Pázmány Péter Catholic University
Doctoral School of Law and Political Science

# Armed intervention in the internal affairs of the state

Identifying fundamental rules in the UN system

doctoral thesis
of
Zeno Suller

# THESIS BOOKLET

Supervisor: Dr. Tamás Vince Ádány, PhD

2025 The Hague, Budapest

## ISSUE

### Armed intervention in internal affairs instead of wars of conquest

The new international framework established after the Second World War, based on the primacy of law and the central role of the UN, made the prohibition of the use of force a general rule in interstate relations. In this system, classic wars of conquest were indeed pushed back, but armed intervention in the internal affairs of another state and the maintenance or expansion of influence in this way became characteristic. Since the prohibition of the UN Charter was designed against wars of conquest between states, the legal and moral justification of external interventions, as well as the practice of more covert armed interventions in internal affairs, raise problems. Both the Cold War and the subsequent period are characterized by trends opposing the "less politics, more law" principle that was the basis of the UN system, and the desire to reintroduce a more flexible political approach into international relations instead of the rigid legal system.

### Law and politics as the fundamental problem of jus contra bellum

According to the realist view, states always pursue state interests, and since war is the ultimate and extreme form of politics, the use of force is also a highly politicized area. However, international law seeks to confine war within a normative framework, for example through the collective security system of the UN, where states renounce certain elements of their sovereignty and build the limitation of force on common rules and institutions. The relationship between law and politics is particularly complex here: the permissibility of an armed action can depend on a legal rule or on a political value, and although every approach forces a choice as to which dimension is ultimately the absolute basis of legitimation, in practice a clear separation of law and politics is almost impossible, which determines an examination on the armed intervention in internal affairs.

## OBJECTIVE

### Substantive objective: formal recognition of UN Security Council and General Assembly resolutions, drafts and background materials in identifying legal rules

The aim of the thesis is a somewhat radical attempt. In the case of armed interventions, one of the defining issues, which has a profane impact on the entire legal analysis, is the interaction of law and politics. The same issue is characteristic of the decisions and procedures of the political organs of the UN, which are based on the substantive and procedural rules laid down in the Charter and have jurisdiction in such cases.

The radical attempt of the thesis consists in specifically addressing the two bodies to establish the legal rules of armed intervention in internal affairs, where the old problem of rule identification is also acutely and obviously manifested, and which nevertheless serve as a reference in some form in the application of all methodologies. These two bodies are the Security Council (SC) and the General Assembly (GA) of the United Nations. The immanent characteristic of these two bodies is the duality of legal and political functioning, which, depending on the methodological approach, some authors examine with priority to the former, others to the latter.

The research is not at all radical in the sense that it examines the resolutions and even debate records, of the SC and the GA and draws conclusions from them to establish legal rules. It can perhaps be said to be radical in the sense that the research attempts to establish the rules of armed intervention in the internal affairs of another state based solely on these materials, i.e. the resolutions, draft resolutions, and records of their debates of the SC and the GA.

The idea behind the objective is not to claim that it would be sufficient to rely only on these materials when identifying rules and that other sources, such as diplomatic notes, unilateral state acts, and official state communiqués, should be ignored.

The aim of the thesis is to examine whether the proposition can be sustained that, based on the analysis and systematization of the decisions and background materials of the Security Council and the General Assembly on certain armed interventions, fundamental rules can be identified, which can be incorporated into the dogmatics of the traditional sources of international law. In other words, the question is whether the materials of the main organs, which are considered to be the most political, be incorporated into the - theoretically - purely normative world of rule identification using a legal positivist method? To answer this, it is necessary to meet a more abstract, theoretical, formal objective.

**Formal objective: jurisprudence, law and politics**

The aim of the thesis is not only to establish the rules for armed intervention in internal affairs, but also to examine how the tension between law and politics can be interpreted and managed. Even more so because the substantive objective of the research cannot be achieved without fulfilling the formal objective.

In international law, the prohibition of the use of force and intervention is legally enshrined, but its enforcement is carried out through political mechanisms, primarily through the main political organs of the UN – the Security Council and the General Assembly. The research therefore reflects not only on the content of the norms, but also on their methodological issues: jurisprudence, as an abstract system, interprets and systematizes law, but depending on the methodological approach, also takes political elements into account.

One of the fundamental problems of international law is that the relationship between law and politics often creates tensions, either due to the excessive rigidity of legal frameworks or the consideration of value-based, political aspects. The thesis takes a position in favour of legal positivism, emphasizing the normative scope of the Charter over moral, political considerations, and the primacy of the collective, enduring practice of the UN over individual and ad hoc state interpretation. At the same time, referring to the ideas of Bennouna and Higgins, it acknowledges the consideration of political realities and values, especially since the practice under examination is inherently manifested in political bodies.

By merging the formal and substantive purpose, the research legalizes aspects beyond law – especially the decisions and background materials of the UN political bodies – i.e. it interprets political practice with the rules of secondary law, thereby attempting to form a bridge between abstraction and reality, as well as between law and politics.

## THEORERICAL BACKGROUND

The historical overview describes the formation of the jus contra bellum system. This is justified not only to present the antecedents of the current framework, but also because placing the attitude of states to war in a historical perspective describes a clearly traceable development curve. This development curve shows the demand of the community of states that, in the interests of international peace and security, it is necessary to depoliticize war and confine it to legal frameworks and jointly controlled institutional mechanisms. In other words, the legal historical trend is aimed at ensuring that *realpolitik* can only appear within the legal and institutional framework during the launch of war.

The second unit of this part lays down the theoretical foundations necessary for the research objective. It defines what the research means by “armed intervention” and “internal affairs of the state”. It thus provides the criteria for selecting the armed conflicts that will be the subject of the study.

With regard to interventions in the internal affairs of a state, based on the typical reason that triggers the intervention, the research applies the term "internal affairs" to three main cases:

1) civil war
2) internal unrest
3) domestic political changes.

Although the distinction is not clear in practice, as a rule, civil war is a case of non-international armed conflict (NIAC); internal unrest is an act that does not reach the level of NIAC but involves sporadic violence; while domestic political change covers acts that result in an internal power realignment, either peacefully or with only disorder. The latter can be a change of government, a change of political direction, a transformation of a aliances, etc.

The cases of internal political change, internal unrest and civil war are connected by the fact that they fall under the prohibition of intervention according to the classical principle, since they are matters that fall under the scope of internal affairs according to the general principle. Another common point is that all three can be linked to the right of peoples to self-determination, its external or internal aspect. What makes them distinct is the nature of the conflict according to the threshold levels of humanitarian law.

The thesis follows the below definitions for the purpose of the research.

Domestic political change is a change in the political, economic, social and cultural system of a state that typically involves no or minimal violence. It can mean, among other things, a change of government, a change in political, economic or ideological direction, an electoral anomaly, or a coup carried out with minimal violence.

Internal unrest include domestic unrest, rebellions, or insurrections in which one or more groups take action against the government or state agencies, including by using violence, or in which the state takes action against anti-government protesters. The level of violence and fighting remains approximately below that of non-international armed conflicts.

Civil war is an armed conflicts where armed groups within the territory of a state engage in hostilities against the government or against each other, and which hostilities approximate the level of non-international armed conflicts as defined by humanitarian law.

These are the cases under which the thesis understands internal affairs, which cannot be intervened in as a rule. The next section defines what the research means by armed intervention. That is, it defines the " how " of the interventions examined.

In defining armed intervention, I follow the position that the use of force, aggression and armed attack are progressive concepts, narrowing from the use of force to armed attack. It is also essential that the defintions under the system of collective security, and the field of self-defense are applied *mutatis mutandis* to the field of armed intervention. However, I agree with Henderson's statement that states typically do not make a clear distinction between the concepts, or at least they typically focus on other issues when justifying or condemning such acts. This is also the case in the field of armed interventions. Therefore, by armed intervention, the research understands acts that reach the general threshold set by Corten in the field of the use of force, which is the level of a military operation. According to the position of various authors, this can either be aggression and/or an armed attack per se, or according to others, it can reach the level of aggression or even an armed attack depending on the severity. Therefore, regardless of the classification, the research understands by armed intervention those armed acts that reach the level of a military operation.

So, armed intervention in the internal affairs of another state is intervention in a civil war, internal unrest, or change in domestic policy taking place on the territory of another state amounting to military operation.

## METHODOLOGY

The jurisprudential examination of the cases identified on the basis of the criteria established above, and interpretation of such cases by states, show an extremely diverse picture. Often, when presenting a legal rule, some authors in their jurisprudential works, or states in UN bodies, invoke the same cases as justification for completely opposite rules. This is true not only in the field of induction, but also in the reverse case, in the case of deduction. From the interpretation of the same rule, some authors or some states can give a completely opposite qualification to the same practice.

As far as jurisprudence is concerned, this diversification can be explained mostly by the difference in the methodology applied. As far as states are concerned, it seems that the different conclusions lie in whether the given argumentative state wants to support its national interests or the community interest with the rules. It would be simplistic to say that self-interest justification would be politics, and community interest justification would be the application of law, but one may claim that the former is typically a political evaluation, the latter is typically a legal one. And this issue is of course also related to jurisprudence methodology, since it is a fundamental question of what an author considers political or legal, and whether one attributes legal significance to political acts, and if so, in what way and to what extent.

The question of methodology is therefore of fundamental importance when interpreting a fabric such as the issue of armed intervention in internal affairs, where the two threads are politics and law. The main methodological thesis of the research is that when examining the issue of armed intervention in internal affairs, the practice concentrated in the two main political organs of the

UN, the Security Council and the General Assembly, is the primary reference point for identifying rules.

The empirical starting point of this methodological basis is that when examining the references to the decisive legal works, even in the case of significant methodological differences, the resolutions and records of the UN Security Council and the General Assembly play a decisive, even central role in supporting the propositions and rules. The abstract starting point is the long-standing proposition that a perfect separation of law and politics is impossible and not necessary. However, this does not and cannot mean equality between the worlds of *sein* and *sollen*. Applied to the methodological basis of this research, it is the recognition and support of the fact that the UN Security Council and the General Assembly are at least as much legal as political in their operation.

Consequently, the resolution made here and their background materials have legal relevance. The question arises, if there is legal relevance, how the materials of the main organs can be analysed, and in what normative framework. The two normative interpretative frameworks can be treaty interpretation and the identification of customary law. The research thus examines what methodological rules can delimit the possibilities of legal interpretation of UN materials in the two cases, that is, what are the secondary norms based on which the primary norm, armed intervention in internal affairs, can be interpreted.

After these methodological options are outlined, the thesis introduces the methodology used in the research by applying the methodological starting point and methodological options. The basis of this, as already highlighted, is the central role of the SC and GA materials in the interpretation of norms. The basis for this is the claim that the primary norm has treaty foundations (UN Charter), but the detailed rules are not explicitly included in the treaty. The solution of the research is the thesis that the detailed rules must be sought in the field of practical interpretation. Since the detailed rules cannot be interpreted by themselves, but only together with the main rule, in essence the interpretation of treaties and the identification of customary law simultaneously determine this domain of the jus contra bellum. In light of this, the last unit of the methodology chapter presents the aspects according to which the evaluation of the selected cases within the UN is processed.

**Methodological starting point: the central role of the UN**

I base my methodology on two theses: 1) UN bodies apparently play a central role in legal references, 2) UN bodies are at least partly legal in nature and their legal relevance can be established.

To prove the first theorem, I take the works of key authors in the field of jus contra bellum as a basis and examine their references to justify some of their related propositions. Regardless of the methodology, whether as an institutional act or as an aggregate of individual state acts, UN materials are key reference points to establish the rules of jus contra bellum.

In the case of the second proposition, it can be said that although the SC and the GA fundamentally perform a common political function and are shaped by individual political interests, the institutional and legal framework and the multi-actor operation result in the common language and common framework being international law, hence, the discussions are conducted, and the decisions are made accordingly.

**Methodological options: treaty interpretation or customary law**

In order to establish normative rules in a legal sense from the resolutions, drafts and materials of the SC and the GA, it is necessary that the operation of these organs can somehow be traced back to the traditional legal sources of international law. Acts of political origin but of legal significance can be transferred to "pure law" through the theory of legal sources.

The prohibition of the use of force is primarily a treaty-based rule, laid down in the Charter and regional treaties. But it is also a customary rule. This statement is also true for the prohibition of intervention. However, the decisions of international organizations cannot be directly included among the traditional sources of law under Article 38 of the Statute of the International Court of Justice. However, as the practice of the parties, they can be evidence of either the interpretation of the treaty or the existence of customary law. The practice found in the political organs of the UN can therefore be "legalized" either according to the rules of treaty law (interpretation) or according to the rules of customary law (practice and opinio juris). However, even if the content of the rules may be the same, the two types of legal sources entail different secondary norms in their interpretation and application.

The treaty basis for the prohibition of intervention and the use of force is undoubtedly the UN Charter. However, the Charter is a special treaty that is often described as the constitution of the contemporary international community, as its Article 103 seems to confirm.

One of the instruments of treaty interpretation is subsequent practice. Subsequent practice results in an authentic interpretation, which is not only a particularly reliable interpretation, but also legally binding and provides the correct interpretation of the treaty. This is also true for the Charter. As a rule, subsequent practice is an authentic interpretation of the treaty if that practice is accepted at least tacitly and consistently by all the States parties. In the case of the practice of the main political organs of the UN, there are, to put it simply, two approaches. According to one, there can only be an authentic interpretation if the decision (resolution) was adopted by consensus or unanimously, or possibly by an overwhelming majority, without opposition and with just few abstentions. This can therefore only be true for the General Assembly, not for the Security Council due to its narrow composition. According to the other approach, the subsequent practice of the main organs can be an authentic interpretation regardless of the direct intention of the member states, since these organs are entitled to interpret the Charter under the Charter. This also includes the decisions of the SC.

The practice and debate records found in the political organs of the UN may have legal validity not only on the basis of treaty interpretation but also on the basis of customary law, traceable to traditional sources of law. In this case, the secondary norms governing customary law determine the framework of assessment.

The first defining problem is the requirement of general practice and opinio juris, the difficulty of which lies primarily in the fact that in the case of armed interventions, general practice in accordance with the law is inaction in the majority of cases. On the other hand, in fact, not only practice must be general, but also opinio juris. Just as the proportion of support for an interpretation is decisive in authentic treaty interpretation, so in customary law rules the quantitative characteristics of the expression of opinio juris directed at practice are also unavoidable.

The second issue is also related to this. In the field of armed interventions, it is not only inaction, as a typical practice, that makes it difficult to identify rules, but also silence and abstention, which are part of the issue of opinio juris.

Proving a general customary practice in the field of armed intervention can be difficult, since norm-compliant conduct is an inaction. However, even relatively rare practices can be assessed if they are repeated and the opinio juris assessing the practice in the cases is itself general. This usually means the support of a significant majority of states. It is not entirely clear whether silence is included in support. According to the general rule, if the state had the opportunity and was expected to react, then silence can be considered as consent or acquiescence. However, in the case of the SC and the GA, the assessment of silence may differ.

When a resolution is adopted in the UN, according to the classical approach, it is not the resolution itself which counts in the measurement of opinio juris, but the aggregated opinion of the states supporting it. This can be easily applied to the decisions of the General Assembly, where the number of voters in favour of the resolution determines whether the opinio juris can be considered general. Of course, the debate records must be examined, and this may also explain the abstentions.

In the case of the Security Council, two approaches are possible: either it can be understood as the sum of the opinio juris of the 15 states, and possibly of the states expressing an opinion on the resolution outside the Security Council, or according to the theory of delegation, in the field of international peace and security, the Security Council makes decisions representing the entire membership as a result of the delegation of power by the member states in the Charter, thus the opinio juris also appears collectively.

**Selected methodology: treaty basis, customary law details**

In armed intervention, as in most cases of violence, treaty law and customary law are closely linked and form a unified system. Based on the ICJ Nicaragua decision, customary law norms have also developed in addition to the statutory regulations, with almost identical content according to some interpretations. The Charter provides the basis for the rules, similar to the constitutions of domestic legal systems.

Based on what has been explained previously, the possibilities of treaty interpretation and customary law identification can be used. However, the two types of legal sources intertwine in the regulation of armed intervention, so it would be not only unnecessary but also counterproductive to base the analysis on only one type of legal source.

The thesis chooses the solution of identifying the most fundamental (one might say constitutional) norms in the Charter. These may also be found in customary law, but on the one hand, being a written text, the treaty version may lead to a more certain result. On the other hand, it is difficult to imagine that the customary law version would be contrary to the Charter, and thus it can be interpreted rather as its confirmation. Identifying detailed rules not explicitly stated in the Charter is a more complex task. Here, whether we use treaty interpretation or customary law identification, subsequent state practice helps the most in identifying the rules.

The interpretation and application of existing treaty and customary law rules provide an opportunity to establish detailed rules. Thus, it is possible to determine those rules based on customary law practice or the subsequent practice of the treaty, which in this approach have

always been part of the treaty regulation, even if not expressis verbis. This follows more consistently from respect for the weight of the Charter and its text. Although there is a dogmatic difference between treaty interpretation and the identification of customary law, in practice there is no substantive difference from a methodological point of view, especially when the contractual basis and the customary basis can be considered to be essentially the same. In both cases, the subject of the examination is practice corresponding to legal conviction. In the case of treaty interpretation, subsequent practice, i.e. the application of the treaty, is with the conviction that this is the correct meaning of the contract. In the case of customary law, general practice with the conviction that this follows a customary law rule, i.e. practice is the application of the rule. Both reinforce the rule. And both are largely based on case-by-case practice, as they apply the treaty or the customary law rule to certain cases. Thus, it is not an out-of-the-box approach to equate *in this context* subsequent contractual practice with customary law practice. Some authors discuss the phenomenon as "customary law interpreting treaty". The research also accepts this approach.

In summary: the thesis establishes the fundamental rules of intervention in internal affairs through the interpretation (confirmation) of treaty norms (the Charter) by customary law (subsequent practice) as the application of norms to individual cases.

**Theoretical characteristics of the chosen methodology**

The methodological choice made, i.e. the decision in favour of norm-affirming practice, results in an important methodological approach that underpins the applied methodological techniques and steps. It has two theoretical components: the acceptance of the phase theory and the creation of the theory of binary support.

According to the phase theory, the key statement is this: the act of law-making is political will. In the case of the emergence of customary law, the motivation for state action in the first phase is political will: it is advantageous for it to practice the given action. If this is repeated continuously and consistently, and others do the same, then it becomes a custom, and then customary law, just as opinio juris is formed and then consolidated. Once opinio juris is general and consolidated, it is not necessary for all participants to express their legal convictions.

The theory of "binary support" builds on the phase theory and from the fact that when customary law arises, political will gives rise to it in the first phase, while the rule that takes shape in the second phase and is already consolidated in the third phase is definitely a legal norm.

The core of the binary theory is that it describes support as a very simple yes/no question. Its basis is that opinio juris is always directed at practice, as it qualifies it. Either it gives the actor its motivation (it acts out of normative conviction), or the community evaluates the actor's practice based on its permissibility or impermissibility. Customary law consists of a number of yes and no answers given to a chain of such individual practices. If a sufficient number of similar practices have been repeatedly answered with yes by the overwhelming majority of the community, that is, they considered it permissible, then customary law is formed.

The separation, but also the connection, of politics and law can be explained by this idea. During the process of repetition, the political *should* is strengthened by repeated practice, creating a precedent and legitimacy. As a result, in addition to practice, the political *should* is strengthened into a legal *shall*. Customary law is formed. And from this point on, practice and opinio juris

coexist and can be identified. The practice and opinio juris that follow this point, the confirmation of the rule, continues to be binary, on a yes/no basis.

Here too, the opinio juris is directed at the particular practice, and here too the choice is yes/no: permissible or not permissible. But here the question is whether the action is legally permissible or not permissible. There is no need to be convinced of which legal passage the practice complies with. It is enough that it follows a legal norm. This seems more consistent with practice, especially if we take as a basis the debate taking place in the bodies of the SC and the GA, where armed interventions are assessed in the vast majority of cases. Here we almost always encounter general references to the Charter, international law and its principles in general. The binary theory is therefore applied in the thesis not to the creation of norms, but to the subsequent confirmation of the norm.

**Technical characteristics of the chosen methodology**

Based on the above considerations and approach, some technical methodological issues will be clarified in the following. The main emphasis is on which acts of which bodies will be used and in what way. It is also assessed what role do the records of the debates have, and what weighting method will be used in the research.

The central question of the research is how to identify the rules on armed intervention in internal affairs based on the resolutions of the SC and the GA and their debates, and thereby prove general support. According to the binary theory, votes in themselves are suitable for expressing opinio juris, but the debate records must always be considered to determine whether they truly carry a normative qualification.

While the plenary nature of the GA makes it easy to measure the level of support, the lack of representativeness in the case of the SC can be a problem, as the vote of 15 member states cannot automatically be considered as the position of the international community as a whole. Legal literature therefore often cites not SC resolutions but rather exemplary state statements as support, but these are mostly limited to the great powers and a few regional actors, so that "generality" is often not more than a fiction.

In contrast, the inclusion of the decision-making of the SC (and the GA) together with the debate records provide a stronger basis: it creates a presumption of the generality of the opinio juris, which can be empirically confirmed through repetition and temporal dimension. The 15 members of the SC – in the case of 10 members rotated and based on the principle of geographical representation – act on behalf of the international community in accordance with the Charter, in a constantly changing composition, so its decisions offer a relevant pattern in the process of rule identification. At the same time, the presumption must always be balanced by the fact that other states have the right to express a position different from that of the SC; however, the absence of this can be interpreted as tacit acceptance of the SC's position. All this is also supported by the phase theory, according to which an absolute majority is not required to confirm an already existing norm, since the decisions of the authorized bodies themselves strengthen the content of the norm.

The research considers not only the adopted resolutions of the SC and the GA, but also their drafts with equal weight, as both clearly express the legal convictions of the states: a successful vote indicates support, an unsuccessful vote indicates rejection.

In the case of the SC, the veto makes the assessment less obvious: although it is an counterweight inherent in the functioning of the organ, it is more of a procedural obstacle in terms of the confirmation of the norm, which does not make the content of the draft irrelevant. The treatment of abstentions and non-voting poses a separate methodological dilemma, since it cannot be decided unequivocally whether they express support or opposition. The paper therefore measures support with three indicators – inclusive, exclusive and an average calculation of these.

Thus, both decisions and drafts are suitable for verifying general practice and opinio juris, if we examine them in comparison and in their repetitions. And the debate records play an important role in accurately identifying the true content of the texts and the rules behind them.

## ANALYSIS

The aim of the research was to create a representative data bank, which, however, could only process a part of the armed interventions after 1945. Although the selection can be criticized, it strived for geographical and political diversity: it included widely analysed conflicts intertwined with great power interests, as well as cases in which great powers did not play a role or where the UN practically did not take any substantive steps.

The description of each conflict begins with a brief historical and political context, then continues with an analysis of the debates and state statements held in the UN, as well as an examination of the text, support, and percentage evaluation of the resolutions and drafts.

Based on the comparison and systematization of the cases, the thesis reveals the basic rules of armed intervention in internal affairs, taking into account not only the specific, presented practice, but also the general GA decisions containing basic principles. The rules are included in the appendix to the thesis booklet. Their elaboration can be found in the thesis.

It should be emphasized that the thesis does not claim that this method is exclusive or sufficient in itself for identifying rules. The research experimentally examines whether norms can be established based solely on the resolutions, drafts and discussion materials of the SC and the GA that are in line with the current state of jurisprudence. This aims to point out that the work of these bodies is not only politically relevant, but also legally relevant, and therefore it is justified to take into account the practice of the UN as widely as possible to clarify legal analyses.

## CONCLUSION

It can be stated that the work taking place in the main political organs of the UN is suitable for legal analysis. The operation of the organs is not purely political, but strong legal constraints and considerations determine the discussion of individual cases and the decisions made in them. The legal convictions of states can be determined not only from excerpts of individual speeches in the debate records, but they are also reflected aggregated and organically in the resolutions and draft resolutions of the SC and the GA.

It can also be proven that the comparison and systematization of the responses expressed in the bodies to individual cases and the general, declarative resolutions in the aforementioned way is suitable for providing an interpretation of the Statute and thus an explanation of the basic rules.

With this methodology, the basic rules of intervention in internal affairs with weapons can be established.

The research does not claim that the rules established here cover all important issues, nor does it claim that they are not subject to debate. In particular, it does not claim that individual rules should not be supported by additional cases discussed in the UN, and even cases not discussed in the UN, and finally by other sources. It should also be noted that the presentation of percentage support is approximate and indicative and should not be interpreted as absolute truth.

However, this research can contribute to the clarification of the rules of the Charter, to identify the more specific content of the rules by taking advantage of the abundant, publicly available, authentic and well-documented material that is the work of the main political organs of the UN. This methodology, which can of course be the subject of criticism and further development, provides a theoretical and empirical solution for how this material can be elevated to the positivist discourse without jeopardizing its most important legalistic constraints. It can also provide ammunition for the positivist continental school to respond to the criticisms of the realist school, which lacks practical sensitivity and emphasizes realities, in a way that does not endanger the international rule of law and the legal foundations of international relations based on objective, predictable and common rules.

## APPENDIX

ARMED INTERVENTION IN THE INTERNAL AFFAIRS OF THE STATE

FUNDAMENTAL RULES IN THE UN SYSTEM

Rule 1 *(prohibition of armed intervention in internal affairs)*

1. Armed intervention in the internal and external affairs of states, whether direct or indirect, overt or covert, or subversion by force, constitutes a violation of the prohibition of the use of force and of intervention.

2. Such armed intervention constitutes the use of force against the legal entity or political, economic and cultural elements of the State, which violates international law.

Rule 2 *(essential state interest)*

1. A State that intervenes with force in the internal affairs of another State may under no circumstances justify the violation by invoking essential State interests. Neither the maintenance of influence over the other State, nor the safeguarding of economic interests, nor perceived security risks may exempt the State that intervenes with force from responsibility.

2. Any change in the internal relations of one State which threatens the essential national interests of another State shall not entail the right of the latter State to intervene with arms, as long as the condition of armed attack under Article 51 of the Charter is not met.

Rule 3 *(peacekeeping and peace enforcement)*

1. In the event of internal instability or civil war in the territory of another State, a State may provide a neutral military presence to maintain order and security (peacekeeping) or to enforce a ceasefire (peace enforcement) only at the request of the legitimate government of that State and to the extent permitted.

2. The authorization of the given state may be revoked at any time. The use of force after the revocation of the authorization or beyond the scope of the authorization constitutes a violation of international law, which breaches the prohibition of the use of force and interference.

3. In the absence of authorization from a legitimate government, peacekeeping and peace enforcement are the exclusive responsibility of the United Nations Security Council. A peacekeeping or peace enforcement mission may be authorized by the Security Council.

Rule 4 *(exclusion of further exceptions to the prohibition of armed intervention)*

In the absence of the consent of the state or the authorization of the Security Council, a state that intervenes by armed means is committing an international breach of the prohibition of the use of force and of intervention. This cannot be justified or justified by the fact that

1. the intervening state only carries out the mission until the United Nations takes appropriate measures;
2. the intervening state carries out the mission to save lives or prevent large-scale international crimes (humanitarian intervention), except for the protection of its nationals, if
    a) the lives and safety of these nationals are indeed in serious danger;
    b) the state concerned is unable or unwilling to ensure their protection;
    c) military action in the other state is the only reasonable and last possible means to save these lives;
    d) the protection of citizens is done specifically by evacuation and not by enforcing safety *in situ*;
    e) the duration and scope of the intervention does not exceed the scope of the rescue operation, and
    f) the intervention ends immediately upon completion of the rescue operation with the immediate withdrawal of all military personnel and equipment.

Rule 5 *(notification obligation)*

Whether in case of permission or request from the state concerned, or of rescuing citizens, the intervening state is obliged to immediately notify the United Nations Security Council or the Secretary-General.

Rule 6 *(intervention in civil war, internal disturbances)*

1. States shall refrain from armed intervention on either side in a civil war or internal disturbances not amounting to civil war that arise in the territory of another State.

2. In the event of civil war or internal disturbances not reaching such a level, only the request or invitation of a legitimate government shall preclude the illegality of military intervention by another State, provided that the request is genuine, preliminary and independent in the following sense:

a) a request is genuine if it is an authentic, written and verifiable request from a legitimate government, which request must be sent to the United Nations Security Council or the Secretary-General without delay;
b) a request is preliminary if it was clearly made before the intervention began, that is, before the foreign troops crossed the border. Valid consent cannot be given during the intervention or after the *fait accompli;*
c) A request is independent if it is made without coercion or threat, without the intervention or pressure of another state. It indicates a lack of independence if the request is made by the government in the territory of the intervening state or under the control of the intervening state's armed forces.

Rule 7 *(prohibition of land acquisition)*

In no case may the intervention entail the annexation of the territory of the target state. Such territorial acquisition cannot be recognized as lawful in accordance with the principle of iex injuria *jus non oritur.*.

Rule 8 *(sending and supporting armed groups)*

It is a violation of the prohibition of the use of force and intervention in internal affairs if a state sends armed gangs, groups, irregulars or mercenaries against another state that uses force against the target state in order to overthrow the government or change the political, economic or social system.

Rule 9 (i*ntervention during a popular uprising)*

1. External intervention aimed at suppressing an uprising against foreign oppression arising from the right of peoples to self-determination is unlawful.

3. A popular uprising against foreign oppression is not considered a civil war, but an armed independence movement.

4. In the case of a popular uprising against foreign oppression or an independence movement – whether within a colonial or non-colonial context – the invitation of a government maintained by a foreign power does not provide a legal basis for armed intervention.

5. If, as a result of the independence movement, a clear separation emerges between the government previously considered legitimate but maintained by a foreign power and the people, the term "state" should be understood to mean the people, not the government, in accordance with the right of peoples to self-determination.

6. A government established through external intervention that suppresses the right to self-determination and the independence movement is considered cannot be recognized as legitimate under the principle of *ex injuria jus non oritur* .

Rule 10 (e*xceeding military agreement)*

1. It is unlawful to deploy armed forces of a State present in the territory of the receiving State with the consent of the receiving State in violation of the conditions provided for in the agreement, or to extend their presence in such territory beyond the termination of the agreement.

2. The above type of military agreement cannot under any circumstances provide a legal basis for foreign military intervention against the objection of the target state.

3. The above type of authorization may be revoked at any time and shall be deemed to have terminated immediately, even in the absence of revocation or objection, as soon as the foreign military presence and operations go beyond the framework of mutual cooperation.