

*Institut für Völkerrecht, Dr Oliver Landwehr
LMU Munich*

Nolte, Georg. *Eingreifen auf Einladung: Zur völkerrechtlichen Zulässigkeit des Einsatzes fremder Truppen im internen Konflikt auf Einladung der Regierung* (Intervention upon Invitation: Use of Force by Foreign Troops in Internal Conflicts at the Invitation of a Government under International Law). Berlin: Springer 1999; Pp. xxxiv, 699 (with English summary).

At the beginning of the twenty-first century, military conflict remains an unfortunate reality of international relations. At the same time, however, the structure of military conflicts seems to be undergoing changes that pose new challenges to international law. On the one hand, military conflict is taking place more and more frequently within the boundaries of established states. Whether in the Balkans or in Africa, conflicts between ethnic, religious or political groups have been fought with such intensity that the line between international and internal armed conflict has become increasingly hard to trace. On the other hand, the level of tolerance of the international community towards armed conflict, be it internal or international in nature, has declined. Ideally, reactions of the international community should occur within the framework of the UN Charter, and under the full responsibility of the UN Security Council. However, the Security Council's ability or willingness to tackle high-intensity internal conflict has proven to be limited. As Nato's

intervention in Kosovo has shown most recently, this may cause states or groups of states to intervene in internal armed conflict even without the coverage of UN Security Council resolutions.¹

In this context, Georg Nolte's book on 'Intervention upon Invitation' is a most timely publication. Nolte's book appears to be the first comprehensive treatment in recent times of the international law problems raised by the use of force by foreign troops in internal conflict at the invitation of a government. By rescuing a half-forgotten topic from the attic of international law, Nolte's choice of topic demonstrates some courage, and the introductory chapter to the book shows that the author is aware of this. However, Nolte's choice seems justified for two reasons. First, government invitation is a justification for the use of force that has – explicitly or implicitly – frequently played a role in armed conflict, and will most likely continue to do so. Second, intervention upon invitation is a topic that is delicately positioned on the borderline between national and international law. It is thus a topic of intense theoretical interest, which allows the author to tackle core topics of current international law such as the extent of state sovereignty, the legitimacy of governments, and self-determination.

The book is divided into four parts. The first part is primarily of a historical nature, tracing the development of the relevant doctrine, but also of state practice up to the end of the Cold War period. In the second part, Nolte examines the relationship of invitation upon intervention with principles of international law including consent, recognition of governments, the prohibitions of intervention and the use of force, and self determination. The main part of the book is arguably the third part, which contains a very comprehensive account of relevant state practice since the 1960s. On this basis, Part Four presents Nolte's appreciation of the current state of

¹ Cf. M. Bothe and B. Martenczuk, *Die NATO und die Vereinten Nationen nach dem Kosovo-Konflikt* (1999), at 125; Simma, 'NATO, the UN and the Use of Force: Legal Aspects', 10 *EJIL* (1999), 1.

international law with respect to the use of force by foreign troops upon government invitation.

In the first chapter of Part One, Nolte provides an overview of doctrine and state practice from early modern times until the entry into force of the UN Charter. Interestingly, this chapter documents the absence of a consensus on the problem of government invitation even in this early period, which was not yet characterized by a general prohibition of the use of force in international relations. More directly relevant to the current state of international law, the second chapter gives an overview of state practice from 1945 until the early stages of decolonialization. In this chapter, the author provides interesting accounts of early cases where an invitation from the government was raised as a possible justification for an intervention, particularly the Soviet intervention in Hungary in 1956. He also discusses the implications of certain multilateral debates, such as those on a definition of aggression. This leads to the third chapter, which provides an account of the scholarly debate on the issue, a debate which was essentially discontinued with the end of the Cold War. Overall, Part One provides a useful introduction to the historical background and the controversial nature of the topic. On the negative side, one must note that Nolte fails to sufficiently distinguish the various sources he discusses, such as bilateral practice, multilateral debate, or scholarly opinion, according to their status and importance. In terms of structure, it is also not clear why certain aspects of state practice, such as the Soviet intervention in Hungary in 1956, are discussed in the introductory chapter, while the main review of state practice takes place in Part Three.

In Part Two, Nolte addresses a number of basic questions of international law that may arise in relation to the use of armed force upon government invitation. The first relatively brief chapter is devoted to the principle of state consent, taking into account the debates of the International Law Commission on state responsibility, and particularly on 'circumstances precluding wrongfulness'. In this con-

text, Nolte also examines the question whether consent might be irrelevant due to the *jus cogens* character of certain norms, such as the prohibition of the use of force. Rightly, however, he does not accept the existence of a general rule of *jus cogens* that would exclude the use of foreign troops upon government intervention. In the following chapter, Nolte turns to the notion of government. In his view, the power of a government to request the intervention of foreign troops does not depend on a formal recognition of the government, but on substantive criteria related to its effectiveness, which he examines with respect to a number of constellations, including transitional governments and 'failed states'. In Nolte's opinion, freely and fairly elected governments are privileged in the sense that they may continue to be recognized even if their rule is no longer (or not yet) effective; this is supported by a number of examples from state and multilateral practice, such as the case of Haiti in 1994.

In the next chapters, Nolte proceeds to analyse certain principles that may limit the right of governments to invite foreign troops to intervene in internal conflict. The first of these principles is the prohibition of intervention in the internal affairs of a state. However, the inherent vagueness of this principle makes it difficult to deduce any clear rules regarding the invitation problem. In fact, if the rationale of the principle is the protection of state sovereignty, and if the state is legitimately represented by the government, it is difficult to see how an intervention upon invitation could be qualified as illegal. Another relevant principle, to which Nolte next turns, is the prohibition of the use of force. With the exception of conflict between stabilized *de facto* regimes, and despite the recent practice of Security Council interventions in internal conflict, Nolte considers that the prohibition still does not apply to internal conflicts; as a recent example, he cites the Russian intervention in Chechnya. Accordingly, the principle cannot prohibit the invitation of foreign troops in internal conflicts. Even though it is difficult to take issue with this interpretation of current inter-

national law, Nolte's analysis leaves this reviewer somewhat uneasy. Between the classic case of Korean-style *de facto* regimes on the one hand and isolated terrorist violence on the other, there is a vast range of violent conflict that international law would not seem to adequately capture. Unfortunately in this context, Nolte does not examine the rules of the law of neutrality and of humanitarian law applicable in internal conflict. This may be a consequence of Nolte's strong focus on the government, which leads him to lose sight at times of the other belligerents. Overall, Nolte may therefore somewhat underestimate the importance of international law in internal armed conflict.

Nolte's focus on the government side is somewhat redressed in the last chapter of Part Two, in which he considers self-determination and human rights as limitations for intervention upon invitation. For Nolte, self-determination is essentially a right of the people as organized within a state. Therefore, logically it cannot function as a major check on the powers of the central government. Accordingly, Nolte does not recognize a right of secession that would limit the power of the government to invite foreign troops. It is submitted that even after the Kosovo crises, this appreciation of international law remains essentially correct. Nolte acknowledges the importance of a democratic legitimization of the government, but does not consider undemocratic governments as automatically disqualified from inviting foreign troops. The only exception he makes is in cases where a government engages in serious and systematic human rights violations, or in genocidal acts.

The third part of the book contains a detailed analysis of relevant state practice. In this part, Nolte examines over 60 cases of intervention of foreign troops since the 1960s, in which the government invitation played a prominent role as a possible justification for intervention. This analysis is subdivided into five chapters along roughly regional or political lines: American and Soviet practice until 1990, including prominent cases such as the interventions in Czechoslovakia, Afghanis-

tan, Grenada and Panama; French interventions in Africa; inter-African practice; Russian and CIS practice since 1990, particularly in the Caucasus region; and finally certain other cases, including for instance the Indian intervention in Sri Lanka in 1987. Overall, this part is outstanding for its attention to detail as well as the extent to which the political context of the respective intervention has been taken into account. It provides information on many cases of armed intervention for which little documentation has to date been available, particularly with respect to practice in Africa. Among the about 60 cases analysed, Nolte can identify about 40 clear cases of intervention in internal armed conflict at the invitation of an effective government. He concludes that intervention upon invitation in internal conflicts therefore is a reality in international relations that has been recognized as lawful in the reactions of the international community.

On the basis of this overview of state practice, Part Four attempts to state the applicable principles of international law. With respect to the principle of non-intervention, Nolte contends that intervention upon invitation is lawful only if it remains 'auxiliary' in nature, i.e. does not call into question the political control exercised by the inviting government. With respect to self-determination, Nolte seems to confirm his earlier findings, but now enlarges these to argue that self-determination would also be violated if foreign troops intervene 'against the clear wish of the people of the State concerned', in particular in cases of popular uprisings. Furthermore, Nolte addresses some issues regarding the form of invitations, and the risk of abuse of the justification. However, he sees this as a minor risk, particularly since the burden of proof would always lie with the intervening government. Finally, Nolte examines the question of whether different standards apply when interventions take place in a multilateral conflict. Despite the increasing frequency of such interventions, and in the absence of an authorization from the Security

Council, Nolte does not recognize the existence of specific rules applying in the case of multilateral interventions.

In the last chapter, Nolte turns to consider the implications of the developments of the UN collective security system since the end of the Cold War period. He correctly notes the tendency of the UN Security Council to consider internal conflict as a threat to the peace within the meaning of the UN Charter. However, he does not think that this tendency would limit the right of governments to request foreign assistance in cases of internal conflict occurring on their territory. In Nolte's view, much like the right of self-defence, intervention upon invitation may serve as a 'safety valve' where the Security Council cannot intervene to secure peace. Legally speaking, this analysis is probably correct. Politically speaking, a certain degree of caution might be appropriate. Most frequently, intervention upon invitation occurs in a grey zone between straightforward international armed conflict and innocuous forms of international military or police cooperation. In this grey area, the line between the purely internal and the international will be impossible to draw. The higher the intensity of the conflict, however, the more dangerous third-party intervention will be, and the greater therefore the role that the UN security system will have to play. That the UN system currently is not ready to fulfil this role in every case is not an argument in favour of intervention; it is an argument in favour of UN reform.

Overall, Nolte's book provides a stimulating approach to a long-neglected problem. On the basis of his analysis of state practice, he draws a nuanced picture of the state of international law applicable in the area. The book does not provide hard and fast rules. However, given the current state of international law, this would not have been a realistic expectation. Instead, Nolte carefully works along the barely traceable boundary of state sovereignty and international law. This makes the book interesting reading for anyone interested in these fundamental issues of international law. At the same time, it provides useful guidance for a legal question that is bound to recur in

international legal practice.²

*MPA (Harvard), Dr. Bernd Martenczuk
Brussels*

² Presently pending before the International Court of Justice is a case brought by the Democratic Republic of the Congo against Uganda concerning unlawful armed activities of Uganda in the Congo. In this case, Uganda has defended itself by arguing that the Congo had agreed to the presence of Ugandan troops, specifically by signing the Lusaka peace agreement (cf. ICJ, *Case concerning Armed Activities on the Territory of the Congo, Request for the Indication of Provisional Measures*, Order of 1 July 2000, para. 24).