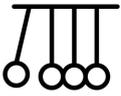


State Consent and the Legal Limits of Military Intervention by Invitation in International Law

LAW

ELA TUNÇ

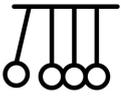


Introduction

The prohibition of the use of force constitutes one of the foundational principles of modern international law. Enshrined in Article 2(4) of the United Nations Charter, this rule obliges States to refrain from the threat or use of force against the territorial integrity or political independence of any State. Designed to preserve international peace, stability, and sovereign equality, the provision establishes a general ban on military intervention. However, the Charter framework also recognises limited exceptions to this prohibition, most notably self-defence under Article 51 and Security Council authorisation under Chapter VII. Within this broader legal structure, intervention by invitation occupies a more complex and debated position. Although not expressly provided for in the Charter, it is often justified as deriving its legality from the principles of State consent and sovereign equality. This section, therefore, examines how the prohibition of force interacts with the doctrine of consent and explores whether intervention by invitation can operate as a lawful exception within the Charter system.

The Legal Framework: Prohibition of Force and the Role of Consent

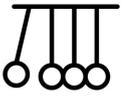
The term “intervention by invitation” refers to military assistance rendered by one or more States to another State with the latter’s prior and valid consent. The objective of such military assistance is usually to support the requesting State in its struggle against non-State actors or individual persons within its territory. It also directly relates to Article 2(4) of the United Nations Charter. The Article states, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political



independence of any State, or in any other manner inconsistent with the purposes of the United Nations.” It establishes the general prohibition on the use of power and affirms that countries cannot attack or threaten to attack other countries. It protects international peace, sovereignty, and political independence by prohibiting military intervention or coercive interference in another State’s affairs. Although it covers most of the authority, the Article still contains exceptions recognised within the Charter framework.

For example, States’ right of self-defence is seen as an exception to this doctrine. Drawing on analytical legal theory and theories of legal reasoning, it explores the nature of an exception to a rule. This classification can be difficult to identify, as legal propositions can compete rather than exist in a hierarchical rule-exception relationship. The parameters of self-defence as an exception to the doctrine of collective security and the prohibition on the use of force are explored in this light, casting doubt on the validity of contemporary attempts to expand self-defence to justify extraterritorial attacks on non-state actors within states deemed unwilling or unable to curb their hostile activity. Thus, the first known example is Article 51 of the Charter, which states, "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 UN until the Security Council has taken measures necessary to maintain international peace and security." Furthermore, the second exception is a member state’s right to seek the Security Council’s specific authorisation for the use of force in accordance with Chapter VII of the Charter.

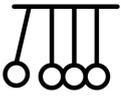
Although there is no clear consensus on the criteria for an intervention by invitation, some potential requirements can be distilled from the definitions. More specifically, the factors to be considered are the internal situation in the requesting state, the identity of the attacking party, and the question of who can provide valid consent and under what



circumstances. The first potential criterion concerning the internal situation in the requesting state is an internal armed conflict. It remains unclear whether or not this is actually a requirement or only the typical situation in which an intervention by invitation occurs. The definition provided above merely mentions a struggle taking place between the state and a non-state actor within the requesting state's territory, thereby indicating the presence of internal armed hostilities. Therefore, it is reasonable to assume that an intervention by invitation typically takes place during an internal armed conflict or perhaps may only take place during such a conflict. Moreover, the second criterion covers that the attacking party must be a non-state actor. The 2011 IDI Resolution makes that explicitly clear, while Nolte's definition implies this requirement by using the term 'internal armed conflict,' which by definition takes place between a state and a non-state actor. This criterion can also be derived from state practice.

Requirements for Valid State Consent

Consent is defined in Article 4(11) as "any freely given, specific, informed, and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her." Article 7 also sets out further "conditions" for consent, with specific provisions on keeping records to demonstrate consent; prominence and clarity of consent requests; the right to withdraw consent easily and at any time; and freely given consent if a contract is conditional on consent. Consent means giving people genuine choice and control over how you use their data. If the individual has no real choice, consent is not freely given and is invalid. This means people must be able to refuse consent without detriment and must be able

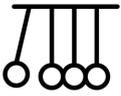


to withdraw consent easily at any time. It also means consent should be unbundled from other terms and conditions wherever possible.

In the context of these discussions, when we examine Russia's Syria intervention as the first topic of discussion, the question arises whether the Assad government is legitimate enough that it should not call for an intervention. However, it is accepted that Assad is a legitimate power both for Russia and for the majority of international actors. In this context, it can be accepted that Assad's invitation is legitimate. It can be said that Russia's intervention by invitation is generally secondary. Because, with the UNSC's decision numbered 2249, all member countries have both a duty and a responsibility towards ISIS. From this point of view, even if Russia's intervention in Syria is not within the scope of intervention by invitation, it is based on legitimate grounds.

Legal Limits on Military Intervention by Invitation

Contemporary international law treats military interventions by invitation as lawful, provided they stay within the bounds of consent. Yet, there are different approaches to the nature of consent and its justificatory role. According to one approach that this article has covered, consent removes the conduct from the scope of Article 2(4) of the UN Charter. Thus, the use of force is lawful because it is not caught by the prohibition. According to another approach, consent is a circumstance precluding the wrongfulness of the conduct operating as justification. The difference between this approach and the first one is not very apparent because, if the wrongfulness of the conduct is precluded, the conduct is lawful. The difference is more conceptual in that the first approach operates in the realm of the primary rules on the use of force and consent, whereas the second operates in the realm of secondary rules, even if they both arrive at the same result. According to a third approach, interventions

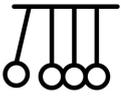


by invitation constitute *prima facie* breaches of Article 2(4), but responsibility is excused because of the existence of consent. This approach also sees consent as a secondary rule but treats it as a circumstance excusing the consequences of responsibility and not as a justification, which is what the second approach does.

Controversies and Challenges in Practice

The legality of an intervention by invitation is based on the existence of valid consent given by the State on whose territory the military assistance is being provided. Whether consent is to be regarded as valid depends on the authority of the consenting entity to represent that State as well as on the timing of such consent. Moreover, the consent must be attributable to the incumbent government of the State in whose territory the military assistance by foreign troops takes place. Consent to direct military assistance has to be issued by the authorized representatives of the government, who are usually the head of State, head of government, or foreign minister in favour of the existence of a strong presumption that approval for direct military assistance must be given by the highest available government authority, which can only be rebutted by clear evidence of the competence of a lower-ranking official to approve coercive measures.

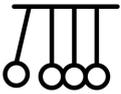
For example, Yemen's case is far less clear-cut. Hadi had long lost control of large parts of the country. The Houthi rebels, which are a northern Zaidi sect that had been in on-and-off conflict with the government for years, seized control of Sana'a in September, and the majority of the army was no longer responsive to Hadi. Hadi's democratic mandate was also weak. Following the Arab Spring protests that drove long-time ruler Ali Abdullah Saleh out of power, he won a 2012 election in which he was the only candidate. His term was due to end with full democratic elections in February 2014. Yet it was extended for a further year



without a poll. In January, even before the formal end of his term, Hadi announced his resignation after the Houthis blockaded his palace. After later escaping Sana'a for the port city of Aden, he reversed his position, saying it was made under duress. Then, shortly before calling for the attack, he fled the country for Saudi Arabia, where he is now based. The manner in which Hadi justified the invasion only muddies the waters further. In a letter to the UN Security Council requesting military intervention, he highlighted Article 51 of the UN Charter.

Conclusion

In conclusion, the legal framework governing intervention by invitation rests upon the interaction between the general prohibition of force under Article 2(4) of the United Nations Charter and the principle of State consent rooted in sovereignty. While the Charter explicitly recognises self-defence and Security Council authorisation as formal exceptions, consent has developed through State practice and legal reasoning as a potential basis for lawful military assistance. Nevertheless, its status remains conceptually contested: some view consent as removing the act from the scope of Article 2(4), others treat it as a circumstance precluding wrongfulness, and still others see it as excusing responsibility. These differing interpretations demonstrate that intervention by invitation is not a straightforward exception but rather a doctrine situated at the intersection of primary and secondary rules of international law. Understanding this legal foundation is essential before assessing the stricter requirements for valid consent and the practical limits imposed on such interventions.



Resources

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