

INTERNATIONAL LAW ASSOCIATION
ATHENS CONFERENCE (2024)
USE OF FORCE: MILITARY ASSISTANCE ON REQUEST

*Members of the Committee**

Professor Claus Kreß (German): *Co-Chair*

Dr Hannah Woolaver (South African): *Co-Chair*

Professor James A. Green (British): *Co-Rapporteur*

Dr Erin Pobjie (Australian): *Co-Rapporteur*

Dr Constantine Antonopoulos (Hellenic)

Professor Masahiko Asada (Japan)

Alternate: Professor Tatsuya Abe

Dr Danae Azaria (British)

Professor Guimei Bai (HQ)

Professor Jack M. Beard (American)

Philippe Blaquier-Cirelli (French)

Dr Gleb Bogush (Russian)

Professor Antonio Bultrini (Italian)

Professor Dr Erika de Wet (Netherlands)

Alternate: Dr Laura Visser

Professor Alena Douhan (Belarusian)

Professor Amos O. Enabulele (Nigerian)

Professor Gloria Fernández Arribas (Spanish)

Dr Luca Ferro (Belgian)

Professor T.D. Gill (Netherlands)

Professor Alonso Gurmendi Dunkelberg (HQ)

Professor Gerhard Hafner (Austrian)

Alternate: Dr Markus P. Beham

Dr Anan Al Sheikh Haidar (German)

Professor Christian Henderson (British)

Professor Michał Kowalski (Polish)

Alternate: Professor Patrycja Grzebyk

Professor Jang-Hie Lee (Korean)

Ambassador Marja Lehto (Finnish)

Dr Eliav Liebllich (Israel)

Dr Christian Marxsen (German)

Dr Carrie McDougall (Australian)

Alternate: Dr Michael Smith

Professor Koichi Morikawa (Japan)

Alternate: Professor Tadashi Mori

Dr Robert Muharremi (Albanian)

Professor Mary Ellen O'Connell (American)

Alternate: Professor Brad Roth

Professor Inger Österdahl (Swedish)

Dr Federica Paddeu (British)

Professor Anne Peters (Swiss)

Alternate: Ezequiel Heffes

Dr Chiara Redaelli (Italian)

Professor Vera Rusinova (Russian)

Professor Tom Ruys (Belgian)

Professor Christian J. Tams (German)

Professor Jennifer Trahan (American)

Dr Jure Vidmar (Slovene)

Alternate: Svit Senković

Dr Sharon Weill (French)

Sir Michael Wood (British)

* It should be noted that the composition of the officers of the Committee changed in 2023. See Section II.

INTERIM REPORT

2024

I. Introduction to the Interim Report

The third iteration of the International Law Association (ILA)'s Use of Force Committee was formed and had its mandate ('Military Assistance on Request') confirmed by the ILA Executive Council in November 2018, although the majority of nominations were only confirmed, and thus the Committee properly composed, in early 2020. The officers initially had intended to deliver the Committee's Final Report at the ILA Biennial Conference in 2022. However, the onset of the COVID-19 pandemic unfortunately delayed our work. Committee activity nonetheless continued throughout 2020-2021, and notable progress has been made. In 2022, the ILA Executive Council approved an extension of our mandate until 2026 to allow us to complete our work.

In this brief Interim Report, we aim to provide some updates on our activities and progress for the benefit of the wider ILA membership and other interested parties, ahead of the ILA's 81st Biennial Conference in Athens, Greece (June 2024). However, the Committee officers have decided not to include any substantive material in this interim report. This is partly because the current state of drafting (see Section II.D) means that our written work at the time of submitting this Interim Report is quite fragmented and incomplete and is thus not suitable for wider distribution. In addition, there are key issues yet to be resolved within the Committee that mean we wish to exercise caution in terms of any wider dissemination at this juncture.

II. A Note on the Officers of the Committee

From the inception of this Committee in 2018 until 2023 Professor Vera Rusinova fulfilled the role of co-chair (alongside Professor Kreß) and Professor Tom Ruys fulfilled the role of co-rapporteur (alongside Professor Green). Unfortunately, in 2023, both Professor Rusinova and Professor Ruys had to step down from these roles, for reasons of circumstance, although they remain valued members of this Committee. They have recently been replaced, from within the existing Committee membership, by Dr Hannah Woolaver and Dr Erin Pobjie respectively. Acknowledgement and a huge thank you must go to Professor Rusinova and Professor Ruys for their substantial contributions, as officers, to the Committee's work so far. The Committee is also very grateful for the willingness of Dr Woolaver and Dr Pobjie to step into these roles so as to allow us to continue our work.

III. A Summary of the Activity of the Committee

A. Committee events

Although preceded by a number of informal meetings and initial planning sessions amongst the officers in 2019, the first formal meeting of the Committee membership had been intended for spring 2020. However, this unfortunately was delayed by the COVID-19 pandemic.

- The first meeting of the Committee eventually took place on 13 November 2020. This remote session involved open discussion amongst the Committee members about all

aspects of our mandate and, in particular, developed a plan for future work. Members were also invited to submit their views on the topic and our planned work via email before and after the meeting, and this material was collated and then later fed back in by the rapporteurs.

- The Committee's second meeting was a working session as part of the (delayed) ILA Biennial Conference in Kyoto, which took place on 7 December 2020. This session involved the presentation of two prepared background papers by Committee members, discussion of these papers, as well as a more general discussion about the development of the Committee's work and the parameters for its report.
- The Committee's third event was a much more extensive, two-day, meeting, which took place (again remotely) on 6 and 7 May 2021. A wide range of background papers were prepared in advance and circulated; these then were presented by their authors at the event. Each paper was also assigned a specific discussant. After the presenter and discussant had spoken, a wider discussion of each paper took place. Also at this meeting, there was a more detailed exchange of views as to what should be included in the Committee's report – after which the officers drafted a provisional structure.
- The fourth meeting of the Committee took place on 20 November 2021, again remotely. This involved the presentation and detailed discussion of another background paper, as well as further discussion of the (revised) draft structure and planning for the next round of future work.
- The fifth meeting of the Committee was a two-day (hybrid) event that took place in Graz, Austria, on 12-13 May 2022. This was the first opportunity for members of the Committee to meet in person. Four background papers were prepared ahead of the event and presented in Graz (again, with assigned discussants).
- The sixth meetings of the Committee were its open and working sessions at the ILA's 80th Biennial Conference in Lisbon, Portugal, which took place from 19-24 June 2022. Two background papers were presented in the open session, and discussion of plans for the first round of drafting of the report took place in the closed session.
- The seventh meeting of the Committee was a two-day (hybrid) event that took place in Warsaw, Poland, on 25-26 May 2023. Ahead of this meeting, the first draft version of (some of) the report was circulated to members (see Section II.D) and this was discussed in a lengthy session. Four further background papers were also presented.
- The Committee's eighth, and most recent, meeting took place remotely over two days, on 30 November and 1 December 2023. Three background papers were presented and discussed.

B. Presentations/background papers

The following papers were prepared in written form and presented at the events detailed in Section II.A.

[note: other members generously acted as discussants to support and develop the presentations of these papers and stimulate wider discussion amongst the Committee membership]

- Constantine Antonopoulos – *Military Intervention at the Request of the Government the Negative Equality Principle: State Practice*
- Markus P. Beham, *Peacekeeping Operations and Military Assistance Upon Request: Overlaps and Borderlines*
- Gleb Bogush – *Regional practice: Russia (including Soviet Union)*

- Antonio Bultrini – *(Re-)Framing Military Assistance on Request in the Light of Conflict Minimisation*¹
- Luca Ferro – *Common Article 1 (and vetting/monitoring)*
- James A. Green – *Military Assistance on Request and Collective Self-Defence*²
- Alonso Gurmendi Dunkelberg – *Regional practice: Latin America*
- Anan Al Sheikh Haidar – *Regional practice: Middle East*
- Michał Kowalski and Patrycja Grzebyk – *Military Assistance on Request and Humanitarian Assistance*
- Eliav Lieblich – *Why Can't We Agree on When Governments can Consent to External Intervention?*³
- Eliav Lieblich – *Internal Self-Determination, Civil Wars, and The Legality of Consensual Intervention*
- Robert Muharremi – *Military Assistance upon Request and the Role of Recognition*
- Tadashi Mori, Tatsuya Abe, Aiko Nakai, Hirofumi Oguri and Sayoko Tanaka – *Regional practice: Asia*
- Federica Paddeu – *The Defence of Consent in the Law of State Responsibility*⁴
- Chiara Redaelli – *Provision of Weapons and Training, Non-Lethal-Assistance*
- Brad Roth – *Intervention by Invitation: The (Uncertain) Significance of Democracy*
- Christian Tams – *Military Assistance on Request: The Impact of Security Council Action*
- Jennifer Trahan and Anne Peters – *Invitation to Atrocities: When Military Intervention on Request is Unlawful*
- Jennifer Trahan and Anne Peters – *Invitation to Atrocities: When Military Intervention on Request Violates the Ius contra Bellum and the Ensuing Consequences*⁵
- Jennifer Trahan – *When Military Assistance on Request Falls Within the Crime of Aggression*
- Mary Ellen O'Connell – *Necessity and Assistance*
- Mary Ellen O'Connell – *Necessity and Proportionality*⁶
- Erika de Wet – *Timing of Consent*⁷
- Hannah Woolaver – *The Purpose-Based Approach to the Legality of Military Assistance on Request*

¹ This paper is based, in part, on elements of Antonio Bultrini, 'Reappraising the Approach of International Law to Civil Wars: Aid to Legitimate Governments or Insurgents and Conflict Minimization' (2019) 56 *Canadian Yearbook of International Law* 144.

² Elements of this paper have since been published in James A. Green, *Collective Self-Defence in International Law* (Cambridge, Cambridge University Press, 2024).

³ A version of this paper was published as Eliav Lieblich, 'Why Can't We Agree on When Governments can Consent to External Intervention? A Theoretical Inquiry' (2020) 7 *Journal on the Use of Force and International Law* 5.

⁴ A key aspect of this paper was published as Federica I. Paddeu, 'Military Assistance on Request and General Reasons against Force: Consent as a Defence to the Prohibition of Force' (2020) 7 *Journal on the Use of Force and International Law* 227.

⁵ This paper was based on the one listed immediately above it by the same co-authors (*Invitation to Atrocities: When Military Intervention on Request is Unlawful*) but was significantly rewritten and further developed, to the extent that it rightly can be considered an additional paper.

⁶ This paper was based on the one listed immediately above it by the same authors (*Necessity and Assistance*) but was significantly rewritten and further developed, to the extent that it rightly can be considered an additional paper.

⁷ A version of this paper was published as Erika de Wet, 'Military Assistance Based on Ex-Ante Consent: A Violation of Article 2(4) UN Charter?' (2020) 93 *Die Friedens-Warte* 413.

C. Upcoming events and background papers in development

In addition to the open and working sessions planned for the ILA's 81st Biennial Conference in Athens, Greece, in June 2024, the Committee also provisionally plans a meeting in Cape Town, South Africa, in February 2025. It is likely that further online meetings will also be scheduled during 2024 and 2025.

The following papers are being prepared and will be presented either at Athens (open session) or another online meeting in 2024 (as appropriate). We do not plan to prepare any further papers beyond these, which will conclude the background research work of the Committee. The titles of these papers are provisional.

[note: other members will be acting as discussants to support and develop the presentations of these papers]

- Danae Azaria – *The Implications of State Silence for Military Assistance on Request*
- Jack Beard – *Cyberspace and Military Assistance on Request*
- Antonio Bultrini – *The Impact of Third-State Support on NIACs (empirical study)*

D. Drafting/progress of report to date and plans for future drafting

As noted in Section III.A, the first round of drafting of the Committee's report was undertaken by Professor Green and Professor Ruys in late 2022/early 2023, ahead of the Committee's meeting in Warsaw. A draft was circulated to members and discussed at that meeting. This draft comprised two main sections, in addition to an introduction. The two sections drafted were 'The place of military assistance on request within the broader *jus ad bellum* framework' and 'Military assistance on request – general conditions'. The draft ran to 25 pages, but no work had yet been undertaken on a final section, which was intended – given its importance – to be lengthy, entitled 'Particular contexts in which consent may be problematic or controversial'. Following feedback and discussion in after the Warsaw meetings, the rapporteurs have partially reworked and updated the draft. There were also suggestions from within the Committee to restructure the report. Various proposals have been advanced for this and, at the time of writing this Interim Report, the officers have just agreed on a new structure for their next draft (although this could, of course, change again based on future discussion within the wider Committee membership once that draft is circulated).

Going forward, with Dr Pobjie now having taken over from Professor Ruys, the rapporteurs are currently working on an updated and extended draft report for circulation within the membership of the Committee in the middle of 2024, for discussion in Athens. This draft will update the previously drafted 'general conditions' section – based on Committee discussions – into a section redrafted as 'The issuance of consent'. This will include new sections such as considerations of matters such as mistake and fraud, as well as substantially revising the previous draft of the equivalent section. Current drafting is also focusing on a section entitled 'Conditions for lawful provision of consensual military assistance', which looks at issues such as proportionality, the limits of the provided consent, compliance with IHL and IHRL, etc. After discussion of these sections at Athens, they will of course then be further updated in the next draft of the report. That next draft will also include the first version of a new section on 'Contextual factors potentially relevant to validity of consent' (to be prepared in the second half of 2024), which will *inter alia* grapple with the most difficult issue for this committee – that of military intervention in the context of civil wars. This topic has deliberately been left until last, as it is the most acute point of contention within the Committee and will require careful drafting and discussion to try to reach consensus. The intent of the officers is to have a *full* draft completed in early 2025, albeit that sections will be in different stages of development. That full draft then will be refined through 2025 and to the end of the Committee's mandate in 2026.

This drafting process will draw on the many background papers already submitted (see Section III.B) and Committee discussions in meetings and written comments from its members. It will also draw on the three final papers being drafted, which will be submitted and presented in 2024 (see Section III.C).