

Intervention by Invitation

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A. Concept and Definition

- 1 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. Such interventions may involve actual fighting by the foreign troops but their operations may also be limited to power projection or to other forms of active military support (eg guarding of important places). In a wider sense, intervention by invitation could conceivably also cover non-military interventions as well as military interventions by the invitation of other actors than the government, but such use is less relevant.

B. State Practice

- 2 → *State practice* from the → *Holy Alliance (1815)* to the → *Spanish Civil War (1936–39)* is inconclusive as to whether → *governments* had the right to invite foreign troops to help dealing with internal unrest. Thus, until the coming into force of the United Nations Charter no clear pertinent rule of → *customary international law* existed, despite a tendency in favour. The Soviet intervention in Hungary (1956), inter alia, raised the question whether there had actually been an invitation by the Hungarian government as alleged by the Soviet Union. In its report, the UN General Assembly's Special Committee on the Problem of Hungary later concluded: 'The act of calling in the forces of a foreign State for the repression of internal disturbances is an act of so serious a character as to justify the expectation that no uncertainty should be allowed to exist regarding the actual presentation of such a request by a duly constituted Government' (UNGA 'Report of the Special Committee on the Problem of Hungary' GAOR 11th Session Supp 18 para. 266). The US and British interventions in Lebanon and Jordan (1958) indicated that, during the early period of the → *Cold War (1947–91)*, a significant number of States considered that interventions at the invitation of the government could violate the principles of non-intervention, non-use of force, and → *self-determination* (see also → *Intervention, Prohibition of*; → *Use of Force, Prohibition of*).
- 3 After → *decolonization* the question of the permissibility of intervention by invitation was mostly discussed when the issue arose. State practice since then can be grouped according to typical actors or regions.

1. United States and Soviet Union (During the Cold War)

- 4 The main belligerents of the Cold War, the United States and the Soviet Union, justified some of their military interventions by alleging an invitation of the government or authorities concerned. The most important of such interventions took place in the Congo (Stanleyville Operation 1964), the → *Dominican Republic* (1965), Czechoslovakia (1968), Afghanistan (1979), → *Grenada* (1983), and Panama (1989). Although each of these interventions was criticized by a majority of States as a violation of international law, the objecting States almost never questioned the permissibility of interventions by an invitation of a government as such.
- 5 As far as the Soviet interventions in Czechoslovakia and Afghanistan are concerned, most States criticized that the respective government had manifestly not requested the intervention in question. In the case of Czechoslovakia the lack of an actual invitation became clear when a representative of the Czechoslovak government stated in the UN Security Council that foreign troops had crossed the borders without knowledge of the Czechoslovak authorities (UNSC Official Records [21 August 1968] SCOR 23rd year 1441st meeting para. 137). The Soviet Union thereafter changed its justification to what was later called the Brezhnev doctrine. In the case of Afghanistan international criticism concentrated on the manifest lack of credibility of the Soviet assertion in the face of the fact that the Afghan President had been murdered two days after the invasion.
- 6 The US mostly used the claim that an official invitation had been issued not as a principal legal justification for their interventions, but rather as one of several factors which, taken together, would legitimize the respective operation. Only the Stanleyville Operation (1964) was justified by the US, principally on the basis of an invitation by the Congolese government. Most States did not criticize this operation by disputing that an invitation had been issued, but rather because its professed goal, saving foreign nationals, was seen as a pretext for other purposes. In the case of the Dominican Republic (1965) the US did not assert that the government itself had issued an invitation but only stated that the intervention had not taken place against the will of the Dominican authorities. In the case of Grenada (1983) the US initially justified the intervention by referring to a call for help from the → *Organization of Eastern Caribbean States (OECS)* and a power vacuum. One day later Dominica alleged that the Governor-General of Grenada had issued an invitation. Still another day later the US asserted that this invitation was one of several factors in a 'unique combination of circumstances' which justified the intervention, in particular the rescue of nationals (Ambassador Kirkpatrick's Statement [(1983) 83 (No 2081) Dept St Bull 74, 75]). Most States which commented on the invitation aspect of the US justification disputed that a valid invitation which could have justified the deployment had actually been issued. In the case of Panama (1989) the US again relied on an invitation issued by the head of the government, but not the President, as one of several factors, albeit a minor one which taken together would legitimize the operation, the principal reason being the need to restore democratic rule.

2. France

- 7 During the decolonization process France concluded 'defence treaties' with most of its former colonies in Africa (see → *Decolonization: French Territories*). Those treaties provided for the possibility of French → *military assistance* or even intervention by French troops at the request of an African government in cases of 'internal defence'. These treaties have been used to legitimize a series of French interventions in African States. Such interventions include those in Gabon (1964 and 1990), Chad (1968–71, 1978, 1983, 1986, 1990, 1992, and 2006), Zaire (1977 and 1978), the Central African Republic (1979, 1996, and 1997), Togo (1986 and 1991), the Comoro Islands (1989 and 1995), → *Côte d'Ivoire* (1990 and 2002), → *Rwanda* (1990–93), and Djibouti (1991 and 1992). Most of the treaties were either terminated or fundamentally changed before and after the end of the Cold War by the introduction of non-intervention clauses. The interventions of French troops in Côte d'Ivoire (2002) and Chad (2006) are modern cases of intervention with limited stated purposes (safety of French nationals; protection of refugees; logistical support; preparation of regional → *peacekeeping forces* such as the mission of the → *Economic Community of West African States [ECOWAS]* in Côte d'Ivoire 2003; and of the European Union in Chad 2008) which were commended by the UN Security Council (eg UNSC Res 1464 [2003] [4 February 2003] SCOR [1 August 2002– 31 July 2003] 176 concerning Côte d'Ivoire). Most of the conflicts in which French troops have intervened at the request of a government were purely internal and the French interventions were mostly not opposed on specific legal grounds by other States, although they aroused political opposition.

3. African States

- 8 The interventions by African States at the invitation of governments of other African States have long remained largely unnoticed. Such interventions can be subdivided into bilateral, subregional, and pan-African cases. Interventions on a bilateral basis have occurred, inter alia, in → *Sierra Leone* (1971 and 1991–96), → *Burundi* (1972), → *Liberia* (1979), *Gambia* (1981), *Mozambique* (1982–89), the *Democratic Republic of the Congo* (1998–99), and in → *Somalia* (2006–09). Subregional interventions have taken place in *Liberia* (1990), *Sierra Leone* (1997 and 1998), *Guinea Bissau* (1998), *Côte d'Ivoire* (2003), and members of the → *Southern African Development Community (SADC)* threatened to intervene in *Lesotho* (1994 and 1997) and did so in 1998. Pan-African interventions (→ *African Union [AU]*) were undertaken in *Chad* (1981–82) and in → *Sudan* (2004–07 alone, later together with UN). Most of these interventions were not criticized on legal grounds. During the Cold War the general emphasis on the principle of non-intervention by African States was not meant to exclude the power of governments to invite foreign troops—except as far as the political legitimacy of the ‘neo-colonial’ (French) treaties with African States on ‘internal defence’ were concerned. After 1990 the right of governments to invite foreign troops was not challenged anymore as such, but the discussion moved to the conditions under which this right should be exercised.

4. Russian Federation

- 9 The Russian Federation, both acting alone and together with other States within the framework of the → *Commonwealth of Independent States (CIS)*, has intervened at the invitation of the governments in *Tajikistan* (1992–94) and *Georgia* (*South Ossetia* 1992–2008), during the so-called *Gamsachurdia* insurrection (1993) and *Abkhazia* (1992–2008). In none of these cases, however, did Russian or CIS-troops seem to have officially intervened directly on the side of the government against other major parties to a conflict. The Agreement on the Protection of the State-Boundaries and Maritime Economic Zones of the State Participants of the CIS of 20 March 1992 (31 ILM 496) and the Treaty on Collective Security of 15 March 1992 (1894 UNTS 313) provided that troops from CIS States should act only with the agreement of the parties to the conflict and only in a neutral and impartial manner. Russian troops have officially protected certain vital installations and places and have performed other specific tasks on the basis of bilateral or multilateral agreements with the government concerned, in particular in *Tajikistan*. It is unclear whether such activities were always conducted in agreement with all parties to a conflict and only in a neutral and impartial manner. The activities of the Russian troops in *Georgia* and *Tajikistan* until 2008 were partly supervised by Observer Missions of the UN and the → *Organization for Security and Co-operation in Europe (OSCE)* and have generated little controversy on the UN level. The difference between the critical international reaction to Soviet interventions during the Cold War and the muted reaction to the use of Russian troops in some of the newly independent post-Soviet space seems to be due to a multitude of reasons, among which are not only the changed political landscape and the different character of the conflicts, but also a certain willingness of the Russian government until 2008 to involve international organizations and to recognize different parties to the conflict.

5. Other Cases

- 10 Other cases of State practice have taken place, inter alia, in *Afghanistan* (beginning in 2001, UNSC Res 1386 [2001]), the → *Middle East* (*Lebanon* 1976–90, *Yemen* 1978, *Iraq* since 2004 (UNSC Res 1546 [2004]), in *Africa* (*Angola* 1976–88, *Ethiopia* 1978, *Sierra Leone* 2000), in *Southeast Asia* (→ *Laos* 1975, *Cambodia* 1978, *Timor-Leste* 2006), in *South Asia* (*Sikkim* 1949, → *Nepal* 1951 and 1953, *Sri Lanka* 1987–90, *Maldives* 1988), within → *Micro States* (*St Vincent and the Grenadines* 1979, *Vanuatu* 1980, *Trinidad and Tobago* 1990, *Solomon Islands* 2003, *Tonga* 2006), and in *Western Europe* (→ *Bosnia and Herzegovina* 1995, → *Macedonia* 2001, → *Kosovo* 2008). Taken together, these cases show that intervention by invitation of the government has been practised in all regions.

6. General Observations on State Practice

- 11 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 war on the other. Most cases were either so-called low-intensity conflicts, rebellions, military coups, popular uprisings, or demonstrations.
- 12 The debates following the Cold War interventions by the Soviet Union and the US indicated that demonstrable → *consent* by the highest available governmental authority is required in order to identify attempts of abuse (Soviet interventions) and that lesser official consent can only serve as one of several factors which could conceivably justify an intervention (US interventions). Interventions by invitation against military coups or secessionist groups have mostly not been criticized by other States, while those against popular uprisings or conflicts about who controls the central government have provoked resistance. The cases of *Sri Lanka* (1987–90) and *Lebanon* (1976–90) indicate that international

recognition of the internal character of a conflict (secessionist; inter-communal) and the legitimacy of the government (democratically elected; proportionally constituted) played an important role during the Cold War in the acceptance by other States of interventions at the invitation of a government.

- 13 Since the end of the Cold War a tendency has emerged to use the invitation of a government as a basis for multilateral interventions, either in addition to, or in combination with, an authorization or commendation of the UN Security Council (eg Macedonia 2001, Afghanistan 2001, Iraq 2004, Sudan 2004–07, Chad after 2006, Timor-Leste 2006, Kosovo 2008), or as an independent justification (Solomon Islands 2003, Tonga 2006).

C. Applicable Legal Principles and Rules

- 14 From Grotius until World War II scholars disagreed whether governments had the right to invite foreign troops to help deal with internal unrest. The UN Charter provided a new reference point for the legal assessment, but not necessarily new rules. It should also be noted that different conflict paradigms prevailing at different times have influenced the legal approaches to the problem. During the Cold War most academic contributions primarily took into account the paradigm of internationalized internal armed conflict by proxy. After 1990 analyses have taken other conflict paradigms into consideration, in particular ethnic and secessionist conflicts. This paradigm change has led to a generally greater acceptance of the practice of intervention by invitation by authors. State practice and pronouncements by authoritative international bodies are, however, of primary importance for the assessment of the law.

1. Consent

- 15 Legal analysis proceeds from determining the effect of State consent. The International Court of Justice (ICJ) has formulated an authoritative general dictum in the → *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v United States of America)* according to which 'it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition' (*Nicaragua Case* para. 246).
- 16 The ICJ has confirmed and applied the general rule that intervention is 'allowable at the request of the government' in the case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (at paras 42–53; → *Armed Activities on the Territory of the Congo Cases*). This rule, however, is a general rule and it does not imply that every intervention by invitation of the government is allowable. General principles of international law and specific rules may, in certain circumstances, preclude the justificatory effect of an invitation. The debates in the → *International Law Commission (ILC)* on what became Art. 20 (Draft) Articles on Responsibility of States for Internationally Wrongful Acts ([2001] GAOR 56th Session Supp 10, 43) concerning 'consent' as a circumstance precluding wrongfulness, indicate that most ILC members considered that the permissibility of military intervention by an invitation of the government was ultimately to be determined by the applicable primary rules and not merely by a secondary rule like Art. 20.

2. Situation of the Inviting Government

- 17 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. Internal legitimacy of a government had already played a limited role insofar as → *Apartheid* governments were considered legally incapable to invite foreign troops. Today, invitations by freely and fairly elected governments carry a presumption of legal authority. 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.
- 18 This relevance of democratic legitimacy does not mean, however, that other ('non-democratic') governments are generally incapable of inviting foreign troops. A 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. This is not the case of governments which do not exercise any effective authority like phony governments, puppet regimes, or → *governments in exile*. The concept of puppet regime must, however, be reserved to extreme cases of external dependency. Cases like Somalia, in which State-guaranteed law and order has at times completely broken down, and with respect to which other States at times no longer recognize a government, have remained the exception (see → *Failing States*). Transition governments which, following a peace agreement, are composed of all important parties to an internal conflict, cannot, as a general rule, invite foreign troops without the consent of its main component political forces. Invitations which are issued under → *duress* cannot justify a military intervention.

3. Principle of Non-Intervention

- 19 The classical definition of prohibited intervention as 'dictatorial interference' does not exclude the invitation of foreign forces. However, the UN General Assembly Declaration on the Inadmissibility of Intervention (1965) and the → *Friendly Relations Declaration* (1970) have sometimes been read as suggesting the inadmissibility of intervention of foreign troops by invitation of the government. Still, the dictum of the ICJ according to which 'intervention is allowable at the request of the government' (*Nicaragua Case* para. 246) reflects a retreat from absolutist positions taken in the 1960s and 1970s. The rationale of the principle of non-intervention, the protection of → *sovereignty* of the State, and its political independence nevertheless suggests that the admissibility of intervention of foreign troops by invitation of the government needs to be carefully analysed.
- 20 State practice indicates that the principle of non-intervention does not prohibit certain limited operations of foreign troops at the invitation of a government, ie the protection of property of foreigners or the protection of vital installations or transport routes. It is also reasonably clear that foreign troops may be invited to fight secessionist groups or to reverse a military coup against a democratically elected government. It is less clear, however, whether foreign troops may be invited to directly influence a classical and full-scale civil war. Such operations seem to be permissible as long as the extent of the foreign military support does not exceed the dimension of an auxiliary enterprise. On the other hand, interventions by invitation must not lead to the removal of the political control of the inviting government. Recent operations in Iraq since 2004, and Afghanistan since 2001 suggest that the question of whether the activities of the invited troops and their States remain within the permissible auxiliary function should also be determined by the assessment of international bodies, in particular the UN Security Council. International as well as democratic legitimation can therefore compensate for a certain lack of effectiveness of a government and preclude its being disregarded as a phony or puppet government.

4. Principle of Self-Determination

- 21 Since its recognition in the 1960s and early 1970s as a general principle of international law, the principle of self-determination has expanded beyond its original meaning as an anti-colonial rule. To determine its effect on cases of intervention by invitation two types of internal conflict must be distinguished: conflicts over who controls the central government and conflicts concerning certain parts of the State territory.
- 22 As far as conflicts over the control of the central government are concerned the case of the Apartheid government in South Africa demonstrates that international law possesses a doctrine of minimal internal legitimacy for governments which goes beyond the effective control test. Just as the principle of self-determination prohibited the Apartheid government of South Africa to invite foreign troops, today any government which practices → *genocide* or is confronted with a manifest and comprehensive popular uprising is prevented by the principle of self-determination to invite foreign troops. As far as conflicts over parts of the State territory are concerned, a hypothetical right of secession could preclude a government from using foreign troops to prevent such a move. Such a right has not, however, so far been generally recognized in international law.

D. Specific Issues

1. Form

- 23 There are no particular requirements as to the form of an invitation and its withdrawal (*Armed Activities [DRC v Uganda]* paras 45–53). The author of an invitation, however, must be the highest available State organ in order to ensure that the State speaks with one voice (see para. 12 above). The possibility of abuse has always been one of the main objections against the permissibility of invitations by governments as a justification for intervention. State practice shows, however, that attempts of abuse have mostly been recognized and criticized by other States.

2. Treaty-Based Invitations

- 24 Invitations have not only been issued on a bilateral ad hoc basis. States have sometimes tried to enhance the legitimacy of their interventions by either anticipating this possibility in a treaty or by undertaking multilateral operations. So far, neither the anticipatory nor the collective, non-UN-mandated character of an intervention by invitation has been universally recognized as modifying the applicable legal standards. Certain undertakings by the AU which could be interpreted to that effect have not yet been tested in practice. It is possible, however, that multilateral interventions by regional security systems might in the future be considered to be a better legitimized form of intervention at the invitation of a government.

3. International or Non-International Character of the Conflict

- 25 The involvement of invited foreign troops in a non-international armed conflict does not *per se* transform this conflict into an international armed conflict. If, on the other hand, a change of government takes place during an international armed conflict, a transformation of this conflict into one of a non-international character may occur. In such cases fighters who were loyal to the ousted government can become insurgents, and foreign troops which originally acted on the basis of the right to → *self-defence* now operate within a non-international armed conflict on the basis of an invitation of the newly installed government (eg Afghanistan after 2001). However, if both sides of an internal conflict receive military support from foreign States the conflict is an international armed conflict, but it can also in part be mixed, depending on the circumstances.

4. Effect on Occupation

- 26 The presence and operation of foreign troops by invitation of the government does not, as a general rule, amount to an occupation in the sense of the Hague Regulations Respecting the Laws and Customs of War on Land (annexed to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land; 205 CTS 277). Invited foreign troops are supposed to act as an auxiliary force of the inviting government, and the law of occupation does not protect individuals against their own government. However, in certain cases of transition, the situation after the formal assumption of power by a fragile new government may still be sufficiently comparable to a situation of occupation and require the application of the laws of occupation. This issue was discussed in the case of Iraq (2004) where US troops, after the establishment of a fragile new government of Iraq, rather independently continued to perform security functions which they had performed during the previous phase of occupation. It has been asserted that the conduct of foreign troops which exercised occupation authority continues to be regulated in such cases by the law of occupation even after a new government has extended an invitation (see also → *Occupation, Belligerent*; → *Occupation, Military, Termination of*; → *Occupation, Pacific*)

E. Conclusion

- 27 State practice suggests that while interventions by invitation of the government are, as a general rule, permissible, they are nevertheless subject to more nuanced rules. As far as they conform to these rules such interventions are compatible with the principle of → *collective security*. Since the UN Security Council may either be incapable or unwilling to respond to even the most serious threats to the most important international values (Rwanda 1994) there should be some room for this alternative avenue for other States to try to bring internal conflicts to an end. A right of unilateral → *humanitarian intervention*, even if it was generally accepted, would be both too limited in time and purpose, and risks would be too wide, eg the danger of competing interveners, to fulfil this purpose. Whereas interventions by an invitation of the government are by no means an ideal instrument to pacify internal conflicts they can be preferable to the rigid alternative between either no intervention at all or unilateral interventions.

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