

Benjamin K. Nußberger

Interstate Assistance to the Use of Force



Nomos

INSTITUTE FOR
INTERNATIONAL PEACE
AND SECURITY LAW



**Kölner Schriften zum Friedenssicherungsrecht
Cologne Studies on International Peace und Security Law
Études cognaises sur le droit de la paix et de la sécurité
internationales**

Herausgegeben von/Edited by/Éditées par

Prof. Dr. Dr. h.c. Dr. h.c. Claus Kreß LL.M. (Cambridge)

Band/Volume 23

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The open access publication of this title was made possible by the umbrella initiative „Hochschule.digital Niedersachsen“ of the German state of Lower Saxony.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Köln, Univ., Diss., 2022

ISBN 978-3-7560-0648-9 (Print)
978-3-7489-3982-5 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-7560-0648-9 (Print)
978-3-7489-3982-5 (ePDF)

Library of Congress Cataloguing-in-Publication Data

Nußberger, Benjamin K.

Interstate Assistance to the Use of Force

Benjamin K. Nußberger

884 pp.

Includes bibliographic references.

ISBN 978-3-7560-0648-9 (Print)
978-3-7489-3982-5 (ePDF)

1st Edition 2023

© Benjamin K. Nußberger

Published by

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-7560-0648-9 (Print)

ISBN 978-3-7489-3982-5 (ePDF)

DOI <https://doi.org/10.5771/9783748939825>



Onlineversion
Nomos eLibrary



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To Felicitas and Ferdinand in hope for a peaceful life

Preface

It was a brief letter that ultimately led to this book: Germany's report to the Security Council about its contributions to fighting ISIS in Syria. The masterful ambiguity of the letter intrigued me to explore the legal grey area in which interstate assistance often operates. The manuscript essentially developed during my time at the Institute for International Peace and Security Law at University of Cologne and at the University of Oxford. I defended it as doctoral dissertation at the Faculty of Law of the University of Cologne in November 2022. The present book is a revised and updated version of my dissertation. It takes into account State practice and literature up to March 2023, including practice relating to the ongoing war triggered by the Russian aggression against Ukraine.

A book on assistance, how could it be different, could not have been finished without the support of many. Hence, first and foremost, I would like to extend my sincere gratitude to Professor Claus Kreß, who exemplifies why in Germany a doctoral supervisor is called "Doktorvater" (doctoral father). Claus has been a "Doktorvater" to me in a literal meaning, caring about my academic and personal well-being. I would also like to thank Professor Stefan Hobe as the second examiner of my thesis for reviewing my work so swiftly.

I am grateful for having been able to think, research, and write in extraordinarily stimulating and supportive environments. I would like to especially thank Professor Catherine Redgwell, Professor Dapo Akande, Professor Miles Jackson, and Professor Antonios Tzanakopoulos for their hospitality and for fully integrating me into the vibrant and inspiring PIL group during my two-year academic stay in Oxford. Also, I owe thanks to the Bodleian law library staff, who guided me through the thicket of the archives of United Nations Official Papers. Similarly, I am particularly grateful to have been a fortunate member of the Institute of International Peace and Security Law in Cologne. The institute has always been my academic family and home base. On that note, I wish to thank all my (academic) companions and friends who accompanied me on this journey, emotionally or intellectually. Treading this path together has decisively shaped the book. Each and every conversation about assistance helped me to better understand my questions, my thoughts, and eventually my book.

project. Paula Fischer, Josef Weinzierl, and my brother Malte Nußberger, who were the first to take on my full manuscript, deserve special mention here.

I am grateful to the German Academic Scholarship Foundation that generously supported my doctoral studies and my research stay in Oxford; to the German Academic Exchange Service (DAAD) for also supporting my academic visit to Oxford; and to the Institute for International Peace and Security Law as well as the Niedersachsen Consortium for generously funding the publication and enabling me to share my book with all, open access.

Last but not least, I would also like to say ‘thank you’ to my family – especially Angelika and Stephan, my parents, whose contributions by their very nature could not but be described inadequately, yet in any case have been at any time pivotal. Finally, a great and heartfelt ‘*merci infiniment*’ to my wife, Anne-Marie, who personifies loving, boundless, patient, assuring, and enabling assistance that cannot be properly put into words but certainly makes her an ‘accomplice’ in whatever I do.

Berlin, March 2023

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Selected Abbreviations

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|-----------------------|---|
| 1987-Declaration | United Nations General Assembly Resolution 42/22 of 18 November 1987, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Use of Force in International Relations |
| Aggression Definition | United Nations General Assembly Resolution 3314 (XXIX) of 14 December 1974, Definition of Aggression |
| alt | alternative |
| AP | Associated Press |
| Appl No | Application Number |
| ARIO | Articles on the Responsibility of International Organizations, in Yearbook of the International Law Commission, 2011, vol. II, Part Two, as it appears in the annex to General Assembly resolution 66/100 of 27 February 2012 |
| ARS | Articles on the Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol II (Part Two), as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4. |
| ASEAN | Association of Southeast Asian Nations |
| ATT | Arms Trade Treaty, adopted by United Nations General Assembly Resolution 67/234B of 2 April 2013, entered into force 24 December 2014, 3013 UNTS I52373 |
| AU | African Union |
| BT Drs | Bundestagsdrucksache |
| BVerfG | Bundesverfassungsgericht |
| BVerfGE | Entscheidungen des Bundesverfassungsgerichts |
| BVerwG | Bundesverwaltungsgericht |
| BVerwGE | Entscheidungen des Bundesverwaltungsgerichts |
| CADSP | Solemn Declaration on a Common African Defense and Security Policy (27-28 February 2004) |
| Daesh | Islamic State of Iraq and the Levant |
| Deb | Debate |
| DeptStBull | Department of State Bulletin |

Selected Abbreviations

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| DW | Deutsche Welle |
| ECHR | European Convention of Human Rights |
| ECOWAS | Economic Community of West African States |
| ECtHR | European Court of Human Rights |
| ed | Editor |
| edn | edition |
| eds | Editors |
| EU | European Union |
| FAZ | Frankfurter Allgemeine Zeitung |
| Friendly Relations Declaration | United Nations General Assembly Resolution 2625 (XXV) of 24 October 1970, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations |
| FT | Financial Times |
| GCC | Gulf Cooperation Council |
| HC | House of Commons |
| HL | House of Lords |
| i.a. | inter alia |
| IBTimes | International Business Times |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, 999 UNTS 171 |
| ICG | International Crisis Group |
| ICJ | International Court of Justice |
| ICRC | International Committee of the Red Cross |
| ICTY | International Criminal Tribunal of the Yugoslavia |
| IHL | International Humanitarian Law |
| ILC | International Law Commission |
| ILC ARS Commentary | Responsibility of States for Internationally Wrongful Acts, General Commentary, as it appears in Yearbook of the International Law Commission, 2001 vol II Part Two as corrected, pages 31-143 |
| ILCYB | Yearbook of the International Law Commission |
| ILDC | International Law in Domestic Courts |

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| ILM | International Legal Materials |
| IRNA | Islamic Republic News Agency |
| ISIL | Islamic State of Iraq and the Levant |
| ISIS | Islamic State of Iraq and the Levant |
| KUNA | Kuwait News Agency |
| LNTS | League of Nations Treaty Series |
| LoN | League of Nations |
| LoNC | Covenant of the League of Nations |
| NAM | Non-Aligned Movement |
| NATO | North Atlantic Treaty Organization |
| No | Number |
| NYT | New York Times |
| OAS | Organization of American States |
| OSCE | Organization for Security and Co-Operation in Europe |
| OIC | Organisation of Islamic Cooperation |
| OVG | Oberverwaltungsgericht |
| para | paragraph |
| RFERL | Radio Free Europe Radio Liberty |
| SIPRI | Stockholm International Peace Research Institute |
| SOFA | Status of Force Agreement |
| SZ | Süddeutsche Zeitung |
| TIAS | Treaties and Other International Acts Series |
| UN | United Nations |
| UNC | Charter of the United Nations |
| UNCIO | Documents of the United Nations Conference on International Organization |
| UNGA | United Nations General Assembly |
| UNRIAA | Reports of International Arbitration Awards |
| UNSC | United Nations Security Council |
| UNSG | United Nations Secretary General |
| UNTS | United Nations Treaty Series |
| UNYB | Yearbook of the United Nations |
| UST | United States Treaties and Other International Agreements |

Selected Abbreviations

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| VCLT | Vienna Convention on the Law of Treaties, done on 23 May 1969, entered into force on 27 January 1980, 1155 UNTS 331 |
| VG | Verwaltungsgericht |
| vol | volume |
| WaPo | Washington Post |
| WSJ | Wall Street Journal |

Symbols without specific designation are United Nations documents. For the abbreviations used, see the Dag Hammarskjöld United Nations Library guide on 'UN Document Symbols' available at: <https://research.un.org/en/docs/symbols>.