

I Have No Mouth, and I Must Scream: Interventions by Invitation in the Aftermath of Coup D'états

Michael Alan Dressler Jr.*

ABSTRACT

In 2021, Myanmar's military carried out a coup that overthrew the state's democratically elected government. The swiftness of the coup's execution enabled the military to effectively subdue much of Myanmar's civilian leadership. Without the presence of its duly elected representatives, Myanmar's legitimate government has been left without an authoritative voice on the world stage. All that currently remains of the democratic government within Myanmar are the citizens loudly and clearly clamoring for its restoration.

The United Nations Charter establishes international respect for national sovereignty. U.N. Articles related to state sovereignty forbid another country from using unprompted military force to restore Myanmar's democratic government. By contrast, the uncodified doctrine of intervention by invitation allows a third-party state to militarily intervene in Myanmar if Myanmar's legitimate government consents to the request. However, because no qualified representative is available to give governmental consent, third-party states willing to assist Myanmar cannot do so. Myanmar's inability to authorize the necessary use of force in this instance reveals a fatal flaw in the doctrine of intervention by invitation. In its current form, the doctrine is incapable of resolving swift coup d'états.

Until this incapability is remedied, the doctrine of intervention by invitation has a loophole that allows rogue militaries to overthrow democratic governments without fear of an international military response. Therefore, this Comment supplements the criteria for a valid intervention by invitation to facilitate the doctrine's legal application in situations such as the Myanmar coup. This Comment ultimately recommends that the citizens of democratic states be able to wield

* J.D. Candidate, The Pennsylvania State University, Penn State Law, 2024; M.I.A. Candidate, The Pennsylvania State University, School of International Affairs, 2024.

governmental power in the absence of their elected representatives to issue a legitimate invitation to a third-party state.

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I. INTRODUCTION

In the early morning of February 1, 2021, as Myanmar's recently elected civilian leadership prepared to take their oaths of office, the state's military forces, the Tatmadaw,¹ overthrew Myanmar's five-year-old democratic government.² By the day's end, the Tatmadaw controlled Myanmar's elected leaders, governmental infrastructure, and local and international political capacity.³

This coup d'état marked the culmination of tense civilian-military relations that followed the November 8, 2020, parliamentary elections.⁴ During the 2020 elections, the civilian-led National League for

1. See Russell Goldman, *Myanmar's Coup, Explained*, N.Y. TIMES (Feb. 1, 2021), <https://nyti.ms/3Cz8Uen>. The official name for Myanmar's military forces is the "Tatmadaw." See Nick Marsh, *Tatmadaw: Myanmar's Notoriously Brutal Military*, BBC NEWS (Feb. 2, 2022), <https://bbc.in/3pgtMmO>.

2. See Hannah Beech, *Myanmar's Leader, Daw Aung San Suu Kyi, Is Detained Amid Coup*, N.Y. TIMES (Jan. 31, 2021), <https://nyti.ms/2VWEy62>.

3. See *id.*

4. See Sebastian Strangio, *Myanmar's Coup Was a Chronicle Foretold*, FOREIGN AFFS. (Feb. 2, 2021), <https://fam.ag/3lOWusq>.

Democracy (“NLD”) party won 83% of the legislative seats.⁵ However, the military-backed Union Solidarity and Development Party (“USDP”) garnered a mere 7% of the seats.⁶ The election results’ lopsided nature caused the USDP’s supporters to issue accusations of fraud and call for an electoral investigation.⁷ In addition to swiftly imprisoning the civilian-controlled government’s highest leaders, the Tatmadaw also seized Myanmar’s physical and electronic infrastructure, including roadways, airports, television broadcasts, internet connections, and cellphone signals.⁸ Following their successful coup d’état, the Tatmadaw made their intentions public through an announcement on the military-owned Myawaddy TV station.⁹ Citing a provision in Myanmar’s 2008 constitution that allows the military to unilaterally declare a state of emergency,¹⁰ the Tatmadaw installed military-affiliated officials as the new leaders of the Burmese¹¹ government.¹²

Even before the public had widely recognized the coup’s occurrence, the Tatmadaw removed many civilian political leaders from public view and separated them from all lines of communication.¹³ Unable to resist the coup with either state power or assistance from third parties, Myanmar’s democratically-elected leadership submitted to

5. See *id.*; see also *Myanmar’s 2020 General Election Results in Numbers*, IRRRAWADDY (Nov. 11, 2020), <https://bit.ly/3uifO7d> (showing a map of Myanmar’s 2020 election results).

6. See Strangio, *supra* note 4; *Myanmar’s 2020 General Election Results in Numbers*, *supra* note 5.

7. See Strangio, *supra* note 4.

8. See Goldman, *supra* note 1.

9. See *id.*; see also *Myanmar: Military Announces State of Emergency in TV Address*, RUPTLY (Feb. 1, 2021), <https://bit.ly/3GpOuYH> (broadcasting the announcement of the Tatmadaw’s emergency declaration).

10. See CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR Sept. 2008, ch. I, ¶ 40(c). The Constitution of Myanmar states as follows:

If there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity and loss of sovereign power or attempts therefore by wrongful forcible means such as insurgency or violence, the Commander-in-Chief of the Defence Services has the right to take over and exercise State sovereign power in accord with the provisions of this Constitution.

Id.

11. See Alice Cuddy, *Myanmar Coup: What is Happening and Why?*, BBC NEWS (Apr. 1, 2021), <https://bbc.in/3AUAet2>. As of the time this Comment was written, the state is widely recognized by the name “Myanmar,” which the previous military junta adopted in 1989. See *id.* However, because the state was originally recognized as “Burma,” the adjective “Burmese” is still often used (including by the citizens themselves) to describe the State and the people within it. See *id.*

12. See Strangio, *supra* note 4.

13. See *id.*

military domination under the threat of violent reprisal.¹⁴ Subsequently, an unknown number of those civilian leaders have been saddled with allegations of election fraud,¹⁵ imprisoned in unknown locations,¹⁶ and subjected to secret court proceedings.¹⁷

The Tatmadaw's actions caused an immediate and forceful outcry from the Burmese people, with public protests still periodically occurring at the time of this Comment's development.¹⁸ When mass demonstrations erupt on the streets of Myanmar, they often oscillate between peaceful and violent resistance.¹⁹ The military's response to the ensuing protests has so far resulted in thousands of civilian deaths, injuries, and detainments.²⁰ While the Tatmadaw's leaders initially announced that the ongoing emergency declaration would end in one year and culminate in another round of elections, the one-year deadline has passed without further elections or the military's release of power.²¹ Furthermore, there are no indications that any imprisoned civilian leaders will be justly tried or released, leaving the civilian-led, democratic government without an official or effective voice.²² The extended entrenchment of the military junta, in conjunction with an escalating cycle of violence, has resulted in armed clashes between junta forces and guerilla militias that threaten to spiral into civil war.²³ Meanwhile, an assortment of Burmese officials that successfully evaded imprisonment and escaped Myanmar are mounting an ongoing geopolitical effort to

14. *See id.*

15. *See Election Fraud Trial of Myanmar's Suu Kyi Set for Feb. 14*, INDEPENDENT (Jan. 31, 2022, 4:29 PM), <https://bit.ly/32LJGNM>.

16. *See* Victoria Milko & Kristen Gelineau, *Myanmar's Military Disappearing Young Men to Crush Uprising*, ASSOCIATED PRESS (May 5, 2021), <https://bit.ly/3GfImAA>.

17. *See* Goldman, *supra* note 1; Helen Regan, *Aung San Suu Kyi Sentenced to Four Years in Prison*, CNN (Jan. 10, 2022, 6:59 AM), <https://cnn.it/32NiBKf>; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, ALJAZEERA (Jan. 22, 2022), <https://bit.ly/3L1tWrm>.

18. *See* Jalen Small, *Pressure Builds on U.S. and the West to Support Democracy in Myanmar*, NEWSWEEK (Jan. 5, 2022, 2:24 PM), <https://bit.ly/3f0tcni>; Rebecca Ratcliffe, *Myanmar Protesters Hold 'Silent Strike' Against Military Junta*, GUARDIAN (Dec. 10, 2021, 11:40 AM), <https://bit.ly/3EVTrpD>.

19. *See* Goldman, *supra* note 1; Small, *supra* note 18; Ratcliffe, *supra* note 18.

20. *See* Small, *supra* note 18; Milko & Gelineau, *supra* note 16.

21. *See* Anthony Faiola, *One Year After Myanmar's Coup, the Fight is Not Going Well for the Generals*, WASH. POST (Feb. 4, 2022, 12:01 AM), <https://wapo.st/3Hwkc6i>.

22. *See* Goldman, *supra* note 1.

23. *See Myanmar Junta Intensifies Arson Attacks in Resistance Strongholds*, IRRRAWADDY (May 27, 2022), <https://bit.ly/38VV2Sj>; *see also* Goldman, *supra* note 1.

rally international assistance in support of the growing resistance movement within Myanmar.²⁴

However, despite concerns within the liberal international order about the health of Burmese democracy,²⁵ the varying complexities of the coup's aftermath have prevented any concerted international response thus far.²⁶ One complicating factor stifling a forceful international response is that Myanmar's coup d'état is a fully internal struggle rather than the result of external aggression, as demonstrated by the Tatmadaw's overthrow of its *own* government.²⁷ Therefore, despite the unsavory nature of the Tatmadaw's actions,²⁸ the military coup did not violate Burmese sovereignty because internal, domestic actors carried out the coup rather than external, international forces.²⁹ Although the military coup has replaced the democratically elected government with an unelected and undemocratic government,³⁰ any uninvited foreign military efforts to restore democratic governance to Myanmar would violate Article 2(4) of the United Nations (U.N.) Charter by interfering with Burmese sovereignty.³¹ However, there is a way for a third-party state to militarily intervene in the internal matters of another without

24. See *Myanmar Resistance Urges West to Provide Arms for Fight Against Junta*, REUTERS (May 17, 2022, 11:41 PM), <https://reut.rs/3wUKyvV>.

25. See *Senior US Senator Questions White House Support for Myanmar Resistance*, IRRRAWADDY (May 27, 2022), <https://bit.ly/3PGF0MV>.

26. See *Is the NUG Ready for the World Stage?*, FRONTIER MYANMAR (May 26, 2022), <https://bit.ly/3GpTcpl>.

27. See Goldman, *supra* note 1; Strangio, *supra* note 4; Beech, *supra* note 2; Small, *supra* note 18; Ratcliffe, *supra* note 18.

28. See Cameron Peters, *The UN Condemned Myanmar's Coup. Will That Matter?*, VOX (June 20, 2021, 4:45 PM), <https://bit.ly/34wVomR>.

29. See *Sovereignty*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“[S]overeignty is not a metaphysical concept, nor is it part of the essence of statehood; it is merely a term which designates an aggregate of particular and very extensive claims that *states habitually make for themselves* in their relations with other states.” (emphasis added) (quoting ANDREW CLAPHAM, *BRIERLY'S LAW OF NATIONS: AN INTRODUCTION TO THE ROLE OF INTERNATIONAL LAW IN INTERNATIONAL RELATIONS* 46 (7th ed. 2012))); see also Ted Piccone & Ashley Miller, *Cuba, the U.S., and the Concept of Sovereignty: Toward a Common Vocabulary?*, BROOKINGS (Dec. 19, 2016), <https://brook.gs/2XDGYj> (“Although understandings of sovereignty have evolved over time, the earliest and most traditional definition asserts that states have the freedom to govern themselves as they choose, with full control over their internal and external affairs and free from interference or intervention.”).

30. See Strangio, *supra* note 4; Small, *supra* note 18.

31. See U.N. Charter art. 2, ¶ 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the [U.N.]”); see also *Sovereignty*, *supra* note 29 (“Unless authorised by permissive rules to the contrary, intervention by subjects of international law in one another's sphere of exclusive domestic jurisdiction constitutes a breach of international law.” (quoting GEORG SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 65 (5th ed. 1967))).

violating the U.N. articles concerning national sovereignty: “intervention by invitation.”³²

To explore a possible solution to Myanmar’s dire situation, this Comment centers around the question of how an intervention by invitation can possibly be executed after a coup d’état has both swiftly incapacitated an existing government and subsequently foreclosed any foreseeable opportunity to issue the invitation necessary for a valid intervention. Part II³³ explores two historical examples of interventions by invitation,³⁴ as well as their legality³⁵ and criteria.³⁶ Then, this Comment applies the existing criteria to Myanmar’s ongoing situation.³⁷

While this Comment views the established criteria as a useful foundation for remedying the problem at hand, the forthcoming application of the criteria ultimately demonstrates that they do not adequately facilitate a valid intervention by invitation in the instance of the Myanmar coup.³⁸ The current criteria’s deficiency fundamentally stems from their lack of a necessary contingency for when there is no governmental organ or official available to issue the needed invitation to intervene.³⁹ As a result of both this critical omission and the established criteria’s inapplicability to Myanmar’s situation, this Comment advocates for a remedial adjustment to the criteria, accounting for situations in which there is a fatal lack of a government source of consent.⁴⁰ Once this critical addition is fully explained, this Comment concludes by reapplying the updated criteria for a valid intervention by invitation to the Myanmar coup to demonstrate the updated criteria’s newfound capacity to resolve the ongoing situation.⁴¹

II. BACKGROUND

An intervention by invitation allows a third-party state to militarily involve itself in the internal matters of another state at the latter state’s

32. See Georg Nolte, *Intervention by Invitation*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2011), <https://bit.ly/3qU8jQz>.

33. See *infra* Part II.

34. See *infra* Section II.A.

35. See *infra* Section II.B.

36. See *infra* Section II.C.

37. See *infra* Section II.D.

38. See *infra* Section II.D. This Comment recognizes that the status of intervention by invitation as an uncoded doctrine results in a level of malleability uncommon in more formal standards of international law. See Nolte, *supra* note 32 (detailing historical examples of interventions by invitation and the wide variety of accepted justifications employed to support them).

39. See *infra* Section II.D.

40. See *infra* Sections III.A, III.B.

41. See *infra* Section III.C.

behest.⁴² While the concept of intervention by invitation is not formally recognized or internationally codified by name,⁴³ high-profile cases in the International Court of Justice (“ICJ”)⁴⁴ and provisions in multiple U.N. resolutions have both impliedly⁴⁵ and explicitly⁴⁶ recognized the validity of interventions carried out on the basis of national consent.⁴⁷ Furthermore, since the ICJ and U.N.’s initial de facto embrace of the interventions by invitation doctrine, academic examinations have further developed and reinforced the criteria that are generally considered necessary for this doctrine’s valid execution.⁴⁸ Throughout the academic

42. See Nolte, *supra* note 32 (“The expression ‘intervention by invitation’ is mostly used as a shorthand for military intervention by foreign troops in an internal armed conflict at the invitation of the government of the State concerned.”); see also Institut De Droit International Resolution, *Present Problems of the Use of Armed Force in International Law: Sub-Group C—Military Assistance on Request*, art. 1(a) (Sept. 8, 2011) [hereinafter I.D.I. Resolution] (“‘Military assistance on request’ means direct military assistance by the sending of armed forces by one State to another State upon the latter’s request.”).

43. See 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*, 3 J. USE FORCE & INT’L L. 97, 98 (2016) (“The doctrine of intervention by invitation is not codified in any single place.”).

44. See *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 126, ¶ 246 (June 27); *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, 196–99 ¶¶ 42–54 (Dec. 19). The International Court of Justice (ICJ) is the “principal judicial organ of the [U.N.],” and it is charged with both resolving international legal disputes and providing advisory legal opinions to the U.N. and its various agencies. *The Court*, I.C.J., <https://bit.ly/3FTCR11> (last visited Jan. 8, 2022).

45. See, e.g., G.A. Res. 3314 (XXIX), annex, art. 3(e) (Dec. 14, 1974). Academics consider this source an implicit recognition of interventions by invitation because it indirectly establishes support for the idea that a state’s military can be legal and legitimately granted access to another state’s sovereign territory by way of a consensual agreement. See Coman Kenny & Sean Butler, *The Legality of ‘Intervention by Invitation’ in Situations of R2P Violations*, 51 N.Y.U. J. INT’L L. & POL. 135, 139–40 (2018).

46. See, e.g., G.A. Res. 36/103, annex, § 2(o) (Dec. 9, 1981). As opposed to Resolution 3314, academics consider this source a more explicit recognition of interventions by invitation because it forthrightly establishes that all sovereign states have the inherent right to grant consent for another state to directly intervene in its internal affairs. See Kenny & Butler, *supra* note 45, at 140.

47. See G.A. Res. 3314 (XXIX), *supra* note 45, art. 3(e); G.A. Res. 36/103, *supra* note 46, § 2(o).

48. See, e.g., Nolte, *supra* note 32; OLIVIER CORTEN, *THE LAW AGAINST WAR: THE PROHIBITION ON THE USE OF FORCE IN CONTEMPORARY INTERNATIONAL LAW* 249–310 (2010); Gregory H. Fox, *Intervention by Invitation*, in *THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW* 816, 818–27 (Marc Weller ed., 2015); Masoud Zamani & Majid Nikouei, *Intervention by Invitation, Collective Self-defence and the Enigma of Effective Control*, 16 CHINESE J. INT’L L. 663, 663–94 (2017). For the purposes of its forthcoming analysis, this Comment will assume that the criteria it has synthesized from the most commonly cited elements of valid interventions by invitation are indeed the operational criteria necessary for the international acceptance of such interventions. See *infra* Sections II.C–D.

development of the doctrine, concerned academics and institutions have determined that interventions by invitation are neither violations nor exceptions to U.N. articles⁴⁹ concerning sovereignty.⁵⁰ The common basis for this consensus view is that invited interventions are extensions of a sovereign and consenting nation's entitlement to self-defense.⁵¹ Thus, the ability to request assistance from a third-party state for purposes of self-defense is indistinguishable from actions of pure, unilateral self-defense⁵² taken within the sovereign territory of the defending state.⁵³

With this necessary context in mind, this Part first presents two historical examples of valid interventions by invitation to illustrate how this doctrine operates in reality.⁵⁴ Next, this Part explores the foundational legal principles that establish the legality of rightfully executed interventions by invitation.⁵⁵ This Part then presents and explains the current operational criteria necessary for a valid intervention by invitation.⁵⁶ Finally, this Part presents an informed application of the current conception of intervention by invitation to this Comment's chosen case study: the Myanmar coup d'état.⁵⁷

49. See U.N. Charter art. 2, ¶ 4; U.N. Charter art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the [U.N.], until the Security Council has taken measures necessary to maintain international peace and security."); see also *supra* note 48.

50. See Jean d'Aspremont, *Mapping the Concepts Behind the Contemporary Liberalization of the Use of Force in International Law*, 31 U. PA. J. INT'L L. 1089, 1131–32 (2010) ("Indeed, once the host state consents, the use of force is not at odds with the territorial integrity of the host State and accordingly does not infringe Article 2(4) of the Charter.").

51. See Quoc Tan Trung Nguyen, *Rethinking the Legality of Intervention by Invitation: Toward Neutrality*, 24 J. CONFLICT & SEC. L. 201, 219 ("The author recognizes the fact that modern literature sees governmental consent as a manifestation of 'sovereign equality.' With this view, consent given by one state to another is an implementation of sovereignty . . .").

52. See S.C. Res. 387, pmbl. (Mar. 31, 1976) (recognizing "the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other State or group of States").

53. See Laura Visser, *Intervention by Invitation and Collective Self-Defence: Two Sides of the Same Coin?*, 7 J. USE FORCE & INT'L L. 292, 308–09 (2020) (describing how the term "intervention by invitation" specifically applies to situations where military assistance is requested for use within the consenting state's sovereign territory, whereas "collective self-defence" pertains to situations where military assistance is requested for use outside of the requesting state's sovereign territory).

54. See *infra* Section II.A.

55. See *infra* Section II.B.

56. See *infra* Section II.C.

57. See *infra* Section II.D.

A. *Historical Examples of Interventions by Invitation*

Intervention by invitation is not merely a theoretical concept; rather, it is an actionable doctrine that has been employed as justification for military interventions throughout history.⁵⁸ For instance, France's 2013 intervention in Mali⁵⁹ and Russia's 2015 intervention in Syria⁶⁰ are just two examples of how states militarily intervene in the domestic affairs of another country based on this doctrine.⁶¹ These examples reveal the reality that such interventions are neither straightforward nor available solely to democratic states.⁶²

1. France's Intervention in Mali

Before France intervened in Mali in January 2013, Mali was on the brink of a national fracture.⁶³ In the northern reaches of the State, the Malian government's ability to effectively control its territory steadily weakened throughout 2012 as multiple, independent militant groups formed and began to vie for regional dominance.⁶⁴ Although the Malian military was charged with stabilizing the situation, it was ultimately unsuccessful because separatist forces repeatedly bested government

58. See, e.g., Dapo Akande & Zachary Vermeer, *The Airstrikes Against Islamic State in Iraq and the Alleged Prohibition on Military Assistance to Governments in Civil Wars*, EJIL: TALK! (Feb. 2, 2015), <https://bit.ly/3kJEAaG>; Karine Bannelier-Christakis, *Military Interventions Against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent*, 29 LEIDEN J. INT'L. L. 743, 743–75 (2016); Antenor Hallo de Wolf, *Rattling Sabers to Save Democracy in The Gambia*, EJIL: TALK! (Feb. 1, 2017), <https://bit.ly/3uhnvdl>; Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61, 61–98 (2016); see also Nolte, *supra* note 32 (presenting historical examples of interventions by invitation).

59. See Karine Bannelier & Theodore Christakis, *Under the UN Security Council's Watchful Eyes: Military Intervention by Invitation in the Malian Conflict*, 26 LEIDEN J. INT'L L. 855, 855–74 (2013); Dan E. Stigall, *The French Military Intervention in Mali, Counter-Terrorism, and the Law of Armed Conflict*, 223 MIL. L. REV. 1, 1–40 (2015); Vidan Hadzi-Vidanovic, *France Intervenes in Mali Invoking both SC Resolution 2085 and the Invitation of the Malian Government —Redundancy or Legal Necessity?*, EJIL: TALK! (Jan. 23, 2013), <https://bit.ly/3reQt7>.

60. See Laura Visser, *Russia's Intervention in Syria*, EJIL: TALK! (Nov. 25, 2015), <https://bit.ly/3lP4wkK>; Samuel Mercier, *The Legality of Russian Airstrikes in Syria and 'Intervention by Invitation'*, E-INT'L RELS. (Apr. 29, 2016), <https://bit.ly/3gfoYsW>; *Russia Begins Airstrikes in Syria After Assad's Request*, NPR (Sept. 30, 2015), <https://n.pr/3gfpaIG>.

61. See Visser, *supra* note 60; Bannelier & Christakis, *supra* note 59, at 857.

62. See Visser, *supra* note 60; see also *Freedom in the World 2021—Russia*, FREEDOM HOUSE, <https://bit.ly/3HHrsfO> (last visited Jan. 31, 2022) (explaining the underlying reasons for Russia's status as an authoritarian, undemocratic state).

63. See Bannelier & Christakis, *supra* note 59, at 856.

64. See *id.*

forces on the battlefield.⁶⁵ Following the sustained failure of the Malian military campaign to halt the various militant groups from securing territory, parts of the military itself eventually rebelled against the government and staged a coup.⁶⁶ However, the then-President of Mali, Amadou Toumani Toure, was able to successfully avoid capture and flee the country.⁶⁷ In the months following the coup, Mali fell further into factional warfare.⁶⁸ However, the military junta and Economic Community of Western African States (“ECOWAS”) eventually struck a deal to begin transitioning and legitimatizing the newly empowered government.⁶⁹

Although the ECOWAS’s recognition of the new Malian government prompted the U.N. Security Council to authorize an African-led International Support Mission in Mali (“AFISMA”) as a means of assisting in reestablishing Mali’s national stability,⁷⁰ the AFISMA effort moved too slowly to sufficiently halt the lingering militant groups from consolidating power and advancing southward.⁷¹ As a result, France commenced a campaign of targeted airstrikes intended to prevent rebel forces from making additional southern gains.⁷² This air campaign was merely the prelude to France’s larger Operation Serval, which ultimately resulted in the deployment of 4,500 French troops in Mali.⁷³ France was eventually assisted by both AFISMA coalition forces and troops from additional African states.⁷⁴ Ultimately, France provided an acceptable level of stability within Mali.⁷⁵

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.* at 857.

69. *See id.* at 856–57.

70. *See* S.C. Res. 2085, ¶ 9 (Dec. 20, 2012). The U.N. Security Council stated as follows:

[The Security Council] authorize[s] the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year, which shall take all necessary measures, in compliance with applicable international humanitarian law and human rights law and in full respect of the sovereignty, territorial integrity and unity of Mali to carry out the following tasks To support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups and in reducing the threat posed by terrorist organizations, including AQIM, MUJWA and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population

Id.

71. *See* Bannelier & Christakis, *supra* note 59, at 857.

72. *See id.* at 856.

73. *See id.*

74. *See id.*

75. *See id.*

France subsequently justified its intervention to the international community on the basis that a consensual invitation to intervene was issued by the President of Mali.⁷⁶ Additionally, France cited Mali's internal armed conflict as further support for why the aforementioned invitation was a sound foundation for military intervention.⁷⁷ Save for a few isolated instances in which critics questioned the propriety of the intervention⁷⁸ or scorned it as an ill-advised venture,⁷⁹ the international community near-universally celebrated France's actions.⁸⁰ The willingness of the organs and institutions of international governance not only to accept but also to celebrate France's intervention in Mali implicitly reinforced both the legality of said actions and the international acceptance of interventions by invitation in general.⁸¹

76. See Permanent Rep. of France to the U.N., Identical Letters Dated 11 January 2013 from the Permanent Representative of France to the UN Addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2013/17 (Jan. 14, 2013). The Permanent Representative of France to the U.N. wrote as follows:

On instructions from my Government, I should like to inform you that France has responded today to a request for assistance from the Interim President of the Republic of Mali, Mr. Dioncounda Traoré . . . I therefore wish to inform you that the French armed forces, in response to that request and in coordination with our partners, particularly those in the region, are supporting Malian units in combating those terrorist elements.

Id.

77. See *id.* ("Mali is facing terrorist elements from the north, which are currently threatening the territorial integrity and very existence of the State and the security of its population.").

78. See Philippe Leymarie, *Mali, A Country Divided*, LE MONDE DIPLOMATIQUE (Jan. 21, 2013), <https://bit.ly/3Lb1TIB>. ("Worried by the precedent of French involvement in Libya, some distrust France's role [in Mali].").

79. See *Qatar: An Influential Cleric Strongly Criticizes the French Intervention in Mali*, RFI (Jan. 18, 2013), <https://bit.ly/3grAtgW>.

80. See Press Release, Statement of the President of the ECOWAS Commission on the Situation in Mali (Jan. 14, 2013), <https://bit.ly/3oz21FE> ("The Commission thanks the French Government for its initiatives to support Mali."); *Mali: Ban Welcomes Bilateral Assistance to Stop Southward Onslaught of Insurgents*, UN NEWS (Jan. 14, 2013), <https://bit.ly/3yXSfCZ> ("United Nations Secretary-General Ban Ki-moon today welcomed the response of 'bilateral partners' to the plea for assistance from the Government of Mali to counter the troubling push southward by armed rebels, some of which are associated with terrorists [sic] groups."); S.C. Res 2100, pmbl. (Apr. 25, 2013). The U.N. Security Council stated as follows:

[The Security Council] [w]elcom[es] the swift action by the French forces, at the request of the transitional authorities of Mali, to stop the offensive of terrorist, extremist and armed groups towards the south of Mali and commend[es] the efforts to restore the territorial integrity of Mali by the Malian Defence and Security Forces, with the support of French forces and the troops of the African-led International Support Mission in Mali (AFISMA).

Id. (emphasis omitted).

81. See Bannelier & Christakis, *supra* note 59, at 873 ("The attitude of the UNSC during these interventions clearly demonstrates that the Council accepted the validity of the legal basis of intervention by invitation . . .").

However, even though the established system of international governance and law accepted such a justification in this instance, it does not necessarily follow that all invited interventions are legal, acceptable, or advised.⁸²

2. Russia's Intervention in Syria

Russia's 2015 intervention in Syria is an example of a less straightforward⁸³ and more dubious⁸⁴ intervention by invitation.⁸⁵ By the time Russia intervened in the Syrian Civil War in 2015, the ongoing conflict had already been raging for four years.⁸⁶ In the aftermath of the Arab Spring, pro-democracy protesters took to the streets throughout Syria in March 2011.⁸⁷ Despite the peaceful nature of the demonstrations, the regime of Syrian President Bashar al-Assad viewed the movement's demands for democratic reform as a threat to its power.⁸⁸ As a result of this perception, government security forces were quickly ordered to suppress all reformist demonstrations.⁸⁹ However, these violent measures stoked further resistance from disgruntled Syrians, causing the protests to develop into a mass movement of opposition against the autocratic Assad regime.⁹⁰ This cycle of escalation culminated in defectors from the Syrian army forming the rebellious Free Syrian Army ("FSA"), marking a new stage of internal conflict within Syria.⁹¹

82. See *id.* at 859 ("The consensus about the legality of foreign intervention by invitation in Mali should not lead to the conclusion that third states have an unlimited right to military intervention on the basis of the consent of the authorities of the state where the intervention takes place.").

83. See Vladimir Dergachev & Elizabeth Maetnaya, *"We Thought it Was to the Donbass, but it Turned Out to be in Syria"*, GAZETA.RU (Sept. 18, 2015, 12:42 AM), <https://bit.ly/3oEBd69> ("We don't want to go to Syria, we don't want to die there From the very beginning, there were many oddities and omissions with this business trip, the situation began to clear up already here [sic], in Novorossiysk.").

84. See *US to Start Military Talks with Russia Over Syria*, ALJAZEERA (Sept. 19, 2015), <https://bit.ly/3oEBTsd> ("Russia has never acknowledged sending troops to Syria. Moscow says there are only Russian military advisers in the country to support President Bashar al-Assad's efforts to curb ISIL.").

85. See *Russia Carries out First Air Strikes in Syria*, ALJAZEERA (Sept. 30, 2015), <https://bit.ly/3EPpFEM>.

86. See *Why Has the Syrian Civil War Lasted 11 Years*, BBC NEWS (Mar. 15, 2022), <https://bbc.in/2OwH4Xv>.

87. See *id.*

88. See Zachary Laub, *Syria's Civil War: The Descent into Horror*, COUNS. ON FOREIGN REL. (Mar. 17, 2021), <https://on.cfr.org/3RDOiKs>.

89. See *id.*

90. See *Syrian Civil War*, ENCYCLOPEDIA BRITANNICA (Jul. 17, 2020), <https://bit.ly/3RTKQeM>.

91. See *id.*

As the civil war intensified, it became a complex, stalemated conflict fought amongst various opposing factions.⁹² Among these factions were government-backed security forces, the FSA, local armed militias, Syrian Kurds, the Islamic State of Iraq and Levant (“ISIL” or “ISIS”), and al-Qaeda.⁹³ The presence of extreme Islamist elements and organizations within Syria initially resulted from increasing sectarian divisions following the outbreak of armed conflict.⁹⁴ However, the Assad regime purposely heightened the involvement of Islamic terrorist organizations in the conflict through the propagandistic labeling of all opposition forces as Islamic extremists and subsequently through the mass release of previously captured Islamic extremists from Syrian prisons.⁹⁵ Through these tactics, the Assad regime attempted to frame the Syrian Civil War as a conflict waged between an embattled secular government and an army of conquering jihadists.⁹⁶ Some foreign states—such as the United States and its coalition partners—rejected this narrative and rendered assistance to pro-democracy opposition forces, while other foreign states—such as Russia—leveraged this narrative as a means to more directly intervene in the conflict.⁹⁷

Following a request for aid from President Assad, Russian President Vladimir Putin authorized airstrikes against what were publicly recognized as ISIS forces operating within Syrian territory.⁹⁸ Once Russia had the necessary justification to take action in Syria, Russian armed forces executed a brutal military campaign that quickly changed the dynamics of the war.⁹⁹ However, it was immediately clear that Russia was not limiting its operations to areas of the country that were under ISIS control.¹⁰⁰ As a means of stabilizing the position of the Assad regime, Russia also supported Syrian security forces in their fight against pro-democracy rebel groups.¹⁰¹ Until American-led coalition forces began to effectively counter extremist forces in 2016, Russia’s focus on undermining democratic rebels allowed Islamic extremists to consolidate their power, which subsequently reinforced the Assad regime’s preferred

92. See Isaac Chotiner, *Reëxamining Putin’s Military Interventions in the Middle East*, NEW YORKER (Mar. 9, 2022), <https://bit.ly/3OeZpqq>.

93. See *Syrian Civil War*, *supra* note 90.

94. See Laub, *supra* note 88.

95. See *id.*

96. See *id.*

97. See *Why Has the Syrian Civil War Lasted 11 Years*, *supra* note 86.

98. See *Russia Carries out First Air Strikes in Syria*, *supra* note 85.

99. See Chotiner, *supra* note 92.

100. See *id.*

101. See *Syrian Civil War*, *supra* note 90.

narrative, made foreign support for opposition forces politically unviable, and further justified Russia's intervention.¹⁰²

While the international community had criticized Russia's intervention because of allegations that Russia misrepresented the scope of its involvement in the region,¹⁰³ hid the existence of ground troops within Syria,¹⁰⁴ and lied about the nature of its targets,¹⁰⁵ Russia's intervention was arguably justified based on the doctrine of intervention by invitation.¹⁰⁶ Russia's arguments justifying its actions were grounded in the fact that Bashar al-Assad was, and still is, recognized as the President of Syria, despite the unstable nature of Syria as a result of the ensuing civil war.¹⁰⁷ Therefore, he was an instrument of the legitimate government of Syria¹⁰⁸ and was capable of issuing valid invitations to intervene in the Syrian conflict.¹⁰⁹

In the wake of Russia's actions, multiple states¹¹⁰ issued a joint declaration expressing "deep concern with regard to the Russian military build-up in Syria."¹¹¹ Similarly, the North Atlantic Treaty Organization

102. See Laub, *supra* note 88.

103. See *Russia Begins Airstrikes In Syria After Assad's Request*, *supra* note 60 ("While Russia said the airstrikes would aim at ISIS elements, Syria's state news agency says many of the targets hit today were in western Syria, north of the city of Homs—an area known for anti-government sentiment that's also miles away from ISIS strongholds such as Raqqa or Palmyra.").

104. See *US to Start Military Talks with Russia Over Syria*, *supra* note 84.

105. See Mercier, *supra* note 60 ("In a move that sparked a major wave of concern in western countries, instead of targeting ISIS, Russia started to conduct systematic airstrikes against Assad's opposition, the Free Syrian Army (FSA).").

106. See *US to Start Military Talks with Russia Over Syria*, *supra* note 84 ("Putin's move followed a request for military help by Assad."); see also Visser, *supra* note 60 ("Russia's intervention in Syria is in accordance with the concept of intervention by invitation It is thus submitted that the Russian intervention in Syria is in accordance with international law."). Although Russia has been criticized for shielding the exact nature of its involvement within Syrian borders, Russia's unwillingness to be forthcoming about the details of its military presence and actions has no bearing on the validity of its intervention in the region. See *id.* President Bashar al-Assad's confirmation that an invitation was issued bolsters Russia's claim that its intervention in Syria is valid on the basis of that invitation. See *id.*

107. See Visser, *supra* note 60.

108. See *id.*

109. See *id.*

110. The involved states included "France, Germany, Qatar, Saudi Arabia, Turkey, the United Kingdom[,] and the United States of America." Press Release, U.K. Foreign & Commonwealth Office, Joint Declaration on Recent Military Actions of the Russian Federation in Syria (Oct. 2, 2015), <https://bit.ly/3sqOp1l>.

111. *Id.* ("We express our deep concern with regard to the Russian military build-up in Syria and especially the attacks by the Russian Air Force on Hama, Homs and Idlib which led to civilian casualties and did not target Da'esh.").

(NATO) also released a statement condemning the Russian strikes.¹¹² However, these instances of international condemnation focused exclusively on concerns for how Russia's actions may escalate conflict within and around Syria.¹¹³ None of the international pushback disputed the legality of the intervention.¹¹⁴ This demonstrates that the doctrine of intervention by invitation can be legally applied both by a broad array of international actors and to a diverse set of situations as long as the accepted legal criteria are met.¹¹⁵

B. The Legality of Interventions by Invitation

Because the U.N. is “based on the principle of the sovereign equality of all its Members,”¹¹⁶ the U.N. has established articles intended to safeguard the national sovereignty of all states.¹¹⁷ U.N. Charter Article 2(4) establishes this protection¹¹⁸ and forbids Member States¹¹⁹ from employing the “threat or use of force against the territorial integrity or political independence of any state.”¹²⁰ However, as previously discussed,¹²¹ interventions by invitation are neither violations of U.N. sovereignty rules nor exceptions to those rules because such interventions are extensions of a sovereign state's entitlement to self-defense.¹²²

General Assembly Resolution 3314 (XXIX) of 1974 established implied support for valid military interventions based on national requests for assistance.¹²³ This Resolution supports the conclusion that intervention by invitation does not violate or contradict established U.N. rules concerning national sovereignty.¹²⁴ The Resolution's support for

112. Press Release, North Atlantic Treaty Organization, Statement by the North Atlantic Council on Incursions Into Turkey's Airspace by Russian Aircraft (Oct. 5, 2015), <https://bit.ly/3BUYTJD> (“Allies strongly protest these violations of Turkish sovereign airspace, and condemn these incursions into and violations of NATO airspace. Allies also note the extreme danger of such irresponsible behaviour [sic]. They call on the Russian Federation to cease and desist, and immediately explain these violations.”).

113. See Visser, *supra* note 60.

114. See *id.*

115. See *id.*

116. U.N. Charter art. 2, ¶ 1.

117. See *id.*

118. See *id.* ¶ 4.

119. The term “Member States” refers to all states that are currently members of the United Nations. See *About UN Membership*, U.N., <https://bit.ly/3JE0nex> (last visited Dec. 23, 2021).

120. U.N. Charter art. 2, ¶ 4.

121. See *supra* Section II.A.

122. See d’Aspremont, *supra* note 50, at 1131–32.

123. See G.A. Res. 3314 (XXIX), *supra* note 45, art. 3(e).

124. See *id.*

such interventions can be found in its definition of an act of aggression: “[t]he use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, *in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement.*”¹²⁵ A subsequent general assembly resolution, General Assembly Resolution 36/103 of 1981, more explicitly reinforced the tacit recognition of, and support for, interventions based on national consent.¹²⁶ General Assembly Resolution 36/103 stated that each Member State has “[t]he duty . . . to refrain from any economic, political or military activity in the territory of another State *without its consent.*”¹²⁷

Additionally, a preeminent judgment from the ICJ further cemented the validity of interventions by invitation in 1986.¹²⁸ In *Nicaragua v. United States of America*,¹²⁹ the ICJ explicitly recognized that “intervention . . . is . . . allowable at the request of the government of a State.”¹³⁰ While simultaneously recognizing a government’s right to request assistance for means of self-defense, the ICJ denied any possibility that internal, nongovernmental opposition groups have that same right.¹³¹ In *Nicaragua*, the ICJ firmly established that invitations to intervene are solely a tool for the state.¹³² By doing so, the ICJ set forth the foundation for the necessary criteria of valid interventions by invitation.¹³³

125. *Id.* (emphasis added).

126. *See* G.A. Res. 36/103, *supra* note 46, § 2(o).

127. *Id.* (emphasis added).

128. *See* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 126, ¶ 246 (June 27).

129. *See id.* at 14.

130. *Id.* at 126, ¶ 246.

131. *See id.* In *Nicaragua*, the Court stated as follows:

[The principle of non-intervention] would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State—supposing such a request to have actually been made by an opposition to the régime in Nicaragua in this instance.

Id.

132. *See id.* In *Nicaragua*, the Court stated as follows:

[Allowing interventions on the basis of opposition invitation] would permit any State to intervene at any moment in the internal affairs of another State, whether at the request of the government or at the request of its opposition. Such a situation does not in the Court’s view correspond to the present state of international law.

Id.

133. *See id.*

C. *The Necessary Criteria for Valid Interventions by Invitation*

Despite the validity of interventions by invitation as a general concept, three specific requirements must be met for any particular intervention by invitation to be considered valid and legal.¹³⁴ Because an intervention by invitation is not a formal doctrine with codified rules beyond the need for national consent, the requirements for a valid intervention are often disputed and can vary from source to source.¹³⁵ However, because academics concerned with interventions by invitation often associate three common considerations with the doctrine, three general requirements can be synthesized.¹³⁶

First, a valid intervention by invitation must be the result of a clear and freely given invitation to intervene.¹³⁷ Second, the invitation to intervene must be issued by the legitimate government of the consenting state.¹³⁸ Third, such an invitation must be issued as a means for intervening in an internal armed conflict between the consenting state and a non-state actor.¹³⁹

1. Clear and Freely Given Invitation

Because the very concept of intervention by invitation rests upon the foundation of governmental consent,¹⁴⁰ the criterion requiring a clear and freely given invitation can be reasonably seen as the foremost threshold for legal military action.¹⁴¹

As part of this threshold criterion, an invitation “must be actually expressed by the State rather than merely presumed on the basis that the

134. *See infra* Sections II.C.1-3.

135. *Compare* Kenny & Butler, *supra* note 45, at 141 (“In order for state consent to have a legalizing effect on an intervention, scholars suggest that the consenting government should be (i) legitimate; (ii) effective; and, (iii) that the intervention consented to must not violate the right of self-determination.”), with Laura Visser, *May the Force Be with You: The Legal Classification of Intervention by Invitation*, 66 NETH. INT’L L. REV. 21, 23–31 (2019) (splits “intervention” and “invitation” into two separate categories, with a valid intervention having two distinct criteria and a valid invitation having four distinct criteria).

136. *See* *Nicar. v. U.S.*, 1986 I.C.J. at 126, ¶ 246; Nolte, *supra* note 32; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, 2 Y.B. INT’L L. COMM. 31, 73 (2001).

137. *See* *Nicar. v. U.S.*, 1986 I.C.J. at 126, ¶ 246; Nolte, *supra* note 32; International Law Commission, *supra* note 136, at 73.

138. *See* Christopher J. Le Mon, *Unilateral Intervention by Invitation in Civil Wars: The Effective Control Test Tested*, 35 N.Y.U. J. INT’L L. & POL. 741, 754 (2003); Nolte, *supra* note 32.

139. *See* Nolte, *supra* note 32; I.D.I. Resolution, *supra* note 42, art. 2, ¶¶ 1–2.

140. *See* *Nicar. v. U.S.*, 1986 I.C.J. at 126, ¶ 246.

141. *See id.*

State would have consented if it had been asked.”¹⁴² In other words, a valid intervention by invitation cannot be based on the intervening third-party state’s *mere assumption* that their help is requested.¹⁴³ Instead, the intervention must be based on a clearly given invitation to enter and operate within the sovereign territory of the inviting nation.¹⁴⁴ Furthermore, the inviting state¹⁴⁵ cannot be coerced.¹⁴⁶ If any “error, fraud, corruption[,] or coercion”¹⁴⁷ is involved, the faultily-issued invitation is considered invalid,¹⁴⁸ rendering the resulting intervention likewise invalid and illegal.¹⁴⁹

2. Legitimate Government

The issue of governmental legitimacy within the context of international affairs is often entwined with the practicalities of external recognition by other states and international bodies.¹⁵⁰ Therefore, whether a consenting government is considered the legitimate government of the inviting nation greatly depends on whether the *international community* recognizes the government as legitimate.¹⁵¹ However, particularly during times of both national upheaval and international tension, the international community can disagree about a state’s legitimate government.¹⁵² As a consequence, the U.N. has amassed *de facto* powers over which governments are considered legitimate.¹⁵³ In addition to the U.N.’s ability to grant valuable international recognition to a disputed government, the U.N. has been reluctant to strip that recognition “from an established regime, even once it has lost control, if there is no new single regime in control to take its place.”¹⁵⁴

Additionally, although both democratic and non-democratic governments are capable of issuing invitations to intervene, academics

142. International Law Commission, *supra* note 136, at 73.

143. *See id.*

144. *See id.*

145. *See id.*

146. *See id.*

147. *Id.*

148. *See Id.*

149. *See id.*

150. *See* Le Mon, *supra* note 138, at 754.

151. *See id.*

152. *See* Max Fisher, *Who Is Venezuela’s Legitimate President? A Messy Dispute, Explained*, N.Y. TIMES (Feb. 4, 2019), <https://nyti.ms/3kLmuoB>.

153. *See* Kenny & Butler, *supra* note 45, at 142 (citing Louise Doswald-Beck, *The Legal Validity of Military Intervention by Invitation of the Government*, 56 BRIT. Y.B. INT’LL. 189, 199 (1986)).

154. *Id.* (quoting Doswald-Beck, *supra* note 153, at 199).

who have recently commented on the matter of intervention by invitation have asserted that governments that have earned their internal legitimacy through democratic means are generally considered to have a stronger legal foundation for issuing invitations to intervene.¹⁵⁵ Historically, the traditional determinative factor as to whether a government was legitimate was whether it held “effective control”¹⁵⁶ over the territory of the state.¹⁵⁷ In the context of territorial disputes, effective control means that the government both has de facto control of the disputed land and can carry out the necessary functions of the state.¹⁵⁸ While the effective control test still has some relevance when determining a government’s legitimate ability to issue an invitation to intervene, the test’s relevance is relegated to instances involving non-democratic governments.¹⁵⁹ The modern view that democratic legitimacy reigns supreme allows democratic governments to retain their internal legitimacy—and thus retain their ability to legally issue invitations to intervene—even after they have lost a substantial amount of their control over state territory and functions.¹⁶⁰

3. Internal Armed Conflict

The final criterion of a valid intervention by invitation is that the affected state must invite the third-party state into an internal armed conflict.¹⁶¹ While this criterion is seemingly clear on its face, there is

155. See Nolte, *supra* note 32 (“Since the end of the Cold War the democratic legitimacy of a government has been emphasized more strongly concerning the determination of the legality of an invitation to intervene.”).

156. *Control*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining effective control as “[t]he physical retention of possession of an item or its maintenance in a secure place”).

157. See Le Mon, *supra* note 138 at 742.

158. See *id.* at 745.

159. See Nolte, *supra* note 32. Nolte states as follows:

A [non-democratic] government must display a minimum of effectiveness to have international legal authority to invite foreign troops. This minimum is normally present in cases of internal conflict as long as a government that is challenged by rebellion has not lost control of a sufficiently representative part of the State territory.

Id.

160. See *id.* (“Governments which have been freely and fairly elected under international supervision, or which are universally recognized as having been freely and fairly elected, can arguably preserve their status for the purpose of inviting foreign troops even after having lost almost all effective control.”).

161. See *id.* Nolte states as follows:

State practice indicates that an invitation by the government has not only been asserted as a justification in cases in which support of the insurgents from abroad has been alleged but also in purely internal conflicts. The cases lie between mere local and sporadic unrest on the one hand, and full-scale civil

considerable substance packed within such a short, yet circumstantial, phrase.¹⁶² This three-word phrase contains two distinct aspects that can be separated and examined individually: “armed conflict”¹⁶³ and “internal.”¹⁶⁴

As the plain language of the criterion suggests, the situation in question must involve some level of conflict.¹⁶⁵ However, the ensuing conflict cannot merely be political, economic, or cultural, such as the sorts of domestic conflicts that regularly occur in states that allow for domestic dissent and debate.¹⁶⁶ Rather, the modifier “armed” qualifies that the conflict must be violent.¹⁶⁷ Furthermore, the specification that the conflict involve the use of arms implies the presence of opposing belligerents violently resisting each other.¹⁶⁸

Such violent resistance is a necessary, but not sufficient, requirement of the criterion at hand because the ensuing armed conflict must occur internally to allow for an intervention by invitation.¹⁶⁹ The affected state must invite a third party to intervene in a conflict that is unfolding “within its [own] territory,” rather than within the territory of another sovereign state.¹⁷⁰ The state’s inability to invite a foreign military incursion into another state’s territory precludes interventions by invitation from being utilized as part of an offensive war.¹⁷¹ Furthermore, the requirement that the conflict is internal in nature reinforces the necessity that the conflict is between the consenting government and a non-state actor.¹⁷² This reinforcement and clarification further prevents

war on the other. Most cases were either so-called low-intensity conflicts, rebellions, military coups, popular uprisings, or demonstrations.

Id.; see I.D.I. Resolution, *supra* note 42, art. 2, ¶ 1.

162. See Nolte, *supra* note 32; I.D.I. Resolution, *supra* note 42, art. 2, ¶¶ 1–2.

163. Nolte, *supra* note 32; I.D.I. Resolution, *supra* note 42, art. 2, ¶¶ 1–2; See Visser, *supra* note 53, at 296.

164. Nolte, *supra* note 32; I.D.I. Resolution, *supra* note 42, art. 2, ¶¶ 1–2.

165. See I.D.I. Resolution, *supra* note 42, art. 2, ¶ 1 (“This Resolution applies to situations of internal disturbances and tensions . . .”).

166. See *id.* (describing “riots, isolated and sporadic acts of violence and other acts of a similar nature, including acts of terrorism . . .” as the kind of situations that qualify as a conflict within the context of intervention by invitation).

167. See *id.*

168. See *id.* ¶ 2 (“The objective of military assistance is to assist the requesting State in its struggle against non-State actors or individual persons within its territory, with full respect for human rights and fundamental freedoms.” (emphasis added)).

169. See *id.*

170. *Id.*

171. See Visser, *supra* note 53, at 308–09.

172. See *id.* at 296 (stating that an internal armed conflict is by definition “an armed conflict between a state and non-state actor.” (citing Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977, Article 1(1))).

interventions by invitation from being used during an international armed conflict.¹⁷³ As a result of relegating interventions by invitation to use within internal armed conflicts, such interventions should, in theory, be incredibly useful in instances of coup d'états.¹⁷⁴

D. An Application of the Current Criteria to the Myanmar Coup D'état

The current criteria for intervention by invitation are incapable of resolving the situation in Myanmar.¹⁷⁵ Although the current criteria establish a solid foundation for potentially taking international action,¹⁷⁶ particular circumstances of the Myanmar coup both complicate such an effort and foreclose the legal execution of an intervention by invitation.¹⁷⁷ Specifically, the legitimate democratic government's current inability to consent to a foreign military intervention¹⁷⁸ is the fatal roadblock to a swift resolution in Myanmar.¹⁷⁹ This impediment is observable through a reverse-ordered¹⁸⁰ application of the aforementioned criteria to the facts of the Myanmar coup.¹⁸¹

The Myanmar coup fulfills the third criterion for an intervention by invitation,¹⁸² which requires an internal armed conflict within the

173. See Nolte, *supra* note 32 (discussing the elevation of an internal armed conflict to an international armed conflict).

174. See *id.*

175. See, e.g., Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Cuddy, *supra* note 11; Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17; Small, *supra* note 18; Ratcliffe, *supra* note 18.

176. See *supra* Section II.C; see also International Law Commission, *supra* note 136, at 72–74 (reiterating the principle that governmental consent can be used as a foundational basis for otherwise-illegal military interventions); Nolte, *supra* note 32 (noting the use and acceptance of similar criteria as justification for previous interventions by invitation); I.D.I. Resolution, *supra* note 42, art. 1–7 (detailing the meaning and applicability of the intervention by invitation doctrine).

177. See, e.g., Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Cuddy, *supra* note 11; Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17; Small, *supra* note 18; Ratcliffe, *supra* note 18.

178. See Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17.

179. See G.A. Res. 3314 (XXIX), *supra* note 45, art. 3(e); G.A. Res. 36/103, *supra* note 46, § 2(o); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, 126, ¶ 246 (June 27); Armed Activities on the Territory of the Congo (Dem. Rep. Congo. v. Uganda), Judgment, 2005 I.C.J. 168, 196–99, ¶¶ 42–54 (Dec. 19); International Law Commission, *supra* note 136; Nolte, *supra* note 32.

180. See *supra* Section II.C.

181. See *infra* Section II.D.

182. See *supra* Section II.C.3.

consenting state.¹⁸³ The Tatmadaw's overthrow of the Burmese government¹⁸⁴ intuitively characterizes the coup and its aftermath as an internal armed conflict. First, the Myanmar coup is a conflict because the Tatmadaw is a domestic organization in Myanmar that has deposed its own civilian leadership.¹⁸⁵ Second, the conflict is armed because both the Tatmadaw¹⁸⁶ and resistance groups¹⁸⁷ have used weaponry to carry out violence since the conflict's inception.¹⁸⁸ Lastly, the conflict is internal because it has unfolded exclusively within Burmese borders.¹⁸⁹ Within this conflict, the Tatmadaw definitionally qualifies as the violent non-state actor¹⁹⁰ required by the criterion.¹⁹¹ Similarly, the resistant citizens of Myanmar fill the role of the state actor¹⁹² in the absence of democratically-elected, civilian leaders¹⁹³—especially in this Comment's conception of the Burmese citizens' role in the present conflict.¹⁹⁴ However, despite the democratic government's loss of territorial control,¹⁹⁵ it can also qualify as the contending state actor because the international community still effectively recognizes it as the legitimate government of Myanmar.¹⁹⁶

183. See I.D.I. Resolution, *supra* note 42, art. 2, ¶¶ 1–2.

184. See Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Cuddy, *supra* note 11.

185. See Marsh, *supra* note 1.

186. See Marsh, *supra* note 1; Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17.

187. See Small, *supra* note 18; Ratcliffe, *supra* note 18; Faiola, *supra* note 21.

188. See Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Cuddy, *supra* note 11.

189. See Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Cuddy, *supra* note 11; Small, *supra* note 18; Ratcliffe, *supra* note 18.

190. See *Nonstate Actor*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“A [nonstate actor is] [a] person or entity that is independent of governments in whole or in part but that has considerable influence . . . [A] violent nonstate actor . . . [is] [a] nonstate actor that uses or threatens to use force to achieve its goals.”).

191. See I.D.I. Resolution, *supra* note 42, art. 2, ¶ 2.

192. See *State Actor*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a state actor as “[a] person or entity that acts on behalf of a governmental body”).

193. See Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17.

194. See *infra* Section III.A.

195. See Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi's Party to Death*, *supra* note 17.

196. See *European Parliament Throws Support Behind Myanmar's Shadow Government*, IRRRAWADDY (Oct. 8, 2021), <https://bit.ly/3heZwEp> (“The European Parliament has voted to support Myanmar's shadow government and its parliamentary committee as the legitimate representatives of Myanmar . . .”); *French Senate Recognises Myanmar National Unity Government*, SCOOP NEWS (Oct. 7, 2021),

Despite this lingering recognition,¹⁹⁷ the situation in Myanmar cannot fulfill the second criterion.¹⁹⁸ The second criterion establishes that the legitimate government must be the entity to issue the invitation to intervene.¹⁹⁹ While continued international recognition perpetuates the legitimacy of a theoretical democratic government of Myanmar,²⁰⁰ there is currently no avatar to represent that theoretical government.²⁰¹ Although certain toppled governments have historically survived beyond their borders and retained their legitimacy,²⁰² these “governments in exile” were always represented by an internationally recognized leader or group of representatives.²⁰³ Even though a newly-organized collection of free Burmese officials—the National Unity Government (“NUG”)—is currently seeking recognition, the international community has been decidedly mixed on whether to emphatically grant that request.²⁰⁴ A

<https://bit.ly/3KdN9oD> (“The Senate, the upper house of the French parliament, adopted the resolution unanimously ‘It’s time for the regime to return power to legitimate, elected leaders and restore democracy in Myanmar.’”); Adam Simpson, *Two Governments Claim to Run Myanmar. So, Who Gets the Country’s Seat at the UN?*, CONVERSATION (Sept. 23, 2021), <https://bit.ly/3tczhUm> (“Most countries have been reticent to recognise the military as the legitimate government of Myanmar”); Kimana Zulueta-Fülscher, *The Struggle for Legitimacy in Post-Coup Myanmar*, CARNEGIE EUR. (Apr. 14, 2021), <https://bit.ly/3phXgRf> (“On February 22, the EU Foreign Affairs Council declared that the results of Myanmar’s November 2020 election had to be respected and the legitimate civilian government restored.”).

197. See Zulueta-Fülscher, *supra* note 196.

198. See *supra* Section II.C.2.

199. See Nolte, *supra* note 32; Le Mon, *supra* note 138, at 754; Kenny & Butler, *supra* note 45, at 141–51.

200. See Nolte, *supra* note 32; Le Mon, *supra* note 138, at 754; Kenny & Butler, *supra* note 45, at 141–51.

201. See Davies, *supra* note 15; Milko & Gelineau, *supra* note 16; Regan, *supra* note 17; *Myanmar Sentences Lawmaker from Aung San Suu Kyi’s Party to Death*, *supra* note 17.

202. See Katrin Tiroch, *Governments in Exile*, in MAX PLANCK ENCYCLOPEDIAS OF INT’L LAW (2011), <https://bit.ly/35wYAbT> (documenting historical examples of governments in exile).

203. *Id.* (“[A] government in exile consists of an individual or a group of individuals who reside within the territory of a foreign State after being forced to leave their homeland due to enemy occupation or possibly civil war.”); see also *Government-In-Exile*, BLACK’S LAW DICTIONARY (11th ed. 2019). Black’s Law Dictionary defines a government-in-exile as follows:

An individual or group of individuals residing in a foreign country while (1) claiming supreme authority over a country, (2) being recognized by the hosting country as the supreme authority over that other country, and (3) being organized to perform and actually performing some acts of state on behalf of the home country.

Id.

204. Compare European Parliament Throws Support Behind Myanmar’s Shadow Government, *supra* note 196 (“In a resolution adopted on Thursday, the European Parliament said it ‘supports the [Committee Representing Pyidaungsu Hluttaw (CPRH)]

further complicating development is that both of the group's identified leaders are currently in Tatmadaw custody.²⁰⁵ Therefore, there is currently no structured governmental entity capable of embodying the free-floating international legitimacy rightly belonging to the previous democratic government of Myanmar.²⁰⁶

III. ANALYSIS

This Comment now attempts to correct the deficiency in the current criteria.²⁰⁷ Although the current criteria facilitate interventions by invitation when the legitimate government is stable and effective,²⁰⁸ they fundamentally lack the flexibility necessary to remedy a situation in which the legitimate government has already been overthrown—as is the case in Myanmar.²⁰⁹ Therefore, any attempt to correct this particular shortcoming must focus on the second criterion, which requires that the consenting state's legitimate government issue the invitation to intervene.²¹⁰

A. *Supplementing Established Criteria*

When an official source of governmental consent is lacking and, therefore, when a country is unable to meet the requirements of the second criterion, the affected state's citizens should qualify as such a source. The international community partially determines a state's governmental legitimacy in the context of interventions by invitation by considering its democratic legitimacy.²¹¹ However, the international community is not the singular source of democratic legitimacy itself—even if that community does often verify such legitimacy.²¹² Instead, the

and the [National Unity Government (NUG)] as the only legitimate representatives of the democratic wishes of the people of Myanmar.”), with Simpson, *supra* note 196 (“[I]t has been difficult for the [National Unity Government] to receive formal recognition . . .”).

205. See Simpson, *supra* note 196.

206. See *id.*

207. See *infra* Sections III.A–B.

208. See *supra* Section II.A; Bannelier & Christakis, *supra* note 59; Visser, *supra* note 53.

209. See *supra* Section II.D; Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Small, *supra* note 18; Ratcliffe, *supra* note 18.

210. See Nolte, *supra* note 32; Le Mon, *supra* note 138, at 754; Kenny & Butler, *supra* note 45, at 141–51.

211. See Nolte, *supra* note 32.

212. See *Elections*, U.N.: POL. & PEACEBUILDING AFF., <https://bit.ly/3q5xcJP> (last visited Jan. 8, 2022) (“In such cases [of election verification] the [U.N.] is requested to certify the credibility of all or specific aspects of an electoral process conducted by the national election authority.”); see also NAT’L DEMOCRATIC INST., DECLARATION OF PRINCIPLES FOR INT’L ELECTION OBSERVATION AND CODE OF CONDUCT FOR INT’L ELECTION OBSERVERS 2 (2005) (“International election observation has become widely

citizens of democratic states act as the primary wellspring²¹³: majoritarian election results function as the authorizing mechanism for bestowing democratic legitimacy upon the state.²¹⁴

The citizenry's power to manifest and award democratic legitimacy is accompanied by the inherent right to foundationally control their government—whether such control takes the form of political participation, institutional reform, or governmental destruction.²¹⁵ This system of powers and responsibilities allows citizens to electorally establish, perpetuate, and legitimize their democratic governmental institutions, which results in typical sources of “governmental consent.”²¹⁶ Therefore, when a state's elected leaders are forcibly and unwillingly impeded from wielding their granted powers, the enduring reservoir of democratic authority and legitimacy should automatically revert back to its point of origin: the people.²¹⁷

accepted around the world and plays an important role in providing accurate and impartial assessments about the nature of electoral processes.”).

213. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“We hold these truths to be self-evident, that . . . Governments are instituted among Men, deriving their just powers from the consent of the governed . . .”).

214. See JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 53 (C. B. Macpherson ed., 1980). Locke wrote as follows:

For if the consent of the majority shall not, in reason, be received as the act of the whole, and conclude every individual; nothing but the consent of every individual can make any thing be the act of the whole: But such a consent is next to impossible ever to be had . . .

Id. (emphasis omitted); see also Robert A. Dahl, *Democracy*, ENCYCLOPEDIA BRITANNICA, <https://bit.ly/3zD5LtN> (last visited Jan. 8, 2022) (“[Locke’s] analysis is far more subversive of nondemocratic forms of government than it appears to be. For whatever the form of government, the ultimate source of sovereign power is the people, and all legitimate government must rest on their consent.”).

215. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). The Framers of the U.S. Constitution wrote that

whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect [sic] their Safety and Happiness.

Id.; see also Dahl, *supra* note 214 (describing Locke’s view of the people’s power to radically transform their government by stating that “if a government abuses its trust and violates the people’s fundamental rights—particularly the right to property—the people are entitled to rebel and replace that government with another to whose laws they can willingly give their consent”).

216. See Heinz Eulau et al., *Election*, ENCYCLOPEDIA BRITANNICA (Nov. 2, 2020), <https://bit.ly/3FbVIT3> (“[T]he possibility of controlling leaders by requiring them to submit to regular and periodic elections helps to solve the problem of succession in leadership and thus contributes to the continuation of democracy.”). In other words, citizens of democratic states imbue their elected leaders, including the institutions at those leaders’ disposal, with the powers associated with governance—including the power to give governmental consent. See *id.*

217. See Locke, *supra* note 214, at 53.

B. Preventing Abuse of the Supplemental Criterion

Importantly, placing so much power into a vessel as amorphous as “the people” could result in a potentially dangerous level of interpretation.²¹⁸ To avoid potential abuses of the proposed supplement,²¹⁹ this Comment recommends establishing an accompanying check on its use: the ICJ.²²⁰ As the U.N.’s “principal judicial organ,” the ICJ regularly resolves active disputes submitted to it by states and can issue advisory opinions to authorized U.N. agencies and organs upon request.²²¹ Individual states cannot directly request an advisory opinion from the ICJ.²²² Rather, Article 96 of the U.N. Charter²²³ makes the ICJ’s advisory procedure and resulting opinions solely available to a select group of organs and agencies.²²⁴ Although most of these organs and agencies are merely authorized to “request advisory opinions of the Court on legal questions arising within the scope of their [own] activities,”²²⁵ both the General Assembly and Security Council may

218. See Mariah Zeisberg, *Interpretation is a Political Power*, 95 B.U. L. REV. 1261, 1265 (2015) (“As a political power, we should expect interpretation to be wielded by partisan actors who seek particular goals and outcomes.”); see generally Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS (Mar. 17, 2020), <https://brook.gs/3n6SWmO> (describing Russia’s interpretative justifications for its illegal 2014 seizure of Crimea); Ctr. for Preventative Action, *Territorial Disputes in the South China Sea*, COUNCIL ON FOREIGN REL. (May 4, 2022), <https://on.cfr.org/3JP469j> (detailing the conflicts resulting from China’s claims of sovereignty over the South China Sea, which are partially justified by historical interpretation).

219. See Zeisberg, *supra* note 218, at 1265; Pifer, *supra* note 218; Ctr. for Preventative Action, *supra* note 218.

220. See *The Court*, *supra* note 44.

221. *Id.*; see *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, U.N. (Dec. 6, 2021), <https://bit.ly/331dmGP> (“An advisory opinion is legal advice provided to the [U.N.] or a specialized agency by the International Court of Justice, in accordance with Article 96 of the [U.N.] Charter.”); see also *Advisory Jurisdiction*, I.C.J., <https://bit.ly/3r6ZHGq> (last visited Jan. 8, 2022). The ICJ’s official website states that the Court’s advisory opinions . . . carry great legal weight and moral authority. They are often an instrument of preventive diplomacy and help to keep the peace. In their own way, advisory opinions also contribute to the clarification and development of international law and thereby to the strengthening of peaceful relations between States.

Id.; see, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9); *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1996 I.C.J. Rep. 66 (July 8); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, 1971 I.C.J. 16 (June 21).

222. See *Advisory Jurisdiction*, *supra* note 221.

223. See U.N. Charter art. 96.

224. See *Organs and Agencies Authorized to Request Advisory Opinions*, I.C.J., <https://bit.ly/3O5r4Kk> (last visited Jul. 15, 2022).

225. U.N. Charter art. 96., ¶ b.

request the ICJ's advice on "any legal question."²²⁶ Therefore, through this mechanism of international judicial oversight and advisement, either a third-party state or coalition of states could work through an authorized organ or agency to request an advisory opinion from the ICJ and resolve any uncertainty as to whether an intervention by invitation could be validly executed.²²⁷ Unlike the court's resolution of legal disputes through case hearings, which occur after a potential international infraction has already occurred,²²⁸ the requesting entity would seek and receive the court's advisory review before the proposed intervention begins.²²⁹

While the advisory judgment of the court would not be binding,²³⁰ and, therefore, would not definitively prevent or justify potential interventions, these preemptive judgments would clearly define the situation's nature, legality, and limits.²³¹ As a result, states considering taking military action on the basis of intervention by invitation would be aware of the potential illegality of such actions.²³² This knowledge would allow for a just intervention to proceed without fear of international sanctions, prevent an intervention from occurring altogether, or reveal the intervening state's lack of commitment to international law and comity.²³³ If a state requested, and later disregarded, an unfavorable ICJ advisory opinion in relation to a disputed intervention by invitation, it would be subject to the same potential international sanctions that apply to any party that violates international law.²³⁴

226. *Id.* ¶ a.

227. See *The Court*, *supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

228. See *The Court*, *supra* note 44; see also *Cases*, I.C.J., <https://bit.ly/31JrXpS> (last visited Jan. 8, 2022) ("The Court has a . . . role . . . to settle, in accordance with international law, legal disputes submitted to it by States . . .").

229. See *The Court*, *supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

230. See *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221 ("In general, advisory opinions are not binding, but may inform the development of international law."); *Advisory Jurisdiction*, *supra* note 221 (stating that advisory opinions issued by the ICJ have "no binding force.").

231. See *The Court*, *supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

232. See *The Court*, *supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

233. See *Cases*, *supra* note 228.

234. See, *Sanctions*, U.N.S.C., <https://bit.ly/3GeAjEP> (last visited Jan. 8, 2022) ("The Security Council can take action to maintain or restore international peace and

C. *Application of Supplemented Criteria to the Myanmar Coup*

By providing both an alternative source of governmental consent and a judicial safeguard against the abuse of that alternative,²³⁵ the doctrine of intervention by invitation can more adequately resolve the situation in Myanmar.²³⁶ This Section specifically focuses on the aspects of Myanmar's situation that are most critically affected by the supplemental additions to the second criterion²³⁷—specifically, the current lack of a legitimate governmental organ or official²³⁸ required to issue an invitation to intervene.²³⁹ Whereas the initially formulated criteria for a valid intervention by invitation have left the Burmese people stranded in a morass of voiceless resistance,²⁴⁰ this Comment's additions to those criteria²⁴¹ turn the citizen's persistent calls for democratic restoration²⁴² into a conduit for international assistance and intervention.²⁴³

With the people of Myanmar acting as the *de jure* source of legitimate governmental power and consent for the state,²⁴⁴ the combination of their ongoing protests,²⁴⁵ democratic election results,²⁴⁶ and individual calls for assistance from the West²⁴⁷ can qualify as an invitation to intervene.²⁴⁸ By interpreting these actions in such a manner and using them to justify an intervention, a state would be correct to request that the U.N. petition the ICJ for an advisory opinion on the matter.²⁴⁹ Due to the time-sensitive nature of the emergency situation, the

security under Chapter VII of the United Nations Charter. Sanctions measures, under Article 41, encompass a broad range of enforcement options that do not involve the use of armed force.”); *see also United Nations Security Council Consolidated List*, U.N.S.C., <https://bit.ly/3yj38OT> (last visited Jan. 8, 2022) (listing the individuals and entities that are currently subject to some form of sanctions regime by the U.N. Security Council).

235. *See supra* Section III.B.

236. *See supra* Part I; *supra* Section III.D; Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Small, *supra* note 18; Ratcliffe, *supra* note 18.

237. *See supra* Section II.C.2.

238. *See supra* Part I; Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4; Small, *supra* note 18; Ratcliffe, *supra* note 18.

239. *See* Nolte, *supra* note 32.

240. *See supra* Section III.D; Small, *supra* note 18; Ratcliffe, *supra* note 18.

241. *See supra* Section III.B.

242. *See* Small, *supra* note 18; Ratcliffe, *supra* note 18.

243. *See supra* Section III.A.

244. *See supra* Section II.C.2.

245. *See* Small, *supra* note 18; Ratcliffe, *supra* note 18.

246. *See* Goldman, *supra* note 1; Beech, *supra* note 2; Strangio, *supra* note 4.

247. *See* Small, *supra* note 18.

248. *See supra* Sections III.C.1–2; Nolte, *supra* note 32.

249. *See supra* Section III.B; *The Court, supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

ICJ could accelerate its review process to issue its opinion as quickly as possible.²⁵⁰ Upon the ICJ accepting the request and issuing an opinion (assuming that the ICJ agrees with the requesting state's interpretation), the intervening state and any assisting allies would be effectively—yet not affirmatively—authorized to intervene in Myanmar and restore the democratically-elected government.²⁵¹

IV. CONCLUSION

The doctrine of intervention by invitation allows a third-party state to militarily intervene in the domestic affairs of another state upon the latter state's request.²⁵² While intervention by invitation is not a formally codified doctrine,²⁵³ U.N. resolutions, ICJ opinions, and subsequent secondary literature have established and reinforced the permissibility of its usage.²⁵⁴ Unfortunately, the doctrine's current form renders it incapable of effectively resolving instances of swift coup d'états that quickly incapacitate and dispose of conventional sources of legitimate government consent²⁵⁵—as was the case in Myanmar.²⁵⁶ Although a legitimate government's²⁵⁷ freely and clearly issued invitation to intervene²⁵⁸ in its internal conflict²⁵⁹ often acts as a sound remedy in applicable circumstances,²⁶⁰ a supplemental criterion is necessary to account for situations like the Myanmar coup.²⁶¹

In democratic states, both governmental legitimacy and the resulting power of representatives to operate the levers of the state are derived from the consent of the people.²⁶² In turn, the government's ability to consensually invite intervention foundationally depends on the people's willingness to give their government the power to do so.²⁶³ Therefore, in the absence of institutionalized sources of government consent, the power to give national consent should revert back to its point of origin:

250. See *Cases*, *supra* note 228.

251. See *supra* Section III.B; *The Court*, *supra* note 44; *What is an Advisory Opinion of the International Court of Justice (ICJ)?*, *supra* note 221; *Advisory Jurisdiction*, *supra* note 221.

252. See *supra* Part II.

253. See *supra* Part II.

254. See *supra* Section II.B.

255. See *supra* Section II.D.

256. See *supra* Part I.

257. See *supra* Section C.2.

258. See *supra* Section C.1.

259. See *supra* Section C.3.

260. See *supra* Section 2.A.

261. See *supra* Part III.

262. See *supra* Section III.A.

263. See *supra* Section III.A.

the people.²⁶⁴ As a result, following a coup's illegitimate usurpation of government power, the legitimate democratic state's citizens should have the power to issue the invitation necessary for a foreign military intervention into their internal affairs.²⁶⁵ However, due to the possible misuse of such a highly malleable criterion, the ICJ could and should be used as a source of legitimation for potential foreign military interventions.²⁶⁶

By using the current criteria for an intervention by invitation along with this Comment's supplemental criterion, a third-party state may leverage this doctrine to address and resolve situations like the Myanmar coup.²⁶⁷ Using both the Burmese people's ongoing protests and the disregarded 2020 election results²⁶⁸ as an invitation to intervene,²⁶⁹ willing third-party states would be able to petition the U.N. for an ICJ advisory opinion on the matter.²⁷⁰ Assuming that the advisory opinion agrees with this interpretation of the Burmese people's actions, the involved third-party states would effectively be authorized to take military action in Myanmar to restore the legitimate, democratically-elected government.²⁷¹

264. *See supra* Section III.A.

265. *See supra* Section III.A.

266. *See supra* Section III.B.

267. *See supra* Section III.C.

268. *See supra* Part I.

269. *See supra* Section II.C.1.

270. *See supra* Section III.B.

271. *See supra* Section III.C.