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Part 3 The Post 9/11-Era (2001–), 65 The Saudi-led Military Intervention in Yemen's Civil War—2015

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(p. 899) 65 The Saudi-led Military Intervention in Yemen's Civil War—2015

I. Facts and Context

In January 2011, 'Arab spring' popular protests erupted in Yemen, calling for President Ali Abdullah Saleh to resign. By November 2011, President Saleh signed the GCC Initiative on Yemen, negotiated under the auspices of the Gulf Cooperation Council (GCC), the UN, and the European Union (EU), effectively stripping him of power and instituting a long-term political transition process.² Vice-President Hadi temporarily assumed the presidency, in anticipation of fresh presidential elections on 21 February 2012, which he won as the sole consensus candidate.³ Additionally, a nationwide Conference for National Dialogue (NDC) was instituted, resulting in an Outcome Document signed by all political parties in January 2014.⁴ The transition process received political support by the UN Security Council (UNSC), which adopted Resolution 2140 (2014), envisioning an asset freeze and travel ban for individuals 'engaging in or providing support for acts that threaten the peace, security or stability of Yemen'.⁵ A few weeks after the official closure of the NDC, a small committee decided that Yemen would become a six-region federation.⁶

Disturbed by the prospect of a six-region federal state, and 'unified in its anti-corruption and anti-old regime posture',⁷ Yemen's Houthi movement started a successful campaign of territorial conquest from their northern stronghold of Sada'a.⁸ This religious/political movement, also known as Ansar Allah ('Partisans of God'), has its origins in the protection of Zaydi traditions, an offshoot of Shi'a Islam, against outside encroachment and political marginalization.⁹ It had long been suspected of having close ties to Iran, which

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(p. 900) stood accused of (materially) supporting the Houthi rebellion.¹⁰ Led by the Al-Houthi family, the success of their 2014 uprising was due to a 'coalition of convenience' with forces loyal to former President Ali Abdullah Saleh.¹¹

In late July 2014, the group capitalized on popular outrage in the wake of a government decision to cut fuel subsidies. The Houthis set up camps in and around the capital of Sana'a, and succeeded in establishing full control over it by late September 2014.¹² Early 2015, President Hadi and members of his cabinet were put under house arrest. They collectively resigned, followed by a widely denounced Houthi 'constitutional declaration' dissolving Parliament and establishing a presidential council and supreme revolutionary committee.¹³ However, Hadi succeeded in escaping his captors, fled to the southern port city of Aden and rescinded his resignation. In the face of advancing rebel forces, which achieved substantial successes against government forces and took control over large parts of the country,¹⁴ he requested foreign military aid from the GCC on 24 March 2015.¹⁵ Immediately hereafter, he fled to the Saudi capital of Riyadh.¹⁶

On 26 March 2015, Operation 'Decisive Storm' was launched, designed to 'protect the people of Yemen and its legitimate government from a takeover by the Houthis'.¹⁷ It was led by Saudi Arabia, and received material support from several other GCC and Arab countries, as well as technical and logistical support from the United States and the United Kingdom.¹⁸ On 22 April 2015, the coalition announced that the objectives of 'Decisive Storm' had been achieved and it would move to the next phase of operations, dubbed Operation 'Renewal of Hope', which was to focus more on the political and humanitarian process.¹⁹ This second phase, however, hardly differed from the previous one, in that bombardments of Houthi strongholds continued largely unabated, but did lead to some (small) diplomatic achievements. For example, a five-day humanitarian ceasefire, (p. 901) starting on 12 May 2015, was agreed upon, but collapsed within hours of its expiration.²⁰ Moreover, consultations were held in Geneva from 15 to 19 June 2015, but again ended without agreement.²¹

The tide in the Yemeni civil war turned with the coalition's launch of 'Operation Golden Arrow' in July 2015. This major offensive, including

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I Facts and Context

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tanks and heavy artillery, quickly succeeded in 'liberating' the major city of Aden and the Abyan province in the south, and in retaking control over the strategically important al-Anad military base.²² In all, the foreign intervention in support of President Hadi clearly tilted the balance in favour of the government forces at a time when the rebels had obtained control over most of the country's institutions.

II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

As described above, President Hadi officially requested assistance in a letter to the GCC on 24 March 2015. In this letter, he accused the Houthi militias of 'being supported by regional Powers that are seeking to impose their control over the country', implicitly alluding to Iranian support.²³ The letter continued:

The threat is therefore not only to the security of Yemen, but also to that of the entire region and to international peace and security ... The Houthi militias have committed several acts of aggression, most recently deploying military columns to attack and take control of Aden and the rest of the south ... I therefore appeal to you, and to the allied States that you represent, to stand by the Yemeni people as you have always done and come to the country's aid. I urge you, in accordance with the right of self-defence set forth in Article 51 of the Charter of the United Nations, and with the Charter of the League of Arab States and the Treaty on Joint Defence, to provide immediate support in every form and take the necessary measures, including military intervention, to protect Yemen and its people from the ongoing Houthi aggression, repel the attack that is expected at any moment on Aden and the other cities of the South, and help Yemen to confront Al-Qaida and Islamic State in Iraq and the Levant.²⁴

In their subsequent letter to the UN, the intervening states similarly held that the Houthi militias were 'supported by regional forces' and had 'always been a tool of outside forces', therefore establishing a 'threat ... to the security, stability and sovereignty of Yemen, but also to the security of the region as a whole and to international peace and security'.²⁵ Moreover:

the acts of aggression have also affected Saudi Arabia, and the presence of heavy weapons and short and long-range missiles beyond the control of the legitimate authorities poses a grave and ongoing threat to our countries ... They recently carried out large-scale military exercises using medium and heavy weapons, with live ammunition, near the Saudi Arabian border. The Houthi militias have already carried out a bare-faced and unjustified attack on the territory

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(p. 902) of Saudi Arabia, in November 2009, and their current actions make it clear that they intend to do so again.²⁶

Consequently, these states 'decided to respond to President Hadi's appeal to protect Yemen and its great people from the aggression of the Houthi militias'.²⁷ Whereas the statement drew attention to the request by President Hadi 'for immediate support in every form and for the necessary action to be taken in order to protect Yemen and its people from the aggression of the Houthi militias',²⁸ subsequent declarations by both Yemen's Government-in-exile²⁹ and Saudi Arabia³⁰ explicitly mentioned the right to collective self-defence as a legal justification for Operation 'Decisive Storm'.

Third states and international organizations in large part lauded or, at least, acquiesced in the military intervention on Yemeni territory. In particular, the League of Arab States 'fully welcome[d] and support[ed] the military operations in defence of legitimate authority in Yemen ... by the coalition composed of the States members of the Gulf Cooperation Council and a number of Arab States' and emphasized that the operation was 'grounded in the Arab Treaty of Joint Defense and Article 51 of the UN Charter'.³¹ This support was echoed by various western states. For example, the United States recognized that the action was taken 'to protect Yemen's legitimate government ... at the request of Yemeni President ... Hadi'.³² It then promptly announced 'the provision of logistical and intelligence support to GCC-led military operations'.³³ Similarly, Prime Minister David Cameron also 'emphasised the [United Kingdom]'s firm political support for the Saudi action in Yemen', while Ministry of Defence officials later acknowledged that the state was 'providing technical support, precision-guided weapons and exchanging information with the Saudi Arabian armed forces'.³⁴ Moreover, France stated that it '[stood] alongside its partners in the region in their efforts to restore Yemen's stability and unity',³⁵ while Canada also endorsed the military action.³⁶

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(p. 903) Some high-ranking representatives of international organizations and other third states adopted a more cautious stance, emphasizing that the conflict in Yemen could not be resolved militarily. UN Secretary-General Ban Ki-Moon noted that 'negotiations remain the only option for ultimately resolving the Yemeni crisis'.³⁷ Federica Mogherini, the EU High Representative for Foreign Affairs, also declared that 'military action is not a solution' and that '[o]nly a broad political consensus through negotiations can provide a sustainable solution'.³⁸ China expressed the hope that the parties would 'resolve the current crisis through political dialogues'.³⁹ Oman was the only GCC member state that refrained from participating in the intervention, since this would preclude the state from 'work[ing] on peace efforts'.⁴⁰

Outspoken criticism of the operation was, however, noticeably absent, barring few exceptions. Unsurprisingly, Iran accused the intervention of occurring 'in flagrant defiance of ... international law ... in particular the obligation to refrain from the threat or use of force',⁴¹ and condemned the 'aggression against Yemen' before the UNSC.⁴² Russia called upon all parties to 'immediately cease any forms of warfare and give up attempts to achieve their goals through military force'.⁴³ It later declared that the Saudi-led operation had 'no legal foundation'.⁴⁴ More cautiously, the Iraqi President stated that 'the problem of Yemen is within Yemen'.⁴⁵ This was in line with the comments made by its Foreign Minister, who claimed that 'bringing external forces is not right' as it was the position of Iraq to 'resort to ... non-interference in Yemen's internal affairs'.⁴⁶

The UNSC issued a Presidential Statement mere days *before* the launch of Operation Decisive Storm, in which it called on 'all Member States to refrain from external interference which seeks to foment conflict and instability [in Yemen]'.⁴⁷ However, Resolution 2216 (2015), adopted weeks *after* the start of operations, expressly noted both the letter of President Hadi requesting military assistance and the letter from intervening states in response.⁴⁸ Although this reference cannot be read as an authorization *ex post facto*, the Council clearly did not denounce the intervention either. This muted reaction was

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(p. 904) furthermore evident from the ensuing debate: not a single Council member explicitly questioned the legality of Operation 'Decisive Storm'.⁴⁹

III. Questions of Legality

In spite of the scope and intensity of the operation, academic scrutiny of Operation Decisive Storm was surprisingly scarce and mostly confined to the blogosphere.⁵⁰ Most blog posts quickly discarded the self-defence argument(s) as inapplicable in the Yemen case, and instead focused on the intervention by invitation argument. Each of the possible legal bases is addressed separately below.

1. Right to collective self-defence pursuant to armed attack(s) against Yemen?

As mentioned above, the principal intervening states expressly invoked the right to collective self-defence against the 'Houthi aggression' to justify their intervention.⁵¹ At the same time, given that the armed conflict was waged *by* Yemenis *against* Yemenis prior to the coalition's intervention, commentators found it difficult to see how the incumbent government could have validly requested allied nations to come to its aid militarily under the framework of the right to collective self-defence. Thus, Deeks regarded the reliance on Article 51 of the UN Charter as 'odd' and 'misplaced', seeing it as 'a way to divert blame away from a regime's own internal failures'.⁵² There indeed appeared to be no indications (including in the statements of the intervening states) that the attacks by the Houthi rebels emanated from abroad, or that they had any cross-border features, thus casting doubt as to the existence of an 'armed attack' (which presupposes some external component).

Even so, the question remains whether the required external component could be derived from a high degree of third-state involvement in the attacks carried out by the Houthi rebels.⁵³ This hypothesis refers to the concept of 'indirect military aggression', as envisaged by Article 3(g) of the UN General Assembly (UNGA) Definition of Aggression.⁵⁴ The International Court of Justice (ICJ) famously used this provision in the *Nicaragua* case as the basis to determine the permissibility of self-defence in a proxy warfare context:

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(p. 905)

[A]n armed attack must be understood as including not merely action by regular armed forces across an international border, but also 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to' (inter alia) an actual armed attack conducted by regular forces, 'or its substantial involvement therein'.⁵⁵

While the Court ostensibly urged a restrictive reading of the concept of indirect military aggression by excluding 'the provision of weapons or logistical or other support',⁵⁶ this narrow approach was subsequently criticized by dissenting Judges Jennings and Schwebel,⁵⁷ and has further come under strain in post-Cold War practice.⁵⁸

Some scholars have since suggested that the criterion might include support that is essential in the group's ability to commit (what could be qualified as) an armed attack.⁵⁹ Reference is sometimes made in this regard to the 'overall control' test as laid down by the International Criminal Tribunal for the Former Yugoslavia in the *Tadić* case, and which encompasses that 'a State has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support'.⁶⁰ While this test was primarily developed for purposes of determining whether an armed conflict should be regarded as 'international' or 'non-international' for *jus in bello* purposes,⁶¹ its application could be extended to the field of the *jus ad bellum*. Put differently: a state's overall control over a non-state armed group potentially internationalizes a non-international armed conflict, and might thus constitute the necessary external component for the existence of an armed attack.

However, even if one accepts such broad interpretation of the concept of indirect military aggression, it remains doubtful whether third-state support for the Houthi campaign was sufficiently substantial to 'externalize' the Houthi attacks, thus triggering the right of self-defence. Indeed, even leaving aside the fact that the third state (read: Iran) allegedly providing assistance to the Houthi rebels was not even mentioned by name in the 26 March statement,⁶² as well as the fact that Iran categorically denied any and all accusations,⁶³ it must be observed that several states concerned seemed to implicitly acknowledge that Iran's alleged involvement did not meet the tentative threshold set out above. For example, a spokesperson for the US Department of State admitted 'not [having] seen evidence that Iran is exerting command and control over the Houthis activities', while the (then) Saudi

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(p. 906) ambassador to the United States only referred to 'reports that the Iranians are providing weapons and training and advisors to the Houthis'.⁶⁴ None of the intervening states provided evidence that Iran's involvement went any further than this, or, at least, argued as such on the international plane. It follows that the collective self-defence argument is not (in the present authors' view) persuasive. Vermeer arrives at the same conclusion: 'the Houthi insurgency cannot be conceptualised as an external armed attack on Yemen'.⁶⁵

2. Right to individual and collective self-defence pursuant to an (imminent) armed attack against Saudi Arabia?

A second justification hinted at by the intervening states, was the right to individual and collective self-defence in defence of Saudi Arabia. The Houthi uprising, and, in particular, the 'presence of heavy weapons ... beyond the control of the legitimate authorities' allegedly posed 'a grave and ongoing threat' to GCC member states.⁶⁶ The existence of such a threat was recognized by the US statement, which referred to the need to 'defend Saudi Arabia's border', and (indirectly) by Resolution 2216 (2015) which demanded that the Houthis 'refrain from any ... threats to neighbouring States, including through ... stockpiling weapons in any bordering territory'.⁶⁷

Acceptance of the second self-defence argument nonetheless presupposes two things. First, it assumes an acceptance that a non-state armed group, such as the Houthi rebels, is capable of mounting an 'armed attack' in the sense of Article 51 of the UN Charter, triggering the right of self-defence, of its own, *irrespective* of any state involvement. This view is not without support in contemporary state practice⁶⁸ or legal doctrine,⁶⁹ albeit that the permissibility of self-defence against attacks by non-state actors remains the subject of considerable discussion.⁷⁰

Second, inasmuch as no claims were made that there had been any *actual* Houthi attacks against Saudi Arabia in the period preceding the

launch of Operation Decisive Storm,⁷¹ the validity of the individual self-defence argument is premised on the view that the right of self-defence applies not only in the case of *actual* (past or ongoing) armed attacks, but

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(p. 907) also to *threats* of attack. The permissibility of so-called 'anticipatory' self-defence has been subject to debate throughout the entire Charter era, with legal doctrine being divided between those pointing to the *texte clair* of Article 51 of the UN Charter and others pointing at an allegedly broader right of self-defence under customary international law.⁷²

An in-depth analysis of this debate is beyond the scope of this chapter. Suffice it to note that in the post-9/11 era, support for some form of anticipatory self-defence has increased, both in legal doctrine, as well as in state practice.⁷³ At the same time, support for anticipatory self-defence is generally construed along the lines of the famous 'Caroline' formula,⁷⁴ which presupposes that an attack is 'imminent'.⁷⁵ The ostensible attempt in the 2002 US National Security Strategy⁷⁶ to broaden the exercise of self-defence to certain 'non-imminent' threats was broadly rejected by states and scholars alike⁷⁷ (and appears to have subsequently been revoked by the United States⁷⁸).

In the present case no evidence was brought forward to suggest that the Houthis were planning any armed attack against Saudi Arabia, let alone that it had already entered the implementation phase and could be regarded as 'imminent'. Instead, the coalition merely presented indications of a potentially hostile attitude, that is, the build-up of Houthi military presence in the border region, or presented the Houthi coup in general terms 'as a threat to the security and sovereignty of Yemen, the security of the Gulf and international peace and security'.⁷⁹ It follows that, even if one accepts that attacks by non-state armed groups can of themselves qualify as 'armed attacks' triggering the right of self-defence, and even if one accepts the legality of anticipatory self-defence against 'imminent' attacks (which remains controversial⁸⁰), Operation Decisive Storm still cannot be construed as a proper application of the right of self-defence. Vermeer similarly concludes that the self-defence claim appears 'weak', since 'there has been no armed attack on Saudi Arabia emanating from Yemen, nor is one imminent'.⁸¹

3. Intervention by invitation

A final (and ostensibly more straightforward) legal argument that was put forward to justify the military intervention relied upon the consent by President Hadi to allow the use of force by foreign states on Yemeni territory. This was also treated by most commentators


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(p. 908) as the principal justification for Operation Decisive Storm⁸² (or the 'most promising' legal justification, as one author put it).⁸³

It is generally accepted that valid state consent to the use of force on its territory precludes a violation of Article 2(4) of the UN Charter. Support for the permissibility of so-called 'intervention by invitation' doctrine can be found in Article 3(e) of the UNGA Definition of Aggression, the practice of the UNSC, ICJ jurisprudence, and legal doctrine.⁸⁴ At the same time, this 'legalizing effect' of state consent depends on its intrinsic validity, which requires, *inter alia*, that consent for the act must emanate from the highest authorities of the state.⁸⁵ In situations of grave internal turmoil, however, it can be unclear whether the embattled government can still (claim to) represent the state for such purposes. Two, interrelated, criteria are generally considered decisive in that regard.⁸⁶ First, the consenting entity needs to exercise effective control over the state's territory. This logically excludes intervention by invitation in a situation of complete state failure or anarchy.⁸⁷ Second, the entity needs to enjoy widespread international recognition. The position adopted by international organizations, and the UN in particular, is often regarded as holding significant probative value in that regard.⁸⁸

In the present case, it was clear in late March 2015 that the Hadi government had lost effective control over significant parts of the territory, even if forces loyal to the exiled government continued resisting the rebel advance, especially in the south and east of the country.⁸⁹ Still, it must be recalled that international law traditionally maintains a presumption in favour of the established government 'so long as the civil war, whatever its prospects, is in progress'.⁹⁰ Furthermore, it has been observed that the 'legitimacy of origin' of a government can, to some extent, 'offset its lack of effectiveness'.⁹¹ In this context, it is clear that the Hadi government retained international recognition as evidenced by Resolution 2216 (2015), which unequivocally reaffirmed 'its support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi'.⁹²

Writing shortly after the operation was launched, Chesney noted that '[s]ome might quibble with the authority of Hadi' to request outside intervention, but nonetheless found the legal basis to be 'strong'.⁹³ Deeks for her part found that the consent was 'not as robust

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(p. 909) as it would be if [Hadi] remained in power in Yemen'.⁹⁴ At the same time, she acknowledges that there have been several examples of military intervention in past decades in support of and with the consent of leaders who had lost effective control over their countries, suggesting that Operation Decisive Storm is 'just another example to add to the pile'.⁹⁵

Leaving aside the intrinsic validity of Hadi's request, a second factor complicated the legality of the intervention. A large share of legal doctrine indeed accepts that customary international law prohibits third-states from intervening militarily in support of *any* party embroiled in a civil war,⁹⁶ including the incumbent regime. This is sometimes referred to as the 'negative equality' doctrine.⁹⁷ According to this view, the principle of non-intervention and the right to self-determination proscribe such assistance, given that the former prohibits 'interference in civil strife in another State',⁹⁸ whereas the latter prescribes that '[a]ll peoples have the right [to] freely determine their political status and freely pursue their economic, social and cultural development'.⁹⁹ The underlying idea is that the latter right is enjoyed by 'peoples' and can therefore not be freely disposed of by government consent.¹⁰⁰

A second school of thought, however, firmly opposes such a reading of international law, arguing instead that it remains permissible to provide foreign military aid to the *de jure* authorities (as opposed to aiding rebel forces), even in situations of civil war. First, these scholars argue that this approach best corresponds to 'traditional international law'.¹⁰¹ Second, they postulate that modern state practice flatly discredits the alleged customary prohibition on military assistance to a government in times of (civil) war.¹⁰² Reference in this regard has been made to recent interventions in Mali (2013) and Iraq (2014).¹⁰³

(p. 910) If this latter ('government-preference') approach is followed, the Saudi-led intervention would *prima facie* appear lawful. Conversely, if one opts for the 'negative equality' approach—which, in the view of the present authors, is more convincing—this does not necessarily imply that Operation Decisive Storm was unlawful. Indeed, even proponents of the 'negative equality' theory widely accept that the assumed prohibition of providing pro-government assistance in a civil war no longer applies in case of *prior* third-state aid to rebel forces. The concept

of 'counter-intervention' stands as the theory's best established exception, though possibly also the most abused.¹⁰⁴ Importantly, state practice suggests that in order to justify a 'counter-intervention', the prior support to the non-state armed group need not rise to the level which is required to 'externalize' an armed attack in the context of indirect military aggression (see above).¹⁰⁵ In light of the foregoing, it could be argued that the alleged Iranian support to the Houthi rebels would effectively justify some form of counter-intervention in support of the recognized Yemeni Government.¹⁰⁶

In the present authors' view, however, the foregoing analysis does not imply that Operation Decisive Storm was fully compatible with international law. While this is an issue which has received little attention in legal doctrine,¹⁰⁷ normatively, a strong argument can indeed be made that any 'counter-intervention' should be subject to a proportionality test, as is the case for other forms of self-help such as self-defence and countermeasures. In the present case, however, the coalition's pro-Hadi assistance, which included months-long air raids, a crippling air and naval blockade, and even boots-on-the-ground, undeniably dwarfed any Iranian involvement, even if all rumours thereof are accepted as fact. Accordingly, the Yemeni people were arguably not allowed to *freely* decide their (political) future, through 'a physical contest if necessary',¹⁰⁸ inasmuch as the intervention did not aim exclusively at cancelling out alleged interference by Iran, but rather sought to defeat the Houthi rebel movement and restore Hadi to power. On balance then, even if one accepts that the Saudi-led operation constituted a 'counter-intervention', it would appear manifestly disproportionate to the alleged Iranian aid to the Houthi rebels. As such, the Saudi-led operation could not be justified by reliance upon any of the established exceptions to the prohibition of the use of force, and rather constituted a (serious) violation of the *jus contra bellum*.

IV. Conclusion: Precedential Value

The Saudi-led intervention on Yemeni territory met with approval or, at least, acquiescence by the majority of states, with only few exceptions.

Although the intervening states expressly referred to the right of self-defence, reliance on the latter legal basis seems rather 'odd' and 'misplaced'.¹⁰⁹ Absent any in-depth debate of the self-defence argument, and seeing as 'intervention by invitation' would seem to provide a more straightforward legal basis, it is submitted that little can be drawn from the Yemen precedent in terms of the interpretation of the right of self-defence. In particular, (p. 91) the Yemen case should not be interpreted as precedent in support of a broad right of self-defence against non-imminent threats posed by non-state actors abroad.

As far as the request by President Hadi is concerned, it is recalled that it was made at a time when his government had lost control over significant parts of the territory, and that he was forced to flee the country days after issuing the request. In spite hereof, it appears that the request was mostly regarded as valid, due to the fact that Hadi continued to enjoy unequivocal international recognition by the international community. This leads to the tentative conclusion that such widespread international recognition can ostensibly compensate for substantial loss of control over territory for the purposes of remaining the state's sole, legitimate representative, including for purposes of requesting outside military support (although some have—rightly—cautioned that this introduces an element of subjectivity in the legal framework).¹¹⁰

Furthermore, having regard to supportive/acquiescent attitude of other states *vis-à-vis* the operation, in spite of its taking place against the background of an ongoing civil war, some will be tempted to conclude that this precedent offers yet more evidence that the 'negative equality' doctrine is not, and has never been, supported by state practice and *opinio juris*. However, taking into account the alleged Iranian involvement, the better view seems to be that the operation constituted an example of that doctrine's best established exception, that is, 'counter-intervention', and should not be regarded as evidence that *de jure* authorities can lawfully request outside military support in situations of civil war.

At the same time, having regard to the scope and intensity of the Saudi-led intervention, the Yemen case certainly raises the question whether a counter-intervention is subject to a proportionality test. According to the present authors, the answer must be affirmative if the concept of counter-intervention is to be more than an empty shell.

Footnotes:

¹ This chapter is a revised version of a more comprehensive article: Tom Ruys and Luca Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-led Military Intervention in Yemen' (2016) 65 *International & Comparative Law Quarterly* 61. The chapter was finished on 9 November 2015. A limited update took place in December 2016, though solely to incorporate additional legal scholarship. All website references were last accessed on the date of its completion.

² 'Agreement by President to Step Down' (2011) 57 *Keesing's Record of World Events* 50793.

³ 'Presidential Election' (2012) 58 *Keesing's Record of World Events* 50961.

⁴ 'National Dialogue Outcome' (2014) 60 *Keesing's Record of World Events* 53149.

⁵ UNSC Res 2140 (26 February 2014) UN Doc S/RES/2140, [17].

⁶ 'Yemen to Become Six-Region Federation, Committee Approves' *Yemen News Agency (SABA)* (10 February 2014) <<http://www.sabaneews.net/en/news341196.htm>>.

⁷ International Crisis Group, 'The Huthis: From Saada to Sanaa' Middle East Report N° 154 (10 June 2014) <<http://www.crisisgroup.org/-/media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Yemen/154-the-huthis-from-saada-to-sanaa.pdf>>, 11.

⁸ Abdul-Hadi Jadallah et al, 'Final Report of the Panel of Experts on Yemen Established Pursuant to Security Council Committee Resolution 2140 (2014)', Annex to Letter Dated 20 February 2015 from the Panel of Experts on Yemen Established Pursuant to Security Council Resolution 2140 (2014) Addressed to the President of the Security Council (20 February 2015) UN Doc S/2015/125, [60]–[62] and [102]–[144] [2015 Final Report of the Panel of Experts].

⁹ International Crisis Group (n 7).

¹⁰ Salomé Zourabichvili et al, 'Final report of the Panel of Experts established pursuant to resolution 1929 (2010)', Annex to Note by the President of the Security Council (2 June 2015) UN Doc S/2015/401, [36]. See also: Abdu Rabbu Mansour Hadi, 'Yemen's President: The Houthis Must Be Stopped' *New York Times* (New York, 12 April 2015) <http://www.nytimes.com/2015/04/13/opinion/the-west-must-help-save-yemen.html?_r=1&mtref=undefined&gwh=E905BDB4CA19EB3378F9CA73163C6E42&gwt=pay&assetType=opinion>.

¹¹ 2015 Final Report of the Panel of Experts (n 8) [80].

- ¹² 'Houthi Capture of Sana'a' (2014) 60 *Keesing's Record of World Events* 53596.
- ¹³ The (then) UN Special Adviser for Yemen stated during a Security Council meeting: 'The unilateral declaration has created strong backlash domestically and internationally', UNSC Verbatim Record (12 February 2015) UN Doc S/PV.7381, 3.
- ¹⁴ For archived maps of expanding Houthi areas of influence throughout the conflict (November 2014–May 2015), compiled by the American Enterprise Institute, see <<http://www.criticalthreats.org/yemen/al-houthi-areas-influence>>.
- ¹⁵ Statement Issued by the Kingdom of Saudi Arabia, the United Arab Emirates, the Kingdom of Bahrain, the State of Qatar and the State of Kuwait, Enclosure to Annex of Identical letters dated 26 March 2015 from the Permanent Representative of Qatar to the United Nations Addressed to the Secretary-General and the President of the Security Council (27 March 2015) UN Doc S/2015/217, 3-5 [Coalition statement in letters to UN, dated 26 March 2015].
- ¹⁶ For a comprehensive and regularly updated overview of developments in Yemen, compiled by the American Enterprise Institute, see the '2015 Yemen Crisis Situation Reports' at <<http://www.criticalthreats.org/yemen/yemen-crisis-situation-reports-2015>>.
- ¹⁷ 'Statement by Saudi Ambassador Al-Jubeir on Military Operations in Yemen' *Operation Renewal of Hope* (25 March 2015) <<http://www.operationrenewalofhope.com/statement-by-saudi-ambassador-al-jubeir-on-military-operations-in-yemen/#sthash.E7gLUWUdk.dpbs>>.
- ¹⁸ The coalition consisted of five out of six Gulf Cooperation Council member states (ie Saudi Arabia, the United Arab Emirates, Kuwait, Qatar, Bahrain (but not Oman)), Jordan, Egypt, Sudan, Morocco, and Senegal. It received support from the United States, the United Kingdom, and Somalia.
- ¹⁹ 'Saudi Ambassador: Operation Decisive Storm Achieved Its Objectives' *Operation Renewal of Hope* (22 April 2015) <<http://www.operationrenewalofhope.com/saudi-ambassador-operation-decisive-storm-achieved-its-objectives/#sthash.LjX4bW4t.dpbs>>.
- ²⁰ 'Bombing in Yemen as Humanitarian Truce Ends' *Al Jazeera* (Doha, 18 May 2015) <<http://www.aljazeera.com/news/2015/05/Arab-coalition-resumes-yemen-air-strikes-truce-ends-150517214058987.html#>>.
- ²¹ 'Yemen Talks in Geneva End with No Agreement' *Al Arabiya News* (Dubai, 19 June 2015) <<http://english.alarabiya.net/en/News/middle-east/2015/06/19/Yemeni-talks-in-Geneva-talks-with-no-agreement.html>>.
- ²² 'Anti-Houthi Forces Retake Yemen's Largest Army Base' *Al Jazeera* (Doha, 4 August 2015) <<http://www.aljazeera.com/news/2015/08/anti-houthi-forces-recapture-yemen-anad-army-base-150804062109651.html>>; AFP, 'South Yemen Clashes Wound Senior Officials' *Al Arabiya News* (Dubai, 11 August 2015) <<http://english.alarabiya.net/en/News/middle-east/2015/08/11/South-Yemen-clashes-wound-senior-officials.html>>.
- ²³ Coalition statement in letters to UN, dated 26 March 2015 (n 15) 4. See also n 10.
- ²⁴ Coalition statement in letters to the UN, dated 26 March 2015 (n 15) 4–5.
- ²⁵ *ibid* 5.
- ²⁶ *ibid*.
- ²⁷ *ibid*.
- ²⁸ *ibid*.
- ²⁹ President Hadi explicitly referred to 'the right of self-defence set forth in Article 51 of the Charter of the United Nations' and 'the Charter of the League of Arab States and the Treaty on Joint Defence'. *ibid* 4; during a consequent Security Council debate, the representative of Yemen to the UN also stated: 'The President was forced, in the context of his constitutional prerogative, to ask his brothers and friends to protect the Yemeni people and the territorial integrity of Yemen, in keeping with Article 51 of the Charter of the United Nations.' See: UNSC Verbatim Record (14 April 2015) UN Doc S/PV.7426, 9.
- ³⁰ See the message by King Salman bin Abdulaziz Al Saud of Saudi Arabia in Annex to Identical Letters Dated 19 May 2015 from the Permanent Representative of Qatar to the United Nations Addressed to the Secretary-General and the President of the Security Council (21 May 2015) UN Doc S/2015/359, 2: 'Saudi Arabia and the States members of the coalition responded ... to the request of the legitimate Government of Yemen ... in accordance with the principle of self-defence'. In a similar sense, see: 'Statement by Saudi Ambassador Al-Jubeir on Military Operations in Yemen' *Saudi-US Relations Information Service (SUSRIS)* (26 March 2015) <<http://susris.com/2015/03/26/statement-by-saudi-ambassador-al-jubeir-on-military-operations-in-yemen-transcript/>>.
- ³¹ Note Verbale Dated 2 April 2015 from the Permanent Observer of the League of Arab States to the United Nations Addressed to the President of the Security Council (15 April 2015) UN Doc S/2015/232, 14, [4].
- ³² United States of America, White House Office of the Press Secretary, 'Statement by NSC Spokesperson Bernadette Meehan on the Situation in Yemen' (25 March 2015) <<http://www.whitehouse.gov/the-press-office/2015/03/25/statement-nsc-spokesperson-bernadette-meehan-situation-yemen>>.
- ³³ *ibid*.
- ³⁴ United Kingdom, Prime Minister's Office, 'PM Call with King Salman of Saudi Arabia' (27 March 2015) <<http://www.gov.uk/government/news/pm-call-with-king-salman-of-saudi-arabia-27-march-2015>>; United Kingdom, Parliament, 'Saudi Arabia: Yemen: Written question—HL1125' (14 July 2015) <<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-07-06/HL1125>>.
- ³⁵ France, France Diplomatie, 'Yemen-Situation' (26 March 2015) <<http://www.diplomatie.gouv.fr/en/country-files/yemen/events/article/yemen-situation-26-03-15>>.
- ³⁶ Canada, Department of Foreign Affairs, Trade and Development, 'Minister Nicholson Concerned by Crisis in Yemen' (27 March 2015) <<http://news.gc.ca/web/article-en.do?nid=956649>>.
- ³⁷ UN Secretary-General Ban Ki-Moon, 'Noting Saudi Arabia Has Begun Military Operations in Yemen, Secretary-General Says Negotiations Remain Only Option for Resolving Yemeni Crisis' (Press Release, 26 March 2015) UN Doc SG/SM/16621.
- ³⁸ European Union, External Action Service, 'Statement of the High Representative and Vice President Federica Mogherini on the Situation in Yemen' (26 March 2015) <http://eeas.europa.eu/statements-eeas/2015/150326_02_en.htm>.
- ³⁹ China, Ministry of Foreign Affairs, 'Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference' (26 March 2015)

http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1248965.shtml.

⁴⁰ Noah Browning, 'Interview-Yemen Combatants Not Ready for Talks, Says Neighbour Oman' *Reuters* (2 April 2015) <http://uk.reuters.com/article/2015/04/02/yemen-security-oman-idUKL6NOWZ3E720150402>.

⁴¹ Annex to the Letter Dated 17 April 2015 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the Security Council (17 April 2015) UN Doc S/2015/263. See, more generally: Letter Dated 23 March 2015 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the President of the Security Council (24 March 2015) UN Doc S/2015/207.

⁴² UNSC Verbatim Record (30 September 2015) UN Doc S/PV.7527, 82.

⁴³ Russia, Ministry of Foreign Affairs, 'Comment by the Foreign Ministry on the Situation in Yemen' (26 March 2015) http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/1113515.

⁴⁴ 'Saudi-Led Coalition Operation in Yemen Has No Legal Foundation—Lavrov' *Sputnik* (6 April 2015) <http://sputniknews.com/world/20150406/1020533752.html>.

⁴⁵ Michael R Gordon and Eric Schmitt, 'Tensions Flare Between Iraq and Saudi Arabia in U.S. Coalition' *The New York Times* (New York, 15 April 2015) http://www.nytimes.com/2015/04/16/world/middleeast/iraqi-prime-minister-criticizes-saudi-intervention-in-yemen.html?_r=0.

⁴⁶ Iraq, Ministry of Foreign Affairs, 'Foreign Minister: The Summit Needs to Exert Efforts to Find Proper Solution to the Yemeni Issue' (3 September 2015) <http://mofa.gov.iq/en/news.php?articleid=353>.

⁴⁷ UNSC Presidential Statement 8 (22 March 2015) UN Doc S/PRST/2015/8, 3.

⁴⁸ UNSC Res 2216 (14 April 2015) UN Doc S/RES/2216.

⁴⁹ UNSC Verbatim Record (14 April 2015) UN Doc S/PV.7426.

⁵⁰ For some examples, see: Nathalie Weizmann, 'International Law on the Saudi-Led Military Operations in Yemen' *Just Security* (27 March 2015) <http://justsecurity.org/21524/international-law-saudi-operation-storm-resolve-yemen/>; Ashley Deeks, 'International Legal Justification for the Yemen Intervention: Blink and Miss It' *Lawfare* (30 March 2015) <http://www.lawfareblog.com/international-legal-justification-yemen-intervention-blink-and-miss-it/>; Joe Dyke, 'Is the Saudi War on Yemen Legal?' *IRIN News* (3 April 2015) <http://www.irinnews.org/report/101320/is-the-saudi-war-on-yemen-legal/>; Robert Chesney, 'U.S. Support for the Saudi Air Campaign in Yemen: The Legal Issues' *Lawfare* (15 April 2015) <http://www.lawfareblog.com/us-support-saudi-air-campaign-yemen-legal-issues/>; Robert Burrows et al, 'Open Letter From Yemen Scholars Protesting War' *Middle East Research and Information Project* (16 April 2015) <http://www.merip.org/open-letter-yemen-scholars-protesting-war/>; Zachary Vermeer, 'The Jus ad Bellum and the Airstrikes in Yemen: Double Standards for Decamping Presidents?' *EJIL: Talk!* (30 April 2015) <http://www.ejiltalk.org/the-jus-ad-bellum-and-the-airstrikes-in-yemen-double-standards-for-decamping-presidents/>. For a more extensive analysis, see: Ruys and Ferro (n 1).

⁵¹ See (nn 29–30).

⁵² Deeks (n 50). See also: Vermeer (n 50).

⁵³ Both President Hadi and the intervening states briefly referred in their letters to the UN to a request for help in confronting terrorist organizations, in particular Al-Qaeda and Islamic State (Coalition statement in letters to UN, dated 26 March 2015 (n 15) 5). However, leaving aside the question whether a state may employ measures of self-defence against non-state actors and whether terrorist attacks in Yemen qualified as armed attacks, such attacks could at most justify military action against terrorist strongholds, but never against the Houthi rebels. It is therefore irrelevant as a justification for Operation Decisive Storm.

⁵⁴ Annex to UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314 (XXIX) Article 3(g).

⁵⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)* (Merits) [1986] ICJ Rep 14, [195] (emphasis added).

⁵⁶ *ibid.*

⁵⁷ *ibid* (Dissenting Opinion Judge Jennings) [1986] ICJ Rep 528, 543; *ibid.*, (Dissenting Opinion Judge Schwebel) [1986] ICJ Rep 259, [154ff].

⁵⁸ See Albrecht Randelzhofer and Georg Nolte, 'Article 51' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* vol 2 (3rd edn, OUP 2012) 1415–16; Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter (CUP 2010) 486ff.

⁵⁹ Randelzhofer and Nolte (n 58) 1416.

⁶⁰ *Tadić Case* (Judgment) IT-94-1-A (15 July 1999) [137]. See also Stefan Talmon, 'The Responsibility of Outside Powers for Acts of Secessionist Entities' (2009) 58 *International & Comparative Law Quarterly* 493, 515–16; Carsten Stahn, 'Terrorist Acts as "Armed Attack": The Right to Self-Defense, Article 51 (1/2) of the UN Charter, and International Terrorism' (2003) 27 *Fletcher Forum of World Affairs* 35, 51.

⁶¹ Accepting the suitability of the test for such purposes: *Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Merits) [2007] ICJ Rep 43, [404].

⁶² Note: as for the Security Council meeting of 14 April 2015, Yemen was the only country to mention Iran by name. See UNSC Verbatim Record (14 April 2015) UN Doc S/PV.7426, 9 (Yemen).

⁶³ Letter Dated 12 May 2015 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the President of the Security Council (13 May 2015) UN Doc S/2015/335: 'I wish to reiterate our position as reflected in the letters of 23 March 2015 (S/2015/207), 9 April 2015 (S/2015/249) and 17 April 2015 (S/2015/263), and to categorically reject such allegations that are wilfully fabricated'.

⁶⁴ United States of America, Department of State, 'Daily Press Briefing' (12 February 2015) <https://2009-2017.state.gov/r/pa/prs/dpb/2015/02/237453.htm>; 'Amb Al-Jubeir Interview—Yemen Campaign [Transcript]' *Saudi-US Relations Information Service (SUSRIS)* (27 March 2017) <http://susris.com/2015/03/27/amb-al-jubeir-press-conference-yemen-campaign-transcript/>. See also the Letter Dated 24 April 2015 from the Permanent Representative of Qatar to the United Nations Addressed to the President of the Security Council (27 April 2015) UN Doc S/2015/279, 3.

⁶⁵ Vermeer (n 50).

⁶⁶ Coalition statement in letters to UN, dated 26 March 2015 (n 15) 5. See also: Letter Dated 24 April 2015 from the Permanent

Representative of Qatar to the United Nations Addressed to the President of the Security Council (27 April 2015) UN Doc S/2015/279, 2 (referring to a 'direct threat ... to peace and security in our region').

⁶⁷ UNSC Res 2216 (14 April 2015) UN Doc S/RES/2216, Article 1(e).

⁶⁸ See, eg, the Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General (23 September 2014) UN Doc S/2014/695.

⁶⁹ Consider, eg, Ashley Deeks, 'Unwilling or Unable': Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 Virginia Journal of International Law 483, 487.

⁷⁰ See, eg, Ruys (n 58) 368ff.

⁷¹ The coalition statement only mentioned a previous 'attack on the territory of Saudi Arabia, in November 2009', referring to the death of several Saudi border guards by the Houthis in a cross-border incursion in retaliation for allowing Yemeni troops to attack rebel positions from Saudi territory, which allegedly proved that the Houthi militias 'intend[ed] to do so again' (Coalition statement in letters to UN, dated 26 March 2015 (n 15) 5). See also, 'Saudi and Iranian Involvement in Civil War' (2009) 55 Keesing's Record of World Events 49548. Having regard to the necessity requirement under customary international law, it is clear that the 2009 incident could not justify action in self-defence six years later.

⁷² See, eg, Ruys (n 58) 250ff.

⁷³ *ibid* 318ff.

⁷⁴ Letter of US Secretary of State Daniel Webster to Special Minister Ashburton in relation to the *Caroline* incident, dated 27 July 1842, British and Foreign State Papers (1840-1841) vol. XXIX, 1137-38: 'a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation'.

⁷⁵ This is, for instance, the approach adopted in the report of the High-Level Panel on Threats, Challenges and Change and in the 2005 'In Larger Freedom' Report of UN Secretary-General Annan. See 'A More Secure World: Our Shared Responsibility' (2 December 2004) UN Doc A/59/565, [188]; and 'In Larger Freedom: Towards Development, Security and Human Rights for All' (21 March 2005) UN Doc A/59/2005, para 124 respectively.

⁷⁶ United States of America, The White House, 'The National Security Strategy' (September 2002) <<http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/>>.

⁷⁷ See Ruys (n 58) 318ff. But see, for instance, John Yoo, 'International Law and the War in Iraq' (2003) 97 American Journal of International Law 563, 576.

⁷⁸ Consider, eg, the emphasis on the imminence requirement in the 2015 US Law of War Manual: United States of America, Office of General Counsel Department of Defense, 'Department of Defense Law of War Manual' (June 2015) <http://www.dod.mil/dodgc/images/law_war_manual15.pdf>, 47.

⁷⁹ Letter dated 19 May 2015 from the Permanent Representative of Yemen to the United Nations Addressed to the President of the Security Council (20 May 2015) UN Doc S/2015/357*, 2.

⁸⁰ For examples of states opposing anticipatory self-defence, see: Ruys (n 58) 339-41.

⁸¹ Vermeer (n 50).

⁸² See the statement by the UN Under-Secretary-General for Legal Affairs in ILC, 'Provisional Summary Record of the 3245th Meeting' (5 May 2015) UN Doc A/CN.4/SR.3245, 4. See also the blogposts mentioned above (n 50).

⁸³ Vermeer (n 50).

⁸⁴ UNGA Res 3314 (n 54); UNSC Res 387 (31 March 1976) UN Doc S/RES/387, preamble; ICJ *Nicaragua* case (n 55) [246]; Institut de Droit International, Resolution on Military Assistance on Request (Rapporteur: M Gerhard Hafner) (8 September 2011) Rhodes Session, Article 4(1).

⁸⁵ Albrecht Randelzhofer and Oliver Dörr, 'Article 2 (4)' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* vol 1 (3rd edn., OUP 2012) 216.

⁸⁶ Olivier Corten, *Le droit contre la guerre* (2nd edn, Editions A Pedone 2014) 453; Louise Doswald-Beck, 'The Legal Validity of Military Intervention by Invitation of the Government' (1985) 56 British Yearbook of International Law 189, 199-200. Some commentators seem to add a third criterion, ie democratic legitimacy. See, eg, Georg Nolte, 'Intervention by Invitation', 1702 Max Planck Encyclopedia of Public International Law [17]; Gregory H Fox, 'Intervention by Invitation' in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (OUP 2015) 835. However, it has been argued that 'effective control' and '(democratic) legitimacy' rather operate to some extent as communicating vessels, in that 'the legitimacy of origin of a government can sometimes offset its lack of effectiveness'. See Jean d'Aspremont, 'Legitimacy of Governments in the Age of Democracy' (2006) 38 New York University Journal of International Law and Politics 877, 908-09.

⁸⁷ Nolte (n 86) [18].

⁸⁸ Stefan Talmon, *Recognition of Governments in International Law* (OUP 1998) 149.

⁸⁹ See archived maps of Houthi areas of influence throughout the conflict (n 14).

⁹⁰ Hersch Lauterpacht, *Recognition in International Law* (CUP 1947) 94.

⁹¹ D'Aspremont (n 86).

⁹² UNSC Res 2216 (n 67) 2. Compare with the situation in Ukraine (2014), see: Tom Grant, 'The Yanukovich Letter: Intervention and Authority to Invite in International Law' (2015) 2 The Indonesian Journal of International & Comparative Law 281.

⁹³ Chesney (n 50).

⁹⁴ Deeks (n 50).

⁹⁵ *ibid*. See, in a similar sense, Max Byrne, 'Consent and the Use of Force: An Examination of "Intervention by Invitation" as a Basis for US Drone Strikes in Pakistan, Somalia and Yemen' (2016) 3 Journal on the Use of Force and International Law 97, 114.

⁹⁶ The crisis in Yemen was labelled a non-international armed conflict as of March 2014, see 2015 Final Report of the Panel of Experts (n 8)

[60].

⁹⁷ Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol 2 (September 2009) 277–78; Institut de Droit International, Resolution on the Principle of Non-Intervention in Civil Wars (Rapporteur: Dietrich Schindler) (14 August 1975) Wiesbaden Session, Article 2(1). The doctrine is supported by eminent scholars and state practice, see: Doswald-Beck (n 86) 251; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 81; Corten (n 86) 513–14; and the British Foreign Office policy document No 148 of 1984, published in (1986) 57 *British Yearbook of International Law* 616. But, see, eg, Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, CUP 2011) 119.

⁹⁸ See, eg, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625. For an overview of the non-intervention principle's role in this regard, and a strong point of view on the matter, see: Philippe Fabri, 'La Licéité de l'Intervention de la Coalition Internationale Menée par l'Arabie Saoudite au Yémen au regard des Principes de l'Interdiction du Recours à la Force et de Non-intervention dans les Guerres Civiles' (2016) *Revue belge de droit international* 69, 82–85.

⁹⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 1 (emphasis added).

¹⁰⁰ Gerhard Hafner, 'Present Problems of the Use of Force in International Law—Sub-group: Intervention by Invitation' (2009) 73 *Annuaire de l'Institut de Droit International* 297, 409.

¹⁰¹ Dinstein (n 97) 119; James W Garner, 'Questions of International Law in the Spanish Civil War' (1938) 31 *American Journal of International Law* 66, 68.

¹⁰² Dinstein (n 101). Strangely, Dinstein supports his argument by referring to the Doswald-Beck article (n 86), which arguably comes to an entirely different conclusion. See also Deeks (n 50).

¹⁰³ Claus Kreß, 'The Fine Line Between Collective Self-Defense and Intervention by Invitation: Reflections on the Use of Force against "IS" in Syria' (*Just Security*, 17 February 2015) <<http://justsecurity.org/2015/02/17/clauss-krebs-force-isil-syria/>>; Fox (n 86) 828; Dapo Akande and Zachary Vermeer, 'The Airstrikes against Islamic State in Iraq and the Alleged Prohibition on Military Assistance to Governments in Civil Wars' (*EJIL: Talk!*, 2 February 2015) <<http://www.ejiltalk.org/the-airstrikes-against-islamic-state-in-iraq-and-the-alleged-prohibition-on-military-assistance-to-governments-in-civil-wars/>>.

¹⁰⁴ Gray (n 97) 92. For an interesting piece on the debate regarding a possible second exception to the 'negative equality' doctrine, ie intervention by invitation against terrorist groups, see: Karine Bannelier-Christakis, 'Military Interventions against ISIL in Iraq, Syria and Libya and the Legal Basis of Consent' (2016) 29 *Leiden Journal of International Law* 743.

¹⁰⁵ Institut de Droit International, Wiesbaden Resolution (n 97) Article 5; British Foreign Policy Document 1984 (n 97).

¹⁰⁶ In a similar vein, Vermeer (n 50): 'Assuming that the Houthis are indeed receiving arms and other support from Iran, that criterion [referring to counter-intervention] would seem to be met here'.

¹⁰⁷ *ibid.*

¹⁰⁸ Lauterpacht (n 90) 233.

¹⁰⁹ Deeks (n 50).

¹¹⁰ See Vermeer (n 50): 'The worry about accepting such a constitutive theory of recognition in this context [is] that it seems to undermine the objectivity of the law on the use of force, leaving it open to double standards ... But the application of double standards on the basis of international consensus is arguably already a fundamental feature of the *ius ad bellum*'.