

The principle of non-intervention in recent non-international armed conflicts

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1. *Introduction*

The principle of non-intervention is one of great importance in the international legal system but at the same time one of complex definition. This is due to doubts regarding both the content of that principle (for example, whether it covers any and all types of external intervention in a foreign territory or just the most significant forms of intervention, as the armed interventions) and the links between the principle in question and other fundamental principles of international law (for example, the principle of non-interference in the domestic affairs of foreign States, the principle of prohibition of the use of force and the principle of self-determination).

In particular, the link between the principle of non-intervention and the principle of prohibition of the use of force would appear to be evident in the framework of both international armed conflicts and non-international armed conflicts. The link between the two principles was highlighted by the United Nations General Assembly as far back as the well known resolutions no 2625 of 24 October 1970 (XXV)¹ and no 3314 of 14 December 1974 (XXIX)² as well as by the International Court of Justice in the *Nicaragua* case³ and in the *Armed Activities* case.⁴

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¹ See UNGA Res 2625 (XXV) (24 October 1970) 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations'.

² See art 3, subparagraph g) of UNGA Res 3314 (XXIX) (14 December 1974) 'Definition of Aggression'.

³ See the Judgement of 27 June 1986, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1986] ICJ Rep 98 ff (para 187 ff).



It is common ground that the principle of non-intervention, at times identified with the principle of neutrality, is indisputably applicable ‘to all international armed conflict’⁵ while its very existence and content are rather less clear as regards non-international armed conflicts.

It is my intention in this article, which summarises part of a wider work recently published in Italian,⁶ to demonstrate that the principle of external non-intervention in civil wars has never actually taken hold in international law except for the part concerning a ban on supporting insurrectionary movements and that recent practice bears this out. I also highlight a growing although not yet consolidated trend that permits support, even military support, to be lent to a specific category of insurrectionary movements, namely, those that fight against dictatorial regimes that do not hesitate during civil war to employ brutal methods against the civilian population.

It will be shown that this recent practice exhibits some links, even if not yet systemic, with other regimes and principles of international law such as the regime concerning violations of *erga omnes* obligations contained in peremptory norms, humanitarian intervention and remedial secession, thereby constituting an overall reaction – even if not easily discernible at this moment – to grave violations of the essential values of the international community.

2. *Summary of the literature on external intervention in civil wars and my position*

At international level scholars have carefully analysed the question of intervention by third party States in civil wars, thereby dwelling on the existence and content of the principle of neutrality.⁷

⁴ See the Judgment of 19 December 2005, *Case Concerning the Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] ICJ Rep 223 ff (para 148 ff).

⁵ See the Advisory Opinion of the International Court of Justice of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ Rep 261 (para 89).

⁶ P Pustorino, *Movimenti insurrezionali e diritto internazionale* (Cacucci Editore 2018).

⁷ For a wide-ranging and precise analysis of the numerous strands of thought and practice regarding external intervention in non-international armed conflicts, see O



In short, some authors assert that there is a general and ‘absolute’ principle of non-intervention or neutrality in civil wars, which prohibits third party countries from lending support to any side in the internal armed conflict.⁸ According to this stance, there are no exceptions to the application of the principle of neutrality although the advocates of this view are not unanimous as regards when exactly the principle of neutrality must be applied since some scholars maintain that one must preliminarily establish the existence of a highly intense internal armed conflict. Moreover, a number of scholars in this respect argue that only the most significant forms of support for the various sides in an internal armed conflict are prohibited, in particular military-type support. Indeed, for some scholars the ban on helping or assisting both sides of an internal armed conflict covers solely direct military intervention and the sending of military advisers and trainers while any assistance ‘short of tactical military support’⁹ is lawful.

It should also be noted that the authors who espouse the existence of the said general principle of neutrality are split between those who maintain that it constitutes a principle that is totally separate on an international level and those who by contrast consider that it is a ‘derivative’ principle that operates to protect other fundamental principles of international law, including above all the principle that prohibits the use of force, the principle of self-determination of peoples and, more recently, fundamental human rights. These ‘over-arching’ principles referred to when analysing and applying the principle of neutrality are sometimes invoked individually and other times ‘collectively’, ie relying on all the said principles.

For other authors, the principle of neutrality exists but only ‘in one direction’, in the sense that international law still permits support for governments in power during civil wars but prohibits any type of sup-

Corten, ‘La rébellion et le droit international: le principe de neutralité en tension’ (2014) 373 *Recueil des Cours de l’Académie de Droit International* 53.

⁸ See L Doswald-Beck, ‘The Legal Validity of Military Intervention by Invitation of the Government’ (1986) 56 *British YB Intl L* 242-244; K Bannelier, T Christakis, ‘Volenti non fit injuria? Les effets du consentement à l’intervention militaire’ (2004) 50 *Annuaire Français de Droit International* 116.

⁹ See TJ Farer, ‘Harnessing Rogue Elephants: A Short Discourse on Foreign Intervention in Civil Strife’ (1969) 82 *Harvard L Rev* 532 and 540.

port in favour of insurgents,¹⁰ except for the well known ‘humanitarian’ exception cited by the International Court of Justice in the *Nicaragua* case.¹¹ Even within the framework of this school of thought, it is generally maintained that the most serious and continuous forms of support for insurgents must be analysed in light of the prohibition of the use of force and of the principle of self-determination of peoples while less serious forms can be considered as violations *minoris generis* of the prohibition of the use of force or violations of the principle of non-interference or simply as unfriendly conduct towards governments in power but not banned by international law.

By contrast, other authors consider – although with positions that vary considerably – that military, economic and political support in favour of any category of insurgents is lawful thereby negating the existence of the principle of neutrality¹² whereas other scholars argue that external intervention in support of the two sides of an internal armed conflict is lawful on condition that it can be considered as a counter-intervention in the wake of previous foreign intervention in favour of the government in power.¹³ This stance would appear to be based on the need to balance out the opposing interventions, which should be examined also in light of the principle of proportionality. Consequently, the content and effects of the second intervention should be commensurate with the extent and effects of the first intervention.

In my opinion the principle of neutrality, with reference to its application to all the parties of civil wars, has never been established at international level. This view is based on the evident contradictions that can be gleaned from ample practice as reviewed in the literature, also

¹⁰ See M Bennouna, *Le consentement à l'ingérence militaire dans les conflits internes* (LGDJ 1974) 213.

¹¹ In words of the Court ‘There can be no doubt that the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law’: *Military and Paramilitary Activities* (n 3) 124 (para 242).

¹² In this sense see E Lieblich, ‘Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements’ (2011) 29 Boston U Intl L J 337 ff; GH Fox, ‘Intervention by Invitation’ Wayne State U Law School Legal Studies Research Paper Series no 2014-04 available at <www.ssrn.com/link/Wayne-State-U-LEG.html>.

¹³ O Corten, *The Law Against War. The Prohibition on the Use of Force in Contemporary International Law* (Hart Publishing 2010) 301 ff.



having regard to the formation or consolidation of other international legal principles like those of the self-determination of peoples and democratic legitimacy,¹⁴ thereby giving rise to solutions that can differ for case that are actually very similar.¹⁵ In my opinion, stating the contrary is tantamount to stretching what can actually be deduced from past (ie the Spanish civil war) and present practice (Mali, Syria, Yemen) in order to protect at any cost some fundamental principles of international law.

Moreover, with reference to support also of a military nature in favour of the government in power in cases of both grave internal disorder and veritable civil wars, the validity of the consent given by regime in power – without the democratic nature of the government in power having any real bearing on the matter – has been upheld in International Court of Justice caselaw. As far back as its judgment in the *Nicaragua* case, the Court held that the intervention of third party States is ‘allowable at the request of the government of a State’.¹⁶ And in its judgment in the *Armed Activities* case, the Court did not doubt the lawfulness at international level of the presence of Ugandan troops in Congo consistent with the express consent given by the government of that country. The matter disputed by the two States concerned solely the content and limits to the consent and when exactly it had subsequently been withdrawn.¹⁷

Better established would seem to be the tendency to rule out the lawfulness of external military or economic intervention in favour of insurrectionary movements. From this standpoint, worthy of note is again International Court of Justice case law. In its judgment in the *Nicaragua* case and with particular reference to the question of the validity of the consent given by the *Contras* insurrectionary movement to intervention by the United States, the Court stated that the principle of non-intervention ‘would certainly lose its effectiveness as a principle of law if

¹⁴ Regarding the importance of the principle of self-determination of peoples and the principles on human rights on the progressive formation of the prohibition to intervene against the government in power or the insurgents, see Farer (n 9) 513 ff.

¹⁵ To quote O Corten (n 7) 85, 26-127 and 288, who however concludes that the relevant practice in the matter could be interpreted overall in the sense that ‘le principe de neutralité n’a pas été mis en cause dans son existence même’ (293).

¹⁶ ICJ, *Military and Paramilitary Activities* (n 3) 126 (para 246).

¹⁷ ICJ, *Armed Activities* (n 4) 196 ff (para 42 ff).

intervention were to be justified by a mere request for assistance made by an opposition group in another State'. The Court highlight how the principle of non-intervention would be greatly impaired if one were to subscribe to the view that considers intervention at the behest of an insurrectionary movement as lawful, stating that 'it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition. This would permit any State to intervene at any moment in the internal affairs of another State, whether at the request of the government or at the request of its opposition. Such a situation does not in the Court's view correspond to the present state of international law'.¹⁸

The unlawfulness of external armed intervention in favour of insurrectionary movements is confirmed by the International Court of Justice in the *Armed Activities* case, in which the Court held that the direct and indirect military support that Uganda lent to the *Mouvement de libération congolais* was a violation of the principles of non-interference and the prohibition of use of force irrespective of the specific aims of the intervention in question and therefore 'even if the objectives of Uganda were not to overthrow President Kabila, and were directed to securing towns and airports for reason of its perceived needs'.¹⁹

Specifically determining which rules and principles of international law are violated in the case of external intervention in favour of insurgents obviously depends on the type of intervention undertaken in favour of the insurgents – direct or indirect, military or economic intervention, etc – as well as the other characteristics of the intervention in terms especially of duration and intensity of the foreign action.²⁰ From a general perspective it is arguable that if military intervention is most likely to amount to a violation of the principle that prohibits the use of force in international relations, economic intervention or even significant political support (for example, early recognition of the insurrectionary movement) could amount to a violation of the principle of non-interference in the internal affairs of the country in a state of civil war.

¹⁸ ICJ, *Military and Paramilitary Activities* (n 3) 116 (para 246).

¹⁹ ICJ, *Armed Activities* (n 4) 227 (para 163).

²⁰ On this point see Pustorino (n 6) 227-243.



Again in this situation one can cite what the International Court of Justice stated in the *Nicaragua* case, in which it held that ‘while the arming and training of the *contras* can certainly be said to involve the threat or use of force against Nicaragua, this is not necessarily so in respect of all the assistance given by the United States Government. In particular, the Court considers that the mere supply of funds to the *contras*..., does not in itself amount to a use of force’. Therefore, support of an economic nature, regardless of the extent thereof, constitutes for the court ‘undoubtedly an act of intervention in the internal affairs of Nicaragua’.²¹

3. *Examination of practice, with particular reference to recent cases of external intervention in favour of insurgents who are fighting against brutal and dictatorial governments*

The examination of practice in relation to external intervention in non-international armed conflicts leads one to rule out that the principle of neutrality applies to all the parties of internal armed conflicts.

In particular, some important cases dating back many years, whether before or after the entry into force of the UN Charter, clearly reveal – at least as regards military and economic support in favour of a government in power engaged in a civil war – that third party States and international organisations did not at all feel obliged to refrain from intervening in support of government. One of the best known cases is the Spanish civil war (1936-1939), with military and economic support lent to both sides in the internal armed conflict. Another well known case was the attempted secession of Katanga and the attendant declaration of independence of 11 July 1960, which involved also the United Nations in two respects: the setting up of a peace-keeping operation, which effectively helped the government of Congo to restore law and order in the country²² and the Security Council’s express deprecation of the secessionist activities carried out by the provincial administration of Katanga,

²¹ ICJ, *Military and Paramilitary Activities* (n 3) 119 (para 228).

²² See UNSC Res 146 (9 August 1960) which, totally inconsistent with what would be the role actually played by the peacekeepers in Congo, states that ‘the United Nations force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict’: para 4.

explicitly categorised as ‘illegal’ and contrary to previous Security Council resolutions.²³

As mentioned above, in less recent practice, the prohibition of external intervention in favour of insurrectionary movements would seem to hold sway even if there are exceptions. It should be noted that in the past military and economic intervention in favour of insurrectionary movements was undertaken almost always indirectly and in secret, for example through private parties or States other than that which was effectively providing the support. In particular, the economic and military support by United States to the *National Union for the Total Independence of Angola* (UNITA) was provided through Zaire with the aim to overthrow the communist regime formed by the *Popular Movement for the Liberation of Angola* (MPLA).²⁴

Any analysis of recent practice confirms that the principle of neutrality is not a customary one given that some international organisations and various States – European and non-European, whether part of the West or other geo-political blocs – have intervened in numerous armed conflicts (Mali, Syria and Yemen) or in situations that are half-way between a civil war and grave internal disorders and tensions, as in the case of Bahrain.²⁵ The interventions in question were undertaken by States in support of various factions in conflict, including insurgents pursuing the secession of a specific portion of a State. In some instances support was lent to serve the intervening State’s own specific national interests, as was the case for the Turkish military intervention against the Kurdish-Syrian faction aimed at weakening the latter’s territorial claims and thereby avoiding a link up with the Kurdish movement in Turkey.

When it comes to supporting a government in power, foreign intervention has been justified in a variety of ways by the intervening States.

²³ See UNSC Res 169 (24 November 1961) paras 1 and 8.

²⁴ On this case see BS Akca, ‘Supporting Non-state Armed Groups: A Resort to Illegality’ (2009) 32 *J Strategic Studies* 598.

²⁵ In the case of Bahrain, Saudi Arabia and the United Arab Emirates intervened, with the support of the Gulf Cooperation Council and at the request of the government of Bahrain, to react to turmoil in the country. It should be noted that the level of armed conflict in the country was very limited with the result that the Bahrain situation can most likely be classified as one that was more than mere unrest and internal tension but less than civil war. Regarding that intervention see Corten (n 7) 161 ff.



In some cases, the States in question have cited a general or specific need to combat international terrorism as in Mali for French intervention and in Syria for Russian intervention. In other cases, there was express or implied reliance on the previously mentioned doctrine of counter-intervention to address previous foreign intervention, as occurred for the Saudi Arabian intervention in Yemen in response to presumed Iranian intervention. In other cases, external intervention was underpinned by the consent given by the government in power, as happened for Russian intervention in Syria and for French intervention in Mali, or was based on UN Security Council resolutions interpreted in a broad manner if not in a totally spurious way to legitimise the armed intervention, as occurred for the intervention in Libya by NATO and some individual States. There have also been interventions professed to have been undertaken in the name of collective or individual self-defence, as occurred for the French intervention in Mali. Leaving aside their rather dubious foundation from an international standpoint, those types of justifications are proffered on a single basis but frequently also together in a package of different and vague justifications that at times contradict each other. The French intervention in Mali and the Russian intervention in Syria are emblematic in this regard.

The recent experience examined above demonstrates that States intervening alongside a government in power rule out that their actions contrast with the principle of neutrality or with the principle that prohibits the use of force. Moreover, protests from other States or international organisations against such interventions are rather limited and for the most part tend to focus on contesting the ‘truthfulness’ of some specific legal basis cited to underpin the intervention, as occurred when some States complained that Russia’s intervention in Syria was not effectively aimed at fighting terrorism but rather, as turned out to be the case, to push back against Syrian rebels and prop up Assad’s Regime. In the same case, the protests did not question the lasting validity of the Syrian regime’s consent to the external intervention.²⁶

One of the possible and most significant limits to external intervention in civil wars is given by the principle of self-determination of peoples.

²⁶ For more details on the different states’ positions see the contribution of O Corten in this zoom-in.

In relation to a specific clash between external armed intervention in favour of the government in power and the principle of self-determination of peoples, I believe that especially in particularly intense and long internal armed conflicts – like the recent conflicts in Libya, Syria and Yemen – it is extremely difficult to apply the principle of self-determination of peoples because it is virtually impossible to ascertain whether the national population is in favour of one or other of the sides in the conflict. Moreover, the relationship between the principle of external intervention and the principle of self-determination of peoples, and more in general the protection of fundamental human rights, is not at all just ‘one way’, in the sense that the intervention always disrespects the will of the people. On the contrary, the intervention could well operate in the opposite direction with the potential to legitimise external intervention should it be demonstrated that it would foster the attainment of the will of the people subjugated in particular by the government in power. From this standpoint Corten, referring to the Syrian insurrection, cautiously surmises that *rébellion-remède* could well be a possible exception to the neutrality in connection with insurrections exhibited by international law, which generally – as Corten points out – neither prohibits nor authorises insurrections.²⁷

It is easy to see how the hypothesis of *rébellion-remède* could be viewed as consistent in some respects with the theory of remedial secession as a further application of the principle of external self-determination (in case of grave violation of internal self-determination), which, although not generally endorsed by scholars and especially not accepted in practice, is based on the same assumption as *rébellion-remède*: grave violation of human rights and of the principle of internal self-determination.

What has been asserted just now dictates that great caution must be exercised in ascertaining a presumed conflict between external interventions in support of a government in power or an insurrectionary movement and the principle of self-determination of peoples.

It needs to be clarified that the lawfulness of external intervention to bolster a government in power does not obviously extend to de facto governments formed at times on the basis of unlawful military occupation as is the case with the Turkish Republic of Northern Cyprus, creat-

²⁷ Corten (n 7) 297 ff.



ed in the wake of the Turkish military occupation of 1974, or the de facto governments installed in Abkhazia and South Ossetia relying on Russian military support.

Similarly, external intervention is to be considered as unlawful when it is designed to favour 'States' or terrorist type governments as in the case of ISIS. Consequently, general economic support, the specific sale of arms or the acquisition of goods (for example, oil), mentioned by some with reference to ISIS, in the period when that insurrectionary and terrorist organisation was particularly effective, constitutes a grave violation of fundamental principles of international law such as the prohibition of the use of force and the principle of non-interference in the internal affairs of other States. It also amounts to a violation of article 48 of the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with particular reference to paragraph 2 of that article in accordance with which 'No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation'. Therefore, it would seem correct to assert that the conclusion by States of commercial contracts of any nature with ISIS would contribute to recognising and if anything maintaining the legal and factual situation stemming from the serious breach of international law, in particular the grave violations of human rights and international humanitarian law committed by ISIS in the territories that it temporarily took control of, especially at the expense of the Iraqi and Syrian governments.²⁸

Obviously, if the government in power independently or with the help and assistance of third party countries commits internationally wrongful acts while actually combating insurrectionary movements, the territorial State and the third party States involved will be liable at international level on the basis of the customary rules on the international responsibility of a State, for example through the conduct of its own organs *de jure* or *de facto* or in light of the other customary rules referred to in the above cited ILC Draft Articles (Aid or assistance in the commission of an internationally wrongful act).²⁹ Gross violations of human

²⁸ This approach presupposes that the rules envisaged by the ILC Draft Articles in question are applicable also to violations committed by *sui generis* entities like ISIS.

²⁹ Regarding the correspondence between general international law and the provisions of article 16 of the Draft, see ICJ *Case Concerning Application of the*

rights and international humanitarian law have been committed, for example, in Syria, especially by the Assad regime and also by the Russian air force against Syrian opposition, and in Yemen by Saudi Arabia during the brutal and often indiscriminate aerial campaign conducted against the Houthis in Yemen.

Turning now to examine recent practice (Libya and Syria), in supporting insurrectionary movements, I believe that military, economic or political support (the latter in the form of early recognition) given by States and international organisations to insurgents who fight against dictatorial regimes is lawful where the violations attributed to the governing regime are *grave, clear and independently ascertained at international level*, in particular by the relevant international bodies as was the case for both Libya and Syria, where the UN Security Council, UN General Assembly and in a very detailed way the commissions of inquiry set up in both instances by the Human Rights Council established beyond any doubt.

It is still too early to say whether this practice can be interpreted as a sign of a gradual equivalence between this specific category of insurgents and national liberation movements, with particular reference to the analogy between, on the one hand, brutal and dictatorial governments that the insurgents are fighting against and, on the other hand, governments installed by foreign powers following military or colonial occupation or governments that practice apartheid that national liberation movements are fighting against. However, it is worth bearing in mind, for the purposes of drawing a possible analogy between the two legal situations, that legal scholars would seem to be in agreement in maintaining that external intervention of a political and economic nature in favour of national liberation movements is lawful while harbouring doubts as to the lawfulness of armed intervention in favour of those same entities. With particular regard to the external intervention in favour of the insurgents which fight against brutal and dictatorial governments, even the military intervention, as was showed, seems lawful.

Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) [2007] ICJ Rep 217 (para 420).



4. *Conclusions*

Concluding this rapid analysis of the literature and practice, especially recent, in relation to external intervention in internal armed conflicts, one must, firstly, ascertain what the general effects deriving from the non-existence of the principle of neutrality applicable to all the parties of civil wars are and, secondly, inquire as to whether there are links between the specific trend of considering intervention by third party States and international organisations in favour of the insurgents fighting against brutal and dictatorial regimes as lawful and other international principles.

One of the potential effects at an international level flowing from the non-existence of a principle of neutrality in civil wars would be instability in international relations. Naturally, a certain amount of instability will always be a feature of the international legal system given the structure of the international community. This instability is mainly a result of the equality among its members premised on the fundamental principle that States are equal and sovereign and of the absence of any higher authority that makes and enforces laws since the UN Security Council is far from being a true law-making body recognised as such.

Therefore, the international legal system is always in tension, to borrow an expression dear to Corten and used by the author as aforesaid precisely with reference to the principle of neutrality. In my opinion tension is natural in all the international legal system and is an expression of the essential characteristics of the international community. This is easily demonstrated by the fact that fundamental principles of international law often contrast with one another protecting values and interests that are at the same time crucial but competing. Some examples are the permanent conflict between the principle of territorial integrity and the principle of self-determination of peoples or between the principle of national and international security and the protection of human rights.

Moreover, some international principles of great importance like the principle of self-determination of peoples may be used in relation to various actual cases and sometimes even in relation to the exact same case to bolster or to challenge other international principles. For example, if the principle of self-determination of peoples is generally invoked as aforesaid to deny the lawfulness of external military intervention, one

cannot rule out that the principle can be cited – at the very least *de lege ferenda* – also to justify the intervention on the basis of the previously mentioned theory of remedial secession.³⁰

This situation of potential or actual conflict between different principles naturally also holds true for the principle that prohibits the use of force and its exceptions, ie the attempts to extend the application of some exceptions (just think of the ongoing debate on pre-emptive self defence). It is indeed a question of competing forces pulling in opposite directions that are not only an intrinsic aspect of the international community but also an expression of the ‘expansive force’ of the said fundamental principles of the international legal system. Those forces must be constantly and adequately balanced out to prevent excesses or deviations due to an ‘unbridled’ application of certain principles of international law that can upset the equilibrium of the international legal system.

In the case of the principle of neutrality as applied to civil wars, the needs that compete with the principle that prohibits external intervention in favour of the parties to an internal armed conflict (mainly founded on the prohibition of the use of force and the principle of self-determination of peoples) are based on equally fundamental principles of international law, such as the principle of equality of arms in an armed conflict, which can be cited in the event of a previous intervention in support of one of the sides in the conflict, or the protection of the very principle of self-determination of peoples and protection of human rights where external intervention is designed to protect the civilian population against particularly ferocious and brutal governments.

It should be noted that the tendency of some States and international organisations to support insurrectionary movements that oppose brutal and dictatorial governments is certainly independent of other principles of international law, in particular, the possibility to adopt collective coercive countermeasures by States not specially affected by a violation of an international obligation and the principles (of dubious

³⁰ The point is developed by D Amoroso, ‘Il ruolo del riconoscimento degli insorti nella promozione del principio di autodeterminazione interna: considerazioni alla luce della “primavera araba”’ *Federalismi.it* no 21/2013 (23 October 2013) 40-42 available at <www.federalismi.it>.



existence on an international level) of humanitarian intervention and the responsibility to protect.

However, in one respect the potential future establishment of a principle that permits political, economic and even military intervention in favour of insurgents who fight against dictatorial regimes that are responsible of grave violations of international law may have an impact on the various principles mentioned, for example, strengthening the view – nowadays minority among legal scholars and in practice – in accordance with which it is possible to resort to peaceful or even coercive countermeasures in case of objectively proven grave violations of peremptory norms.

In this regard the practice cited above – though not yet consolidated – can, on the one hand, be interpreted as an attempt to specifically balance out the effects flowing from the enduring legality of external intervention in favour of the government in power, even if that government is not actually democratic. On the other hand, that practice can constitute a wider corrective linked to the lasting and in my opinion ill-advised exclusion – according to the restrictive approach of the ILC – of recourse to peaceful or military countermeasures against States responsible for grave violations of human rights. Accepting that point of view, the practice regarding military, economic or more limited support in favour of insurgents who fight against brutal and dictatorial governments can be interpreted overall as serving the purpose of coordinating and balancing principles of extreme importance for the international community, in particular, the prohibition of the use of force and the protection of fundamental values of individuals.

Solely an examination of the future conduct of States and international organisations will reveal in clearer terms whether this attempt is destined to remain an isolated one unlikely to contribute to the progressive development of international law or whether it will be confirmed in practice. In this latter hypothesis, one will have to ascertain whether the practice will remain confined to the ambit of study of external intervention in internal armed conflicts or whether it will end up merging, and if so to what extent, with practice in the matter of humanitarian intervention and collective countermeasures adopted following a grave violation of peremptory norms and with the theory of remedial secession in the framework of analysis of the principle of self-determination of peoples.