Introduction

Principle and Practice of Armed Intervention and Consent

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I. RECENT EVENTS AND POSSIBLE SHIFTS OF THE LAW

In the past decade, numerous outside states, coalitions, or regional organisations have launched military operations in reliance on the (real or alleged) request, or 'invitation', of one of the parties embroiled in military strife. The most prominent among these are as follows. The French operation 'Serval' in Mali of 2013 was a response to a 'request for assistance from the Interim President of the Republic of Mali'.[1] In 2014, Russia intervened in Crimea (Ukraine) at the request of a pro-Russian Ukrainian president, which resulted in the annexation of the peninsula.[2] Eight years later, an appeal for help by the secessionist regions in eastern Ukraine was a (minor) topos in the Russian narrative that seeks to justify its fully fledged invasion of the country.[3] A US-led coalition launched 'Operation Inherent Resolve' against so-called Islamic State in Iraq and Syria in 2014 at the express request of Iraq.[4] Meanwhile, the Russian interveners in Syria were explicitly pointing to the Syrian government's request for military assistance in combating

[1] Identical letters of 11 January 2013 from the Permanent Representative of France to the United Nations, addressed to the Secretary-General and the President of the Security Council (UN Doc. S/2013/17).

[2] Ukrainian President Viktor Yanukovych later confirmed he had asked Russia for support on 1 March 2014: Caro Kriel and Vladimir Isachenkov, 'Associated Press Interview: Yanukovych Admits Mistakes on Crimea', 2 April 2014, available at www.apnews.com, quoted in Christian Marxsen, 'The Crimea Crisis', *Heidelberg Journal of International Law* 74 (2014), 367–91 (374, 376).

[3] Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations, addressed to the Secretary-General, containing, as an annex, the text of the address of the President of the Russian Federation, Vladimir Putin, to the citizens of Russia, informing them of the measures taken in accordance with Article 51 of the Charter of the United Nations in exercise of the right of self-defence (UN Doc. S/2022/154).

[4] See letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations, addressed to the Secretary-General (UN Doc. S/2014/440):

the terrorist organisation 'Islamic State' (IS).[5] The Saudi-led military intervention in Yemen (2015) was at the invitation of Yemeni President Abdrabbuh Mansur Hadi.[6] Finally, the operation 'Restore Democracy', launched by the Economic Community of West African States (ECOWAS) in The Gambia in 2017, was in support of President Adama Barrow, who had won democratic elections but been prevented from taking office by the regime of former President Yaha Jammeh.[7]

Such interventions 'by invitation', 'on request', or 'with consent' have long attracted scholarly interest.[8] Still, the state of the law has remained unsettled,

> We have previously requested the assistance of the international community. While we are grateful for what has been done to date, it has not been enough. We therefore call on the United Nations and the international community to recognize the serious threat our country and the international order are facing. . . . [T]he Iraqi Government is seeking to avoid falling into a cycle of violence. To that end, we need your support in order to defeat ISIL and protect our territory and people. In particular, we call on Member States to assist us by providing military training, advanced technology and the weapons required to respond to the situation, with a view to denying terrorists staging areas and safe havens.

See further letter dated 20 September 2014 from the Permanent Representative of Iraq to the United Nations, addressed to the President of the Security Council of 22 September 2014 (UN Doc. S/2014/691).

5 Letter dated 15 October 2015 from the Permanent Representative of the Russian Federation to the United Nations, addressed to the President of the Security Council (UN Doc. S/2015/792):

> I have the honour to inform you that, in response to a request from the President of the Syrian Arab Republic, Bashar al-Asad, to provide military assistance in combating the terrorist group Islamic State in Iraq and the Levant (ISIL) and other terrorist groups operating in Syria, the Russian Federation began launching air and missile strikes against the assets of terrorist formations in the territory of the Syrian Arab Republic on 30 September 2015.

See also identical letters dated 14 October 2015 from the Permanent Representative of the Syrian Arab Republic to the United Nations, addressed to the Secretary-General and the President of the Security Council (UN Doc. A/70/429-S/2015/789): 'The Russian Federation has taken a number of measures in response to a request from the Government of the Syrian Arab Republic to the Government of the Russian Federation to cooperate in countering terrorism and to provide military support for the counter-terrorism efforts of the Syrian Government and the Syrian Arab Army.'

6 Yemeni President Abdrabbuh Mansur Hadi requested support up to military intervention in a text dated 24 March 2015, cited by the intervening governments in identical letters dated 26 March 2015 from the Permanent Representative of Qatar to the United Nations, addressed to the Secretary-General and the President of the Security Council (UN Doc. S/2015/217). See also UN Security Council (UN SC) Res. 2140 of 26 February 2014 and Res. 2201 of 15 February 2015.

7 The ECOWAS initiative was commended by UN SC Res. 2337 of 19 January 2017.

8 Since the contemporary classic study, Georg Nolte, *Eingreifen auf Einladung* (Heidelberg: Springer 1999), three more recent monographs have addressed the topic: Eliav Lieblich, *International Law and Civil Wars: Intervention and Consent* (London: Routledge 2013); Erika de Wet, *Military Assistance on Request and the Use of Force* (Oxford: OUP 2020); Chiara Redaelli, *Intervention in Civil Wars: Effectiveness, Legitimacy and Human Rights* (Oxford: Hart 2021). In addition, all standard books on the use of force devote a chapter to the

and the interplay of relevant legal elements such as sovereignty and responsibility to protect (R2P), non-intervention, the use of force, self-determination, atrocity crimes, and the scope and relevance of consent might be under revision. These shifts are partly the result of macro changes to the international legal order as a whole, perhaps shaped by the rise of China and a decline of Western power. These changes in the political landscape and the law are likely to impact on the rules governing 'consented' military intervention and assistance such as arms transfer.

Against this background, this book assembles three essays that apply, respectively, a critical historical analysis (Chapter 1, by Dino Kritsiotis), qualitative case studies (Chapter 2, by Olivier Corten), and large-N empirics (Chapter 3, by Gregory H. Fox) to the subject. The different approaches of these three pieces illuminate its less-addressed angles, while confirming its conceptual and factual complexities.

The following sections prepare the ground for the detailed studies to come.

II. SOME KEY ISSUES OF LEGAL CONCERN

Debates relating military intervention by invitation with international law have taken several turns during the twentieth and early twenty-first centuries. Speaking doctrinally, the 'invitation', or request for military support, extended by one of the groups embroiled in a conflictual situation may, under certain

issue: Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge: CUP 6th edn 2017), 125–30; Christine D. Gray, *International Law and the Use of Force* (Oxford: OUP 4th edn 2018), ch. 3, 'Invitation and Intervention' (75–119); Christian Henderson, *The Use of Force and International Law* (Cambridge: CUP 2018), ch. 9, 'Consent to Intervention and Intervention in Civil Wars' (349–78); Olivier Corten, *Le droit contre la guerre: L'interdiction du recours à la force en droit international contemporain* (Paris: Pedone 3rd edn 2020), ch. V, 'L'intervention consentie' (415–515), trans. Olivier Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart 2nd edn 2021), ch. 5, 'Intervention by Invitation' (247–315). Moreover, sixteen authors wrote 'Impulses' on the topic in the *Heidelberg Journal of International Law* 79 (2019), 635–711, and the *Journal on the Use of Force and International Law* 7 (2020), 1–155, was a special issue devoted to the problem. The Institut de droit international (IDI) has tackled the issue three times: first in its 1900 session in Neufchâtel, published as IDI, 'Droits et devoirs des Puissances étrangères, au cas de mouvement insurrectional, envers les gouvernements établis et reconnus qui sont aux prises avec l'insurrection' (rapporteurs: M. Arthur Desjardins and Marquis de Olivart), *Annuaire de l'Institut de droit international* 18 (1900), 227–30; second in the 1975 session in Wiesbaden, published as IDI, 'The Principle of Non-Intervention in Civil Wars' (rapporteur: M. Dietrich Schindler), *Annuaire de l'Institut de droit international* 56 (1975), 131–3; and last in the 2011 session in Rhodes, published as IDI, 'Intervention by Invitation' (rapporteur: M. Gerhard Hafner), *Annuaire de l'Institut de droit international* 74 (2011), 359–63. Finally, the International Law Association (ILA) established the Committee on Use of Force: Military Assistance on Request in 2019 (chairs: Claus Kreß and Vera Rusinova): see ILA, 'ILA Committees', available at www.ila-hq.org/index.php/committees.

conditions, function as a consent to behaviour that would otherwise breach the prohibitions to intervene or to use military force. But the legal explanation of this effect and the exact requirements in law are in flux.

A. *The Power to Consent Revisited*

Generally, consent by the 'owner' of a legal good is said to foreclose any infringement of that legal good (i.e., *volenti non fit iniuria*). It is therefore normally assumed that a government which properly represents the state can allow the use of force and the intervention in 'its' territory. Along this line, the International Court of Justice (ICJ) held, in its *Nicaragua* judgment of 1986, that intervention is 'allowable at the request of the government of a State' but not upon request by the armed opposition.[9] This principle is widely accepted as a cornerstone in the legal field. Nevertheless, several questions about the nature, limits, and legal consequences of such consent remain. Likewise, the power and the possible loss of power to consent have been problematised more recently, especially with a view to the harmful effects of such consent – which, after all, leads to a disregard of territorial integrity, peace, and human rights.

1. The Nature of Consent

There is a rough agreement that consent simultaneously forms the legal basis and defines the legal limits of the exception from the prohibitions on the use of force and on intervention. In its 2005 judgment on *Armed Activities on the Territory of the Congo*, the ICJ explained consent as 'validating that presence [of troops] in law'.[10] The ICJ also stated that such consent is limited in time, 'geographic location and objectives'.[11] When the parameters of the consent are

[9] *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), merits, judgment of 27 June 1986, ICJ Reports 1986, 14, para. 246:

> As the Court has stated, the principle of non-intervention derives from customary international law. It would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State – supposing such a request to have actually been made by an opposition to the regime in Nicaragua in this instance. Indeed, it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition.

[10] ICJ, *Armed Activities on the Territory of the Congo* (DR Congo v. Uganda), merits, judgment of 19 December 2005, ICJ Reports 2005, 168, para. 105.

[11] *Ibid.*, para. 52 (emphasis added). See also *ibid.*, para. 105.

overstepped, an (armed) intervention becomes illegal.[12] But an open question is whether the lawfulness of military intervention by invitation is a negative rule element, such that permissible action does not fall under Article 2(1) and 2(4) of the UN Charter in the first place, or whether a valid invitation (consent) serves only as a ground precluding the wrongfulness of a breach of those principles or, finally, whether it merely forms an excuse, removing the consequence of state responsibility.[13] This question has, until recently, lingered in the background unresolved.[14]

In line with the first view, the official governmental position of the United Kingdom on its military action against the so-called Islamic State of Iraq and the Levant (ISIL) was not only that an invitation is an 'exception' to the prohibition on the use of force in international relations, but also that 'international law is equally clear that this prohibition [on the use of force] *does not apply* to the use of military force by one State on the territory of another if the territorial State so requests or consents'.[15] That view considers an absence of consent as being, in effect, 'intrinsic' in the prohibitions of the use of force and of intervention.[16]

[12] Cf. Art. 20 ARSIWA: consent precludes wrongfulness only 'to the extent that the act remains within the limits of that consent'. Under Art. 8(2) lit. e) of the Statute of the International Criminal Court (ICC), '[t]he use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, *in contravention of the conditions provided for in the agreement* or any extension of their presence in such territory beyond the termination of the agreement' (emphasis added) constitutes the crime of aggression. See also Art. 3 lit. e) of UN General Assembly (UN GA) Res. 3314 (XXIX) of 14 December 1974 ('Definition of Aggression').

[13] For the doctrinal issues, see the references cited at nn. 14–19.

[14] For detailed examinations, see: Florian Kriener, 'Invitation: Excluding ab Initio a Breach of Art. 2(4) UNCh or a Preclusion of Wrongfulness?', *Heidelberg Journal of International Law* 79 (2019), 643–6; Federica Paddeu, 'Military Assistance on Request and General Reasons against Force: Consent as a Defence to the Prohibition of Force', *Journal on the Use of Force and International Law* 7 (2020), 227–69; Patrick M. Butchard, 'Territorial Integrity, Political Independence, and Consent: The Limitations of Military Assistance on Request under the Prohibition of Force', *Journal on the Use of Force and International Law* 7 (2020), 35–73.

[15] Prime Minister's Office, *Summary of the UK Government's Position on the Military Action against ISIL*, Policy paper, 25 September 2014 (emphasis added), available at www.gov.uk/government/publications/military-action-in-iraq-against-isil-government-legal-position/summary-of-the-government-legal-position-on-military-action-in-iraq-against-isil.

[16] For the term 'intrinsic', see Paddeu, 'Military Assistance on Request' (n. 14). The view that the invitation precludes the existence of any intervention or use of force has long been the mainstream in scholarship. See, e.g., Théodore Christakis and Karine Mollard-Bannelier, '*Volenti non fit injuria*? Les effets du consentement à l'intervention militaire', *Annuaire Français de Droit International* 50 (2004), 102–37; Georg Nolte, 'Intervention by Invitation', in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Public International Law* (Oxford: OUP, online edn 2010), para. 16; International Law Association, *Final Report on Aggression and the Use of Force* (Sydney: ILA 2018), 18; Henderson, *Use of Force* (n. 8), 349; Laura Visser, 'May the Force Be with You: The Legal Classification of Intervention by

The opposing view is that an invitation merely forms a 'ground precluding the wrongfulness', to use the terminology of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA).[17] At first sight, this conceptualisation seems incompatible with the peremptory character of the prohibition on the use of force: the prohibition cannot, according to Article 26 ARSIWA, be overcome by a simple 'justification' but only by an equally 'peremptory' counter-rule.[18]

One question is therefore whether the host state's request (its invitation) is best understood as consent in terms of the laws of treaties, like the consent to be bound set out in Article 11 of the 1969 Vienna Convention on the Law of Treaties (VCLT), or is more akin to 'consent' in terms of state responsibility (as mentioned in Art. 20 ARSIWA),[19] or whether it is something altogether different. In his contribution to this book, Dino Kritsiotis examines in more detail the nature of consent and its juridical consequences for the legal assessment of a given intervention and invites us to probe how consent relates to the various substantive provisions of international law. His particular point

Invitation', *Netherlands International Law Review* 66 (2019), 21–45; Corten, *Le droit contre la guerre* (n. 8), 420.

[17] Terry D. Gill, 'Military Intervention at the Invitation of a Government', in Terry D. Gill and Dieter Fleck (eds), *The Handbook of the International Law of Military Operations* (Oxford: OUP 2010), 229–32 (229); Gregory H. Fox, 'Intervention by Invitation' in Marc Weller (ed.), *The Oxford Handbook on the Use of Force* (Oxford: OUP 2015), 816–44 (816); Paddeu, 'Military Assistance on Request' (n. 14), esp. 256 and 268; Eliav Lieblich, 'Why Can't We Agree on when Governments Can Consent to External Intervention? A Theoretical Inquiry', *Journal on the Use of Force and International Law* 7 (2020), 5–25 (11). On the additional legal questions raised by the qualification of the invitation as a ground precluding wrongfulness, see n. 19.

[18] Unlike the Charter-based exception of self-defence, it is not clear whether consent operates on the same normative level as the prohibition itself, and therefore ARSIWA does not as obviously as Art. 51 UN Charter 'define' the reach of the peremptory norm: see Dino Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume, section II.C, pp- 41–47. for Art. 51, see Christian Tams, 'Self-Defence against Non-State Actors: Making Sense of the "Armed Attack" Requirement' in Mary-Ellen O'Connell, Christian Tams and Dire Tladi, *Self-Defence against Non-State Actors*, Max Planck Trialogues on the Law of Peace and War (Anne Peters and Christian Marxsen, series eds), vol. 1 (Cambridge: CUP 2019), 90–173 (95–6; 100, fn. 57; 110–11).

[19] Additionally, the exact doctrinal operation of consent as a 'ground precluding wrongfulness' is still underexplored. It could function as a 'justification' (removing the breach), and it would then be a primary rule (a guide for conduct), properly speaking. It could be a mere 'excuse' for the non-performance and serve only to exclude the consequences of state responsibility (a secondary rule, properly speaking). See Federica Paddeu, 'Clarifying the Concept of Circumstances Precluding Wrongfulness (Justifications) in International Law' in Lorand Bartels and Federica Paddeu (eds), *Exceptions in International Law* (Oxford: OUP 2020), 203–24.

of focus is the prohibition of force and of intervention, as well as the principle of self-determination, which is now a given under international law.[20]

2. Effectiveness and Legitimacy: Determining the Value of Consent

The *Nicaragua* principle is that only the government's invitation can lead to a lawful intervention.[21] This privilege is, at first sight, in line with the general international law principles on the status of a government, its power to represent the state, and its capacity to engage the state under international law.

However, the legal terrain has been notoriously murky – confused by inconsistent state practice on the identification of governments. On the one hand, a government need not be recognised by other states to 'exist' in international law; on the other hand, outsiders use pronouncing or withholding recognition of a political group as an important political tool that also has legal effects. The absence of a certain 'level of external recognition by other states' seems to undermine a government's ability to consent to the use of force on its territory.[22] And the external recognition of a political group claiming to govern and represent a state depends not only on that group's 'effectiveness' (its territorial control over the country or significant portions) but also on qualitative criteria (often called 'legitimacy'). A fresh example of legitimacy concerns is the international reaction to the Taliban's military victory over the then Afghan government in August 2021. The Taliban's proclamation of a new Sharia-guided government has been met with other states' reluctance to 'recognise' the Taliban as the Afghan government. For example, when evacuating German nationals, Germany relied on the 'continuous consent' of the overthrown and no longer effective government as a legal basis for a German military presence in the country, ignoring whether or not the Taliban government might grant it any fresh consent.[23]

Several authors have considered either the effectiveness *or* the legitimacy of a government as self-sufficient conditions for the power to invite.[24] Relatedly, the effectiveness and legitimacy of a government might be seen as interlinked, so that a lack of effectiveness might be compensated by factors of legitimacy

[20] Kritsiotis, 'Intervention and the Problematisation of Consent', Chapter 1 in this volume.
[21] See above, n. 9 and text. It is a point of discussion in the following chapters whether *Nicaragua* also allows a governmental invitation in the midst of a civil war. See below, section II.B.2.
[22] Henderson, *Use of Force* (n. 8), 357.
[23] *Antrag der Bundesregierung: Einsatz bewaffneter deutscher Streitkräfte zur militärischen Evakuierung aus Afghanistan*, Bundestags-Drucksache 19/32022 of 18 August 2021.
[24] Redaelli, *Intervention in Civil Wars* (n. 8), 151 and 254; de Wet, *Military Assistance on Request* (nn. 8), 73 and 220.

(which would in turn impact on the government's power to invite military assistance – more on this below in section II.A.3, at pp. 9–11).[25]

The follow-up question then is about the exact parameters of 'legitimacy'. The contemplated legitimacy criteria relate both to the origin of the group's power (whether it emerged from democratic elections or from a military coup) and to the modes by which the group exercises its powers. A special concern is any breach of international law committed by the government that delegitimises it and might lead to a forfeiture of its power to consent (see section II.A.3, pp. 9–11).

The situation becomes even more complicated when various groups compete. The Arab Spring of 2011 – which fuelled the upheavals in Libya and Syria, the constitutional crisis in Venezuela, and further recent political events – has exacerbated the fragility of the relevant principles and confused their application to those cases. While outside states mostly avoided recognising the opposition in those states as 'the government', states officially called and thus recognised certain groups as 'legitimate interlocutor', 'legitimate representative' of the people, 'legitimate opposition', and the like.[26] With such terminology, outside states may have sought both to elevate the political pedigree of the opposition and to mitigate the risk that their delivery of arms to those groups could breach the prohibition on intervention (see section II.B.5, pp. 18–19).[27]

To sum up, the political and legal assessment of military interventions launched as recently as 2017 has taken account of human rights protection, democracy, and rule of law. It remains to be seen whether the expected rise of non-Western state actors – notably, China – will reverse this legal trend. The chapters in this book seek to illuminate the more specific interaction of these

[25] In this sense, see Nolte, 'Intervention by Invitation' (n. 16), para. 20; Lieblich, *International Law and Civil Wars* (n. 8), 235. With a view to the Yemeni case, see Tom Ruys and Luca Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen', *International and Comparative Law Quarterly* 65 (2016), 61–98 (97), arguing that, 'for purposes of assessing the validity of a request for military assistance, the degree of international recognition can compensate for substantial loss of control over territory'.

[26] Dapo Akande, 'Which Entity is the Government of Libya and Why Does It Matter?' EJIL:Talk!, 16 June 2011, available at www.ejiltalk.org/which-entity-is-the-government-of-libya-and-why-does-it-matter/; Stefan Talmon, 'Recognition of the Libyan National Transitional Council', ASIL Insights, 16 June 2011, available at www.asil.org/insights/volume/15/issue/16/recognition-libyan-national-transitional-council; Sebastián Mantilla Blanco, 'Rival Governments in Venezuela: Democracy and the Question of Recognition', Verfassungsblog, 28 January 2019, available at https://verfassungsblog.de/rival-governments-in-venezuela-democracy-and-the-question-of-recognition/; Federica Paddeu and Alonso Dunkelberg, 'Recognition of Governments: Legitimacy and Control Six Months after Guaidó', OpinioJuris, 18 July 2019, available at http://opiniojuris.org/2019/07/18/recognition-of-governments-legitimacy-and-control-six-months-after-guaido/.

[27] Cf. Henderson, *Use of Force* (n. 8), 358–9.

principles with the concepts of sovereignty and effectiveness, which stand in tension with human rights protection, democracy, and rule of law.

3. A Government's Loss of the Power to Consent

An outgrowth of the legitimacy debate sketched out thus far is the question if whether an incumbent government's authority to invite military assistance is conditional on that government's respect for certain material principles anchored in international law. A government – despite being 'effective' – arguably loses its power to invite foreign assistance when it exercises its governmental powers in an illegitimate way – notably, by violating international law. Indeed, it is increasingly held that at least some types of international law violation 'can adversely affect the government's legal capacity to express consent to external intervention',[28] or might, under certain conditions, even mean that government 'forfeit[s] its right to ask for foreign intervention'.[29] Relevant breaches are notably those in the realm of ius cogens: atrocity crimes (genocide[30] and crimes against humanity) and violations of other peremptory norms (such as apartheid).[31] It is less likely, but not out of the question, that 'ordinary' violations of the population's human rights[32] and less-than-grave breaches of international humanitarian law (IHL) might also taint the power to invite. Besides violations of ius cogens, the legal debate has attached a special significance to the principle of self-determination. This principle is often conceived of as prohibiting military support for a government that faces intense and widespread popular revolt, because such support would violate the self-determination of the people.[33] Arguably, the principle is also addressed at the government itself and taints its power to invite military assistance in such a situation.[34] Such incapacitation of the government to consent can be

[28] Lieblich, *International Law and Civil Wars* (n. 8), 187–8, 228; Eliav Lieblich, 'The International Wrongfulness of Unlawful Consensual Interventions', *Heidelberg Journal of International Law* 79 (2019), 667–70 (668).
[29] Redaelli, *Intervention in Civil Wars* (n. 8), 160.
[30] De Wet, *Military Assistance on Request* (n. 8), 135, fn. 60.
[31] Nolte, 'Intervention by Invitation' (n. 16), para. 22.
[32] For human rights as parameters of legitimacy and thus of the power to invite, see notably Oona A. Hathaway, Rebecca Crootof, Daniel Hessel, Julia Shu and Sarah Weiner, 'Consent Is Not Enough: Why States Must Respect the Intensity Threshold in Transnational Conflict', *University of Pennsylvania Law Review* 165 (2016), 1–47 (33–4); Redaelli, *Intervention in Civil Wars* (n. 8), 251.
[33] See below, section II.B.2, pp. 12–14, on the doctrine of 'negative equality'.
[34] Nolte, 'Intervention by Invitation' (n. 16), para. 22.

bolstered by the idea that a state cannot delegate an authority which it itself does not possess (i.e., *nemo plus iuris ad alium transferre potest, quam ipse habet*) – namely, the 'authority' to violate human rights and commit war crimes in its territory.[35]

The request and the accompanying consent to military action inside the requesting state's territory are unilateral acts under international law. A unilateral act of extending an 'invitation' to assist in breaches of international law can defensibly be qualified as being unlawful in itself. If the invitation extends to committing violations of peremptory norms, it can be argued that the invitation (the unilateral act) is in itself invalid.

Generally speaking, unilateral acts that conflict with peremptory norms are invalid (alternatively, 'void' or 'null'). The ILC has stated as much in its Draft Conclusion 16 on Jus Cogens.[36] The ILC has derived this legal qualification from the analogous rule contained in Article 53 VCLT (which uses the term 'void') for a treaty that conflicts with a peremptory norm of general international law.[37] Invalidity (alternatively, 'voidness' or 'nullity') means that the act is deprived of any legal effect.[38] Application of these principles leads to the conclusion that a requesting state may not, as a matter of lex lata, consent to an intervening state joining it, for example, in violating peremptory norms of international law or committing other crimes under international law. Thus requests for assistance and the accompanying consent to military action in such scenarios must be considered illegal or void (i.e., of no legal effect).

The Syrian war that has raged since 2011 does not provide a clear-cut answer to the question of whether a government might forfeit its power to invite. On the one hand, outsider states have never explicitly stated that the criminal and abusive Assad government might have lost its authority to

[35] Gill, 'Military Intervention at the Invitation of a Government' (n. 17), 230; Ashley S. Deeks, 'Consent to the Use of Force and International Law Supremacy', *Harvard International Law Journal* 54 (2013), 1–60 (34–5); Hathaway et al., 'Consent Is Not Enough' (n. 32), 34.

[36] Third Report on Peremptory Norms of General International Law (Jus Cogens) by Dire Tladi, Special Rapporteur, 12 February 2018 (A/CN.4/71).

[37] ILC, Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with commentaries thereto, UN Doc. A/61/10 (2006), 378: 'The invalidity of a unilateral act which is contrary to a peremptory norm of international law derives from the analogous rule contained in article 53 of the 1969 Vienna Convention on the Law of Treaties. Most members of the Commission agreed that there was no obstacle to the application of this rule to the case of unilateral declarations.' See also Ninth Report on Unilateral Acts of States, by Mr Victor Rodríguez Cedeño, Special Rapporteur, UN Doc. AC/CN.4/569 and Add. 1, 162: 'The provisions of article 53 of the 1969 Vienna Convention apply in general, and again *mutatis mutandis*, to unilateral acts.'

[38] Michael Reisman and Dirk Pulkowski, 'Nullity', in Anne Peters and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of International Law* (Oxford: OUP 2006), para. 1.