Intervention by Invitation as a Tool of New Colonialism

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Introduction

The main presumption of this article is that any military intervention by a State at the request of the Government of another State directed against the right to self-determination of the latter’s peoples violates the political independence of that state and is, therefore, unlawful. It is also an act of domination. The right to (or the principle of) self-determination is not limited to the right of colonial peoples, or peoples under alien occupation or racist regimes. It goes far beyond this and bears the right of the entire population of an independent State ‘to maintain its political independence from third States and to choose its own Government with no outside interference.’ An act of domination means, for the purposes of this article, an invited intervention which violates the right to self-determination of the people in their territory where the intervention takes place. By such an intervention, the intervening State often seeks to maintain or impose a Governmental regime against the will of at least a large part of the host State’s population. This means a form of domination which was one of the foundations of international law, legitimizing colonization, and still retaining its function, though often covertly, in the decentralized world order.

Indeed, Article 2(4) of the United Nations (UN) Charter contains no absolute prohibition of the use of force by States, as popularly believed and as even some scholars regard as *jus cogens*. But in fact this principle could be likened to a dam that has several breaches. Under Charter law it contains exceptions, of which self-defence is only one. The use of force is also permissible under international law against a colonial power, racist regimes and other forms of

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alien domination, and also in the form of invited intervention. Consequently, force may be employed by a State under one of these justifications, for dominating other States or ensuring its political influence on them. Intervention by invitation, like the ‘global war on terror’ has often been a pretext to redefine a world order based on imperial and neo-colonial domination. The first section of this article will focus on the principle of the use of force, which is still a prominent tool of domination particularly by great powers, to ensure the continuity and/or reproduction of the status quo for their benefit. The second section will reflect on consented intervention as an instrument to justify a breach of the right to self-determination of peoples in whose territory the intervention occurs. The article concludes, finally, that it is not enough to concentrate on the validity of the consent given by the inviting Government when evaluating its lawfulness. To minimize the risk of abuse, it is necessary also to inquire whether the invited State is qualified to conduct such an intervention.

1 The Use of Force as a Means of Domination

The universalization of international law became possible through positivism, which progressively replaced naturalism, from the second half of the eighteenth century. Under positivist international law, States are the principal actors of this discipline and nothing can bind them without their consent. Despite certain evolution in international law after 1945, positivism continues to be the foundation of the international legal system.

Positivist international law imposed a world legal order in which the law-makers and the subjects of the law are the same. In other words, it has been a means to ensure the supremacy of sovereign States, which were principally European till the early years of the twentieth century. The goal was to create and/or preserve a status quo in which the more powerful States, despite formal legal equal sovereignty of all States, could have the last word. In such a legal world order the mighty States are right and have more rights than the weak States who are—when necessary—wrong and enjoy fewer rights. Positivist