

1(4) of *Additional Protocol I* to the *Geneva Conventions of 12 August 1949* [*Additional Protocol I*] defines 'international armed conflict' to include:

armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the [Friendly Relations Declaration].

As a result, it is reasonable to argue that intervention on behalf of a people exercising its right of self-determination in this context could be considered intervention on behalf of a legitimate government and not in support of an opposition movement, at least where the conflict results from the prior suppression of the exercise of the right of self-determination by the state. However, this position remains controversial. For example, the internationalization of a conflict for the purpose of applying humanitarian law does not necessarily equate with recognition of the existence of two separate states or the applicability of article 2(4) or 51 of the *UN Charter*.²⁶

Outside of the context of *Additional Protocol I* (i.e. conflicts against colonial domination, alien occupation or racist regimes), the possible implicit acceptance by the ICJ in *Nicaragua* regarding support for opposition self-determination movements has even more limited application. Immediately following its statement regarding non-application of the decision to a colonial context, the Court concluded that no general exception to the prohibition on intervention could be justified on the basis of state practice directed "in support of an internal opposition in another State, whose cause appeared particularly worthy by reason of the political and moral values with which it was identified."²⁷ Furthermore, the Court expressly concluded that:

*...while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras.*²⁸

Recent state practice since the *Nicaragua* decision provides little support for intervention in support of armed self-determination movements, in the absence of express or possibly implied authorization from the United Nations Security Council [UNSC]. For example, caution must be exercised with the example established by the 1999 intervention by the North Atlantic Treaty Organization [NATO] in Kosovo. With the exception of Belgium, NATO states involved in this operation did not justify their intervention with reference to a legal right of intervention in support of humanitarian principles. No state argued a legal right to intervene in support of the Kosovo Liberation Army [KLA], the major armed opposition group fighting for independence from the Former Yugoslavia. Instead, preliminary legal justifications forwarded by NATO states have centred around prior UNSC resolutions addressing internal repression in Kosovo.²⁹ While the subsequent UN-authorized international presence in Kosovo is expressly premised on internal self-determination of Kosovar-Albanians, though unequivocally rejecting external self-determination by upholding Yugoslavian territorial integrity, it has also actively sought to disarm the KLA pursuant to its express mandate.³⁰

²⁶ As a result, in spite of significant international support for assisting self-determination movements, Malcolm Shaw (at 797) submits that the provision of armed assistance to peoples engaged in conflict against colonial domination or alien occupation "would appear to be unlawful."

²⁷ 206 ff.

²⁸ 268, emphasis added. However, the legal effect of this statement may be limited by its characterization as *obiter dicta*; the Court followed this statement with the observation that the argument of American intervention in Nicaragua on the basis of Sandinista human rights abuses "cannot in any event be reconciled with [its] legal strategy ... which is based on the right of collective self-defence."

²⁹ See, e.g., *Legality of Use of Force (Yugoslavia v. Belgium)*, *Provisional Measures*, Verbatim Record, 10 May 1999. This is itself a controversial position, given the lack of express prior authorization of NATO action.

³⁰ UNSC Resolution 1244, UN Doc. S/Res/1244 (10 June 1999), provides for the "demilitarizing the Kosovo Liberation Army [KLA] and other armed Kosovo Albanian groups." However, the resolution only makes specific reference to "offensive actions,"