

## EVOLVING NORMS OF MILITARY INTERVENTION: BETWEEN LEGITIMIZING ACTIONS AND SHAPING STATE BEHAVIOUR

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**Abstract:** *This paper analyses the evolution of norms of military intervention in the post-Cold War era from the perspective of international relations theory, wishing to offer a new understanding to the international interactions in which states decide to use military action and the extent to which they use legal, moral or normative arguments to justify and legitimize their intervention. From this perspective, the paper is trying to assess whether norms and principles such as “pre-emptive war”, “responsibility to protect” and “intervention by invitation” have emerged as a response to the legal inability of the international law system to answer and to solve crisis such as those that have required military intervention in the post-Cold War era, or whether they were shaped by state interests and interactions.*

**Keywords:** *military intervention, sovereignty, responsibility to protect, humanitarian war, international law*

### 1. INTRODUCTION

The aftermath of World War II has left the international community in search of a new world order, in complete recognition of the horrors and costs of war, and with a declared purpose of preventing such atrocities from happening again. International institutions and an integrated body of international law were put in place in order to make sure that the use of military force by one state against another was strictly regulated, as well as how one state could treat its own citizens. Therefore, military intervention in the international society was confined to self protection and humanitarian purposes only, and it was to be allowed only under special conditions.

Although the legal framework of the United Nations (UN) had as a primary goal to maintain international peace and security, based on the assumed and declared intention of all its members to do so, military interventions that were outside of this framework still occurred in the world after 1945, leading to a generally accepted opinion that this institutional model of monopolizing the use of force in international relations has proven to be largely ineffective [1]. This has also entailed, in time, a series of variations in the process of legitimizing interventions in other state’s internal affairs.

This paper is an attempt to look at the evolutions in state practice regarding military intervention as a reflection of the way in which norms and international law principles have evolved in order to effectively regulate the use of force in international relations. It is divided into three parts, with the first part focusing on the evolution of the norms of military intervention, both from a normative and from an ethical perspective.

The second part explores the evolution of state behaviour and their attitude towards military intervention, as well as the principles that have been used to legitimize this behaviour. Finally, the third part of the paper assesses the unfolding of events in the Syrian crisis up to date, as an eloquent example of the way in which norms and interests, as well as previous experiences, shape state behaviour in relation to military intervention on serving different grounds, be it humanitarian crisis or the fight against terrorism.

For the purpose of this analysis, military intervention is described as the use of military means to alter the internal context of one state (which can be either civil war, popular revolt, ethnic strife, separatist movements or terrorist haven) through unilateral or multilateral intervention by other states. The time span covered by this analysis concentrates on the post-Cold War evolutions, as these seem to have caused a division in the way the use of force has been legitimized. Distinct approaches have emerged, some emphasizing a legal narrative, concerned with the rules and procedures needed to maintain peaceful relations among the states, while others focused on the moral arguments, stressing the protection of liberal values and human rights, and showing willingness towards extending the goals of legitimate use of force such as to include humanitarian intervention or regime change.

Although military intervention has acted with some success on some cases such as the 1991 Iraqi war, there have also been numerous cases when international intervention has not been authorised or the intervention came too late, or simply some states used military intervention without the explicit approval of the United Nations Security Council (UNSC). Such events have largely been viewed as a failure of international norms, and requests to reform the functioning of the UNSC have had these specific cases as motivation. In reality, the behaviour of states regarding foreign intervention has seen various waves of development, ranging from the enthusiasm of the 1970s to the relative reticence that we see today to intervene in humanitarian crises, and different doctrines and norms have been used to acquire legitimacy.

At this point, three caveats need to be considered. First, in discussing military intervention it is important to distinguish between cases of self-defence and cases where the intervention was carried out by third parties, using different legal and ethical arguments for legitimizing their actions. Second, military intervention is understood here as a normative concept rather than a strictly legal one, as the purpose of this paper is to emphasize the causal relationship between state practice and the evolution of the norms legitimizing intervention. Finally, the purpose of this article is to shed light on the evolving norms and principles of military intervention from the perspective of international relations theory, thus emphasizing the importance of such norms and principles in understanding and predicting state practice, without going into the complexity of the legal debate regarding such instruments of international relations.

## **2. USING NORMS TO LEGITIMIZE MILITARY INTERVENTION**

The international law system that was constructed within the framework of the UN Charter was based on several principles that had their origin in the Westphalian system of states. They put forward ideas such as the sovereign equality and independence of all member states, emphasized by the non-interference in the domestic jurisdiction of one state's affairs, the prohibition of the use of force of one state against another and the respect for human rights.

The United Nations Charter contains one specific provision which explicitly prohibits "the threat or use of force [of a state] against the territorial integrity or political independence of any state" - Article 2(4).

There are two exceptions admitted to this provision outlawing the use of force. The first one is individual and collective self-defence, while the second one is the enforcement action authorized by the United Nations Security Council (UNSC) under Chapter VII of the Charter. Therefore, one of the functions of the UNSC is to determine whether a certain situation required the use of military force and to authorize such foreign interventions on a case-by-case basis. The UNSC also decides whether to impose economic or other type of sanctions, such as travel bans, financial restrictions, airspace limitations or arms embargo. As a last resort, the use of force is authorized, provided that the situation complies with a series of “criteria of legitimacy” that refer to the seriousness of the threat, the existence of a humanitarian motive, the exhaustion of every non-military option, proportional means and a reasonable chance of success [1].

But subsequent evolutions in the international system and the tragedies that they produced brought forward a systemic flaw of this system, raising the question whether states had the ability and the willingness to protect the human rights of their own citizens. These evolutions challenged the status of the doctrine of sovereignty, and although in formal terms there is still no higher authority than the state, the classical view of this concept has changed.

Developments such as the emergence of other international actors that share power with states and the acceptance of international legal norms that constrain state power and subsequent damages that a state has to pay for conduct that is in breach of international law have been combined with the formulation and implementation of international standards for the protection of human rights, advancing the option for “humanitarian intervention” when a state mistreats its population. Also, the fact that interdependence has replaced independence as a characteristic of the global system of states has had an even greater impact on the erosion of the notion of sovereignty [2].

This has entailed, as a consequence, a distinctive way in which legitimization of foreign intervention has been conducted, and, combined with the contradictions in intervention norms and their implications for state practice, it has produced extended normative discussions. Over time, some claims have become less powerful or they have disappeared completely, with others, such as claims about human rights, becoming increasingly powerful, challenging the long-affirmed assertions about sovereignty and self-determination that dominated the international system [3].

In the post-Cold War era, one of the first arguments brought forward in legitimising military interaction was the concept of preemption, which gained renewed reputation after being used by the Bush administration for motivating the US invasion of Iraq in 2003 [4]. The doctrine has spurred numerous academic debates about the legitimacy of such an approach to international relations, as well as the clear opposition of the then-Secretary General of the UN, Kofi Annan, who advanced the idea that such actions could set precedents that may result in a “proliferation of the unilateral and lawless use of force, with or without justification”. The proponents of such an approach, that the use of preemptive force is permissible in the exercise of anticipatory self-defence because it makes for the case when threats are completely unanticipated in the traditional international law system (such as terrorism and WMD), argue that the law must be reinterpreted to allow for a new standard for preemption [5].

Following further evolutions in the international system, a series of normative concepts emerged within the UN framework. The 1999 NATO military intervention in Kosovo, deemed illegal but legitimate, pushed the international society to search for meaningful ways to address grave human rights.

As such, the doctrine of “responsibility to protect” has emerged from a 2001 document issued by the International Commission on Intervention and State Sovereignty, following ‘The Millennium Report of 2000’ put forward by the UN Secretary General. The principle found unanimous endorsement at the 2005 World Summit, and it has been invoked numerous times ever since. However, this did not translate into tangible action inside the UN framework or it raised questions about the unlawful use of the principle, where a reaction legitimized by the R2P principle might be, in fact, the result of inherent interests of the states involved rather than primarily a genuine expression of this international norm [6]. Its most prominent use was the UN-authorized intervention in Libya in 2011, which, in the view of some analysts, is a clear example of a well-intentioned intervention that backfired by exacerbating civilian suffering [7].

Another argument invoked in the recent history of military intervention as a legal basis for external intervention is the argument of invitation or consent [8], as it was the case for Saudi-led military intervention in Yemen, which has started in March 2015. In overwhelming majority of cases, states using such an legitimizing argument try to either minimize the purpose of their action (claiming to protect their nationals or to fight against terrorism) or to maximize it (stating that there was an external aggression against the inviting state). For it to be legally accepted, however, the “intervention by invitation” argument needs to confine the intervention within a purpose-based approach, that is, to not challenge the rule of prohibition of military assistance to governments in civil war [8].

### **3. MILITARY INTERVENTION AS A TOOL FOR UNDERSTANDING STATE PRACTICE**

The evolution of a legal and normative framework that had as objective the strict regulation of force in the international system has encountered numerous setbacks, mainly because some of the evolutions of the world affairs have proven hard to anticipate. Having in mind the general claim that rules and norms both constrain and enable actors in the international society [1], it becomes obvious that analyzing the actors’ justifications in using force might lead to a better understanding of the reasons that states believe they can legitimately invoke to justify their actions.

The end of Cold War was hailed by many analysts as the beginning of a “golden era” for the international human rights [9] and the prospects for humanitarian intervention were very promising. Leaving behind the power politics of the Cold War, the UNSC embarked upon a period of activism having as objective the worldwide protection and promotion of human rights. The general recognition and the endorsement by the UN member states of the R2P doctrine in 2005 was viewed by the idealist proponents of the international politics as the “golden rule” in how the international community should deal with cases of human rights abuses. This also meant, however, the erosion of the norms of sovereignty and non-intervention that were the foundation the UN system was built upon [1], perspective which was not favoured by some of the UN SC permanent members and it led them to veto some of the resolutions that had invoked R2P as a legitimizing principle. The operational challenges the R2P was confronted to in Libya, coupled with the difficulties of the interactions in the UN SC, makes it less likely to be applied in future conflicts [10].

Military interventions are sometimes conducted outside the legal framework of the UN or other regional organisations, based on a principle called “intervention by invitation”, in which the government of one state asks for help from the international community.

Most of the times, the operations are conducted multilaterally, thus raising the legitimacy of the action and also sharing the burden of the costs involved [11]. Previous studies have shown that the legal argument of invitation by consent is becoming more and more encountered in justifying military interventions, being invoked almost as common as self-defence [8]. This argument has been brought forward in order to legitimize actions in recent interventions such as the intervention of France in Mali, the US drone strikes in Pakistan and Afghanistan, Saudi-led military coalition in Yemen and multilateral strikes against the Islamic State in Syria. Military intervention legitimized by the “intervention by invitation” argument is generally devised under the form of “coalition of the willing”, which experts on international law consider to have many faults [2]. These cases point to the fact that the use of such an argument raises important problems, not only in relation to the legitimacy of the inviting government or the validity of consent, but also regarding the influence of such practices on the evolution of legal principles related to the use of force in international relations.

Drawing a conclusion regarding the evolution of the norms of military intervention means, therefore, understanding that the structural change that came about is not related to the increased capabilities of waging war or the technological advances in the field, but rather to the form and meaning and the intervention [3]. The realist theory of international relations advances the hypothesis that states seek to maximize their interests and they decide whether to intervene militarily or not based on the perceived advantage that they can obtain. Realpolitik supporters believe that strong states will intervene in weak ones when the intervention serves their geostrategic or/and economic interests. But these terms of analysis of state behaviour in relation to military action were not able to explain interventions in humanitarian cases such as Somalia (2004). From a constructivist point of view, states create and construct the rules that are then applied in their interactions, and these rules are in direct connection with their interests. When it comes to the use of force, the rules are strongly if not entirely designed by the actions of the powerful states that actually have the capacity to intervene [3]. Furthermore, once established, norms will serve to constrain even the most powerful states in the international system [1].

#### **4. CASE STUDY: MILITARY INTERVENTION IN THE CASE OF THE SYRIAN CRISIS**

One of the most controversial debates in the international community regarding the necessity of military intervention and the best response to the massive human rights violations that are currently taking place has spurred as a consequence of the evolution of the conflict in Syria. The complexity and the rapidly evolving situation in Syria, expanding also to Libya and Iraq, has posed some important limitations to the possibility of analysing the interactions between all the actors involved, as well as to the decision-making process within the UN framework. It is important to mention that, although since the start of the crisis in 2011 the UN SC has held several meetings on the subject and resolutions that advanced the need for authorizing intervention have been initiated, none of them has resulted in a UN authorized military action [12].

The current military operations in Syria are conducted from two different sides. The first one, the US-led international coalition, has invoked the “war on terrorism” as its arguments for intervention. The intervening states advance, in their letters to the UNSC, the legal basis of ‘self-defence’, either individual and/or collective [8]. The second one is the coalition formed by Russia, Iran, Syria and Iraq, who have used the principle of “intervention by invitation”, relying on the legal argument of consent by the Syrian government.

Regarding Iraq, most of the military interventions took place at the request of the Iraqi government and, although the operations took place without the explicit authorisation of the UN SC, they were endorsed by the declarations of its President. This brings forward the importance of consent as a legal basis for military intervention, as the argument invoked for the intervention in Iraq was the invitation and the consent of the Iraqi government, although there were cases where such invitation had not been extended. The Turkish actions of deploying military forces near Mosul were harshly criticized by the Iraqi government, who strongly protested against, calling this a “flagrant violation of the provisions and principles of the Charter of the United Nations. They also violate the territorial integrity and sovereignty of the Iraqi State”. Another point of debate regarding the legality of intervention in Iraq spurred as a consequence to the prohibition of the international law to offer military assistance in case of civil war.

The legal argument of intervention by invitation was also invoked by Egypt in the case of Libya, who has also called for the creation of an international coalition in order to help the Libyan people fight terrorism, but the existence of the civil war that has torn the country apart since 2011 has determined the international community to be reluctant to such a proposal and to advance the idea that a prerequisite for such a military intervention would be finding a solution to the political crisis and the establishment of a national unity government. US intervention in Libya (an airstrike in November 2015) had no legal justification, the only comment of the Department of Defense being that US will ‘go after ISIL leaders wherever they operate’. The rhetoric of speeches used to legitimize intervention may prove useful in enhancing our understanding of emergent military conflicts which first manifest themselves in language as increasing verbal aggression [10], and which are only later on correlated with specific norms to legitimize intervention.

The Syrian conflict, touching also the neighbouring countries, is proving to be an important case study for the analysis of the use of force in contemporary international relations. The complexity of the situation, combined with the numerous actors involved, is increasing the usefulness of observing changes in the pattern of global behaviour related to military intervention. Undoubtedly, the Syrian crisis demonstrates that it remains difficult for the UN members to find agreement between themselves regarding the necessity to intervene militarily in humanitarian crises, showing reluctance to authorizing international action such as in the Libyan case, which sheds some pessimistic light on the future of UN-commissioned norms such as R2P. At the same time, a general legitimizing principle of self-defense and, consequently, the fight against terrorism, as opposed to the argument of invitation or consent by the legitimate government of the state in which the intervention takes place, shows that state practice in the case of Syria provides a compelling illustration of different perspectives of international justice and multilateralism [13]. These perspectives will undoubtedly shape the ongoing debate about the new challenges to global security and the revision of the legal provisions that address the use of military force.

## CONCLUSIONS

Although strictly regulated by the UN Charter in a manner that has been formally accepted and endorsed by all UN member states, in the period following World War II the use of force has, in numerous cases, been employed outside this framework, with different legal, ethical and normative arguments being invoked by the actors involved.

This paper has focused on the evolution of such arguments, trying to assess the extent to which the norms and principles that regulate military intervention appeared in response to events in international politics that were unsought of before, or they were simply shaped by the interests and motives of the intervening states, who have used these norms to legitimize their actions.

By putting under scrutiny the norms and principles that were invoked in the military interventions in the post-Cold War period (the doctrine of “pre-emptive war”, the “responsibility to protect” principle and the “intervention by invitation or consent” argument), this paper shows that the evolution of such norms is influenced by the interests and actions of the states, but, at the same time, they serve as a normative constraint for shaping future actions and decisions in relation to the use of force in international relations. Some of these norms have a more powerful influence than others, being consolidated by the endorsement of the majority of international society, while others fade away and lose their influence. The debate around the grave ambiguities in terms of specific normative content of the norms currently employed to legitimize the use of military force point out to the deficiencies in the current legal structures and the need for reframing these structures.

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