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The present role of the UN and  
the adaptation of the UN Charter  
- The examples of Somalia and the terror attack  
in N.Y. in 2001

Master thesis  
20 points

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# Contents

<b>1 INTRODUCTION</b>	<b>3</b>
<b>2 THE CREATION AND THE VISIONS OF THE UNITED NATIONS IN 1945</b>	<b>5</b>
2.1 The purposes of the United Nations	5
2.2 The United Nations in a historical perspective	7
2.2.1 Similarities between the League of Nations and the United Nations	8
2.2.2 Differences between the League of Nations and the United Nations	9
2.2.3 The development of the United Nations	11
2.2.4 The United Nations of today and the new problems the organisation is facing	13
<b>3 HOW TO AMEND THE UN CHARTER</b>	<b>16</b>
3.1 Formal amendments	16
3.1.1 Formal amendments made to the Charter at present	18
3.1.2 Proposals made in order to make formal amendments	19
3.2 De facto amendments	21
3.2.1 The UN Charter as a constitutional document	21
3.2.2 The interpretation of the UN Charter	22
<b>4 THE MAINTENANCE OF PEACE AND SECURITY</b>	<b>27</b>
4.1 The applicability of article 39 in the Charter	27
4.1.1 Threat to the peace	29
4.1.1.1 Practice regarding article 39	30
4.2 Different means in order to maintain or restore international peace	31
4.2.1 Humanitarian intervention	34
4.3 The sovereignty of states contra interventions	36
4.3.1 The consent of the government in the targeted state	37
<b>5 THE EXAMPLE OF SOMALIA-A HUMANITARIAN INTERVENTION</b>	<b>41</b>
5.1 Background to the conflict in Somalia	41
5.2 Efforts made by the United Nations in order to improve the situation in Somalia	42
5.2.1 The establishment of UNOSOM I	43
5.2.2 The establishment of UNITAF	44
5.2.3 The establishment of UNOSOM II	46
5.3 Criticism towards the United Nations-intervention in Somalia	47

<b>6 THE TERROR ATTACK ON SEPTEMBER 11, 2001</b>	<b>48</b>
<b>6.1 Definition of terrorism</b>	<b>48</b>
<b>6.2 September 11, 2001</b>	<b>49</b>
6.2.1 The response of the United Nations to the terror attack	49
<b>6.3 International instruments in the area of terrorism</b>	<b>51</b>
<b>7 CONCLUSIONS</b>	<b>53</b>
<b>8 BIBLIOGRAPHY</b>	<b>56</b>

# Summary

Created in the aftermath of the Second World War, the main task of the UN is the maintenance of international peace and security. Although the UN Charter, signed in San Francisco in 1945, has remained almost the same, the world has changed.

In order to adapt the Charter to new upcoming problems two main possibilities exist. The Charter can either be changed itself, following the procedure set forth in its articles 108 and 109, or the adaptation can take place through practice. Since 1945 there have only been three formal amendments made to the Charter. This is probably due to the fact that any such amendment requires a two-third majority, including all the permanent members of the Security Council. Hence, the adaptation of the Charter to new problems often takes place through practice.

One of the elaborated instruments the UN controls in order to obtain international peace is the collective enforcement system, set forth in Chapter VII. To make Chapter VII applicable, the Security Council must determine the existence of either a threat to the peace, a breach of the peace or an act of aggression as set forth in article 39. In most of the cases references are made to the concept of a threat to the peace.

The aim of this paper is to show two situations when the Security Council has extended the interpretation of a threat to international peace in recent practice. This has been done in order to adapt the Charter as well as the organisation to new challenges. The interstate conflicts, that article 39 was initially addressed to, are rare. Instead many intrastate conflicts have arisen. One of them is the conflict in Somalia during the early 1990s.

The enrolment of the UN in such intrastate conflicts is however not without criticism.

The most recent finding of a threat to international peace, made by the Security Council, is the terror act in the U.S. in 2001. Its finding of a threat to international peace made the entire Chapter VII applicable. When also recognising the right of individual as well as collective self-defence, the Security Council considered the U.S. strike back in Afghanistan as legal in the aspect of international law.

The moral aspects of the extended interpretation of any threat to international peace are not meant to be analysed in this abstract.

# Abbreviations

ECOSOC	Economic and Social Council
GA	General Assembly
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ILO	International Labour Organisation
NATO	North Atlantic Treaty Organisation
NIEO	New International Economic Order
NGO	Non-Governmental Organisation
SC	Security Council
U.K.	United Kingdom
UN	United Nations
UNCIO	United Nations Conference on International Organisation
UNITAF	United Task Force
UNOSOM I	United Nations Operation in Somalia I
UNOSOM II	United Nations Operation in Somalia II
U.S.	United States
USSR	Union of Soviet Socialist Republics

# 1 Introduction

The United Nations (UN) was established shortly after the end of the Second World War in order to avoid similar disasters like the First and Second World War. As set forth in its article 1(1), the main goal of the UN is to maintain or restore international peace and security. This is partly obtained through its collective enforcement system, laid down in Chapter VII.

The League of Nations, established shortly after the First World War is considered as being the predecessor to the UN. The League, however, never got the same universality as the United Nations.

The absent U.S. membership made it difficult for the League to work properly as a worldwide organisation. The present universal membership of the UN is probably one of the reasons why the UN still is an existing, evolving constitution and why the League failed.

The Charter of the UN has, except for some minor changes, remained the same since its establishment in 1945. Although the Charter has not changed the world has. At present the UN faces problems different from the ones envisaged in 1945. In order to adapt the organisation to these new challenges, there are two options. The Charter can either be changed following the processes set forth in articles 108 and 109 in the UN Charter or an adaptation can take place through practice.

One important article, subject for interpretation, is article 39. If the Security Council finds the existence of a threat to the peace, a breach of the peace or an act of aggression as laid down in the aforesaid article, it may use all the measures set forth in Chapter VII. Article 39 is hence crucial, as it alone opens for the applicability of Chapter VII. In most of the cases where article 39 has been found applicable, the Security Council has made reference to a threat to the peace.

This paper focuses on how amendments to the Charter are made. In particular it focuses on how article 39 of the Charter has been interpreted in order to adapt the organisation to new upcoming problems concerning the threat to international peace. The initial meaning of article 39 as well as the concept of a threat to international peace was to deal with interstate conflicts. Today these conflicts are rare. Instead there is an increasing number of conflicts within states.

The conflict in Somalia, threatening not only its inhabitants, but also the surrounding countries, was considered as threatening international peace by the Security Council. As the convoys with food and supplies didn't reach the starving population, the UN forces were given a Chapter VII mandate in order to enforce its power to deliver humanitarian relief to the peoples of Somalia.

On September 11, 2001, two aeroplanes crashed into the World Trade Center in the State of New York due to an act of terrorism. This act resulted in the loss of nearly 6000 lives.

These two events are taken as examples where article 39 has been found applicable and when an interpretation of a threat to international peace has been made.

The thesis is divided into six main Chapters. First the present role of the UN compared to its visions in 1945 is explained. In this Chapter one also finds a comparison between the League of Nations and the UN. This is followed by a description of how amendments to the UN Charter are made. The difference between formal amendments and de facto amendment is explored. Chapter four deals with the important article 39 and the maintenance of international peace and security. The concept of article 39 is explained as well as how the Security Council has interpreted threats to the peace. The following two Chapters bring up two concrete examples of recent findings of threats to international peace; the humanitarian intervention in Somalia as well as the terror attack in the U.S. in 2001. Finally conclusions are drawn.

International documents, including both hard law such as conventions and treaties as well as soft law in the form of declarations and other non-binding instruments have been studied. UN documents are in focus. This is of course to show the interpretation of the UN Charter, made by the UN organs.

Also doctrine have been used in order to obtain opinions from different prominent authors on the subject.

Since there is an immense amount of written material regarding article 39 and the interpretation of threats to the peace, there has been a need to limit the scope of the thesis. The Security Council has determined several situations as threats to the peace since the end of the Cold War. This thesis focuses, however, only on the examples of Somalia and the terror act in N.Y. in 2001.

This paper does not in any way intend to be exhaustive regarding the interpretation of the Charter or of the changing role of the UN. It rather aims at showing two examples of how the concept of a threat to international peace, as set forth in article 39, has been interpreted in recent practice by the Security Council.

# 2 The creation and the visions of the United Nations in 1945

## 2.1 The purposes of the United Nations

The preamble of the UN Charter, drafted in San Francisco 1945, sets forth, in its opening words the determination of the United Nations:

- “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom.”<sup>1</sup>

And for these ends

- “to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish their aims.”<sup>2</sup>

The main purpose when creating the United Nations in 1945 was, as the preamble indicates, to maintain or restore international peace and security. In order to accomplish international peace the Charter provides a system for regulating the settlement or the adjustment of disputes ( Chapter VI ), the use of collective measures in threats to or breaches of peace ( Chapter VII) as well as a

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<sup>1</sup> Preamble, Charter of the United Nations, Bring-Lysén, Materialsamling i Folkrätt, 1996, Iustus Förlag, sid 199.

<sup>2</sup> Preamble, Charter of the United Nations.



regulation of national armaments (Chapter VII). The Charter prescribes obligations and procedures that have to be followed by the member states, the organisation itself and also the agencies acting under its authorities.

The substance of the purpose to maintain international peace and security is set forth in article 1(1) in the UN Charter reading as follows:

- “to maintain international peace and security, and to that end: to take effective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations that might lead to a breach of the peace.”<sup>3</sup>

Other purposes of the UN Charter in addition to those expressed in its preamble as well as in its article 1 (1) are those set forth in its article 1 (2-4):<sup>4</sup>

- “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen international peace”, further
- to be the center for harmonising the actions of nations in the attainment of these common ends”

and finally to achieve international co-operation in economic and social matters.<sup>5</sup>

Both the preamble and article 1 of the UN Charter indicates that peace is not only the absence of war. They both refer to an evolutionary development in international relations, aiming at decreasing issues likely to cause war. This can be seen in the wording of article 1(2) where it is stated that the strengthening of peace should be done through the development of friendly relations among nations. Article 1(3) indicates that the UN’s function is to stabilise international relations in order to reduce the occurrence of war.<sup>6</sup>

Not only do the member states confine themselves to act in accordance with the principles and purposes set forth in the treaty. They are also obliged to establish certain organs with defined powers and procedures to complete these purposes.<sup>7</sup>

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<sup>3</sup> Article 1(1), Charter of the United Nations.

<sup>4</sup> Article 1 (2,4), Charter of the United Nations.

<sup>5</sup> Article 1(3), Charter of the United Nations.

<sup>6</sup> The Charter of the United Nations, A Commentary, Simma, Oxford University Press, 1994, page 50.

<sup>7</sup> Charter of the United Nations, Goodrich, Hambro, Simons, Columbia University Press, 1969, page 13.

## 2.2 The United Nations in a historical perspective

The United Nations is often considered to be a child of the League of Nations. The League was established at the end of the First World War in Paris 1919 under the Treaty of Versailles in order to avoid a reoccurrence of a major warfare.<sup>8</sup> The establishment of the League followed the call of President Woodrow Wilson, who believed that the old system of powers had been discredited by the failure of diplomacy to prevent the First World War. In Wilson's view the main guarantee of peace lied in the willingness of peace-aspiring states to utilise their forces to restrain aggression.<sup>9</sup>

In practice the League of Nations ceased to exist when the Second World War broke out, although it was not formally abolished until 1946.<sup>10</sup> Even though the League did not survive the Second World War, the idea of reestablishing an international organisation did.<sup>11</sup>

The first step towards the United Nations was the Inter-allied Declaration, signed in London 1941 expressing the will "to work together, with other free peoples, both in war and in peace"<sup>12</sup>

In the Atlantic Charter of August 1941 President Roosevelt and Prime Minister Churchill expressed their hope "to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."<sup>13</sup> The Atlantic Charter was signed during a meeting on the ship HMS Prince of Wales while being at sea. It hereby got its name.<sup>14</sup>

Representatives from 26 Allied Nations fighting against the Axis Powers met in Washington D.C in on January 1, 1942. They all pledged their support for the Atlantic Charter by signing the "Declaration by United Nations". This was the first time the name United Nations was used, a name coined by President Franklin D. Roosevelt.<sup>15</sup>

In the Moscow Declaration of October 1943 the governments of the Soviet Union, the United Kingdom, The United States and China declared " that they

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<sup>8</sup> The United Nations, Falk ,Mendlovitz, World Law Fund, 1966, page 5.

<sup>9</sup> Goodrich, Hambro, Simons, page 3.

<sup>10</sup> FN Globalt Uppdrag, Fakta, Historia, Framtid, Eriksson, Haldèn mfl, 1995, Svenska FN-förbundet och SNS Förlag, sid 10.

<sup>11</sup> Falk, Mendlovitz, page 1.

<sup>12</sup> About the United Nations; Milestones in United Nations History, UN Department of Public Information., page 1.

<sup>13</sup> Goodrich, Hambro, Simons, page 2.

<sup>14</sup> About the United Nations; Milestones in United Nations History, page 1.

<sup>15</sup> About the United Nations; History of the UN, UN Department of Public Information, page 1.

recognise the necessity of establishing at the earliest practicable date a general international organisation, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.”<sup>16</sup>

It was a complex process to give effect to the Moscow commitment, starting in the U.S. Department in June 1942 and lasting till the summer of 1944. The four major powers<sup>17</sup> held a conference in two phases called the Dumbarton Conversations in order to agree upon different proposals ( the Dumbarton Oaks Proposals ). Although the proposals did not cover all important issues such as, for example, the voting procedure in the Security Council, they indicated what kind of organisation that was to be established. The conference also contained the first blueprint of the UN. Two additional conferences, amongst one the Yalta Conference, held in 1945, helped to lay down the groundwork of the 1945 UN Charter.<sup>18</sup>

The final stage of the elaboration of the Charter was the United Nations Conference on International Organisation ( UNCIO ), held in San Francisco April 25 - June 26 in 1945. Several states were invited by the government of the United States in the names of the four sponsoring governments to participate.<sup>19</sup>

The Charter was signed on June 26, 1945. The UN was later established on October 24, 1945 when the 111–article long Charter was ratified by the five permanent members of the Security Council as well as by the majority of other signatories. October 24 was officially designated as the “United Nations Day” by the General Assembly in 1947.<sup>20</sup>

The UN was an attempt to create a more effective international world order, drawing experience from its precedent. There was a wish to overcome the League’s many failings. This was particularly true regarding the ability to organise a response to aggressions, having in mind those of the 1930s that led to the Second World War.<sup>21</sup>

### **2.2.1 Similarities between the League of Nations and the United Nations**

Making a comparison between the two organisations, one finds several important differences as well as similarities, where this paper only focuses on some.

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<sup>16</sup> Goodrich, Hambro, Simons, page 3.

<sup>17</sup> The Soviet Union, the United States, the United Kingdom and the Republic of China.

<sup>18</sup> Goodrich, Hambro, Simons, page 3.

<sup>19</sup> Goodrich, Hambro, Simons, page 4 ff.

<sup>20</sup> About the United Nations; Milestones in United Nations History, page 2.

<sup>21</sup> The United Nations and A Just World Order, Falk, Kim, Mendlovitz, Westview Press, Inc, 1991, page 68.

Looking at similarities, both the UN and the League were based upon the principle of voluntary co-operation of sovereign states. The UN Charter reads in its article 2 that “the organisation is based on the principle of sovereign equality of all its members.” Although this was not explicitly expressed in the Covenant, regulating the League, it was implicit in its provisions.<sup>22</sup> The Charter as well as the Covenant were based on and gave expression to high purposes. These contained provisions general and elastic enough to permit its members to give effect to the purposes of the respective organisations.<sup>23</sup> They were both attempts to create international institutions as a political basis for an enduring peace, the League being established after the First World War and the UN after the second.<sup>24</sup>

### **2.2.2 Differences between the League of Nations and the United Nations**

The organs of the UN have been given a greater authority compared to the powers vested in the corresponding organs of the League. Decisions by the General Assembly may be taken with a two-thirds majority in accordance with article 18 in the UN Charter instead of the required unanimous vote of those present as demanded by the League’s Covenant.<sup>25</sup>

An important change has also been made regarding the voting procedure in the Security Council. Under the League’s Covenant the Council was governed by the unanimity rule except for in procedural matters. All members of the Council, accused of threatening or disturbing the peace could prevent any effective action taken by the Council by the interposition of its veto. In the UN there has been a concentration of powers, giving only the five main victorious nations<sup>26</sup> of the Second World War the right to veto for the purposes of international peace and security.<sup>27</sup>

Another shift of emphasis is the recognition of the UN as a worldwide organisation. Due to the U.S. rejection of a membership in the League, the League remained basically an euro centric organisation. With the U.S. participation in the UN, the headquarters were moved to New York in order to ensure the U.S. further membership.<sup>28</sup>

Additionally the UN differs from the League in its greater emphasis on economic and social objectives. While the League had mainly focused on military and

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<sup>22</sup> Falk, Mendlovitz, page 22.

<sup>23</sup> Goodrich, Hambro, Simons, page 12.

<sup>24</sup> Falk, Mendlovitz, page 1.

<sup>25</sup> Falk, Mendlovitz, page 22-23.

<sup>26</sup> The United States, the Soviet Union, the United Kingdom, the Republic of China and France.

<sup>27</sup> Falk, Mendlovitz, page 11.

<sup>28</sup> Falk, Kim, Mendlovitz, page 68.

political questions, the UN Charter speaks not only of maintaining peace but also of promoting social progress. A great number of specific functional specialised organs have been established for this purpose.<sup>29</sup> This was not too surprising considering the role that economic and social circumstances have had in the events leading to the Second World War.<sup>30</sup>

The Covenant focused more on the legal approach in the prevention of war by placing specific obligations upon the members. The UN Charter's approach is essentially political, since the measures to be taken and their effectiveness depends mainly on the co-operation of the major military powers in the defence of common interests.<sup>31</sup>

Finally the adoption of a political role for the Secretary-General is a shift in focus. The role of the Secretary-General was never clear under the League. It was not defined if he was to be a spokesman for the organisation or merely a glorified clerk at the service for the member states. Today the Secretary-General is one of the principal six UN-organs undertaking the administrative support service for the organisations. The Secretary-General may also take personal initiatives in resolutions or in the abatements of international conflicts.<sup>32</sup>

One can ask oneself what the reasons are to why the League failed and to why the UN still plays an important role on the worldwide arena?

As already mentioned, the U.S. rejected the membership of the League. Other important military powers like Japan, Germany and Italy had announced their resignations, something which made the League rather weak. It was very difficult for the League to function without the participation of the one power that could make it work, i.e. the U.S. Since the League never had the universality the UN has today, it is, easier for the UN to function.<sup>33</sup>

One other important way to strengthen the powers of the UN, compared to that of the League's, was the abolishment of the unanimity rule in the Security Council in the voting procedure. Although the requirement of the unanimity of the permanent members in the Council also has restrained its powers, it is less stringent than the unanimity of all the members in the Council which was required by the League's Covenant.<sup>34</sup>

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<sup>29</sup> Falk, Kim, Mendlovitz, page 69.

<sup>30</sup> Goodrich, Hambro, Simons, page 10.

<sup>31</sup> Goodrich, Hambro, Simons, page 10-11.

<sup>32</sup> Falk, Kim, Mendlovitz, page 69.

<sup>33</sup> Goodrich, Hambro, Simons, page 12.

<sup>34</sup> Falk, Mendlovitz, page 35.

### 2.2.3 The development of the United Nations

At its inception on June 1945 the UN had fifty-one member states.<sup>35</sup> Then, just as today, the organisation consisted of six major organs: the Security Council, the General Assembly, the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice (ICJ) and the Secretariat.<sup>36</sup>

Today the UN consists of 189 member states.<sup>37</sup> Four members have been added to the Security Council and 36 to ECOSOC through Charter- amendments. Additional to the six principal organs of the UN, there are around sixty specialised agencies, subsidiary organs, programs, funds, commissions, sub commissions and related organisations.<sup>38</sup>

Since the UN is a system of states, acting upon the United Nations rather than the opposite, the UN has, for better or worse, mirrored the politics of the state systems. Therefore it makes sense to look at the UN, since its creation, through the prism of state systems in order to more easily understand how the UN of 1945 became the UN of today. Six different stages may be identified for this purpose;<sup>39</sup>

#### *Stage One: 1945-1960*

In this early stage of the UN history, the world was split in two rival ideological blocs. The period was characterised by newly divided states, power vacuums, economic and psychological warfare as well as a major arms race. The UN was dominated by the United States, its western allies and Latin American followers where the U.S. used the UN as a mean to restrain the Soviet Union's influence throughout the world. The U.S. for example lead the way in securing passage of the Uniting for Peace Resolution in the General Assembly on November 3, 1950. Through this resolution the General Assembly was assured a role in peacekeeping in the event of veto-caused deadlocks by the East Bloc in the Security Council. In short, it was a period when the UN was seen as an arena to carry on the ideological struggle between the East and the West.

#### *Stage Two: 1960-1972*

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<sup>35</sup> About the United Nations; History of the UN, page 1.

<sup>36</sup> Preferred Futures for the United Nations, Mendlovitz, Weston, Transnational Publishers Inc, 1995, page 8.

<sup>37</sup> [www.un.org](http://www.un.org)

<sup>38</sup> Mendlovitz, Weston page 9.

<sup>39</sup> Mendlovitz, Burns, page 12ff.

Many new states in Africa and Asia gained their independence through decolonialisation during this stage. The member states grew from fifty-one in 1945 to more than one hundred and thirty in 1972. None of these new “third world” members were entitled to permanent membership in the Security Council. Therefore they focused on the General Assembly and helped to define and refine the UN’s commitment to social progress and higher standard of living. The previous tight bipolar world was also loosened up by a non-aligned movement, formed by countries such as China, Egypt, India, Indonesia and Yugoslavia. The UN was, despite of this new movement incapable of acting in the still very hostile arena and was during this period considered to be a weak independent agency.

#### *Stage Three: 1972-1978*

This period was characterised by a continuing effort by the UN to eradicate colonialism, particularly in the sub-Saharan racist societies such as the former South Rhodesia, today’s Zimbabwe. The pressure from the third world countries also emerged in order to better share the resources and wealth of the world. These efforts culminated in the 1974 Charter of Economic Rights and Duties of States under the New International Economic Order (NIEO). The NIEO movement in itself didn’t have a great impact. The emerging consciousness for a more human world order played a role of larger importance. Throughout UN conferences all around the world attempts were being made in order to define what a humane or just world order could be.

#### *Stage Four: 1978-1986*

Nothing of importance was accomplished during this period. The third world countries tried to use the General Assembly to achieve major concessions in the field of development, but neither the U.S. nor the Soviet Union dealt with the matter other than through their traditional client-state manner.

#### *Stage Five: 1987-1991*

The Soviet General Secretary Gorbachov proclaimed to the General Assembly in 1988 on its 43<sup>rd</sup> session that the world had entered “an era when progress will be shaped by universal human interests”. He also called for a “radical review” of the international approach to the totality of the problems our planet is facing. Given that his proposals and policies were met with approval by the public, he opened up an era of renewed hope vis-à-vis international relations in general, and in particular those of the UN. With the fall of the Berlin Wall in 1989, the UN started to claim attention, support and a central role in the world affairs, something which had eluded it since 1945.

#### *Stage Six: 1992 -*

With the end of the Cold War, the unification of Germany, the break-up of the Soviet empire and the roll-back of the apartheid in Namibia and South Africa, the UN now finds itself extended beyond what anybody could have imagined. Ever since the Security Council regained its strength, a large number of peacekeeping operations have taken place around the world. Less attention have been given though to the social and economic needs of the southern societies, which have resulted in an increase in poverty and maldevelopment.

#### **2.2.4 The United Nations of today and the new problems the organisation is facing**

Although the primary goal for the UN in the beginning was the maintenance of international peace, a social and economic co-operation has over the years been regarded as an issue that can provide conditions to facilitate peace. This co-operation has often taken its form through multilateral efforts to develop standards. One example is the international labour standard, elaborated by the International Labour Organisation (ILO). The entry, however, of a great number of new states into the UN in the early 1960s stimulated a transformation of the goal of economic and social activities to one of the development of the third world. Over the past thirty years the dealing with development through different UN programs, has contributed to a global dialectic on the meaning of the word.<sup>40</sup>

The dynamic process on how *development* has been understood can be shown in different stages.<sup>41</sup> These stages also show the growing importance the organisation has put in a more equalised world.

As an answer to the disparity between wealth possessed by the people in developed/developing countries *the national development* of the third world countries initially became the main goal. This approach was originally to help the developing countries through technical assistance, loans and sometimes grants of capital. Since the aid did not diminish the gap, but rather increased it, a New International Economic Order (NIEO) was proposed in order to eliminate dependency and to establish *international economic equity*. The Declaration on the establishment of the NIEO, declared at a special session at the General Assembly on May 1, 1974, was a culmination of the frustration felt by the third worlds countries, demanding a change.

Some of the principles ,set forth in the NIEO Declaration, made by the General Assembly, and on which the new economic world order was to be based reads as follows:<sup>42</sup>

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<sup>40</sup> Falk, Kim, Mendlovitz, page 95.

<sup>41</sup> Falk, Kim, Mendlovitz, page 96.

<sup>42</sup> Declaration on the Establishment of a New International Economic Order, 3201 S-VI.



1. to create an equitable and fair relationship between the prices of goods exported by developing countries and the prices of goods imported by those states
2. to remain the processing of raw materials in the producer developing countries
3. to ensure every state the sovereignty of its natural resources and its economic activities
4. to improve the access of modern technology as well as to adapt that technology to specific economic, social and ecological conditions in the developing countries
5. to elaborate an international code of conduct for transnational corporations
6. to strengthen the co-operations between the developing countries

However the dialogue continued on how to deal with the development of countries in the most favourable way. Instead of NIEO, some pleaded for *self-reliance* based on the needs of the local society in the context of local culture and experience, and not on the modelling effect of diminishing the gap. According to others, development programs were to provide *for basic human needs* such as food, shelter, clothing, education etc. This, in its turn, provoked the question who should define what basic human needs are? The answer was, in some views, the people themselves, which lead to the *participation* of the people in the definition of the needs. Human development was the final goal and other forms of developments, such as economic development, was seen as means towards this end. Finally, the *ecological balance*, i.e. balance in the relationship between human beings and the non-human environment, has become a part of the development dialogue.<sup>43</sup>

Even though the UN Charter itself hasn't changed so much since 1945, the world has. One can for example look at the changed nature of the threats to peace and security. The provisions of the Charter presuppose an external aggression, i.e. an attack by one state to the other. In recent decades far more people have though been killed due to civil wars, ethnic cleansing and acts of genocide, than in interstate conflicts. The UN institutions have not fully been adapted to these new threats.<sup>44</sup>

This is also true in the economic sphere. After the Second World War the world was made up of separate national economies, engaged in external transactions. Today there are lots of discussions about the globalisation. It is not easy to define globalisation. Several components and processes can be covered within the waste meaning of the notion. Some of the most important ones are the increasing internationalisation of trade, the increasing mobility of finance, the rapid advance of technology, the global expansion of cross-border problems

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<sup>43</sup> Falk, Kim, Mendlovitz, page 96-97.

<sup>44</sup> "We the Peoples" The role of the United Nations in the 21<sup>st</sup> century, Annan, page 11.

and the substantial shifts of power from sovereign states to private multinational parties.<sup>45</sup>

One of the UN's challenges of great importance at present is to ensure that globalisation is of benefit, not only for some countries, but for all.

The impact economic growth has had in the fields of human development and human security has varied a lot depending, for example, on how government institutions are structured and how they enrol themselves into the matter. Due to the lack of governance in many developing countries, globalisation has often had a primarily negative impact. The benefits such as new technology and increased market potential have often been accompanied by financial crises and loss of governmental autonomy.<sup>46</sup>

Globalisation has also created new threats and vulnerabilities. For example criminal networks take advantage of the more advanced technologies to facilitate drug and arm traffic.

Open borders and unprecedented mobility have also increased the number of people infected by HIV/AIDS. The UN is also challenged by transborder pollution and the global climate change. The revolution in global communication has important effects as well.<sup>47</sup>

In short, the UN faces at present problems different from the ones envisaged when it was established. The organisation must therefore adapt itself in order to deal with them. The main threat to international peace and security was in 1945 *between* sovereign states, i.e. inter-states conflict. The three fundamental security threats the world faces today are:

- the increase of weapons of mass destruction, such as nuclear weapons,
- the fragmentation of states due to socio-ethnic wars; and
- major ecological catastrophes

In order to adapt the Charter to these new problems, the UN can either choose to change the UN Charter itself or adapt to new upcoming problems through practice. Such Charter amendments will be further explained in the following chapter.

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<sup>45</sup> Globalisation and State, page 1.

<sup>46</sup> Globalisation and State, page 1.

<sup>47</sup> Annan, page 11-12.

# 3 How to amend the UN Charter

The UN Charter can be amended either through:<sup>48</sup>

- changing the text (formal amendment)
- inserting new provisions in the Charter (formal amendment)
- through practice of the organisation (de facto amendment)

The reasons to why an amendment is made are identical in all three cases. To describe it in an illustrative way one can say that it is done when the Charter no longer provides a full and adequate “map” by which the member states and the UN organs may “navigate.” In other words there is a loophole in the Charter.<sup>49</sup>

## 3.1 Formal amendments

Formal amendments are regulated by Chapter XVIII in the Charter (articles 108 and 109).

They read as follows:<sup>50</sup>

### Art 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been *adopted by a vote of two thirds of the General Assembly and ratified* in accordance with their respective constitutional processes *by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.* (italic letters made by the author)

### Art 109.

(1) A *General Conference* of the Members of the United Nations for the purpose of *reviewing the present Charter* may be held at a date and place to be fixed by two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

(2) Any *alteration* of the present Charter recommended by a two-thirds vote of the conference shall take the effect when *ratified* in accordance with their respective constitutional processes *by two thirds of the Members of the United Nations including all the permanent members of the Security Council.* (italic letters made by the author)

(3) If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of

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<sup>48</sup> Documents on the Reform of the United Nations, Taylor, Daws, Adamczick-Gerties, 1997, Hartnolls Limited Bodmin, Cornwall, page 491.

<sup>49</sup> Taylor, Daws, Adamczick-Gerties, page 471.

<sup>50</sup> Article 108 and 109, Charter of the United Nations.

the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

Both articles 108 and 109 require a qualified majority (two-thirds majority) of the votes in order to put an amendment to the Charter into reality. But while the voting system set forth in article 108 refers to the members of the General Assembly, article 109 refers to a two-thirds vote of the conference. Both the amendments enter into force through a ratification by two-thirds of the UN member states, including all the permanent members of the Security Council. Hence, every permanent member is in a position to veto a revision by refusing to ratify, something which can make it almost impossible to put a formal amendment into reality.<sup>51</sup>

Since the annual meeting of the General Assembly in article 108 is used as a platform to initiate amendments, the procedure set forth in this article may be considered to provide a more “regular” review of the Charter. Article 109 in its turn might be regarded as an “extraordinary” review since it is decided upon in a special general conference.<sup>52</sup> Article 108 could therefore be regarded as aiming at changing or adding particular articles to the Charter, while article 109 has broader alterations, maybe even a general review in mind. However, the interpretation of these two provisions has been a debated issue ever since.<sup>53</sup>

Each Organ of the UN as well as the member states have the right to suggest a review of the Charter. This may be deduced when looking at the Rules of Procedure of the General Assembly. According to these rules the member states as well as the UN organs have the right to submit motions to the General Assembly.<sup>54</sup> This right is neither subordinate to a time limit, nor restrained to a particular issue and may be submitted at every session of the General Assembly. Every article of the Charter may be an issue of review from a legal point of view.<sup>55</sup>

When a Charter amendment has come into force, it is legally binding for all the members of the UN. This is true even if a state voted against the amendment in the General Assembly and /or refrained from ratifying it. This follows article 108 in the Charter, where each member undertakes by virtue to be bound by any future amendment to the Charter. It is only the permanent members of the Security Council that have reserved their rights to decide upon every specific amendment.<sup>56</sup>

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<sup>51</sup> Taylor, Daws, Adamczick-Gerties, page 495.

<sup>52</sup> Taylor, Daws, Adamczick-Gerties, page 493.

<sup>53</sup> Taylor, Daws, Adamczick-Gerties, page 493.

<sup>54</sup> Rules of Procedure of the General Assembly, Rule 13, lit. c,d,g and e.

<sup>55</sup> Taylor, Daws, Adamczick-Gerties, page 493 ff.

<sup>56</sup> Taylor, Daws, Adamczick-Gerties, page 515.

Although the UN Charter itself speaks of no right of withdrawal for dissenting members when an amendment is taking place, the founding conference agreed that “exceptional circumstances” could justify a withdrawal. In the Interpretative Declaration made in June 1945 it was stated that no member state was being forced to stay within the organisation if its rights and obligations were changed by any Charter amendment in which it had not concurred and finds itself unable to accept. The amendment must however be of a certain importance and infringe the rights and obligations of a member state. The state must also be unwilling to accept it.<sup>57</sup> Although the legal scope of this declaration is unclear, it is often considered as being authoritative.<sup>58</sup>

### **3.1.1 Formal amendments made to the Charter at present**

Every amendment to the Charter may be considered as constituting a legal as well as a political problem. It is not likely that a completely legal problem will lead to a revision of the Charter. Normally, an amendment does not only aim at making the text clearer or codifying the text. It can therefore not be said to be a purely procedural matter. On the contrary, regarding most of the cases, amendments are of a political nature since either the functions or the structure of the UN or its organs are changed or enlarged.<sup>59</sup>

Efforts to amend the Charter according to the procedures set forth in articles 108 and 109 have produced poor results so far. The amendments that have been ratified until now have aimed at enlarging the members of the Security Council as well as the ECOSOC, and can be seen as political amendments.<sup>60</sup>

All three Charter amendments made so far have been made in accordance with article 108. No revision following the procedure set forth in article 109 has ever been made.<sup>61</sup>

The first successful amendment (1963-1965) led to changes in the provisions of articles 23, 27 and 61. A request was submitted mainly by the developing countries in order to strengthen the group of non-permanent members in the Security Council as well as the representation of UN members in ECOSOC due to the increase of members in the UN since 1955.<sup>62</sup>

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<sup>57</sup> United Nations Conference on International Organizations, Volume VII, page 267.

<sup>58</sup> Taylor, Daws, Adamczick-Gerties, page 516-517.

<sup>59</sup> Taylor, Daws, Adamczick-Gerties, page 492.

<sup>60</sup> Taylor, Daws, Adamczick-Gerties, page 495-96.

<sup>61</sup> The Law and Practice of the United Nations, Conforti, 2000, Kluwer Law International, page 18.

<sup>62</sup> Taylor, Daws, Adamczick-Gerties, page 518.

The first amendment to the UN Charter changed in short:<sup>63</sup>

- the required majority for decisions of the Security Council from the former seven to nine votes, article 27(2) and (3)
- the number of non-permanent members in the Security Council from former eleven to fifteen (article 23 (1), and
- the number of members of ECOSOC from former 18 to 27 members, article 61 (1)

The second Charter amendment (1965-68) was a correction of an blunder when making the first amendment. Article 109 (1) had to be adjusted due to the increase of members in the Security Council from eleven to fifteen, as set forth in the first Charter amendment. The majority required in article 109(1) was changed from seven to nine affirmative votes in the second amendment.<sup>64</sup>

The third and till present the last formal amendment of the Charter dealt again with an increase of the members in ECOSOC. This time it was done by enlarging the amount of members from 27 to 54.<sup>65</sup>

### **3.1.2 Proposals made in order to make formal amendments**

Due to the fact that each amendment to the Charter needs to be carefully prepared regarding both the political situation and the procedural matters, a “Committee on Arrangements for a Conference for the Purpose of Reviewing the Charter” was established in 1955. This Committee consisted of representatives from all the Member States. In 1974 the Committee was replaced by the “Ad Hoc Committee on the Charter of the United Nations”, which, at that time, consisted of representatives from only 42 Member States. The Ad Hoc Committee’s tasks were to:<sup>66</sup>

- discuss observations received by governments
- consider any proposals made by any government on how to achieve the purposes of the UN in a better way
- consider suggestions for a more effective functioning of the organisation, not requiring any amendment to the Charter
- enumerate interesting proposals made to it

The Ad Hoc Committee was changed in 1975 into the “Special Committee on the Charter of the United Nations and the strengthening of the Role of the Organization”, now having 47 states as members. This new Committee was

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<sup>63</sup> GA Resolution 1991-XVIII A and B of December 17, 1963.

<sup>64</sup> Taylor, Daws and Adamczick-Gerties, page 519, se also GA Resolution 2101 XX of December 20, 1965.

<sup>65</sup> GA Resolution 2847 XXIV of December 20, 1971.

<sup>66</sup> GA Resolution 3349 XXIV of December 17, 1974.

entrusted with mainly the same tasks as its predecessor, only this time the mandate was a little more specific. Suggestions and proposals regarding any amendment in the areas of the maintenance of international peace and security, the development of the co-operation among states as well as the promotion of the rules of international law in the relations between states was to be particularly observed.<sup>67</sup>

Until now it has been hard for the Charter Committee to make any progress in order to revise the Charter, because of the opposition of any of the permanent members of the Security Council.<sup>68</sup>

The Committee has subsequently been busy negotiating non-binding instruments ever since the 1980s until now in order to deal with this problem. These non-binding instruments have sometimes been confirmed by the evolutionary practice of the UN organs.<sup>69</sup>

The Committee has also made recommendations on how to maximize the application of the existing Charter provisions in the area of peaceful settlement of disputes and maintenance of international peace and security. To give some examples, the work of the Committee has led to the adoption of the 1982 Manila Declaration on “Peaceful settlement of Disputes”, the 1988 Declaration on “Prevention and Removal of Disputes and Situations which may Threaten International Peace and Security” and on the “Role of the United Nations in this Field.”<sup>70</sup>

Many proposals concerning a review of the Charter have been made. Every reform of the UN causes difficulties because of the conflicting ideas among the member states on necessity, aim and means of such a reform. Proposals to increase the number of permanent members in order to obtain a better application of the equitable geographical representation have been made. Some permanent members objected to such a change arguing that the composition at present reflects the international balance of power. Proposals have also been made in order to change the composition of the permanent members of the Security Council as well as to diminish the impact of the veto power.<sup>71</sup>

The Secretary-General has been entrusted with the task to decide on opinions held by member states regarding a review of the Charter. On a regular basis he issues the report “Repertory of Practice of United Nations organs” in which he

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<sup>67</sup> GA Resolution 3499 XXX of December 15, 1975.

<sup>68</sup> Taylor, Daws, Adamczick-Gerties, page 478.

<sup>69</sup> Taylor, Daws, Adamczick-Gerties, page 478.

<sup>70</sup> Taylor, Daws, Adamczick-Gerties, page 478.

<sup>71</sup> Taylor, Daws, Adamczick-Gerties, page 475 ff.

describes the way how the provisions of the Charter have been carried out by the organisation.<sup>72</sup>

## 3.2 De facto amendments

The UN Charter has formally remained almost unchanged as a legal basis since the UN was established in 1945. All the changes being made, i.e. formal amendments, have occurred without any major revisions or amendments to the Charter.<sup>73</sup>

Different problems not predicted in 1945, have appeared though. To give some examples of problems, one could mention the use of nuclear powers, the use of the outer space and the seabed, differing economic growth-rates, the global environmental threat and finally the dangers in the health sector.<sup>74</sup>

The UN Charter and the organisation itself, have to adapt to new and changing circumstances as well as to the needs of member states. Formal amendments are often difficult to obtain, as mentioned in section 3.1. The remaining option is a de facto amendment i.e. an adaptation to situations as they arise.<sup>75</sup>

### 3.2.1 The UN Charter as a constitutional document

As the UN Charter sets forth guidelines for the future development of the Charter it should, reflecting a commonly held view, be seen as a constitutional document. This is based on similarities found between the UN organs and the administrative or legislative organs of a state. Every organ of the UN, is according to this theory, vested not only with the powers explicit attributed to it by the Charter, but has additionally the implicit powers necessary for exercising its express powers.<sup>76</sup>

Since it is not a static treaty, the development of the Charter is to be decided partly by the Charter itself, but also by the way its members interpret the guidelines. It is crucial how the members use the organisation when dealing with new problems in a changing world. Although the constitutional basis for achieving, for example, international peace and security, which may be considered as the main goal of the organisation, is provided by the Charter, the final outcome lies with the members themselves.<sup>77</sup>

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<sup>72</sup> GA Resolution 2968 XXVII of December 14, 1972, see also Taylor, Daws, Adamczick-Gerties, page 494.

<sup>73</sup> Falk, Kim, Mendlovitz, page 70.

<sup>74</sup> Simma, page 29.

<sup>75</sup> Goodrich, Hambro, Simons, page 13.

<sup>76</sup> Conforti, page 12.

<sup>77</sup> Goodrich, Hambro, Simons, page 1.



### 3.2.2 The interpretation of the UN Charter

According to the Vienna Convention of the Law of Treaties, which is applicable to any treaty that constitutes the founding Charter of an international organisation, different methods of interpretation may be applicable to an international Charter. It might for example take its form through an interpretation according to the principles of good faith, through the ordinary meaning of a term as well as through a dynamic-evolutionary method.<sup>78</sup>

Which method that should be used when interpreting the UN Charter was partly considered at the United Nations founding conference in San Francisco. No provision of an explicit nature was however made in the Charter itself. An agreement was reached in a statement that was included in the report from the technical committee dealing with the matter. It was later approved by the conference.<sup>79</sup>

This statement read as follows:<sup>80</sup>

“ In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its functions and powers. It will be manifested in the functioning of such body as the General Assembly, the Security Council, or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle.

Difficulties may conceivably arise in the event that there should be a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter. Thus, two organs may conceivably hold and may express or even act upon different views. Under unitary forms of national government the final determination of such a question may be vested in the highest court in some other national authority.

However, the nature of the Organization and of its operation would not seem to be such as to invite the inclusion in the Charter of any provisions of this nature. If two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Should the General Assembly or the Security Council prefer another course, an ad hoc committee of jurists might be set up to examine the question and report its views, or recourse might be had to a joint conference. In brief, the Members of the organs of the Organization might have recourse to

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<sup>78</sup> The Vienna Convention on the Law of Treaties (1969), Bring-Lysén, Materialsamling i Folkkrätt, Iustus Förlag, 1996, Article 31.

<sup>79</sup> Goodrich, Hambro, Simons, page 14.

<sup>80</sup> United Nations Conference on International Organization, Documents, Volume XIII, page 709-710.

various expedients in order to obtain an appropriate interpretation. It would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients.

It is to be understood, of course, that if *an interpretation made by any organ of the Organization or by a committee of jurists not generally accepted by the member states will be without binding force*. In such circumstances, or in cases where it is desired to establish authoritative interpretation as a precedent for the future, it may be necessary to put through the interpretation as an amendment to the Charter. This may always be accomplished by recourse to the procedure provided for amendment.” (italic letters made by the author)

The International Court of Justice is the principal judicial organ of the United Nations.<sup>81</sup> Either the Security Council or the General Assembly can request the court to give an advisory opinion on any legal question arising under the Charter.<sup>82</sup> Hence the court may give opinions on the interpretation of the Charter.<sup>83</sup> Although not legally binding for neither the UN organs nor the member states, the advisory opinions can play an important role regarding the interpretation of the Charter. Some evidence of the applicability of the dynamic-evolutionary method regarding the interpretation of the UN Charter can be found in the practice of the ICJ.<sup>84</sup>

Up to this point in time 23 advisory opinions have been handed out by the court.<sup>85</sup> One of these is the Certain Expenses case of July 20, 1962. Herein one finds an example of the use of article 1 of the Charter as a mean to justify the exercise of wide powers by the General Assembly. The Court asserted in this opinion that:

“ In determining whether the actual expenditures authorized constitute expenses of the Organisation within the meaning of Article 17, paragraph 2, of the Charter, the Court agrees that such expenditures must be tested by their relationship to the purposes of the United Nations.”<sup>86</sup>

Further it held that:

“ When the Organisation takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations set forth in its Article 1 of the Charter, the presumption is that such action is not *ultra vires* the Organization”.<sup>87</sup>

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<sup>81</sup> Article 92 UN Charter.

<sup>82</sup> Article 96 (1) UN Charter.

<sup>83</sup> Conforti, page 14.

<sup>84</sup> Taylor, Daws, Adamczick-Gerties, page 492.

<sup>85</sup> www.icj.org .

<sup>86</sup> Certain Expenses of U.N, Opinion of 20 VII 1962, International Court of Justice, Reports of Judgements, page 20.

<sup>87</sup> Certain Expenses of U.N, Opinion of 20 VII 1962, International Court of Justice, Reports of Judgements, page 21.

This view, upheld in the *Certain Expenses* case, saying that the purposes of the UN, as laid down in its article 1, may be used to justify the exercise by its organs of powers not explicitly mentioned in the Charter, has been subject to controversies. One of the members who has denied the authority claimed by the General Assembly, in the exercise of a “residual responsibility” for the maintenance of international peace through initiate peacekeeping operations is the Soviet Union.

One of the dissenting opinions in the *Certain Expenses* case, belonging to Judge Winiarski explained the situation as follows:

“ The Charter has set forth the purposes of the United Nations in very wide, and for that reason too indefinite, terms. But...it does not follow, far from it, that the Organisation is entitled to seek to achieve those purposes by no matter what means. The fact that an organ of the United Nations is seeking to achieve one of those purposes does not suffice to render its action lawful. The Charter, a multilateral treaty which was the result of prolonged and laborious negotiations, carefully created organs and determined their competence and means of action. The intention of those who drafted it was clearly to abandon the possibility of useful action rather than to sacrifice the balance of carefully established fields of competence, as can be seen, for example, in the case of the voting in the Security Council. It is only by such procedures, which were clearly defined, that the United Nations can seek to achieve its purposes”.<sup>88</sup>

In the *Namibia Case* of June 21, 1971 the court set forth;

“That the concepts embodied in Article 22 of the Covenant...were not static, but were by definition evolutionary...[the court’s] interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.”<sup>89</sup>

It further held:

“Art 24 of the Charter vests in the Security Council the necessary authority to take action such as that in the present case..... The only limitations are the fundamental principles and purposes found in Chapter 1 of the Charter.”<sup>90</sup>

In favour of an evolutionary interpretation speaks the fact that the Charter is very much a law-making treaty.<sup>91</sup>

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<sup>88</sup> *Certain Expenses of U.N*, Opinion of 20 VII 1962, International Court of Justice, Reports of Judgements, page 83.

<sup>89</sup> *Namibia (South West Africa) Case*, Advisory Opinion of 21 of June 1971, International Court of Justice, Reports of Judgements page 19.

<sup>90</sup> *Namibia (South West Africa) Case*, Advisory Opinion of 21 of June 1971, International Court of Justice, Reports of Judgements page 40.

<sup>91</sup> Simma, page 36.

No official organ in the UN has an explicit mandate to interpret the Charter with a binding effect for other organs or member states, not even the ICJ as already mentioned in this section. There exists no arbitration clause for the settlement of disputes on issues of interpretation. Due to this it is mainly the political organs of the UN that decide on the interpretation of the Charter.<sup>92</sup>

Many of the adaptations made in order to adapt the Charter to its changing tasks have subsequently taken its form through resolutions by the General Assembly and by specifications of general principles for example the Universal Declaration of Human Rights in 1948. It has also taken its form through various contributions to the interpretation of the concept of force, through condemnations of state behaviour for example South Africa for violating human rights through its apartheid policy and finally by the development of the UN peacekeeping operations. Any resolution as well as declaration passed by consensus among the members in the General Assembly plays a role of large importance in the creation and in the change of legal values. This in its turn may influence the interpretation of the Charter.<sup>93</sup>

However, as the number of member states grow and as the different objectives between industrialised and developing countries grow, it becomes harder to find a consensus between the member states and thus create a uniform practice carried out by consent. The UN must not only balance the interests of diverse member groups in the General Assembly, but also the interest of the five permanent members in the Security Council, something which may have a retroactive influence on the interpretation of the Charter.<sup>94</sup>

An amendment to the Charter can, as explained in this Chapter, either be made through changing the text, through a new provision in the Charter or through the practice of the organisation, i.e. how the Charter is being interpreted. It is difficult to make a formal amendment to the Charter due to the veto any permanent member of the Security Council may impose.

As a consequence the Charter is often adapted to deal with new upcoming problems through the interpretation of the Charter. As explained above much speaks for that an evolutionary, dynamic interpretation was envisaged for the Charter when it was signed.

One of the main tasks for the UN is the maintenance of the international peace and security. The collective measures in order to obtain this, is set forth in Chapter VII of the Charter. As to open up for the application of Chapter VII one of the criteria in article 39 first has to be obtained. There must either be a threat to the peace, a breach of the peace or an act of aggression.

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<sup>92</sup> Taylor, Daws, Adamczick-Gerties, page 492.

<sup>93</sup> Simma, page 27 ff.

<sup>94</sup> Simma, page 28 ff.

The notion of a threat to peace is very broad and undefined, but very crucial since the Security Council often uses this term as a reference. Due to its vague concept it leaves room for interpretation. In the next Chapter the interpretation of any threat to the peace will be discussed.

# 4 The maintenance of peace and security

*“ For the United Nations there is no higher goal, no deeper commitment and no greater ambition than preventing an armed conflict.”<sup>95</sup>*

Kofi Annan

Measures, in order to obtain international peace, were elaborated at the drafting of the UN Charter to prevent the reoccurrence of a comparable disaster like the Second World War. Subsequently Chapter VII in the Charter explicitly permits the collective use of force by member states whenever international peace is put into danger. Peaceful means are however preferable in order to solve international disputes and the use of force is the very last option.<sup>96</sup>

The concept of collective use of force, as laid down in Chapter VII, aims to prevent the unilateral use of military force by any state. When deemed necessary, unilateral use of force should be replaced by a collective enforcement action envisaged by either the international community itself or by a number of states, representing it. The ideal collective security system consists of a universal coalition of states restoring status quo whenever a threat against international peace appears. It should not be important from where the military threats come as long as it is directed towards the security and sovereignty of any state.<sup>97</sup>

## 4.1 The applicability of article 39 in the Charter

Article 39 in the UN Charter consists of several important criteria making Chapter VII applicable when being obtained.

It reads as follows:

### **Art 39**

“ The Security Council shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or

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<sup>95</sup> Secretary-General Report to the United Nations Security Council, 16 of April 1998.

<sup>96</sup> The future of the United Nations system: Potential for the twenty-first century, Alger, The United Nations University, 1998, page 55.

<sup>97</sup> Alger, page 59.

decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

The Security Council shall hence determine the existence of either:

- a *threat* to the peace
- a *breach* of the peace, or
- an *act of aggression*

The Security Council shall further either:

- make *recommendations*; or
- decide what *measures* shall be taken in accordance with article 41 and 42 in order to maintain international peace and security.

One can, with other words, describe the responsibilities of the Security Council as a dual one. First it has to determine the existence of a threat to the peace, breach of the peace, or an act of aggression. Second it has to make recommendations and decide upon measures to maintain or restore international peace and security.

The Charter lacks any definition of the concepts of threats to the peace, breaches of the peace or acts of aggression. At the founding conference held in San Francisco no definition of the terms was accepted. The efforts to define them have been without success ever since.<sup>98</sup> The distinctions between the above listed notions have not been a subject of controversy since the Security Council in many cases makes no clear differentiation between them.<sup>99</sup> Recent practice sometimes even lacks a specific reference to article 39 itself or even to Chapter VII in whole.<sup>100</sup>

Another article in the Charter that needs to be considered, regarding the prohibition of the use of unilateral force by states, is article 2(4). This article is directed towards the member states themselves. It defines the prohibition of the use of force regarding one member state towards another.

#### **Art 2(4)**

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

According to some writers, a correspondence between article 2(4) and the competences of the Security Council when acting under Chapter VII could be found, as the Security Council deals with maintaining peace and security by taking

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<sup>98</sup> Goodrich, Hambro, Simons, page 295.

<sup>99</sup> Simma, page 610 ff.

<sup>100</sup> Simma, page 613.

action against states that infringes article 2(4). Chapter VII in the Charter could then be argued as allowing the Security Council to deal with actual breaches of the peace as well as of article 2(4).

Such a theory would limit the Security Council to take action in situations that infringe both articles. A “threat of force” article 2(4) would correspond to “threat to the peace” article 39 while “use of force” article 2(4) would be equivalent to “a breach of the peace” or “act of aggression” article 39. To determine a situation as a “ threat to the peace” without being a “ threat of force” would be to act ultra vires. The competence of the Security Council would at its limit, be defined by article 2(4). This theory considers the Charter to be a closed rather than an open system.<sup>101</sup>

In practice the Security Council has shown a preference for an open system, applying the concept of “threat to the peace” not only in situations containing the “threat of force “ against another state in the meaning of articles 39 and 2(4).<sup>102</sup>

#### **4.1.1 Threat to the peace**

The concept of threatening the peace is the most crucial of the three notions since it is most frequently used by the Security Council when granting its jurisdiction under Chapter VII.<sup>103</sup> It is, however, also the broadest and the most indistinct notion in article 39.

Traditionally theories and policies dealing with collective security only have wars between different states in mind. Collective interventions in intrastate crises, i.e. civil wars, have usually been considered as being beyond the scope of collective security.<sup>104</sup> Therefore early practice of the usage of “threat to the peace” does not reveal the same as the latter. This is probably due to a change in the types of disputes occurring in the post 1945 world order. In the early years, a finding of a threat to the peace was regarded as an initial to a finding of a breach to the peace. Later practice envisages that the term has been modified to handle intrastate conflicts and situations rather than the traditional inter-state conflicts.<sup>105</sup>

Under section 4.1.1.1 below some examples will be given in order to show how a threat to the peace has been defined in some of the resolutions made by the Security Council.

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<sup>101</sup> Keeping the peace; The United Nations and the Maintenance of International Peace and Security, White, Manchester University , Press 1993, page 34 ff.

<sup>102</sup> White, page 34 ff.

<sup>103</sup> Simma, page 610.

<sup>104</sup> Alger, page 60.

<sup>105</sup> White, page 44.



#### 4.1.1.1 Practice regarding article 39

In the 1980:s South Africa was condemned due to an *act of aggression* against Angola. In Resolution 567 (1985) the Security Council strongly condemned South Africa:

“ For its recent act of aggression against the territory of Angola in the Province of Cabinda as well as for its renewed intensified, premeditated and unprovoked acts of aggression, which constitutes a flagrant violation of the sovereignty and territorial integrity of that country and seriously endanger international peace and security”.<sup>106</sup>

The Security Council further demanded that:

“South Africa should unconditionally withdraw forthwith all its occupation forces from the territory of Angola, cease all acts of aggression against that State and scrupulously respect the sovereignty and territorial integrity of the Peoples Republic of Angola.”<sup>107</sup>

Due to the fact that the concept in article 39, regarding a threat to the peace, is broad and not defined it is very open for interpretation.

Ever since the end of the Cold War it has been more or less accepted that an extreme violation *within* a state may be qualified as a threat to the peace. This will also be further explained in section 4.2.1. To give an example, one could look at the case of the former Yugoslavia. Harsh fighting broke in 1991 out between the forces of the federal government and those belonging to the two states of Slovenia and Croatia which had proclaimed their independence. In the Resolution 713 of September 25 1991, the Security Council declared its deep concerns:

“ By the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of the neighbouring countries”.<sup>108</sup>

The Security Council additionally deemed:

“ That the continuation of this situation constitutes a threat to international situation peace and security.”<sup>109</sup>

It further recalled the applicability of Chapter VII in the current situation.<sup>110</sup>

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<sup>106</sup> SC Resolution 567 of June 20,1985.

<sup>107</sup> SC Resolution 567 of June 20, 1985.

<sup>108</sup> SC Resolution 713 of September 25, 1991.

<sup>109</sup> SC Resolution 713 of September 25, 1991.

<sup>110</sup> SC Resolution 713 of September 25, 1991.

The Security Council also decided:

“ Under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Council decides otherwise following the consultation between the Secretary-General and the Government of Yugoslavia.”<sup>111</sup>

Due to the air crash in Lockerbie, caused by a bomb placed on the aircraft by two Libyans, the U.S and the U.K requested the handing over of these two citizens to either of the two countries. When Libya did not comply with the conditions set forth in Resolution 731 of January 21, 1992, the Security Council determined the situation as a threat to the peace and applied sanctions under Chapter VII in the Charter. It determined that:

“ The failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security”.<sup>112</sup>

The extended interpretation of the notion “a threat to the peace” made by the Security Council in recent practice regarding internal situations has been subject of controversies.<sup>113</sup>

The example of Somalia as well as the most recent interpretation of a threat to the peace, i.e. the terror attack in N.Y. in 2001 will be subject for analyse in Chapter 5 and 6.

## **4.2 Different means in order to maintain or restore international peace**

At present there exist two main alternatives for the Security Council, partly elaborated through practice, to act when granting international peace:

1. enforcement actions (Chapter VII)
2. peacekeeping operations (Chapter VI)
  - observer missions
  - peace-keeping forces
  - enlarged peacekeeping forces (“Chapter VI and a half”)

The observer missions and the use of peacekeeping forces are two different ways of handling a peacekeeping operation.

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<sup>111</sup> SC Resolution 713 of September 25, 1991.

<sup>112</sup> SC Resolution 748 of March 31, 1992.

<sup>113</sup> White, page 46.

Enforcement action is explicitly envisaged in Chapter VII in the Charter. It is a collective security operation based on Chapter VII, aiming at eliminating threats to inter-state peace and security or to reverse the aggression by restoring the prior situation. To give one example, such enforcement measures were utilised towards Iraq in 1991-92 in order to reverse its attack on Kuwait.<sup>114</sup>

Peacekeeping operations is considered as being a child of the Cold War. During this period the permanent members of the Security Council suffered from difficulties to co-operate and to make important decisions in the field of international peace and security. This strongly diminished the possibility for the Security Council to apply Chapter VII in the over 100 major conflicts occurring around the world since the establishment of the UN in 1945.<sup>115</sup> The failure of the Security Council to reach unanimity on important issues in the area of Chapter VII was however not considered as discharging the member states of their responsibility under the Charter. In the “Uniting for Peace Resolution” made by the General Assembly in 1950 it was stated that the General Assembly should consider and make recommendations to grant international peace whenever the Security Council failed to do so. A Peace Observation Commission was established with the task to observe and report any situation where existing international tension could endanger international peace and security.<sup>116</sup>

After the dissolution of the USSR in the early 1990s the hostility between the two blocs is reduced and the UN can be used to resolve prolonged conflicts.<sup>117</sup> Today no obvious enemy exists as it did during the Cold War. This can sometimes render it difficult to understand what new risks the organisation is facing.<sup>118</sup>

The peacekeeping operations have been defined as operations that involve the use of military forces without any enforcement powers. It became the general approach during the Cold War in order to prevent local disputes from developing into any armed conflict or war.<sup>119</sup> Typical activities for peacekeeping operations are to supervise cease-fire, to serve as buffers and to help to protect humanitarian transports.<sup>120</sup>

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<sup>114</sup> Alger page 64.

<sup>115</sup> The United Nations at Age Fifty, a Legal Perspective, Tomuschat, Kluwer Law International, 1995, page 81.

<sup>116</sup> GA Resolution 377 (V) Uniting for peace, of November 3, 1950.

<sup>117</sup> Tomuschat, page 85.

<sup>118</sup> Tomuschat, page 92.

<sup>119</sup> Tomuschat, page 84.

<sup>120</sup> Alger, page 152.

The two basic forms of peacekeeping operations are, as already mentioned: observer missions and peacekeeping forces. Both of them work with the same principles:<sup>121</sup>

- both are established by the Security Council and directed by the Secretary-General
- for both operations the approval of the host country is necessary and normally also the consent by all parties directly involved herein.
- the military personnel and equipment will be provided by the UN member states on a voluntary basis.
- both work under the principle of non-violence (observers in an observer mission are unarmed, while personnel serving in peace-keeping forces have light defensive weapons, allowed to be used in self-defence)
- the principle of impartiality is of great importance
- both operations need a broad consensus among the member states to be established
- both have a temporary and improvised character

In the beginning, the peacekeeping operations were restricted to deal with relations and conflicts between states where the lines of conflict as well as the conflicting parties were easy to define. When a cease-fire agreement was made, the Blue Helmets knew where to operate in such inter-state conflicts and they also knew whom they could hold responsible for breaking the cease-fire or other agreements.<sup>122</sup> Today there are many socio-ethnic conflicts very different from the interstate conflicts, the peacekeeping operations were meant to deal with.

In socio-ethnic conflicts the lines of the conflicting parties as well as the lines of the conflict itself are often fragmented and in flux. In many cases there exist national, regional and local leaders, armed groups but also bandits and warlords. In such unstable and often anarchic environment it is very difficult to rely on the consent of the parties as a basis for the peacekeeping operations. This is often the reason to why the UN peacekeeping troops either have used violence or have scaled down their operation to zero. This was true in the cases of both Angola, Rwanda and Somalia.<sup>123</sup>

Enlarged peacekeeping missions are peacekeeping operations containing a limited use of force. They are often regarded as blurring the clear distinction between traditional Chapter VI-based peacekeeping forces and the military enforcement actions taken under Chapter VII.<sup>124</sup> Some peacekeeping missions have therefore been suggested to be called “Chapter VI and a half measures” to create a bridge

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<sup>121</sup> Tomuschat, page 83.

<sup>122</sup> Tomuschat, page 95.

<sup>123</sup> Tomuschat, page 95.

<sup>124</sup> Tomuschat, page 99.

between the two Chapters.<sup>125</sup> Ethnic conflicts where enlarged peacekeeping missions have been used easily blurs not only the line between domestic and international, state and non-state actors but also that between Chapter VI and VII.<sup>126</sup>

In the “Agenda for Peace”, B.B-Ghali introduced the term “ peace enforcement” for enlarged peacekeeping missions. He defined it so the UN forces could employ military power beyond that of the peacekeepers, when enforcing agreements, against any party violating it.<sup>127</sup>

The Security Council is often refraining from stating, even implicitly, on what provisions a peacekeeping operation is based. Reference to Chapter VI has however become quite frequent in state practice.<sup>128</sup>

One should however bear in mind that the possible use of limited force in the context of peacekeeping is very different from a massive use of force as a part of the traditional collective interstate security system.<sup>129</sup>

#### **4.2.1 Humanitarian intervention**

New methods of external interventions by the UN have, as already explained, occurred in recent years. These new interventions are often discussed as conflict prevention, humanitarian intervention and peacemaking. All of them aim at ensuring the survival of people or to keep or establish order in societies rather than to establish a countervailing coalition against any aggressive power.<sup>130</sup>

A humanitarian intervention should be distinguished from other peace-building programmes since it is more limited both in time and scope. It additionally takes place in the context of a civil war. A humanitarian intervention may additionally occur without the explicit consent of the targeted state.<sup>131</sup>

The concept of a humanitarian intervention can be explained as the use of armed force by one state or several states in order to protect citizens of the targeted state from a large-scaled human rights violation.<sup>132</sup>

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<sup>125</sup> Tomuschat, page 83.

<sup>126</sup> Tomuschat, page 99.

<sup>127</sup> An Agenda for Peace; Preventive diplomacy, peacemaking and peace-keeping, A/47/277-S/24111 of June 17, 1992, page 10.

<sup>128</sup> Tomuschat, page 51.

<sup>129</sup> Tomuschat, page 99.

<sup>130</sup> Alger, page 56.

<sup>131</sup> Alger, page 74.

<sup>132</sup> Taylor, Daws, Adamczick-Gerties, page 24.

At present there exists no consensus on how persistent and how gross a violation against human rights must be in order to justify an external intervention. Disagreements also often arise over how “basic” the violated right at issue is.<sup>133</sup>

Additional to the humanitarian motives an intervention may be used as a mean to prevent any intensification in an internal dispute to endanger the security of other neighbouring states. Any spreading to other state boundaries may be considered by the Security Council as a threat to the peace hence justifying the applicability of Chapter VII.<sup>134</sup>

The civil wars in for example the former Yugoslavia and Somalia were all determined as threatening the peace. This was not only due to the enormous amount of destruction in both of these conflicts, but also due to the adverse affects they had on their neighbouring states.<sup>135</sup>

It is important to decide if the system of collective security should be applied only when the security of other states are threatened or if the human suffering within a country in itself is enough to justify a military operation to provide for relief and to save lives. In case of a large-scaled famine, a gross violation of human rights or a civil strife, the latter solution has been chosen in practice. In these cases the situation within the country has been deemed enough to make Chapter VII applicable. Extraordinary circumstances have been considered as legitimate interventions when the international community has been deprived of any other ways to improve the situation.<sup>136</sup>

According to some writers, like White, it is possible to consider the tendency of the Security Council to stress an existence of a threat to the peace in situations like this as a need to quickly find a justification for an intervention where the legal basis for it is limited.<sup>137</sup>

Humanitarian interventions have often been authorised with Chapter VII as legal base.<sup>138</sup> In some cases a mandate has been given to a group of states outside the UN framework to set up military forces. In other cases the task has been entrusted to either the Secretary-General or another international organisation, for example the NATO. These forces have operated alongside with the UN forces, whose mandate for the peacekeeping/humanitarian relief has been based on Chapter VI, something which has rendered a difficult situation.<sup>139</sup> This was the case in Somalia, something that will be analysed in the next Chapter.

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<sup>133</sup> Taylor, Daws, Adamczick-Gerties, page 12.

<sup>134</sup> Alger, page 62.

<sup>135</sup> White, page 46.

<sup>136</sup> Alger, page 63.

<sup>137</sup> Alger, page 63.

<sup>138</sup> Ex the cases of Somalia and Ruwanda.

<sup>139</sup> Alger page 64.

Humanitarian crises could be seen as “endangering the peace” more than threatening it, a fact that would speak for the applicability of Chapter VI instead of Chapter VII, according to some writers like Minear.<sup>140</sup>

Theoretically it is possible to distinguish the enforcement of collective security and humanitarian interventions and to consider them as two different categories of international action, even when they both are based on the provisions set forth in Chapter VII. In practice such a distinction is more complicated to make. Peaceful means have often turned out to be insufficient to ensure the delivery of assistance into the targeted areas. An enforcement element easily creeps into humanitarian interventions, legitimating the reference to Chapter VII.<sup>141</sup>

Neither a humanitarian intervention nor a collective enforcement measure can be judged only by the legal criteria. Politics is very closely linked to the decisions. This is particularly true when looking at the representatives in the Security Council. In Bosnia as well as in Somalia where the anti-U.S. attitude was strong, the parties to the conflict mobilised people against it, pointing at the predominance of the leading western countries in the Council.<sup>142</sup>

Any intrastate crises may also be considered as being a matter only for the state in question. Such opinion is in line with the doctrine of the sovereignty of states, article 2(7) in the UN Charter. This doctrine will be further analysed in the section below.

### **4.3 The sovereignty of states contra interventions**

The doctrine of sovereignty of states implies that no higher authority than the states themselves are acknowledged. No superior jurisdiction exists and only the governments of the states have exclusive jurisdictions within their frontiers. The principle of sovereignty was not articulated in the emergence of international law until the middle of the eighteenth century, but has always been one of the cumber stones in the international system of states. Each state is according to the principle of sovereignty an equal member of the international society and all states are also equal vis-à-vis international law.<sup>143</sup>

In the UN Charter this fundamental principle is set forth in article 2(7).

#### **Art 2(7)**

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<sup>140</sup> Alger, page 62.

<sup>141</sup> Alger, page 60.

<sup>142</sup> Alger, page 68.

<sup>143</sup> Taylor, Daws, Adamczick-Gerties, page 3.

“ Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII. ”

The intended meaning of article 2(7) is unclear. During the drafting of the Charter the French delegation proposed the domestic jurisdiction limitation to apply:<sup>144</sup>

“Unless the clear violation of essential liberties and human rights constitutes itself a threat capable of compromising peace.”

This indicates that the delegates intended a wider exception to when an enforcement action could be legitimated.<sup>145</sup>

Through practice, the Security Council has elaborated its own interpretation of the notions intervention and domestic jurisdiction. A finding under article 39, combined with enforcement measures or not, has through practice shown to be enough to internationalise a situation and escape the grasp of article 2(7). This might be what the delegates in San Francisco had in mind.<sup>146</sup>

The prohibition to intervene, as written in article 2 (7) , forbids the *UN itself* to intervene in any internal affair of the member states. The wording of the article makes this prohibition to intervene without exceptions; a rather hard version of the doctrine. This prohibition to intervene in other states affairs should, if strictly following the doctrine of sovereignty, prevent the UN from involving itself into any intrastate affairs.

Regarding the prohibition for one member state to intervene into the matters of another, the principle of sovereignty may be deduced from article 2(4).

### **4.3.1 The consent of the government in the targeted state**

The key UN documents concerning the humanitarian role of the United Nations are A/46/182 and A/43/131. Herein some guiding principles are laid down. Amongst those one finds the following wording:

“The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance *should* be provided with the consent of the affected

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<sup>144</sup> United Nations Conference on International Organization, Volume III, Dumbarton Oaks, page 386.

<sup>145</sup> White, page 58.

<sup>146</sup> White, page 58.



country and *in principle* on the basis of an appeal by the affected country.”<sup>147</sup>  
(italic letters made by the author)

The use of the notions *should* and *in principle* might imply that there could be occasions when the consent of the government is deemed unnecessary.<sup>148</sup>

These guiding principles further supposes that the first responsibility in order to take care of victims lies within the territory of the state in question.

“ Each state has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected state has the primary role of the initiation, organization, co-ordination, and implementation of humanitarian assistance within its territory.”<sup>149</sup>

The targeted state is called upon to assist the humanitarian assistance that is provided to their country.

“ States whose populations are in need of humanitarian assistance are called upon to facilitate the work of these organizations in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential”.<sup>150</sup>

When the Cold War came to its end in the early 1990s, one of the common opinions was that an intervention only could take place when there was an expressed consent from the government of the targeted state. No form of conduct of a sovereign government within its frontiers was a matter of concern for others. This argument was held by, for example, China.<sup>151</sup>

Another opinion was that an intervention within a state, to protect human rights, also could be justified without the consent of the targeted government, on the basis of a threat to international peace and security. Justifications could be found when looking, for example, at the number of refugees.<sup>152</sup>

Other justifications have arisen in order to allow humanitarian interventions, although they remain controversial. One opinion is that the Charter gives not only rights to states but also to peoples. A statehood could therefore be considered as being conditional upon the respect of the rights of the peoples. The legal basis for these arguments could be found both in the preamble speaking of reaffirming “faith in fundamental human rights” as well as in article 1(3) setting forth the obligation to “achieve international co-operation...in promoting and encouraging respect for human rights and fundamental freedom for all..” This was argued as

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<sup>147</sup> GA Resolution 46/182 of December 19, 1991.

<sup>148</sup> Taylor, Daws, Adamczick-Gerties, page 6.

<sup>149</sup> GA Resolution 46/182 of December 19, 1991.

<sup>150</sup> GA Resolution 46/182 of December 19, 1991.

<sup>151</sup> Taylor, Daws and Adamczick-Gerties, page 5.

<sup>152</sup> Taylor, Daws and Adamczick-Gerties, page 5.

giving evidence of the fact that the sovereignty of states was not without exceptions and that extreme violations of human rights could in themselves be a justification for the international community to intervene.<sup>153</sup>

The question whether a humanitarian intervention may be put through, without the consent of the targeted government, is hence controversial. The UN Charter speaks in its article 2(7) of a ban on any intervention regarding matters lying “essentially within the domestic jurisdiction of any state.” Though it makes an exception saying that “this principle shall not prejudice the application of the enforcement measures under Chapter VII.” Subsequently, when Chapter VII is invoked as legal basis for the intervention, the Security Council gets a limited legal competence to carry out humanitarian operations lacking the consent of the country in question.<sup>154</sup> One can argue that the defence of the national sovereignty should not be an argument in favour for not putting through any humanitarian intervention if there is a common understanding that it should be launched.<sup>155</sup>

Also with the consent of the government in the targeting state, humanitarian interventions are sometimes being considered as unlawful. This is due to the fact that it involves neither self-defence as set forth in article 51 in the UN Charter nor any enforcement action under Chapter VII.<sup>156</sup> In situations where the host government is either unwilling or incapable of giving its consent to the UN mission, the situation starts approaching enforcement action under Chapter VII rather than peacekeeping under Chapter VI.<sup>157</sup>

Till present, the most striking example regarding a non-consensual intervention took place in 1991. An intervention in Iraq was made at the end of the Gulf War in order to protect the Kurds and the Shia Muslims in the country. The intervention lacked the consent of Saddam Hussein, although it could later be considered as being implied.<sup>158</sup>

In the case of Somalia the intervention took place due to a prior request by the local government.

Kofi Annan, the present Secretary-General of the UN, discusses the dilemma of humanitarian interventions in his document entitled “We the peoples of the United Nations”. Herein he emphasises the importance of both the principles of sovereignty of states but also the defence of humanity. According to Annan no principle, not even that of the sovereignty of states, can possibly shield any crimes against humanity. Where and whenever such crimes occur, given all peaceful means being exhausted, the Security Council has a moral duty to act in the name

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<sup>153</sup> Taylor, Daws and Adamczick-Gerties, page 5.

<sup>154</sup> Alger, page 63 ff.

<sup>155</sup> Alger, page 83.

<sup>156</sup> Alger, page 61.

<sup>157</sup> Alger, page 93.

<sup>158</sup> Taylor, Daws and Adamczick-Gerties, page 6.

of the whole international community. Only because it is not possible to protect people everywhere, it should not be a reason to remain passive when there is a possibility to act. An armed intervention should however always remain the very last option.<sup>159</sup>

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<sup>159</sup> Annan, page 48.

# 5 The example of Somalia-a humanitarian intervention

As explained in Chapter 4, the extended interpretation of the notion a threat to the peace made by the Security Council in recent practice have been subject to controversies. Often, as in the current case, there is no direct reference made to article 39, but to Chapter VII in its whole. The Security Council stated only, as we will see, that a threat to international peace existed.

When it comes to humanitarian interventions in civil wars, the lack of a clear legal base and a generally accepted doctrine constitute a big problem at present. Chapter VII has, according to some authors, been stretched to its very limit by permitting such interventions.<sup>160</sup>

Somalia is a good example of an intervention when peacekeeping forces with a Chapter VII- mandate have operated alongside forces whose mandate for the peacekeeping/humanitarian relief has been based on Chapter VI. This has rendered a very difficult situation. The trade-offs between military enforcement operations and the delivery of relief in Somalia turned out to be very problematic.

## 5.1 Background to the conflict in Somalia

The collapse of President Siad Barre's regime in Somalia in 1991 was followed by power struggles and clan clashes all around the country. In November 1991 severe fighting broke out in Mogadishu between two factions. One supported Interim President Ali Mahdi Mohamed and the other the Chairman of the United Somali Congress; General Mohamed Farah Adid. From this moment on fighting persisted in the capital and it also spread all over the country. Heavily armed elements controlled different parts of Somalia. Some of them declared their alliance with one of the two above mentioned factions, while others did not.<sup>161</sup>

The hostilities between the two main factions resulted in widespread casualties and destruction. Hundreds of thousands civilians fled their homes, leading to a huge need of humanitarian assistance. Approximately 4.5 million of the Somali inhabitants were threatened by malnutrition and hereby caused diseases. This responded to half the population in Somalia. The most affected persons were those living on the countryside. Since November 1991 nearly 300 000 persons lost their lives and 1.5 million more lives were threatened at immediate risk.

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<sup>160</sup> Alger, page 83.

<sup>161</sup> United Nations Operation in Somalia II, page 1.

Around 1 million Somali inhabitants sought refuge in neighbouring countries and elsewhere.<sup>162</sup>

Several elements aggravated the problems Somalia was facing. Some problems were the extensive banditry and looting together with the physical destruction. These conditions constrained the deliverance of humanitarian provisions. If maintained, the harsh conflict was esteemed to threaten the stability in the whole Horn of Africa region.<sup>163</sup>

## **5.2 Efforts made by the United Nations in order to improve the situation in Somalia**

In March 1991 the UN was fully engaged with its humanitarian efforts in Somalia. The UN personnel had temporarily to withdraw on a couple of occasions due to the unstable situation. Nevertheless they continued their work to the fullest extent possible in co-operation with the International Committee of the Red Cross (ICRC) and with other Non-Governmental Organisations (NGO's).<sup>164</sup>

In December 1992, the Secretary-General initiated an attempt to restore peace in the country. A UN-delegation was sent to Somalia in order to negotiate with the fighting parties. All faction leaders except General Adid expressed their support for a cease-fire. A unanimous support was expressed for a UN role to bring about national reconciliation<sup>165</sup>

Consultations between the UN Secretary-General and the members of the Security Council resulted in Resolution 733 of the 23 January 1992. Herein the Council deliberated the request by Somalia to consider the current situation and expressed its concerns that:

“ The continuation of this situation constitutes, as stated in the report of the Secretary-General, a threat to international peace and security.”<sup>166</sup>

The Council further asked the Secretary-General to take the actions necessary to increase the humanitarian assistance by the UN and its specialised agencies. All the conflicting parties were urged to immediately cease the hostilities. They were additionally asked to commence a cease-fire as well as a process of reconciliation and political settlement.<sup>167</sup>

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<sup>162</sup> United Nations Operation In Somalia II, page 1.

<sup>163</sup> United Nations Operation in Somalia II, page 1.

<sup>164</sup> United Nations Operation in Somalia II, page 1.

<sup>165</sup> United Nations Operation in Somalia II, page 2.

<sup>166</sup> SC Resolution 733 of January 23, 1992.

<sup>167</sup> SC Resolution 733 of January 23, 1992.

The Council also decided:

“ Under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Somalia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia until the Council decides otherwise.”<sup>168</sup>

Due to a visit in Somalia by a UN-team, Interim President Ali Mahdi and General Aidid both signed “Letters of Agreement on the Mechanisms for monitoring the cease-fire and on Arrangements for equitable and effective distribution of humanitarian assistance” in the end of March 1992.<sup>169</sup>

### **5.2.1 The establishment of UNOSOM I**

In response to a recommendation made by the Secretary-General the Security Council adopted Resolution 751 of April 24, 1992. Herein the Secretary-General was requested to instantly set up 50 unarmed peace observers in order to monitor the agreed cease-fire in Mogadishu and to establish:<sup>170</sup>

“ [...Under the overall direction of the Special Representatives of the Secretary-General a United Nations security force to be deployed as soon as possible...].”<sup>171</sup>

Although no explicit reference was made in the resolution, the observers were to operate with Chapter VI as a legal base.

The peaceobservers had as their task to:<sup>172</sup>

- observe permanent cease-fire
- provide urgent humanitarian assistance
- supervise the indigenous police force; and
- promote national reconciliation and peaceful settlement.

The first observers arrived in Mogadishu in early July 1992, followed by the first group of security personnel, arriving on September 14, 1992.<sup>173</sup>

Even though the UN and its partners had the capacity to provide increased assistance to the starving population they were prevented to do so due to the lawlessness and the lack of security in the country. Looting of supplies by armed gangs from delivery and distribution points and attacks on incoming ships and

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<sup>168</sup> SC Resolution 733 of January 23, 1992.

<sup>169</sup> United Nations Operation in Somalia II, page 2.

<sup>170</sup> SC Resolution 751 of April 24, 1992.

<sup>171</sup> SC Resolution 751 of April 24, 1992.

<sup>172</sup> White, page 255.

<sup>173</sup> United Nations Operation in Somalia II, page 3.

airports, prevented the guaranteed deliverance of humanitarian support to reach the starving population.<sup>174</sup> The strength of the United Nations Operation in Somalia I (UNOSOM I) was therefore increased in Resolution 775 of August 28, 1992 and four different operational zones were created.

### **5.2.2 The establishment of UNITAF**

Despite all efforts to ameliorate the situation in Somalia, it continued to get worse. The country remained without a central government, with which it was possible to negotiate, and the capital was divided by rival militias. A dozen or more factions were active over the country. The political chaos and extensive physical devastation severely constrained the delivery of humanitarian supplies. Numerous of the Somali, de facto, authorities additionally refused to concur with the deployment of UN troops, to protected delivery of aid in the areas of greatest need. UNOSOM troops were fired upon and their arms and vehicles taken. Ships with supplies were further prevented from docking and also shelled. Airports as well as seaports were under fire. Big amounts of cash and relief support were being extorted from donor agencies and organisations. The lives of the personnel, trying to distribute supplies to the starving people, were put to danger. Lots of relief supplies were ready to be distributed but only a fraction reached those who desperately needed it. Estimated 3000 persons died each day from starvation, while the warehouses remained stocked. The problems relating to the security and protection of relief supplies needed to be resolved on an immediate basis.<sup>175</sup>

On December 3, 1992, the Security Council unanimously adopted Resolution 794. Herein it was determined that:

“ The magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security.”<sup>176</sup>

The Security Council expressed its concern for:

“ The deterioration of the humanitarian situation in Somalia and underlining the urgent need for the quick delivery of humanitarian assistance in the whole country.”<sup>177</sup>

It also uttered its anxiety for the reports of violations of international humanitarian law as well as the reported cases of violence towards personnel participating in

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<sup>174</sup> United Nations Operation in Somalia II, page 3.

<sup>175</sup> United Nations Operation in Somalia II, page 5.

<sup>176</sup> SC Resolution 794 of December 3, 1992.

<sup>177</sup> SC Resolution 794 of December 3, 1992.

relief distribution. Every person liable for such a crime, would be held responsible for such acts.<sup>178</sup>

Finally it endorsed:

“ The recommendation by the Secretary-General...that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible.”<sup>179</sup>

The Secretary-General and the member states were given a mandate to:

“Use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”<sup>180</sup>

As the UN did not have the capability to command and to control such an enforcement action that was needed in Somalia, a multi-national force coalition with a Chapter VII enforce mandate was set up.<sup>181</sup>

The Security Council authorised the Secretary-General and the member states, willing to participate to make arrangements for a unified control and command of the military forces that would be concerned. Member states were called to provide military forces and cash, if they were in a position to do so. The Secretary-General was asked to set up a fund so the contributions could be channelled to states or operations concerned. Further were both the Secretary-General and the member states asked to establish appropriate mechanisms in order to co-ordinate between the UN and their military forces.<sup>182</sup>

The U.S. offered 28 000 soldiers out of the 30 000 men acting as a part of the UN force. On December 9, 1992, the first elements of the Unified Task Force (UNITAF) were deployed in Mogadishu.<sup>183</sup>

The main goal of the UNITAF was to establish a secure environment in Somalia for urgent humanitarian assistance. When this was accomplished, the military command was to be handed over to the UN. Meanwhile UNOSOM would remain fully responsible for the political aspects as well as for the humanitarian assistance to the country. UNOSOM remained in the capital and continued to liaise with UNITAF and planned for the transition to normal peacekeeping functions.<sup>184</sup>

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<sup>178</sup> SC Resolution 794 of December 3, 1992.

<sup>179</sup> SC Resolution 794 of December 3, 1992.

<sup>180</sup> SC Resolution 794 of December 3, 1992, para 10.

<sup>181</sup> Peacekeeping and the United Nations, Hill, Malik, Dartmouth Publishing Company Limited, 1996, page 137.

<sup>182</sup> SC Resolution 794 of December 3, 1992.

<sup>183</sup> Hill and Malik, page 137.

<sup>184</sup> United Nations Operation in Somalia II, page 6.



### 5.2.3 The establishment of UNOSOM II

The presence of UNITAF had a positive impact on the security situation in Somalia as well as on the delivery of the humanitarian assistance. The situation was however still quite unstable.<sup>185</sup>

On March 3, 1993 the Secretary-General submitted a report to the Security Council containing the transformation of the UNITAF to United Nations Operation in Somalia II (UNOSOM II). On May 4, 1993, the military command was transferred from UNITAF to UNOSOM II by Resolution 814, adopted on March 26, 1993.<sup>186</sup>

The deployment of UNOSOM II was at the discretion of the Secretary-General with his special representatives and the force commander acting under the authority of the Security Council. UNOSOM II was, as UNITAF endowed, with enforcement powers, in accordance with Chapter VII, in order to establish a secure environment throughout Somalia.<sup>187</sup>

The mandate of the UNOSOM II operation was to cover the whole territory of Somalia. It was proposed to include the following military tasks:<sup>188</sup>

- to make sure that all factions continue to respect the cease-fire and other agreements to which they had consented
- to prevent any violence and if deemed necessary to take appropriate action
- to maintain the control over any heavy weapon of the organised factions which have been brought under international control
- to seize the small arms of the unauthorised armed elements and to assist in the registration and security of such arms
- to secure or maintain security at all ports, airports and other lines of communication required for the deliverance of humanitarian assistance
- to protect the personnel, installations and equipment of the UN as well as its agencies
- to continue the programme of mine-clearing
- to repatriate refugees and displaced persons within Somalia
- to carry out further actions as might be authorised by the Security Council

The UN peacekeeping force met some difficulties while carrying out their assignment. At two different occasions in 1993 some clan leaders used violence towards the UN soldiers. Al together over 50 UN soldiers were killed and many more were missed or wounded.<sup>189</sup>

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<sup>185</sup> United Nations Operation in Somlia II, page 6.

<sup>186</sup> United Nations Operation in Somalia II, page 7.

<sup>187</sup> United Nations Operation in Somalia II, page 8.

<sup>188</sup> United Nations Operation in Somalia II, page 8.

<sup>189</sup> United Nations Operation in Somalia I, page 3 ff.

The mandate of UNOSOM II was extended in different resolutions made by the Security Council until 1995. It ended in March 1995 when the last contingents of UNOSOM II left Somalia.<sup>190</sup>

### 5.3 Criticism towards the United Nations-intervention in Somalia

The former Secretary-General of the UN, Boutros Boutros-Ghali described the guiding principles in order to succeed with a peace-keeping operation as follows:

“The United Nations can be proud of the speed with which peacekeeping has evolved in response to the new political environment resulting from the end of the Cold War, but the last few years have confirmed that respect for certain basic principles of peacekeeping are essential to its success. Three particular important principles are the *consent of parties, impartiality and the non-use of force except in self-defence*. Analysis of recent successes and failures shows that in all the successes those principles were respected and in most of the less successful operations one or other of them was not.”<sup>191</sup>  
(italic letters made by the author)

Hence three basic principles are important to follow:<sup>192</sup>

- the consent of the parties
- impartiality
- non-use of force except in self-defence

These three criterias are true for a Chapter VI intervention. When an operation is taking place with Chapter VII as a legal base, a certain enforcement action is allowed.

The reason to why the operation in Somalia faced difficulties is described by Francis Henn in his Article “Keeping the Peace: A military perspective.” The troops acting under UN command abandoned, according to Henn, their impartiality and used disproportionate force towards one Somali faction.<sup>193</sup> Subsequently the forces failed in one of the above mentioned principles i.e. the impartiality. UNOSOM II has additionally been criticised for failing in respecting local culture and traditions.<sup>194</sup>

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<sup>190</sup> Tomuschat, page 93.

<sup>191</sup> A/50/60-S/1995/1, of January 3, 1995, para 33.

<sup>192</sup> A United Nations for the twenty-first century, Peace, Security and Development, Bourantonis, Evriviades, 1997, Kluwer Law International, page 204 ff.

<sup>193</sup> See also Tomuschat, page 102 having the same opinion.

<sup>194</sup> Hill, Malik, page 141.

# 6 The terror attack on September 11, 2001

*“Terrorism is a global menace. It calls for a united, global response. To defeat it, all nations must take counsel together, and act in unison.*

*That is why we have the United Nations. “*

Kofi Annan<sup>195</sup>

The most recent finding of a threat to international peace and security, made by the Security Council, is the terror attack in the United States in September 2001. The concept of a threat to the peace, as stated in article 39 of the UN Charter, was regarded as including this act of terrorism.

## 6.1 Definition of terrorism

The war fought against terrorism is difficult since the enemy is neither a single entity nor a single state. Instead it is a large and well hidden network functioning in several countries.<sup>196</sup>

It is hard to define what is meant by terrorism. It can be considered as consisting of either violence or threats of violence aiming at creating an atmosphere of fear. Through terror acts the terrorists aim at obtaining a social or political change.<sup>197</sup>

International terrorism can be defined as cross boarding terrorism such as targets not in the home country, international terror acts strike international airlines or other lines of commerce. In short, international terrorism consists of acts of terror having international consequences.<sup>198</sup>

The modern industrial society has many vulnerable targets as the terrorists also profit from the phenomena of globalisation and modern technology. Present mobility as well as easy access to weapons facilitates the striking at any continent.<sup>199</sup>

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<sup>195</sup> Secretary-General's Statement, UN Chronicle Volume XXXVIII, Number 3 2001, page 2.

<sup>196</sup> Combating Terrorism, Coordinating International Cooperation, Arlacchi, UN Chronicle Volume XXXVIII, Number 3 2001, page 1.

<sup>197</sup> The United Nations and the Maintenance of peace and security, UNITAR, Matrinus Nijhoff Publishers, 1987, page 407.

<sup>198</sup> UNITAR, page 409.

<sup>199</sup> UNITAR, page 412.

So far six basic terrorist tactics are known comprising 95 % of all the terrorist acts: assassinations, bombings, hostage situations, armed assaults, kidnappings and hijackings.<sup>200</sup>

It is not so easy to point out the terrorists. Governments often label all acts including violence committed by their political opponents as terrorism while the opponents claim to be victims of government terror.<sup>201</sup>

Terrorism is an important threat to human rights, one of the basic rights protected by the UN Charter. The growing sponsorship of terror acts by governments put more money into the hands of the terrorists as well as more intelligence and technical expertise, something which is very dangerous.<sup>202</sup>

## **6.2 September 11, 2001**

On September 11, 2001, the U.S. was hit by the worst terror attack in history. Two hi-jacked aeroplanes crashed into the two towers of the World Trade Center, one in the Pentagon, Washington D.C. and another hi-jacked plane crashed near Pittsburgh, Pennsylvania. One hour after the impact one of the towers in the World Trade Centre collapsed, shortly followed by the second tower.<sup>203</sup>

The attack claimed 6000 casualties from 80 different nations.<sup>204</sup>

### **6.2.1 The response of the United Nations to the terror attack**

On September 12, the General Assembly strongly condemned the:

“Heinous acts of terrorism, which have caused enormous loss of human life, destruction and damage in the cities of New York, host city of the United Nations, and Washington D.C. and in Pennsylvania”<sup>205</sup>

It urgently called for an:

“International co-operation to prevent and eradicate acts of terrorism, and stresses that those responsible for aiding, supporting or harbouring the perpetrators and sponsors of such acts will be held accountable.”<sup>206</sup>

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<sup>200</sup> UNITAR, page 412.

<sup>201</sup> UNITAR, page 408 ff.

<sup>202</sup> UNITAR, page 414.

<sup>203</sup> <http://www.svt.se/nyheter/2001/010911/139.html>.

<sup>204</sup> The United Nations Response, UN Chronicle Volume XXXVIII, Number 3 2001, page 1

<sup>205</sup> GA Resolution 56/L.1 of September 18, 2001.

<sup>206</sup> GA Resolution 56/L.1 of September 18, 2001.

The Security Council in its turn reaffirmed the principles and purposes of the United Nations. It recognised the inherent right of individual as well as collective self-defence in accordance with the Charter and condemned:

“ In the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington D.C and Pennsylvania and regards such acts, like any act of international terrorism, *as a threat to international peace and security*.”<sup>207</sup> (Italic letters made by the author)

In Resolution 1373 of September 28, 2001 the Security Council further declared that:

“ Acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.”<sup>208</sup>

The Council emphasised the urgent need to strengthen a global response to fight threats towards international peace and security caused by terrorist acts. It also expressed its determination to fully implement the adopted resolution.<sup>209</sup>

Acting under Chapter VII the Council set forth wide-ranging strategies to fight international terrorism. It established a Committee, consisting of all Council members, to monitor the implementation of the resolution. States were called on to report within 90 days on the actions taken in order to implement the measures laid down in the adopted text.<sup>210</sup>

Some of the measures the states were urged to implement were :<sup>211</sup>

- to prevent and suppress the financing of terrorism
- to criminalise the provisions or collection of funds for such acts
- to freeze the financial assets of those who commit, attempt to commit or facilitate terrorist acts
- to prohibit their nationals or people in their territory from making funds or services available to those who are involved in terrorism
- to refrain from providing support to people involved in terrorism
- to take steps in order to prevent terrorist attacks
- to deny safe havens to those who commit or support terrorist acts or to provide safe havens

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<sup>207</sup> SC Resolution 1368 of September 12, 2001.

<sup>208</sup> SC Resolution 1373 of September 28, 2001.

<sup>209</sup> SC Resolution 1373 of September 28, 2001.

<sup>210</sup> SC Resolution 1373 of September 28, 2001.

<sup>211</sup> SC Resolution 1373 of September 28, 2001.

- to prevent terrorists from using their territories for those purposes against other countries
- to bring to justice anyone who participates in terrorism
- to assist other States with criminal investigations or proceedings

A week long debate on how to eliminate international terrorism was held by the General Assembly, starting October 1, 2001.

The President of the General Assembly; Han Seung-soo from the Republic of Korea, stated in his opening words of the Conference that:

“We must never forget that terrorism is not a weapon yielded by one civilization against another, but rather an instrument of destruction through which small bands of criminals seek to undermine civilization itself.”<sup>212</sup>

### **6.3 International instruments in the area of terrorism**

At present there exist twelve UN Conventions and protocols dealing with terrorism.

The terror attack in the U.S. shows the need for states to ratify and to implement the measures set forth in these Conventions in order to fight international terror.

One important Convention is the Convention for the Suppression of Unlawful Seizure of Aircraft adopted in Hague in 1970. At present 174 states parties have signed this treaty which combats aircraft hijackings and:<sup>213</sup>

- considers as a crime to board an aircraft in flight, “unlawfully, by force or threat thereof or any other form of intimidation, seizes or exercises control of that aircraft” or attempts to do so
- asks parties to the Convention to make hijackings punishable by severe penalties
- asks parties having custody of any alleged offender to either extradite him or to submit the case for prosecution
- asks parties to assist each other in connection with criminal proceedings brought under the Convention

Other international Conventions dealing with terrorism are the:<sup>214</sup>

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<sup>212</sup> The United Nations Response, page 1.

<sup>213</sup> Convention for the Suppression of Unlawful Seizure of Aircraft, Brinig-Lysén, page 264.

<sup>214</sup> International Instruments Against Terrorism, UN Chronicle Volume XXXVIII, Number 3 2001, page 1 ff.

- Convention on Offences and Certain Other Acts Committed on Board Aircraft.
- Convention for the Suppression of Unlawful acts against the safety of Civil Aviation.
- Protocol on the Suppression of Unlawful acts of Violence at Airports Serving International Civil Aviation.
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomat Agents.
- International Convention against the Taking of Hostages.
- Convention on the Physical protection of Nuclear Material.
- Convention for the Suppression of Unlawful acts against the safety of Maritime navigation.
- Protocol for the Suppression of Unlawful acts against the Safety of Fixed Platforms Located on the Continental Shelf.
- Convention on the Marketing of Plastic Explosives for the Purpose of Detection.
- International Convention for the Suppression of terrorist Bombings.

In 1994 the General Assembly adopted the Declaration on Measures to Eliminate International Terrorism. Herein the Assembly condemned all terrorist acts as criminal and unjustifiable. It also urged all states to take measures at both national and international levels in order to eliminate international terrorism.<sup>215</sup>

The most recent Convention is the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly in 1999. At present only 4 state parties have signed the Convention. In order to enter into force it needs a ratification by 22 states.<sup>216</sup>

This Convention obliges, for example, the state parties to prosecute or to extradite persons who are accused of funding terrorist activities. It also asks banks to endorse measures to identify doubtful transactions.<sup>217</sup>

The co-operation through UN includes however not only the drafting of international Conventions but also the sharing of information and intelligence between states and co-operations of the states law enforcement agencies. The UN additionally develops and implements mechanisms in order to suppress financial support to terrorist groups.<sup>218</sup>

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<sup>215</sup> International Instruments Against Terrorism, page 5.

<sup>216</sup> International Instruments Against Terrorism, page 4.

<sup>217</sup> International Instruments Against Terrorism, page 4.

<sup>218</sup> [Arlacchi](#), page 1.

# 7 Conclusions

This thesis aimed at describing the present role of the UN compared to its visions in 1945 and to explore how the Charter and the organisation have adapted itself to new upcoming problems.

The UN is considered as being the successor to the League of Nations. On the contrary to the League, the UN is however still an existing and evolving organisation.

It is crucial to remember that both the League and the UN were/are *co-operations of states*. How well the UN can accomplish its missions today depends on the states themselves. If, as it was during the existence of the League, there is no universality in the participation of the states, it is more difficult for the international forum to deal with international crises.

The non-participation of the U.S. was probably one of the League's biggest obstacles.

Today, the Charter of the UN is, except for some minor changes, almost identical to its drafting in San Francisco in 1945. The world has however changed.

The UN was established in order to prevent a new world war and its most important task is the maintenance of international peace and security. Important issues like the globalisation is also handled by the UN at present. However, having many positive effects, globalisation also creates threats and vulnerabilities. The criminal networks take advantage from the more advanced technologies to facilitate drug and arm traffic. Open borders and unprecedented mobility have increased the number of people infected by HIV/AIDS. The world is also challenged by transborder pollution and the global climate change.

In order to adapt the Charter as well as the organisation itself to new upcoming problems basically two possibilities exist. Either to change the Charter by amendments (formal amendments) or by an adaptation through practice. So far only three formal amendments have been made since the creation of the UN. This is probably due to the requirement of a two-third majority including all the permanent members of the Security Council when making any formal amendment. In most cases, an adaptation to new situations, hence takes place through practice.

One of the tools given to the UN in order to obtain international peace is the collective enforcement system, set forth in Chapter VII of the Charter. In order to open for the applicability of this Chapter, the Security Council must determine the existence of either a threat to peace, a breach of peace or of an act of aggression,



as stated in article 39. A threat to the peace is the broadest concept of the three notions and is most frequently used as reference by the Security Council.

The initial meaning of any threat to international peace was, at the drafting of the Charter, that of an interstate conflict, as laid down in article 39. Today such conflicts are rare. Instead the number of intrastate conflicts raised, and so has the need to handle such new conflicts.

When looking at the practice of the Security Council, there has been an important change after the end of the Cold war. During this period the organisation was prevented from taking action in the majority of upcoming conflicts due to the veto imposed by either the U.S or the Soviet Union. After its end the organisation has refound its strength to act, as it was intended.

In several recent cases, the Security Council has found the existence of a threat to international peace in new conflicts and situations. This extended interpretation of article 39 and threats to international peace hasn't been without controversies.

The three fundamental security threats the world faces today are:

- the increase of weapons of mass destruction, such as nuclear weapons
- the fragmentation of states due to socio-ethnic wars, and
- major ecological catastrophes

Due to the fact that the helping convoys in Somalia never reached the starving population, the UN mandate was extended to include the right to use enforcement actions. It was the very first time peacekeeping forces were allowed to use force in order to deliver humanitarian relief to the civil population. According to some, Chapter VII was stretched to its very limit, being the legal base for such humanitarian intervention.

The conflict in Somalia also shows an example of where peacekeeping forces with a Chapter VI mandate worked side by side with forces having a Chapter VII mandate, something which made the situation quite difficult.

The most recent finding of a threat to international peace was made by the Security Council as a result of the terror attack in the U.S. 2001. Due to this finding, Chapter VII got applicable in its whole. The Security Council established a Committee and imposed several measures on the member states with Chapter VII as the legal base. These measures were obligatory for the members states. Recognising the inherent right of individual as well as collective self-defence in accordance with the Charter, the Security Council also considered the strike back from the U.S. in Afghanistan as legal, in the aspect of international law. The changing practice of the UN as well as the extended meaning of a threat to international peace makes it more difficult to foresee the future meaning of the

concept. Probably it would be better to amend article 39, including also intrastate conflicts under certain circumstances. Intrastate conflicts are situations where the notion has been most frequently extended. Such amendment is however hard to put into reality. Instead the adaptation continues to take place through practice.

The western concentration of power within the permanent members of the Security Council is often subject to criticism. Considering the fact that the Council alone decides the existence of a threat to international peace, making Chapter VII applicable in its whole, one cannot ignore this critics. The question is why the organisation enrol itself in certain conflict, but not in others?

Then of course, the UN is a political organisation and a co-operation of states. The economic contribution from example the U.S. to the UN is crucial. An act or an enrolment into a conflict against the opinion held by the U.S. will probably not be put into reality.

In order to be better prepared for future challenges, *more objective measurements* are needed when the Security Council decides on any threats to the peace. The dependency of the political will from the U.S. needs, if possible, to be decreased. Again, one of the best options is, according to the author, to *amend article 39* to also include certain intrastate conflicts in order to make the application of article 39 more predictable.

However, the author agrees with Kofi Annan stating that:<sup>219</sup>

“The fact that we cannot protect people everywhere is no reason for doing nothing when we can.”

The UN consists of the peoples. *We are* the peoples of the United Nations and we decide its future.

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<sup>219</sup> Annan, page 48.

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