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Book Review

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Abstract

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Book Review

***Intervention in Civil Wars: Effectiveness, Legitimacy, and Human Rights* by Chiara Redaelli¹**SOFYA CHERKASOVA²

LIBYA, MALI, YEMEN, SYRIA, UKRAINE. These are just some of the countries that have been subject to armed interventions in only the past eleven years. The list of countries that were invaded in the past fifty years is exponentially longer.

In 1945, with great adulations and hope for the brighter, peaceful future, the Charter of the United Nations (“UN Charter”) was adopted. This foundational document rests on the principles of the prohibition of the use of force and non-intervention. But despite a fervent hope for a world without war, history has shown that states continue to use force and intervene in the affairs of other states. International law is left with an unenviable task of attempting to reconcile this reality with the two fundamental principles mentioned above. The result has been a fragmented set of rules that have produced more questions than answers.³

1. (Hart, 2021).

2. Juris Doctor 2023, Osgoode Hall Law School.

3. See Michael J Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo* (Palgrave, 2001) at 208 (“[f]ifty years after the drafting of the Charter, it is no longer possible to know when the use of force by states violates international law”).

Despite an abundance of scholarship on the general topic of the use of force,⁴ on the legality of specific interventions,⁵ and on isolated issues relating to interventions,⁶ *Intervention in Civil Wars: Effectiveness, Legitimacy, and Human Rights* (“*Intervention in Civil Wars*”) provides “the first truly comprehensive examination of foreign interventions in internal conflicts.”⁷ Drawing on her PhD research at the Graduate Institute of International and Development Studies and experience as a Research Fellow at the Geneva Academy,⁸ Chiara Redaelli grapples with the difficult questions that arise when states intervene in the internal conflicts of another state.

A distinctive feature of her book is Redaelli’s particular focus on the impact of human rights on the law of interventions. Although the idea that human rights have transformed international law is far from novel,⁹ Redaelli’s work demonstrates the influence of this rhetoric specifically on the law of interventions. After analyzing the practice of interventions on behalf of the states and on behalf of rebellions, she concludes that human rights have become a “parameter of legitimacy” of both governments and rebellions.¹⁰ In other words, states use protection of human rights as a litmus test to determine whether the intervention is legitimate under international law—if the intervention is seen to be in furtherance of human rights, its legitimacy will be more readily accepted by the international community. Along with identifying this emergent trend,

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4. See e.g. Christian Henderson, *The Use of Force and International Law* (Cambridge University Press, 2018); Joel Westra, *International Law and the Use of Armed Force: The UN Charter and the Major Powers* (Routledge, 2007); Philip Alston & Euan MacDonald, eds, *Human Rights, Intervention, and the Use of Force* (Oxford University Press, 2008).
 5. See e.g. Myra Williamson, *Terrorism, War and International Law: The Legality of the Use of Force Against Afghanistan in 2001* (Routledge, 2009); Tom Ruys & Olivier Corten, eds, *The Use of Force in International Law: A Case-Based Approach* (Oxford University Press, 2018).
 6. See e.g. Eliav Lieblch, *International Law and Civil Wars: Intervention and Consent* (Routledge, 2013); Richard A Falk, *Humanitarian Intervention and Legitimacy Wars: Seeking Peace and Justice in the 21st Century* (Routledge, 2015).
 7. Redaelli, *supra* note 1, abstract.
 8. See Geneva Academy, “Chiara Redaelli,” online: <www.geneva-academy.ch/the-academy/about-us/experts/detail/166-chiara-redaelli> [perma.cc/GK9L-CLUH].
 9. See e.g. Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press, 2003); Elizabeth M Bruch, *Human Rights and Humanitarian Intervention: Law and Practice in the Field* (Routledge, 2016). On the influence of human rights on the concept of sovereignty, see e.g. Gregory H Fox & Brad R Roth, eds, *Democratic Governance and International Law* (Cambridge University Press, 2000); Michael W Reisman, “Sovereignty and Human Rights in Contemporary International Law” (1990) 85 AJIL 866.
 10. Redaelli, *supra* note 1 at 7.

Redaelli's work provides a helpful analysis of some of the challenges that this new "parameter" raises.

Intervention in Civil Wars is divided into three parts. The first part provides a historical overview of the fundamental concepts that currently govern state interventions in international law: the use of force, sovereignty, the principle of non-intervention, and human rights. The author traces the limits of sovereignty and the right to wage war to the cultures of ancient Greece and Rome, explores the emergence of the principle of non-intervention in the eighteenth century, and reviews the impact of the UN Charter on these principles.

Redaelli argues that the concept of sovereignty underwent a significant transformation in recent years—"from sovereignty as control to sovereignty as responsibility [to protect human rights] in both internal function and external duties."¹¹ This, in turn, affected the scope of the principle of non-intervention by introducing human rights considerations. In other words, now that the sovereignty of a state is rendered corollary to the human rights narrative, could it be said that a state has a right to intervene if another state abuses human rights internally? Does it have a responsibility to do so? And if so, what conditions must be satisfied for the intervention to be lawful? Redaelli addresses these questions in the second and third parts of her book by looking at the state practice of intervention in internal conflicts.

The second part of the book centres around the modalities of the intervention upon invitation and what entity can invite foreign assistance. The author canvasses the main theoretical approaches to when such intervention is allowed under international law and then juxtaposes these theories with the state practice in order to determine the current legal framework.

Redaelli examines two doctrines—effective control and democratic entitlement. According to the effective control doctrine, which has been the traditional school of thought, the government that controls the territory and the population is the one that can ask for intervention, irrespective of how it came to power or how it exercises its power.¹² Although this view embraces ideological pluralism, it also endorses the "might makes right" philosophy.¹³ This is why the doctrine of democratic entitlement has become more dominant in recent years. It posits that "only democratic governments could express a valid consent to

11. *Ibid* at 78, n 281.

12. *Ibid* at 105.

13. *Ibid* at 109.

foreign interventions.”¹⁴ This view, although appealing in principle, is based on a faulty premise that there is a recognized right to democratic government.¹⁵

With these theoretical dilemmas in mind, Redaelli examines histories of state interventions upon invitation and determines that “both the effectiveness and democratic entitlement doctrines seem to coexist in state practice.”¹⁶

Based on her analysis of state practice, the author offers the following original framework for determining whether the government can ask for foreign assistance. Governments that were democratically elected retain their legitimacy, even if they become ineffective (democratic entitlement doctrine, *i.e.*, when Yemeni President Abdrabbuh Mansur Hadi asked for military intervention to help restore his power in 2015).¹⁷ On the other hand, a regime that came to power through undemocratic means will be recognized (effective control doctrine), as long as there is no democratic alternative available (*i.e.*, the international community recognized the self-proclaimed President Juan Guaidó instead of the elected President Nicolás Maduro in Venezuela because of concerns about the legitimacy of elections).¹⁸ A government might also lose its legitimacy if it commits gross and systemic violation of human rights of its people (democratic entitlement doctrine, *i.e.*, in Libya and Syria).¹⁹

The third part of the book focuses on the legitimacy of intervention on behalf of the rebels. Redaelli finds that in this area, too, human rights “have emerged as a parameter of legitimacy.”²⁰ That is, the rebellions that fight for a “worthy cause” of combatting human rights violations tend to be recognized as legitimate, which leads to a certain relaxation of the principle of non-intervention. One such example is the National Liberation Movements (NLMs) that emerged in the 1960s during the decolonization era. In recognition of the value of the right to self-determination that the NLMs were fighting for, international law has recognized the right of NLMs to receive non-lethal assistance from third states and prohibited the use of force against NLMs or offers of foreign assistance to the oppressive regime.²¹

Another example of the influence of human rights as a “parameter of legitimacy” is the recent Libya conflict. There, because of the gross human rights

14. *Ibid* at 116.

15. *Ibid* at 111.

16. *Ibid* at 151.

17. *Ibid* at 133-34, 138, 151.

18. *Ibid* at 141-42.

19. *Ibid* at 157.

20. *Ibid* at 202, 260.

21. *Ibid* at 189.

violations committed by the Muammar Gaddafi regime against the Libyan population, the international community legitimized the rebellion, and the UN Security Council allowed third states “to take all necessary measures...to protect civilians...under threat of attack.”²² Although, strictly speaking, this did not authorize intervention on behalf of the rebels, the use of force by the coalition forces soon turned into an operation aimed at overthrowing Gaddafi’s regime and incidentally supporting the rebels.²³

Despite the recognition of some rebellions, the law is not clear on whether the states are allowed to intervene on behalf of the rebels. This is why the recent interventions in Libya and Syria are particularly illuminating. Redaelli analyzes both of these interventions, rejects the justificatory value of the pretexts used in each of them (protection of civilians in Libya²⁴ and humanitarian grounds in Syria)²⁵ and ultimately finds that interventions in favour of legitimate rebels are not recognized as lawful.²⁶

In the concluding chapter of her book, the author summarizes her findings and dwells on some of the underlying dilemmas that her analysis reveals. For instance, the tension between democracy and self-determination: If the right to self-determination includes the right to internal self-determination, does it not mean that the people can choose to live under a dictatorship, rather than a democracy?²⁷ At what point do you determine that the will of the people is expressed through the rebels, rather than the oppressive regime? In fact, Redaelli offers a keen observation that “the military capability and probability of success of a specific opposition group is used as a parameter to verify its claim to represent the people, without an endeavour to assess the actual will of the population.”²⁸

The author also cautions the reader against a rose-tinted view of the human rights narrative. She points out that despite the instinctive appeal of the link between human rights and legitimacy,²⁹ in practice, legitimizing decisions are often nothing more than political choices that are framed in comfortable

22. *Ibid* at 238.

23. *Ibid* at 238-39.

24. *Ibid* at 243-44.

25. *Ibid* at 249 (“unilateral humanitarian interventions are not part of positive international law”).

26. *Ibid* at 257.

27. *Ibid* at 198.

28. *Ibid* at 260.

29. *Ibid*.

“protection of human rights” terms.³⁰ For instance, in the cases of Syria and Libya, the decision to recognize the rebellions that were fighting against the violations of human rights ignored the fact that the rebels themselves also committed gross human rights violations.³¹

Redaelli’s analysis is particularly relevant in light of Russia’s recent invasion of Ukraine. Confirming the author’s thesis about human rights as a parameter of legitimacy, Russian President Vladimir Putin relied on the violations of the human rights of Ukrainian citizens to legitimize the Donbass rebellion and justify the beginning of a war in order to protect the people of Donetsk and Luhansk.³² Although, clearly, this was only a “smokescreen,” the reliance on the human rights discourse demonstrates both the prevalence and the danger of this rhetoric.³³

Redaelli’s work is an important contribution to the field of international law on interventions. It usefully summarizes the current law and offers an easy-to-follow system for reviewing the legality and legitimacy of interventions both in favour of the government and of the rebels. More importantly, it provides a valuable insight into the changing understanding of the legitimacy of governments and rebellions in light of the human rights paradigm.

The book is thoroughly researched both factually and legally. Although it does not cover all instances of state interventions, it benefits from focusing on key examples and discussing the broader patterns that these examples demonstrate. It canvasses the spectrum of scholarly debate on the discussed issues and the available decisions of the international bodies, making sure the reader is aware of the existing tensions. At the same time, Redaelli relies heavily on state practice to showcase the dichotomy between the supposed law and the de facto application of it by the states.

Despite addressing a notoriously complex topic, Redaelli’s work is easy to read and understand. Her analysis will be useful for international lawyers and legal scholars, policy makers, and diplomats, as well as non-legal professionals who are simply looking to learn more about this topic. Throughout the book, the

30. *Ibid* at 262 (“the risk is that states would proceed to legitimise or de-legitimise governments and rebels with the specific aim of intervening in their favour or in order to justify the adoption of measures against them”).

31. *Ibid* at 261.

32. See Vladimir Putin, “Address by the President of the Russian Federation” (21 February 2022), online: *Official Internet Resources of the President of Russia* <en.kremlin.ru/events/president/news/67828> [perma.cc/KZ97-8MSN].

33. See also Philip Cunliffe, *Cosmopolitan Dystopia: International Intervention and the Failure of the West* (Manchester University Press, 2020); David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (Pluto Press, 2002).

author provides helpful factual context to the international law conflicts that she references, making the book accessible to even the most novice reader.

Redaelli ends her book by reflecting on the historical pendulum motion of international law “from legitimacy to effectiveness and back.”³⁴ At the moment, it appears that international law has shifted to favour the legitimacy doctrine, prioritizing regimes and movements that respect human rights. However, the controversy of interventions in Libya and Syria, and, arguably, the current war in Ukraine, may hinder this development. At the same time, these examples also highlight the danger of the effectiveness doctrine and the “might makes right” maxim. The solution to this conundrum remains elusive and will, surely, be a subject of future works of international law scholars.

34. *Supra* note 1 at 262.

