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Research Article

Revisiting Democracy as A Right Protected by International Law: Challenges Brought by African Military Coups

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Abstract
In Africa, democracy is the meeting of two streams of traditions: one from Western countries, the other specifically African. Since the 1990s, all the states on this continent have established a pluralist electoral process with competition between candidates, with the exception of Eritrea. However, this era again witnessed more coups than before. The groups responsible for the coups quickly occupied the centers of command, decision-making, and administration, replacing the previous chief executives and the most senior officials with people of their choice. They ended up controlling the entire state's authority. Despite the size of the continent and the multiplicity of situations, the reality remains the same in Africa. Until today, coups are still happening. The principal aim of international law is to sustain global peace between countries. However, this peace cannot be reached when international law is indifferent to the domestic peace of members of the international community, regardless of the origin of the threat. The aim of this research is to analyze whether there is an obligation under the international law to be democratic and whether military coups, especially the recent African coups, can establish an obligation under international law. In this way, this study will combine analytical and doctrinal methods, focusing on the hypothesis that there is a responsibility to be democratic and that failure to respect this obligation through the dismissal of a democratically elected government creates international obligations.

Keywords: Coup d'état, international obligations, global peace, democracy, international law
JEL Classification Codes: F50, F51, F53

Demokrasiyi Uluslararası Hukukla Korunan Bir Hak Olarak Yeniden Gözden Geçirmek: Afrika Askeri Darbelerinin Getirdiği Zorluklar

Öz
Afrika'da demokrasi iki geleneğin buluşmasıdır. Biri Batı ülkelerinden, diğeri özellikle Afrika'dan. 1990'lardan günümüze, Eritre hariç, Afrika'daki tüm devletler, adaylar arasında rekabetin olduğu çoğulcu bir seçim süreci oluşturmuştur. Darbelerden sorumlu gruplar komuta, karar alma ve yönetim merkezlerini hızla işgal ederek, öteki yöneticileri ve kişileri ülke yönetimine dahil ettiler ve böylelikle, bütün devlet otoritesini kontrol altına aldılar. Kıtanın büyüklüğüne ve durumların çeşitliliğine rağmen, Afrika'da gerçeklik aynı kalmaktadır. Uluslararası hukukun temel amacı, ülkeler arasında küresel barışı sürdürmektir. Ancak, tehdidin kaynağı ne olursa olsun, uluslararası hukukun uluslararası toplum üyelerinin iç barışına kayıtsız kalmasıyla, bu barışa ulaşılamaz. Bu çalışmanın amacı, uluslararası hukukta, demokratik olma zorunluluğunun olup olmadığını ve askeri darbelerin, bilhassa son dönemde yaşanan Afrika darbelerinin, uluslararası hukukta bir yükümlülük oluşturup oluşturmadığını tartışmaktır. Bu minvalde analitik ve doktrinsel yöntemleri birleştirecek olan çalışmada, demokratik olma sorumluluğun var olduğu ve demokratik olarak seçilmiş hükümetin görevden alınması yoluyla, söz konusu yükümlülüğe saygı gösterilmemesinin uluslararası yükümlülükler doğurduğu hipotezi üzerinde odaklanılmaktadır.

Anahtar kelimeler: Darbe, uluslararası yükümlülükler, küresel barış, demokrasi, uluslararası hukuk
Jel Sınıflandırma Kodları: F50, F51, F53

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1. Introduction

A military coup, also known as a putsch, is an "*illegal and overt attempts by the military or other elites within the state apparatus to unseat the sitting executive*" (Powell, 2011, p. 249-259). These coups often lead to a suspension of democratic processes and human rights violations. The prohibition of coups is not explicitly mentioned in any international treaty, but international and regional communities have created a set of legal obligations that apply to states in the aftermath of a coup (Kahombo, 2017).

In 2014, the *African Union's Peace and Security Council* denounced "shortcomings in terms of governance", but also "*greed, selfishness, poor management of diversity and opportunities, marginalization, human rights abuses, refusal to accept electoral defeat, manipulation of constitutions, as well as unconstitutional revision of constitutions in favour of narrow interests and corruptio*n"(The Peace and Security Council of the African Union 2014) as frequent causes of unconstitutional changes of government. The poorest countries and those where democracy is fragile are historically more affected by putsches. Fifteen of the top twenty countries on the Fund for Peace's State Fragility Index are in Africa (Fund for Peace, 2021). Of these, twelve have suffered at least one successful coup, including Somalia, DRC, Central African Republic, Chad, Sudan and Zimbabwe. On the contrary, no overthrow of governments has ever happened in wealthier nations with solid establishments, such as South Africa and Botswana (Fund for Peace, 2021).

Recently, Africa as a continent has witnessed a major proliferation of coups in which the military has taken power in Burkina Faso, Sudan, Guinea, Chad, and Mali (Duzor, 2022). After the putsch in Sudan in October 2021, the United Nations Secretary General Antonio Guterres spoke of an "*epidemic of coups d'état*'' (Nichols, 2022) when referring to these events in Africa and the overthrow of power in Burma in February 2021. He denounced an "*environment in which some military leaders feel they enjoy total impunity*" and "*can do whatever they want because nothing will happen to them*" (Nichols, 2022). Antonio Guterres addressed three main causes for the proliferation of coups in 2021: *strong geopolitical divisions between countries, the socio-economic impact of Covid-19, and the inability of the Security Council to take strong measures in the face of putsches* (Nichols, 2022). For example, at the end of 2021, Russia and China, with their right of veto, prevented the Security Council from sanctioning the Malian putschists, after the latter delayed the elections intended to bring civilians back to power (UNSC/RES/2590(2021)). Although he thinks it would be surprising if coups continued at the same rate, Jonathan Powell, in his research on coups, predicted the occurrence of unaccustomed military coups in the future (Powell, 2012, p. 164). Throughout his work, he kept consistently arguing that the underlying causes of coups still exist and are getting worse (Powell, 2012, p. 164). In his opinion, unless

internal conflict dynamics improve, or regional or global actors provide a solution, there is no reason to think coups will cease to exist (Powell, 2012, p. 19).

The prohibition of coup d'états is derived from the fundamental principle of the non-use of force contained in the UN Charter (The Charter of the United Nations, 1945, Art. 2(4)). The international community condemns coups as a violation of the principle of sovereignty of states and the right of peoples to self-determination (UNGA/C.1/SR.1402(1965)). This prohibition has been reinforced by regional agreements such as the African Charter on Democracy, Elections, and Governance (ACHPR/Res.548 (LXXIII) 2022), the Inter-American Democratic Charter (Inter-American Democratic Charter, 2011, Art. 1), and the European Convention on Human Rights (Lautenbach, 2013, p. 65). Another component of the international framework is the obligation of states to promote and protect human rights (Icelandic Human Rights Centre, 2022). These obligations also apply in situations where coups have taken place (Icelandic Human Rights Centre, 2022). The United Nations General Assembly (UNGA) has reiterated the importance of protecting democratically elected governments and respecting human rights (UNGA/12463(2022)). The UNGA has also recognized the legitimate role of regional organizations in promoting and protecting democracy and human rights (UNGA/12463(2022)).

The authors of this paper examine the legal obligations left behind by these coups and re-examine the position of international law towards them, taking recent African military coups as examples. This work is structured in three parts: A brief background of coups in Africa, international law and military coups, legal obligations arising from coups and conclusion.

2. A Brief Background of Military Coups in Africa

Out of the 486 successful or failed coups since 1950, among the 214 successful ones, 106 have taken place in Africa, the hardest-hit region, according to data from Jonathan Powell and Clayton Thyne (Powell and Thyne, 2011, p. 250). In less than a decade, coups have taken place in Mali (twice) (Dion, 2021), Chad (Soyinka, 2021), Guinea (The Africa Report, 2021), Sudan (Baldo, 2021), Tunisia (Yerkes, 2022) and, arguably, Algeria (Souames, 2019) and Burundi (McCann, 2015), while most of these countries were in the midst of democratic transition. This type of coup can be traced back to what happened in Egypt (Project on Middle East Democracy, 2023) on July 3, 2013 and Zimbabwe (Tendi, 2020, p. 39-67) on November 15, 2017. This can be deducted to an observation that almost twenty percent of African states have experienced military coups since 2013. Africa is therefore at risk of returning to the bad era of poor military governance, an epoch frequently reminisced about as the continent's "*lost decades*" (Kaberuka, 2022). Coups are ultimately cold calculations of benefits versus costs. The benefits are fabulous, power and unlimited access to state resources. The lure of a coup, therefore, will always exist. The potential downsides, failure or imprisonment, are probably seen

as manageable for unconstrained military actors under civilian administration. In short, those who stage coups do so, because they think they can endure the consequences (Miclaucic, 2017, p. 17).

Under the *Organization of the African Unity's policy of non-interference* (Ndubuisi, 2016, p. 1-22) the putschists did not have discomfort from any accountability. The excess of takeovers during this period[1] validates the open offer to military seizures created by the indifferent approach on coups of this OAU's policy (Powell, Lasley and Schiel, 2016, p. 482-502). The African Union's swing to a strategy of non-indifference when it was established in 2002 fundamentally changed that calculus, exposing those who overthrew democratically elected government to potential *suspension, sanctions and the threat of military intervention* (Crisis Group Africa, 2022). These strategies have been intensified by the sanctions of United States, Some European countries and International organizations such as ECOWAS (ECOWAS, 2018).

The recent increase in the number of upheavals on the African continent, something that is not witnessed on other continents, reflects the absence of the will of African and international actors to actively support anti-coup policies in Africa. This situation is the consequence of a confluence of reasons, including a *regional democratic recession*, an *inclination of regional bodies to negotiate compromises with the putschists*, *a reluctance to organize military interventions* and the *distraction of international actors by internal crises and the pandemic, among others* (New African, 2022). These factors highlight the serious task that regional and international organizations perform in extenuating military coups. If international actors reject the recognition of junta, the putschists are politically secluded, and this becomes access to a state's sovereign financial accounts is denied. International actors, both organizations and foreign countries, play an important role in legitimizing coups. By considering military coups as an undesirable but common method of power shifting in Africa. Foreign actors, without intention, are assisting putschists in crossing the finish line and consolidating their putsch.

African coups have been viewed as a tool for the United Arab Emirates, Saudi Arabia, and Egypt to advance their regional aspirations (Siegle, 2021). The attempt by the Sudanese military to maintain control of the power was assertively supported by these countries. They have also been active in Tunisia's auto-coup led by Kais Saied, by encouraging him and offering protection to him (Arab Center for Research and Policy Studies, 2022, p. 15). Thwarting the Arab democracy from being born also hinders any transformation impetus that these Gulf States might experience in opening up their own highly obstructive power structures (Arab Center for Research and Policy Studies, 2022, p. 24).

[1] From 1963 to 2002, a period known in. the African diplomacy as the timeline of the *Organization of the African Unity (OAU).*

Russia has actively encouraged coups in Africa as well Russia maintained close ties with the military during Sudan's democratic transition and reportedly lobbied for it to assume power, frequently acting through the Wagner mercenary group (Caniglia and Murphy, 2021). In return for Russian assistance, the Sudanese junta is probably going to allow Russian military an access to the naval port of Port Sudan, which will give Russia a military base and an advantage in the crucial Red Sea corridor (Caniglia and Murphy, 2021). *Wagner Mercenary Group* would also remain operational in western Sudan for the trafficking of gold and other illegal products over the Central African Republic (The Sentry, 2023). In Mali, a year prior to the August 2020 coup, pro-Russian propaganda movements undermined the legitimacy of constitutionally voted president Ibrahim Boubacar Keita (Stronski, 2023). Keita was used as a pretext for the overthrow and the junta included several people who had previously attended Russian universities (Stronski, 2023).

The putschists require international recognition to make up for their lack of national legitimacy. As a result, external totalitarian regimes have more power to undermine a state's sovereignty. For instance, the Mali coup prompted the junta to consider inviting Russian mercenaries, which would significantly alter the country's security and foreign policy (Stronski, 2023). Such a choice would not be in the best interests of the people of Mali, but it would increase Russian influence because it would be made by unelected military officers acting outside of the bounds of the constitution and without any form of public accountability.

3. The Position of International Law on Military Coups

The Second World War, which resulted in unprecedented trauma, was a turning point for the international community. The birth of the United Nations is the most striking example of this. To avoid such a tragedy once again, the nations tried to adopt a common position by advocating peace among states (Combacau and Sur, 2016, p. 619-642). Many principles emerged, in particular thanks to the Charter of the United Nations in which the idea of democracy became a guiding principle of this era. Although this momentum for peace seems to have found an echo within the North American and European continents, this does not seem to be the case in the world as a whole. From then on, following the events of 1939-1945, a division between two periods that have shaped and marked the world of today took place: before and after the Cold War. It is especially during these periods that it turns out that the acceptance of the coup within the international community will radically change its meaning. Among the most striking examples, there are two: that of the African and South American continents. Indeed, the international community, based on the notion of democracy, wants strict respect for constitutional changes in power.

In other words, the efforts made following the Second World War in terms of international peace and security, but also in terms of promoting democracy in the

world, remain remarkable for the States of the "North". In terms of internal stability and democracy, these efforts had little echo in the rest of the globe, and more specifically in Africa where the cold war did not improve the situation of the continent either.

In this section, an analysis of the coup d'état with regard to the international legal order is necessary. Because such an event calls into question certain fundamental principles of contemporary international law, particularly when they concern democratically elected governments. Second, the reaction of the international community to such an unconstitutional takeover shall be studied. Especially since the end of the Cold War, state entities and international organizations are increasingly taking this phenomenon into consideration on the international scene.

3.1. The Effects and Damages of the Coup D'etat on the International Legal Order

Both Thomas Hobbes (2008, p. 102-109) and Jean Jacques Rousseau (2004) warned, each one from his gaze, on the need to preserve an order that is built and sustained in values and ways of life of society, this involves any of the social buildings. But especially the pact between citizens and their constituted authorities. A pact not written in rigorous formalities, is a pact for the fulfilment of duties and obligations, a pact of normative definitions about what should be taken into account for a harmonious social coexistence. There, the social contract is born but what happens when the social contract is broken?

The coup, as a phenomenon overthrowing a democratically elected government, is not without effect on the international scene. From its preparation to its conclusion, it upsets above all the political life of the State in which it takes place. It leads to a sudden and brutal disruption of the normal functioning of administrative and political institutions. With the establishment of a new government, it is often the result of a rapid change in the domestic and foreign policy pursued until then by the predecessors. As a result, the coup directly targets natural persons with important responsibilities. Depending on the case, it leads to the overthrow of the Head of State and/or the Head of Government, then it can cause the departure of ministers, deputies, senior civil servants, or any other person occupying a position in the politico-administrative apparatus of the state. Generally, all these changes then take place despite the constitutional rules.

What makes the specificity of the State compared to other subjects of public international law is undoubtedly the notion of sovereignty, considered as a real keystone, a central piece of international law. It is around this notion that all the material revolves and it is what will make it possible to distinguish the State from other subjects and actors of international law. It seems to be accepted today that this notion underpins the very quality of the state entity. However, the latter must be stable on the international scene. For this, and especially since the 1990s, the international community has been increasingly attached to the process of

democratization of States. With the recognition of many principles, it somehow frames state sovereignty. However, the coup is by nature disorganizing. It is not exempt from any effect with regard to State sovereignty, democracy and analogous principles.

3.1.1. The State Sovereignty and the Concerns Arising from the Coup

The state, the primary subject of international law, is sovereign in its own internal legal order. This sovereignty is also recognized in the international legal order. Among other things, it confers on it exclusive competence with regard to the choice of the political regime that it wishes to put in place. However, this freedom is gradually diminished in practice.

International law gives a sovereign State the possibility of holding a set of powers that it will be able to exercise within its territory. This territorial competence will be characterized by two elements: plenitude and exclusivity. The first allows the State to acquire powers relating to its status as a public authority. It will be able to exercise its jurisdiction over all persons and all things within its territory. At the internal level, the generality of territorial jurisdiction allows the State to hold the right to internal self-determination which implies the free choice of the constitutional system, the form of the State and the form of government, i.e., the free choice of political regime. The exclusive territorial jurisdiction of the State implies that no State can exercise jurisdiction over the territory of another State instead of or in competition with it. This exclusive jurisdiction is neither more nor less the corollary of the independence of the State asserted in the Island of Palmas case of 1928 (United States v Netherlands, 1928).

i) *The Autonomy of the State to Determine Its Political Regime*

The State, because of its sovereignty, will be able to exercise its own powers through a government which is one of the constituent elements of the State (Montevideo Convention on the Rights and Duties of States, 1933, Art. 1). The only condition required by international law is that of the effectiveness of the government, and this seems to follow from the fact that international law leaves to the State the free choice of its government and its political organization. Indeed, the indifference of international law vis-à-vis the choice of political regime was illustrated by the General Assembly of the United Nations, in its resolution 2131 of 1965 relating to the Declaration on the inadmissibility of intervention in internal affairs of States and on the protection of their independence and sovereignty, affirming that "every State has the inalienable right to choose its political, economic, social and cultural system without any form of interference on the part of any State" (UNGA/RES/2131(XX)(1965)). This is the constitutional autonomy

of sovereign States. Many international texts (Pellet, 1993, p. 286-303)[2] have affirmed this power, from which States will benefit. This notion highlights three other fundamental elements: self-organization, which refers to the power recognized by the State to give itself the fundamental rules of its political organization, the self-affirmation of a community or a people which announces itself as a political, social, economic and cultural entity, and finally the free choice which prohibits any interference in the internal affairs of a State. These three principles demonstrate the monopoly that the State has within its constitutional order where it will be the only one competent as to its organization.

However, the coup d'état as an antidemocratic event in itself, and more particularly as an event occurring on the part of the administrative apparatus of the State and not of the people, seems to go against this constitutional autonomy. This poses some fundamental problems, since the lack of any apparent rule regarding the choice of political regime leaves a void that seems to allow such unconstitutional practices within modern society. This principle of constitutional autonomy and the indifference of international law to the internal form of the state seem to have generally suppressed the internal aspect of self-determination which was a matter considered to fall within the competence exclusive to the state for a long time. However, the inability in the face of various unconstitutional changes of government and more specifically in the face of coups d'état must be put into perspective. Practice shows in fact that efforts are made as regards a certain standard of choice of political regime within the international community. A standard that seems essential as the number of coups since the beginning of the century is important.

ii) *Coup as One of the Remaining Choices to Ascend to Power in the Modern Practice*

Since the League of Nations, international law has been unconcerned with the choices of the political regime, despite a few rare exceptions set by the UN (Gowan and Pradhan, 2022). However, the end of the Cold War marked a considerable change within the international community, as many practices began to evolve (Gowan and Pradhan, 2022). With the end of the conflict between the two blocs, governmental instability due particularly to coups in certain regions of the globe no longer reaches the same intensity, and has practically disappeared (Gowan and Pradhan, 2022).

[2] See also, Article 1 Common to the two International Covenants on Human Rights; Article 20, African Charter on Human and Peoples' Rights; General Assembly resolution 2131 (XX), Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 2625 (XXV).

However, it remains difficult to admit that there can be a model of political regime that international law will impose on all States; this would directly conflict with the principle of constitutional autonomy and the sovereignty of the latter. Nevertheless, to counter these events which have disturbed the world for centuries, such proposals as well as the efforts undertaken by the United Nations are welcome. The UN no longer seems to be completely cold about the choice of political regime since it is implementing work relating to the effectiveness of the principle of genuine and periodic elections (UNGA/RES/43/157(1988)). Elections are the very synonymous to the people's choice and democracy, unlike coups which only emanate from a small group of people, even if this group can be relatively well received by the population in some cases. This illustrates the emergence of an obligation that has caused much ink to flow in recent years: the obligation to be democratic. The efforts of the United Nations are reflected in the provision of electoral assistance (UNOWAS, 2017), even if it must be at the request of the State in question or through its consent.[3] These elements are just a few examples that ultimately demonstrate the UN's commitment to democracy and fundamental freedoms.

This question was appropriate to be raised, since, when it comes to condemning coups carried out against freely elected regimes, the United Nations speaks in the name of constitutional legality and the democratic legitimacy of the overthrown governments., which clearly demonstrates that coups d'états are contrary to democracy and constitutional autonomy. However, despite the absence of a positive norm imposing the democratic value, the action of the United Nations with the aim of universalizing the system of democracy has not ceased to evolve and assert itself, although it remains selective (UNOWAS, 2017). Even if this practice does not make it possible to show a regulated action with regard to coups d'état, in any case, it is true that it is a movement towards a renewal since the fall of the Berlin wall. Today, it is possible to note that this freedom as to the choice of the political regime seems to be increasingly regressing in contemporary practice in favour of a democratic model, necessary to avoid such unconstitutional inconveniences which can harm public order. Internal to States and which could have repercussions on the international scene. Hence, this leads to the question of interference and intervention in the internal affairs of a state.

iii) *Sovereign Equality and the Prohibition of Interference in The Internal Affairs of a State*

The notions of non-interference and non-intervention clash with the doctrine of the sovereign equality of States. A distinction must be made since interference in the internal affairs of another State can be done directly by intervening with the help of armed force or indirectly by taking a position vis-à-vis a specific situation involving

[3] However, this does not seem to be a problem since the UN, after various negotiations, often succeeds in obtaining an agreement.

the State in question. The principle of non-interference is closely associated with that of the non-use of force laid down in Article 2(4) of the Charter of the United Nations, which specifies that "*the members of the organization refrain, in their international relations, to resort to the threat or use of force, either against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations*" (The Charter of the United Nations, 1945, Art. 2(4)). The provision here is talking about the absolute prohibition of any aggression against the territory of a foreign State by the armed forces of another State. These are therefore two principles that must be distinguished even if it remains difficult in practice, since the principle of non-interference necessarily carries with it that of non-use of armed force. In any event, vis-à-vis a coup d'Etat, which is internal to a State, intervening with or without the use of force or interfering in the affairs of that State in an indirect way seems to be prohibited in principle.

The different aspects of the prohibition of the principle of non-interference associated with that of non-intervention derive from numerous international legal instruments. First of all, it is worth citing Article 2(7) of the Charter of the United Nations, which specifies that " *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll*.'' (The Charter of the United Nations, 1945, Art. 2(7)). Therefore, whether through a State, a group of States, an international or non-governmental organization or any other non-State entity, there is interference when they intervene in internal affairs of a State, that is to say in what it achieves "in an area which falls within its competence (exclusive or concurrent) and where its powers are free and discretionary" (Combacau and Sur, 2016, p. 267). In principle, commenting on the political system or the internal constitutional order of a State constitutes an interference prohibited by the Charter of the United Nations. Consequently, one can be led to affirm that to take a position on a coup d'état or to intervene by resorting to armed force to counter a coup d'état, or even to dismiss a government resulting from a putsch, corresponds to interference on the part of the States which decide or act, since it is an event relating to the internal affairs of a State.

iv) *The Position of International Court of Justice on Interference in Internal Matters of a State*

First of all, a strict obligation of abstention was laid down with regard to the States thanks to the resolution 2131 of the General Assembly, entitled "*Declaration on the inadmissibility of intervention in the internal affairs of States and the protection of their independence and sovereignty*", but also, subsequently, by resolution 2625 of October 24, 1970 entitled "*Declaration relating to the principles of international*

law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations" , which solemnly repeats the statement of principles by affirming that States have the "duty not to intervene in matters within the national jurisdiction of a State". Then, with regard to international organizations and more particularly the United Nations, it is above all Article 2, paragraph 7 which implements this obligation of non-interference. In addition to the conventional value of this obligation, it was recognized as having customary value by the International Court of Justice, in the case concerning military and paramilitary activities in and against Nicaragua, on June 27, 1986, where it specified in its paragraph 202 that "*the principle of non-intervention brings into play the right of any sovereign State to conduct its affairs without outside interference: although examples of breaches of the principle are not rare, the Court considers that it is part of customary international law*"; which has led some authors to recognize it as a norm of jus cogens (Shen, 2001, p. 1-45). On December 19, 2005, in the case relating to armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda), the ICJ considered that these provisions were of a declaratory nature of customary international law.

With regard to UNGA resolution 2625, it refers to the principle of non-interference, prohibiting all States, on the one hand, "*from organizing and encouraging acts of civil war or acts of terrorism on the territory of another State, to aid or participate therein, or to tolerate on its territory activities organized with a view to perpetrating such acts*" (UNGA/RES/2625(XXV)(1970)), and, on the other hand, "*to organize, to aid, foment, finance, encourage or tolerate armed subversive or terrorist activities intended to change by violence the regime of another State as well as to intervene in the internal struggles of another State*" (UNGA/RES/2625(XXV)(1970)).

Although these are two distinct concepts, the case law, in the case concerning military and paramilitary activities in and against Nicaragua, confuses them by designating the principle of non-intervention as bringing into play "*the right to any sovereign state to conduct its affairs without outside interference*" (Nicaragua v. United States of America, 1986, p. 106, Para. 202). Consequently, they become difficult to separate since an intervention logically entails an interference, even if the opposite pattern may be different. In any case, it is possible to see that these are principles well affirmed by case law and international texts. That said, they do have some mitigations.

3.2. Collective Security and the Relativization of the Principles of Non-Interference and Non-Military Intervention

The principle of non-interference in the internal affairs of a State may be subject to a few exceptions in the context of collective security. In particular, following a putsch with serious consequences within a State, neighboring States or a region, the

international community claims the right to intervene, in certain cases, even if it is a purely internal event.

3.2.1. Exceptions in Case of Self-Defence

Self-defence is one of the exceptions to the principle of non-interference and non-military intervention. Today, there is an extensive notion of this right to self-defence in contemporary international law, which stems from the very interpretation given to it by the States of the international community, which raises questions about the maintenance and the survival of the international system. It is considered to be an inherent right recognized by the Charter of the United Nations (The Charter of the United Nations, 1945, Art. 51).

It is a right which has two sources: on the one hand, conventional, with article 51 of the Charter which affirms that "*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 United Nations, until the Security Council has taken measures necessary to maintain international peace and security Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."*(The Charter of the United Nations, 1945, Art. 51) and, on the other hand, customary international law since the Nicaragua judgment (Nicaragua v. United States of America, 1986). In principle, self-defense presupposes an armed attack for its triggering, and since resolution 1368 of September 12, 2001, it does not seem to be any obligation for this aggression to come from a State by itself. Moreover, this self-defense can be both individual and collective. Several attempts by States have attempted to broaden the scope of application of self-defence, of which we have seen that Article 51 strictly limits the reactions vis-à-vis an attack, and from this extensive interpretation lives the concept of preventive self-defence[4], as well as the resort to self-defense against military infiltration or any indirect aggression and for the protection of nationals abroad (Nicaragua v. United States of America, 1986).

Collective security is a security system based on the perception of indivisibility and solidarity of peace between States (Orakhelashvili, 2011), but there are many imprecisions as to its definition. Some perceive in the collective security of super statism, that is to say the overcoming of the sovereignty of States, which will only tolerate the radical limitation of the use of force by States and its submission to justifications of collective interest, as the Preamble to the Charter recalls. For

[4] Invoked by Israel in 1967, 1975 and 1981, or by the United States to justify their presence in Afghanistan in 2001 or the invasion of Iraq in 2003.

others, it is more a matter of interstateism, of maintaining the sovereignty of States, that is to say the right for each State to control its own security and thus to arm itself as it sees fit without any specific limitation being imposed on it by the Charter. In any event, it is in this area that self-defence is found, a consequence of the right to defend oneself in the event of armed attack, since Article 1(1) of the United Nations Charter sets out this collective security by integrating, among the purposes of the United Nations, the maintenance of international peace and security. To this end, it is therefore necessary to take effective collective measures to prevent and remove threats to the peace and to repress any act of aggression or other breach of the peace, and to achieve, by peaceful means, in accordance with the principles of justice and international law, the adjustment or settlement of disputes or situations, of an international character, likely to lead to a breach of the peace (Galván, 2011, p.147-185). The goal is to protect everyone from everyone. It is based above all on the solidarity of peace between States, hence the importance of any question of international peace and security, for which the Security Council is the guarantor of respect. As a result, in matters of coup d'etat, a few particularities should be noted.

3.2.2. The Subtlety of the Military Coup in Collective Security Doctrine

The collective security system is marked by many limitations from its origin, such as the fact that it only focuses on interstate security (Orakhelashvili, 2011), and that it only concerns international peace and security, which means that collective security ignores multiple forms of violence whose international effect is only indirect even if it can be destabilizing. The coup, as an internal event, normally has no direct consequence in itself on the international scene. It is an unconstitutional change of government that takes place following the revolt of a military group or a group within the administrative apparatus of the State. Apart from whether this coup was prepared and supported by a third state, in which case there will be interference in the internal affairs of a state, it remains an event that takes place mainly outside the international sphere. However, the coup will have a major consequence, that of the establishment of a new government which will be in contact with the governments of other States. From then on, undoubtedly, it will have consequences for the State itself and on the international scene. This is what collective security fails to take into consideration, although some efforts are being made in this area.

It has happened that the Security Council has pronounced itself following a military putsch. This is mainly the case in Haiti (UNSC/RES/841(1993); UNSC/RES/875(1993); UNSC/RES/940(1994) and Sierra Leone[5] after the coups that were perpetrated there. It even went so far as to adopt sanctions to enforce the rule of law and the constitutional order in 1994 and 1996. In its resolution 841 of

[5] He recalls that the council "strongly deplores this attempt to overthrow the democratically elected government and urges that constitutional order be immediately restored" (Statement by the President of the Security Council of 27 May 1997, S/PRST/1997/29).

June 16, 1993, the Council notes that the situation in Haiti constitutes a threat to the international peace and security in the region and decrees, on the basis of Chapter VII of the Charter, an embargo on arms and oil. On July 31, 1994, the Council adopted resolution 940 by which it authorized member states to constitute a multinational force and to use "*all necessary measures*" (UNSC/RES/940(1994) to obtain the departure of the putschists and the return of the legitimate authorities to Haiti. Therefore, for the first time in its history, the Security Council resorted to coercive measures, going so far as to authorize the use of force to restore democracy in a UN member state (Christakis, 2009, p. 113). However, what limits this position of the Council is that there were many coups d'etat well before and well after this one, which were not considered in the same way by the Security Council, even if the purpose remains the same. A coup remains an anti-democratic event and a violation of the constitutional order, whatever its nature. The Council justified itself by constantly emphasizing that the Haitian events were complex and extraordinary, which called for an exceptional reaction. This should in no way be considered as a precedent obliging the Council to act as upholding any principle of democratic legitimacy (Carey, 1997, p. 30–47).

However, much later, with the Sierra Leone incident, things seemed to change. Initially, the Security Council contented itself with deploring the situation after the military junta overthrew the democratically elected power, then it stressed that the seriousness of the crisis in Sierra Leone endangered peace and security as well as stability in the region as a whole (Statement by the President of the Security Council of 11 July 1997, S/PRST/1997/36). It adopted resolution 1132 on October 8, 1997, by which it decreed a number of sanctions to put pressure on the military junta, without however organizing a military operation against the putschists. However, in this affair, what really needs to be underlined is that, unlike Haiti, the Council did not dwell on the unique and exceptional nature of its reaction and was much more rapid in its action.

Some authors[6] concluded that the coup d'etat was "illegal" as noted by the Security Council and that it was the start of a "genuine practice of the organization in terms of restoring democracy". This assertion seems interesting given the firm and decisive position of the Security Council in these cases. Apart from these two cases, the UN Security Council following the 2012 Coup in Guinea Bissau took robust measures of sanctions against the putschists of this coup which to date marks the most serious step the Council has ever taken in Africa (The Security Council Report, 2022). Nonetheless, the problem lies in the fact that these are only three cases among the hundreds of coups that take place. For example, in the recent cases

[6] According to Professor Jean d'Aspremont, Professor Sicilianos is the only one who clearly expressed this idea. However, this seems to be shared by other authors such as Rafâa Ben Achour or Pierre Klein: D'aspremont, 2009, p. 133).

of Malian Coups, the President of the Security Council did not condemn the take-over but welcomed (Statement by the President of the Security Council of 15 October 2020, S/PRST/2020/10) the measures proposed by the putschists regarding the transition of power, even if later all of these failed and the Council imposed sanctions (UNSC/RES/2590(2021) to the Malian regime not because they overthrew the democratically elected government but because they could not conduct a smooth transition of power as promised before. The collective security system therefore seems quite thin, quite limited vis-à-vis coups, even if the Security Council mostly speaks out in cases of Coups, taking example of its 2022 press release about military coup in Burkina Faso (Security Council Press Statement on Situation in Burkina Faso, 2022). In the latter case, the pressure exerted by certain international organizations was decisive.

Thus, the Coup d'Etat remains an event demonstrating the limits of international law in terms of collective security, and which goes against many principles of international law, despite the indirect nature of the significant repercussions it generates in the international legal order.

4. Is There any International Obligation for a State to be Democratic?

In a contemporary sense, the coup d'etat can be considered as "*the more or less violent conquest of the state apparatus, in order to install new rulers at its head or to establish a new regime*" (Caporal, 2004, p. 261). Naturally, this is contrary to the process of democratization initiated by the international community, such as the demand for free, fair and independent elections to legitimately choose those who hold power. However, the obligation of States to be democratic is a fairly recent principle in the international legal order. Then, in certain cases, States have tried to act under the heading of democratic interference when precisely democracy but also the rule of law or human rights have been seriously affected after a military coup.

4.1. On the Existence of an Obligation to be Democratic Under International Law

The accession to power by constitutional means demonstrates that within modern society, democracy is no longer just a goal but a means available to all. That said, the international community includes a very large number of countries with diverse and varied legal regimes that do not all have the same sensitivity to the principles of democracy. This is why, within the international legal order, it is possible to notice for some years the emergence of an obligation to be democratic.

Conventionally speaking, the obligation to be democratic is a principle that remains fragile on a universal level, but debates persist as to its customary nature.

The question of the international obligation to be democratic has occupied the doctrine since the end of the 1990s, particularly targeting the field of elections (D'aspremont, 2008, p. 263). Although the state has been believed to have a

monopoly over its choice of political regime, this seems to be limited in practice with the principle of democracy, rule of law and human rights which must be respected in all circumstances. The coup, as a non-electoral process of accession to power, is undoubtedly contrary to all these principles.

International law confers, in fact, on everyone, without distinction, the same rights and possibility of claiming the right to democracy and be able to use it. It is still difficult to find a single definition of democracy that gained universal consensus. For example, in the Charter of the United Nations, it is not possible to find any definition of democracy or of elections, very often considered as the very proof of democracy and the means of ensuring respect for the popular will. It should be noted that the democratic instrument which is the election, although decisive in the democratic process, remains as one of the possible systems. The absence of a definition of democracy in the Charter of the United Nations is also reflected in the absence of any mention of the international obligation to be democratic. However, the General Assembly of the United Nations was at the origin of numerous resolutions referring or referring to such a principle, which demonstrates the effort of internationalization which can be deduced from it with a view to strengthening democracy and rule of law. Examples include resolution 57/221 of 27 February 2003 entitled "*Strengthening the rule of law*", resolution 58/13 of 24 November 2003 entitled "*Support by the United Nations system to the efforts of Governments to promote and consolidate new or restored democracies*", or even resolution 58/180 of 17 March 2004 on "*the strengthening of the role of the United Nations for the purpose of strengthening the effectiveness of the principle of periodic and genuine elections and action in favour of democratization*".

Furthermore, one of the international legal instruments that lays the foundations for the democratic obligation is undoubtedly the International Covenant on Civil and Political Rights of 1966, which formulates a series of obligations relating to the respect of human rights, without which there can be no democratic state. It is more particularly a question of article 25 of this Covenant from which will be deduced many indicators relating to the respect of democracy.

According to this article, "e*very citizen has the right and the possibility, without any of the discrimination referred to in article 2 and without unreasonable restrictions: 1) To take part in the management of public affairs, either directly or through intermediary of freely chosen representatives; 2) To vote and to be elected in genuine periodic elections by universal and equal suffrage and by secret ballot, ensuring the free expression of the will of the electors; 3) To have access, under general conditions of equality, to public service in his country …". It affirms, in paragraph b), the need for "periodic, genuine elections by universal and equal suffrage and by secret ballot*" (International Covenant on Civil and Political Rights, 1966, Art. 25). Although this article does not refer directly to any obligation to be

democratic, the preferred election model seems to refer to a so-called democratic electoral process (Klein, 1993. p. 96).

This is where the distinction between soft law and hard law should be made. Soft law is the expression which designates rules whose normative value would be limited either because the instruments which contain them would not be legally binding, or because the provisions in cause, although contained in a binding instrument, would not create positive law obligations, or would create only weakly binding obligations (Guzman and Meyer, 2010, p. 171-225). As for the instruments of hard law, it is possible to note that the principles of democratic necessity or of the international obligation to be democratic are never expressly recalled, which requires an interpretation to identify such a purpose. According to Maurice Kamto, "it can only be deduced either from the interpretation of the provisions of the various texts, or from the analysis making it possible to show that the individual democratic rights enshrined can only be exercised in the context of democratic regimes"(Kamto, 2013, p. 79). This is why it is possible to speak of a certain fragility regarding the existence of a conventional obligation to be democratic. Despite the presence of some texts making implicit reference to it, the non-adherence to a binding legal instrument bearing such an obligation by the international community leaves a breach open to a coup d'etat even if such an event goes against Article 25 of the International Covenant on Civil and Political Rights as it lays the foundations for a free and fair election.

The existence of rules resulting from binding or non-binding legal instruments, incumbent on the State with an obligation to be democratic, inevitably raises the question of their customary nature. For a customary norm to exist and be recognized in the international legal order, two elements must be present: a material element referring to a practice or customs, which must be done by a state, general and constant, and a psychological element, or opinio juris, referring to the conviction of being bound by a legal rule (Tunkin, 1961, p. 419-430).

With regard to the general and constant practice regarding the obligation to be democratic, it appears that today there is a majority of democratic States or States which aspire to democracy, most of which organize elections to designate the effective holders of power or those who control them. Moreover, the ratification of numerous legal instruments, binding or not, demonstrates the existence of such a constant and uniform practice in contemporary international law. However, the whole difficulty arises from the determination of the proof of opinio juris. For some, article 25 of the International Covenant on Civil and Political Rights implies that all States parties feel an international obligation to adopt a democratic regime, but it is difficult to draw an opinio juris from this, since the problem lies in the fact that it is a question here of respecting a conventional rule which must be followed, taking into account the fact that the covenants of 1966 are binding instruments. Nevertheless, the feelings of states, whether democratic or not, are not that

different. Democratic states promote the democratic model and the principles that follow it, whether on legal or extra-legal grounds (Feldman, 2008, p. 550–77). Only legal grounds can constitute an opinio juris, since according to the North Sea Continental Shelf case in 1969, the Court stated that "States must feel that they are complying with a legal obligation. Neither the frequency nor the habitual character of the acts is sufficient" then she goes on to affirm that the opinio juris must "demonstrate the conviction (that the practice) is made obligatory by the existence of a rule of law". The feeling that animates States when they themselves adopt a democratic regime can therefore constitute an opinio juris.

Therefore, the accumulation of these declaratory instruments, the condemnation of undemocratic forms of accession to power, the repetition of the commitment to promote political pluralism and the participation of citizens in a democratic society could be considered as the expression of opinio juris, or at least as evidence of the existence of an opinio juris. Finally, in connection with the general and constant practice that characterizes custom, the latter could constitute a customary obligation to be democratic within the international legal order, which would have the effect of filling the gaps at the conventional level given the absence of a binding or mandatory legal instrument.

4.2. The Contribution of Regional International Organizations in Outlawing Coups

The most notable advances are contained in regional instruments and more particularly in Europe, America and Africa (Kamto, 2013, p. 90). First of all, in the European context, the establishment and practice of democracy are among the fundamental criteria for admission to the European Convention on Human Rights and to the Council of Europe. At the level of the latter, a number of values specific to democratic societies are affirmed from the preamble to the statute, paragraph 3 of which proclaims that States are " *reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy*" (The Statute of the Council of Europe, 1949, Para. 3). The Committee of Ministers of the Council of Europe, in Statutory Resolution (93) 26 on observer status, affirms that '*'any State may be granted observer status by the Committee of Ministers if it is willing to accept the principles of (i) democracy; (ii) the rule of law; and (iii) the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms; and (iv) if it is willing to co-operate with the Council of Europe"*(The Committee of Ministers of the Council of Europe/RES/93(26)). As for the European Convention on Human Rights, it reproduces in more explicit terms the status of the Council of Europe by specifying in paragraph 5 of its preamble: " *reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights*

upon which they depend"(European Convention on Human Rights, Rome, 4.XI.1950). Finally, the European Union, by distinguishing itself from other regional international organizations, plays a central role, whether at regional or intercontinental level, in the process of democratization of States. Consequently, from these provisions stand out the remarkable progress made within the European continent in the promotion and propagation of the principle of democracy. Indeed, by forcing the member states of the Council of Europe or the states parties to the Convention to adopt a democratic standard, Europe appears as a model in terms of democracy, which explains why this continent, for several years, no longer knew any coup d'etat overthrowing a democratically elected government.

In Africa, the scene of numerous coups d'etat, a legal apparatus relating to sanctions against unconstitutional changes of government has been deployed from the Organization of the African Union to consolidate the democratic gains in the Member States (Kamto, 2013, p. 91). A meticulous development having been undertaken previously, it is nevertheless appropriate to insist on the considerable efforts made in terms of democracy within this continent, long tormented by illegal seizures of power. The OAU declarations of 1990, 1999 and 2000, the 1994 resolution of the African Commission on Human and Peoples' Rights on military regimes and the Algiers decisions of 1999 are all texts which demonstrate the African concern for democracy. Furthermore, it is possible to cite the Lomé Declaration on the framework for an Organization of African Unity response to unconstitutional changes of government, adopted by the Conference of Heads of State and Government of the OAU , held from 10 to 12 July 2000 in Lomé, which rightly expresses the recognition by the Heads of State and Government "that the principles of good governance, transparency and human rights are essential to guarantee governments representative and stable and can contribute to conflict prevention" (Declaration of Lomé, AHG/Decl. 2 (XXXVI) (2000)). Similarly, the Constitutive Act of the African Union adopted by the Heads of State and Government of the OAU on July 11, 2000 in Lomé sets out, among sixteen principles listed in Article 4, the "*condemnation and rejection unconstitutional changes of government*", supported by Article 30, one of the most defining articles in matters of unconstitutional change of government, which provides that "governments which come to power by unconstitutional means shall not be allowed to participate to the activities of the Union".

From Burkina Faso to Sudan in particular, coups have recently multiplied on the African continent. This military context was the backdrop for the annual summit of the African Union (AU), which was held on 5th-6th February 2022, in Addis Ababa, Ethiopia. Among the many topics discussed, the coups that shook the continent recently were unanimously against them (Dawit, 2022). During the meeting of the Peace and Security Council of the Union, the president of the Council noted that "*every African leader in the assembly unequivocally condemned the wave of unconstitutional changes of government,*" (TRT World and Agencies,

2022) and that The AU "*will not tolerate any military coup in any form whatsoever*"(African Union, 2022), recalling that all countries[7] that have experienced putsches have been suspended. These few texts among dozens suffice to illustrate on the one hand the African effort in the consolidation of democracy within the continent, but also and above all the work undertaken with regard to the rejection of coups d'etat, a symbol of the instability of many countries in Africa.

Finally, in the inter-American system, the Charter of the Organization of American States sets out the OAS' commitment to democracy, by affirming from the third paragraph of the preamble that "representative democracy constitutes an indispensable condition for stability, peace and development in the region", and continues in the following paragraph that "the true sense of American solidarity and good neighborliness can only be conceived by consolidating in this continent and within the framework of democratic institutions, a regime of individual freedom and social justice based on respect for fundamental human rights". One of the essential aims of the Organization is to promote and consolidate representative democracy in full respect of the principle of non-intervention. The notion of democracy, although in a representative form, also becomes the pillar of the Organization of American States and a reference with regard to all the States parties to the OAS Charter. It allows freedom, emancipation for each State, but it is through this that solidarity will be able to be built. According to the OAS, democracy becomes a condition for solidarity and good living together on the international scene. The American effort on this subject as well as the contribution of the Charter becomes remarkable in the field of the international obligation to be democratic. It is also possible to cite other resolutions and protocols[8] expressing this concern for representative democracy with regard to the member states of the OAS.

The evolution undertaken through these various texts within these three continents demonstrates the preponderant place that democracy has on the international scene by obliging the States parties to adopt a specific regime, most often through free and fair elections. As is the case with the inter-American and African systems for the protection of human rights, many States strive to adopt a democratic regime to be in accordance with the constitutive act of the international organizations concerned. At the conventional level, the consolidation of democracy through regional organizations undoubtedly fills the gaps at the universal level with the virtual absence of binding international legal instruments. It is therefore at the regional level that it would be possible to block and adopt more concrete sanctions with regard to unconstitutional changes of government, and more specifically

[7] Four countries suspended in twelve months: Mali, Guinea, Sudan and Burkina Faso.

[8] Washington Protocol, adopted on December 14, 1992 during the Sixteenth Extraordinary Session of the OAS General Assembly and entered into force on September 25, 1997, which expresses, among other things, the possibility for a Member State to be suspended from the work of the OAS following the sudden or irregular interruption of the democratic institutional process.

following the occurrence of coups d'etat. At the customary level, state practice seems to show a certain tendency towards the acceptance of a regional customary obligation to be democratic, even if this remains debatable.

4.3. De Facto Doctrine and Military Coups

The De Facto Doctrine is a legal elaboration carried out with the purpose of recognizing the existence and operation of governments revolutionaries. The problem is that once in power, governments must legitimize their existence and raison d'être, that is, they must justify why or for what reasons they are in possession of the political place that was not assigned to them (Cullen and Wheatley, 2013, p. 694). The Canadian jurist Constantineu (1910, p. 245-247) argues that the de facto doctrine is a rule or principle of law intended firstly to justify the authority of governments that have assumed power by force, secondly to recognize the existence of bodies that exercise power in the same way, protecting them from collateral challenges and thirdly, confer validity to the acts issued by those bodies.

According to Garcia-Mansilla, de facto governments should be framed in an "emergency doctrine" as they arise as a result of an extraordinary or exceptional situation (Mansilla, 2004, p. 307). In the Argentine Republic, this emergency doctrine was used in an accord of the Supreme Court in 1930 (Walker, 2006, p. 772) and this legal creation justified the reason for the military coup of that same year, however it should be noted that said presumption resulted, in the end, being the antecedent of a series of military coups that were injuring democratic values, cracking the legal and political scaffolding of national institutions. This emergency doctrine recognizes the legislative powers of political power. There is a precedent from the year 1865, similarly, the 1976 coup d'état, also in Argentina, was “legalized” by the Supreme Court of Justice (Walker, 2006, p. 773).

As we can observe, the biggest problem that arises is that a principle of legality must be established to allow recognizing the existence of the de facto government, since not every situation can deserve such a characterization, and since there are also multiple instances of irregularity that do not always require the recognition of effective power.

In a famous ruling of the Connecticut Supreme Court, maintains that: "the de facto doctrine was incorporated into the law as a police act and of necessity to protect the interests of the public and individuals, where those interests were affected by official acts of persons who exercised the functions of a position without being legitimate officials” (State v. Carroll, 38 Conn. 449 9 Am.Rep. 409 (1871).

When it comes to fundamental questions, one of the problems, the greatest causes of the interruption of the democratic system and the normality of the functions carried out by the organs of power, is the legal continuity and therefore, the legitimacy and validity of the norms that have originated in said period. If, as is

supposed, a government that takes power by force is an illegitimate government, then it turns out that all the acts and norms that are created by this government are also illegitimate and therefore without legal value.

Thus, what was intended was to argue the need to accept the situation of force as a fact (facto) that explained the "continuity of the State" and therefore, the rules issued by the usurpers would also acquire continuity and legality as an indissoluble part of the state legal system. Measure that reaches sentences of all kinds.

One of the forms of recognition of governments is based on legitimacy and another on recognition. The doctrine of legitimacy maintains that any government that comes to power depends not on mere possession but on compliance with the legal order established for the succession of governments.

The question that can be asked is that, since there are two broad positions, one of which is based on the simple and plain rejection of the doctrine because it violates the constitutional order and another that, in the name of the continuity of the State's normative production, accepts that the norms and acts are valid and therefore justify the irruption of the force or dictatorial government.

A no less problem is constituted by the so-called "decree-laws" which are the norms produced by a de facto government and through the state of force that it imposes without mediating legislative action or participation of a democratic parliament. If we take the theory outlined by those who give continuity to the production of the State in legal matters, we should then argue that when political life is regularized through democracy, these decree-laws become part of the legal architecture and in some cases come to be called laws after a specific legislative treatment. In some cases, these decree-laws directly affected or violated any of the citizen rights, guarantees such as Habeas Corpus or the State of Siege, for which reason they are revoked (Sala, 1988, p. 8–24).

As a synthesis of the above, we can conclude that the governments de facto they have become phenomena that correspond to anomalous, emerging situations but noting that, after their passage, they have not provided solutions or given answers to the supposed reasons why they interrupted the democratic system. It is evident that these invocations are framed in ideological excuses and actions tending to the plain and simple seizure of power, rather than valid arguments that justify it. Definitely, history, society and laws will always judge in favour of common sense.

5. Conclusion

A succession of unresolved crises can be counterproductive for the maintenance of democracies that are weakened because the institutional system does not give complete answers to the problems. At times, cultures suffer setbacks or stagnation that lead to portals of uncertainty, leading a large part of society to find their way

for some time. These ruptures are usually in the medium to long term because cultural issues take a longer process.

In the coup, there are no essential or profound changes; there is a realignment or substitution of actors who take power where another actor was until a short time ago and will try to rectify or ratify the course set by the political decision that installed them in power. According to historical and political readings, in Africa and throughout successive decades, there have been many coups d'états that have created uncertainty, breakdowns of order, interruptions of political and social projects, and wounds that do not permanently heal the social fabric. Rather, there are remains of political dismemberment, traumatic and repeated experiences in the history of African countries. The authors of this paper think that the frequency of coups in Africa is a result of external influence and the indispensability of the political role of the military to the African governments.

The position of international law vis-à-vis military coup lies on the principle of non-intervention in the internal affairs of states. However, recent developments, especially in regional doctrines, overthrowing a democratically elected leader seems to be a serious concern. This article takes the position that there is an emerging customary rule on the duty to be democratic. The on-going situation in Niger[9] where the Economic Community of West African States has already decided to use force against the putschists in case they refuse to return the overthrown president to power, seems to create a new doctrine that would imply that force can be used in response to an undemocratic seizing of power. Once this move successfully executed, the question of whether a military coup is illegal under international law will be clear or will remain a political satisfaction that only applies to African states.

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Ethics Statement: The authors declare that ethical rules were followed in all preparation processes of this study. In case of detection of a contrary situation regarding scientific ethical issues, all responsibility belongs to the authors of the study, and Çankırı Karatekin University Journal of the Faculty of Economics and Administrative Sciences has no responsibility.