Forcing Democracy: Is Military Intervention for Regime Change Permissible?

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Abstract

This article intends to go beyond the consequentialist utilitarian approaches to forcible regime change by addressing the question of forcing democracy-building from an angle of appropriateness. It aims to analyze the admissibility of pro-democratic military interventions in international society by focusing on the UN and state practice. Is military intervention to remove a tyrannical regime permissible in international law? To what extend does international society condone an outside force to impose a democratic regime? Does the practice of the UN Security Council in promotion of democracy by force point to an emerging norm with regards to expansive concept of humanitarian intervention? To analyze such questions, this article first provides for a discussion of the concept of intervention. Second, it overviews the normative framework of the use of force in international relations. It continues with the analysis of unilateral and multilateral pro-democratic military interventions, and the UN Security Council practice of condemning, authorizing or consequently endorsing democratic regime change in the target states. In the conclusion part, the article assesses the legality and legitimacy issue regarding the pro-democratic intervention and regime change in light of main norms enshrined in the UN Charter and in general international law.

Keywords: Pro-democratic interventions, use of force, regime change, legality, United Nations

1. Introduction

Since the end of superpower confrontation, several aspects of foreign military interventions have been subject of many scholarly works. The optimism of early 1990s about a functional UN collective security mechanism after repelling Iraq from Kuwait and the hopes for the willingness of the UN Security Council to take action to prevent humanitarian atrocities were followed by a more grim picture with the UN's failure to thwart crimes against humanity in places like Rwanda. The US military campaign in Afghanistan in 2001 and the inva-

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sion of Iraq in 2003 after the phenomenal events of September 11, 2001, provoked further concerns regarding the new American security doctrine, namely preemptive self-defense, and the new security threats, particularly fundamentalist terrorism. In this context, democratization has increasingly come to be seen as part of the strategy to fight against terrorism. However, the question of whether or not democracy can be imposed by an outside force remained to be controversial. Most recently, the NATO military campaign against Libya has once again raised questions as to whether use of force is an effective tool to promote democracy.

Part of the debate has focused on the nature of the intervener. In this respect, some scholars analyzed whether or not broad multilateral coalition of democratic states, a single democratic state taking action on its own or a force under the UN make a difference regarding democracy building. One group of studies concerning the impact of intervention argued that although democratic interveners brought about democratic reform in the target states, in the long run, these democratic reforms would not lead to stable political systems.[1] Another group of studies which addressed the question mainly from the angle of impact of interventions carried out by the United States, suggested that American military interventions did not generally bring democracy.[2] Among the scholars analyzing the reasons why American military interventions usually failed to result in democratization, some identified the US military and political interests as the cause.[3] Some others, on the other hand, contended that democratization did not follow, as it was imposed by an outside power. Yet another group maintained that under certain circumstances, the United States had been successful and effective in advancing democracy and liberal regimes.[4] Finally, there is also work on how the intervener's motives influence the institution-building in the target state.[5] As such, the existing literature contributes significantly to the various aspects of the effect of military intervention on democratization. Notwithstanding the variety of such studies on the relationship between intervention and democratization, the legality and legitimacy issues regarding the use of force to change regimes remain far from settled.

This article intends to go beyond the consequentialist utilitarian approaches by addressing the question of forcing democracy-building from an angle of appropriateness. More precisely, rather than assessing whether military occupation can be a midwife to democracy, this article aims to analyze the admissibility of pro-democratic military interventions in international society by focusing on the UN Security Council

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[1] See for example, Charles W. Kegley Jr. and Margaret H. Hermann, "Putting Military Intervention into the Democratic Peace: A research Note," *Comparative Political Studies* 30 (1997): 78-107.

[2] See for example, Abraham F. Lowenthal, *Exporting Democracy: The United States and Latin America-Themes and Issues* (Baltimore: Johns Hopkins University Press, 1991).

[3] See for example, David P. Forsythe, "Democracy, War, and Covert Action," *Journal of Peace Research* 29 (1992): 385-95.

[4] See for example, James Merrnik, "United States Military Intervention and the Promotion of Democracy," *Journal of Peace Research* 33 (1996): 391-402; and Margaret G. Hermann and Charles W. Kegley, "The US Use of Force to Promote Democracy: Evaluating the Record," *International Interactions* 24 (1998): 91-114.

[5] Bruce Bueno de Mesquita and George W. Downs, "Intervention and Democracy," *International Organization* 60 (2003): 627-649.

and state practice. Is military intervention to remove a tyrannical regime permissible in international law? To what extend does international society condone an outside force to impose a democratic regime? Does the practice of the UN Security Council in promotion of democracy by force point to an emerging norm with regards to expansive concept of humanitarian intervention? To analyze such questions, this article begins with a discussion and working definition of the concept of intervention. It then overviews the legal framework, within which use of force in international relations is governed. The following section addresses the question of whether there is a right to democratic governance by examining the debate for and against the use of force to liberate a country from a non-democratic regime. The article continues with the analysis of unilateral and multilateral pro-democratic military interventions, and the UN Security Council practice of condemning, authorizing or consequently endorsing democratic regime change in the target states. In the conclusion part, the article assesses the legality and legitimacy issue regarding the pro-democratic intervention and regime change in light of main norms enshrined in the UN Charter and in general international law.

2. Conceptual Framework

The concept of intervention is usually defined as the breach of sovereignty and encroachment of independence in international law. Thus, the norm proscribing intervention in the internal affairs of states has come to represent the flip side of the norm upholding sovereignty.[6]

The leading legal scholar Hersch Lauterpacht defined intervention as the "dictatorial interference by a State in the affairs of another State for the purpose of maintaining or altering the actual condition of things."[7] Generally speaking, international relations literature also reflects the legal-normative definition of the term. For example, Max Beloff argues that intervention is an attempt by one state aiming to "affect the internal structure and external behavior of other states through various degrees of coercion."[8] In this sense, intervention involves the activities that impair a state's external independence or territorial authority by imposing a certain order of things on a state without its consent, thus violating its sovereignty. Similarly, one of the leading IR scholars, Hedley Bull defines intervention as "dictatorial or coercive interference in the sphere of jurisdiction of a sovereign state, or more broadly of an independent political community."[9] Bull argues that the target of intervention is the jurisdiction of a sovereign state, whereby "the jurisdiction that is being interfered with can be a state's jurisdiction over its territory, its citizens, and its right to determine its internal affairs or to conduct its external relations."[10] One other significant discussion of intervention in

[6] Anne-Marie Slaughter Burley and Carl Kaysen, "Introductory Note: Emerging Norms of Justified Intervention" in *Emerging Norms of Justified Intervention*, eds. Laura W. Reed and Carl Kaysen. (Cambridge, MA: American Academy of Arts and Sciences, 1993), 13.

[7] Lassa Francis Lawrence Oppenheim, *International Law: A Treatise* Vol. I, ed. Hersch Lauterpacht, (London: Longmans, Green & Co., 1955), 305.

[8] Max Beloff, "Reflections on Intervention," *Journal of International Affairs* 22 (1968): 198.

[9] Hedley Bull, "Introduction" in *Intervention in World Politics*, ed. Hedley Bull (Oxford: Oxford University Press, 1955), 1.

[10] Ibid.

the literature is Rosenau's attempt to operationalize the concept of intervention. During the 1960s' behavioral approach to international relations, Rosenau argued that intervention was distinguished from other types of state activity by two characteristics. First, it represents a clear break with the prevailing pattern of relations between the intervening and target states; and second, it is essentially directed to either change or preserve the structure of political authority in the target state.[11]

For the purposes of the present article, drawing mainly upon the definitions of Rosenau and Bull, intervention is defined as the coercive interference of an external agency, whether a state, a group of states or an international body, in the internal affairs of another state in a manner that disturbs the conventional pattern of their relations, with the aim of rearranging its domestic political order, including its authority structure and domestic policies, in a particular fashion. To narrow the concept further for the context of this study, pro-democratic intervention is defined as the use of armed force by one state or group of states against another state –the target state- with the intention to change the government of that state in general, and the character of the political and legal institutions in particular. Therefore, in this article the key guides to the incidence of intervention for regime change are the organized physical transgression of the borders of a recognized sovereign state and the conception of intrusion in its domestic affairs.

A further conceptual delineation concerns the relationship between forcible regime change and humanitarian intervention. The difficulty arises from the fact that pro-democratic interventions are often addressed within the context of expanded version of humanitarian intervention. Indeed, in the final analysis, bringing a democracy to a state can be assumed to serve to ensure the basic human rights of the citizens of that state. However, use of force for humanitarian purposes does not necessarily include an intention to or end up with a regime change. One obvious example in this respect is the 1991 intervention in Northern Iraq. During the *Operation Provide Comfort*, the Allies set up a no-fly zone to protect the Kurds, but did not attempt to oust the Baath party regime of Saddam Hussein. Thus, in this article, the term pro-democratic intervention is distinguished from humanitarian intervention used in general and denotes the use of force with clear stated intention to topple the regime in power in the target state.

3. The Legal Framework

3.1. Use of force

Notwithstanding the prevalence of the incidents of intervention in international politics, under international law, it is firmly established that interference in domestic affairs of other states is an illegal act. Consequently, the debate on intervention in the scholarly literature has sought to discern exceptions to the rule of non-intervention. Thus, the question is whether removal of a tyrannical regime and building democracy qualify as an admissible ground for military intervention.

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[11] James N. Rosenau, "The Concept of Intervention," Journal of International Affairs 22 (1968): 167; James N. Rosenau, "Intervention as a Scientific Concept," *Journal of Conflict Resolution* 23 (1969): 161.

Within the UN Charter framework, the two most relevant provisions are Article 2 (4) and Article 2 (7), which concerns use of force by states and the principle of non-intervention in domestic matters respectively. Article 2 (4)[12] requires that states refrain in their international relations from the threat or use of force. In this respect, Kelsen maintains that by establishing the obligation of states to refrain from the threat or use of force in their relations, Article 2 (4) implies the obligation of states to refrain from intervention in the domestic matters of other states.[13] The substantial majority of legal scholars attribute the norm contained in Article 2 (4) to a *jus cogens* character.[14] The *jus cogens* status of Article 2 (4) is also confirmed in the *Nicaragua* judgment of the International Court of Justice (ICJ), where it referred to statements by government representatives who considered the prohibition of force in Article 2 (4) as not only a principle of customary international law but also "a fundamental and cardinal principle of such law."[15] Nonetheless, the prohibition of force by states is not absolute. The UN Charter provides in Article 51 for an exception to this rule in relation to measures of collective and individual self-defense.[16] Article 51 specifies the conditions under which individual states may resort to force.[17]

With respect to the interference of the United Nations as an organization in the internal affairs of the member states, Article 2, paragraph 7 directs the organs of the UN to respect domestic affairs of states and lays down a principle of non-intervention.[18]

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[12] Article 2 (4) reads as follows: "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 manner inconsistent with the Purposes of the United Nations."

[13] Hans Kelsen, *The Law of the United Nations* (London: Stevens & Sons Limited, 1951), 770.

[14] See for example, Malcolm N. Shaw, *International Law* (Cambridge: Grotius Publications Limited, 1991), 686; Antonio Cassese, *International Law in a Divided World* (New York: Oxford University Press, 1994), 141; Edip Çelik, *Milletlerarası Hukuk*, (International Law), (İstanbul: Filiz Kitabevi, 1982), 410. In this respect, Brownlie also states that the customary norm regarding the use of force is "restated and reinforced" by Article 2 (4). See Ian Brownlie, *International Law and the Use of Force by States* (London: Oxford University Press, 1963), 112.

[15] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, ICJ Reports (1986), para. 190.

[16] In addition to these, there are two other exceptions to Article 2 (4). The changed circumstances however, since then, have rendered the above exceptions practically void. Hence, for the purposes of the study, force used in self-defense and force authorized by the Security Council are presumed to be the two exceptions pertinent under current international standards. For an elaboration of other exceptions, see for example, Brownlie, *International Law*, 336-337; Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm* (London. Routledge, 1993), 32-33; Bruno Simma, ed., *The Charter of the United Nations* (Oxford: Oxford University Press, 1994), 119; Hüseyin Pazarcı, *Uluslararası Hukuk Dersleri*, *IV. Kitap* (Lectures in International Law, Book IV), (Ankara: Turhan Kitabevi, 2000), 121.

[17] Article 51 states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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-defense 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 any time such action as it deems necessary in order to maintain or restore international peace and security."

[18] Article 2 (7) reads: "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter but this principle shall not prejudice the application of enforcement measures under Chapter VII."

In this sense, it represents "an interpretative guideline" for UN organs in "dealing with matters that are essentially within the domestic jurisdiction of a state."[19] The enforcement measures under Chapter VII which includes resort to force, represent the only exception provided by the Charter to the rule of non-intervention in domestic affairs stipulated in Article 2 (7). Thus, the United Nations system, while prohibiting the threat and use of force by states, designates the United Nations as the sole authority able to use force legitimately as a means of maintaining international peace and security. In other words, the Charter places the right of resort to force under the monopoly of the United Nations except in self-defense.

Under Chapter VII, the Security Council is first required to determine whether a "threat to peace, breach of the peace, or act of aggression" exists before it can take measures pursuant to Chapter VII (Article 39).[20] Chapter VII does not, however, furnish explicit definitions as to what constitutes a threat to peace, a breach of the peace, or an act of aggression. It leaves this completely to the judgment of the Security Council. Hence, as one scholar notes, "a threat to the peace is whatever the Security Council says is a threat to the peace."[21] Nor does Article 39 qualify the threat to, or the breach of "international" peace. In spite of the stated aim of maintaining or restoring "international" peace, it refers to "any" threat to peace. Consequently, according to the wording of the article, the Security Council's definition of a threat to peace does not need to derive from instances that are specified in Article 2 (4). To put it in other words, a threat to peace does not necessarily have to be a conflict between two states.[22] Moreover, read in conjunction with Article 2 (7), the Organization is authorized to intervene in matters of domestic jurisdiction in cases where there is judged to be a threat to, or breach of, the peace as determined by the Security Council in accordance with Article 39. Therefore, a threat to peace, a breach of peace, or an act of aggression may well be extended to include domestic affairs, such as civil war, violations of human rights, or the existence of a repressive regime. In this context, Article 39 leaves it to the exclusive discretion of the Security Council to decide what factors constitute a threat to, or breach of international peace and against whom the enforcement action for the maintenance or restoration of the international peace is to be carried out. In practice, on many occasions, the Security Council has found a number of such situations as constituting a threat to or breach of peace. In this sense, Article 39, combined with Articles 41 and 42 which state non-military and military measures respectively, implies the "forcible interference in the sphere of a state."[23] As a result, the notions "threat to peace, breach of the peace" permit a highly subjective interpretation, compared to, for example, the "threat or use of force" under Article 2 (4), which is a more "objectively determinable conduct."[24]

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[19] Simma, *The Charter of the United Nations*, 143.

[20] Article 39 reads: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decided what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

[21] Michael Akehurst, *A Modern Introduction to International Law* (London; George Allen and Unwin, 1984), 181.

[22] Kelsen, *The Law of the United Nations*, 731.

[23] Ibid., 735.

[24] Ibid., 737.

Hence, by allowing for only one condition as an exception to the prohibition of the use of force i.e. self-defense, the Charter has considerably confined the scope of what are considered legitimate self-help measures. On the other hand, while the UN Charter is restrictive with respect to the use of force by states, it is fairly open-ended when it comes to the use of force and intervention by the UN itself.

In addition to the UN Charter, from the very inception of the United Nations, the General Assembly has repetitively underlined the non-intervention principle as the principle duty of states. For example, Article 3 of the *Draft Declaration on the Rights and Duties of States* of 6 December 1949, stated that: "Every state has the duty to refrain from intervention in the internal and external affairs of the any other state."[25] The duty of non-intervention in internal affairs was strongly emphasized in subsequent resolutions. In *Peace Through Deeds* Resolution for example, the General Assembly condemns "the intervention of a State in the internal affairs of another state for the purpose of changing its legally established government by the threat or use of force."[26] The 1957 *Resolution of Peaceful and Neighbourly Relations* among States reiterates the duty of non-intervention as one of the main principles the Charter was based on.[27]

General Assembly Resolution 2131, the *Declaration on the Admissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* adopted in 1965, provides the first detailed formulation of the principle:

> "No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are condemned."[28]

The following paragraphs further condemn the use of "economic, political or any other type of measures to coerce another State," subversion, and all other forms of indirect intervention. Specifically, the second operative paragraph is relevant for the purposes of the present article. It declares that:

> "No State shall organize, assist, foment, finance, incite, or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

The question of definition of the duty of non-intervention was also taken up in the drafting of the Resolution 2625, which aimed to outline the fundamental principles of inter

[25] UN General Assembly (GA) Res. 375 (IV), *Draft Declaration on the Rights and Duties of States* (6 December 1949).
[26] UN GA Res. 380 (V), *Peace Through Deeds* (17 November 1950).
[27] UN GA Res. 1236 (XII), *Peaceful and Neighbourly Relations among States* (14 December 1957).
[28] UN GA Res. 2131 (XX), *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty* (21 December 1965).

national law. The subsequent *Declaration of Principles of International Law* of 1970 adopts essentially the same definition of non-intervention as that provided in Resolution 2131. It links "the obligation not to intervene in the affairs of any other State" with the international peace and security. Restating the principle concerning "the duty not to intervene in matters within the domestic jurisdiction of any State," it additionally proclaims that acts of "armed intervention and all other forms of interference" constitute violation of international law.[29] The following Resolution 2734 on the *Strengthening of International Security* once again calls upon all States "not to intervene in matters within the domestic jurisdiction of any State."[30]

The principle of non-intervention was further developed in a more detailed way in the 1981 *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States*. Regarding the "full observance of the principle of non-intervention and non-interference in the internal and external affairs of States" as having the utmost significance for the "maintenance of international peace and security," and violation of it as a "threat to the freedom of peoples, the sovereignty, political independence and territorial integrity of States" as well as to "their political, economic, social and cultural development," the Resolution embarks on a detailed elaboration of the scope of the principle of non-intervention and non-interference in the internal and external affairs of States, and prescribes a series of specific duties. According to it, states are:

> "…to refrain in their international relations from the threat or use of force in any form whatsoever…to disrupt the political, social or economic order of another State, to overthrow or change the political system of another State or its Government…, to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State." [31]

As such, intervention in the internal affairs in general and intervention to oust the political system of another state in particular is condemned in a number of General Assembly resolutions.[32] Although General Assembly resolutions are not binding over states, there is a general agreement on the authoritative character of the resolutions on notions like intervention, self-determination and human rights. In this respect, they are argued to represent concrete interpretations of the Charter and assertions of general international law.[33]

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[29] UN GA Res. 2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with Charter of the United Nations* (24 October 1970).
[30] UN GA Res. 2734 (XXV), *Declaration on the Strengthening of International Security* (16 December 1970).
[31] UN GA Res. 36/103, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States* (9 December 1981).
[32] Among other resolutions that emphasized the principle of non-intervention are UN GA Res. 34/103, *Inadmissibility of the Policy of Hegemonism in International Relations* (14 December 1979) and UN GA Res. 37/10, *Manila Declaration on the Peaceful Settlement of International Disputes* (15 November 1982).
[33] Blaine Sloan, *United Nations General Assembly Resolutions In Our Changing World* (New York: Transnational Publishers, Inc., 1991), 45.

Judgments of International Court of Justice also support this view. For example, in the *Nicaragua* case, the Court referred to Resolution 2131 and Resolution 2625 as reflecting customary law.[34]

3.2. Right to democratic governance and intervention for regime change

After the end of the Cold War, liberal democracy was championed to be the dominant ideology.[35] It has been contended since then that notable consensus concerning the legitimacy of liberal democracy as a system of government had emerged throughout the world. One prominent law scholar, for example, maintained that there was a newly emerging law which called for democracy to validate governance and thus, democratic entitlement was transformed from a mere moral obligation to an international legal norm.[36]

Within the UN Charter framework, promoting human rights and fundamental freedoms forms the very basis for democratic entitlement.[37] In this respect, UN has increasingly supported democratic governance particularly within peacekeeping activities. Notwithstanding, use of force for democratization remains quite problematic as the principle of nonintervention is firmly embedded in the present international system despite the changes in the aftermath of the Cold War.

One of the most earliest and ardent proponents of pro-democratic intervention, Michael Reisman argued that liberating a country from an oppressor would not conflict with Article 2 (4), for the use of force would not have been aimed at the political independence and territorial integrity of the target state. Rather, such interventions, Reisman contended, would improve opportunities for self-determination. Thus, he called for a fundamental reinterpretation of Article 2 (4) that would provide states with a unilateral right to overthrow despotic governments or leaders in a state.[38] The opponents on the other hand, typically argue that such a doctrine of pro-democratic intervention would provide the most powerful states with an unconstrained power to oust the governments allegedly repressive and nondemocratic.[39] Further, it is maintained that foreign armed intervention for regime change in fact exemplifies use of force against the political independence of the target state, regardless of its internal political structure, since it contradicts with the spirit of Article 2 (4) and its clear intention to prohibit unilateral resort to force on *just war* premises by deeming the Security Council as the only authority to use force in circumstances other than self-defense, not to mention several General Assembly declarations and ICJ decisions.[40] In this respect, one prominent legal scholar

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[34] *ICJ Reports* (1986), para. 203.

[35] See generally Francis Fukuyama, "The End of History?," *The National Interest* (1989): 3-18.

[36] Thomas Franck, "The Emerging Right of Democratic Governance," *American Journal of International Law* 86 (1992): 46-91.

[37] See for example, Boutros Boutros-Ghali, *An Agenda for Democratization* (New York: United Nations, 1996), 3.

[38] W. Michael Reisman, "Coercion and Self-Determination: Construing Charter Article 2 (4)," *American Journal of International Law* 78 (1984): 642-44.

[39] See for example, Oscar Schachter, "The Legality of Pro-Democratic Invasion," *American Journal of International Law* 78 (1984): 645-50.

[40] Ibid., 649; and Michael Byers and Simon Chesterman, ""You the People": Pro-Democratic Intervention in International Law," in *Democratic Governance and International Law*, ed. Gregory H. Fox and Brad R. Roth (Cambridge; Cambridge University Press, 2000), 264.

points out that using force for changing the government of another state might be considered aggression, since such uses of force for "value extension" is prohibited under Article 2 (4) and resort to force is only allowed for "value conservation."[41]

Another argument in support of pro-democratic intervention rests on a notion of sovereignty based on people rather than states. According to this liberal view, international rights of governments stem from the rights and interests of the individuals that make up the state. Only representative governments have international rights, since in view of this Kantian account of the state, the ultimate ethical agents are not states but individuals who vest in governments the obligation to secure basic human rights.[42] It follows that tyrannical governments are deprived of the protection accorded to them through sovereignty by international law. In other words, "tyranny and anarchy cause the moral col-lapse of sovereignty."[43] Hence, this view holds that "any nation with the will and the resources may intervene to protect the population of another nation against … tyranny."[44] For the liberal account, democracy appears to be both a cause for peace and a reason for war. It should be noted that the idea that international community should oppose tyranny and prevent violations of fundamental human rights is usually presented in connection with the general arguments put forward for the right to humanitarian intervention.[45]

Nonetheless, ICJ in its Nicaragua judgment founded that there is no unilateral right to intervene on the basis of political and moral considerations:

> [t]here have been in recent years a number of instances of foreign intervention for the benefit of forces opposed to the government of another State…It has to consider whether there might be indications of a practice illustrative of belief in a kind of general right for States to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State, whose cause appear particularly worthy by reason of the political and moral values with which it was identified. For such a general right to come to existence would involve a fundamental modification of the customary law principle of non-intervention.[46]

In addition to the international litigation, the opponents further point out that although the idea of sovereignty has changed to a certain extent since the adoption of the UN

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[41] Myres S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order: The Legal Regulation of International Coercion* (New Haven, CT: Yale University Press, 1961), 18-19.
[42] Fernando R. Teson, "Eight Principles of Humanitarian Intervention," *Journal of Military Ethics* 5 (2006): 94.
[43] Ibid., 96. For a similar view, see also W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law," *American Journal of International Law* 84 (1990): 866-76.
[44] Anthony D'Amato, "The Invasion of Panama was a Lawful Response to Tyranny," *American Journal of International Law* 84 (1990): 519.
[45] See for example, W. Michael Reisman, "Humanitarian Intervention and Fledgling Democracies," *Fordham International Law* Journal 18 (1994): 794-805.
[46] *ICJ Reports* (1986), para. 206.

Charter, it is still not clear that democracy has replaced peace as the main interest of the UN and of the international normative order. Moreover, it is not clearly articulated how "democratic governance" as a right might reign over a peremptory, *jus cogens* rule, namely prohibition of the use of force.[47]

One of the most recent reformulations of the issue of intervention on behalf of people under a repressive regime is the concept of the "responsibility to protect," which suggest that it is not the "right to intervene" of any state, but "responsibility to protect" of every state "in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent."[48] In the context of "responsibility to protect" however, military intervention should be considered as a last resort and authorized by the Security Council.

4. The Practice

4.1. Unilateral pro-democratic interventions

The state practice during the Cold War does not point to a general acceptance of unilateral military interventions for regime change. The most illustrative cases are the United States' interventions in the Dominican Republic (1965) and Panama (1989), as well as the United States and East Caribbean intervention in Grenada (1983), whereby the interventions were justified among others, on the grounds that they aimed to "reinstate order" or "restore democracy."

After the overthrow of the freely elected government in the Dominican Republic by a civilian junta in 1963, the US troops landed in the country in 1965. In the Security Council, the US representative asserted that the US action was undertaken due to the collapse of law and order in the Dominican Republic. The US justifications were rejected by most of the states. States condemning the intervention laid emphasis on the principle of non-intervention.[49] On the other hand, the French representative expressed that the intervention seemed to have been undertaken "against those who claimed to have constitutional legality."[50] Nonetheless, a Soviet resolution calling for the withdrawal of US forces was voted down.[51]

The alleged legal grounds for the US and the Organization of Eastern Caribbean States' (OECS) intervention in Grenada in 1983 paralleled to those presented in the Dominican case: consent of the target state, protection of nationals and regional peacekeeping action.[52] Nevertheless, the justification based on invitation by the Governor-General of Grenada was more emphasized in this case, for at the time of intervention, as opposed to the Dominican internal situation of full-scale conflict, there was only a general internal unrest

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[47] Michael Byers and Simon Chesterman, "'You the People'," 269.
[48] UN Doc. A/59/565, United Nations Report of the Secretary-General's High-level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, para. 203, (4 December 2004).
[49] *UN Yearbook* (1965), 140-45.
[50] "Security Council Debates," *Keesing's* 11 (July 1965), accessed June 2011, http://www.keesings.com.
[51] *UN Yearbook* (1965), 147.
[52] For an extensive treatment of the US and OECS justifications, see Scott Davidson, *Grenada: A Study in Politics and the Limits of International Law* (Aldershot, England: Avebury, 1987), 79-137.

in Grenada.[53] Thus, the initial US justifications did not include a doctrine of pro-democratic intervention. However, it was later revealed that the military action was carried out in order to free the people of Grenada from a military dictatorship.[54] The operation was condemned even by close US allies. For example, deploring the intervention, France pointed out that international law and the UN Charter authorized intervention only in response to a request from the legitimate authorities of a country, or upon a decision of the Security Council.[55] Also, British government stated that it regarded the US action as clearly illegal because "the invitation had come from those not entitled to make such a request on behalf of Grenada."[56] A number of states underlined that the armed intervention had denied the people of Grenada the right to self-determination.[57] As to the US argument of restoration of peace and order, the Polish representative, for example, characterizing the US action as aggression, expressed his government's regret that the US had presented "violation of basic norms of international law and the Charter of the United Nations" as "restoration of peace and order."[58] In the Security Council, the norms referred to by the majority of states condemning the intervention in the Assembly debate were prohibition of the use of force, prohibition of any act of aggression, the rule of non-intervention and the rule of non-interference in the internal affairs of states so as to deprive peoples of their right to self-determination.[59] However, as in the Dominican Republic case, the overwhelming condemnation could not be translated to a corresponding Council resolution, which would have deplored the intervention as violation of international law and the independence of Grenada due to the US veto.[60] Nonetheless, a General Assembly resolution was adopted, which condemned the intervention as a "flagrant violation of international law and the independence, sovereignty and territorial integrity" of Grenada, and reaffirmed the "sovereign and inalienable right of Grenada freely to determine its own political, economic and social system."[61]

The case of Panama differs from the above cases with the absence of an internal conflict at the time of the intervention, but relevant to the extent that the United States also claimed, among others,[62] to have been invited to restore democracy by the democratic government that had sworn at a US base some thirty minutes before the intervention

[53] For the situation in Grenada after the coup, see "Removal of Mr.Bishop – Establishment of Revolutionary Military Council – Reactions from other Caribbean States," *Keesing's* 30 (January 1984), accessed June 2011, http://www.keesings.com.

[54] UN Doc. S/PV.2489 (Oct. 26, 1983).

[55] *UN Yearbook* (1983), 212.

[56] Quoted in Oscar Schachter, *International Law* in Theory and Practice (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1991), 132.

[57] Among those were Yugoslavia, Guatemala, Venezuela, *UN Yearbook* (1983), 211-13.

[58] UN Doc. S/PV.2489 (26 October 1983), 21.

[59] *UN Yearbook* (1983), 214-216.

[60] Draft resolution sponsored by Guyana, Nigaragua and Zimbabwe, S/16077.Rev.1 (27 October 1983). Failed by 11 votes in favor, 1 against (United States) with 3 abstentions (Togo, United Kingdom, Zaire).

[61] UN Doc. A/RES/38/7 (2 November 1983).

[62] Other US justifications included protection of the US citizens, defending the integrity of the Panama Canal Treaty, stopping drug trafficking and bringing Noriega to justice on drug charges. "US Justification for Intervention," *Keesing's* 35 (December 1989), accessed June 2011, http://www.keesings.com.

began.[63] Defending democracy in Panama was therefore one of the justifications US presented.[64] Although the US did not argue for a legal right to use force to restore democratic governments, during the Security Council debate, the US representative asserted that it was the "sovereign will of the Panamanian people" that they were defending, and that the US was seeking to support their pursuit of democracy, peace and freedom.[65] The Panama intervention was condemned by the Soviet Union as a "flagrant violation of the fundamental principles of the UN Charter and the norms of relations between states." The intervention was also condemned by a large majority of the Latin American states.[66] Despite this wide disapproval of states, in the Security Council, a draft resolution condemning the US intervention failed.[67] A similar resolution was, however, adopted by the General Assembly. Recalling Article 2 (4) and the right of a state to determine freely its social, economic and political system and to conduct its foreign relations without any form of foreign intervention and interference, the resolution strongly deplored the intervention in Panama.[68] Many criticized the US claim to justify the action as a means to restore democracy in Panama as violating international norms of the use of force.[69]

Common to all these cases of military intervention is the alleged aim of restoring order or democracy, among others. In this respect, in all the interventions above, the United States seems to have based its claims on a broad interpretation of Article 2 (4), as reflected by the statement of the US representative, Ambassador Kirkpatrick, during the Grenada intervention, who at the time argued that "the prohibitions against the use of force in the UN Charter are contextual and not absolute," and that the language "or in any manner inconsistent with the purposes of the United Nations" in Article 2 (4) provides "ample justification for the use of force in pursuit of other values also inscribed in the Charter–freedom,

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63 For the details of the reinstatement of Guillermo Endara, who was widely held to have won the May 1989 presidential elections, whose results were annulled by General Manuel Noriega, the Panamanian dictator, see "US Invasion and Installation of Endara Government" and "Inauguration of President Endara – Confirmation of Election Results," *Keesing's* 35 (December 1989), accessed July 2011, http://www.keesings.com.

64 For all US justifications, see UN Doc. S/PV.2899 (20 December 1989), 31.

65 Ibid., 36.

66 The Organization of American States on 22 December 1989 "deeply deplored" the military action and urged the immediate cessation of hostilities and the commencement of negotiations, in a resolution opposed only by the United States, with 20 voting in favor and 6 abstaining (Costa Rica, Honduras, Guatemala, Venezuela, El Salvador, and Antigua and Barbuda. See "International Reactions to Invasion," *Keesing's* 35 (December 1989), accessed July 2011, http://www.keesings.com.

67 Draft resolution submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia, failed to be adopted by 10 (joining the sponsoring countries were Brazil, China and USSR) to 4 (Canada, France, United Kingdom, United States) with 1 abstention (Finland), UN Doc. S/21048 (22 December 1989).

68 UN Doc. A/RES/44/240 (29 December 1989). The resolution passed with 75 votes in favor and 20 against with 40 abstentions. Among the countries voting against were mostly the Western states, but also Dominica, El Salvador, Israel, Turkey and Japan. Abstaining countries were mainly the African states.

69 See Ved P. Nanda, "The Validity of US Intervention in Panama Under International Law," *American Journal of International Law* 84 (1990): 498; also, David J. Scheffer, "Use of Force After the Cold War: Panama, Iraq, and the New World Order," in *Right v. Might - International Law the Use of Force*, ed. Louis Henkin et. Al. (New York: Council on Foreign Relations,1991), 119.

democracy, peace."[70] Nevertheless, the states' responses and the UN practice did not lend support to a general right of unilateral pro-democratic intervention. On the contrary, it was maintained that the US interventions were not compatible neither with the norms governing the use of force between states. The UN reactions further demonstrate that enforcing universal values as such is not perceived as superseding the right of every people freely to choose their own form of government without outside interference. In this respect, commenting on the US invasion of Panama, Farer maintains that since the central structural principle of the postwar international legal system is the "equal sovereignty for all nation-states,"

> "One state cannot compromise another state's territorial integrity or dictate the character or the occupants of its governing institutions. If the law allows any exception to this constraint on state behavior, surely it is only where the exception is required to preserve the rule."[71]

It appears from above analysis that even when the issue is the enforcement of generally accepted virtuous values like peace, order and democracy, military action is not considered legal under the present norms governing use of force. Lack of support other of countries further confirms that there is no demonstrable evidence for *opinio juris*, sufficient to change the existing legal regime of the use of force.

4.2. Multilateral pro-democratic interventions

After the Cold War, with revitalization of the Security Council, the Security Council authorized collective action to restore democratically elected government in two cases –Haiti and Sierra Leone- whereby it determined the existence of a threat of international peace and security. Although in these instances, the Security Council undertook action particularly for the principle of democratic entitlement; its decisions are far from being explicit with regards to a right to foreign armed intervention to enforce democratic governance.

In 1991, the democratically-elected President Jean-Bertrand Aristide of Haiti was removed from office by a military *coup d'etat*. Following the failure of economic sanctions, the Security Council passed a resolution affirming the goal of international community to restore democracy in Haiti. To this end, the Security Council authorized the member states "to form a multinational force under unified command and … to use all necessary means."[72] However, close examination of the Security Council debates reveal the Council members' concern that possible erosion of state sovereignty should not set a precedent. The desire for avoiding a precedent can be seen from the emphasis in the texts of relevant resolutions on "the unique character of the present situation in Haiti and its deteriorating, complex, and

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[70] UN Doc. S/PV.2491 (28 October 1983), 31.

[71] Tom J. Farer, "Panama: Beyond The Charter Paradigm," *American Journal of International Law* 84 (1990): 507-508. For a similar view, see for example, Nanda, "The Validity of United States Intervention in Panama ," 498. For an opposite view that action against tyranny does not violate Article 2(4), see Anthony D'Amato, "The Invasion of Panama," 516-24.

[72] UN Doc. S/RES/940 (31 July 1994), para. 4.

extraordinary nature requiring an exceptional response."[73]

Some scholars point to the Economic Community of West African States (ECOWAS) intervention in Sierra Leone and its *ex post facto* approval by the Security Council as an example of an emerging collective right of pro-democratic intervention. In May 1997, the democratically-elected government of Sierra Leone was overthrown by a military junta. A week later, Organization of African Unity (OAU) authorized ECOWAS to take military action in order to restore the constitutional order.[74] In October 1997, the Security Council unanimously adopted Resolution 1132, in which it determined the situation as constituting a threat to international peace and security and demanded that "the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of democratically-elected Government and a return to constitutional order."[75] With the same resolution, the Security Council authorized ECOWAS under Chapter VIII of the Charter to ensure the implementation of the economic sanctions decided upon in the resolution.[76] Although the Security Council did not authorize ECOWAS military action, *ex post* endorsement of the military intervention, can be discerned from the statement of the President of the Security Council on 26 February 1998, which stated that "the Council welcome[d] the fact that the rule of the military junta has been brought to an end, and stress[ed] the imperative need for the immediate need for the restoration of the democratically-elected government." [77] Additionally, in subsequent resolutions, the Security Council welcomed "the return to Sierra Leone of its democratically elected President" [78] and commended "the positive role of ECOWAS and ECOMOG in their efforts to restore peace, security, and stability throughout the country at the request of the Government of Sierra Leone."[79]

One prominent scholar argues that the Sierra Leone case presents "the best evidence … of a fundamental change in international legal norms pertaining to "pro-democratic" intervention."[80] According to him, the fact that the Security Council resolutions did not this time bother "to take refuge in assertions of "extraordinary," "exceptional," or "unique" circumstances in invoking Chapter VII," further evinces that "coups against elected governments are now, *per se*, violations of international law, and that regional organizations are now licensed to use force to reverse such coups in member states."[81] However, most legal scholars contend that for customary international law regarding the legal consequences of a regime change to change, it takes more than a Security Council determination that a particular coup poses a threat to international peace and security. Scholars

[73] Ibid., 2. See also UN Doc. S/RES/841 (16 June 1993) where the Security Council characterized the situation of Haiti as "unique and exceptional" that warrants "exceptional measures."
[74] For details see Brad R. Roth, *Governmental Illegitimacy in International Law* (Oxford: Clarendon Press, 1999), 405-406.
[75] UN Doc. S/RES/1132 (8 October 1997), para.1.
[76] Ibid., para.8.
[77] The President of the Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/1998/5 (26 February 1998).
[78] UN Doc. S/RES/1156 (16 March 1998), para. 1.
[79] UN Doc. S/RES/1181 (13 July 1998), para. 5.
[80] Roth, *Governmental Illegitimacy in International Law*, 407.
[81] Ibid.

also argue that the Council's retrospective approval of certain actions cannot be taken as giving of a license to carry out such acts in future.[82]

Two cases of military interventions in the aftermath of the September 11 events, namely Afghanistan and Iraq, are relevant in so far as both resulted in drastic change in internal political structure, although neither of the operations was justified on the basis of regime change. In Afghanistan, military action was authorized by the Security Council and justified on the basis of individual and collective self-defense.[83] Following the US-led military intervention, the Security Council expressed its support for "a new government which should be broad-based, multiethnic and fully representative of all the Afghan people." [84] Contrary to the Afghanistan case, no authorization was issued by the Security Council for military action against Iraq.[85] Nonetheless, the Security Council resolution 1511 stated that the "Coalition Provisional Authority" would terminate upon the creation of an "internationally recognized, representative government established by the people of Iraq."[86] Subsequently, in Resolution 1546, the Security Council welcomed Iraq's transition to a democratically elected government and the Interim Government's commitment to establish a "federal, democratic, pluralist, and unified Iraq." Thus, through its relevant resolutions, Security Council appears to have recognized the regime change in Iraq despite the lack of an initial authorization for the use of force against Iraq.

Finally and most recently, the Security Council authorized military action against the Gaddafi regime of Libya. In February 2011, violent clashes between the security forces and the protesters erupted, resulting in many civilian deaths. Upon Gaddafi regime's harsh repression of the rebels, and to stop Gaddafi's forces from getting any further towards the city of Benghazi, the Security Council passed a resolution which imposed a no-fly zone and other measures over Libya. Acting under Chapter VII, the Council defined the situation as constituting a threat to international peace and security, and authorized all member states "acting nationally or through regional organizations or arrangements to take all necessary measures" to enforce the no-fly zone as well as to protect the civilians.[87] The resolution passed with 10 affirmative votes. Five members including two permanent members, namely Brazil, Germany, India, China and Russia abstained. The states abstained maintained they had serious reservations about the use of military action force.[88] While constituting the legal basis for the military intervention followed, it is noteworthy that the resolution explicitly indicated that the ensuing use of force to protect civilians and civilian-populated areas would not involve ground forces by stressing that military action would remain short of foreign occupation.[89]

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[82] See Michael Byers and Simon Chesterman, "You, the People," 289-90.
[83] UN Doc. S/RES/1368 (12 September 2001).
[84] UN Doc. S/RES/1378 (14 November 2001), para. 1.
[85] UN Doc. S/RES/1511 (16 October 2003), para. 1.
[86] UN Doc. S/RES/1546 (8 June 2004), para. 9.
[87] UN Doc. S/RES/1973 (17 March 2011), para. 8.
[88] "Obama Says 'Qaddafi Has A Choice' or UN Force Will Take Military Action," RFE/RL, 18 March 2011, accessed September 30, 2011, http://www.rferl.org/content/libya_no-fly_zone_united_nations_france_britain/2342541.html.
[89] UN Doc. S/RES/1973 (17 March 2011), para. 4.

It follows from the above cases that the Security Council has increasingly assumed a pro-active role in situations, which traditionally are not defined as threats to "international peace and security." Nevertheless, it seems far from clear that disruption of democracy or presence of a despotic government alone and by itself has been characterized as amounting to meet the Chapter VII threshold. For the Security Council authorizations in the above cases underlined other grounds such as the request of the government, the plight of refugee flows, self-defense as well, it remains unclear whether there emerged a collective right to use force to ensure democratic governance in states.

5. Conclusion

This article has examined the arguments for and against pro-democratic military interventions in the framework of the legal norms governing the use of force, and the practice in this context in order to discern whether or not there emerged a right to intervention for regime change, more specifically to install a democratic government.

The above analysis of the unilateral pro-democratic interventions hardly demonstrates evidence that restoring democracy forms the basis for a claim to a unilateral right to use force. Strong opposition raised by many states in the Security Council, the General Assembly resolutions condemning such acts, and presentation of other justifications along with restoration of democracy confirm that unilateral pro-democratic intervention is prohibited legally and not endorsed politically. In addition, despite the strong rhetoric of the consequentialist views of Article 2 (4), such analysis remains to be seriously problematic. First, the arguments do not substantiate that democracy has become a peremptory norm or an equivalent to self-determination, which is considered by many as a peremptory norm. Thus, it is difficult to argue the norm of prohibition of force as *jus cogens* is superseded or should be equally treated with the principle of democratic governance. Second and a more practical issue is the difficulty to determine the actual "will of the people" by the international community. Whether or not the faction foreign intervention is assisting in the target state represents the "will of the people" and intends to install a democratic government is yet to be seen for example in the Libyan case. Third, the view that states can unilaterally interpret Article 2 (4) as they see fit not only bears the grave political risk of arbitrary exercise of power, but also remains fundamentally in contradiction with the main principles of international legal norms. In this respect, the unilateral state practice demonstrates that the fear of weaker states that such a normative change would pave the way for great power abuse is not without basis.

As for the multilateral pro-democratic interventions, the practice shows that the authority of the Security Council does not translate to an automatic obligation to take military action to change nondemocratic governments. Thus far, in every case, the Security Council has evaluated the special circumstances to justify Chapter VII measures. This said, it should be noted that the Security Council practice does reflect substantial commitment to democratic governance, for it has pronounced violations of human rights due to the lack of democracy or denial of democratic processes -in exceptional instances- as constituting a threat to international peace and security. In such special cases, the Security Council has demonstrated willingness to authorize the states to take action or endorse the regional organizations' endeavors to end an ongoing human plight arising out of tyrannical rule. Having

broad discretion and authority under the UN Charter, the Security Council is legitimately equipped to interpret the circumstances as constituting threats to international peace and security. Nonetheless, the Council's critical deliberations as such are representation of the political will rather than substantiation of an emerging legal norm of forcible regime change. Hence, even for authorized multilateral interventions, it is not legally accurate to argue for a right to pro-democratic intervention. It can be inferred from the practice of multilateral interventions that the Security Council shall evaluate each instance carefully by examining the specifics of the situation under consideration, and determine whether or not Chapter VII measures are justified.

In an increasingly interdependent world, sovereignty and principle of domestic jurisdiction are no longer shields for undemocratic governments. However, the prohibition of the use of force and the principle of non-intervention are equally important for the right to self-determination, for democratic entitlement is ultimately a right vested in people. This is not to say that the international community should sit back and watch widespread human agony. It is just to underline that a unilateral right to pro-democratic intervention carries with it the danger of undermining the very right to self-determination for democratic governance. Thus, within the existing imperfect international order, pro-democratic collective action authorized by the UN Security Council in cases where there is widespread international support is both legally permissible and politically desirable.

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