The Misconception About the Term "Intervention by Invitation"

*Agata Kleczkowska**

Legal scholarship may create a terminology which enables easy labelling of States' actions and facilitates classifying them as legal or illegal. While such terminology is helpful, at times it may also be confusing since it is deemed to be part of international law even though it may be detached from States' practice. This is true of the term "intervention by invitation".

The present Impulse argues that the term "intervention by invitation" is purely academic, ungrounded in States' practice, and confusing for three reasons.

Firstly, while "intervention by invitation" is broadly used in legal scholarship, States do not employ this term. Instead, they use expressions like "appeal for military assistance"[1]; "appeal for help"[2]; request "to assist in re-establishing order"[3]; "request for assistance to restore peace"[4]; "request for air and military support"[5]; "an urgent plea" to send forces "to maintain security";[6] or a request to help the army restore order[7]. Thus States prefer more flexible and descriptive language to explain their legal positions, which gives them the opportunity to define the circumstances of the intervention.

Secondly, the distinction between "intervention by invitation" and other types of interventions is sometimes unclear and artificial. In 2014 Iraq requested international assistance to fight Islamic State of Iraq and Syria (ISIS), but it did not mention the right to self-defence.[8] Despite that, in ad-

* Ph.D. in public international law; Assistant Professor at the Institute of Law Studies of the Polish Academy of Sciences.

1 S/PV.831, paras. 28-29.

2 S/PV.2185, para. 17.

3 A/C.4/SR.2185, para. 32.

4 S/PV.7124, 5.

5 Mali: Press conference given by Minister *Fabius*, 14.1.2013, <https://franceintheus.org>.

6 Statement by President *Eisenhower*, White House Press Release dated July 15, The Department of State Bulletin XXXIX (993) 1958, 181.

7 A/PV.564, para. 100.

8 Letter dated 25.7.2014 from the Permanent Representative of Iraq to the UN addressed to the Secretary-General, S/2014/440; Letter dated 20.9.2014 from the Permanent Representative of Iraq to the UN addressed to the President of the SC, S/2014/691.

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dressing the Iraqi appeal the USA referred to collective self-defence.[9] Likewise, in 1958 Jordan asked the USA and the UK for assistance based on Art. 51 of the United Nations (UN) Charter.[10] In response, the UK did not mention the right to collective self-defence, but instead claimed that nothing inhibits "a Government from asking a friendly Government for military assistance as a defensive measure", basing its intervention solely on Jordan's request.[11] Since a "request by the State which regards itself as the victim of an armed attack"[12] is a condition for a lawful collective self-defence, sometimes it may be difficult to clearly distinguish between these two types of interventions. At the same time, as the examples illustrate, the mere use of a different wording in States' statements justifying their interventions does not influence their legality which depends on the circumstances of the intervention. On the other hand, these different wordings may demonstrate how States' legal assessment of the situation varies.

Likewise, States do not categorise interventions in the same way as the scholarship. For instance, *Louise Doswald-Beck* in her article "The Legal Validity of Military Intervention by Invitation of the Government" discusses, *inter alia*, the cases of the USA interventions in Lebanon and in Grenada, as well as the USSR intervention in Afghanistan.[13] Not only did neither of these intervening States justify their actions as "intervention by invitation", they did not use the consent for the intervention as their principal legal argument, instead referring to the right to self-defence[14] or collective action by the regional organisation.[15]

Thirdly, "intervention by invitation" suggests that the initiative behind the intervention belonged to the State where the intervention took place, i.e. that it "invited" the intervening State. This implies that it encompasses only those interventions when the request was made voluntarily and before the intervention commenced, and thus excludes those interventions when the

9 Letter dated 23.9.2014 from the Permanent Representative of the USA to the UN addressed to the Secretary-General, S/2014/695.

10 S/PV.831, para. 24.

11 S/PV.831, para. 29.

12 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgement, ICJ Reports 1986, para. 199; see also *J. A. Green*, The "additional" criteria for collective self-defence: request but not declaration, Journal on the Use of Force and International Law 4 (2017), 4.

13 BYIL 56 (1986), 214 et seq., 230 et seq.

14 Statement by President *Eisenhower* (note 6), 181; S/PV.2185, para. 17.

15 Letter dated 25.10.1983 from the Permanent Representative of the USA to the UN, addressed to the President of the SC, S/16076. Ultimately the USA did not use the alleged invitation from General-Governor of Grenada as the argument for the legality of the intervention.

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consent was extorted by the intervening State or when it was secondary to the decision to intervene. For instance the USA, in intervening in Panama, claimed that Panama's legitimate authorities consented to the intervention, arguing that it was "welcomed by the democratically elected government of Panama".[16] This suggests that the intervention did not take place upon "invitation" but rather was only subsequently approved. Consequently, this intervention cannot be labelled as having been conducted "by invitation". Since legal doctrine often applies "intervention by invitation" to any intervention conducted upon consent,[17] this may lead to erroneous conclusions.

To conclude, "intervention by invitation" is a scholarly term that is not confirmed in States' practice. While it is helpful in academic discussions, it may not aptly convey the circumstances behind the intervention, blurring the assessment of its legality. Currently, the term "military assistance on request" finds support in the doctrine of law as more accurate than "intervention by invitation".[18] Likewise, more descriptive terms may also be used, as e.g. "armed action upon invitation or with the consent of the target State".[19]

[16] *L. Henkin*, The Invasion of Panama Under International Law: A Gross Violation, Colum. J. Transnat'l L. 29 (1991), 299.

[17] See e.g. *R. Higgins*, The Development of International Law Through the Political Organs of the United Nations, 1963, 210; *D. Wippman*, Military Intervention, Regional Organizations, and Host-State Consent, Duke J. Comp. & Int'l L. 7 (1996), 232; *G. Nolte/J. Barkholdt*, The Soviet-Intervention in Afghanistan – 1979-1980, in: T. Ruys/O. Corten (eds.), The Use of Force in International Law: A Case-Based Approach, 2018, 301.

[18] E.g. *G. Hafner*, Present Problems of the Use of Force in International Law. Sub-group: Intervention by Invitation, AIDI 73 (2009), 311.

[19] *V. Lowe/A. Tzanakopoulos*, Humanitarian Intervention, in: R.Wolfrum (ed.), The Law of Armed Conflict and the Use of Force, MPEPIL 2015, 468.

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