

What's in a Name? The Terminology of Intervention by Invitation

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In certain circumstances, an intervention by invitation is legal.¹ That appears to be the premise of most, if not all, scholars working in this field of international law. The subsequent scholarly debate centres on determining those certain circumstances. This paper will not contribute to that particular debate, however. It will demonstrate that a fundamental issue surrounding the concept of intervention by invitation is being overlooked. That issue is its name, and with it, the implied legal classification. Accordingly, this paper focusses on the use of the term “intervention” within the concept of intervention by invitation and it wonders whether the term “use of force” is not the more appropriate idiom to employ.

Using the correct terminology is of vital importance, as the terms intervention and use of force lead to the application of different sets of rules. If an intervention by invitation is classified as an intervention, the principle of non-intervention (or the prohibition of intervention) applies. If one were to speak of a use of force, however, the prohibition of the use of force applies. Hence, these two terms lead to different (yet strongly related) concepts under public international law, to which different rules apply. It is thus crucial to understand the difference between an intervention and a use of force.

The International Court of Justice has provided some clarity in the *Nicaragua* case.² A wrongful intervention is one that uses methods of coercion. These methods are “particularly obvious”³ with an intervention that uses force. The Court has thus created a clear link between the notions of intervention and use of force. If a State uses force illegally, it violates both the prohibition of intervention and the prohibition of the use of force.⁴ Every use of force is therefore classified as an intervention as well, but not every intervention can be classified as a use of force, only those interventions that

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¹ See *L. Doswald-Beck*, *The Legal Validity of Military Intervention by Invitation of the Government*, BYIL 56 (1986), 189 et seq.

² ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports 1986, 14, 108 (para. 205).

³ *Nicaragua v. United States of America* (note 2).

⁴ *M. Koben*, *The Principle of Non-Intervention 25 Years after the Nicaragua Judgment*, LJIL 25 (2012), 157 et seq.

use of force can be.⁵ The question then remains what a use of force actually entails.

The definition of the term use of force has been the subject of recent studies. *Olivier Corten*⁶ and *Tom Ruys*⁷ in particular have published detailed and stimulating works. Both also research the topic of intervention by invitation. However, neither one has created a clear link between the definition of use of force and the terminology of intervention by invitation. For example, *Corten* spends an entire chapter on defining both threat and use of force, but he does not relate back to it in his chapter on intervention by invitation. It therefore seems that even if scholars are aware of the intricacies surrounding the definition of use of force and even if they work within the area of intervention by invitation, they do not question the name of this concept under public international law.

One factor to define the term use of force is generally accepted: a use of force is limited to armed force, thereby excluding for example economic force.⁸ *Corten* and *Ruys* have distilled additional factors. *Corten* focusses on gravity and intent, while *Ruys* is of the opinion that there is no *de minimis* (gravity) threshold but he does include intent as a factor to be considered as well.⁹

Notwithstanding these different definitions, an intervention by invitation will always meet these proposed thresholds. The State intervening upon the invitation of another State, will do so by deploying its armed forces to the inviting State's territory, where they will often engage in combat. As a result, the gravity threshold is met. The intervening State also has the intent to use armed force, which is precisely the reason why its armed forces are now stationed in the inviting State's territory. Thus, an intervention by invitation will always meet the threshold of a use of force. The correct rule to apply is therefore the prohibition of the use of force. Consequently, it would be more appropriate to refer to a use of force rather than an intervention when discussing military activity in a foreign state upon invitation. Hence, a more fitting name for this concept would be use of force by invitation.

It must be noted that no assertion is hereby made as to the legality of an intervention by invitation (or use of force by invitation, actually). The conclusion is merely that it concerns a use of force rather than an intervention.

⁵ *M. Jamnejad/M. Wood*, The Principle of Non-Intervention, LJIIL 22 (2009), 345 et seq.

⁶ *O. Corten*, The Law Against War, 2010.

⁷ *T. Ruys*, The Meaning of "Force" and the Boundaries of the *Jus ad Bellum*: Are "Minimal" Uses of Force Excluded from UN Charter Article 2(4)?, AJIL 108 (2014), 159 et seq.

⁸ *A. Randelzhofer/O. Dörr*, Article 2(4), in: B. Simma/D.-E. Khan/G. Nolte/A. Paulus (eds.), The Charter of the United Nations: A Commentary, Vol. I, 2012, 200 et seq.

⁹ *O. Corten* (note 6), 66 et seq.; *T. Ruys* (note 7), 171 et seq.

It is an entirely different question whether such a use of force is lawful.¹⁰ To answer that question, one must look into the prohibition of the use of force as contained in Article 2(4) United Nations Charter. What is prohibited, is force used “within international relations”.¹¹ Using force upon the invitation of the territorial state cannot be classified as such: the force is used by the intervening state outside its own borders, but it is not used against the territorial state. In fact, the force is used on the same side as the territorial state, since that state issued the invitation. A use of force by invitation will therefore fall outside the scope of the prohibition and is therefore lawful.¹²

In conclusion, *Shakespeare* pondered the importance of a name, as a rose would still smell as sweet if it were called differently. Yet, it was evidently of great significance for *Romeo* and *Juliet*, as their surnames prevented them from being together. So too does a name carry weight for legal scholars, as it leads to the application of different sets of rules. Indeed, there is much in a name and the correct terminology must therefore be employed, which in this case is use of force by invitation.

¹⁰ See the Impulse by *Florian Kriener* on this question.

¹¹ Art. 2(4) UN Charter.

¹² *L. Visser*, May the Force Be with You: The Legal Classification of Intervention by Invitation, NILR 66 (2019), 21 et seq.

