

**TURKISH INTERVENTION BY INVITATION IN LIBYA:
INTERVENTION IN CIVIL WARS, THE VIOLATION OF
INEFFECTIVE ARMS EMBARGOES AND NON-
COMPLIANCE WITH DOMESTIC LAW**

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ABSTRACT

In the three decades since the end of the Cold War, there have been at least 47 occasions where States militarily intervened in the internal conflicts of other States at the request of their beleaguered governments. While using force in another State with the consent of its government do not in principle present an immediate challenge to the prohibition on the use of force between States, it is controversial whether a government challenged by an internal conflict or civil war can request foreign military assistance in order to bolster its hand against the opposition. This is due to the alleged implications of such assistance for the

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principle of the political independence of States and the right to self-determination of peoples.

Turkey's 2020 intervention in the Libyan conflict at the invitation of the Libyan government reveals highly relevant and ample evidence of State practice and *opinio juris* – components of customary international law – on the part of both the protagonists, Turkey and Libya, and third States, with regard to this controversy. Given its such importance, this article aims to assess the precedential value of this intervention for the purpose of contributing to determining the state of customary law on the subject, without necessarily attempting to assess all the relevant facts and circumstances in order to reach a conclusive judgement on the lawfulness of the intervention.

Another significance of this intervention is that it gives rise to some questions pertinent to the subject but under-addressed and under-conceptualised in the literature. Against the backdrop of this intervention, this article also aims to shed light on these questions. One of them is whether supporting a government in violation of an arms embargo in response to a prior breach of the embargo in support of the opposition can be deemed lawful. The other is whether the compliance of the consenting or the intervening State with its own domestic law matters for the purpose of the legality of an intervention under international law.

Keywords: Intervention by invitation, military assistance on request, compliance with arms embargoes, supremacy of international law, use of force.

TÜRKİYE'NİN LİBYA'YA DAVETLE MÜDAHALESİ: İÇ SAVAŞLARA MÜDAHALE, ETKİSİZ BİR SİLAH AMBARGOSUNU İHLAL VE İÇ HUKUKA AYKIRILIK MESELELERİ

ÖZ

Soğuk Savaşın bitiminden itibaren geçen yaklaşık 30 yıllık süre içerisinde, devletlerin diğer devletlerde cereyan eden iç çatışmalara bu devletlerin hükümetlerinin isteği üzerine askeri müdahalede bulunduğu en az 47 vaka vardır. Bir devlette o devletin hükümetinin rızası ile kuvvet kullanmak kural olarak devletler arası kuvvet kullanma yasağı bakımından büyük bir sorun teşkil etmezken, bir iç çatışma veya iç savaşla mücadele etmek zorunda kalan bir hükümetin elini muhaliflere karşı güçlendirmek amacıyla dışarıdan askeri yardım isteme hakkının olup olmadığı tartışmalıdır. Tartışma, bu tür bir yardımın

devletlerin siyasi bağımsızlığı ilkesi ve halkların kendi geleceklerini tayin etme hakkı üzerindeki iddia edilen etkilerinden kaynaklanmaktadır.

Türkiye'nin 2020 yılında Libya'daki iç çatışmaya Libya hükümetinin daveti üzerine gerçekleştirdiği askeri müdahale bu tartışmayı oldukça ilgilendirmektedir. Bu müdahale, hem esas aktörler Türkiye ve Libya hem de üçüncü ülkeler bakımından, konuyla ilgili önemli miktarda devlet uygulaması ve *opinio juris* (uluslararası örf ve adet hukukunun unsurları) örneğinin ortaya çıkmasına neden olmuştur. Müdahalenin bu öneminden dolayı makale, müdahalenin hukukiliği konusunda bütün ilgili gerçekleri ve şartları değerlendirip kati bir hükme varma çabasına girmeden, müdahalenin ilgili örf ve adet hukuku bakımından nasıl bir emsal teşkil ettiğini araştırmaktadır.

Bu müdahalenin bir diğer önemi ise konuyu ilgilendiren fakat literatürde yeterince değinilmemiş ve kavramsallaştırılmamış bazı meselelere yol açmasıdır. Makale, bu müdahale bağlamında, bu meseleleri de aydınlatmayı amaçlamaktadır. Bunlardan bir tanesi, bir silah ambargosunun muhalifler lehine ihlal edilmesine karşılık olarak ilgili ambargoya rağmen hükümeti desteklemenin hukuka uygun olup olmadığıdır. Bir diğeri de, müdahaleye rıza gösteren ve müdahaleyi gerçekleştiren devletlerin kendi iç hukuklarına uyup uymamasının bir müdahalenin milletlerarası hukuk bakımından hukukiliğini etkileyip etkilemeyeceğidir.

Anahtar Kelimeler: Davetle müdahale, talep üzerine askeri yardım, silah ambargolarını ihlal, milletlerarası hukukun üstünlüğü, kuvvet kullanma.

I. INTRODUCTION

In the three decades since the end of the Cold War, there have been at least 47 occasions where States militarily intervened in the internal conflicts of other States at the request of their beleaguered governments.¹ As widely acknowledged in the literature,² using force in the territory of another State at the request, or with the consent, of its government does not in principle present an immediate challenge to the prohibition on the use of force between States enshrined in Article 2(4) of

¹ See the author's forthcoming book *State Consent to Foreign Military Intervention during Civil Wars* (Brill).

² See, for example, ILA, 'Final Report on Aggression and the Use of Force' (Sydney Conference, 2018) 18; Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963) 317; Terry D Gill, 'Military Intervention with the Consent or at the Invitation of a Government' in Terry D Gill and Dieter Fleck, *The Handbook of the International Law of Military Operations* (2nd edn, OUP 2015).

the Charter of the United Nations (UN), which prohibits States ‘in their international relations’ from using force ‘against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’.³

What gives rise to contention in the literature is the right of a government challenged by an internal conflict or civil war to request foreign military assistance in order to bolster its hand against the opposition. A potential limitation to such a government’s right to request foreign military assistance is said to exist based on the argument that a consensual intervention that impacts on the outcome of a civil war would be inconsistent with the principle of non-intervention which safeguards States’ political independence and the right to self-determination of peoples which deems the people of a State as the only arbiter of their political status. In the scholarship, in the course of time since the adoption of the UN Charter, both based on this reason and on State practice, there has been wide support or sympathy, though with certain variations, for the understanding that military interventions aimed at influencing the outcome of a purely internal conflict or civil war, be it in favour of the rightful government, are problematic.⁴ Against the backdrop

³ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16, Article 2(4).

⁴ Ann Van Wynen Thomas and A J Thomas, *Non-Intervention: The Law and Its Impact in the Americas* (Sothorn Methodist University Press 1956) 215-40; Brownlie (n 2) finding the practice diverse and contradictory.; Rosalyn Higgins, ‘International Law and Civil Conflict’ in Evan Luard (ed), *The International Regulation of Civil Wars* (New York University Press 1972) 169-184 seeing the law as playing a small role in regulating the issue and reaching an elaborate conclusion based on practice.; Oscar Schachter, ‘The Right of States to Use Armed Force’ (1984) 82 MichLRev 1620, 1641; Louise Doswald-Beck, ‘The Legal Validity of Military Intervention by Invitation of the Government’ (1986) 56 BYIL 189; Antonio Tanca, *Foreign Armed Intervention in Internal Conflict* (Martinus Nijhoff Publishers 1993); Robert Jennings and Arthur Watts (eds), *Oppenheim’s International Law* (Volume 1, 9th edn, Longman 1996) 437-8; Pater Malanczuk, *Akehurst’s Modern Introduction to International Law* (First published in 1970, 7th revised edn, Routledge 1997) 325-6; Georg Nolte, *Eingreifen auf Einladung* (With an English Summary, Springer 1999); Georg Nolte, ‘Intervention by Invitation’, *Max Planck Encyclopedia of Public International Law* (Last updated January 2010) <<https://opil.ouplaw.com/view/10.1093/law/epil/9780199231690/law->

of a common practice by the intervening States of presenting different purposes/objectives for their interventions indicating their avoidance of being seen as influencing an internal conflict, some among these authors find the purpose of the intervention particularly consequential in the sense that the compatibility of the objectives of a consensual military intervention with principles such as non-intervention and self-determination is instrumental for its legality.⁵

Another group of authors, on the other hand, read State practice altogether differently. They reach the conclusion that so long as the requirements for the validity of consent are met, whatever the scale of the internal conflict in which the consenting government is involved, international law does not prohibit any kind of foreign military assistance to a legally legitimate government.⁶ They thus either do not view that

9780199231690-e1702?prd=EPIL>; Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Christopher Sutcliffe tr, Hart Publishing 2010) Ch 5; Karine Bannelier and Theodore Christakis, 'Under the UN Security Council's Watchful Eyes: Military Intervention by Invitation in the Malian Conflict' (2013) 26 LJIL 855, 864, fn 46 citing their 2004 study in French; Tom Ruys and Luca Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-led Military Intervention in Yemen' (2016) 65 ICLQ 61, 88-9; Karine Bannelier-Christakis, 'Military Interventions against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent' (2016) 29 LJIL 743; Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 84-119 accounting and acknowledging the controversy surrounding the practice.; Quoc Tan Trung Nguyen, 'Rethinking the Legality of Intervention by Invitation: Toward Neutrality' (2019) 24 JC&SL 201.; Luca Ferro, 'The Doctrine of 'Negative Equality' and the Silent Majority of States' (2021) 8 JUFIL 4.

⁵ See Bannelier-Christakis (n 4) 745-7.

⁶ Christopher J Le Mon, 'Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested' (2003) 35 NYUJIntL&Pol 741; Yoram Dinstein, *Non-International Armed Conflicts in International Law* (CUP 2014) 78-9; Gregory H Fox, 'Intervention by Invitation' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 828-9; Dapo Akande and Zachary Vermeer, 'The Airstrikes against Islamic State in Iraq and the Alleged Prohibition on Military Assistance to Governments in Civil Wars' (*EJIL: Talk!*, 2 February 2015) <<https://www.ejiltalk.org/the-airstrikes-against-islamic-state-in-iraq-and-the-alleged-prohibition-on-military-assistance-to-governments-in-civil-wars/>>; Pietro Pustorino, 'The Principle of Non-Intervention in Recent

general State practice indicates an avoidance from influencing by force the outcome of internal conflicts or that this avoidance inferred from the purposes presented by the States concerned is relevant for legal purposes. After all, State practice undertaken with extra-legal motives, ‘such as comity, political expediency or convenience’ cannot lead to the identification of a rule of customary international law.⁷

In respect to this controversy, the author of this article has shown in another study with reference to an extensive survey of State practice that from the involved States’ point of view, there barely is an instance where a consensual intervention has taken place in order to suppress a popular opposition group at the request of the government. Intervening States usually put forward claims such as that they intervene to counter terrorism, address a threat to their national security (sometimes with the claim of self-defence) or to the region, counter a prior illegal intervention, assist the inviting State in the exercise of its collective self-defence, rescue nationals or foreigners, maintain law and order, bring stability, protect vital infrastructure, prevent a humanitarian crisis or genocide, protect the democratically elected government, or ensure a secure environment for the elections, or that they are not taking a side in the internal conflict. The study in essence entrenches the purpose-based approach by showing why the objectives put forward for consensual interventions cannot be considered merely political and why they are also legally pertinent – a pertinence that comes from the fact that avoidance from influencing civil wars by force is what is in theory required by the principle of the political independence of States and the right to self-determination of peoples – and how the practice essentially confirms the existent law and what this entails. It also brings to light clear and ample evidence of *opinio juris* indicating the non-acceptance of influencing civil wars by force.⁸

Non-International Armed Conflicts’ 53 (2018) *QuestIntIL* 17, 20-1; ILA, ‘Final Report on Aggression and the Use of Force’ (Sydney Conference, 2018) 19; Erika de Wet, *Military Assistance on Request and the Use of Force* (OUP 2020) Ch 3.

⁷ ILC, ‘Draft Conclusions on Identification of Customary International Law, with Commentaries’ (2018) UN Doc A/73/10, Commentary to Conclusion 9, para 3.

⁸ See the author’s forthcoming book cited in n 1 above.

Turkey's 2020 intervention in the Libyan conflict at the invitation of the Libyan government reveals highly relevant and ample evidence of State practice and *opinio juris* (belief or acceptance of a practice as law), which are the components of customary international law, on the part of both the protagonists, Turkey and Libya, and third States, with regard to this controversy. Given its such importance, this article aims to assess the precedential value of this intervention for the purpose of contributing to determining the state of customary law on the subject, without necessarily attempting to assess all the relevant facts and circumstances in order to reach a conclusive judgement on the lawfulness of the intervention.

Another significance of this intervention comes from the fact that it gives rise to some important legal questions peripheral to the subject that are under-addressed and under-conceptualised in the literature. One of these questions is the legality of supporting a government in violation of an arms embargo in response to a prior breach of the embargo in support of the opposition. It comes from the fact that Turkey intervened in Libya in defiance of an arms embargo on the whole country imposed by the UN Security Council, in response to a prior intervention in violation of the embargo on the side of the opposition. The article in this respect attempts to show what this intervention reveals in regard to the question of non-compliance with an ineffective arms embargo.

Another such peripheral question the article seeks to shed light on is whether compliance of the consenting or the intervening State with its own domestic law matters for the purpose of the legality of an intervention under international law. It evaluates the matter against the backdrop of the criticism that the consent of the Libyan government to the Turkish intervention was expressed in a way that violated the Libyan Political Agreement signed by the key political players in the country.

The article begins with an account of the background to, the justifications for, and the international reaction to the intervention. It then respectively examines the implications of this invited intervention for the questions of intervention in civil wars, non-compliance with an ineffective arms embargo and non-compliance by the inviting or intervening state with its own domestic law.

Before beginning, however, it should be noted that consensual military interventions give rise to various doctrinal challenges that go beyond the above-mentioned issues such as those that relate to the conditions required for the validity of a consent given and for the legal legitimacy of a consenting government and its capacity to consent to

foreign military intervention. The scope of this article however is limited to the matters mentioned above.

II. BACKGROUND TO, JUSTIFICATIONS FOR, AND INTERNATIONAL REACTION TO, THE INTERVENTION

With the overthrow of the Gaddafi government in 2011 as a result of popular protests that eventually turned into an armed uprising, Libya was embroiled in a political conflict accompanied by armed violence over governmental power.⁹ On 17 December 2015, key political players, with the participation of armed groups and representatives from throughout the country, signed the Libyan Political Agreement providing the formation of a Government of National Accord (GNA).¹⁰ The UN Security Council welcomed the signing of the agreement forming the GNA ‘supported by the other institutions of state including the House of Representatives’, endorsed the GNA ‘as the sole legitimate government of Libya’ and ‘*call[ed] upon* Member States to cease support to and official contact with parallel institutions that claim to be the legitimate authority but are outside of the Agreement’. It moreover ‘*urge[d]* Member States to swiftly assist the [GNA] in responding to threats to Libyan security and to actively support the new government in defeating ISIL’ and all other entities associated with al-Qaeda, ‘upon its request’.¹¹

The signing of the Libyan Political Agreement, however, did not end the conflict in the country. Despite initially endorsing the Agreement in principle on 25 January 2016, the House of Representatives later failed to ratify the ministerial list for the GNA and instead opted to form its own rival government.¹² The House was elected in June 2014 and stipulated to be the legislative authority of the State in the Agreement.¹³ The rivalry between the House of Representatives and the GNA, both of which were

⁹ UCDP, ‘Libya: Government’ <<https://ucdp.uu.se/conflict/11346>>.

¹⁰ Libyan Political Agreement (signed 17 December 2015) <<https://unsmil.unmissions.org/sites/default/files/Libyan%20Political%20Agreement%20-%20ENG%20.pdf>>.

¹¹ UNSC Res 2259 (23 December 2015) UN Doc S/RES/2259, Articles 1, 3, 5 and 12.

¹² UCDP, ‘Libya: Government’ (n 9).

¹³ Libyan Political Agreement (n 10) Article 12.

engaged in the fight against other groups such as ISIL during 2016, led to armed clashes between the two in 2017, with the GNA being unable to assert real control outside the capital Tripoli.¹⁴ The hostilities between the two were triggered again in April 2019 when the Libyan National Army (LNA), the House of Representatives' major militia,¹⁵ launched an offensive to capture the capital from the GNA.¹⁶

Against the backdrop of this development, on 27 November 2019, the GNA and Turkish government signed a memorandum of understanding on security cooperation. Among others, it laid out the legal framework for the 'provision of training, consultancy, experience transfer, planning and material support by Turkey'.¹⁷

On 2 January 2020, the Turkish Parliament approved a Bill that allowed the deployment of Turkish troops to Libya and outlined the deliberations in light of which the decision had been taken. According to the Bill, the GNA is internationally recognised and the only and legitimate government of Libya in accordance with (the above-mentioned) UN Security Council Resolution 2259 (2015). The Resolution calls on member States to cease support to the parallel institutions outside the framework of the UN-facilitated Libyan Political Agreement, while urging them to support the GNA and other institutions referred to in the Agreement. Despite the efforts of political conciliation, the LNA, which bears an illegitimate characteristic for being outside the Libyan Political Agreement, continues its attacks with the support of foreign powers. The attacks by the LNA worsen the humanitarian situation while the hostilities benefit the terror groups ISIL and al-Qaeda. The LNA constitutes a threat to the region and Turkish companies and citizens, and other Turkish interests in Libya. The GNA requested military assistance in the fight against threats to the region, threats to the unity and stability of Libya, terrorist groups, illegal armed groups, illegal migration and

¹⁴ UCDP, 'Libya: Government' (n 9).

¹⁵ On the relationship between the two, see UCDP, 'Forces of House of Representatives' <<https://ucdp.uu.se/actor/5802>>.

¹⁶ UNSC, 'United Nations Support Mission in Libya – Report of the Secretary-General' (15 January 2020) UN Doc S/2020/41, para 2.

¹⁷ Memorandum of Understanding Between the Government of the Republic of Turkey and the Government of National Accord-State of Libya on Security and Military Cooperation (signed 27 November 2019) <<https://www.resmigazete.gov.tr/eskiler/2019/12/20191226-3.pdf>>, Article 4.

human trafficking. Turkish troops will be deployed in response to the GNA's request based on these considerations and within the framework of international law. The aim of the deployment is to eliminate the threat against Turkish interests emanating from illegitimate armed groups and terrorist organisations, to provide security in the face of risks such as mass migration, and to deliver humanitarian aid, among others.¹⁸

On 6 January 2020, the Turkish President announced the beginning of the deployment of troops. He said that Turkey was not sending its own combat forces and that 'different teams' were undertaking coordination tasks and were providing training to the Libyan forces. The purpose of the intervention was 'not to fight' but 'support the legitimate government and avoid a humanitarian tragedy'.¹⁹ Turkey, however, did not rule out more direct involvement in the conflict. The President had earlier said that they 'will evaluate all kinds of military support including ground, marine and air options if necessary'. He also accused foreign countries of 'supporting an illegal warlord, who is the pawn of certain nations, instead of the UN-recognised government'.²⁰ He accused Russia of sending mercenaries to Libya without the approval of the GNA and said that Turkey would not remain silent over this, while also accusing Sudan of sending troops to the country. He said the difference was that '[t]hey are all helping a war baron, whereas we are accepting an invitation from the legitimate government.'²¹

There has been considerable criticism by some States against the legality of the Turkish intervention. Thus, Egypt in a letter to the UN rejected the mentioned memorandum of understanding on security

¹⁸ The Grand National Assembly of Turkey, Karar No: 1238 (02 January 2020), produced in the Official Gazette of the Republic of Turkey, Sayı: 30997 (3 January 2020) <<https://www.resmigazete.gov.tr/eskiler/2020/01/20200103-15.pdf>> (In Turkish).

¹⁹ 'Turkey Begins Deploying Troops to Libya, Says Erdogan' (*DW*, 5 January 2020) <<https://p.dw.com/p/3Vk7K>>.

²⁰ 'Erdogan: Turkey will Increase Military Support to GNA if Needed' (*Al Jazeera*, 22 December 2019) <<https://www.aljazeera.com/news/2019/12/haftar-forces-seize-ship-libya-coast-turkish-crew-191222105449299.html>>.

²¹ 'Turkey to Send Troops To Libya Amid Warnings From Russia' (*RFE/RL*, 27 December 2019) <<https://www.rferl.org/a/erdogan-turkish-troops-libya-russia-opposition/30346782.html>>.

cooperation between Turkey and Libya on the ground that it was inconsistent with the Libyan Political Agreement for not being concluded by the Presidency Council as a whole and not being endorsed by the House of Representatives. Second ground was that the memorandum of understanding entails provisions that violate ‘the resolutions of the Security Council concerning Libya and, in particular’ the one imposing arms embargo.²²

Greece, Cyprus and Israel, in a joint statement, in addition to finding the deployment of troops by Turkey a violation of the UN arms embargo, the Libyan Political Agreement and related UN resolutions, stated that it was a threat to the region and would escalate the conflict. The statement also warned Turkey ‘from taking such action, which blatantly violates Libyan national sovereignty and independence’.²³

A statement by Saudi Arabia’s Foreign Ministry, finding ‘Turkish escalation’ a violation of UN Security Council decisions, affirmed that it ‘poses a threat to the security and stability in Libya and a threat to Arab and regional security, as it is an interference in the internal affairs of an Arab country in flagrant violation of international principles and covenants’.²⁴

²² UNGA, ‘Note Verbale Dated 23 December 2019 from the Permanent Mission of Egypt to the United Nations Addressed to the Secretary-General’ (24 December 2019) UN Doc A/74/628.; For another Egyptian criticism of the intervention claiming the deployment of foreign terrorist fighters and militias by Turkey from Syria to Libya, see UNSC, ‘Note Verbale Dated 10 March 2020 from the Permanent Mission of Egypt to the United Nations Addressed to the President of the Security Council’ (11 March 2020) UN Doc S/2020/196.; For the Turkish response, see UNSC, ‘Letter Dated 23 March 2020 from the Permanent Representative of Turkey to the United Nations Addressed to the President of the Security Council’ (24 March 2020) UN Doc S/2020/227.

²³ ‘Mitsotakis, Anastasiades and Netanyahu: The Turkish Decision to Deploy Troops in Libya Presents a Dangerous Threat to Regional Stability’ (*ANAMPA*, 3 January 2020) <<https://www.amna.gr/en/article/419459/Mitsotakis-Anastasiades-and-Netanyahu-The-Turkish-decision-to-deploy-troops-in-Libya-presents-a-dangerous-threat-to-regional-stability>>.

²⁴ ‘No Deal: Libya’s Parliament Votes Against Turkish Involvement’ (*Al Jazeera*, 4 January 2020) <<https://www.aljazeera.com/news/2020/01/deal-libya-parliament-votes-turkish-involvement-200104145706382.html>>.

A joint statement by the Foreign Ministers of France, Germany, Italy and the UK, without naming Turkey, urged States to ‘respect and enforce the UN arms embargo’ and warned that the ‘[c]ontinuing outside interference is fuelling the crisis.’ It also stated that ‘[t]he more the Libyan warring parties rely on foreign military assistance, the more they give external actors undue influence on sovereign Libyan decisions’.²⁵

The League of Arab States, in a resolution, without naming Turkey, stressed that sending troops would violate the Libyan Political Agreement and ‘relevant international resolutions’, and escalate the conflict. It also rejected ‘external interference, which facilitates the transfer to Libya of extremist foreign terrorist fighters and violates international arms embargoes and thereby threatens the security of that country’s neighbours and the region’.²⁶

In a UN Security Council meeting, France, referring ‘in particular to Turkey’, deplored the violations of the arms embargo and urged for foreign interference and military support that fuel the conflict to stop; Belgium denounced the mentioned memorandum of understanding for infringing ‘the democratic rights of other States’; and Tunisia emphasised that ‘it is important to respect the principle of non-interference in the internal affairs of countries’ and reiterated its ‘rejection of any external interference in the internal affairs of Libya or any acts that would further fuel the conflict’.²⁷

Cyprus, Egypt, France, Greece and the United Arab Emirates, in a joint statement, reiterated that the memorandum of understanding on security cooperation between Turkey and Libya was ‘in contravention of international law and the UN arms embargo in Libya’ and undermine the

²⁵ French Ministry for Europe and Foreign Affairs, ‘Joint Statement by the High Representative of the European Union for Common Foreign and Security Policy and the Ministers of Foreign Affairs of France, Germany, Italy and the United Kingdom’ (7 January 2020) <<https://www.diplomatie.gouv.fr/en/country-files/libya/news/2020/article/libya-joint-statement-by-the-high-representative-of-the-european-union-for>>.

²⁶ UNGA and UNSC, ‘Identical Letters Dated 13 January 2020 from the Permanent Representative of Iraq to the United Nations Addressed to the Secretary-General and the President of the Security Council’ (17 January 2020) UN Doc A/74/650–S/2020/84, Articles 4 and 5

²⁷ UNSC Verbatim Record (30 January 2020) UN Doc S/PV.8710, 8, 14 and 18.

regional stability. They also ‘condemned Turkey’s military interference in Libya, and urged Turkey to fully respect the UN arms embargo, and to stop the influx of foreign fighters from Syria to Libya’, stating that ‘[t]hese developments constitute a threat to the stability of Libya’s neighbours in Africa as well as in Europe.’²⁸

The criticism thus mainly revolved around the arguments that the intervention violated the arms embargo imposed by the UN Security Council;²⁹ was not consistent with the Libyan Political Agreement, for example, it was not endorsed by the House of Representatives; constituted an unlawful interference in Libya’s internal affairs; implicated or violated Libya’s sovereignty and independence; and escalated the crisis. There have also been some other statements by some States, such as the US, Turkey, Russia, Italy and Germany, similarly expressing a will for an end to foreign interference on any side in the internal conflict, including with an emphasis on the right of the Libyan people to determine their own future independently from foreign meddling.³⁰

To reflect the context of the criticism, it would be apt to note that among the countries that criticised the Turkish intervention, Greece, Cyprus, Israel and Egypt had already been critical of Turkey for signing with Libya a memorandum of understanding on maritime boundaries, which was in contradiction of their interests in the Mediterranean Sea.³¹ Also, some of the criticising States were publicly known for militarily, financially or politically backing the LNA against the GNA.³²

²⁸ Greek Ministry of Foreign Affairs, ‘Joint Declaration adopted by the Ministers of Foreign Affairs of Cyprus, Egypt, France, Greece and the United Arab Emirates’ (11 May 2020) <<https://www.mfa.gr/en/current-affairs/statements-speeches/joint-declaration-adopted-by-the-ministers-of-foreign-affairs-of-cyprus-egypt-france-greece-and-the-united-arab-emirates-11052020.html>> paras 6 and 7.

²⁹ See UNSC Res 1970 (26 February 2011) UN Doc S/RES/1970, Article 9 imposing an arms embargo on Libya.

³⁰ For the relevant sources, see Ferro (n 4) 19.

³¹ See, for example, ‘Turkish Navy Orders Israeli Ship out of Cyprus’s Waters’ (*Al Jazeera*, 15 December 2019) <<https://www.aljazeera.com/news/2019/12/turkish-navy-deports-israeli-ship-cyprus-territorial-waters-191215062253581.html>>.

³² See Ramy Allahoum, ‘Libya’s War: Who is Supporting Whom’ (*Al Jazeera*, 9 January 2020) <<https://www.aljazeera.com/news/2020/01/libya-war-supporting-200104110325735.html>>.

In response to the criticism of the League of Arab States which pointed out, among others, the breach of the UN arms embargo by Turkey, the Turkish Foreign Ministry stated that ‘the letter and spirit of the UN Security Council Resolution 2259, primarily, intend to support and strengthen the’ GNA. ‘On the other hand, contrary to the Libyan Political Agreement and UNSC Resolution 2259, it is obvious that the Arab League has remained silent and failed to decisively support international legitimacy against the months-long, foreign supported military offensive’ by the LNA.³³ Thus, despite not directly answering the criticism that its intervention was in breach of the UN arms embargo or not explaining in detail how its intervention constituted one of the exemptions to the embargo, Turkey seemed to have read the resolution 2259 calling for foreign support to the GNA in responding to threats to Libyan security allowing it to provide military support to the GNA despite the embargo. This seems to be the case also based on the above-mentioned Bill authorising the deployment of Turkish troops.

The GNA, for its part, confirmed its commitment to the UN Security Council resolutions, including the arms embargo they imposed. However, it complained about foreign support to ‘the aggression’ by the Haftar-led LNA in violation of the embargo and reiterated its right as the recognised and legitimate government ‘to defend the sovereignty and territory of Libya and protect the country’s citizens by entering ... into openly declared alliances, in accordance with international law and through legitimate and transparent channels’.³⁴ Its delegation in a UN Security Council meeting stated that ‘many States have violated’ the embargo ‘and supplied the aggressor forces attacking the city of Tripoli with sophisticated weapons ... even some States do not possess ... The actions that the [GNA] is taking to confront this aggression are an obligation in line with the natural right of every Government to defend its

³³ Turkish Ministry of Foreign Affairs, ‘Statement of the Spokesperson of the Ministry of Foreign Affairs, Mr. Hami Aksoy, in Response to a Question Regarding the Extraordinary Session of the League of Arab States on Libya at the Level of Permanent Representatives’ (31 December 2019) <http://www.mfa.gov.tr/sc_-83_-arap-ligi-konseyi-nin-libya-konulu-toplantisi-hk-sc.en.mfa>; Similarly see (n 22) UN Doc S/2020/227.

³⁴ UNSC, ‘Letter Dated 1 April 2020 from the Permanent Representative of Libya to the United Nations Addressed to the President of the Security Council’ (2 April 2020) UN Doc S/2020/269.

people.³⁵ Thus, for Libya the UN arms embargo did not mean that it must refrain from procuring foreign military assistance when Libya was subjected to a foreign intervention in violation of the embargo and international norms; in such a situation, it can defend itself with the help of other States in the exercise of its right to sovereignty.

In respect of the criticism that the signing of the memorandum of understanding on security cooperation with Turkey was in contravention with the Libyan Political Agreement, the Libyan government, in respect of another memorandum of understanding signed with Turkey on maritime delimitation at which the same criticism was levelled, stated that '[i]ts actions were consistent with the Libyan Political Agreement ... which authorizes the Presidency Council of the Government of National Accord to sign memorandums of understanding as the supreme executive authority, the Constitutional Declaration issued in 2011, and national legislation that regulates the operation of the Government.'³⁶

The external interference in the country was so pervasive that the UN envoy to Libya in May 2019 described the situation as 'a textbook example of foreign interference today in local conflicts' with between 'six and 10 countries are permanently interfering in Libya's problem' by funnelling arms, cash and military advice to the country.³⁷ The UN Panel of Experts on Libya found, in addition to other violations of the sanctions, that the majority of arms transfers to the opposition came from Jordan and the United Arab Emirates.³⁸ Its report states that it was '[i]n response to' these 'illicit transfers' that the 'GNA approached Turkey' and received military material from it in violation of the arms embargo.³⁹

³⁵ UNSC Verbatim Record (18 November 2019) UN Doc S/PV.8667, 14.

³⁶ UNGA, 'Letter Dated 26 December 2019 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations Addressed to the Secretary-General' (27 December 2019) UN Doc A/74/634, 3.

³⁷ 'UN Envoy: 'Libya a Textbook Example of Foreign Intervention'' (*Al Jazeera*, 23 May 2019) <<https://www.aljazeera.com/news/2019/05/envoy-libya-textbook-foreign-intervention-190523164926246.html>>.

³⁸ UNSC, 'Letter Dated 29 November 2019 from the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011) addressed to the President of the Security Council' (9 December 2019) UN Doc S/2019/914, para 61.

³⁹ *ibid* para 62.; Also see UNSC, 'Letter Dated 8 March 2021 from the Panel of Experts on Libya Established Pursuant to Resolution 1973 (2011)

The Panel also found that there had been Chadian and Sudanese armed groups in the country in support of both sides alike.⁴⁰

Seeking a political solution to the crisis, in the Berlin Conference on Libya held on 19 January 2020, 12 countries interested in the conflict, including Turkey, and the international organisations the UN, the AU, the EU and the League of Arab States, admitting that ‘the external interferences ... continue to be a threat to international peace and security’, ‘commit[ted] to refraining from interference in the armed conflict or in the internal affairs of Libya’. The participants, welcoming the ceasefire between the parties to the conflict in Libya, also committed to respect and implement the arms embargo established by the UN Security Council.⁴¹ The UN Security Council endorsed the conclusions of this conference and demanded ‘all Member States not to intervene in the conflict or take measures that exacerbate the conflict’.⁴²

After a ceasefire in October 2020 and the establishment of an interim Government in March 2021 mandated to prepare nationwide elections by the end of 2021, a second Berlin Conference on Libya was held in June 2021. It called for the withdrawal of all foreign forces and mercenaries from Libya – a call to which Turkey introduced a reservation – reaffirmed its ‘commitment to refrain from interference in the conflict or in the internal affairs of Libya and urge all international actors to do the same’, and committed to respect the arms embargo imposed by the UN Security Council.⁴³ The UN Security Council recalled this commitment not to interfere in the internal affairs of Libya, called ‘the

Addressed to the President of the Security Council’ (8 March 2021) UN Doc S/2021/229.

⁴⁰ *ibid* 2.

⁴¹ Annex to UNSC, ‘Letter Dated 22 January 2020 from the Permanent Representative of Germany to the United Nations Addressed to the President of the Security Council’ (22 January 2020) UN Doc S/2020/63, Conclusions 4, 6, 9 and 18.

⁴² UNSC Res 2510 (12 February 2020) UN Doc S/RES/2510, Articles 2 and 10; Similarly see UNSC Res 2542 (15 September 2020) UN Doc S/RES/2542.; For a similar call without reference to the Berlin Conference, see UNSC Res 2509 (11 February 2020) UN Doc S/RES/2509, Article 6.

⁴³ Annex to UNSC, ‘Letter Dated 23 June 2021 from the Permanent Representative of Germany to the United Nations Addressed to the President of the Security Council’ (24 June 2021) UN Doc S/2021/595, Conclusions 5, 8 and 35.

withdrawal of all foreign forces and mercenaries from Libya' in accordance with the October 2020 ceasefire agreement, and demanded 'all Member States not to intervene in the conflict or take measures that exacerbate the conflict'.⁴⁴

III. THE QUESTION OF INTERVENTION IN CIVIL WARS

As mentioned in Section I, whether a government embattled in a civil war can request foreign military assistance merely in order to bolster its hand against the opposition gives rise to controversy, with the principle of the political independence of States and the right to self-determination of peoples being at stake in such a situation. State practice concerning the Turkish intervention in Libya, the account of which was given in the previous section, supports the idea of the non-permissibility of fulfilling such a request. This is reflected in the fact that some States criticised the intervention for the reason that it constituted an unlawful interference in Libya's internal affairs, or implicated or violated Libya's sovereignty or independence. Some States emphasised the point that the Libyan people should determine their own future independently from foreign interference on any side. Such reaction to the intervention clearly reflects on the part of these States that a consensual intervention in a civil war could be unlawful on account of being a violation of the principle of the political independence of States or the right to self-determination of peoples. To be more precise, the language used by these States at the least shows that a valid consent by a rightful government does not necessarily make an intervention compatible with the relevant principles of international law such as non-interference in the internal affairs of States, respect for the political independence of States and the right to self-determination of peoples. The particularities of each case need to be taken into account to judge whether a consensual intervention complies with these principles and thus is lawful.

Not only third States' view but also Turkey's view gives weight to the idea that consensual interventions aimed at influencing a civil war should not be allowed. As mentioned in Section II, Turkey seemed to

⁴⁴ UNSC Res 2570 (16 April 2021) UN Doc S/RES/2570, Preamble, and Articles 12 and 13; Similarly see UNSC Res 2571 (16 April 2021) UN Doc S/RES/2571.

made a conscious effort not to be seen as intervening solely to influence a civil war, by depicting its intervention, in line with Libya's request, as one about countering a prior unlawful intervention in the country, countering terrorism, addressing the threats to the region and Turkish interests in Libya, preventing a humanitarian crisis, maintaining the unity and stability of Libya, and preventing illegal migration and human trafficking. This kind of behaviour, that is presenting different purposes/objectives for the intervention implying an avoidance to be seen as intervening solely to influence the outcome of a civil war, is already a common practice among States arguably with legal relevance as mentioned in Section I.⁴⁵

All in all, therefore, it could be said that the State conduct surrounding this intervention constituted a strong precedent for the view that foreign States are not allowed to intervene in civil wars merely to influence their outcome, be it at the valid request of the lawful government.

IV. THE QUESTION OF NON-COMPLIANCE WITH AN INEFFECTIVE ARMS EMBARGO

With Article 25 of the UN Charter, the UN member States have undertaken 'to accept and carry out' the Council's decisions in accordance with the Charter.⁴⁶ With Article 103, they have given superiority to their Charter obligations, and thus also those arising from the Council's decisions, over any other international agreement.⁴⁷ Accordingly, whatever agreement an intervening State makes with a consenting State where a civil war is waging, the obligations arising from a UN Security Council resolution addressing the conflict in question will supersede it. The Institute of International Law's resolution on military assistance on request which provides that the provision of assistance is prohibited when it 'would be inconsistent with a Security Council resolution relating to the specific situation, adopted under Chapter VII of

⁴⁵ See n 8 above and the surrounding text.

⁴⁶ UN Charter (n 3) Article 25.

⁴⁷ *ibid* Article 103; See Johann Ruben Leiaë and Andreas Paulus, 'Article 103' in Bruno Simma and others (eds), *The Charter of the United Nations: A Commentary* (Volume II, 3rd edn, OUP 2012) 2123-2124.

the Charter of the United Nations'⁴⁸ thus merely reflects this obvious conclusion.

Under Chapter VII of the UN Charter, the UN Security Council is empowered to take measures to maintain or restore international peace and security. Under these powers, the Council, since the end of the Cold War, has increasingly been engaging in civil wars by, for example, reinforcing peace processes, authorising peacekeeping operations, or imposing financial sanctions or arms embargoes.⁴⁹ Arms embargoes, for example, can considerably limit the effectiveness of foreign interventions in civil wars. They could be imposed against the whole country and thus could prevent the supply of arms to any party, including the government,⁵⁰ as well as only against the opposition groups.⁵¹

However, the lack of political will may result in ineffective implementation by States of the arms embargoes imposed by the Council.⁵² Added to this is that the UN Security Council rarely takes effective measures against violations of arms embargoes, particularly when the interests of the permanent members of the Council are at stake.⁵³ Thus, it could very well be that an armed opposition group could be receiving foreign military assistance in its fight against the government in violation of an arms embargo imposed on the country, with the Council not being able to prevent it. The question is whether the law in such a situation entails the government to abide by the embargo and not to obtain any military assistance to defend itself against an unlawful foreign intervention which could result in its ousting.

⁴⁸ IIL, 'Military Assistance on Request' (Resolution, Session of Rhodes, 2011) Article 3(2).

⁴⁹ See James Cockayne, Christoph Mikulaschek and Chris Perry, 'The United Nations Security Council and Civil War: First Insights from a New Dataset' (International Peace Institute, September 2010) 30-1.

⁵⁰ See, for example, UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973, para 13.

⁵¹ See, for example, UNSC Res 2216 (14 April 2015) UN Doc S/RES/2216, para 14.

⁵² See, for example, UN Doc S/2019/914 (n 38) accounting the non-compliance of sanctions by various States in respect to the civil war in Libya.

⁵³ Judith Vorrath, 'Implementing and Enforcing UN Arms Embargoes: Lessons Learned from Various Conflict Contexts' (SWP Comment, No.23, May 2020) 3.

On this point, it has already been convincingly argued in the literature, based on the textual interpretation of the UN Charter, preparatory works of the Charter, and State practice, that the measures taken by the UN Security Council under Chapter VII do not in themselves suspend the exercise of the right to self-defence of a State.⁵⁴ For such measures to prevent a victim State from receiving foreign military assistance in the exercise of its right to self-defence under Article 51 of the UN Charter, they must effectively prevent an armed attack from occurring. In other words, ‘the Council’s primacy is conditional upon its effectiveness’.⁵⁵ Recent State practice concerning the 1995 Croatian intervention by invitation in Bosnia and Herzegovina against the rebels claimed to be supported by Serbia and Montenegro and the 2011 Ethiopian intervention by invitation in Somalia against al-Shabaab confirms this position.⁵⁶

The point being the ‘effectiveness’ of the measures taken by the Council, it could also be argued that a government beset by a civil war is not obliged to conform to an arms embargo when the embargo is violated to its detriment and with disregard to the non-intervention principle, regardless of whether the intervention in support of the opposition reaches the level of an ‘armed attack’ warranting a response in self-defence under Article 51 of the UN Charter.

The Libyan government’s above-mentioned response to the criticism that its request of military assistance from Turkey violated the UN-imposed arms embargo reflects this point. The Libyan government

⁵⁴ Marco Roscini, ‘On the Inherent Character of the Right of States to Self-Defence’ (2015) 4 *CJICL* 634, 653-9; Terry D Gill, ‘Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers Under Chapter VII of the Charter’ (1995) 26 *NYIL* 33, 94-106.

⁵⁵ Gill, ‘Legal’ (n 54) 97 drawing this conclusion from, among others, the fact that the text of the UN Charter refers to ‘effective’ collective measures and that the preparatory works of the Charter show that the understanding of the member States was that the Council would be able to take swift and effective measures in maintaining peace and security.; Also see Craig Scott and others, ‘A Memorial for Bosnia: Framework of Legal Arguments Concerning the Lawfulness of the Maintenance of the United Nations Security Council’s Arms Embargo on Bosnia and Herzegovina’ (1994) 16 *MichJIntlL* 1, 63-7.

⁵⁶ See Chapter 7, Section 3.6 of the author’s forthcoming book cited in n 1.

claimed that while it was mindful of its obligations under the embargo, it could request military assistance despite the embargo in order to defend Libya in the exercise of its right to sovereignty and independence when it was subjected to a foreign intervention in violation of the embargo.⁵⁷ The fact that Libya did not seem to particularly invoke ‘self-defence’ under Article 51 of the UN Charter but claimed to ‘defend’ itself against the foreign intervention in support of the Haftar-led LNA’s ‘aggression’ should not change the conclusion. As said, it is about whether the embargo is *effectively* implemented or not.⁵⁸ It is not expected for a beleaguered government to stay put when the State it represents is subjected to a foreign military intervention in violation of both the non-intervention principle and a UN-imposed arms embargo. Being put at a disadvantage with the unfair implementation of the law could also go against the general principles of law concerning equality and fairness.

Sometimes, an apparent breach by a State of a UN Security Council-imposed arms embargo could also be about the interpretation of the Council’s relevant decisions on the part of that State. Thus, despite not directly answering the criticism that its intervention was in breach of the UN arms embargo or not explaining in detail how its intervention constituted one of the exemptions to the embargo, Turkey implicitly claimed that it had not violated the Council’s decisions by supporting the GNA, because the relevant resolution of the Council actually intended to urge foreign States to provide support to the GNA for Libya’s security and its intervention was in line with this resolution.⁵⁹ However, the UN Panel of Experts on Libya certainly was not in agreement with this interpretation, as it found Turkey in violation of the embargo.⁶⁰

V. THE QUESTION OF NON-COMPLIANCE WITH DOMESTIC LAW

It would be a tautology to state that a State has to comply with its own domestic law when requesting assistance from another State. Likewise, the assisting State is bound by its own domestic law when fulfilling that request. The relevant question is whether non-compliance

⁵⁷ See n 34-35 above and the surrounding text.

⁵⁸ See n 55 above and the surrounding text.

⁵⁹ See n 33 above and the surrounding text.

⁶⁰ See n 39 above and the surrounding text.

with domestic law can affect the legality of a requested intervention under international law. According to the principle of supremacy of international law, rules deriving from international law, such as those deriving from the agreement between the consenting and the intervening State, must prevail over domestic law.⁶¹ It follows that the intervening State can rely on the consent it received without having to conduct an inquiry into whether the consent comports to the consenting State's domestic law.⁶²

Article 3 of the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) also confirms the superiority of international law over domestic law. It provides that '[t]he characterization of an act of a State as internationally wrongful ... is not affected by the characterization of the same act as lawful by internal law.'⁶³ The Commentary to Article 20 of ARSIWA on consent, however, states that '[s]ometimes the validity of consent has been questioned because the consent was expressed in violation of relevant provisions of the State's internal law.'⁶⁴ The Institute of International Law's 2009 Report on intervention by invitation interprets this statement as enabling 'the conclusion that consent may only be given in accordance with obligations incumbent on the consenting State'.⁶⁵ However, it has to be noted that, as the Commentary to ARSIWA goes on to state, the validity of consent depends on the 'rules of internal law to which, in certain cases, international law refers'.⁶⁶ As such, when the two comments by the ILC are read in conjunction, it is understood that internal law can prevail over international law only to the extent that the latter defers to the former. The international agreement between the consenting and consented State, for example, may defer to certain rules of internal law on various aspects of the intervention, or may generally subject the international legality of the intervention to internal law.

⁶¹ See Ashley S Deeks, 'Consent to the Use of Force and International Law Supremacy' (2013) 54 *HarvIntLJ* 1, 3 and 6-8.

⁶² See *ibid.*

⁶³ ILC, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, With Commentaries' UN Doc A/56/10 (2001) Article 3.

⁶⁴ *ibid* Commentary to Article 20, para 5.

⁶⁵ IIL, 'Intervention by Invitation' (Rapporteur: Gerhard Hafner, Session of Naples, 2009) 395, para 71.

⁶⁶ ILC, 'Draft Articles' (n 63) Commentary to Article 20, para 5.

Otherwise, such a referral in international law is contained in Article 46 of the Vienna Convention on the Law of Treaties (VCLT). It permits a State to invoke its internal law to invalidate its consent to be bound by a treaty if the consent was given in manifest violation of a fundamentally important rule of its internal law ‘regarding competence to conclude treaties’.⁶⁷ Such an exception thus is accompanied by strict conditions and only relates to the procedural but not substantial rules of domestic law. The VCLT, otherwise, as a general rule prohibits a State from invoking its internal law to justify its failure to perform its treaty obligations.⁶⁸

The application of this conclusion to State consent to intervention, at first sight, could be seen as doubtful. The VCLT governs treaties, that is, international agreements concluded between States in written form,⁶⁹ while the consent to intervention could be expressed both formally (in the form of a treaty)⁷⁰ and informally.⁷¹ However, the VCLT acknowledges that the fact that it does not apply ‘to international agreements not in written form, shall not affect: (a) the legal force of such agreements; (b) the application to them of any of the rules set forth in the present Convention of which they would be subject under international law independently of the Convention’.⁷² Therefore, the rules of the VCLT could nevertheless apply to the informal agreement between the intervening and consenting State so long as those rules are also part of the customary international law applying to all international agreements.⁷³ State consent to the commission of an act by another State has the legal power to preclude the international wrongfulness of the act in question, so long as the act remains within the bounds of the consent given, as provided for in Article 20 of ARSIWA.⁷⁴ It would be apt, therefore, to

⁶⁷ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Article 46.

⁶⁸ *ibid* Article 27.

⁶⁹ See *ibid* Articles 1 and 2(1)(a).

⁷⁰ For examples of such treaties and intricacies that arise therefrom, see Eliav Lieblich, ‘Intervention and Consent: Consensual Forcible Intervention in Internal Armed Conflicts as International Agreements’ (2011) 29 *BostonUIntlLJ* 337, 357-62.

⁷¹ See Chapter 2, Section 5.2 of the author’s forthcoming book cited in n 1.

⁷² The VCLT (n 67) Article 3.

⁷³ See Lieblich (n 70) 362-4.

⁷⁴ ILC, ‘Draft Articles’ (n 63) Article 20.

consider, in conjunction with other rules of customary international law, such as *pacta sunt servanda*, that State consent to intervention, given in whatever form, amounts to a legally binding international agreement to which the above-mentioned rules of the law of treaties, enshrined in the VCLT and arguably in customary international law, apply.⁷⁵

The debate around compliance with domestic law with respect to intervention by invitation is not merely one with hypothetical consequences. Finland's domestic law, for example, has in almost absolute terms prevented Finland from requesting military assistance from, or providing military assistance to, other States until a wide range of changes were introduced into its existing law in 2017.⁷⁶ To give an example of a potential breach of domestic law, the US's actions against al-Qaeda members in other States with their consent seem to have disregarded the host States' domestic laws protecting individuals from being rendered to another State, subjected to lethal force and detained in secret facilities.⁷⁷

Among others, based on such problems in practice producing undesirable consequences for the rule of law, Deeks proposes a change to the current positive international law – a change that could materialise through the modification of the VCLT or customary international law.⁷⁸ Accordingly, intervening States should be required to conduct an inquiry into the domestic law of the consenting State. If the latter's domestic law does not comport to the consent given or if the latter consents to the conduct of an act that it itself cannot undertake under its domestic law, the former has to abstain from fulfilling the wishes of the latter, such as putting down a rebellion.⁷⁹ However, so long as the incentives to preserve the supremacy of international law in international fora exist, and by the time a proposal such as that of Deeks becomes part of positive law, non-compliance with domestic law in consenting to foreign intervention remains to be only the problem of domestic law.

⁷⁵ Also see Lieblich (n 70) 362-4.

⁷⁶ See Heini Tuura, 'Finland's Changing Stance on Armed Measures: How Does it Correspond to International Law?' (2018) 87 *ActScandJurisGent* 154; Also see Deeks (n 61) 23, fn 79, citing Mexico's and Philippines's Constitutions restricting the governments' power to request the deployment of foreign troops to their territory.

⁷⁷ See Deeks (n 61) 27-30.

⁷⁸ *ibid* 57-8.

⁷⁹ *ibid* 33-60.

As for State practice, there is some internal law-based criticism or rejection of consensual interventions that generally relates to the consenting State's constitutional rules concerning competence to request military assistance. This seems to be in line with the above-mentioned right of a State to invoke a fundamentally important procedural rule of its internal law concerning competence to conclude agreements to invalidate its consent when the consent was given in manifest violation the rule to be invoked. However, while this right entitles the consenting State itself to invoke such a procedural rule, the mentioned criticism or rejection came from third States. Ukraine and the US, for example, criticised 2014 Russian intervention in Ukraine's Crimea region, among others, based on the fact that the Crimean authorities' consent to such an intervention was not acceptable under the Ukrainian Constitution.⁸⁰

In respect of Turkey's consensual intervention in Libya, some States claimed that the way in which the consent given by Libya's government was inconsistent with the Libyan Political Agreement signed by the key political players in the country that led to the formation of that government. It was claimed, for example, that the consent of Libya was not endorsed by the House of Representatives as required under the Libyan Political Agreement – even though the House at the time of the intervention was on the other side of the conflict.⁸¹ Libyan government, on the other hand, claimed in response that '[i]ts actions were consistent with the Libyan Political Agreement ... which authorizes the Presidency Council of the Government of National Accord to sign memorandums of understanding as the supreme executive authority, the Constitutional Declaration issued in 2011, and national legislation that regulates the operation of the Government.'⁸² Based on the above-mentioned principle of supremacy of international law, it remains doubtful whether *third States'* allegations of the violations of domestic law, even if manifest, would help render a consensual intervention illegal under international law.

⁸⁰ See UNSC Verbatim Record (3 March 2014) UN Doc S/PV.7125, 5 and 15.

⁸¹ See nn 22, 23 and 26 above and the surrounding text.

⁸² See n 36 above and the surrounding text.

VI. CONCLUSION

Using force in the territory of another State with the consent of its government does not in principle present an immediate challenge to the prohibition on the use of force between States. However it is controversial whether a government challenged by an internal conflict or civil war can request foreign military assistance to bolster its hand against the opposition. This is due to the alleged implications of such assistance for the principle of the political independence of States and the right to self-determination of peoples. Based on this reason and State practice, some authors found military interventions aimed at influencing the outcome of a purely internal conflict or civil war, be it in favour of the rightful government, legally problematic.

This article attempted to situate Turkey's 2020 consensual intervention in Libya within the bounds of this controversy, without necessarily attempting to assess all the relevant facts and circumstances to reach a final judgement on the lawfulness of the intervention. It found for the purpose of contributing to determining the state of customary international law on the subject that this intervention, which revealed highly relevant and ample *opinio juris* on the part of the involved States, constitutes a strong precedent against the legality of such interventions. This is reflected in the fact that some States criticised the intervention for the reason that it constituted an unlawful interference in Libya's internal affairs, or implicated or violated Libya's sovereignty or independence. Some States emphasised the point that the Libyan people should determine their own future independently from foreign interference on any side. The language used by these States at the least shows that a valid consent by a rightful government does not necessarily make an intervention compatible with the relevant principles of international law such as non-interference in the internal affairs of States, respect for the political independence of States and the right to self-determination of peoples. The particularities of each case need to be taken into account to judge whether a consensual intervention complies with these principles and thus is lawful.

Not only third States' view but also Turkey's view gives weight to the idea that consensual interventions aimed at influencing a civil war should not be allowed. Turkey seemed to make a conscious effort not to be seen as intervening solely to influence a civil war, by depicting its intervention, in line with Libya's request, as one about countering a prior unlawful intervention in the country, countering terrorism, addressing the

threats to the region and Turkish interests in Libya, preventing a humanitarian crisis, maintaining the unity and stability of Libya, and preventing illegal migration and human trafficking. This kind of behaviour, that is presenting different purposes/objectives for the intervention implying an avoidance to be seen as intervening solely to influence the outcome of a civil war, is already a common practice arguably with legal relevance long adhered to by other States.

Another significance of the Turkish intervention in Libya comes from the fact that it gives rise to some pertinent legal questions that are under-addressed and under-conceptualised in the literature. The first of these concerns the legality of supporting a government in violation of an arms embargo in response to a prior breach of the embargo in support of the opposition. On this point, it has already been convincingly argued in the literature, including with reference to State practice, that for the relevant binding measures, such as arms embargoes, taken by the UN Security Council to prevent a State victim of an armed attack from requesting foreign military assistance in the exercise of its right to self-defence, they must effectively prevent an armed attack from occurring.

In this respect, the Libyan government claimed that while it was mindful of its obligations under the embargo, it could request military assistance despite the embargo in order to defend Libya in the exercise of its right to sovereignty and independence when it was subjected to a foreign intervention in violation of the embargo. The fact that Libya did not seem to particularly invoke 'self-defence' under Article 51 of the UN Charter should not change the conclusion, as it is about whether the embargo is *effectively* implemented or not. It is not expected for a government to stay put in the face of an unlawful intervention against the country it represents in such a situation. Being put at a disadvantage with the unfair implementation of the law could also go against the general principles of law concerning equality and fairness.

Sometimes, an apparent breach by a State of a UN Security Council-imposed arms embargo could also be about the interpretation of the Council's relevant decisions on the part of that State, as Turkey seemed to interpret the relevant decisions of the Council as allowing it to provide military assistance to Libya in the particular situation, something the UN Panel of Experts on Libya appeared not to agree with.

The other question the article sought to shed light on is about whether the compliance of the consenting or the intervening State with its own domestic law matters for the purpose of the legality of an

intervention under international law. It evaluated the matter against the backdrop of the criticism that the consent of the Libyan government was expressed in a way that violated the Libyan Political Agreement signed by the key political players in the country, a criticism the Libyan government did not accept. Given the superiority of international law over domestic law in the positive law except for the situations where the relevant rules of international law defers to domestic law, the article argued that it remains doubtful whether third States' allegations of the violations of domestic law, even if manifest, would help render an intervention illegal under international law.

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