1. Introduction

The terms ‘internal strife’ and ‘insurgency’ encompass a range of situations from both peaceful and violent protests and demonstrations through to rebellions against the government to full blown armed conflicts, that may either occur entirely between the governmental forces of a state and a non-state armed group (or between two such groups) or, as is more often the case, fuelled by outside states or even involve them directly.\(^1\) The uprisings of the Arab Spring since 2011, in particular the horrifying continuing crisis in Syria, provide a near textbook example of these different conditions of internal strife, and their actual and potential impact upon regional and global security.

Traditionally, international law neither expressly permitted or prohibited individuals or groups within states to revolt against their government, or against each other,\(^2\) or provided much in the way of rules regulating their actions during the course of such internal strife, leading some to declare the ‘neutrality’ of international law in regards to such issues.\(^3\) Similarly, it was the case that ‘[g]overnments faced no limitations on their ability to quell internal uprisings’.\(^4\) Today, while international law retains a certain neutrality regarding the right of individuals and groups to rise up against their government (or indeed each other),\(^5\) government and state officials are not permitted to simply resort to forcible measures against individuals and groups within their

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\(^1\) There are no universally accepted definitions of the terms ‘internal strife’ or ‘insurgency’. In general, ‘strife’ may be defined as ‘angry or bitter disagreement over fundamental issues’ while ‘insurgency’ may be defined as ‘active revolt or uprising’ (Oxford English Dictionary). In Kelsen’s view insurgency presupposes a civil war. H. Kelsen, ‘Recognition in International Law’ (1941) 35 AJIL 605, at 616. Another term used for ‘insurgency’ is ‘insurrection’ which has been described as ‘a war of citizens against the State for the purposes of obtaining power in the whole or in part.’ R.P. Dhokalia, ‘Civil Wars and International Law’ (1971) 65 AJIL 219, at 225. Falk is of the view that for a conflict to amount to insurgency as understood in international law ‘[i]t should not be a mass of disconnected and individual acts of terrorism (bombardment of planes, etc) but a coordinated struggle with the objective of obtaining power in the state in whole or in part’. H.A. Falk, ‘Janus Tormented: The International Law of Internal War’ in J.N. Rosenau (ed), International Aspects of Civil Strife (Princeton University Press, 1964), 185, 185-9.


\(^5\) Although such individuals or groups may be in violation of domestic law in doing so, with many states treating acts of insurrection and insurgency as treasonable offences. As set out below, this does not mean that international law is entirely neutral on the issue, and in fact provides regulation of the actions of non-state actors in several key respects, most notably through the law of non-international armed conflict. In addition, acts committed during internal strife and insurgency may constitute crimes under international criminal law, although this is beyond the remit of this chapter.
territory, and how they respond to the disruptive and possibly violent actions of these groups is also more firmly regulated – and, with that, limited – by international law.

This contribution intends to provide a broad yet concise overview of the international legal frameworks that regulate internal strife and insurgency. In setting these out the chapter commences by looking at the framework governing the actions of state officials in law enforcement operations, which is primarily centered upon the rights of individuals – and the related duties of states in protecting them – contained within international human rights law (IHRL). In addition to addressing the ways in which the existence and operation of human rights law seeks to both restrain and empower state officials in carrying out their law enforcement duties in reacting to incidences of internal strife and insurgency, this section will also look at the way in which non-treaty standards regulate such conduct of these officials. The chapter then examines the transition of internal disorder into armed conflict, in particular the applicability of the law of armed conflict (LOAC) and the ways in which this framework interacts with IHRL.

However, incidences of internal strife and insurgency are rarely purely internal, and from the perspective of ‘global security’ it is the possibility of outside intervention and the attendant frameworks and rules of international law that are arguably most pertinent and controversial, which will similarly be examined and set out below. There have been several recent developments with an impact, or possible impact, upon international law governing internal strife and insurgency, most notably in connection with this final framework, and the chapter will provide a brief overview of these and some of the recent situations that illustrate them, before providing some general conclusions.

2. Relevant Legal Frameworks

2.1. The law enforcement paradigm

The law enforcement paradigm starts with the rights of individuals, in that it is grounded in the framework of international human rights law. Rather than having as its starting point the imposition of obligations upon states, it inversely begins with the rights of individuals, with the obligations upon states and state officials primarily flowing from these. In this respect, and of particular note within the context of internal strife and insurgency, individuals have the right to life, the right to be free from torture, the right to liberty and security, the freedom of thought and expression, the freedom of association, and the right to peaceful assembly and

6 States also have, in general, an obligation to maintain law and order within their territories. See ICRC, International Rules and Standards for Policing (2015), at 18.
8 See, for example, Article 7, ICCPR.
9 See, for example, Article 9 ICCPR.
10 See, for example, Articles 18 and 19, ICCPR.
11 See, for example, Article 22, ICCPR.
protest.  However, while several human rights are absolute, there are many that are not, so while, for example, individuals have the right to be entirely free from torture at all times, there are situations in which either the interruption of a protest – including through forceful means – or even the taking of an individual’s life may be lawful. More specifically, it is not that a state official is prohibited from interfering with an individual’s right to peacefully protest, but that any interference must be in conformity with the law and be necessary, leaving somewhat a wide margin of appreciation in the hands of state authorities in its implementation. In respect to the right to life, the principle provides that ‘no one shall be arbitrarily deprived of [their] life’, which again is essentially left to be determined by whether it was in accordance with the law and was necessary.

While these rights are contained within various international and regional human rights treaties which expressly state the right and the strict conditions under which some may be infringed or derogated from, regulation of the actions of state officials in regards to these rights is encased within the broader law enforcement paradigm, incorporating, in addition, several ‘softer’ non-binding instruments that have been agreed upon, including the Code of Conduct for Law Enforcement Officials (1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). In general, this paradigm provides that state officials who are carrying out law enforcement duties – whether that be the police or military – are exceptionally permitted to resort to the use of forcible measures when necessary under the circumstances, in particular where non-forcible measures ‘remain ineffective or without any promise of achieving the intended result’ or legitimate objective, and only in a proportionate manner and to the extent strictly required.

In the law enforcement paradigm special attention is provided to the use of firearms in that ‘[l]aw enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the

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12 See, for example, Article 21, ICCPR.
13 See, for example, Article 21, ICCPR: any interference must be ‘necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.’ See also Article 11(2), ECHR.
14 See, for example, Article 6(1), ICCPR. In contrast, Article 2 of the ECHR holds that no one shall be ‘intentionally’ deprived of their life. See also McCann and Others v UK (1995), ECHR, para. 148: ‘The use of force … must be no greater than “absolutely necessary” for the achievement of one of the purposes set out in that Article.’ The purposes referred to in the McCann case are found in Article 2(2), ECHR: ‘Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.’
15 Derogation is only permitted during times ‘of public emergency which threatens the life of the nation’. Article 4(1), ICCPR. Certain rights, such as the right to life, the freedom for torture, and the freedom of thought conscience and religion are expressly excluded. Article 4(2), ICCPR.
16 The 1979 Code of Conduct for Law Enforcement Officials was adopted by UN General Assembly Resolution 34/169 of 17 December 1979. In paragraph 1 of the resolution, the General Assembly decided to ‘transmit it to Governments with the recommendation that favourable consideration be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials’. The Basic Principles were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990. In its Resolution 45/166, adopted without a vote on 18 December 1990, the General Assembly welcomed the Basic Principles and ‘invite[d] Governments to respect them and to take them into account within the framework of their national legislation and practice’ (para. 4).
17 Article 1 (commentary), Code of Conduct, ibid.
18 Article 4, Basic Principles, n.16.
perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In the context of dispersing protests that have become violent, for example, ‘law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

Even more restrictively, however, intentionally lethal force, whether or not through the use of firearms, is permitted solely when strictly necessary in order to protect life and less extreme measures are insufficient to restrain or apprehend the suspected offender. In gauging whether such action meets this strict standard of necessity, it must be clear that a real and imminent threat to the life of either the law enforcement official concerned or others exists, whether that be other law enforcement officials or civilians. In addition, the use of intentionally lethal force must be strictly unavoidable, with other less-lethal means proving ineffective or without any promise of protecting life. In this respect, and in gauging the proportionality of any forcible measures, a range of weaponry must be available to those engaging in law enforcement activities and who are appropriately trained in their use, so that an immediate resort to those weapons with a higher risk of being lethal is the only option available.

It should also be borne in mind that the right to life is an individual right, so the necessity and proportionality of the use of lethal force must be gauged against the actions of individuals, not groups as a whole. In this respect, it is not permissible to shoot with lethal force at a group of people on the mere basis of their participation in violent riots, but rather a clear imminent threat posed by each individual targeted must exist. In this respect while it might be considered that these principles operate in times of isolated disturbances it is clear that ‘[e]xceptional circumstances such as internal political instability or any other public emergency’ may not be invoked to justify any departure from them.

2.2. The conduct of hostilities paradigm

There may come a point during internal strife within a state when a transition in the applicable legal frameworks takes place, from the framework governing law enforcement operations to that governing armed conflict. Traditionally, if armed groups had begun to seriously challenge the authority of the state in which they were fighting either the legitimate government or third

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20 Article 9, Basic Principles, n. 16. See also Article 3 (commentary(c)), Code of Conduct, ibid.
21 Article 14, Basic Principles, ibid.
22 Article 9, Basic Principles, ibid.
23 Nachova and Others v Bulgaria (2005), ECHR, para. 95.
24 Article 2, Basic Principles, n.16: ‘Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.’ See also Simsek v Turkey (2005), ECHR, para. 111.
26 See the discussion on Israel’s rules of engagement in Gaza in 2018 in section 3 of this chapter.
27 Article 8, Basic Principles, n.16.
states could recognise a state of belligerency.\(^{28}\) If recognition of belligerency was by a third state this meant that the recognised belligerent could bilaterally trade with, have diplomatic relations with, and enter into treaties with the recognising state, which became entitled to the status of a neutral state. If recognition was by the legitimate government the laws of war, which traditionally only applied between states, became applicable to the armed conflict between them.

However, along with some notable absences of such recognition taking place, such as in the Spanish Civil War of 1936-39,\(^ {29}\) the doctrine of belligerency and its associated ad hoc regulatory approach is more of historical significance today, as situations of violent and prolonged internal strife or insurgency that begin to challenge the authority of the governmental authorities will normally fall to be regulated under the law of non-international armed conflict,\(^ {30}\) as found within Common Article 3 of the Geneva Conventions (1949) and Additional Protocol II to the Geneva Conventions (1977) (‘APII’), as well as customary international law.\(^ {31}\)

This framework specifically does ‘not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature’\(^ {32}\) but instead to protracted hostilities of a particular intensity.\(^ {33}\) So while internal strife might at first be governed solely by the law enforcement paradigm, if the severity and gravity of the situation on the ground reaches a certain point it then falls to be regulated by the LOAC. In addition, however, although connected to the intensity requirement, the armed group(s) involved must be sufficiently organised,\(^ {34}\) and any armed hostilities must have a nexus with the armed conflict.\(^ {35}\)

There are, however, some differences in applicability between Common Article 3 and APII, in that while the ‘elementary considerations of humanity’ contained in Common Article 3 apply to all states,\(^ {36}\) APII, which develops and supplements Common Article 3,\(^ {37}\) only applies to the states that have signed and ratified it.\(^ {38}\) In addition, APII contains a ‘territorial control’ stipulation in that it is restricted to situations of internal armed conflict which involve armed groups that are under responsible command and which exercise such control over a part of the

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32 Article 1(2), APII.
34 Ibid.
36 Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) (1986) ICJ Rep. 14, at para. 114. This provision contains minimum safeguards in the protection of those rendered hors de combat and not for the protection of those taking part in hostilities or civilians and civilian objects.
37 It provides for a broader range of fundamental guarantees in the protection of non-combatants, such as prohibiting collective punishment, hostage-taking, and pillage.
38 The number of state parties to APII currently stands at 168.
state’s territory as to enable them to carry out sustained and concerted military operations and actually implement APII.\(^{39}\) The high threshold of applicability, in addition to the more limited breadth and scope of regulation in comparison with the framework regulating conflicts between states, owes much to the protectionist concerns of states in regards to their sovereignty.

Yet, all of these rather vague criteria leave much room for disagreement as to whether they have been met, raising the question as to how one might gauge whether the stage has been reached in internal strife or insurgency when the law of armed conflict becomes applicable? It is not always easy to pin point exactly but, as the International Tribunal for the former Yugoslavia has remarked, relevant factors might include the number, intensity and duration of intensity of individual confrontations, the type of weapons and other military equipment used, the number and calibre of munitions fired, the number of persons and type of forces partaking in the fighting, the number of casualties, the extent of material destruction, and the number of civilians fleeing combat zones.\(^{40}\) In addition, if and when the UN Security Council (UNSC) begins to identify violations of – as well as call upon the parties to refrain from violating – LOAC then it can be credibly claimed that the situation and applicable frameworks have shifted. Indeed, this could be seen in Syria during the uprising in the country from 2011. While the internal strife began with demonstrations in Daraa, with the international community treating it as such, as the situation intensified the UNSC began to talk of violations of LOAC in its resolutions,\(^{41}\) indicating a shift in applicable legal frameworks.

However, it is not in fact a case of ‘transitioning’ from one framework (IHRL) to another (LOAC), in that IHRL continues to apply during armed conflicts.\(^{42}\) Indeed, the law enforcement paradigm does not cease to be applicable during times of armed hostilities but the way that it is interpreted and applied is altered in that LOAC becomes the \textit{lex specialis}.\(^{43}\) For example, while all individuals have the right at all times to be free from the arbitrary deprivation of their lives, during armed hostilities this must be read in light of the applicable rules of the law of armed conflict.\(^{44}\) In this respect, while the law enforcement paradigm permits the taking of life only in exceptional circumstances based upon the \textit{conduct} of the individual concerned and when strictly necessary to protect life,\(^{45}\) the taking of life under the conduct of hostilities paradigm is premised upon the \textit{status} of the individual concerned being either a combatant (a member of a state’s armed forces) or a member of an armed group to the armed conflict.\(^{46}\) In addition, however, the targeting of individuals might also be determined upon the

\(^{39}\) Article 1(1), APII.

\(^{40}\) \textit{Haradinaj} case, 3 April 2008, para. 49.

\(^{41}\) Compare, for example, UN Doc. S/PRST/2011/16, 3 August 2011, with UNSC Resolution 2139, 22 February 2014, para.1.


\(^{43}\) \textit{Nuclear Weapons} advisory opinion, \textit{ibid}, at para 25.

\(^{44}\) The right to life is non-derogable ‘except in respect of deaths resulting from lawful acts of war’. See Article 15(2), ECHR.

\(^{45}\) See section 2.1. above where this is discussed.

\(^{46}\) Members of organized non-State armed groups which are a party to a non-international armed conflict are understood as ‘individuals whose continuous function is to take a direct part in hostilities’. ICRC, \textit{Interpretive
conduct of the individuals concerned, in that civilians may be targeted if and for such time as they directly participate in hostilities. 47 So while no one shall be intentionally or arbitrarily deprived of their life, an intentional killing of a combatant, a member of an armed group, or a civilian directly participating in hostilities will not be deemed to be arbitrary due to the fact that the law of armed conflict permits killing under these circumstances. 48

In this respect, while killings under both frameworks are governed by a principle of necessity, under the law enforcement framework the principle of ‘absolute necessity’ restricts force to that taken as a last resort and which pursues a legitimate aim, while under the conduct of hostilities framework the ‘military necessity’ to use force against legitimate targets is presumed. Furthermore, under the law enforcement framework in gauging proportionality a balance between the risks posed by the individual and the potential harm to this individual as well as to bystanders is required, 49 whereas the conduct of hostilities framework prohibits an attack against a legitimate target if it ‘may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’. 50 The legitimate target of an attack itself is therefore not covered by the principle of proportionality under the conduct of hostilities framework, which also tolerates more incidental loss of life than the law enforcement paradigm. 51

Both frameworks will be relevant when situations of civilian unrest – such as demonstrations and riots – arise while combat operations against an armed group are taking place, 52 something which arose in early 2018 when Israel responded to protests by Gazan civilians while in a state of armed conflict with Hamas. 53 Indeed, ‘the two situations of violence may even intermingle, for instance when fighters are hiding among rioting civilians or demonstrators.’ 54 In such a situation, and as Israel claimed was an issue during its operations in 2018, ‘it may become difficult to distinguish fighters from rioting civilians and to identify the relevant applicable paradigm.’ 55

2.3. Outside intervention in internal strife

47 See Article 13(3) APII, as well as the ICRC’s Interpretive Guidance, ibid.
48 Although the ICRC has adopted the position that ‘while operating forces can hardly be required to take additional risks for themselves or the civilian population in order to capture an armed adversary alive, it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force’. See Interpretive Guidance, ibid., at 82. Also, while the non-state actors/insurgents will not be prosecuted for acts undertaken in conformity with LOAC, they do not have combatant immunity so are liable to be prosecuted under domestic law for their participation in armed action against the state.
49 See Andronicou and Constantinou v Cyprus (1997), ECtHR, para 194; Kerimova and Others v Russia (2011), ECtHR, para 246.
50 Article 51(b), Additional Protocol I to the Geneva Conventions (1977).
52 Ibid., at 1.
53 See further section 3 below.
54 The Use of Force in Armed Conflicts, n. 52, at 1.
55 Ibid.
There is a further possible important element to internal strife, which also requires the consideration of a further relevant international legal framework. While internal strife may predominantly take place within the confines of a state, and in that sense be internal, it may also have external elements, in particular in the form of outside states directly or indirectly intervening. In this sense, the framework and rules governing intervention and the inter-state use of force become applicable.

States are prohibited from intervening in the internal affairs of other states, that is, they are not permitted to employ coercion against other states so that political, economic, social and cultural choices are no longer made freely. Coercion involving the use of force is, in particular, prohibited under Article 2(4) of the UN Charter and in customary international law. Yet, while self-defence and authorisation by the UN Security Council represent exceptions to this prohibition, if a state intervenes in another upon the basis of an invitation or the consent of that state in order, for example, to help the authorities maintain law and order or conduct hostilities against enemy fighters, then its actions do not engage the prohibition of forcible intervention ab initio.

While we talk of one state inviting, or at least consenting to, another state intervening upon its territory, a state is of course an abstract entity and the question is reduced to who may provide such consent. International law provides that while governments may invite outside intervention, opposition forces or insurgents may not. As the ICJ opined in the Nicaragua case of 1986, the principle of non-intervention ‘would certainly lose its effectiveness as a


57 Nicaragua case, ibid., at para. 205. Article 2(4) of the UN Charter provides that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

58 See Chapter VII, and Article 51 specifically, of the UN Charter.


60 In addition, it should be noted that consent may be ad hoc or contained within a treaty. Arguably an example of the latter is that found within Chapter VII of the UN Charter, permitting the UN Security Council to intervene should it determine at least a ‘threat to the peace’ (Article 39). A controversial competitor to this regime within the UN Charter and challenge to the Council’s authority can be found in Article 4(h) of the African Union’s Constitutive Act of 2000, although it has yet to be invoked.

principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State’ as this ‘would permit any State to intervene at any moment in the internal affairs of another State, whether at the request of the government or at the request of the opposition.’

This is not to say that states have not – and do not – intervene on behalf of opposition groups, but rather that they have not done so on the basis of a legal right to assist such groups, and it is clear that states have not attempted to develop such a right to intervene. Instead, states often deny that they are assisting opposition forces within another state while covertly providing indirect support through the provision of weapons and training, as was the case for much of the Cold War. Such support, while insufficient by itself to constitute an ‘armed attack’, thereby giving rise to the right of self-defence of the government of the state concerned, does nonetheless constitute a use of force for the purposes of the prohibition of the threat or use of force as found within the Charter of the United Nations and customary international law. Other forms of assistance, such as the provision of non-lethal equipment or the supply funds, while undoubtedly acts of intervention in the internal affairs of the state concerned, does not in and of itself amount to a use of force.

Alternatively, and more explicitly, states have claimed that intervention in support of opposition groups is justified upon the basis of individual or collective self-defence. For example, in the *Nicaragua* case the United States argued that both its direct actions against Nicaragua and its support for the *contras* – who were acting within Nicaragua and against the government – was in collective self-defence of Honduras, Costa Rica and El Salvador. Furthermore, in the *Armed Activities* case Uganda claimed that its support for the Movement for the Liberation of the Congo (MLC), who were operating in the DRC and against the government, was an act of self-defence. The ICJ held in both cases that there had been a violation of the principle of non-intervention and the prohibition of the use of force, regardless of whether the intervening states had intended to overthrow the government of the states concerned.

However, in supporting an opposition group it may be that a state in fact claims to be intervening in support of the legitimate authorities of the state concerned. This might be

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62 *Nicaragua* case, *ibid.*, para 246. In addition, it is those within the higher echelons of government, most notably the Prime Minister or President, that possess the authority to invite outside intervention. O. Corten, *The Law against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart, 2010), at 259. The United States intervened in Grenada in 1983, for example, following an invitation to do so by the Governor-General of the island who did not possess the requisite powers to consent to such an intervention.

63 See Henderson, n. 59, at 353. More generally, states have not in general attempted to develop a legal right of humanitarian intervention in order to prevent, deter or end a humanitarian catastrophe within another state that takes place at the hands of the government or is something the government is unable to do anything about. See Henderson, *ibid.*, chapter 10. While the UNSC possesses primary responsibility for the maintenance of international peace and security, it has also characterised internal strife and humanitarian situations as a ‘threat to the peace’ and subsequently authorised interventions upon this basis.

64 See Henderson, *ibid.*, at 353.

65 See *Nicaragua* case, n. 36, at para. 205.

66 *ibid.*, at para. 228.

67 See Article 51 of the UN Charter. This right is also one that exists within customary international law. See *Nicaragua* case, n. 36, at para. 176.


70 *Nicaragua* case, n. 36, at para. 241; *Armed Activities* case, n. 60, at para. 163.
through a state installing a new regime prior to it extending an invitation to intervene, as occurred with the Soviet Union’s intervention in Afghanistan in 1979.71 Alternatively, it may be claimed that an opposition group has since assumed governmental authority through its de facto effective control of all or most of the territory of a state.72 Indeed, the answer as to which entity possessed authority to invite outside intervention ‘turned … on wholly pragmatic questions of effective control over territory.’73 Indeed, effective control is the traditional method of identifying governmental legitimacy. Yet, it may also be claimed that an intervention has taken place upon the basis of an invitation from an opposition group that possess greater democratic legitimacy than the incumbent regime,74 or upon the invitation of a democratically elected leader that has either been ousted from or yet to assume their leadership of a state. However, while the political goals underlying an intervention may include the (re)establishment of democratic government this has ‘not led states to espouse a legal doctrine of “pro-democratic” invasion without UN authority’.75

However, a state may claim that an opposition group, and the ‘people’ they represent, possess the right of self-determination which, in turn, justifies intervention in support. During the Cold War national liberation movements were recognised as having the right to ‘struggle’ for self-determination.76 Yet, it was not clear whether ‘armed struggle’ was permitted. Nonetheless, while all states were urged ‘to provide moral and material assistance to all peoples struggling for their freedom and independence’,77 in declaring that ‘[i]n their actions against, and resistance to, … forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter’,78 support involving the direct or indirect use of force would appear to have been excluded, seeing as the Charter makes no provision for the use of force upon this basis. In addition, while there is no objective definition of a ‘people’ for the purposes of the right of self-determination, there also does not appear to be any ‘support for the right to use force to attain self-determination outside of the context of decolonization or illegal occupation’.79 However, while those in power – either through the possession of effective control or democratic credentials – possess the right to request outside interference, much will also turn on whether an intervention impedes or represses the realisation of self-determination. Indeed, ‘[e]very State has the duty to refrain from any forcible action which deprives peoples … of their right to self-determination and freedom and independence’.80

There is, in this respect, notable support for the ‘negative equality’ principle, meaning that if a civil war is in progress – whereby internal strife has reached the stage whereby the outcome of the conflict is unclear – then states should refrain from interfering and potentially influencing the outcome of the civil conflict one way or the other, principally on the basis that to do so

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72 J. Crawford, Brownlie’s Principles of Public International Law, 8th edn (Oxford University Press, 2012), at 152.
73 Fox, n. 59, at 817.
74 See the discussion in section 3.
75 C. Gray, International Law and the Use of Force, 4th edn (Oxford University Press, 2018), at 64. Instead, such interventions more often take place under the umbrella of UNSC authorisation (eg. Cote d’Ivoire in 2011) or upon the consent or invitation to intervene (eg the Gambia in 2017).
76 Definition of Aggression, UNGA Res. 3314(XXIX), 14 December 1974, Article 7.
78 Declaration on Principles of International Law concerning Friendly Relations, n. 56 (emphasis added).
79 Gray, n. 75, at 73.
80 Declaration on Principles of International Law concerning Friendly Relations, n. 56, at para. 5(5).
would negatively impact upon the right of self-determination.\textsuperscript{81} During the often messy reality of a civil war adherence to this principle avoids the need to identify those with authority to consent as well as establishing that an invitation has been validly given.\textsuperscript{82} It also avoids the possibility of escalating internal strife into an international armed conflict between states.\textsuperscript{83} Yet, the principle also overlooks the absence of clarity as to what exactly constitutes a ‘civil war’ and whether one exists in the circumstances,\textsuperscript{84} leaving much to subjective determination. In addition, if it only becomes applicable when the intensity of fighting has reached the level of a civil war it ‘appears to provide a greater right of self-determination to those with the capabilities to fight.’\textsuperscript{85} In this respect, given that the negative equality principle is based upon not impeding the right of self-determination it should also arguably be applicable beyond full-blown civil wars to situations of domestic civil and political unrest.\textsuperscript{86} It has, in any case, arguably not been adhered to in state practice,\textsuperscript{87} and as such not attracted a consensus among scholars.\textsuperscript{88}

However, those scholars in support of the negative equality do also accept that an intervention in support of one side in a civil war can justify a ‘counter-intervention’ by a state in support of the other,\textsuperscript{89} primarily on the basis that the initial intervention internationalises the conflict, meaning that the negative equality principle – which applies only in the context of civil wars – loses its relevance. Concerns might be raised in regards to the potential for abuse of such a principle. Indeed, this was arguably witnessed by the USSR’s intervention in Czechoslovakia in 1968 and Afghanistan in 1979.\textsuperscript{90} The required degree of prior intervention in order to permit counter-intervention is also unclear.\textsuperscript{91} If adhered to, this principle could be seen as supporting the principle of self-determination, in that an intervention is seen as reversing the negative impact of the original intervention. Yet, whether there is a need for proportionality between the prior intervention and the counter-intervention is another issue that remains unclear.\textsuperscript{92}

\begin{itemize}
\item \textsuperscript{81} Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, UNGA Res. 2131 (1965), para. 2. See also Declaration on Principles of International Law concerning Friendly Relations, \textit{ibid.}, at para. 3(2); Institut de Droit International, Resolution, ‘The Principle of Non-Intervention in Civil Wars’ (1975) 56 \textit{Annaire de l’Institut de droit international} 545, at 547; Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, September 2009, vol. II, at 277; Fox, n. 59, at 827: ‘where a society is fully divided about its political future, meaning that the government cannot plausibly claim to represent the entire population, external assistance on the government’s behalf would interfere with the people’s right to determine their own future’.
\item Henderson, n.59, at 363.
\item \textit{Ibid.}
\item \textit{Ibid.}
\item \textit{Ibid.}, at 364.
\item Q. Wright, ‘Subversive Intervention’ (1960) 54 \textit{American Journal of International Law} 521, at 529.
\item Fox, n.59, at 828.
\item Gray, n.75, at 81; 1986 UK Foreign Office support. ‘Is Intervention Ever Justified’ (1986) 57 British Yearbook of International Law 616.
\item See Doswald-Beck, n. 59, at 224 and 230-33.
\item \textit{Ibid.}, at 94.
\end{itemize}
Finally, it is possible that the purpose of an intervention may affect the way it is viewed legally.\textsuperscript{93} For example, while an intervention which aims to aid government forces in the context of a civil war, and thus potentially interfere with the right of self-determination, may be unlawful, intervention with the government’s invitation or consent for other purposes, such as fighting terrorism, may be seen as permissible.\textsuperscript{94} While this has arguably been seen to an extent in state practice,\textsuperscript{95} identifying and confirming the legitimacy of the proclaimed purpose of the intervention will often be problematic.

Of course, the above assumes the validity of any initial consent or invitation provided. In this respect, the consent must be shown to be real and clearly expressed, and must be provided prior to the intervention, as well as being freely provided and not under coercion.\textsuperscript{96} In addition, even if a state is seen to lawfully intervene in the territory of another, this does not mean that there are no limitations upon the actions of the intervening state, most notably it is not permitted to violate human rights or LOAC, or in general do anything that the consenting state would not itself be permitted in doing,\textsuperscript{97} and must stay within the boundaries of the consent provided.\textsuperscript{98}

While the applicable LOAC framework between the opposition fighters and the government will continue to be that regulating non-international armed conflicts, if the intervening state intervenes on behalf of an opposition force indirectly – through the provision of weapons, funding, training etc – then while this will constitute a use of force against the territorial state the armed conflict will remain one between the governmental and non-governmental forces concerned. If, however, the non-governmental forces operate under the effective control of the intervening state or the state intervenes directly with its own armed forces then the framework governing international armed conflicts becomes applicable.

3. Recent Developments & Contemporary Challenges

The world has seen no shortage of incidents over recent years that fall within the purview of the topic of this chapter, most of which have been well documented. They have also produced challenges to the legal frameworks and have had consequences for both regional and global security. The revolutionary spirit that spread through Africa and the Middle East from 2011 – or the ‘Arab Spring’, as it came to be known – led to a wave of peaceful and violent demonstrations, protests and riots and in many cases insurgencies, civil wars and foreign interventions. While the uprisings in Tunisia, Egypt and Yemen led to the overthrow of the government, that in Libya led to a civil war and subsequent intervention by NATO which resulted in the death of the leader, Muammar Gaddafi, and a toppling of the governing regime.\textsuperscript{99}

\textsuperscript{94} Henderson, n. 59, at 365-366.
\textsuperscript{95} See, for example, the intervention of the Gulf Cooperation Council in Bahrain in 2011 and France’s intervention in Mali in 2013.
\textsuperscript{96} International Law Commission, Draft Articles, commentary (1979) 2 (Part II) Yearbook of the International Law Commission 112.
\textsuperscript{98} International Law Commission, Draft Articles, commentary (1979) 2 (Part II) Yearbook of the International Law Commission 112: ‘Moreover, consent can be invoked as precluding the wrongfulness of an act by another State only within the limits which the State expressing the consent intends with respect to its scope and duration.’
However, the uprising in Bahrain was crushed by the government, which was supported by a direct intervention by several Gulf states, while a catastrophic civil war continues in Syria, fuelled by outside intervention by several states, most notably Russia, the US and Qatar. Early in the days of the Syrian uprising there was initially condemnation of violations of human rights by state agents, and then condemnation of violations of LOAC by both sides, demonetarising a graduated reaction of states to internal strife that has largely traced events on the ground.

As further examples, demonstrations of both a peaceful and violent nature in reaction to severe austerity measures took place in Greece in 2010-11, while in April 2018 a nationwide revolt began against President Daniel Ortega in Nicaragua initially in response to pension reforms but which swelled into a broader rebellion with designs on removing Ortega from power. The violent response of Ortega’s government led to the UN accusing it of ‘a wide range of human rights violations … including extrajudicial killings, torture, arbitrary detentions, and denying the people the right to freedom of expression.’ Furthermore, the long running armed conflict between the Revolutionary Armed Forces of Columbia (FARC) and the government which commenced in 1964 finally came to an end in June 2017, with FARC ceasing its activities and disarming under a peace agreement. Civil uprisings also took place in Côte d’Ivoire in 2011, The Gambia in 2016-17, and Zimbabwe in 2018 in response to disputed election results, while several states, for example Mali and Nigeria, have faced severe threats from insurgent Islamist groups. While the consequences of these incidents of internal strife have often remained internal, there are examples of where civil unrest has had regional security consequences. For example, in 2014 a series of protests and civil insurrection took place in Venezuela against the economic policies of the government. The continued civil

\[101\] See, for example, UNSC Resolution 2042, 14 April 2012, preambular para.4 (‘Condemning the widespread violations of human rights by Syrian authorities’)
\[102\] See, for example, UNSC Resolution 2139, 22 February 2014, para.1 (‘Strongly condemns the widespread violations of human rights and international humanitarian law by the Syrian authorities, as well as the human rights abuses and violations of international humanitarian law by armed groups’).
unrest has led to extensive Venezuelan migration to neighbouring states, including Brazil, Columbia and Ecuador, which has resulted in the deployment of troops in light of security concerns arising from attacks by and against the migrants.\textsuperscript{112}

In addition, and of particular note, Israel’s response to the Great March of Return in Gaza between 30\textsuperscript{th} March and 15\textsuperscript{th} May 2018,\textsuperscript{113} in which Palestinians within the Gaza Strip demonstrated near the border fence with Israel, presented real challenges and question marks over the appropriate application of the law, in particular the way in which the law enforcement and conduct of hostilities paradigms should interact and operate alongside each other. In particular, the rules of engagement of the Israeli Defence Force came to light and received particular attention, both in the blogosphere\textsuperscript{114} and through a challenge to them brought by 11 NGOs to the Israeli Supreme Court in the \textit{Yesh Din} case.\textsuperscript{115} While the NGOs that had petitioned the Supreme Court and most commentators were of the view that given the general civilian nature of the protests the appropriate framework was that of law enforcement, Israel claimed that the current use of lethal force in Gaza occurred in the context of an armed conflict between Hamas and Israel and given that the protests had been organised and utilised by Hamas for offensive operations the appropriate framework governing the situation was that of the law of armed conflict.

Yet, in what was a notable development, it became clear that Israel adopted the position that within the LOAC framework there are two regimes regulating the resort to force: the ‘conduct of hostilities’ paradigm, and the ‘law enforcement’ paradigm. The law enforcement paradigm embedded within LOAC, according to Israel, is ‘inspired by’, but not similar to, the law enforcement regime familiar from IHRL, and would apply where demonstrations are organised by a belligerent party, take place in enemy territory, and are used by the belligerent party to further its hostile goals.\textsuperscript{116} While under the law enforcement framework, as set out above, force is only permitted against individuals who pose an imminent threat to life,\textsuperscript{117} Israel was of the view that under the law enforcement regime embedded within LOAC the ‘threat can be posed by a single individual, or by masses of individuals’ and that force might be resorted to so as to ‘address the threat before it materializes, even if the danger itself is not immediate’.\textsuperscript{118} In addition, the threat may be to the life of others but also ‘when there is clear threat to infrastructure’.\textsuperscript{119} In essence, soldiers were permitted to fire live ammunition at anyone

\textsuperscript{115} \textit{Yesh Din} v. \textit{IDF Chief of General Staff}; HCJ 3003/18.
\textsuperscript{116} Lieblich, \textit{ibid}.
\textsuperscript{117} See section 2.1.
\textsuperscript{118} Lieblich, n.114.
\textsuperscript{119} See BBC News, ‘Did Israel use excessive force at Gaza protests?’, 17 May 2018, available at https://www.bbc.co.uk/news/world-middle-east-44124556. In any case, Israel claimed that its actions would be lawful under the regular law enforcement paradigm found within IHRL, as potentially lethal force is permitted in order to quell a life threatening riot under Article 2(c) of the ECHR.
attempting to approach and damage the border fence, even if they are unarm
ed and pose no imminent danger.\(^{120}\) Intentionally lethal force was permitted against ‘main inciters’, even if they were not directly endangering any lives.\(^{121}\) In this sense, Israel claimed that many of those killed were terrorists with a documented terror background.

On 25\(^{th}\) May 2018 the Israeli Supreme Court unanimously rejected the petition before it by the NGOs.\(^{122}\) The Court showed broad deference to governmental decisions in military operational matters and accepted Israel’s claim that the protests were merely a backdrop to Hamas operations against Israel and served as cover for the commission of terrorist attacks, while also acknowledging that many of the participants were civilian and not participating in such activity. However, the position it took on several issues was not overly clear. Although it accepted Israel’s position that the relevant legal framework was LOAC, albeit implicitly accepting Israel’s version of it with its law enforcement element,\(^{123}\) the Court did not clearly specify which paradigm – the conduct of hostilities or law enforcement – covers targeting in the situation in Gaza.

Arguably most controversy, however, has arisen in the context of third state intervention in internal strife and insurgency. While such interventions have occasionally been justified as or discussed in the context of humanitarian intervention,\(^{124}\) self-defence\(^{125}\) or have received the authorisation of the UNSC,\(^{126}\) they have most often been justified upon the basis of an invitation by or consent of the government of the host state. And it is in this context that several recent developments and challenges to the law can be seen.

While identifying the entity with legitimacy to invite or consent to outside intervention has never been entirely clear,\(^{127}\) the traditional criteria of effective control of territory has certainly come under challenge in recent interventions. There appeared to be, for example, widespread acceptance by the international community in 2013 of the legality of French military intervention in support of the Malian government, despite the fact that Islamist rebels both controlled much of the north of the country and were gradually moving in on the capital.\(^{128}\)

\(^{120}\) Ibid.

\(^{121}\) Chachko and Shany, n.114.

\(^{122}\) Note that the Court did not actually see the text of the rules of engagement. The government offered to present the classified version of the rules ex parte in a closed session, but only accompanied with intelligence concerning how they were implemented during the clashes in Gaza. The petitioners did not agree to the Court also hearing the intelligence. The Court thus rather based its judgment upon the general approach taken in the rules, as detailed by Israel.

\(^{123}\) Justice Hayut, however, doubted whether it reflects international law.

\(^{124}\) For example, NATO intervened in Kosovo in 1999 with the intention of halting severe repression by the Serbian authorities. See, in general, A. Roberts, ‘NATO’s “Humanitarian War” Over Kosovo’ (1999) 41 Survival 102.

\(^{125}\) For example, a US-led coalition intervened in Syria in 2014 in collective self-defence of Iraq against so-called ‘Islamic State’ forces that had taken control of areas of both Iraq and Syria and had carried out heinous acts against civilians in both states. See, in general, C. Henderson, ‘The Use of Force and Islamic State’ (2015) 1 Journal on the Use of Force and International Law 209.

\(^{126}\) For example, in 2011 authorization was provided to NATO to intervene in Libya and to UNOCI and French forces to intervene in Côte d’Ivoire. See, in general, C. Henderson, ‘International Measures for the Protection of Civilians in Libya and Côte d’Ivoire’ (2011) 60 International and Comparative Law Quarterly 767.

\(^{127}\) See section 2.3.

This determination has, instead, been more often made on the basis of recognition of the entity concerned having the authority or at least legitimacy to provide such consent. Traditionally, States have not tended to expressly recognise governments, but have rather left this to be implicitly determined in light of the interactions that take place with the entity concerned. Yet, more recently there have been examples of express recognition. This has sometimes been done objectively through the UNSC in an attempt to implement an election result. For example, during the internal strife in Côte d’Ivoire in 2011, which flowed from a disputed election between Alassane Ouattara and Laurent Gbagbo, the UNSC ‘Urge[d] all the Ivorian parties and other stakeholders to respect the will of the people and the election of Alasane Dramane Ouattara as President of the Côte d’Ivoire’. Following this there was an intervention by UNOCI and French armed force to enforce the election result, despite Alassane Ouattara not yet in office, let alone in effective control of the territory of the state.

Events in The Gambia in 2016-17 provide a further example. The sitting president, Yahya Jemneh, refused to accept the results of the presidential elections in December 2016 and leave office, with the president-elect, Adama Barrow, immediately calling for assistance to enforce his electoral win after having been sworn into office. His claim to take office was supported by the UNSC in Resolution 2337. Senegalese troops subsequently entered The Gambia as part of an Economic Community of West African States intervention. On both occasions, while the UNSC did not expressly authorise the intervention, the support provided to the democratically elected leader was sufficient to legitimise the ensuing intervention.

The UNSC has, however, also been seen to provide its support to leaders who have been forced into exile, and therefore no longer in effective control of the territory of the state. For example, President Abdrabbuh Mansour Hadi of Yemen issued an invitation to a Saudi Arabian-led coalition to intervene and oust the Houthi rebels following his forced exile in 2015. This invitation received general support and the UNSC ‘took note’ of the request, the support arguably being offered upon the basis of him representing the elected president of the country as opposed to being in control of it.

Upon the basis of these particular developments it is possible to conclude that ‘broad international recognition of the person inviting outside intervention may effectively compensate to a large extent for the lack of effective control over territory’, with it also being inversely true that a general lack of recognition can negatively affect perceptions of the legality of invited interventions. For example, Russia intervened in Crimea in 2014 upon the invitation of President Yanukovych after he had been forced to flee the country and had been replaced by an interim government, although not through an election but an act of the Ukrainian parliament. On this occasion, it was argued that ‘any consent [Yanukovych] might have provided for the Russian action is unlikely to have been valid because he was no longer

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133 See Maclean, n. 108.
134 UNSC Resolution 2216 (2015), preamble.
135 Ruys and Ferro, n. 91, at 85.
effectively acting as president of Ukraine’, and therefore he ‘no longer had authority to represent Ukraine in relation to the use of force’. Yet while the legality of the interventions in Yemen and Crimea are viewed differently, in neither case was the individual concerned able to act effectively as President of their respective countries. As such, while democratic legitimacy has the power to ‘validate an invitation to intervene by a government in exile that controls no territory’, the overriding factor appears to be the breadth and extent of the recognition of an individual and their government that is ultimately of greatest importance.

This conclusion does raise the question as to whether recognition can also validate interventions by opposition groups or insurgents, perhaps who pose a more democratic and stable future than the incumbent, perhaps democratically elected, regime. After the uprising in Libya in 2011 states began to recognise the National Transitional Council as the government of Libya which was followed by the supply of arms and non-lethal military equipment and which also permitted other measures such as the release of assets held in various states to the opposition forces. This all took place while Colonel Gaddafi remained in power and retained effective control over most of the country, leading some to argue that such recognition and subsequent supply of arms was premature and therefore illegal. By contrast, in Syria outside states stopped short of providing full recognition as the legitimate government to the Syrian National Council instead recognising it as the ‘legitimate representatives’ of the people of the state in 2012, leading to much greater resistance to the idea of supplying of arms and non-lethal assistance. However, despite these recent events arguably demonstrating that recognition – often ostensibly upon the basis of democratic legitimacy – is arguably the most prominent factor in decisions to intervene, states continue to base their interventions on a right of intervention by invitation or consent rather than in attempting to develop a standalone right of pro-democratic intervention.

A lack of general adherence to the negative equality principle has also seemingly been witnessed. For example, as the internal strife in Syria morphed into a protracted civil war in 2011, while concerns were raised regarding the Russian supply of arms and subsequent deployment of its forces to assist the Assad regime this was not on the basis that intervention in support of either party during a civil war was unlawful. States that went on to support the opposition groups in Syria also did not justify their intervention on the basis of the principle of counter-intervention. Similarly, France’s intervention in Mali in 2013 at the request of the government came and was accepted after the Tuareg rebels of Le Mouvement national de liberation de l’Azawad (MLNA) had captured and controlled the entire northern part of the state and were less than 300 miles from the capital, although ‘no state raised the “negative equality” principle or spoke in opposition to the French intervention’.


\[139\] Fox, n.59, at 833-4.


\[141\] D. Akande, ‘Would it be Lawful for European (or other) States to Provide Arms to the Syrian Opposition?’, EJIL Talk!, 17 January 2013, available at https://www.ejiltalk.org/would-it-be-lawful-for-european-or-other-states-to-provide-arms-to-the-syrian-opposition/.


\[144\] Fox, n.59, at 828.
However, in practice when states have intervened they have attempted to convince others that they are not, in fact, intervening in a civil war, but instead for an alternative purpose. For example, while it might be questioned whether the internal strife had reached the level of a civil war, the Gulf Cooperation Council (GCC) intervened in Bahrain in March 2011 principally on the grounds of ‘contribut[ing] to the maintenance of order and stability’ following an uprising in the state. However, it later transpired that ‘[t]he GoB [Government of Bahrain] [had] expressed its concerns about a possible Iranian armed intervention in Bahrain’ and ‘that these concerns were among the principal reasons that it requested the deployment of GCC forces in Bahrain starting on 14 March 2011’. Similarly, in intervening during the civil war in Mali in 2013 France denied that it was intervening in the war between the government and the MLNA, but was instead acting against Islamist terrorist groups which were partly composed of foreign fighters.

The Saudi-led coalition intervention in Yemen – Operation Decisive Storm – that commenced on 26 March 2015 in response to armed activity by Yemen’s Houthi movement could be seen as an intervention in a civil war in response to an invitation by Yemen’s president. Indeed, it was launched to ‘protect the people of Yemen and its legitimate government from a takeover by the Houthis’. Yet, in its letter to the Security Council, Saudi Arabia placed clear focus not upon the consent or invitation to intervene in the civil war but on the fact that the Houthi rebels were ‘supported by regional forces’ and ‘had always been a tool of outside forces’ and therefore there had been an act of ‘aggression’ against Yemen. While it might, therefore, be argued that the forces intervened to repel the internal Houthi rebels, consent in a civil war was not considered a sufficient justification by itself with Saudi Arabia in addition claiming counter-intervention, although it is not clear whether – and if so to what extent – Iran was supporting the Houthi rebels.

As noted above, a central problem with the ‘purpose-based’ approach to intervention during times of civil war, however, is in identifying and confirming the legitimacy of the proclaimed purpose of the intervention. In Mali, for example, while all three groups that France intervened against had been determined to be of a ‘terrorist’ nature by the UNSC, thus lending some legitimacy to the subsequent intervention, during the internal strife in Syria the Syrian government appeared to simply categorise all opposition forces as terrorist meaning that winning the civil war and fighting terrorism had become indistinguishable.

4. Conclusions and Outlook

145 GCC, Secretary-General of the Cooperation Council, ‘Notes and supports the positions of the GCC countries to contribute to the preservation of order and security in the Kingdom of Bahrain’ (Riyadh, 15 March 2011), para. 1.
147 See UN Doc. S/2013/17, 14 January 2013.
150 UNSC Res. 2100 (2013), para. 4
151 UN Doc. S/2016/80, 28 January 2016. although if there is no negative equality principle then there is no need to look for a purpose of the intervening force.
While internal strife and insurgency traditionally remained outside of the reach of international law and within the domaine réservé of states, this chapter has attempted to demonstrate that this is no longer the case. Yet, while the law has not remained static and can no longer be said to be entirely neutral on this issue, in an attempt to shift the law further, particularly in the context of large scale internal strife, proposals have been advanced for more ‘internal’ regulation so as to bring the actions of non-state actors and insurgents within the purview of international legal regulation of both the use of force and armed conflict.152 Yet, in addition to proposals for a new framework governing ‘internal jus ad bellum’ and for a more developed internal jus in bello – in particular, providing the ‘privilege of belligerency’ to non-state armed groups with the aim of providing a greater incentive for compliance with LOAC – remaining within scholarly realms, the humanitarian imperative upon which they are based has not been accepted without question.153

Yet, what should become clear is that while the basic standards and expectations contained within the rules and principles of the existing frameworks remain strong, their implementation is not often straightforward or clear, and remain hostage to the subjective whims of those relying on them. In addition, and as the ongoing catastrophic crisis in Syria demonstrates all too vividly, what might begin as peaceful protest can morph swiftly into a civil war and then into what might be described as a regional or even global conflict, with interventions not simply by regional states but those further afield. The consequences for both regional and global security are heightened from the risks of instability caused through, for example, migration, but in addition outside intervention – as both Syria and Yemen have vividly demonstrated – have the tendency of prolonging civil conflict and, with that, drastically increasing the negative humanitarian consequences.

While commissions of inquiry have in some senses partially filled an accountability gap, enforcement of international law in the context of internal strife remains poor. Despite the emergence of the concepts such as the Responsibility to Protect, the bulwarks of sovereignty and territorial control continue to remain stumbling blocks in ensuring accountability in such crises.


153 See, for example, F. Mégret, ‘Response to Claus Kreß: Leveraging the privilege of belligerency in non-international armed conflict towards respect for the jus in bello’ (2014) 96 International Review of the Red Cross 44.