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Military Intervention with the Consent or at the Invitation of a Government

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Publication date

2015

Document Version

Final published version

Published in

The handbook of the international law of military operations. - 2nd edition

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Citation for published version (APA):

Gill, T. D. (2015). Military Intervention with the Consent or at the Invitation of a Government. In T. D. Gill, & D. Fleck (Eds.), *The handbook of the international law of military operations. - 2nd edition* (pp. 252-255). Oxford University Press.

<http://opil.ouplaw.com/view/10.1093/law/9780198744627.001.0001/law-9780198744627>

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**Part III Military Operations within the Context of the
Right of Self-Defence and other Possible Legal Bases
for the Use of Force, Ch.14 Military Intervention with
the Consent or at the Invitation of a Government**

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From: The Handbook of the International Law of Military Operations (2nd Edition)
Edited By: Terry D. Gill, Dieter Fleck

Content type: Book content

Published in print: 10 December 2015

Product: Oxford Scholarly Authorities on
International Law [OSAIL]

ISBN: 9780198744627

Subject(s):

Military assistance — Armed conflict — UN Security Council — Peace treaties — UN Charter — Military matters — Armed attack — International peace and security — Peace keeping

(p. 252) Chapter 14 Military Intervention with the Consent or at the Invitation of a Government

14.01 Consent of a government for a military intervention can form either a separate or an additional legal basis for the deployment of forces onto its territory and can include permission to conduct operations, either alongside and in conjunction with the consenting State's forces or independently. In the absence of any other legal basis, consent is a strict requirement for the deployment of armed forces or the conduct of any type of military operations on another State's territory.

1. Consent is generally recognized as a ground for precluding the wrongfulness of an act which would otherwise be illegal under international law.¹ This also applies to military intervention, which in the absence of any other recognized legal basis in the form of a Security Council mandate or in the lawful existence of the right of self-defence, would constitute a violation of the prohibition of the use of force and the principle of non-intervention, which are core principles under both the UN Charter and under customary international law.²
2. Consent can act either as an independent legal basis for the deployment of military forces within the territory of another State, or can function alongside another legal basis as an additional justification for the deployment of forces and conduct of operations on another State's territory.
3. When intervention is undertaken solely on the basis of the consent of a government or at its invitation, the intervention will be subject to any conditions posed by the consenting State, either in the form of a formal agreement, or conditions of a more informal nature. Such agreement is always subject to amendment. This is a natural consequence of the independence and sovereignty of every State in relation to its territory and of other relevant rules and principles of international law.³

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(p. 253) **4.** Wherever forces are stationed on another State's territory with the agreement of the Receiving State's government, they would require additional consent to conduct any type of operations not covered by the stationing agreement, or which were carried out in the context of the lawful exercise of self-defence.⁴

14.02 Any consent granted must be freely given and issued by the lawful authority of the consenting State which is recognized under international law and the national law of the consenting State as authorized to act on behalf of that State.

1. For consent to be valid, it must be freely obtained or granted without any compulsion in the form of a threat or use of force or through coercion of the consenting State's leadership or representatives.⁵ It must, moreover, be forthcoming from the recognized government of the consenting State by State officials who have the authority under international law and the national law of the consenting State to grant such consent on behalf of that State. There have been numerous examples in State practice of interventions undertaken on the basis of invalid or dubious consent, which consequently would not qualify as lawful interventions.⁶
2. In addition to meeting the abovementioned conditions of valid consent, any operations which were carried out would also have to comply with human rights and, if relevant, humanitarian law rules and principles which were applicable. The consent of a government in no way affects or diminishes the applicability of other relevant rules and principles of international law, including, in particular, those of a humanitarian or otherwise peremptory character. This is a logical consequence of the fact that a State's government may not grant more authority than it itself possesses under international law.⁷

14.03 To the extent the intervention has another legal basis in the form of either a

Security Council mandate under Chapter VII of the Charter, or the lawful exercise of the right of self-defence, the consent of the

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(p. 254) State where the intervention is conducted would not be required from a strictly legal perspective. However, such consent would provide an additional legal basis alongside the primary one and would be welcome from a political and operational perspective. In such cases, the conduct of operations should conform to any conditions put forward by the consenting State's government in so far as these do not clash with the legal requirements and conditions which form part of the primary legal basis for the intervention. In the event of any conflict between the two, the requirements and conditions relating to the primary legal basis will prevail.⁸

- 1.** In the event that an intervention is carried out with a mandate of the UN Security Council under Chapter VII of the Charter in the form of a peace enforcement operation, no additional legal basis for the operation would be required from a purely legal perspective since the Council has the necessary legal authority to undertake such an operation, with or without the consent of the government of the State where the operation was conducted. However, as has been pointed out earlier, the consent of the State where the operation is conducted can provide a useful and desirable complement to the Council's mandate from a political and an operational perspective.⁹
- 2.** The Council's mandate would prevail over any conditions put forward by the consenting State's government in the event of any clash between the two. However, the related Operational Plan (OPLAN) and rules of engagement (ROE) should be adjusted and tailored as far as possible within the terms of the mandate and the requirements of mission accomplishment to maintain the Host State's support and consent. This will in turn normally contribute to the successful conduct of the operation and would help limit the effect of the operation upon the Host State's legal order and authority to the maximum extent possible.¹⁰
- 3.** With respect to the relationship between consent and self-defence, the situation is somewhat more complex. Firstly, consent would be completely out of place in a situation of classic self-defence whereby one State (State A) initiates an armed attack against another State (State B). State B in such a situation would neither seek nor require the consent of State A to conduct operations against State A directed towards repelling the attack and forestalling further attacks. In such a case, consent would be obviously irrelevant since State A was the author of the attack. However, it might be a case of collective self-defence, in which a State which was the object of an armed attack (State B) by another State (State A) called for or was offered military

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(p. 255) assistance by or from a third State (State C) to help it repel the attack. In such a situation, the request by the attacked State, or in any case its consent to assistance from a third State, would be a strict requirement for the lawful provision of military assistance on the part of State C.¹¹

There is also a third possible scenario; namely a situation whereby a State (State A) responds to an attack against its territory, nationals, military, vessels, aircraft, or installations which were located either in international sea or airspace, or were stationed on the territory of the State where the attack originated (State B) but without the active involvement of that State's government or armed forces. In such a situation the author of the attack would not be State B itself, but an armed organized group of a non-State character (Group X) which was capable of mounting an armed attack in its own right, without acting in any way on behalf of or under the control of the State where the attack originated from. Self-defence would only be relevant within such a context to the extent that State B were neither willing nor capable of carrying out either law enforcement or other measures directed against the armed organization or group which had carried out the attack, and

did not consent to measures by the State which had been subjected to attack.¹² In such a case, the target State of the attack (State A) would be justified in taking measures in self-defence in conformity with the Charter and customary requirements governing the exercise of self-defence which were directed against the organization responsible for the attack, even in the absence of consent by the State where the organization was located and conducting its operation from. Although this position is not wholly uncontroversial, it does seem to best reflect considerable (recent) State practice and best conform to the legal structure relating to the use of force, as well as with contemporary realities in which States are not the only actors capable of conducting an armed attack and do not always exercise effective control or a monopoly over armed force on their territory.¹³

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Footnotes:

¹ J. Crawford, *The International Law Commission's Articles on State Responsibility* (2002), 163–5. Article 20 of the Articles on State Responsibility lays down the generally accepted conditions for the granting of valid consent, which are discussed in para. 1 of the commentary to Section 14.02. See 2(2) *Yearbook of the International Law Commission*, (2001), 72–4.

² See Sections 5.02 and 8.01 and supporting commentary.

³ This is a paraphrase of a classic rule of international law that a State possesses exclusive jurisdiction over its territory, which was set out in the arbitral decision of the *Island of Palma's Awards* (RIAA), 4 April 1928, Vol. II, 829 at 838. Other relevant rules of international law would include the principle of non-intervention, the prohibition of the use of force, and the right to self-determination. For a restatement of these rules see, *inter alia*, GA Res. 2625 (XXV) (1970).

⁴ If attacked, forces which were stationed on another State's territory could obviously defend themselves; see para. 3 of the commentary to Section 14.03 for further explanation of this question.

⁵ See Crawford, *International Law Commission's Articles*, 164–5 (part 4 of his commentary to Article 20 of the Articles on State Responsibility).

⁶ Examples which readily spring to mind include, but are not limited to, the German and Soviet invasions of Czechoslovakia in 1938 and 1968 respectively, the Soviet intervention in Afghanistan in 1979, and the United States intervention in Grenada in 1983, the last of which was partly justified by an alleged invitation by the Governor General, whose authority to issue such consent was subject to doubt. For a general treatment of the question see L. Doswald-Beck, 'The Legal Validity of Military Intervention by Invitation of the Government', 56 *BYBIL* (1985), 189.

⁷ This is a general principle of law contained in the Roman law maxim '*Nemo plus iuris ad alium transferre potest, quam ipse habet*' in J.E. Spruit, *Textus Iuris Romani* (Deventer: Kluwer, 1977), para. 462 at 198.

⁸ On the basis of, *inter alia*, Articles 103 and 24 of the Charter in relation to a Security Council mandate and the right of a State to defend itself within the terms of the Charter and customary law relating to self-defence with regard to the concurrent applicability of consent and self-defence; see para. 3 of the commentary to this Section for further elaboration.

⁹ See Section 5.03 with supporting commentary.

¹⁰ *Ibid.* See also Section 5.08 with supporting commentary.

¹¹ See Section 8.05 and supporting commentary. The requirement of a request (or clear consent) in relation to collective self-defence was stated clearly in the ICJ decision in the *Nicaragua* case; ICJ

Reports, 1986, 14, at 104.

¹² See Section 8.03 and supporting commentary.

¹³ Ibid. para. 5 of the commentary. An alternative aside from self-defence for possible justification of military action directed against a non-State entity which acts upon its own initiative without the substantial involvement of a State includes 'state of necessity'. However, it is a less satisfactory ground in view of the ILC's consistent position that it could not be invoked to justify military intervention. See Crawford, *International Law Commission's Articles*, 185.