External Intervention and Interference within the Framework of Self-Determination

A Third Category of Conflict?

Ahmed Ali
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“We consider the entry of any soldier or military vehicle into the territory—whether air space, land, or waters—of the Kingdom of Bahrain—an occupation of the Kingdom”

On the 14th of March 2011, Bahrain’s major opposition society ‘Al-Wefaq’, alongside other political societies, wrote a letter to the Secretary General of the United Nations Ban Ki-Moon. The letter proposed an urgent appeal to the United Nations from the fear of a “serious threat of entry by Saudi Arabian and other Gulf forces to confront the isolated, unarmed people of Bahrain”. The appeal spoke of a ‘real threat of war’ to be waged against an unarmed populace. It also contained a plea to the Security Council to establish an emergency session in order to discuss the ‘dangers of foreign military intervention’ in consideration of the international binding responsibility to protect international peace and security. The upcoming intervention was considered foreign occupation.

The stratagems of conflict have changed. There has been practical, political, social and economic a shift in approach by States since the enactment of the prominent United Nations Charter in 1945 following the hardships faced throughout the Cold War; the law, however, largely remains the same as the period immediately following the War. In an era of political polarization, social shifts and technological advancement, inter-state conflicts have largely been diminished or limited to diplomacy and ‘behind-the-scenes’ action. Since the 2003 US war in Iraq, the struggles of warfare have been entrenched in battles between states and other international non-state groups, often dubbed terrorist associations, or states and internal groups, rebels, and/or protesters.

2 ibid
3 Article 39, United Nations Charter 1945
4 Immerman, H., and Goedde, P. (Eds), The Oxford Handbook of the Cold War, Oxford University Press 2013, P86
In 2011, the world witnessed a collective upsurge of struggles for self-determination. Regimes have fallen as a result of revolutions in Libya and Tunisia, twice in the case of Egypt, an ongoing 3-year struggle in Bahrain has tested a defiant autocratic system of rule and a bloody civil war in Syria has led to the death of over 100000 people and a widespread refugee crisis with nearly 1.8 Million displaced individuals. Palestine also remains within its bygone foundational struggle for independence.

As a result, proxy wars have taken place as an indirect method of inter-state conflict as well as the rise of external interventionism both direct and indirect in order for states to preserve their interests abroad or achieve significant political changes in regions relevant to third state securities.

Questions have arisen in regards to the development of the principle of self-determination, the relationship it holds with the law regulating the use of force, and the practices of external intervention or interference by one state in the internal or external affairs of another. In 1984, Reisman identified a ‘structural defect’ in the Charter of the United Nations arguing the lack of independence faced by specific articles. Instead of an autonomous self-standing prohibition on the use of force, Reisman notes that it was coupled with a “collective security system” with its head being the Security Council. There has also been an increase in criticism over the hollow doctrine of intervention by invitation and the principle of humanitarian intervention as early as the 70s. Subsequent interventions in 1994 in Bosnia, Kosovo in 1998, Afghanistan in 2001, Iraq in 2003, Libya in 2011, and Mali in 2013 have all contributed to the rise in criticism over the doctrines’ perceived double standards and selective application.

Gray has argued that it was not states who favoured the incorporation of the doctrine of humanitarian intervention in law during the called war but writers that argued in its favor as a validation for the use of force. However prominent theorists in favor of the principle still remain as stern opponents to the theory that humanitarian intervention is a force for evil.

Most recently, French philosopher Bernard-Henri Levi argued that the purposes of humanitarian

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10 Oxfam - “Nearly 1.8 million refugees have now fled violence in Syria”, Syria Crisis Appeal


12 ibid


intervention are backed up by moral arguments of ‘stopping a bloodbath’ in other states as “despots do not have the sovereign right to kill their own people”\textsuperscript{15}. These arguments of morality have also been backed up within the law\textsuperscript{16}; however, they are difficult to enforce when considering the disparity of ethical criteria applied across the divergent legal systems of individual member states. Although a prominent advocate of humanitarian intervention, Henri Levy does correspondingly argue that there should be a benchmark applicable to necessitate the application of such an intervention: the question of whether or not a ‘massacre’\textsuperscript{17} was taking place in the concerned state.

Moreover questions of Security Council legitimacy to authorize measures of enforcement under Chapter VII of the Charter have also been brought to light. Military intervention through the authorization from the Security Council – consisting of five permanent world power members – has recently been applied in the 2011 Libya uprising and the conflict in Mali in 2013. This is an express in-Charter limitation to the prohibition on the use of force against another state. In an era of increasing resentment towards the formalities and structural defects of the Security Council, the vast powers it has been assigned to authorize a breach of the prohibition have come into question. Additionally, self-determination has instantaneously been working in the background, developing alongside human rights law as a force to counter colonialism. It would be simplistic to describe the maturity of self-determination within the law as clear. The birth of the principle within international law has been attributed as the outcome of two strands of philosophical though; the equality of man and the notion of a ‘social contract’ between a ruling government and the society that it governs\textsuperscript{18}.

The foundations of self-determination, the idea of the people’s right to determine their own system of rule, stretch from historical factors beyond its specifics in the United Nations Charter. Its position as a principle of international law today and the relationship that it has with the doctrines of sovereign equality, territorial integrity and intervention was developed over a period of rising state independence and the retreat of colonialism. With divergent legal and political regimes operating globally, the extent to which enforcement of the principle can be achieved is contested. Even today criticism remains over the extent to which self-determination can be classified as a ‘right’ in itself.

These questions and controversies can be observed through the case study of a tiny Gulf Kingdom: Bahrain. Following popular uprising in the neighboring states of Tunisia and Egypt, Bahraini protesters took to the streets to demand greater political voice, social and economic rights, end to corruption, discrimination, torture, ill treatment and societal coercion. Political deadlock ensued, and a crackdown by regime forces lead to the death of over 100 citizens, the arrest, torture and ill treatment of thousands. Two specific instances of possible unlawful intervention have given rise to criticism, yet little debate has taken place to discuss their legality.

The first involves the direct military intervention of armed forces on the 14\textsuperscript{th} of March 2011 when the Gulf Cooperation Council (GCC) directed approximately 2000 troops, mostly comprising

\begin{itemize}
  \item \textsuperscript{15} Al Jazeera English, \textit{Meddling in Other Peoples Business? Head to Head}, Mehdi Hasan and Bernard-Henri Levy, 08 June 2013 (Last Accessed: 25/08/2013) \url{http://www.aljazeera.com/programmes/headtohead/2013/06/2013661301564183.html}
  \item \textsuperscript{16} See Johnson, J., \textit{Ethics and the Use of Force}, Ashgate Publishing 2011, pp.103-116
  \item \textsuperscript{17} Henri Levy at supra note 12
  \item \textsuperscript{18} See Wilson, H., \textit{International Law and the Use of Force by National Liberation Movements}, Oxford University Press (1988), P55
\end{itemize}
of Saudi Arabian and United Arab Emirate forces, to the Kingdom of Bahrain 'at the invitation of its monarchy'. The deployment of troops to Bahrain was the first time in GCC history where military boots have been supplied at the request of a member state.

According to an independent commission report, Bahrain’s authorities validated the intervention in order “to assist the Bahrain Defence Force in confronting any foreign armed intervention and assisting in protecting and securing certain vital locations” in defence against claims of Iranian interference to cause instability which constituted a security threat in the region by instigating the uprising. Saudi officials also argued at the time that “this is the initial phase, Bahrain will get whatever assistance it needs. It’s open-ended.”

The Bahrain Independent Commission of Inquiry, formed following a three-month period of imposed Martial Law, found no evidence of this perceived Iranian intervention. The GCC intervention was accompanied by military courts used to sentence political dissidents, including medical personnel who treated injured protesters, to lengthy prison terms following confessions obtained under severe torture. Protesters were sacked from their jobs, student protesters expelled from universities and numerous individuals associated with the protests were forced into exile, including the withdrawal of passports. There were also specific reprisals taken by the regime in Bahrain against demonstrators including the ‘excessive and lethal use of force’. Although it has been argued that GCC forces took no part in suppressing the protest movement directly, the intervention played an important role in shifting the equilibrium of the conflict in favour of the regime.

The second instance of proposed intervention is the ostensible interference of a former colonial power and close ally to Bahrain’s ‘Al Khalifa’ rulers, the United Kingdom. The alleged interference in the internal affairs of Bahrain has drastically altered the political scene in the country and the self-determination of its peoples. Although working under the cover of limited concerns over the country’s human rights record, the United Kingdom continues to reiterate close mutual support for its former colonial regime, including the continuation of arms sales.

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19 However, see discussion below over whether or not an invitation actually took place.
23 Bahrain Centre for Human Rights, *Two Years of Deaths and Detentions: Documenting the Human Rights Abuses During the Pro-Democracy Movement in Bahrain*, Quarterly Edition BCHR Reports, February 2013, pp14-15
25 Although it is important to note that 41 arms export licenses were revoked in 2011 by the United Kingdom to the Kingdom of Bahrain – See Committee on Arms Exports Control, *Scrutiny of Arms Exports and Arms Control 2013*, First Report, 17 July 2013, Para. 390
the training of military commanders and political cover-ups in the media. Moreover, contentious means of possible interference have also surfaced through measures of defence agreements, business deals, and irregular meetings between state officials.

The aims of interference were clearly stated on the website of the British Embassy in Manama (Bahrain's capital) as a statement of intention “to help Bahrain to return to a stable and reformist state with a good human rights record, while protecting our significant defense and security interests and enhancing our bilateral relationship.”

The interference by external forces in Bahrain's political affairs has given rise to questions of individual state sovereignty, political and personal independence, and territorial integrity. Moreover, it sheds light on the legal facade of ‘whom’ or ‘what’ the state actually is, and how the self-determination people conflicts with its application in law. These questions form a parietal structure relevant to the shifting political structure of the Middle East and North Africa following the uprisings of 2011. Moreover, they pose to analyse the current application of international legal doctrines as universal norms within ever-changing international policy. Indeed, the conclusion identifies the existence of a third category of conflict, between inter-state conflicts and civil wars, that are not covered by the laws of armed conflict and fall short of legally recognised external interventions. These types of conflicts are left under the governance of the weak institute of international and regional human rights law.

Sovereignty, Intervention, and the Faux Prohibition

Sovereignty and the Law of Intervention

International law establishing the prohibition of forceful intervention in the affairs of a state by another is an explicit declaration of the sovereignty of individual states. The principle of non-intervention aims to preserve the domaine réservé of independent autonomous state entities through the explicit preservation of sovereignty and the prohibition of external forces aiming to breach that sovereign status. According to Oppenheim, this preservation in law applies to tripartite list of features of sovereignty: independence, territorial integrity and personal authority. Sovereignty, Oppenheim argues, is independence both internal and external in relation to supreme authority within its borders and liberties outside them. This also involves the liberty of applying supreme authority over its nationals and objects (dominium territorial sovereignty) and personal authority (imperium political sovereignty). Jamnejad also argues, forcefully, that the success of the non-interventionist principle has been largely due to its status as a “corollary every state’s right to sovereignty.” This stems, according to Clapham, from the formulation of the doctrine of sovereignty in Jean Bodin’s De Republica in 1576 which claimed that the supra-legal power of a state was the essence of statehood.


27 See website of the British Embassy Manama, Bahrain https://www.gov.uk/government/world/organisations/british-embassy-manama


29 ibid


31 Clapham, A., Brierley’s Law of Nations: An Introduction to the Role of International Law in International Relations, Oxford University Press 2012, P.8
Sir Geoffrey Howe, Minister of State for the United Kingdom Foreign and Commonwealth Affairs in 1986 explored the significance of this imposed sovereign status in international relations; “in accordance with generally accepted international practice, we cannot intervene in the due process of law in another sovereign country any more than we would accept intervention in our own judicial process.”

Indeed this view has been a crucial outcome of the developments following the First World War where the Allied Powers, namely France and Britain, worked in dismembering the Ottoman Empire in order to colonialize the spoils of war. In order to cement decolonisation after the Second World War and recognise the sovereignty of individual States, the concept of unlawful forceful intervention in the internal and external affairs of sovereign States had to be established and enforced.

The law reflects this development. During the signing of the Treaty of St Germaine in 1919, and the voluntary dissolution of the Austro-Hungarian Empire, a clause was incorporated in article 88 reflecting the sovereignty of Austria, albeit with a limitation through League of Nations authorisation. Article 88 expressly prohibited Austria from “any act which might directly or indirectly or by any means whatever compromise her independence” predominantly through the participation within the affairs of another state. This was also reflected in the Austro-German Customs Union Case in 1931 when the Permanent Court of International Justice held that a customs union by Austria with Germany would breach its obligation to preserve the states independence. The Court commented on the characteristics of independence, including within its scope “all matters economic, political, financial or other.” The decision suggests that the benefits of state sovereignty can be legally imposed even when representatives of the state are in breach of that states sovereignty. It outlines a clear division between the state itself and authorities of that state. However, it is important to note that international law favours the existing government of a state as the genuine representatives of that state rather than any rebel force or makeshift provisional government. Conversely, state practice in this area in terms of government recognition has been selective to represent individual state interests and not self-determination or sovereignty. Churchill argued in 1943 that recognition ‘is meaningless without a formula’. Indeed individual states have worked to employ their own formulas to work out the recognition of state representatives; for example the UK courts had a traditional approach of not recognising the existence of a government that the state did not recognise. The selectiveness

32 House of Commons Debates, Vol. 89, Written Answers, Col. 473, 13 January 1986
33 Russia, France, British Empire, Italy and in 1917 the United States.
35 Article 88, Treaty of Peace between the Allied and Associated Powers and Austria; Protocol, Declaration and Special Declaration, (St. Germain-en-Laye, 10 September 1919), Entry into force for Australia and generally (Treaty): 16 July 1920
36 Austro-German Customs Union Case 1931, Permanent Court of International Justice Series (A/B), No. 41, pp57-59
37 ibid at 59
38 Churchill, W., The Second World War, (1954) Pimlico 2002, at 137 - “What does recognition mean? One can recognize a man as an Emperor or as a Grocer. Recognition is meaningless without a defining formula.”
39 See Wilde, R., Cannon, A., and Wilmshurst,
can be seen in the recent disposal of elected President Morsi in Egypt by military coup.

Although the US Foreign Assistance Act of 1961 requires that the US stop any aid to a country when “the government of any country whose duly elected head of government is deposed by military coup d’état”\(^\text{40}\), the US have sidestepped the requirement and continued to provide aid to military ruled Egypt\(^\text{41}\).

This is imperative when discussing intervention through authorization by authorities, specifically when the practices of state representatives have the effect of preventing or limiting self-determination.

The prominence of the principle of sovereignty was also reflected in the ‘Nine-Power Treaty’ of 1922 where agreements were signed by Britain, the United States, France, Japan, Italy and Portugal to guarantee the territorial integrity and political independence of China. Conversely, it is important to note that significant damage to the integrity of state independence was also subsequently dealt during this time. Britain had terminated its protectorate over Egypt in order to guarantee its independence\(^\text{42}\) – however this was provided under the condition of the guaranteed placement of a specified monarch to rule\(^\text{42}\) – and at the same time a treaty was also signed between Britain and Iraq successfully depriving Iraq from political, economic, and military control by taking over defense and oil concessions\(^\text{43}\).

Today, its development has been entrenched in laws prohibiting intervention, interference and coercion. The International Law Commissions Draft Declaration on the Rights and Duties of States imposes an explicit duty on states to “refrain from intervention in the internal or external affairs of any other state”\(^\text{44}\). The declaration also offers the right to independence, legal powers and the choice of government\(^\text{45}\). These prescriptions were also confirmed in the celebrated General Assembly Declaration on the Inadmissibility of Intervention 1965 denoting that “no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights”\(^\text{46}\). It further demands that ‘all states shall respect the right of self-determination and independence of peoples and nations’\(^\text{47}\). The Resolution seems to widen the scope of intervention by declaring that intervention, whether direct or indirect, in the external or internal affairs of a state and “all other forms of interference or threat against the personality of a state” is condemned\(^\text{48}\).

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\(^\text{40}\) The Foreign Assistance Act of 1961 (as added by Public Law 110–161) [22 U.S.C. 2378d]
\(^\text{42}\) Tachau, F. (Ed), \textit{Political parties of the Middle East and North Africa}, Westport, CT: Greenwood, 1994, P.175.
\(^\text{43}\) \textit{ibid}
\(^\text{44}\) Article 3, \textit{International Law Commission Draft Declaration on Rights and Duties of States}, Yearbook of the International Law Commission (1949), P.286
\(^\text{45}\) \textit{ibid} Article 1
\(^\text{46}\) Article 2, General Assembly Resolution 2131 (XX) 21 December 1965: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty \url{http://untreaty.un.org/cod/avl/pdf/ha/ga_2131-xx/ga_2131-xx_e.pdf}
\(^\text{47}\) \textit{ibid} at Article 6
\(^\text{48}\) \textit{ibid} at Article 1
It is reflected by a clear majority state agreement through 0 votes against alongside 109 votes in favour of the provisions.

The development of sovereignty and the illegality of forcible intervention in the domestic matters of sovereign states were exported to the prominent 1970 Declaration on Friendly Relations Resolution 2625 which noted that “every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State”49. Reflective of its status in the international legal sphere, Rosenstock argues that this is ‘the most important of the resolutions”50 because it is the only resolution reflective of international law. Additionally, the 1975 Helsinki Final Act, a product of the Conference on Security and Cooperation in Europe, asserted: “participating States will refrain from any intervention, direct or indirect... in the internal or external affairs...of another participating State, regardless of their mutual relations”51.

General Assembly Resolution 36/103 in 1981 advances these principles further by bestowing duties upon states to ‘refrain from any forcible action which deprives peoples under colonial domination...of their right to self-determination”52.

The principles are clear, however far from practical. Although, *prima facie*, the mentioned doctrines provide for an absolute solidified status of independence and sovereignty for individual states, there remain scathing limitations on its functioning in international relations. Moreover, Clapham argues that the practice of states in this area has in history “been determined more often by political motives than by legal principles”53. The questions on the specific content of intervention are far from clear alongside questions of legitimacy in regards to official state representatives within divergent legal regimes. There is moreover a specific difference between intervention *per say*, and *interference* that seems to denote a wider scope of intrusion. Chatham House has argued that the two terms are interchangeable, although one denotes a wider prohibition54. Indeed the scope of this interference ranges from military intervention to financial and other economic forms of coercion.

As expressed under article 2(4) of the United Nations Charter 1945, the threat or use of force between member states is prohibited as part of the preservation of sovereignty and internal affairs. The importance of the prohibition was reflected by the judgment of the International Court of Justice in the *Armed Activities* case where it portrayed the law as the ‘cornerstone of the United Nations Charter’55. Additionally, in the celebrated *Nicaragua* case, Judge Nagendra Singh

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49 This was confirmed to be declaratory of customary international law in *Nicaragua – Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)* 1986 ICJ Reports 14, at 191 and in *Armed Activities on the Territory of Congo*, ICJ Reports (2005) 168, para. 162
51 Helsinki Final Act of the CSCE, 1 August (1975), 14 ILM 1292
52 General Assembly Resolution 36/103, 9 December 1981 Declaration on the Inadmissibility of
55 *Armed Activities on the Territory of the Congo* (DRC-Uganda case), 2005 International Court of Justice, Rep 201, Para. 148
observed that the prohibition provides ‘the very cornerstone of the human effort to promote peace in a world torn by strife’\textsuperscript{56}. Such a prohibition was unmistakably directed at inter-State conflicts, with ‘internal conflicts’ perceived as internal issues. This was confirmed when the ICJ established in Nicaragua that the prohibitions present in the 1970 Declaration on Friendly relations were declaratory of customary international law\textsuperscript{57}. The proceeding Article 2(7) of the Charter verifies this impression by noting “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state”\textsuperscript{58}.

The Nicaragua judgment offers a distinct analysis of the characteristics of interference that may be unlawful. It has employed two distinct elements that must be distinguished for unlawful intervention to take place. There must first be a practical intervention by one state in the affairs of another. Secondly that intervention must not take place concerning matters that the state may decide autonomously under the principle of state sovereignty.\textsuperscript{59} It has also been generally accepted that the law prescribes a minimum standard of intervention which must be “forcible or dictatorial or otherwise coercive, in effect depriving the state intervened against of control”\textsuperscript{60}. This baring on the principle of sovereignty within the law concerning intervention has postulated a conflict of interests between the principle of peoples self-determination on the one hand, and the right for state authorities to preserve their sovereign status.

As a result the drafters of international law have unearthed complications in this area of regulation, and consequentially the complexity surrounding the prohibition of the use of force is by no means a concluded discussion and academic debate continues to regenerate new areas of controversy within the law. This is especially the case when considering the principle of intervention by invitation, where authorities may justify an intervention into the affairs of the state by inviting a third state to intervene.

The Faux Prohibition

The faux prohibition of intervention works not only through the minimum standards applied in the interpretations of the law concerning intervention but also through express limitations within the Charter itself. This provides for two definite exceptions against the prohibition on the use of force. The first is stipulated under article 51 that designates the individual or collective self-defense of state(s) as a lawful justification to use force against a third state. The second constraint to the prohibition is Security Council enforcement action under article 42 of the Charter which may include the use of military force by member states on others if authorized. Arguments of these limitations have been extensive despite the massive body of laws condemning intervention and interference. Indeed the arguments of ‘national security’ have been described as ‘rhetorically dangerous’ when used as a challenge against state sovereignty and human rights\textsuperscript{61}.

The enforcement powers afforded to the Security Council is a crippling exception to Articles 1(4) and

\textsuperscript{56} Separate opinion of President Singh - Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)(Nicaragua case) 1986 ICJ Rep 14, at 153
\textsuperscript{57} Nicaragua at para. 191
\textsuperscript{58} Article 2(7), United Nations Charter 1945
\textsuperscript{59} Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) ICJ Reports 14 (1986), Para. 205
Article 1(7) of the Charter. Although Article 1(7) works to prohibit the United Nations from interfering in the domestic matters of member states, it specifically offers that enforcement measures by the Security Council are not part of the prohibition. Chapter VII presents the Security Council with comprehensive discretions to take action—excluding military action by air, sea or land—in situations that it declares a ‘threat to international peace and security’ or ‘act of aggression’.

Prior to resorting to this use of force, the use of non-military measures are recommended by the Charter, however these do not have to be exhausted in order for the Security Council to resort to military measures. These include the “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” If the Council considers that the suggested non-military measures are inadequate it may use force against a member state ‘as may be necessary’.

These measures can be seen in effect from the Libyan uprising where the Security Council issued Resolution 1973 (2011) authorizing Member States “to take all necessary measures...to protect civilians and civilian populated areas under threat of attack” including the enforcement of a no-fly zone in Libyan territory.

Additionally, the subsistence of article 39 under Chapter VII of the UN Charter, which lists the ‘triggers’ where the Security Council may use its discretion under Article 42, identifies a broader scenario where the enforcement action may apply. The action of that had been given the title ‘breach of the peace’ suggests that this would include internal/domestic conflicts and civil war, a power that would justify the limitation expressed within Article 1 of the Charter.

The use of this measure is an irrefutable threat to individual State sovereignty. Fabri argues that in the international legal setting sovereignty of individual member states means that they should not be arbitrarily subjected to outside intervention or authority without express consent. There are also strong arguments over the extent of Security Council authorization to resort to force: Waxman calls this the Security Councils “authoritative monopoly to authorize force beyond bright-line exceptions.”

62 Article 1(7), Charter of the United Nations 1945 – “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”
63 Article 24(1), Charter of the United Nations 1945
64 Article 41, Charter of the United Nations 1945
65 Article 42, Charter of the United Nations 1945

67 ibid at Para 6 – Note that intervening States were prohibited by the SC to have any boots on the ground in Libya limiting the attacks on the Gaddafi regime through air strikes.
70 Waxman, C., Regulating Resort to Force: Form and Substance of the UN Charter Regime, European Journal of International Law, 2013, 24(1), P179
Finnemore further argues that, when the law determines that states are indeed states merely because they have certain control over their territory and force within that territory, “then military intervention is an explicit challenge to sovereignty”\(^71\). Moreover where the use of force through Security Council enforcement action has been used against the regime of a state, the most probable conclusion to that effect will often embrace the installation of a new state regime, that embraces the interests of the interveners – a modernised form of historic imperialism.\(^72\) Conversely, if States are given absolute sovereignty, a concept rejected in international law\(^73\), with no international accountability, the chances are that breaches of human rights and international humanitarian law would be on the constant increase. This conflict of interests, between sovereignty and interventions, has been identified and critically analysed by Bennoune through the debate within the context of Iraq. He claims that even though the government of Iraq at the time prior to the 2003 invasion of the US sought shelter beneath the cloaks of autonomy in order to conceal severe abuses of human rights law, simultaneously, the actions of other governments and the United Nations have contributed to the breach of rights in Iraq through the use of force and sanctions\(^74\). Moreover these conflicts of interests and strains within the law have been visible in Bahrain from the very beginning. The lack of international accountability for human rights violations and crimes against humanity have led to the continuation of abuses and an increase in violence. The turmoil and instability, anger and revolt, has developed into a two-and-a-half-year uprising building up increasing antagonism towards the legitimacy of Bahrain’s rulers and their system of rule. The quest for lost validation within the governance of Bahrain has been sought out through a medieval system rejected by most academic analysis of the sources of legitimacy and voluntary compliance. Arguments for democracy, proletariats, and modernization have all rejected the concept that force alone is capable of providing authentication for governance\(^75\). Accountability remains a central catalyst for the survival of the revolution, the lack of government held legitimacy, and the deterioration of the concept of reformation\(^76\).


\(^{72}\) ibid at pp8-9

\(^{73}\) See Yannis, A., *The Concept of Suspended Sovereignty in International Law and its Implications in International Politics*, European Journal of International Law, 2002, 13(5), 1037-1052

\(^{74}\) Bennoune, K., *Sovereignty v Suffering, Re-examining Sovereignty and Human Rights Through the Lens of Iraq*, European Journal of International Law, 2002, P243


Bahrain: Intervention by Invitation or Coercion?

In Bahrain, the scores have been similar to that of the previous Iraqi administration. In order to justify the crackdown on dissent and the severe human rights abuses, the defence of sovereignty was a card often played by the ruling monarch. An illusion of Iranian intervention was reproduced by officials and disseminated through state media\textsuperscript{77}. This was a similar to the Gulf War when Iraq argued “the maintenance of order” as part of its justifications that was claimed by Iraq for its invasion of Kuwait in 1991\textsuperscript{78}. The argument that it made centered on a response to the request from the ‘Free Provisional Government of Kuwait’ to “to establish security and order so that Kuwaitis would not have to suffer”\textsuperscript{79}. Indeed Iran has a history of claiming Bahrain as part of its sovereign territory. Undeniably, at the time the intervention, Iranian state media conveyed the stance that its government held which was that the GCC intervention was a foreign “invasion”\textsuperscript{80}. No evidence was found of proposed Iranian interference, the Bahrain regime is adamant that this is the case. In 2013, authorities conducted a series of arrests relating to a group that it claimed was linked to Iran and Lebanese political and militant group Hezbollah\textsuperscript{82}. They claimed that the group received direct coordination from Iran alongside financial and moral support. The accusations were serious; they claimed that the charges constitute the direct interference by Iran in Bahrain’s internal affairs. Had the arguments put forward by the Bahrain regime proved to be true, the exceptions of self-defence under article 51 of the Charter might have come into play depending on whether or not they suffered from an “armed attack”\textsuperscript{83}. Moreover there have been arguments for the existence of an ‘anticipatory self-defence’ mechanism, which the US powerfully asserted during the now declared illegal war in Iraq\textsuperscript{84}. However, these should be distinguished from reprisals against acts of aggression that are not an exception to the prohibition of the use of force.

It is also important to note that the intervention was staged only two days after United States Defence Secretary Robert Gates held a meeting with the King in Bahrain and his son the Crown Prince\textsuperscript{81}. Even though the BICI confirmed that


\textsuperscript{79} See Rowe, P., The Gulf War 1990-91 in International and English Law, (London: Routledge), Sweet & Maxwell, 1993


\textsuperscript{83} Article 51 of the United Nations Charter 1945 - “Nothing in the present Charter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.”

A 2005 Wikileaks cable highlighted what Shehabi calls Bahrain’s ‘sovereign hypocrisy’. In the leak, the Crown Prince was quoted saying, “Bahrain has worked hard not to become a vassal of Saudi Arabia, and we’re certainly not going to let ourselves become a vassal of Iran.” Six years later GCC troops, the majority from Saudi Arabia, were invited to quell demonstrations, and they remain in the country today. Robert Fisk argues that the intervention was not in fact an invitation; “the Saudis are now running the country. They never received an invitation to send their own soldiers to support the Bahraini “security forces”... they simply invaded and received a post-dated invitation.”

If the arguments provided are accurate, the previously though mechanism of intervention by invitation was not in fact used to invite GCC troops into Bahrain, it was merely used as a justification of an action that had already took place. Instead, coercion might have been the central reason of the intervention making it a possible illegitimate interference in international law. The severity of this argument cannot be understated, if an intervention took place without the invitation from Bahrain, the continuing presence of troops could be considered a foreign occupation and thereby trigger the international rules governing the conduct of occupiers.

Indeed, coercion is essential to hold that an intervention was in breach of the law. In the Armed Activities case the International Court of Justice commented that military coercion is a form of unlawful intervention making it the basis of a two-part prohibition. The first basis is the general prohibition on the use of force under Article 2(4) of the Charter, and the second is the general prohibition of the intervention in the affairs of another state. In analysis of the Courts decision, Kohen identifies that other forms of coercion are prohibited. This is also imperative in the discussion of the proposed UK intervention in Bahrain. Kohen argues that, by distinguishing any type of intervention or interference that might be used to pressure an existing state to comply with its international law obligations, it is possible to identify certain forms of coercive interferences that are against the purposes of international law. These include financial pressures that may attempt to coerce a state into accepting certain policies in regards to third states.

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85 Shehabi, A., Bahrain’s Sovereign Hypocrisy, Foreign Policy Magazine, 14 August 2013 (Last Accessed: 21/08/2013) http://mideast.foreignpolicy.com/posts/2013/08/14/bahrain’s_sovereign_hypocrisy

86 Wikileaks, Crown Prince Discusses Democracy, Trade, Security with Ambassador, 05Manama544, 12/04/2005, Bahrain Embassy Manama, Para. 5

87 Fisk, R., Bahrain Didn’t Invite The Saudis to Send Their Troops; The Saudis Invaded and Received a Post-Dated Invitation, The Independent, 14 June 2011 (25/08/2013) http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-i-saw-these-brave-doctors-trying-to-save-lives-dash-those-charges-are-a-pack-of-lies-2297100.html

88 See Jadaliya supra note 1

89 Article 42 of the 1907 Hague Regulations and see common Article 2 of the 1949 Geneva Conventions.

90 See Geneva Convention IV 1949 Articles 27-34 and 47-78

91 See Armed Activities on the Territory of Congo, ICJ Reports (2005) 168

The legal acceptance of a state’s right to invite foreign intervention within its borders was highlighted by Doswald-Beck through the General Assembly Resolution on the definition of aggression in 1974.

Additionally, the preservation of sovereignty and territorial integrity was used as a defence to justify intervention by invitation on another occasion in Bahrain. In 2013, following the ousting of Egypt’s President Morsi, rallying calls for an anti-government ‘rebellion’ movement in Bahrain was voiced by an anonymous online group. Bahrain authorities used this to justify another breach of the state’s sovereignty by inviting Jordanian police to help in the crackdown. Moreover, the Bahrain security force largely consists of foreign individuals imported and naturalized from Asian and other Arab states in order to crackdown on the majority opposition. The lawfulness of such interventions must be discussed in the context of self-determination. The identification of the legitimate government entitled to invite outside intervention has been fraught with controversy. There have been a number of notable cases of intervention in the past to compel a debate about the legal restraints on its use. In the 1980s, France intervened in Tunisia on the side of the regime in order to quell an insurgency commonly attributed to Libya. This support of its former colony was evidenced in 2011 when commentators criticised France for ‘staying silent’ on the revolution in Tunisia and occasionally voicing support for its dictator Ben Ali.

Moreover, Gray highlights

96 French Agricultural Minister claimed that Tunisian Dictator Ben Ali was being ‘misjudged’ and that he has ‘done a lot of [good] things’ - See Crumley, B., *Why is France Staying Silent on Tunisia Turmoil?*, Time Magazine, 12 January 2011 (Last Accessed: 25/08/2013) http://www.time.com/time/world/article/0,8599,2042005,00.html
99 Doswald-Beck at 189
in determining these limited operations in which a state may invite foreign intervention.

The developments are mirrored in customary international law through the evolvement of state practice over the years and difficult to apply considering the modern practices of states. Jamnejad argues that in most cases, this practice of states revolves around “inaction rather than action” and as a result there is “a greater reliance on how states interpret the law”\textsuperscript{100} rather than what the law actually prescribes. This miniscule definition through the practice of states reflects purposive definitions of the law, purposes not of the original drafters, but those that reflect the will of the authorities of State at the time.

It may therefore be argued, forcefully, the difficulty in establishing that authorities of a state have breached the sovereignty of their own state through the action of inviting foreign intervention for specified operations. Moreover, unless in breach of the contractual agreement of intervention, or a clear presence of coercion, the intervening state would not be breaching the sovereignty of the state that it has intervened in. There are clear arguments however against these rules in regards to the classification of the conflict in question and the legitimacy of the authority. Moreover it has been well established that in cases of strives for self-determination and decolonisation, outside intervention that has the practical effect of prevention can be a contravention to the customary practices of invitational intervention.

Gray argues that through the legal duty of non-intervention and the developments of the “inalienable right of every state to choose its political, economic, social and cultural systems have brought with them the duty not to intervene to help a government”\textsuperscript{101}. However, Gray also concedes that if the conflict has not been classified as a civil war, but merely seen as domestic unrest, intervention will be permissible. This severely limits the mechanisms available for peoples to achieve their preferred system of rule. This is no truer when considering the fact that states are reluctant to classify conflicts as civil wars in order to refrain from legitimizing opposition fighters. Moreover, it points to the notion that unless a conflict reaches a certain level of violence, the government will always be in prime position to retain governance regardless of their practices. The law in effect promotes force and escalations of violence rather than prevent it.

The 1961 conflict in Vietnam brought these conflicts of interests together where the US argued collective self-defence as a justification for intervention. In retaliation, North Vietnam argued that the intervention was to prevent decolonization and resistance to colonial rule. Wright argues that if the argument of North Vietnam had been recognised, the intervention of the US would have been unlawful with or without an invitation from authorities\textsuperscript{102}. It is imperative to note that the Security Council is yet to remark on the matter. Moreover, the powerful exploitations of this mechanism in the past cannot be ignored. From the Iraq invasion of Kuwait in 1991 to the USSR intervention in Hungary in 1956, saw extreme cases of arbitrary intervention at the justification of an invitation. Moreover during the Hungary intervention, the flaws of the Security Council were realised when condemnation of the USSR were categorically avoided through the USSR’s power of veto\textsuperscript{103}.

Indeed whether the intervention may be classified as an invitation, or coercion, it has been an arbitrary interference. If coercion, the intervention


\textsuperscript{101} Gray at 81

\textsuperscript{102} Wright, \textit{Legal Aspects of the Vietnam Situation}, 60 American Journal of International Law (1966) 750 in Gray at 82

\textsuperscript{103} USSR/Hungary (1956), 1956 United Nations Yearbook 67
is illegal, however the law lacks any enforcement mechanisms.

If an intervention by invitation and has had the effect of quelling an uprising for self-determination, the law has been breached. However authorities could claim mere instability that would make an invitation for intervention lawful in order to restore security. In hindsight, the intervention should be held as coercive breaching international law in both counts.

**The Third Category**

The status of conflicts for self-determination has been left ambiguous. Whether falling short of classification as a civil war or strives for de-colonisation, or falling short from the reach of international humanitarian law, the conflicts in the middle—which involve unarmed protesters, facing a crackdown by armed regime forces—have been limited to the governance of an ill-equipped body of human rights law that is easily derogable, and hardly enforceable. Bahrain has found itself caught in the thorns of this third category of conflict. The Human Security Report of 2005 argued this point by claiming that inter-state conflicts have been rare ever since the establishment of the UN Charter, and more common have been civil wars or those conflicts that have spilled to neighbouring states through external intervention. The prohibition within article 2(4) and its colleagues in the UN Charter and other international legal instruments have possibly outlived their practicality. In modern cases involving the use of force, military boots are rarely deployed against other states, declarations rarely made, and belligerent rarely identified with specificity. The third category of conflict, where peoples fighting against an armed regime and are deprived of the ability to deploy arms, has been covered through laws, namely human rights principles, that are virtually impossible to enforce. Moreover the continuing debates surrounding whether or not economic and other types of coercion are included within the prohibition on the use of force remain unanswered. Furthermore, the ambiguity of the law in this area allows for a wide margin of appreciation for third states to what Criddle calls “sidestep some of the thorny legal and ethical issues associated with military intervention”.

A clear expansion of the definition must be made. What the prohibition is in effect prohibiting is the use of force only if you are not a permanent member of the Security Council, or an ally of those members. These arguments are supported by Kelsen and Bianchi who note that “the idea of the predominance of the political over the legal approach marked the drafting of the Charter can hardly be contested particularly when it comes to the pre-eminent position that the Security Council was to occupy in the maintenance of international peace”.

Indeed this has resulted in the majority of academic concessions that the unlawfulness of a State to invite intervention can only be founded upon exceptional circumstances, external interference is permissible so long as it avoids coercion or aggression, and the Security Council may administer the use of force when it pleases. If the conflict in question fails to establish itself

in the vicinity of civil war, and instead, it has been portrayed as mere domestic unrest or attempts at destabilising the security of a state, intervention would in the majority of cases be held to be legitimate on the side of a representative government. This has been a difficult outcome to comprehend. MacDonald and Alston argue that there has been a development of international law, one that is “no longer entirely blind to the manner in which a government achieves power within a state”\textsuperscript{107}. The legitimacy of governance has become more important in cases of intervention and interference and the correlation between sovereignty and national security much more evident.

Thereby the majority of State governments in the middle of civil conflicts refuse to legitimize opposition forces through express recognition of a civil war or a non-international armed conflict. In turn, the preferred claims in these events are ‘local unrest’ or ‘terrorism’. The consequences of these classifications have resulted in the legal continuation or commencement of financial support, arms exports, public relations support and political backing\textsuperscript{108}. However it should be noted that if this were to interfere in the domestic affairs of the State by undermining its political independence, it could be classified as a form of humanitarian intervention\textsuperscript{109}.

The momentum of the law, and the lack of protection that it provides to peaceful movements consequently result in the escalation of violence within internal conflicts which in turn might drive them to civil wars or international armed conflicts. These effects have been recognised in the Human Security Report which has claimed that civil wars that have invited, or faced external military intervention are ‘consistently deadlier’ than conflicts that have not\textsuperscript{110}. Moreover, it has argued that this is the case regardless of how powerful the intervening power as past experience has proved that the consequences of minor power intervention are the same as those interventions by major powers\textsuperscript{111}. Eck has reconciled this idea but conducting research that has determined the risk of conflict escalation increases by 192\% if there has been an external intervention\textsuperscript{112}. Furthermore the report also emphasizes that, ‘States intervene militarily in civil conflicts...to protect political or ideological interests’ and as a result Cunningham argues that the effects of having an independent agenda would render the conflict almost impossible to reconcile\textsuperscript{113}.

The result: enormous political burdens on peoples in opposition to regimes in their plights for self-determination. International law has been created and enforced on the principles that the government of a state, whether fair or oppressive, is the legitimate representatives of that state. In the German Settlers in Poland advisory opinion, the Permanent Court of International Justice held that ‘states can act only by their agents and representatives’\textsuperscript{114}.

\begin{itemize}
\item \textsuperscript{108} See Moisi, Intervention in French Foreign Policy, in Gray p84
\item \textsuperscript{109} See Criddle at 584-585
\item \textsuperscript{111} ibid
\item \textsuperscript{113} Cunningham, D., Blocking Resolution: How External States can Prolong Civil Wars, Journal of Peace Research, 47, 2 (2010), pp124-125
\item \textsuperscript{114} German Settlers in Poland advisory opinion
\end{itemize}
Rebels, guerrilla groups, revolutionaries, and indeed sometimes peoples and protesters have largely been portrayed as enemies of the state, and will remain within that category politically and legally unless it is in the interests of the Security Council to classify them as State representatives.\(^{115}\) This was reflected by Russia’s UN ambassador Vitaly Churkin who opposed handing Syria’s UN seat to the Syrian National Coalition arguing, “You do not simply seat opposition groups who have gone through no proper process of legitimization”\(^{116}\).

However in contrast, when the interests of the Security Council fell with the removal of the Gaddafi regime in Libya, the United Nations handed the opposition ‘National Transitional Council’ Libya’s UN seat before Colonel Gaddafi was even defeated.

**International Humanitarian Law**

It should be noted at the outset that the uprising in Bahrain does not classify as an international nor non-international armed conflict. Neither has it achieved the legal status of a civil war despite the use of armed force by regime security against dissidents. It is solely identified within these third categories of conflict mentioned above. Indeed, according to international law, besides the legal definitions provided by the 1949 Geneva Conventions no other type of armed conflict exists.\(^{118}\) As a result of this circumstance, the laws of armed conflict have not been triggered under Common Article 2 of the Geneva Conventions which note that they will only apply to ‘cases of declared war or ‘any other armed conflict’\(^{119}\).

Despite this, it is important to make reference to the development of the law in this area in tandem with the changing nature of conflict, especially during a time when violence is on the rise in Bahrain. The law has recognised these shifts albeit restrictively through what has been dubbed the ‘Martins Clause’ brought into the laws of armed conflict through the 1977 Additional Protocols. The clause states that in those instances where the law of force cannot apply “the human person remains under the protection of the principles of humanity and the dictates of the public conscience”\(^{120}\).

This forms part of customary international law, however Cassese argues that its scope has never been determined and that its evolvement into law was simply a mechanism to break political deadlock during negotiations.\(^{121}\) Others have

\(^{115}\) The Libyan uprising in 2011 shows this when the National Transition Council was offered Libya’s UN seat as the State’s genuine representative – UN General Assembly Document GA/11137, 66th GA Plenary, 2nd Meeting, 16 September 2011 [http://www.un.org/News/Press/docs/2011/ga11137.doc.htm](http://www.un.org/News/Press/docs/2011/ga11137.doc.htm)


\(^{118}\) See International Committee of the Red Cross, *How is the Term “Armed Conflict” Defined in International Humanitarian Law*, Opinion Paper March 2008

\(^{119}\) Common Article 2, Geneva Conventions 1949 - “In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”

\(^{120}\) Article 1(2) Additional Protocol I 1977 and Preamble Additional Protocol II 1977

\(^{121}\) Cassese, A., *The Martins Clause: Half a Loaf or Simply Pie in the Sky*, European Journal of
argued that its interpretation is wide in that it applies the laws of humanity and public morality in cases that are not covered by the law.\textsuperscript{122} Furthermore, Röling has argued, with supporting interpretations of the Corfu Channel Case,\textsuperscript{123} that the clause “presupposes that the principles of the law of nations, the laws of humanity and the dictates of the public conscience, contain specific rules of conduct in the event that the treaties are no longer binding.”\textsuperscript{124} Another important consideration to make in regards to the laws of armed conflict is the deliberately widened scope of application of the Geneva Conventions and the Additional protocols. Article 1(4) of API specifically broadens the reach of international humanitarian law to situations of “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination”. The provision makes specific reference to the United Nations Charter in consideration of self-determination and the Resolution on Friendly Relations that governs intervention.

This shift in international law can also be seen through the development of the law covering legitimate forces in an armed conflict. The Bahrain regime has for centuries resorted to the employment of external forces into the national police and armed forces. As will be shown, not only are the heads of security usually brought in from the UK, subordinates and ground forces have been recruited from neighboring Asian and Arab states. As a consequence of this institutional-wide discrimination process, the majority of the country’s ‘Shia’ population have been prevented from being recruited into the army, police or security forces.\textsuperscript{125}

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127 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989 – Entry into force in 2001
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128 Article 47(2)(a) Additional Protocol I to the Geneva Conventions 1949 “A mercenary is any person who is specially recruited locally or abroad in order to fight in an armed conflict”.
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\begin{flushright}
129 Article 2 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989 - “Any person who recruits, uses, finances or trains mercenaries, as defined in article 1 of the present Convention, commits an offence for the purposes of the Convention”.
\end{flushright}

International Law, 2000, Vol. 11, P187
\textsuperscript{122} Cassesse at 188-189
\textsuperscript{123} Corfu Channel Case, Merits, Judgment of 9 April 1949, [1949] ICJ Rep. 35
\textsuperscript{124} Röling, B., International Law in an Expanded World, (Amsterdam: 1960), pp.37–38
\textsuperscript{125} Cockburn, P., Bahrain is Trying to Drown

The intention is clearly to prohibit the strengthening of dissidents, and to prevent an army backlash; the army’s legitimization of demonstrators and the refusal to disperse them in 2011 was one of the central reasons why Egypt’s deposed President Mubarak fell at the hands of the uprising.\textsuperscript{126} In October 2001 the United Nations confirmed that the use of mercenaries in an armed conflict and ‘any other situation’\textsuperscript{127} is prohibited. This expanded the instances in which mercenaries cannot be used from the original restriction to ‘armed conflicts’ in article 47 of Additional Protocol 1.\textsuperscript{128} Article 2 of the convention also prohibits the use, financing or training of mercenaries.\textsuperscript{129} The definition of mercenaries as prescribed by the law is an important outlook at the security forces in Bahrain. Although they are not party to the convention, the prohibition in the law provides a possible outlook at what might conceivably become customary law in the future, meaning that the majority of
the police force and army in Bahrain would need reshuffling.

Mercenaries as per the convention are those who are specially recruited in order to fight in an armed conflict\textsuperscript{130} or ‘any other situation’\textsuperscript{131}, for private gain and material compensation\textsuperscript{132}, is not a national of the state or the armed forces\textsuperscript{133}, and has not been sent by a third state\textsuperscript{134}.

The use of these types of mercenaries in Bahrain does not meet the legal criteria. It has been easily avoided by the mass naturalization of foreign fighters and the use of them in dual-roles: both as army members and police\textsuperscript{135}. These included foreign ‘advertisements’ for the employment of members of the Bahrain National Guard and police, leading to the reported 50% increase of both security bodies\textsuperscript{136}. Analysts have also highlighted that this mass naturalization has been used as a “clear political strategy to alter the country’s demographic balance in order to counter the Shia voting power”\textsuperscript{137}. Indeed these can hardly be disputed when in 2006 a former Bahrain government official, Salah Al Bander, was deported to the UK for exposing a secret web led by a member of the ruling family in Bahrain. The objectives of the organisation were the manipulating of elections, and preservation of sectarian distrust and divisions, in order to “ensure that Bahrain’s Shias remain oppressed and disenfranchised”\textsuperscript{138}. The goals of those objectives can be comprehended as to prevent the effective self-determination of the people.

A History of External Interference

In 1955 the British Cabinet convened a meeting with the British Prime Minister of the time, Anthony Eden. A discussion took place around the 1955 riots in Bahrain where the ruler wanted to invite 117 Iraqi troops to clampdown on dissent. The Cabinet had other ideas, its advisors to the King of Bahrain had warned of an anti-British feeling if British troops were not sent instead. Standing instructions were sent to Bernard Burrows, the former British Ambassador to Turkey, who was based in Bahrain at the time noting, “If a very serious situation arises, British troops may be used to restore it”\textsuperscript{139}. The meeting ended with an abrupt prognosis of Bahrain’s future: “Bahrain won’t for years produce police leaders: they must come from outside”\textsuperscript{140}.

The interference in Bahrain’s affairs by the United Kingdom lays its foundations in history. Undeniably throughout this time the self-determination of the peoples has been affected, if not practically prohibited. Adam Curtis argued in 2012 “this very system of oppression, the rock against which the dreams of democracy are being dashed”\textsuperscript{138}.

\begin{enumerate}
\item[130] \textit{ibid} at Article 1(a)
\item[131] \textit{ibid} at Article 2
\item[132] \textit{ibid} at Article 1(b)
\item[133] \textit{ibid} at Article 1(c) and (d)
\item[134] \textit{ibid} at Article 1(e)
\item[136] See Mashal above.
\item[139] UK Cabinet Minutes, Cab 195/14, C.M. (55) 20th Meeting – C.M. (56) 36\textsuperscript{th}, 5th July 1955 at PM
\item[140] \textit{ibid} at CIGS
\end{enumerate}
was largely created by the British". The history is important to ascertain modern interferences and the rejection of Bahrain’s plight for self-determination. It moreover displays the foundations set in the 1800’s by colonial rule as a modern perpetuation of history, where a de facto Tribal Monarchy rules through the survival of external interventionism.

Ever since the 1820 General Maritime Treaty, Britain has indirectly ruled the system in Bahrain. The treaty recognised the Trucial status of Bahrain’s Sheikhdom and recognised the ‘Al Khalifa’ tribe as its rulers. This extended to 1861 when Bahrain became an informal protectorate through what Onley describes as casting “Britain in the roles of protector, mediator, arbiter, and guarantor of settlements”. A few years later in 1880, Bahrain also signed a series of exclusive agreements binding them to ‘exclusive political relations’ and ceding ‘control of their external affairs’ to the British. Indeed the objectives were divergent, from the protection of interests in shipping during the 1800s towards the discovery of oil in Bahrain in the 1900s. This was particularly true during 1923 where the British effectively removed the ruler of Bahrain at the time for launching a campaign of oppression on his people followed by the installation of his son to the throne.

At the same time, a different form of interference took place: the installation of a ‘British advisor to Bahrain’, Charles Belgrave, following the shift in regimes to stabilise the country. His power developed by the 1930’s, and Curtis argues that he was “in effect running the government of Bahrain” and in consideration of Bahrain’s lack of legal code at the time, he also ran the courts.

In the 1950’s, following the creation of the United Nations Charter, and the beginnings of growing international romance with de-colonialism another uprising took shape in Bahrain, met with another suppression – this time at the hands of the British imposed advisor Belgrave with the help of British troops that were deployed in 1956.

During a Panorama investigation, an interview with a local protester voiced the amount of disdain felt by protesters towards external interference arguing “Belgrave is not just an adviser - he is the judge, and when he goes to the court he is also the police commandant. He is everything in Bahrain, he is not an adviser.”

In the immediate period following the 50s uprising, and growing disparagement faced by Belgrave, another ‘advisor’, Colonel Ian Henderson, was appointed as Head of Security in Bahrain in 1966. Alongside Henderson was head of the Special Branch of security, another Brit, James Bell. Henderson remained following Bahrain’s ‘independence’ in 1971, and the legacy he held was bursting with heavy-handed security tactics, including severe ‘systematic’ torture, and the infamous creation of a National Security system that he held

141 Curtis, A., If you take my advice – I’d repress them, BBC, 11 May 2012 (Last Accessed: 25/08/2013) [http://www.bbc.co.uk/blogs/adamcurtis/posts/if_you_take_my_advice_-_id_rep
144 ibid

146 See Curtis Supra note 62
until 1998. Robert Fisk argued in 1996 “the revolution he [Ian Henderson] is trying to suppress in Bahrain is an inconvenience that torture is unlikely to change”\(^\text{148}\).

It hasn’t changed. During this time, Bahrain had also signed a ‘Treaty of Friendship’ with Britain and an agreement with the United States to allow renting of military facilities alongside the opening of a US embassy in Manama\(^\text{149}\).

Prior to Henderson’s State Security system, the rulers at the time had begun to implement a constitution and National Parliament. The system Henderson created, through arbitrary imprisonment laws reflective of the modern laws governing terrorism, saw the dissolution of Parliament and constitution, the systematic torture of activists and politicians and the destruction of a possible movement towards democracy. He remained in the country until the 1980s and investigations of the allegations against him were later dropped despite the growing evidence.

Even today the intrigue surrounding Henderson’s rule in Bahrain remains classified. In 2013 academic Marc Owen Jones prepared a Freedom of Information request to the United Kingdom Foreign and Commonwealth Office (FCO) concerning documents containing conversations between Henderson and a former FCO employee. The request was rejected on the basis of a failed public interest test under Section 27 of the Freedom of Information Act 2000. De-classification of the document was held to compromise “its [Britain’s] ability to protect and promote its interests in this region”\(^\text{150}\).

The historical background of British interference in Bahrain’s affairs generate little surprise that John Yates, former Met Commissioner in the United Kingdom was hired by Bahrain ‘to reform the police’ following the brutal crackdown on pro-democracy activists throughout 2011. There was a shift of policing methods following the employment of Yates as head of security; the increase of the use of teargas and shotguns by riot police, alongside the establishment of sophisticated online spying methods. Moreover, any doubts that remained over whether Yates was there as an independent entity, or a representative of external interference, were diminished following an article written in the Telegraph by the former police commissioner claiming he was ‘bewildered by the worlds hostility’ towards Bahrain\(^\text{151}\). Yates echoed British Prime Minister David Cameron\(^\text{152}\) in arguing that ‘Bahrain is not Syria’ and argued that he was flustered that “so many in the UK, a long-standing friend and ally for two centuries, could so readily swallow everything opposition groups and activists were saying”\(^\text{153}\). A humble way of saying that Bahrain’s King Hamad Al Khalifa “is still persona


\(^{152}\) David Cameron on BBC News, 20 April 2012 (Last Accessed: 25/08/2013) - “Bahrain is not Syria… there is a process of reform underway” [http://www.bbc.co.uk/news/uk-17789082](http://www.bbc.co.uk/news/uk-17789082)

\(^{153}\) See Yates supra note 78
grata in Downing Street while Assad is not”\textsuperscript{154}.

**Legitimacy and Modern Interference**

“Why did you leave? – No one asked you to go!”\textsuperscript{155}

It is important to note that mere statements do not constitute ‘interference’ as required by international law. It is also not the claim that John Yates has been sent on behalf of the UK to preserve their interests or alter the political shifts happening in Bahrain. However the argument can be made that these cumulative events, taking into account the historic relationship of Bahrain and the UK, suggest that the UK has had a powerful say in the events unraveling in the 2011 uprising. Indeed, throughout the Cold War, means other than the use of force through external powers have been used to preserve ally governments in power. Gray finds that means such as financial support, arms and training of police or the establishment of military bases may be used as a method of strengthening a foreign regime\textsuperscript{156}.

In light of these modern forms of external interference, there should be an examination of the indirect routes to preserve an ally government in contempt to opposing people’s objectives of self-determination. Although it is difficult to establish these procedures as ‘interference’ by the UK in Bahrain’s internal affairs, it provides for a convenience for the UK that it has not troubled to stop. There have been a number of exported goods and services to Bahrain from the UK that work to directly shift the political scene in favour of the Bahrain regime and its ally whilst simultaneously preventing the system of rule desired by the people. The first is the export of arms to Bahrain. It has been argued extensively and repeatedly, that arms should not be sold to regimes that in turn use them against civilians. Maryam Al Khawaja in 2011 called the UK ‘hypocritical’ for defending the perceived ‘pressure’ that they are putting on the Bahrain regime to reform whilst simultaneously selling them arms\textsuperscript{157}.

Bahrain Watch has highlighted that although the UK had revoked some arms licenses in February 2011, sales were resumed in June later that year\textsuperscript{158}. Included in these arms exports were birdshots that are used against protesters, pistols, shotguns, small arms ammunition, assault rifles, and sniper rifles\textsuperscript{159}.


\textsuperscript{156} Gray, C., *International Law and the Use of Force*, 3\textsuperscript{rd} Edition (2008), Oxford University Press, pp85-85

\textsuperscript{157} Maryam Al Khawaja also argued “If you’re really serious about pushing through these values, of human rights and democracy and respecting citizens, you shouldn’t be selling arms to a country that uses them against civilians. And I think that’s a message that needs to be sent very clearly to the UK government along with the others: stop the arms sales, now”. Interview with CAAT in November 2011 (Last Accessed: 25/08/2013) http://www.caat.org.uk/resources/countries/bahrain/interview-caatnews223.pdf

\textsuperscript{158} Parliament Select Committee Publications, *UK’s relations with Saudi Arabia and Bahrain (further written evidence)*, Bahrain Watch Evidence, Session 2013-2014, Foreign Affairs Committee, Para. 10

\textsuperscript{159} ibid at [10]
Additionally, in direct response to Parliamentary Under Secretary of State Alistair Burt claims that “no UK licenses have been issued to ‘Gamebore Cartridge Company’ for Bahrain for the last 10 years”; Bahrain Watch identified a significant number of cartridges baring the ‘Gambore’ logo\textsuperscript{160}. As well as birdshot pellets, teargas by UK arms manufacturer BAE has also been used in Bahrain. BAE also manufactured the military vehicles used by Saudi to intervene in Bahrain in 2011\textsuperscript{161}. It is also important to mention that other exports have also included surveillance technology used against Bahrain activists, currently under Judicial Review in the UK\textsuperscript{162}.

Moreover, when international law works to preserve repressive states during conflicts of genuine plights for self-determination, the argument must be made that the law is inadequate. Furthermore the laws limitation to certain conflicts, and its jurisprudence of oversimplifying state regimes in a single category—whether democracy, autocracy or proletariat—suggests that the law, at times, endorses repression. This is no truer when considering debates over the legitimacy of the government in power alongside the self-determination of the people. The severe accuracy of this stance pointing towards ‘illegitimacy’ through a tough security response in defense against genuine plights for self-determination is prevalent in Bahrain.


\textsuperscript{161} ibid


The second has been the hiring of UK public relations firms by the Bahrain regime in order to control the narrative of events outside the country in a total expenditure of over $32 Million\textsuperscript{163}. The most conspicuous firm used was ‘G3’ who has used a retired British army officer, Lieutenant-General Sir Graeme Lamb, as its general adviser. Following the employment of this firm, Lamb appeared in numerous online pieces\textsuperscript{164} arguing against the recognition of Bahrain as part of the ‘Arab Spring’, praising the system of rule and its rulers calling it a ‘little gem of a country’\textsuperscript{165} despite the horrific crackdown. PR firms have also been used to send out regular emails to journalists in order to promote the Bahrain regime abroad\textsuperscript{166}.

The third has been the irregular meetings between state officials both prior to and commencing following a crackdown on planned popular protests. There have been a number of irregular meetings between British Prime Minister David Cameron with the Bahrain King during the uprising, most recently a meeting in Downing Street which ‘reiterated the UK’s support for ongoing political reform in Bahrain...and commitment to strengthening trade and investment ties’\textsuperscript{167}.

\textsuperscript{163} See Bahrain Watch Report, PR Watch: Keeping an Eye on the Kingdoms PR, 2012 https://www.bahrainwatch.org/pr/

\textsuperscript{164} See for example Lamb, G., Why narrowly cast the push for democracy as the ‘Arab spring’?, The Guardian, 22 February 2012 (Last Accessed: 27/08/2013) http://www.theguardian.com/commentisfree/2012/feb/22/democracy-arab-spring

\textsuperscript{165} Articles have since been removed – see Bahrain Watch Report, PR Watch: Keeping an Eye on the Kingdoms PR, 2012 – G3 Profile https://www.bahrainwatch.org/pr/g3.php


\textsuperscript{167} Prime Ministers Office Press Release, Prime
A notable extraction from the UK press release was British agreement to sell 12 Typhoon Jets to Bahrain worth £1Billion\textsuperscript{168}, in light of the upcoming rebellion movement\textsuperscript{169}. Other meetings have included the invitation of the Bahrain King to the UK Queens Diamond Jubilee\textsuperscript{170}, numerous meetings with the Prime Minister\textsuperscript{171} and meetings with the FCO\textsuperscript{172}.

The increase in business investments by the UK has also been an outcome of irregular meetings with the UK FCO describing “\textit{high-level and regular contact with important Bahraini ministers is providing significant business opportunities}”\textsuperscript{173}.

\textit{Minister meets King of Bahrain, Reducing Barriers to International Free Trade, 6 August 2013} \url{https://www.gov.uk/government/news/prime-minister-meets-king-of-bahrain} \textsuperscript{168}

Farmer, B., \textit{Britain to Sell Typhoon Jets to Bahrain Despite Human Rights Record}, The Telegraph, 9 August 2013 (Last Accessed: 29/08/2013) \url{http://www.telegraph.co.uk/finance/newsbysector/industry/defence/10233673/Britain-to-sell-Typhoon-jets-to-Bahrain-despite-human-rights-record.html} \textsuperscript{169}

\textsuperscript{169} See above

\textit{Telegraph: King of Bahrain Lunches With Queen as Human Rights Storm Rages}, The Telegraph, 8 May 2012 (Last Accessed: 29/08/2013) \url{http://www.telegraph.co.uk/news/uknews/queen-elizabeth-ii/9274690/King-of-Bahrain-lunches-with-Queen-as-human-rights-storm-rages.html} \textsuperscript{170}

\textsuperscript{170} See BBC News: \textit{David Cameron Meets King of Bahrain}, BBC, 23 August 2012 (Last Accessed: 29/08/2013)


\textsuperscript{172} See BBC News: \textit{David Cameron Meets King of Bahrain}, BBC, 23 August 2012 (Last Accessed: 29/08/2013)


\textsuperscript{173} UK Trade & Investment and Foreign & Commonwealth Office, Worldwide Priority: Increasing business with Bahrain, 4 April 2013 (Last Accessed: 29/08/2013)

The majority of these meetings have been conducted in secret, with the lack of public awareness of their specific contents. Moreover, when the majority of these meetings are followed by an increasing crackdown in Bahrain, it is hard to argue the lack of UK interference.

International law lacks in coverage for such interferences, concentrating on direct interventions. Moreover this relationship seems to continue throughout Bahrain’s breach of international human rights law and practices.

\textbf{Self-Determination: A Prelude to Decolonization}

\textit{“Self-determination was a battle cry long before it was a legal principle”}\textsuperscript{174}

The general development of the self-determination principle is today one of the most debated constructions of international law. Its position as a ‘right’ or ‘duty’, the relationship it holds with state sovereignty and its position as a modern antivirus to colonialism is in one way or another unclear.

Crawford attaches this controversy to the \textit{lex lata/lex obscura} paradox. This is where the principle of self-determination has been caught in between laws readily established (\textit{Lex Lata}), and those laws which are in the process of being created (\textit{Lex Ferenda})\textsuperscript{175}.

The law has been established, in numerous international legal instruments. The United Nations Charter describes assigns self-determinations as one of its core principles\textsuperscript{176}.


\textsuperscript{175} ibid at 10

\textsuperscript{176} Article 1(2), United Nations Charter 1945
alongsie equal rights and universal peace.

Self-determination has developed the resort to self-help within a state. From its indirect recognition within the 1776 American Declaration of Independence, Woodrow Wilson defended the principle during the League of Nations Covenant in 1919, however it was not recognised as a legal doctrine. This was confirmed in the *Aaland Islands Question* during a dispute between Finland and Sweden and later was recognised, albeit narrowly, within the Atlantic Charter of 1941 between Winston Churchill and Franklin Roosevelt by recognising that territorial changes should not be against the wishes of the people. It was later during negotiations over trust territories that the Soviet Union proposed to include the principle of self-determination within the Charter of the United Nations. Indeed following the General Assembly Resolution on the Declaration on Colonialism, the principle of self-determination was recognised to apply to colonies. Moreover, it was strengthened following its express inclusion within Articles 1(2) and 55 of the UN Charter, which Wilson claims was

177 American Declaration of Independence 1776 – “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”


180 Wilson at 59

181 UNGA Res 1514 (XV)

the “final liquidation of colonialism in the interest of humanity at large”.

However it has also been argued that by listing the principle as a mere ‘purpose’ within the Charter is a declaration that it was not intended to develop as a right as sovereign equality would be damaged. Although this could be the case on interpretation, it is not the basis of theoretical foundation. Through the imperative of decolonisation and the formation of self-determination through the Charter, and subsequent human rights covenants, whether or not as a result of the original intentions of the drafters, the ensuing existence of future forces including state independence, transitional justice and the formation of democracy strongly suggest that the principle of self-determination can be used as a power to determine sovereign equality.

The two are not mutually exclusive; the former leads to the latter. This can be seen through the adoption of Resolution 637 which orders member states to “uphold the principle of self-determination of all peoples and nations” including non-self-governing and trust territories.

The development of the principle had been damaged through opposition to its enactment. It is undeniable that the doctrine continues to face criticism to this day. Simpson describes the principle as “hopelessly confused and
anachronistic”186, Jennings as “ridiculous”187, and Etzioni as “evil”188. Although the principle was a catalyst of change for the shift to de-colonisation, it has failed to protect people from the regimes installed as a result of colonisation.

Reisman offers an example of a scenario synonymous with the workings of Bahrain’s struggle for self-determination. Moreover it provides the difficulties faced within the third category of conflict mentioned in the analysis above. The scenario encompasses what Reisman calls the ‘19th Century Wild West’ of American Morality189.

Here a town with unclear legal settings exist through a commonly agreed upon rule, carrying weaponry to protect the rights that they have recognised. A sheriff arrives, enforces law, removes weapons, recognises rights that will legitimize his rule amongst the people, and prohibits the use of force. However, a short period following his established rule, the sheriff diminishes these rights, and is incapable of maintaining order.

Indeed in Bahrain, shortly following the declared ‘independence’ from British imperial rule in 1971, the Emir of the time Isa Al Khalifa established elections for the Constitutional Assembly in 1972. Three years later, following the uncovering of an attempted coup190, the Assembly was dissolved, and remained that way for almost 30 years. With torture systematic and repression on the rise, the people have no choice but to resort to self-help. During this time, Colonel Ian Henderson was still head of security and played a role as advisor to the Bahrain government191. The prohibition on the use of force, interference, and the universality of human rights were already established by international law, however, none of them prevented the constant instability in the country, the discrimination and oppression nor the subsequent obstacle placed against the self-determination of its people.

Reisman calls this the “curious legal grey area... between the black letter of the Charter and the bloody reality of world politics”192. He further argues that although verbal condemnations could take place, they could not stop violations of international law and hence the oppressors were ‘permitted to continue to benefit from the fruits of its illegal action’193. Although self-determination, works to counter these situations, its application can also be dangerous.

Verzijl contends that it is often a “convenient plaything both for international politics and propaganda”194.

What is left is a historic right with no means of enforcement. On the 12th of August, 13 human rights organisations including Amnesty International and Human Rights Watch, composed a petition to the UN Office of the High Commissioner for Human Rights to ‘protect Bahrain’s right to self-determination’195.

188 A. Etzioni, The Evils of Self-Determination, (1992) 89 Foreign Policy 21, P.21
191 See “History of External Interference” above.
192 Reisman at 643
193 Reisman at 643-644
195 See “Joint Open Letter pre-August 14 To International NGO's, Media, Ally Governments and the UN”, 12 August 2013 http://www.fidh.org/joint-open-letter-pre-august-14-to-international-ngo-s-media-
within the letter was the express naming of British Prime Minister David Cameron and United States President Barack Obama as ‘Bahrain’s closest allies’ in order to urge them to “remain neutral, if not supportive of the peoples’ right to self-determination”\(^{196}\). The letter also expressly mentioned that “this is not a call for intervention” but to “end active support of the government of Bahrain”\(^{197}\). This third category of conflict suffers from external intervention not to proactively recognise and support the people’s self-determination, but to actively repress it.

Although an intra-principle conflict of interest does arise in regards to the effective realization of self-determination. This places the conflict between the people and the state that Lepard identifies as a ‘legal, moral, and political dilemmas’\(^{198}\) for the Security Council. The approach that bases self-determination on ethical grounds would legitimize individuals uniting in particular social or religious strata in order to assert their choice of leadership. Such rights have been asserted in

\[\text{ally-13818}\]

\[\begin{array}{ll}
196 & \text{ibid} \\
197 & \text{ibid} \\
198 & \text{Lepard, B., Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World religions, Pennsylvania State University Press, 2002, P.158} \\
\end{array}\]

Article 1 of the International Covenant on Civil and Political Rights asserting, “all peoples have the right of self-determination. By virtue of that right they freely determine their political status”\(^{199}\). The same right is reiterated in the International Covenant on Economic, Social and Cultural Rights 1966\(^{200}\) and an indirect reference made in the preamble of the Universal Declaration of Human Rights of a “last resort, to rebellion against tyranny and oppression”\(^{201}\). Together, these three instruments make up the International Bill of Human Rights. The International Court of Justice has also stressed that the principle of self-determination is “one of the essential principles of contemporary international law”\(^{202}\).

These conflict with an approach identified by Lepard as the self-determination of government, including obedience, unity, and diversity\(^{203}\). This assertion must be criticised. There has been a presumed differentiation between self-determination and state interests. By doing so, Lepard is placing sole authority of the state within government hands, thereby uniting the interests of government and state. This might be true in many democratic settings around the globe, however in the majority authoritarian states, the interests of state have been united with the interests of the ruling monarch by the ruling monarch himself.

Indeed he does later argue that it must not be used in order to justify large-scale violence against civilians asserting their right of self-determination or justified rebellions against oppression\(^{204}\). This in turn is at conflict with the interests of the self-determination of the people and their fundamental rights. Allain brings to light the struggle of the Kurds throughout their century-long fight for self-determination\(^{205}\). He places the failure of the Kurdish self-determination movement on two arguments: the lack of support and active denial of Kurdish movements following the First World War, and the ‘genocidal levels of repression’ following the creation of the new Middle East\(^{206}\). He further argues that international law applies differently in the Middle East as opposed to the rest of the world.

\[\begin{array}{ll}
204 & \text{Lepard at 145} \\
205 & \text{Allain, J, International Law in the Middle East Closer to Power than Justice, Ashgate Publishing, 2004, P.13} \\
206 & \text{Allain at 13} \\
\end{array}\]
“States have established positive international law in such a manner as to ensure that the Statist system prevails; that self-determination takes place within the Westphalian State system.”

Cassese supports Allain’s arguments by claiming that the development of the principle was ‘little more than political rhetoric’, with its fate only second to European interests. Policies of selectivity in recognising these modern conflicts are evidence of these arguments. Bahrain has been part of the 2011 Arab Spring alongside other intra-state conflicts, and remains the only state that has not received support for regime change despite the genocidal levels of oppression. Not only have the people in Bahrain lacked any sort of support for their peaceful uprising, but states have had an active role in repressing the struggle; from the Saudi intervention, to the UK interference. Wearing argues that the UKs stance in the conflict is an “embarrassment to David Cameron” and his links with the Gulf dictators will “come back to haunt him.” Additionally, the crackdown has only resulted in the strengthening of regime links to the UK and a ‘business as usual’ response. This is a fundamental error stemming from the vague international laws governing intervention, self-determination and interference. It has been left open-ended to enable interventions when powerful external state interests side with an intervention, and to protect sovereignty when they do not. The conflicting applications of the doctrine of ‘humanitarian intervention’ work as a central argument in favour of this notion.

**External Interests and the Doctrine of Humanitarian Intervention**

At the core of the UN’s legal instruments and jurisprudence lies a difficult paradox. Humanitarian intervention is a mechanism that has split academic opinion in half. Arguing that international law has, in one way or another, become a tool for the use of force, Roberts identifies the inconsistency in legal transformation undergone by the UN. Although it has been concerned with the eradication of force throughout the period following the Charters implementation, the UN’s acceptance of Security Council enforced intervention took the UN “from being an institution for the non-use of force” to “an instrument for the use of force”.

Although the doctrine has a perceived palpable usefulness of preventing overseas massacres, Oppenheim argued that it has been “abused for selfish purposes” which has weakened its legal standing. The law has also been accepted in regional legal instruments such as the Constitutive Act of the African Union.

207 Allain at 15
210 ibid
Within the laws of the UN, humanitarian intervention would depend on the authorisation of the Security Council under the enforcement mechanisms of Chapter VII of the UN Charter. However, it cannot be concluded that humanitarian intervention without the authorisation of the Security Council does not exist. In 2013 the US, UK and France, following stagnation at the Security Council, brace themselves for intervention in Syria under arguments of humanitarian intervention without the backing of the UN217. Russia and Iran have responded with threats of war218 including Syrian regime evacuations of specific bases219, and an Iranian threat of retaliation against Israel220; the makings of the next World War at the hands of external intervention.

The controversy lies in the development of the powers available for the Security Council following the Cold War. Alongside this there has been unpretentious reasons for doubting the use of the principle, taking into account selective applications of the principle and individual state interests. In addition, Lepard also argues that the doctrine is extremely controversial from a legal perspective as it has been the root of severe conflicts of interests within the norms of the UN Charter and contemporary international law221.

The Security Council is made up of fifteen members, ten who are elected in two-year periods, and five permanent members consisting of the United Kingdom, the United States, Russia, China and France - all who possess a power of veto222.

Gray argues that the history of the use of humanitarian intervention had shown that humanitarian ends were almost always mixed with other, less laudable motives223.

The Security Council without the authorization of all five permanent members cannot pass resolutions, and with conflicting interests between the US, UK and France on one end against China and Russia on the other, the foundation is unstable224. This can be seen during recent vetoes by Russia and China against Syrian sanctions225. This would

\[\text{namely: war crimes, genocide and crimes against humanity} \]

221 Lepard, B., Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World religions, Pennsylvania State University Press, 2002, P.3
224 Although note the role of ‘concurring’ votes in which abstentions by a permanent member can enable actions to take place – See Gardiner, R., International Law, Pearson Longman, 2003, P233 and UN Charter Article 27.
almost certainly be mirrored if a draft resolution should pass through the Council for sanctions against Bahrain, with the US preserving its interest and its 5th Fleet stationed in Bahrain, and the UK preserving a long standing ally. Although it is important to note recent arguments made by Navy Commander McDaniel who forcefully argues that the US needs a ‘plan B’ to shift its fleet. Moreover the extension of the tools accessible to the Security Council has been extensively criticised. Lepard further argues that the Security Council powers are on the one hand prescribing mechanisms for intervention whereas the principles of sovereignty, domestic jurisdiction, and non-intervention present in the Charter are expressly prohibiting intervention. These powers may be categorised upon a three-way structure: a power to apply mandatory sanctions on States in breach of their international legal obligations, a power to deploy of military force on enforcement missions and humanitarian intervention, and a power to set up ‘subsidiary bodies to determine legal matters’. In the Namibia Case, Fitzmaurice criticised the Security Council claiming that “it was to keep the peace and not to change the world that the Security Council was set up”.

This is albeit the fact that states are unequally represented within the Council, and Bianchi argues that, as a result of this formality, the Council is “in all likelihood, the least suitable international body that could credibly discharge a legislative function”. Krisch argues that the fact that the power of Security Council authorization for humanitarian intervention in the 90’s showed comprehensive tolerance indicates that sovereignty was not the main concern. Koskenniemi further contends that these powers “hardly justify enthusiasm about its [Security Council] increasing role in world affairs”.

It must be emphasized that there are still arguments in favour of humanitarian intervention through Security Council authorization that have been endorsed within the law despite its inconsistencies and conflicting interests. As expressed within the United Nations Charter, the purposes of the UN involve the universal respect for human rights. In line with this is the Article 55 reiteration of the UNs and Security Councils purpose of promoting observance of human rights and fundamental freedoms. Schachter argues that this imposes a legal duty on member states to protect human rights, and as a result, a pledge

Krisch, N., Legality, morality and the dilemma of humanitarian intervention after Kosovo, European Journal of International Law, 13(1) 2002, pp.331-332
Koskenniemi at 3
Article 1(3) UN Charter 1945
Schachter, O., The Charter and the
by the Security Council to do so is justifiable. However disputing this view, Hudson argues that the Charter does not impose a legal obligation on States to protect human rights. Mechanisms outside the UN Charter are also available in support of humanitarian intervention. Under the Genocide Convention, ‘organs’ of the United Nations “may take action as they consider appropriate for the prevention and suppression of acts of genocide”. This would suggest that should the threshold of ‘genocide’ be reached under 2 and 3 of the Convention, the organs of the UN, namely the Security Council, would be justified in resorting to force. Moreover, practical advantages have also been identified as a result of this mechanism, specifically ‘prompt normative responses’ to humanitarian situations arising globally.

However the selectivity of the principles application overpowers the perceived advantages. It cannot be ignored that those making the decisions over intervention are not without their own interests. Orford makes the argument that the existing approaches to humanitarian intervention have largely neglected the imperial history of the law. Furthermore she criticises the unequal representation of power in the law, arguing that it works to shift responses to those that serve powerful state interests.

The argument must also be made that a large part of humanitarian intervention involves the dissolution of existing state regimes to the creation of new ones. There will be large influences from the intervener on the creation of a new regime in the state intervened.

The Security Council will therefore have a large say in the matter of regional politics and the systems of the world. Mark Evans argues that selectivity has been practiced since the early cases of intervention.

He contends that it is impractical to offer Kosovo military intervention whilst Chechnya and Rwanda were left to “drown in the blood of one of the worst genocides since World War II”. Holzgrefe also contends that the “international community did nothing to stop the Rwandan Genocide”.

It is therefore worrying to comprehend the emergence of a ‘right’ or ‘duty’ to intervene. Clapham argues on the contrary by claiming that

238 Bianchi at 888-889
240 ibid

following the experience of intervention in Libya, “it can no longer be claimed that the UN has no business interfering in a situation of civil war”\textsuperscript{243}. Although a successful intervention in terms of overthrowing a despot, what Clapham fails to argue is that the post-Gaddafi era has been lead by the rule of militias and arbitrary executions\textsuperscript{244} including the killing of the US ambassador to Libya in 2012\textsuperscript{245}.

Additionally there have been academic disputes concerning the legal basis for NATO intervention in Libya. The basis for Libya intervention was argued on a two-fold exception to the prohibition on the use of force: on the authorization of the Security Council Resolution 1973 (2011)\textsuperscript{246} and on the consent of the rebels who had been occupying Libya’s UN seat. There is no doubt that international law was breached.

Intervention does not apply in civil wars and it has also been largely accepted that NATO operations in Libya went beyond the mandate of Resolution 1973 (2011)\textsuperscript{247}.

It is also important to know that academics have realized possible future shifts in the institutional structure of the Security Council and the UN. Waxman\textsuperscript{248} argues that a three-way transformation could affect the possible functioning of the United Nations. Firstly, the authority of the Security Council may lose the legitimacy that it has been devoted with over the years in the short term as a result of the non-operational distributions of state power.

Secondly, through the constant rise and empowerment of regionalist agreements and the empowerment legal and political regional bodies such as the African Union, the authority of the Security Council may be significantly challenged leading to the reformation of the United Nations Charter. Thirdly, the rise of non-state bodies and non-governmental organisations could work as a catalyst for shaping international opinion on the legality of force which could in turn diminish the authoritative powers of States in this field\textsuperscript{249}.

\textsuperscript{243} Clapham, A., Brierley’s Law of Nations: An Introduction to the Role of International Law in International Relations, Oxford University Press 2012, pp.463-464

\textsuperscript{244} Wheeler, W., How Militias Took Control of Post-Gaddafi Libya, Global Post, 24 August 2013 (Last Accessed: 24/08/2013) \url{http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/how-militias-took-control-post-gaddafi-libya}

\textsuperscript{245} See BBC News: US Confirms its Libya Ambassador Killed in Benghazi, 12 September 2012 (Last Accessed: 24/08/2013) \url{http://www.bbc.co.uk/news/world-africa-19570254}


\textsuperscript{247} Ulfstein, G. and Christiansen, H., The Legality of the NATO Bombings in Libya, International and Comparative Law Quarterly, 2013, P169

\textsuperscript{248} Waxman, M., Regulating Resort to Force: Form and Substance of the UN Charter Regime, European Journal of International Law, 2013, 24(1) pp. 151-189

\textsuperscript{249} \textit{ibid} at pp187-188 and see Murphy, ‘Criminalizing Humanitarian Intervention’, 41 Case Western Reserve Journal of International Law (2009) 341, at 349-350 for examples of how the ICISS and IDC helped shape international opinion on the 1999 intervention in Kosovo
CONCLUSION: MOVING FORWARD

The course from the original international legal provisions governing external interventions and interference is stagnant. Although successfully working to limit the amount of modern inter-state conflicts, they work to increase the roles of states in civil wars, whilst simultaneously failing to produce effective formulas for external interference and completely neglecting the existence of peaceful uprising. Moreover, the lack in effective provisioning for the doctrine of humanitarian intervention has allowed for a wide margin of interpretation in individual cases leading to illegal interventions to take place arbitrarily.

Today, with the unworkability of the Security Council on the Syrian Civil War as a result of inevitable veto’s, the US has resorted to the threat of force in response to reports of chemical weapon use by the regime; a threat of double standards considering leading to academic commentary highlighting the insincerity of the interventionist principle250.

In response, Iran has warned of military intervention in support of the regime threatening one of the worst inter-state conflicts since the Second World War251. The law, alongside incompetent state practice, is largely to blame – there is too much wiggle room without efficient enforcement procedures. There arguing – “if the use of chemical weapons is always and unequivocally abhorrent and a taboo, why is it that the United States once held nearly 30,000 tons of CW materials such as mustard blister agent and the nerve agents VX and Sarin? Why is it that the US had a first-use policy on chemical weapons until 1969 and a second-use, ‘retaliatory’ policy on chemical weapons as recently as 1991? And why does the US government continue to miss its legally-binding deadlines for getting rid of all its CW stocks?

Also, if chemical weapons is the ‘red line’ in this conflict, and the trigger for military action and outside, US-led intervention in Syria, why didn’t we see a debate like this in May when UN investigator Carla Del Ponte suggested that Syrian rebels had used Sarin, too? Where was the outrage then?”. http://www.huffingtonpost.co.uk/mehdi-hasan/chemical-weapons-abhorrent_b_3835396.html

The development of the principle of self-determination into a modern right has paved way for a new era of decolonization and regime change, yet external interferences work against its effective realization. There is a conflict of interests that the law fails to resolve leading to the depravation of future societal freedoms. Bahrain has been left as an example of a state conflict left for inescapable rises in violence in order to receive support in law, whilst continuing to face external interventions and interferences. The continuing presence of Saudi troops on Bahrain territory is a modernized form of occupation not recognised in the law. Moreover the effects of UK interferences have had the practical effect of depriving the peoples right to self-determination. Christopher Davison has argued that the regime in Bahrain had already collapsed in 2011, who is in fact ruling in Bahrain are external forces252.


252 See Christopher Davidson at the Oxford Union Society, What Has the Arab Spring Achieved? 25 February 2013
He further argues that there is an upcoming shift in the political landscape in the Middle East leading to the collapse of the ruling monarachs that have for centuries been empowered by the west and that this form of “traditional monarchy” operating as a legitimate regime type in the region “is soon going to reach the end of its lifespan.” This is important for the future Bahrain/UK relationships. In 2013 Bahrain’s King argued that the relationship ‘was as strong as ever’ encompassing further defence agreements,

http://www.youtube.com/watch?v=EdpdmhRJBx0


254 Davidson, C., *Why the Sheikhs Will Fall*, Foreign Policy, 26 April 2013 (Last Accessed: 27/08/2013) http://www.foreignpolicy.com/articles/2013/04/26/why_the_sheikhs_will_fall

255 Bahrain Information Affairs Authority Press Release above at 255

256 See Horne, J., UK’s relations with Saudi Arabia and Bahrain (further written evidence) Written evidence from John Horne (Bahrain Watch), UK Parliament

an increase in naturalising British nationals, and economic cooperation with Bahrain banking assets reaching $11.1 Billion Dollars in the UK.

Future applications of the international legal principle seem to be retreating backwards towards more direct interventions and interferences, with self-determination receiving little recognition if they do not work to protect interests of the powerful, or are an explicit force against those interests.

Select Committee Publications, Foreign Affairs Committee, Session 2013-2014, Para 20 – “Significant news concerning the two countries has been reported openly by Bahraini authorities, but not by the British government. For example, a new UK-Bahrain Defence Co-operation Accord was signed at the MOD in London on 11 October 2012, by the British Secretary of State for Defence and the Bahraini Foreign Secretary, with the Crown Prince present. This followed a trip to Bahrain in September by the British Defence Secretary. The Bahrain government reported on both the trip and the defence agreement, however no such details were forthcoming from the British government. The only information from the British government in the public domain has stemmed from questions asked by MPs in the House of Commons.”

257 See Bahrain Information’s Affairs Authority Press Release above at 255
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