

Benjamin K. Nußberger

Interstate Assistance to the Use of Force



Nomos

INSTITUTE FOR
INTERNATIONAL PEACE
AND SECURITY LAW



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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 Krefß, 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.

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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

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

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

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

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>.