

# The legal framework of intervention by invitation

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## Summary

Intervention by invitation is a lawful manner in which states can use force. However, much of this topic of *jus ad bellum* remains underexplored in contemporary scholarship. This goes especially for its legal framework. While issues such as the legality of intervention by invitation during a civil war get much attention, the doctrinal foundations of the concept are ignored. This thesis therefore seeks to clarify the legal concept of intervention by invitation and position it within the system of *jus ad bellum* under public international law. The aim is to identify the doctrinal foundations of the legal framework. In this thesis, legal framework comprises the concept's definition, legal basis, criteria, legal parameters, and demarcation.

The thesis splits the concept of intervention by invitation into its two main components and these are analysed separately. Chapter 2 is devoted to the component of intervention. For this purpose, the concept of intervention under public international law is analysed. As quite some parallels exist between intervention and use of force, this latter concept is also explored under public international law. It is analysed where the boundary lies between the terms intervention and use of force. Based on this analysis, it is subsequently determined whether using the term intervention rather than use of force is appropriate for the concept under research here or whether it might be in need of rebranding. This chapter also pays attention to other terms employed when describing intervention by invitation, e.g. military assistance on request.

Chapter 3 builds on the conclusion of Chapter 2, namely that intervention by invitation is inaptly named, as it concerns a use of force rather than a mere intervention. This takes the research further to analysing the appropriate position for intervention by invitation within the broader spectrum of public international law, more specifically within the *jus ad bellum* rules. As a consequence, Chapter 3 establishes the legality and legal basis of intervention by invitation. It thereby investigates the often-made assumption that an intervention by invitation is legal by testing this premise. The legal basis of the notion is subsequently examined, leading to an analysis of the relationship between intervention by invitation and the prohibition of the use of force as contained in Article 2(4) of the Charter of the United Nations (UN Charter). Three different approaches for this relationship are analysed. The first analyses the text of Article 2(4) to determine whether intervention by invitation is covered therein, while the second addresses the possibility of the concept being seen as an exception to the prohibition. The third approach takes the thesis to an analysis of the rules of state responsibility, as contained in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). This includes a brief analysis of the position of the rules on state responsibility within public international law, whether the circumstances precluding wrongfulness act as justifications or excuses, what the circumstance of consent entails, and whether the prohibition of the use of force is a norm having *jus cogens* status.

Chapter 4 moves on to the second component of the concept of intervention by invitation: the invitation. This chapter contains a detailed analysis of all the intricacies of the invitation. It starts with an examination of the author, the requirements, and the timing of the invitation. This includes an examination of the details of consent as found in Article 20 ARSIWA and of the legal status of pro-invasion pacts. As it is often stated (and concluded in this thesis as well) that the government can issue the invitation, an investigation needs to be conducted as to how the government of a state is identified under public international law, and what role recognition, effective control, and democratic legitimacy play therein. Furthermore, the chapter studies whether no support whatsoever can be provided to the opposition.

Chapter 5 is devoted to exploring the concept of intervention by invitation as a whole. After the analysis in the previous chapters, preliminary conclusions can be drawn as to its legal framework.

However, it quickly becomes apparent that the notion has quite some overlap with the concept of collective self-defence. The main purpose of Chapter 5 is therefore to distinguish intervention by invitation from collective self-defence. This is done by clarifying both concepts and subsequently comparing and differentiating the two. This differentiation leads to an adjustment of the commonly used definition of intervention by invitation, as the territory in which the assistance is provided is the key factor that sets them apart.

Chapter 6 examines the legal parameters of intervention by invitation by mainly focussing on one specific element, namely such an intervention during a civil war. For this examination, it first needs to be determined what constitutes a civil war before delving into the issue of the legality of an intervention by invitation during such a situation. The assumption often found in academic works that such an intervention is illegal is the starting point of the analysis, together with the proposed exceptions to this illegality, including counter-intervention and fighting terrorism. The possibility (and potential foundation) for the legality of an intervention by invitation during a civil war is analysed next. The chapter ends with other possible limitations of intervention by invitation, including issues of proportionality, assisting another state in committing an internationally wrongful act, and the potential involvement of the United Nations Security Council.

Finally, Chapter 7 contains the overall conclusion of this thesis, providing clarification of the legal concept of intervention by invitation and its position within the system of *jus ad bellum* under public international law and thus the identification of the doctrinal foundations of the legal framework. It becomes clear that the concept of intervention by invitation encompasses more than is traditionally understood. In essence, this thesis demonstrates that intervention by invitation is defined as a lawful exercise of the use of force by one state (the intervening state) in the territory of another state (the requesting state) upon the latter's invitation. As a concept, it falls outside the scope of the prohibition of the use of force as contained in Article 2(4) UN Charter, which is where one can find its legal basis. As intervention by invitation is a term of art and not the appropriate term for the concept, as it concerns a use of force, its name should rather be use of force by invitation. The criteria are that the invitation must be issued by the government, which is identified through the exercise of sufficient effective control over the state's territory. The invitation must be issued before the intervention takes place and must be clearly expressed by the state's highest authorities. If a civil war is raging in the requesting state's territory, this does not form a legal parameter for an intervention. It is further irrelevant who the attacking party is, i.e. a non-state actor or another state. This forms an expansion of the traditional definition of intervention by invitation. The force used must be limited to the requesting state's territory (this is where the difference lies with collective self-defence and thus its demarcation) and must stay within the limits of the issued invitation. Other international obligations applicable on both states are not discharged by the invitation, but can potentially be justified in the sense of the circumstance precluding wrongfulness of consent as contained in Article 20 ARSIWA, a further demarcation. The doctrinal foundations of the legal framework of intervention by invitation are thereby established.