MAKALE (Araştırma Makalesi)

SYRIA OPERATION OF RUSSIA IN CONTEXT OF INTERVENTION BY INVITATION

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ABSTRACT

Intervention by invitation refers to a request for military assistance from a second state in order to protect the legitimate power of a sovereign power. The most basic factor here is that this invitation is made in the context of a legitimate power. At the same time the existence of terrorist and insurgency activities for the mutilation of the will of the sovereign power is also an important factor. In this context, even if the strong intervention is explicitly prohibited both in the UN Charter and customary law the invitation intervention is accepted on a legitimate ground. At the invitation of the Assad administration of Russia, the air attacks against Syria are also legitimate ground within the invitation by intervention. However, there have been some major discussion areas within the intervention by invitation. Elements such as scope, limitations, duration and proportionality of the invitation are particularly expressed by the main discussion topics.

Keywords: Intervention by invitation, Russia, Syria, request, consent.

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DAVETLE MÜDAHALE BAĞLAMINDA RUSYA'NIN SURİYE OPERASYONU

ÖZ

Davetle müdahale konusu egemen bir iktidarın meşru bir şekilde devraldığı iktidarını korumak adına ikinci bir devletten askeri bir yardım talebini ifade eder. Burada ki en temel faktör meşru bir iktidarın talebi bağlamında bu davetin yapılmasıdır. Aynı zamanda egemen iktidarın iradesini sakatlamaya yönelik terörizm ve isyan faaliyetlerinin mevcut olması da önemli bir unsurdur. Bu bağlamda kuvvetle müdahale hem BM Şartında hem de örf, adet hukukunda açık bir şekilde yasaklanmış olsa da davetle yapılan müdahale meşru bir zeminde kabul edilmektedir. Rusya'nın Esad yönetiminin davetiyle Suriye'ye yönelik yapmış olduğu hava saldırıları da davetle müdahale kapsamında meşru bir zeminde oluşmaktadır. Ancak davetle müdahalenin kendi içerisinde de belli başlı tartışma alanları oluşmuştur. Özellikle davetin kapsamı, sınırlılıkları, süresi ve orantılılık gibi unsurlar temel tartışma konularının ifade etmektedir.

Anahtar Kelimeler: Davetle müdahale, Rusya, Suriye, davet, rıza.

I. INTRODUCTION

Since the issue of use of force in international law is directly related to the issue of the sovereignty of states, it has been discussed extensively from the past to the present and important problems are encountered in theory and practice in this regard. According to both the United Nations Charter art. 2/4 and customary international law; the use of force against a sovereign state is explicitly prohibited by international lawmakers.[1] However, all of the discussions on the use of force are based on the exceptions of this action, not its ban.

In this context, discussions within the framework of exceptions to the use of force;

Firstly, in the context of the right of self-defense permitted by UN Charter art. 51 and customary law, It is a preventive and proactive

[1] ICJ Reports (1986), Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, p. 14, paragh. 175.

legitimate defense practice that emerges with the use of force and its broad interpretation. Secondly, In accordance with Articles 41 and 42 of the UN Charter, the United Nations Security Council(UNSC) adopted Resolution 1973 for Libya and similar interventions are de facto situations. As the third; Humanitarian intervention that emerged in the 1990s and the type of intervention that evolved as a protection responsibility, finally; Treaties between states and practices such as intervention by invitation form the basis of discussions on the limits and legitimacy of the act of force.

The practice of intervention by invitation, which is the theme of this study, has been one of the most discussed topics in recent times in the context of Russia's intervention against Syria at the invitation of the Assad administration. At this point, in the context of the elements, limitations and objectives of the intervention by invitation, the question of legitimacy of international law was formed in Russia's intervention in Syria.[2]

The aim of this study is to examine the concept of intervention by invitation in the context of both international law regulations and customary law, to reveal the relationship of intervention by invitation with the prohibition of the use of force and to discuss the legitimacy of the application in international law. Secondly, in this study, an effort is made to seek an answer to the questions of the extent to which the conditions of the intervention by invitation in Russia's intervention in Syria are observed in international law and whether this intervention has legitimacy in international law.

In this context, firstly; by briefly mentioning the prohibition of using force and its exceptions in international law, the place of invited intervention in these exceptions will be revealed. In the second part, the concept of intervention by invited, its history, its place in international treaties and customary law, and the limitations of the concept will be discussed and in the last part; intervention discussions will be held with the intervention by invitation of Russia's in Syria.

[2] Samuel Mercier(2016), The Legality of Russian Airstrikes in Syria and 'Intervention by Invitation', E-International Relations, pp.1-5.

II. PROHIBITION OF THE USE OF FORCE AND EXCLUSIONS IN INTERNATIONAL LAW

The use of force in international law is explicitly prohibited both in UN Charter Article 2/4 and in international customary law. In this context, the prohibition of use of force is also a jus cogens rule. In this respect, breaking the ban imposes international legal responsibility on sovereign states. However, exceptions to the prohibition are based on legitimate grounds for the use of force under certain conditions. In this context, the exceptions to the prohibition of use of force; "self-defence doctrine, Using Force with UN Security Council Resolution, the doctrine of unwillingness and unable, humanitarian intervention and intervention by invitation[3]". Although these exceptions exist; The application of these exceptions has also been subjected to many regulations. The doctrine of intervention by invitation is one of these exceptions. However, it is envisaged to be implemented within certain limits, not unlimitedly. In this respect, the principle of intervention by invitation is one of the exceptions to use of force, which should be considered with great importance.

III. THE CONCEPT OF INTERVENTION BY INVITATION AND ITS ELEMENTS

In general, the concept of intervention by invitation refers to the request of a second state for assistance if the sovereign state is incompetent or reluctant to suppress these acts in the event of an armed conflict or rebellion that is not of an international nature.[4] in this context, interference with the territory of the state by invitation is accepted within the limits of international law. But, like all other exceptions, there are discussions and criticisms about intervention by invitation at the point of their limitations. In this aspect discussions of legitimacy and proportionality experienced by all other exceptions to the use of force are also held within the framework of the principle of intervention by invitation.

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3 Yasin Öztürk(2019), "The International Law Legality Of Turkey's Operations Euphrates Shield", SSSJ, pp-Vol: 6, Issue: 54, pp. 160-161.

4 George Nolte, "Intervention by invitation", http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1702?prd=EPIL, 2010, (Access: 15 May 2017).

When looking at the background of invited intervention, it is seen that it is a concept that is mostly discussed after the Second World War. However, the first use of the concept was towards the end of the 19th century. According to Hall; Intervention by invitation is seen as legitimate and acceptable, but the discussion that emerges here is problematic, whether it is a simple friendship between the invited party and the invited party or a justification for justice. In addition, whether the actor making the invitation is the legal representative of the state or not represents a separate discussion.[5] After the Second World War, the increasing internal armed conflicts, rebellions and independence struggles, especially in Africa and the Middle East, were seen as a threat by the rulers of the sovereign state, and in some cases, it was suppressed by a second state with military aid and support. After the establishment of Bangladesh in 1972, India sending troops to this country by invitation, In Liberia, President Doe wrote an open letter to the mediation committee in 1990 and ECOWAS started its operations in the country[6], The leader Kabbah, who had a coup in Sierre Leone, invited Nigeria to the country are some examples of invited intervention[7].

Intervention by invitation has historically been implemented and continues to be used today. At this point, the use of force by invitation is generally accepted as a legitimate act in international law. However, the intervention by invitation also has characteristic elements in itself, and it takes the intervention from an unlimited dimension.

IV. THE ELEMENT OF THE INTERVENTION BY INVITATION: "INVITATION OR CONSENT"

The concept of intervention by invitation must contain certain elements within itself. This situation is important for the legitimacy of the intervention by invitatiton. In this respect, the most important element of

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5 William Edward Hall, International Law, Oxford Clarendon Press, 1880, pp. 249-250.

6 ECOWAS and the Subregional Peacekeeping in Liberia, https://sites.tufts.edu/jha/archives/66, 1995. (Access: 15 May 2017).

7 Julia Brower, Ryan Liss, Tina Thomas, & Jacob Victor, Historical Examples of Unauthorized Humanitarian Intervention, https://law.yale.edu/system/files/documents/pdf/cglc/GLC_historicalExamples.pdf , ss. 15 (Access: 20 May 2017).

an invitation-based intervention is invitation or consent. In this context, it can be said that consent or invitation also has 4 different elements in itself. These are the general invitation, invitation by treaty, the withdrawal of the invitation and the content of the request.[8]

General invitation; It can be done by the inviting state, as a priori, to make a general invitation to other states / states or organizations in different forms without any conflict, or by making such an arrangement in its domestic law, allowing for general intervention in a possible civil war[9].

Invitation by treaty; It means that only that state can be invited with an agreement to be made with a state in case of internal conflict[10].

Withdrawal of invitation; It refers to the right to request the withdrawal of invited military forces by the inviting state, if requested, which is also mentioned in the UN General Assembly resolution 3414.[11]

The content of the invitation is; It refers only to the realization of legitimate demands and practices from both the inviting and the invited party.[12]

A. Conditions and Limitations of Intervention by Invitation

Another important issue regarding the intervention by invitation is the legitimacy of the actor making the invitation, the content and limitations of the invitation, the validity and duration of the invitation.[13]

The legitimacy of the actor making the invitation, The essence of this debate is the situation under international law of the invitation of the government or actor without democratic legitimacy. At this point, there is

8 Gerhard Hafner, Present Problems of the Use of Force in International Law, Annuaire de l'Institut de droit international - Session de Naples - Volume 73 – 2009, pp.325-330.

9 Christopher J. Le Mon, Unilateral Intervention By Invitation In Civil Wars: The Effective Control Test Tested, *International Law And Politics*, Vol. 35:741, pp. 741-742.

10 Hafner, ibid, pp. 325-330.

11 Ibid, pp. 325-330.

12 Ibid. pp. 325-330.

13 International Law Commision, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

a conviction that the invitations of rulers who commit genocide and crimes against humanity are not legitimate. Even if the administration that made the invitation legitimately seized its power and lost its effective control over time due to anti-democratic factors, the invitation made is considered legitimate under international law[14].

The content and limitations of the invitation, the rulers or actors who invite a second state or groups of states to their country, are not unlimited under international law. At this point, in 2001, in the study titled "State's Responsibility for Acts Against International Law of the International Law Commission"; "The behavior of a person or a group of persons, if this person or group is under the instructions, order or control of the state while doing this, is deemed to be de facto of the state according to international law", the statement is the responsibility of the inviting state for the acts performed by the invited state has revealed the approach. At this point, the inviting state cannot expect the invited state to commit acts and behaviors against human rights. [15]

Validity and duration of the invitation; The conditions of the validity of the invitation can be evaluated within the framework of the contractual conditions in the general legal order. The presence of threats, blackmail, and misdirection to the invitee may invalidate the invitation. In addition, the duration issue can be regulated unlimitedly within the context of the agreement, but it is considered that a conflict, civil war or rebellion must exist in terms of content. For ordinary times, the validity of a military invitation is not seen in accordance with the ordinary course of life.

B. Self Determination and Right to Leave in Intervention by Invitation

One of the important debates about the intervention by invitation is the claim to have the right to self-determination and the nature and legitimacy of the invitation to the revolts made with this request. The right to self-determination has been classified among the purposes of the

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14 Cecile Vandewoud e(2012), The Democratic Entitlement and Pro-Democratic Intervention: Twenty Years After Haiti, Anuario Mexicano de Derecho Internacional, Vol :XII, pp.782-784.

15 International Law Commision, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001.

UN in Article 1/2 of the UN Charter and has been affirmed in the 1966 International Covenant on Personal and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and imposed binding on the parties. In this context, the nature of the intervention by invitation against groups with the right to self-determination has turned into a questionable situation.

However, although the principle of self-determination is a legitimate right in international law, it often conflicts with a fundamental right such as the territorial integrity of states. It is not possible to say that the self-determination principle is operated by a common application in general. In this context, the intervention by invitation made by the groups demanding the right to self-determination can be described as an intervention directly in the internal affairs of a state. In addition, in the context of the principle of non-interference in internal affairs, which can also be described as Jus cogens, it is clear that an external intervention against groups with the right to self-determination also will not be directly considered legitimate.

V. INTERVENTION BY INVITATION DISCUSSIONS IN THE CONTEXT OF RUSSIA'S SYRIA INTERVENTION

Discussions are being held to base Russia's air strikes on Syria during the Arab Spring on a legitimate ground with the doctrine of intervention by invitation. These discussions emerged in November 2015 and according to the sources of Syrian state television; It started with the allegation that the Assad administration invited Russia to Syria. In this context, the Assad administration in the said letter;

- The US and coalition forces continue to operate mission flights over Syria in the context of their mission to combat ISIS,
- Russia is also invited to take a constructionist role in this mission[16].

[16] Russia Begins Airstrikes In Syria After Assad's Request, http://www.npr.org/sections/thetwo-way/2015/09/30/444679327/russia-begins-conducting-airstrikes-in-syria-at-assads-request (Access: 25.05.2017).

Russia, on the other hand, responded to this invitation by expressing that they could only provide air support to the Syrian army and that they would not take part in the ground operation, with the statement of the spokesperson of the federation council Valentina Matviyenko.[17] In this context, Russia's air operation against Syria was carried out both at the invitation of the legitimate government of Assad and under the name of an anti-terrorism mission. In this case, although the United States, France and Turkey lead to criticism of Russia though has not led readily to an international legal responsibility for Russia.[18]

However, this intervention of Russia brought with it certain discussions. These debates emerge on the basis of the basic elements of the intervention by invitation doctrine. At this stage, these discussions can be grouped under some headings. These are;

- Legal legitimacy of the Assad regime,

- Russia's aims in the intervention,

- The humanitarian legal dimension of the intervention

The first subject of discussion; The legitimacy of the Assad government, which made the invitation to intervene to Russia, is problematic. Since the Syrian crisis started in 2011, the issue of the legitimate government of the Assad administration is still being discussed. One of the criticisms brought at this point is that Assad ruled a small part of the Syrian territory, so he did not have a legitimacy ground to make the invitation. However, the main issue at this point; It is whether Assad came to power legitimately. On the legitimacy of the invitee, which is one of the discussions on the issue of intervention with the invitation; If the inviting government has come to office in a legitimate way, it can be accepted that other armed structures in the country are terrorist organizations. In addition, Assad's invitation, which is seen as a legitimate power both for Russia and for the world in general, can be expressed as a legitimate power act. [19]

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17 Only aviation support will be provided to regular Syrian army - Russian lawmaker. More, http://tass.com/politics/824875 (Access: 25.05.2017).

18 Samuel Charap, Elina Treyger, Edward Geist (2019), Understanding Russia's Intervention in Syria, Rand Corporation, pp. 10-15.

19 Gregory H. Fox, Intervention by Invitation, Wayne State University Law School Legal Studies Research Paper Series No. 2014-04, p. 3.

The second point of discussion is whether Russia's aims in the intervention are centered on the fight against ISIS. In this context, Russia's intervention to protect its strategic interests in Syria has also been a subject of criticism. Considering the Russian-Syrian relations in the historical process, Russia's significant influence on Syria and Assad administration, the presence of a Russian military base in Syria and Russia's access to the Mediterranean via Syria, in the context of Russia's theories of sovereignty in Syria 1 ' dropping from to zero has raised the concern. In this context, Russia's refusal to experience political losses in Libya in Syria is accepted as the main reason for its intervention. However, this situation does not change the fact that Russia is also fighting against ISIS, in this context, Russia both fulfills an international responsibility by using its military presence in Syria and aims to maintain its current influence in the country and even increase it.

A third discussion topic is; It is the humanitarian legal dimension of air strikes by Russia. The most important aspect of the criticisms made against Russia is in the context of humanitarian law violation. In this context, although all of Russia's air strikes were made against ISIS; that civilian elements suffered significant damage from these attacks brought along criticisms of Russia. At least 59 civilians died in the first two air strikes in October 2015. Again, in the air strikes in 2016, it was stated that 2000 civilians were killed in the attacks targeting the buildings including hospitals, markets and schools. In response to this claim, Russia insisted that it carried out all its operations against terrorist organizations. Considering these data, the situation in which the international community reacted the most in Russia's Syria intervention was due to the occurrence of civilian deaths.

If a general evaluation is made regarding the invited intervention of Russia towards Syria; First of all, both the regain legitimate administration of the Assad government in the eyes of international actors and the acceptance of ISIS operating in Syria as an international threat ensured that Russia's air strikes against terrorist groups in Syria were accepted as legitimate. In this context, almost all of the criticisms made against Russia are directed not to the intervention itself but to the methods and results. In particular, the emergence of civilian deaths as a result of the intervention, targeting the areas where civilians are located such as schools, hospitals, and markets reveal the criticism that Russia does not comply with humanitarian law rules. The issue of violation of humanitarian law has led to the question of the legitimacy of Russia's actions in Syria.

VI. CONCLUSION

The subject of intervention by invitation means that a sovereign government receives military support from a second state in suppressing the terrorist and rebellion activities directed against its legitimate power. At this point, bilateral or multilateral agreements to which these two states are parties, with the consent and request of the inviting party, give the parties the right to intervene. However, the issue of intervention by invitation also contains certain elements within itself. Situations such as the legitimacy of the power making the invitation, the scope and limitations of the invitation, the invitation to cover an intervention against groups or civilians who demand the right to self-determination refer to the controversial issues of the intervention by invitation.

In the context of these discussions, when we examine Russia's Syria intervention in the context of intervention by invitation, as the first topic of discussion; The question arises whether the Assad government is a legitimate government, so that he cannot call for an intervention. However, it is accepted that Assad is a legitimate power both for Russia and for the majority of international actors. In this context, it can be accepted that Assad's invitation is legitimate. Yet another element is the issue of compliance of the content and limitations of the invitation with humanitarian law. In this respect, the limits and duration of Russia's air strikes are not clearly seen. At this point, the occurrence of civilian deaths, especially as a result of air strikes, reveals that Russia is acting against humanitarian law.

However, it can be said that Russia's intervention by invitation is generally secondary. Because, with the UNSC's decision numbered 2249, all member countries have both a duty and a responsibility towards ISIS. From this point of view, even if Russia's intervention in Syria is not within the scope of intervention by invitation, it is based on a legitimate ground. However, the intervention by invitation itself carries a symbolic meaning for Russia. At this point, Russia as an effective and dominant power in Syria has shown itself with this invitation. The Assad administration, by inviting Russia to the country, has clearly shown that it has the support of Russia and that it is a legitimate power.

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