the situation unaided. However, in communications to the United Nations Russia invoked Article 51, arguing that it was defending Tajikistan against attacks from Afghanistan—although, curiously, it did not assert that the Afghan government was sponsoring such attacks, just that the attacks crossed an international border.<sup>202</sup>

The Security Council seems to have accepted the role of Russian forces in the Tajik civil war. After establishing the U.N. Mission of Observers in Tajikistan (UNMOT) in December 1994,<sup>203</sup> the Security Council received regular reports from the Secretary-General on the status of UNMOT's mission. Several of these reports noted frequent interaction between UNMOT and the Russian military units helping to defend Tajikistan. Additionally, on several occasions a resolution

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199. See, e.g., *TAJIKISTAN: Continuing Border Conflict*, 39 KEESING'S REC. OF WORLD EVENTS 39,686, 39,686 (Oct. 1993); *TAJIKISTAN: Expiry of State of Emergency*, 40 KEESING'S REC. OF WORLD EVENTS 40,143, 40,143 (Aug. 1994); *TAJIKISTAN: Cabinet Reshuffle*, 40 KEESING'S REC. OF WORLD EVENTS 40,321, 40,321 (Dec. 1994).

200. See *TAJIKISTAN: Outbreak of Heavy Fighting*, 39 KEESING'S REC. OF WORLD EVENTS, 40,505, 40,505 (Apr. 1995).

201. *Id.*

202. See U.N. SCOR, 48th Sess., Supp. for July-Sept. 1993, at 2, U.N. Doc. S/26110 (1993).

203. See S.C. Res. 968, U.N. SCOR, 49th Sess., 3482d mtg., U.N. Doc. S/RES/968 (1994).

extending UNMOT's mandate was introduced by the Russian Federation. This interaction certainly stands in contrast to UNOGIL's apparent disapproval of American intervention in Lebanon. Given the clear legality of that action, the extensive interaction between Russian forces in Tajikistan and UNMOT would seem to indicate an unqualified acceptance of the legality of Russian intervention in Tajikistan. Additionally, the Security Council praised the intervention, even though the intervening forces were entirely under Russian control.<sup>204</sup>

The conflict within Tajikistan effectively ended in late 1997, after negotiations between Rakhmanov's government and opposition forces led to a peace accord in June of that year.<sup>205</sup> Russian troops remain, however, and a new agreement was reached in 1999 establishing Russian military bases within Tajikistan. Uzbekistan, a perennial critic of Russian expansionism, has "queried the rationale for creating a legal foundation for the Russian military presence in Tajikistan."<sup>206</sup> Otherwise, the Russian intervention has escaped criticism.

The Tajik civil war offers the clearest evidence that the standards of belligerency have fallen into desuetude, for despite the government's inability to sustain itself without Russian assistance, the international community actively refused to condemn the Russian intervention as a violation of international law. The external legitimacy of the Rakhmanov government, however, was unquestioned; it was viewed as the uninterrupted bearer of the legal rights of the state of Tajikistan throughout the civil war. Even with Russian assistance, the government was on several occasions unable to exert control over large swaths of its own territory. It is unimaginable that it would have been able to exercise anything resembling effective control had Russia not intervened militarily. While the government and nonstate parties to the civil war were not on equal footing, opposition control of significant swaths of territory at various points during the conflict would seem to label this conflict an insurgency. The positive reaction of the international community to long-term Russian intervention, an in-

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204. *Id.*

205. See *TAJIKISTAN: Signing of Peace Agreement*, 43 KEESING'S REC. OF WORLD EVENTS 41,693, 41,693-94 (June 1997).

206. *TAJIKISTAN: Assassination of Socialist Party Leader*, 45 KEESING'S REC. OF WORLD EVENTS 42,889, 42,889 (Apr. 1999).

tervention that the standards of belligerency strictly would have prohibited, displays the continued dissonance between these principles of law and post-Charter state action.

## VII. CONCLUSION: UNILATERAL INTERVENTION BY INVITATION AND INTERNATIONAL LAW

The state reactions to the interventions described above reinforce the assertion that it is only when the inviting party is recognized as the legal government of the receiving state that intervention by invitation will be viewed as a legal interaction between two sovereigns. In Lebanon, Chad (France), Sri Lanka, and Tajikistan the accepted external legitimacy of the inviting government translated into near-unanimous support for the intervention's legality. The negative reaction of the international community to interventions in Chad (Libya) and Afghanistan, and the skepticism surrounding the intervention in the Dominican Republic, displayed the converse, namely that uncertainty regarding the inviting party's external legitimacy taints the legality of any invited intervention.

State action simply does not support the view that the standards of belligerency have survived in the post-Charter system. While the application of the standards of belligerency would argue for the same result regarding the interventions in Lebanon and Chad (France), the contrary result would have been reached when examining the interventions in the Dominican Republic, Chad (Libya), Sri Lanka, and Tajikistan. The intervention in Afghanistan further displays the weakness of this system of gradated duties, given its reliance on factual assessments that may be difficult to make from abroad.

The most serious systemic question regarding intervention by invitation, however, is whether it is indeed a stable and beneficial aspect of an advanced international legal order. In making any such determination, one must take into account the intersections of international law and international politics: While the case studies display how state and Charter-body action influences the law, the inverse is also true. International law influences state behavior as well, and given certain normative goals—the non-use of force, the minimization of casualties during conflict, the promotion of human rights—any such laws should be evaluated for their efficacy in promoting these norms.

Looking at past practice, it is clear that the international community has been willing to note abuses of the right to invite intervention; as a result, such a right remains of continued utility in an international system that lacks effective multilateral security guarantees. Until the system evolves to the point where the United Nations is capable of fulfilling the grand role envisaged by its creators at the end of the Second World War, states that are threatened by internal instability will continue to seek assistance from their neighbors or allies. For its ability to prevent protracted civil war, invited intervention retains value as a tool for reducing the likelihood of such tragic conflict. So long as international actors remain attentive to such interventions, the continued legality of invited external military assistance in civil wars does not seem to pose real risks, either to systemic stability or the coveted right of self-determination. While, as with any rule, there is always the chance of abuse, more important than any such risk is the consistent condemnation of exploitation when it occurs. While not perfect, the Security Council's past practice seems to display that body's willingness to censure transgressor states.

Those making policy in Paris, Washington, Tripoli, Moscow, or New Delhi undoubtedly still face the question of whether a potential intervention by invitation will be accepted as legal. Indeed, after the rapid success of the American military action in Afghanistan following the attacks of September 11, 2001, speculation has arisen regarding the next possible fronts of this war on terrorism. American soldiers have been sent to the Philippines to train that country's armed forces in antiterrorism tactics,<sup>207</sup> and the United States has considered returning to Somalia, where lawlessness and nonexistent central authority create an ideal haven for terrorists.<sup>208</sup> A threshold question is presented by a hypothetical in which both these states request American military intervention in order to quell internal unrest, possibly brought on by terrorists, for while the government in Manila is recognized internationally as the legitimate exerciser of that state's sovereign rights, the

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207. See James Brooke, *Opposition to U.S. Forces Is Fading in the Philippines*, N.Y. TIMES, Jan. 24, 2002, at A14.

208. See James Dao & Eric Schmitt, *U.S. Sees Battles in Lawless Areas After Afghan War*, N.Y. TIMES, Jan. 8, 2002, at A1, A14.

Somali government does not enjoy such widespread recognition.

Yet one must ask which determinations, exactly, militate against a finding that the Somali government is indeed the legitimate bearer of that state's sovereign rights. The fact that it exerts control over but a fraction of the capital city and none of the countryside certainly plays a significant role in this finding. Although one might dismiss this as little more than the residual influence of the dead hand of the standards of belligerency, the lingering attachment to these standards evinces a desire to seek consonance between the rules of governmental recognition and those on intervention by invitation in civil war. Indeed, the rejection of the standards of belligerency, coupled with the continued adherence to the effective control test for governmental recognition, has created dissonance within the law. While the abandonment of the standards of belligerency as corollary does not *per se* indicate dissatisfaction with the effective control test as rule, the emerging challenges to the latter, democratic and otherwise, are nonetheless cause for reflection.

The replacement of the standards of belligerency with an inquiry into the external legitimacy of a government inviting intervention could very well serve to alter the basis on which the legal legitimacy of governments is determined. Should this normative shift ably incorporate questions of systemic stability and self-determination, it will prove to be a welcome evolution in international law.

