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Threat to the peace?

Are gross violations of human rights a threat to the peace
in the meaning of Article 39, Charter of the United
Nations?

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Summary

Human rights are paving its way on the international arena. The international recognition that certain rights needs to be protected has grown. One of the ways this can be seen is that today, gross violations of human rights are considered to be a threat to international peace and security in the meaning of Article 39 of the Charter of the United Nations. A threat to the peace in the meaning of the Article was originally intended to be a military threat; that is one state posing a military threat against another state.

Through the practice of the Security Council, which has the full discretion to determine a situation as a threat to the peace, a new era has started since the end of the Cold War. During the Cold War, the Council was in many situations deadlocked due to the tensions between the two superpowers of that time, the United States and the Soviet Union. Therefore, the Council only determined three cases with human rights violations as a threat to the peace. These three cases were the imposition of economic sanctions against Rhodesia and South Africa to protest against their racist regimes, and the civil war in the Congo in the early sixties, and its implications on the population.

Since the fall of the Berlin wall, and the dramatic change in the political climate in the world and in the Security Council of the United Nations, a number of cases have been declared as a threat to the peace. The repression of civilians in northern Iraq in the early 1990's was determined a threat to the peace. This was also the case with the civil war in Yugoslavia, Somalia, Rwanda, Zaire, Burundi, Liberia and Angola. In these cases, the situation in the country, the suffering of the civilian population, caused by civil war, was one of the reasons the Council gave when authorizing different enforcement measures under Chapter VII of the UN Charter. In Haiti and Albania, the situation for the population and the violations of human rights was mentioned when the situation was considered a threat to the peace.

What is unique about these situations is that, in the traditional sense, there is no threat to international peace and security. The conflicts in question do not threaten the international community as a whole. It is the fact that the importance of human rights are becoming internationally recognized, and the mere violation of these rights might be considered enough to internationalize a conflict, and thus constitutes a threat to international peace and security.

There needs to be a violation of a certain right in order for the situation to constitute a threat. There must be a 'massive' or 'large scale' violation of a 'fundamental' right. It is very hard to narrow down this definition more.

In sum, gross violations of human rights are considered a threat to the peace in the meaning of Article 39 of the UN Charter. This can be deduced from the practice of the Security Council in the recent years.

Abbreviations

CANZ	Canada, Australia and New Zealand
DRC	Democratic Republic of the Congo
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
FPR	Rwandan Patriotic Front
FNLA	National Front of Liberation of Angola
GA	General Assembly
G 77	Group of 77 less developed states.
ICJ	International Court of Justice
IFOR	Peace Implementation Force
ILC	International Law Commission
ILO	International Labour Organization
IPTF	International Police Task Force
KLA	Kosovo Liberation Army
MONUC	United Nations Observer Mission in the Democratic Republic of Congo
MPLA	Popular Movement for the Liberation of Angola
NAM	Non-aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
OAU	Organization of African Unity
ONUC	United Nations Operation in the Congo
OSCE	Organization for Security and Co-operation in Europe
op.	Operative paragraph
p	Page
pp.	Preambular paragraph
Para.	Paragraph
Res.	Resolution
RPF	Rwandan Patriotic Front
SADC	Southern African Development Community
SC	Security Council
SFOR	Stabilization Force
SWAPO	South West Africa People's Organization
UDI	Unilateral Declaration of Independence
UK	United Kingdom
UN	United Nations
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNAMIR	United Nations Assistance Mission in Rwanda
UNAMSIL	United Nations Assistance Mission in Sierra Leone
UNAVEM	United Nations Angola Verification Mission
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees

UNITA National Union for the Total Independence of Angola
UNITAF Unified Task force
UNMIH United Nations Mission in Haiti
UNOMIL United Nations Observer Mission in Liberia
UNOL United Nations Peace-building Support Office in Liberia
UNOSOM United Nations Operation in Somalia
UNPROFOR United Nations Protection Force
US United States of America

1 Introduction

1.1 Thesis

The control of the use of force is one of the oldest and most debated disciplines in international law. Already early scholars like Grotius¹ discussed the importance of controlling the use of force and the respect for states' territorial integrity, political independence and sovereignty. Today, the Charter of the United Nations, mainly Articles 2(4) and 2(7) controls the use of force. There are also some indications that these provisions are a part of customary international law, binding on all states, not only the Member States of the United Nations.

There are some exceptions to the prohibition on the use of force. Some are laid down in the UN Charter; some are principles under international customary law. The Charter exceptions to the prohibition to use force are found under Chapter VII; the right to use force if authorized by the United Nations Security Council and, the other exception is states' right to self-defense, following an armed attack.

The non-Charter exceptions are harder to define, and there are great disagreement on what is considered exceptions to the all out ban on the use of force. The non-Charter exceptions are based on state practice, and they are a bit outside the scope of the thesis and will not be examined in detail.

The Security Council are in many ways the most powerful organ of the United Nations, and one of the ways is that the Council is the only organ that can impose binding decisions upon the Member States. The Security Council can impose sanctions under Chapter VII of the UN Charter, under certain conditions. These conditions are: if there is a *threat to the peace*, a *breach of the peace* or an *act of aggression*.² If the Council determines it necessary for the maintenance of international peace and security, it can decide on enforcement measures.

What is considered a threat to the peace is the hardest to define of the three, since it is the broadest concept. What the present thesis will examine is whether massive human rights violations can be considered a threat in the meaning of Article 39 of the UN Charter. Does the protection of human rights take precedent over the ancient notion of state sovereignty? This will be examined through the practice of the Security Council.

¹ *De Jure Belli ac Pacis*, 1625 (Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, Polity Press, 1996, p. 34)

² Charter of the United Nations, Article 39

1.2 Scope

The thesis is if massive violations of human rights can be considered a threat to the peace in the meaning of Article 39 of the UN Charter. This will be examined in the light of the Security Council's practice. A presentation on the rules governing the use of force will be given, as well as a presentation of international human rights law.

The thesis will deal with unilateral use of force, the use of force authorized by the UN Security Council. I will examine the doctrine and the appropriate cases.

When conducting the research for the thesis, there has been a need to limit myself. There is an immense amount written on the subject of the use of force and on humanitarian intervention. I have chosen a number of texts that I feel cover the wide spectrum of views presented in the writings of others. I have tried to cover the different views presented, and since my intention is not to make an exhaustive compilation of the texts written on humanitarian intervention, I feel the selection is satisfactory.

There has also been a need of limitation in the cases. The Security Council has been very active in the last decade in determining situations as threats to the peace. I have chosen a number of cases I think are important, and all these situations arose before 1998. Any new situations in the world after 1998 will not be considered. The cases I have examined are, however, updated.

2 The use of force in international law

In this section, an overview of the use of force in the international context will be presented. This will include the provisions under the UN Charter as well as rules under customary international law.

2.1 Brief historical background on the use of force and the League of Nations

The Congress of Vienna in 1815 was the first attempt in modern time to organize states to preserve the peace. After the defeat of the French emperor Napoleon Bonaparte by Russia, Prussia, Great Britain and Austria, the victors held a conference to determine the new shape of Europe. Together with the weaker states of Europe, they sought to create a system of distribution of power that would deter any future aggression. The Congress was to meet periodically, but ‘the congress was too visionary for the realpolitik world in which states sought to maximize their power’. The Congress of Vienna was replaced by the Concert of Europe. The Concert was more successful and met seventeen times from 1830 to 1884.³

But once again, armed conflict on a massive scale led to greater need to increase the power of the international institutions. In the aftermath of the terrors of the First World War, it was apparent that better means was needed to prevent widespread interstate violence. The Covenant of the League of Nations from 20 January 1920 arose from the Versailles Peace Conference.⁴

Articles 11 through 19 of the Covenant contained the collective security system of the League of Nations. The two main organs were the Assembly, consisting of all member states, and the Council, consisting of the great powers of that time. The Assembly met annually, and the Council met more frequently and could be convened in a crisis. The Council normally dealt with threats to the peace, but the Assembly also dealt with some of these matters. The lack of a clear division of competence was one of the weaknesses of the League of Nations. This led to that all problems regularly came before both bodies.⁵

Another shortcoming of the League of Nations system, was that the sanctions mechanisms were largely based on the willingness of the Member States to take action. The Covenant did not provide for binding decisions in this area. The Covenant obliged member states to take independent action

³ Thomas G. Weiss, David P Forsythe and Roger A. Coate, *The United Nations and Changing World Politics*, Westview Press, 1994, p. 18-19

⁴ Weiss, Forsythe and Coate, p. 19-20

⁵ Weiss, Forsythe and Coate, p. 21

against a lawbreaker, without the prior decision of the Council. The Council had the duty to issue recommendations for the enforcement of military action (Article 16, paragraph 2 of the Covenant). Also, the Covenant left open substantial rights to take recourse to force. Firstly, if there was no decision by the League Council, the arbitral body or the Court, there was no obligation for states to refrain from the use of force. Secondly, if a decision had been made of one of the aforementioned bodies, the state could still legally resort to force if the other state party was not following the decision, after a waiting period of three months (Article 15 of the Covenant).⁶ The League only restricted the right to use force; it was not outlawed.

The universal membership of the League of Nations was never really true. The United States never joined; the Soviet Union joined as late as in 1934. Japan left in 1931, Italy in 1937. Germany joined in 1926, only to leave again in 1933. The flaws of the league became more and more apparent. Members reestablished alliance systems and refused to take the necessary action against aggression. The League was unable to reverse the Japanese takeover in Manchuria, the Italian invasion of Abyssinia, the German remilitarization of the Rhineland and subsequent takeover of Sudetenland, or the intervention by Italy, Germany and the Soviet Union in the Spanish civil war. The breakdown of the League of Nations collective security system was complete with the German invasion of Poland in 1939. The international community headed towards World War II, and the League of Nations formal dissolution occurred in 1946.⁷

2.2 The UN Charter and the use of force

In this section the intention is to examine the relevant rules on the question whether, and if so, under what circumstances states can use force under international law. The use of force under international law is referred to the '*jus ad bellum*'.⁸

2.2.1 The prohibition on the use of force (article 2(4))

After the cruel and inhuman practices of the Nazis during the Second World War, the international community recognized the League of Nations as inadequate. A new organization was formed, and the new international organization would more successfully keep the world peace. In the spring of

⁶ Anthony Clark Arend and Robert J Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm*, London and New York, 1993, p. 20-21

⁷ Weiss, Forsythe and Coate, p. 21

⁸ *Jus ad bellum* is the body of rules governing when force lawfully can be used. *Jus in bello*, or humanitarian law, is the body of rules applicable once force has been used and a conflict is underway. see Helen Duffy, *Responding to September 11: the Framework of International Law*, Interights, October 2001 (www.interights.com), p. 6 (hereafter referred to as Interights)

1945, the delegates of forty-nine nations met in San Francisco to draft the Charter of the United Nations.⁹ The delegates pledged their determination to “save succeeding generations from the scourge of war, which twice in [their] lifetime [had] brought untold sorrow to mankind”¹⁰.

As stated in the first Article of the Charter, paragraph 1, the purpose of the United Nations is to “maintain international peace and security”¹¹. The maintenance of international peace and security is made possible through a general prohibition on the use of force, found in Article 2(4) of the Charter:

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 matter inconsistent with the purposes of the United Nations.

The provision does not only outlaw war, but any use or threat to use force against the territorial integrity or political independence of another state.¹²

The prohibition to use force under the UN Charter is binding in its function as a binding treaty-provision upon state parties. It is, however, recognized, that the prohibition on the use of force is to be regarded as customary international law, binding on all states, parties to the Charter or not.¹³ That the ban on the use of force is to be regarded as customary international law was also laid down by the International Court of Justice in the *Nicaragua* case¹⁴, despite the fact that state practice is ‘not perfect’, in the sense that states have not “refrained with complete consistency from the use of force”.¹⁵

Security Council reminded states in its resolution 479 on the Iran-Iraq conflict of the prohibition to use force. The preambulatory clause stated that the Security Council was “(m)indful...that all members are obliged to refrain in their international relations from the threat of or the use of force against the territorial integrity or political independence of any State...”¹⁶

2.2.2 The Charter exception to Article 2(4)

There are four explicit exceptions to the prohibition on the use of force to be found in the Charter. The first two are the important ones in this context: 1) use of force in self-defense; 2) the use of force authorized by the United Nations Security Council. The last two are transitional rules and are not

⁹ Arend and Beck, p. 29

¹⁰ Preamble of the UN Charter

¹¹ UN Charter Article 1, paragraph 1.

¹² Arend and Beck, p. 30-31

¹³ Arend and Beck, p. 30

¹⁴ *Military and Paramilitary activities in and against Nicaragua* (Nicaragua v. US) 1986 ICJ 14, para 190.

¹⁵ *Nicaragua* case, para 186 (Interights, p. 6)

¹⁶ Security Council Resolution 479, September 1980

relevant today. They can still be invoked theoretically, but it is not very likely.¹⁷

2.2.2.1 Article 51: individual or collective self defense

Article 51 gives states the right to retaliate if an armed attack occurs against a member state. This right ceases when the Security Council takes the ‘measures necessary to maintain international peace and security’. The member states can also request help from other states to help fight off the attacker, this is the collective self-defense. If, however, the victim state takes any such action, it has a duty to immediately report it to the Security Council.¹⁸

Even though self-defense is a permissible exception to the prohibition to use force, the extent of the exception is controversial. Article 51 of the UN Charter states:

Nothing in the present Charter shall impair the right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by the Members in the exercise of this right to self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Depending on how the notion ‘*if an armed attack occurs*’ is interpreted, the outcome is quite different. There are those who interpret it literally, which means that the attack must have occurred for the right to self-defense to emerge. On the other end of the scale there are the advocates for what is called ‘anticipatory self-defense’. According to this doctrine, the state does not have to wait for an attack, but can strike first if there is an imminent danger of an attack.¹⁹ It is outside the scope of the present paper to make an in-depth study of the right of anticipatory self-defense.²⁰

Since the article in the Charter regarding self-defense is not particularly elaborate, the rules limiting self-defense are laid down in the practice of states and in the jurisprudence of the International Court of Justice (ICJ), most importantly, the *Nicaragua* case. The use of force in self-defense must be *necessary, immediate and proportionate* to the seriousness of the armed attack.²¹ The principle of immediacy requires that the act of self-defense must be taken immediately subsequent to the armed attack. This is to

¹⁷ The third exception is the collective use of force before the Security Council is functional (art. 106), and the fourth exception is the use of force against ‘enemy’ states of the Second World War (arts. 107 and 53), see Arend and Beck, p. 32-33,

¹⁸ Arend and Beck., p. 31

¹⁹ Peter Malanczuk, *Akehurst’s Modern Introduction to International Law*, Seventh revised Edition, RefineCatch Ltd, Bugay, Suffolk, 1999, p. 312

²⁰ For an in-depth analysis, see Malanczuk, p. 311ff.

²¹ *Nicaragua* case, paras 94, 122-123, Malanczuk, p. 316

prevent abuse and military aggression long after the hostilities have stopped. The other two requirements are regarded as the most important limitations, the requirements for proportionality and necessity.²²

In the *Nicaragua* case, the ICJ stated that “there is a specific rule whereby self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established under international law”²³. ICJ confirmed that both these requirements must be met in the advisory opinion in the *Legality of Nuclear Weapons Case*. The Court held:

The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defense in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defense, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which compromise in particular the principles and rules of humanitarian law.²⁴

According to Malanczuk, the permissible use of force under article 51 is “restricted to the necessary minimum required to repulse an attack because retaliation and punitive measures are forbidden”.²⁵ It is not clear whether the proportionality must be measured with a view to the end, with regards to the means employed in self-defense, or with respect to both. Malanczuk is of the view, and I must agree, that Israel’s seven day bombing of South Lebanon in August 1993 in response to sporadic Hizbollah rocket attacks on northern Israel was clearly disproportionate.²⁶

Collective self-defense can be seen as a combination of individual rights of self-defense. Following from this is that no state can defend another state unless each state could have legally exercised a right of individual self-defense in the same circumstances. However, if one looks at state practice, there is no support for this view. According to the North Atlantic Treaty and similar treaties, each party can defend each other against an attack, not regarding whether this attack threatens the interests of the other parties. ICJ declared in the *Nicaragua* case that one state may not defend another state unless that other state claims to be (and is) a victim of an armed attack and asks another state for assistance.²⁷ Kuwait and Saudi Arabia made such a request for assistance to the United States and its allies in August 1990 after the Iraqi invasion of Kuwait.²⁸

²² Malanczuk, p. 316

²³ *Nicaragua* case, para 176, Malanczuk, p. 317

²⁴ *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons* (International Court of Justice, 8 July 1996), para 42

²⁵ Malanczuk, p. 317

²⁶ Malanczuk, p. 317

²⁷ *Nicaragua* case, paras 103-5, 199-22

²⁸ Malanczuk, p. 318

2.2.2.2 Chapter VII: enforcement actions authorized by the Security Council or Collective use of force under the UN Charter

The second exception to the prohibition on the use of force is found in Chapter VII of the UN Charter, which deals with “(a)ction with respect to threats to the peace, breaches of the peace and acts of aggression” (Articles 39-51). The regulations of Chapter VII are a reaction to the unsatisfactory system of sanctions that existed under the Covenant of the League of Nations. (The Covenant did provide, for the first time, the enforcement of international responsibilities by the community of nations.)²⁹

This chapter deals with two aspects on the collective use of force: the authority of the Security Council and the mechanisms for imposing collective sanctions.³⁰ In this context, Article 39 is the most important. It states:

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

Article 39 gives the Security Council two functions; firstly, the authority to determine whether there is a threat to the peace, a breach of the peace or an act of aggression, and secondly, the Security Council is given the power to make ‘recommendations’ or decide what ‘measures’ should be taken.³¹ In the *travaux préparatoires* for Article 39 of the UN Charter, the intention to give the Security Council the exclusive competence to impose sanctions was expressed. The Security Council was given the competence to take measures to maintain world peace and international security.³² The framers did not define what constitutes a ‘threat to the peace’, a ‘breach of the peace’ or an ‘act of aggression’. Arend and Beck notes that the meaning of these phrases have been given a quite subjective meaning by Security Council. The only thing clear is that ‘threat to peace’ is the least severe and ‘act of aggression’ is the most severe.³³

The Security Council has never in the history of the United Nations declared a situation as an ‘act of aggression’, not even the Iraqi invasion of Kuwait.³⁴ This is however, contradicted, by Gray. According to her, the Security Council has declared that there has been an act of aggression on three occasions, in Israel, South Africa and Rhodesia.³⁵ The General Assembly

²⁹ Simma, p. 606-607

³⁰ Arend and Beck, p. 48

³¹ Arend and Beck, p. 48

³² Simma, p. 608

³³ Arend and Beck, p. 48

³⁴ UN GA Res. 3314 (1974). Arend and Beck, p. 48

³⁵ UN SC Resolutions 573, 611, 387, 568, 571, 574, 577 and 455. Christine Gray, *International law and the Use of Force*, Oxford University Press, 2001, p. 146

has tried to come up with a definition of aggression, and adopted in 1974 the (non-binding) Definition of Aggression Resolution.³⁶

The second power enumerated in Article 39 is the power of the Security Council to determine what recommendations or other action that should be taken. The power to make recommendations was originally related to the authority of the Security Council under Chapter VI, Pacific Settlements of Disputes, to recommend action to parties for the peaceful resolution of the underlying dispute. Such recommendations were not binding.³⁷

Article 41 of the Charter deals with the measures that can be decided on by the Security Council, not involving the use of armed force. They can include interruption of economic relations and blockades, or the interruption of diplomatic relations. The article states:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.³⁸

The sanctions include, but are not limited to the sanctions mentioned in the article.³⁹ The sanctions decided by the Security Council are binding on all member states in accordance with Article 48 of the UN Charter.⁴⁰

Article 42 gives the Security Council the mandate, that if the sanctions provided for in Article 41 proves to be inadequate, it may take military action in order to maintain or restore international peace and security. It states:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.⁴¹

These sanctions are commonly referred to as 'enforcement actions'. They are directed against the state that represents a threat to the peace has

³⁶ Arend and Beck, p. 48

³⁷ Arend and Beck, p. 48

³⁸ Article 41 of the UN Charter

³⁹ Arend and Beck, p. 48-49

⁴⁰ Article 48 of the UN Charter states: "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine."

⁴¹ Article 42 of the UN Charter

breached the peace or committed an act of aggression. These actions are also binding on member states in accordance with Article 48.⁴²

2.2.3 Non-charter exceptions to Article 2(4)

In some instance in the past there has been an exception to the prohibition on the use of force that cannot be found in the Charter. There seem to be a preference to 'justice' over 'peace'. According to Arend and Beck, the practices of states can be divided into three categories: 1) claims to use force to promote self-determination; 2) claims to resort to 'just' reprisals, and; 3) claims to use force to correct past 'injustices'.^{43 44}

The rights to use force to promote self-determination have been used on a number of occasions. Many less developed countries have advocated the use of force to assist peoples fighting against colonial and racist regimes. In the 1974 GA Resolution 'Definition of Aggression', Article 7, included mainly upon request by the less developed countries, states that:

Nothing in this definition...could in any way prejudice the right to self-determination, freedom and independence...particularly peoples under colonial and racist regimes or other forms of alien domination; *nor the right of these people to struggle to that end to seek and receive support*, in accordance with the principles of the Charter...⁴⁵

There are instances where other than the developing countries has claimed the right to self-determination as a just cause to use force. The United States has advocated the use of force to correct 'unjust' conditions abroad and to create 'just' societies. This happened when the US and the Organisation of Eastern Caribbean States invaded Grenada in 1983. One of the reasons for this was to hinder the situation from getting worse and to restore law and order to the island of Grenada where 'a brutal group of leftist thugs violently seized power'.⁴⁶ Also in the case of Nicaragua, President Reagan claimed, among other things, in aiding the contras, the US was protecting the right of the people of Nicaragua to determine their own government. Also in the case of Panama in 1989, the US was acting to 'defend democracy in

⁴² In addition to articles 41 and 42, the Security Council is also authorized to take 'provisional measures' under article 40, which provides: "In order to prevent any aggravation of the situation, the Security Council may, before making recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures." Arend and Beck, p. 49-50

⁴³ Arend and Beck, p. 49

⁴⁴ This is the discussion on whether article 2(4) was meant to be exhaustive, and still should be, or if there is room for new interpretations. For the former view, see, for example, Bruno Simma, NATO, the UN and the Use of Force: Legal Aspects, in *European Journal of International Law*, 1999, pp. 1-22

⁴⁵ Arend and Beck, p. 40

⁴⁶ Arend and Beck, p. 41

Panama'.⁴⁷ All of these actions are operating on the border of what is permissible.

There has been an increasing will to use force as a reprisal for a 'just' cause. A forcible reprisal is a quick, limited, forcible response by one state against a prior action by another state that did not rise to the level of an armed attack. The difference between a forcible reprisal and self-defense, is that self-defense is the 'immediate protection of a state from an on-going attack',⁴⁸ and a reprisal is punitive in character; their purpose is to impose reparation for harm done. There seem to be general agreement that the UN Charter prohibits forcible reprisals. Reprisals that do not involve the use of force should thus be permitted.⁴⁹ In the GA resolution 2625 on Friendly Relations, the General Assembly declared that 'States have a duty to refrain from acts of reprisals involving the use of force'.⁵⁰

However, on numerous occasions, states have claimed the right to resort to forcible reprisals when they have believed such reprisals to be 'just'. Among these cases, there are the British air attacks in Yemen in 1964, the Israeli raid on Beirut Airport in 1968, the Israeli raids against Lebanon in 1975, the 1985 Israeli raid on Tunis, and the 1986 US air strike against Libya. In all these cases, the states claimed, rather than claiming the use of force was necessary for the immediate protection, the states claimed the force was being used for punishment or in a deterrent manner.⁵¹

These reasons for intervening might be politically or even morally commendable, but it shows that the UN Charter value peace over justice.⁵²

The third, and last, situation where states have expressed the opinion that the use of force, despite article 2(4) is justified, is to rectify unjust conditions in the political or territorial status quo. There have been several cases when states have claimed that the use of force is permissible when peaceful means have failed or appeared to be ineffective. Arend and Beck gives a number of prominent examples of this.⁵³ They mention, *inter alia*, when the Egyptian President Nasser nationalized the Suez Canal in July of 1956, and after several months of fruitless multilateral efforts to solve it peacefully, Israel began military operations against Egypt. This was immediately followed by British and French military action. Britain and France believed an exception should be made from the prohibition to use force, since they were rectifying a past injustice.⁵⁴ The same rhetoric was used against Israel a few years

⁴⁷ Arend and Beck, p. 42

⁴⁸ Arend and Beck, p. 42

⁴⁹ Arend and Beck, p. 42

⁵⁰ Principle 1, GA Res 2625 (XXV), Malanczuk, p. 316

⁵¹ Arend and Beck, p. 42-43, which also provides for a more elaborate discussion on the particular circumstances in the particular cases.

⁵² Arend and Beck, p. 43

⁵³ Arend and Beck, p. 43

⁵⁴ Arend and Beck, p. 44

later, when some Arab states invaded Israel in 1973. The Arab states claimed that the action was taken to win back the territory that Israel unjustly occupied. The Arab states argued that Israel did not have lawful title over the territories and the use of force to win them back was permissible. This is, however, not in accordance with the UN Charter. Even assuming that the Israeli possession over the territories were illegal, the UN system under the Charter would only permit the use of force authorized by the Security Council or in response to an armed attack. Even if the territories were unlawfully seized in 1967, once the Israeli occupation became status quo, that status quo could only be changed through peaceful means.⁵⁵

2.3 The changing nature of the international conflict

There has been a change in the international conflict since the drafting of the UN Charter. When the Charter provisions on the use of force were drafted, the drafters were mainly concerned about, in the words of Arend and Beck, 'overt acts of conventional aggression' – when a state sends troops into another state or launches air strikes or naval attacks against another state. However, after 1945, most conflicts have not been of that nature. There have been some instances of overt aggression – the 1956 invasion of Egypt, the 1982 Falklands War, the 1990 Iraqi invasion of Kuwait – but most breaches of the peace have taken the form of civil conflicts, mixed conflicts, covert actions, the threat of nuclear war, or acts of terrorism.⁵⁶

Civil conflict refers to situations when a state is experiencing domestic unrest. A *mixed conflict* is when a state (or states) is interfering in another state's internal conflict, by providing some form of assistance to either the government or rebel fractions. It is called a mixed conflict since it is a mixture between a civil and an international conflict.⁵⁷ There is nothing in the UN Charter on how these conflicts should be handled. We must resort to state practice.

A *covert action* is when a state does not openly commits acts against the territorial integrity or political independence of another state. The state tries to obtain similar goals but with other means. These means might include interference with the domestic political process, such as election rigging or bribery, dissemination and clandestine propaganda, and even assassination.⁵⁸

The increasing number of *terrorist acts* since 1945, and most recently, the terrorist attacks on the United States on September 11, 2001, have created a problem for the UN within the Charter framework. The Charter is designed

⁵⁵ The territories in question was the Sinai Peninsula and the Golan Heights seized by Israel in the 1967 War. See Arend and Beck, p. 44

⁵⁶ Arend and Beck, p. 37

⁵⁷ Arend and Beck, p. 37

⁵⁸ Arend and Beck, p. 38

to deal with the use of force of states, and not of individuals. It is not a clear-cut case on how to respond to such acts.⁵⁹ If there is a link to another state, such as in the case of the US bombings and Afghanistan, the right of self-defense under article 51 can be invoked. In the present author's view, there must be some evidence of this type of responses are becoming customary international law.

Finally, there has been a change in the post-war period due to development and proliferation of *nuclear weapons*⁶⁰. At the time of the drafting, the horrific effects of nuclear weapons were not known. The new challenges of the Charter are what constitute a threat when it comes to nuclear weapons. Is the mere possession of nuclear weapons a threat? Is targeting them?

The intention here is not to give an answer to the above raised questions, but only to raise them in order to visualize the new problems the UN is facing, and that there are no right answers to these questions, at least not yet.

2.4 The principle of non-intervention

The right to wage war is one of the oldest principles in international law. It was seen as a part of state sovereignty; state sovereignty and non-intervention made out two sides of the same coin. The principle of non-intervention can be found as early as the eighteenth century in the writings of Christian Wolff and Emerich de Vattel.⁶¹ Although it is one of the essential norms in international law, the principle of non-intervention (or domestic jurisdiction) has never been codified into a clear set of rules. It is a principle and when found in treaties it has been concisely defined as "dictatorial interference" (which is the inter-state use of military force).⁶² In order to be an intervention, there must be a degree of coercion, by which the interfering state seeks to compel certain action or inaction from the other state.⁶³ Clearly, the use of foreign force within another state without consent would seem to constitute dictatorial interference, unless there are recognized exceptions. Is there such a case when there is dictatorial interference without forcible action? There are no treaties and a few court cases specifying the principle; it is therefore hard to say. There seem to be, however, a prohibition not only against forcible interference, but also against non-forcible interference. This prohibition on intervention can be found on both the internal and external affairs of states.⁶⁴

⁵⁹ Arend and Beck, p. 38

⁶⁰ Arend and Beck, p. 38

⁶¹ Ramsbotham and Woodhouse, p. 35-36 and 38

⁶² Mattias Falk, *The Legality of Humanitarian Intervention – A review in Light of Recent UN Practice*, Juristförlaget, Stockholm 1997, p. 15

⁶³ Falk, p. 13

⁶⁴ Kelly Kate Pease and David P. Forsythe, *Human Rights, Humanitarian Intervention and World Politics*, Human Rights Quarterly, Vol. 15 No. 3 August 1993

The International Court of Justice seems to be of the opinion that there must be a certain degree of coercion for a specific behavior to constitute interference. In the *Nicaragua* judgement the Court held that:

Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.⁶⁵

One question that can be raised in this context is intervention against what is prohibited? In the *Nicaragua* case the Court held that prohibited intervention must have bearing on a matter where the state, due to the principle of sovereignty, can decide freely. In other words, the principle of non-intervention concerns intervention in matters that are within the domestic jurisdiction of states.⁶⁶ It was made clear by the Permanent Court of International Justice in the *Tunis-Morocco Nationality Decrees* case⁶⁷ that this is the domain where states are not bound by international law. Matters fall within this “domain réservé” if they are not regulated by international law, and on these matters the state is the sole judge and may act on its own discretion. This is, however, a relative question and changes over the course of time; it depends on the development of international relations.⁶⁸

The Court of Justice declared in the *Corfu Channel* judgement, on the issue of forcible intervention:

The court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to the most serious abuses and such cannot, whatever the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here [Britain sweeping the territorial waters of Albania to remove mines]; for, from the nature of things, it would be reserved for the most powerful states, and might easily lead to perverting the administration of international justice itself.⁶⁹

According to Ramsbotham and Woodhouse, this statement is clearly against all forms of forcible intervention, including humanitarian intervention.⁷⁰

2.4.1 The principle of non-intervention under the UN Charter

There is no article in the UN Charter that deals with the principle of non-intervention *per se*, but the existence of the principle can be deduced from a

⁶⁵ *Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 1986, p. 14, para. 205

⁶⁶ Falk, p. 14

⁶⁷ *Nationality Decrees in Tunis and Morocco*, 1923, P.C.I.J., Series B, No. 4, pp. 23-24

⁶⁸ Falk, p. 14

⁶⁹ ICJ Reports, *Corfu Channel* case (Merits), 1949, 39; in Ramsbotham and Woodhouse, p. 42

⁷⁰ Ramsbotham and Woodhouse, p. 42

number of different provisions, notably Articles 2(4) and 2(7). One of the reasons for this was the difficulty at the time of the drafting to determine what would constitute an intervention.⁷¹ As noted above, Article 2(4) is the UN Charter's prohibition on the use of force. Whether the Article provides for an absolute prohibition or whether there exist exceptions is not quite clear.⁷² There is, and have been since the late 1970's, a discussion on this very subject, namely humanitarian intervention. It would be outside the framework for this thesis to go into a discussion about the legality of humanitarian intervention, but it must be mentioned.

Another article with relevance for the present paper is Article 2(7) of the UN Charter. It states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...but this principle shall not prejudice the application of enforcement measures under Chapter VII.

This Article has been much discussed in the line of humanitarian intervention. It lays down the foundation for the protection of states' sovereignty, but it is not to be upheld if other interests of the UN are at stake, such as the maintenance of international peace and security and the protection of human rights.

The Charter mechanisms that regulates the use of force are very strict, and at the time of the drafting, an attempt to be exhaustive. There has, however, since the beginning of the 1990's and the thaw in world politics, been a change. This change includes that states to a greater extent interfere in other states' "domestic affairs".

Today, internationally recognized human rights are not considered to be within the domestic jurisdiction of states. This means that the exception in Article 2(7) is not applicable. Is there a recognized right to interfere in the name of humanity? After the defeat of Germany and Japan after the Second World War, the respect for human rights was linked to world peace. The maintenance of world peace became threatened if human rights were threatened.⁷³ What is still left unsaid is what rights are linked to world peace, violations of what rights threatens the peace?⁷⁴

⁷¹ Ramsbotham and Woodhouse, p. 39

⁷² Falk, p. 14

⁷³ Alex de Waal and Rakiya Omaar, *Can Military Intervention Be "Humanitarian"?*, Middle East Report, 1994(24):2-3, p. 3

⁷⁴ I am here referring to the division of human rights into First Generation Rights (Civil and Political Rights), Second Generation Rights (Economic, Social and Cultural Rights), and the newest form of human rights, the so-called Third Generation Rights (Collective Human Rights). It seems fairly clear that it is only violations of First Generation Rights that constitutes a threat to the peace. See further under 3.3.1, below.

Article 2(7) has been said to given rise to more controversy than any other provision in the Charter⁷⁵, and the troublesome provisions are what constitutes an intervention, does the Article apply only to the member states in relation to the UN, or is it applicable between the member states, and finally, what is meant by “essentially within the domestic jurisdiction” of states?⁷⁶

The principle of non-interference stated in Article 2(7) of the UN Charter, as stated above, deals only with the relationship between the United Nations and its members. Article 2(7) prohibits the United Nations from interfering in the domestic affairs of states. It seems, however, as if this principle is a lot broader than Article 2(7). This principle is a part of international customary law, and thus applicable to all states, members of the UN or not, in the relationship with the UN or other states.⁷⁷

The last sentence of 2(7) states an exception to the principle of non-intervention: “but this principle shall not prejudice the application of enforcement measures under Chapter VII”.⁷⁸

The principle of non-intervention is specifically dealt with in General Assembly Resolution 2625, also known as the “Friendly Relations Declaration”.⁷⁹ The Declaration states:

No State or group of States has the rights to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.

In contrast to Article 2(7) this is expressly addressed to states. The declaration is stronger in the wording than Article 2(4) because it declares when it comes to the use of force between states, “all forms of interference” is contrary to international law. Taken literally, the wording can be seen to outlaw diplomacy, but this can hardly be the case.⁸⁰ The Declaration also tries to explain what is meant by the term ‘intervene’:

1. Intervention is in the first place (coercive) interference with the internal or external affairs of another State. This includes:
 - i) interference with or attempted threats against its sovereignty, personality, or its political, economic and cultural elements;
 - ii) efforts to secure any advantages from it;

⁷⁵ Falk, p. 15

⁷⁶ Falk, p. 15-16

⁷⁷ Pease and Forsythe, p. 292, Fonteyne, p. 204, Verwey, p. 358-359, Falk, p. 15

⁷⁸ Pease and Forsythe, p. 292

⁷⁹ *Declaration on Principles of International Law Concerning Friendly Relations And Co-operation Among States In Accordance With the Charter of the United Nations*, GA Res. 2625 (XXV), 24 October, 1970

⁸⁰ Falk, p. 17

- iii) activities directed towards the violent overthrow of its regime; and
 - iv) interference with civil strife in its territory.
2. Intervention is, in the second place, the use of force to deprive *peoples* struggling for the realization of their right of self-determination (notably, peoples subject to colonial or alien domination or racist regimes) of their national identity.
 3. Intervention comprises not only armed activities or the threat thereof, but also all other forms of interference, whether direct or indirect, including economic, political or any other type of measures.
 4. The reason why such interference is practiced (for instance, humanitarian concern) does not matter.
 5. All such interference is contrary to international law and in violation of the UN Charter.
 6. The text is inconsistent in a number of places. Thus, it is not clear whether interference should be, in all cases, ‘coercive’ in nature and whether interference should involve the use of armed force in order to be qualified as intervening.⁸¹

This document is a General Assembly resolution, and thus not binding on the Member States of the UN. Since the Declaration expressly sets out to codify a number of legal principles already contained in the UN Charter, the Declaration has some binding legal effect. The Declaration was adopted unanimously, and this fact, together with the legal effect of the document, it is often regarded as an authoritative document reflecting the understanding of the UN members of their obligations under the Charter.⁸²

According to Falk, it seems impossible to formulate a precise meaning of the principle of non-intervention. The Charter provisions leave a ‘gray area’ which allows the member states to approach the question of intervention as they see fit.⁸³

Intervention can be seen as the abrogation of sovereignty. It ‘occurs when one or more external powers exercise sovereign functions within the domestic jurisdiction of a state’.⁸⁴

⁸¹ Verwey, p. 361. I have made some cosmetic changes; otherwise the text is a quotation.

⁸² Falk, p. 16

⁸³ Falk, p. 17

⁸⁴ Ramsbotham and Woodhouse, p. 40

3 Threat to the peace?

Article 39 of the UN Charter gives the Security Council the authority to act when there is a *threat to the peace*, a *breach of the peace* or an *act of aggression*. The Security Council shall make recommendations or decide what measure to be taken in order to maintain or restore *international peace and security*. In this chapter, what is considered a threat to the peace will be examined in detail. The focus will be on what international scholars and the drafters of the UN Charter considered to be a threat to the peace.

3.1 The concept of peace

The first and very essential question one must ask in this context is what actually constitutes a threat to the peace in the meaning of Article 39 of the UN Charter. In order to determine whether there is a threat to the peace, a definition of the concept of peace might be appropriate. ‘Peace’ can be defined narrowly or widely. The narrow definition of peace is the absence of war. In the broader sense, peace is not only the absence of war, but also the presence of certain positive social, economic, humanitarian and ecological circumstances.⁸⁵ The concept encompasses the ‘absence of an organized use of force between states’. It may, however, be assumed that ‘peace’ in the meaning of Article 39 is the absence of organized use of force between states. It is also clear that a threat to the peace can come into play long before a breach of the peace has occurred.⁸⁶ On January 31, 1992 a Security Council meeting recognized that the absence of war and military conflicts does not in itself ensure international peace and security.⁸⁷

3.2 What is a threat to the peace?

The framers of the United Nation deliberately did not bind the Security Council on what should be considered a threat to the peace, and the terms of Article 39 are not defined in the Charter or in any other binding document. It should also be remembered that the Security Council is a political organ, not a judicial organ. When reaching its decisions it is not bound by judicial proceedings, and it must always take into consideration what is politically possible and desirable. According to Falk, the determination of what constitutes a threat to the peace is a political and a factual judgement rather than a legal one. Therefore a decision of the Security Council can not be regarded as a binding precedent. It can only indicate what the Council may do, if the political will to act is there.⁸⁸

⁸⁵ Österdahl, p. 88

⁸⁶ Simma, p. 608

⁸⁷ UN Doc. S/23500, p. 3

⁸⁸ Falk, p. 62

It has also been stated in this context that massive violations of human rights do not necessarily entail threats to peace and security, and that “there is no clear authority to be found in the UN Charter for transboundary uses of force against violations that do not themselves pose a transboundary threat to peace and security”.⁸⁹

Falk also poses the question “whether there is evidence that an internal situation characterized by gross violations of human rights or by the existence of a humanitarian disaster of some kind *in itself* be considered to amount to such a threat and thus provide a basis for military action, or if the Council’s practice indicates that there must exist serious *external aspects* with direct transborder consequences [...] in order for enforcement measures under Chapter VII to be considered possible”.⁹⁰

The notion threat to the peace is a very vague and elastic concept, and unlike aggression or a breach to the peace does not necessarily have to involve a military threat or operation involving the use of armed force. The notion covers a wide range of state behavior. At the time of the drafting of the Charter, a threat to the peace was a military threat to the peace.⁹¹ Internal violence can today be considered a threat.⁹² Does it have to be a military threat? Does it have to be an international threat? A threat in a specific region? Is an internal conflict, civil war or civil strife, a threat to international peace and security? How imminent must the threat be? Same rules as for anticipatory self-defense? Does the threat have to involve the actual loss of human life? These are the questions I intend to answer in this Chapter.

3.2.1 Military threat

At the time of the drafting of the UN Charter, a threat to the peace was probably only a military threat in an international context. Conflicts like this was what the world community knew and feared. Civil wars or civil strife was not considered a threat. It is also clear that military, but also social, political, economic, humanitarian, ecological and other non-military factors may constitute threats to the international or domestic peace.⁹³

⁸⁹ L.F. Damrosch, “Commentary on Collective Military Intervention to enforce Human rights”, in Damrosch and Scheffer (eds.), *Law and Force in the New International Order* (1991), p. 219 (Falk, p. 63, note 257)

⁹⁰ Falk, p. 63

⁹¹ Inger Österdahl, *Threat to the Peace: The interpretation by the Security Council of Article 39 of the UN Charter*, Iustus Publishing, Uppsala 1998, p. 18. See also Hans Kelsen, *The Law of the United Nations*, 2nd impression, 1951, p. 930.

⁹² Benedetto Conforti, *The Law and Practice of the United Nations*, 2nd Revised Edition, Kluwer Law International, 2000, p. 171

⁹³ Österdahl, p. 18

On the other hand, in January 1992⁹⁴, the Security Council recognized that the absence of war and military conflicts amongst states does not itself ensure international peace and security. By stressing that the United Nations membership as whole needs to solve the economic, social and other problems, according to Simma, the Security Council recognizes that Chapter VII is reserved for military conflict.⁹⁵

In numerous Resolutions the Security Council has spoken of a threat to the peace or a danger to the peace without any differentiation has been made between the two concepts. A distinction between threat and ‘endangering’ the peace in the meaning of Articles 34 and 37 does not appear possible. If the peace is only endangered, Chapter VII is not applicable. In Resolution 567 of June 1985, South Africa was condemned because an act of aggression against Angola. The Security Council determined the situation to seriously ‘endanger’ the international peace and security. This wording falls within the ‘danger’ of Chapter VI, even though an act of aggression was identified.⁹⁶ Simma draws the conclusion that a threat is related a possible extension of the conflict to other states.⁹⁷

3.2.2 International or domestic threat?

Today, the fear of an international all-out war is not as imminent as it was right after the Second World War, and since the thaw of the Cold War, the fear is even smaller. Since the Second World War, the dominant part of armed conflicts has been domestic wars, civil wars.⁹⁸

A civil war is not in itself a threat to international peace, but a civil war can lead to a threat to international peace. The Security Council on the occasion of the Indonesian conflict already determined this in 1947.⁹⁹

Today, *intrastate* conflicts are replacing *interstate* conflicts as the dominant threat to international peace and security. The UN security system was not designed to deal with violence and wars of this kind. The UN Charter was created to prevent World War II from happening again, characterized by the invasion of one state by another. The UN is ill equipped to deal with this new type of situation, conflicts within internationally recognized borders.¹⁰⁰

The notion of threat to the peace has undergone a radical transformation. Through the practice of the Security Council, it is shown that the body considers situations in one particular country, only affecting that very

⁹⁴ UN Doc. S/23500, p. 3 (in Simma, p. 608)

⁹⁵ Simma, p. 608

⁹⁶ Simma, p. 610-611

⁹⁷ Simma, p. 611

⁹⁸ Österdahl, p. 19

⁹⁹ Simma, p. 608

¹⁰⁰ Weiss, Forsythe and Coate, p. 89

country can constitute a threat to international peace and security in the meaning of Article 39.

In Africa, internal conflicts are often ethnically based, and the ethnic groups go beyond state boundaries. This has the effect that a conflict in one state can easily spread and erupt violence of the same kind in neighboring countries. This makes the internal conflicts somewhat international.¹⁰¹

It seems accepted that extreme violence within a state can generally be qualified as a threat to the peace. This can be seen in the case of Yugoslavia, after severe fighting had broken out between forces of the Federal Government and the two states Slovenia and Croatia, after the two latter had declared their independence in 1991. In Resolution 713¹⁰² the Council determined that a threat to the peace existed. The same was found in Resolution 733¹⁰³, when the Security Council determined the situation in Somalia a threat to the peace, after the fighting intensified, and the Security Council declared itself alarmed at the rapid deterioration of the situation, and considered the continuation as a threat to international peace and security. One possible explanation for that the Security Council determined these two cases as a threat, is the possibility of an outside intervention.¹⁰⁴

3.2.3 Non-aggressive threats to the peace

Through the practice of the Security Council we can see that there are a number of threats, not involving a threat in the traditional sense of the meaning. The Security Council has in its practice determined heavy flows of refugees as a threat. In Security Council Resolution 841 and 875 of 1993, it was decided that a threat to the peace was at hand since the legitimate government of Haiti, which had been overthrown, by a military government, was not reinstated. The Security Council expressly referred to the refugee problem. Also the repression of the Kurdish population in Iraq after the Gulf War and the its consequences of refugee movement constituted a threat to international peace and security in the region¹⁰⁵.

In the case of Libya, the Security Council found that there was a threat to the peace because of the somewhat unorthodox reason that the Libyan authorities failed to comply with a particular resolution. The failure was to fully comply with Security Council Resolution 731 of January 2, 1992, demanding the extradition of two Libyan nationals to United States and the United Kingdom the reason for the extradition was for the alleged

¹⁰¹ This can, *inter alia*, be illustrated by the events in October-November 1996 in Zaire where the Rwandan government intervened militarily to support Tutsis led by Laurent Kabila, who were rebelling against President Mobuto Sese Seko. Österdahl, p. 20 and note 6.

¹⁰² UN SC Resolution 713 of 25 September 1991

¹⁰³ UN SC Resolution 733 of 23 January 1992

¹⁰⁴ Simma, p. 611

¹⁰⁵ Resolution 688 of 1991. (Simma, p. 612)

involvement in the bombing of Pan Am flight 103 over Lockerbie, Scotland.¹⁰⁶ The Security Council decided that Libya should meet these requests, and when it was not done, it constituted a threat to the peace and applied sanctions under Article 42¹⁰⁷. This, in turn, led to a conflict between the Security Council and the ICJ. The Court declared that *prima facie* the obligation to carry out decisions of the Security Council under Article 25 applies to Resolution 748, thereby implying that it could not be treated as *prima facie ultra vires* and therefore null and void.¹⁰⁸

The Security Council has also found racism, although not fascism,¹⁰⁹ a threat to the peace. The fascist regime in Spain was not considered a threat to the peace, but the white minority government in Rhodesia and South Africa was.

Serious violations of international law which could provoke armed counter-measures, may generally be regarded as a threat to the peace, even when the admissibility of the counter-measures may be doubtful. In 1980, the United States made an application to the Security Council to impose sanctions according to Article 41 against Iran, because of the detention of American diplomatic hostages. The US relied on a threat to the peace. The adoption of the Resolution was prevented by the Soviet veto, denying that the case fell under Chapter VII.¹¹⁰

¹⁰⁶ Resolution 731 of 21 January 1992. (Simma, p. 612)

¹⁰⁷ Resolution 748 of 31 March 1992, (Simma, p. 611)

¹⁰⁸ Simma, p. 611

¹⁰⁹ Resolution 217 of 20 November 1965, and Resolution 221 of 9 April 1966. (Simma p. 612)

¹¹⁰ Simma, p. 612

4 Human Rights in the international context

What will be examined in this Chapter, is how human rights are protected under international law. The protection of human rights is laid down in the UN Charter as one of the purposes of the United Nations. Article 1(3) states that:

The Purposes of the United Nations are:

...promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...

This constitutes the basis for the protection of human rights. These rights are elaborated in thematic international and regional instruments.

4.1 Background

It was clear in the Peace of Westphalia that human rights were of domestic concern. The dominant international rule was state sovereignty. Any question of human rights was subsumed under that principle. The state sovereign could determine the religion of its territory. In 1776-1787, the Americas decided to recognize human rights to a certain extent, and the French did the same after the revolution in 1789. These events, the recognition of the 'rights of man', had no immediate effect on other states. In many parts of the world, the societies were relying on one enlightened leader.¹¹¹

During the middle of the nineteenth century, a growth of international awareness can be spotted in Europe. An international concern for the plight of persons without regard to nationality laid the moral foundation for an expansion towards individual rights. Moral concern led to an explosion of human rights concern. Karl Marx was one of the contemporary persons that focused on the plight of persons without regard of nationality. At the same time the Swiss Henri Dunant developed the Red Cross-Red Crescent movement. The Red Cross-Red Crescent did not immediately use the language of human rights; they spoke in terms of governmental obligation to provide protection and assistance to victims of war. Eventually this developed into about ten legal instruments that came to be called Red Cross law, or international humanitarian law, or the law of human rights in armed conflict.¹¹²

Efforts were made at the Versailles conference in 1919 to include the rights to religious freedom and racial equality in the Covenant of the League of

¹¹¹ Weiss, Forsythe and Coate, p. 106

¹¹² Weiss, Forsythe and Coate, p. 107-108

Nations. Unfortunately, these efforts failed. However, during the 1930's, the League Assembly debated the merits of an international agreement on human rights in general, these efforts also failed. The protection of labor rights was more successful; a series of treaties and other agreements recognized labor rights under the International Labour Organization (ILO).

Article 23 of the Covenant of the League of Nations indicated that the League should be concerned with 'social justice'. The Article demanded the League to take action on such matters as 'native inhabitants', 'trafficking in women and children', 'opium and other dangerous drugs', 'freedom of communications', and 'the prevention and control of disease'.¹¹³

4.2 The internationalization of human rights

Before 1945, some internationalization can be seen in the development of the International Labor Organization and its derivative treaties, but it was not until the creation of the United Nations human rights became extensively internationalized.¹¹⁴ The internationalization of human rights can be seen, firstly in the Charter of the UN, where it is stated that the purpose of the United Nations is to promote and encourage the respect for human rights and fundamental freedom for all without distinction as to race, sex language or religion.¹¹⁵ Also, when ratifying the UN Charter the member states accepted the general human rights obligations set out in Articles 55(c) and 56.¹¹⁶

In 1949, the ICJ acknowledged 'elementary considerations of humanity even more exacting in peace than in war' as 'general and well-recognised principles' of international law.¹¹⁷

Human rights were for a long time viewed as a domestic concern of the States in the world.¹¹⁸ Article 2(7) of the UN Charter was applicable, and there were few exceptions to that rule.¹¹⁹ Now, however there has been an

¹¹³ Weiss, Forsythe and Coate, p. 109

¹¹⁴ Pease and Forsythe, p. 295

¹¹⁵ UN Charter, Article 1(3)

¹¹⁶ Article 55 states:

With view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote... (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article. 56 states: 'All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.'

¹¹⁷ *Corfu Channel case*, ICJ Reports, 1949, 22. Ramsbotham and Woodhouse, p. 9

¹¹⁸ Pease and Forsythe, p. 294

¹¹⁹ Violations of rights stemming from slave trading and international armed conflicts were not seen as a part of domestic affairs. (Pease and Forsythe, p. 294)

internationalization of human rights and the way rulers treat their subjects are now up to scrutiny by the world community. Especially since 1945, and in an accelerated way from the 1970's, international law has confirmed that individuals and peoples are at least partial subjects of international law, with extensive substantial rights and some procedural capacity to act.¹²⁰

There are also a number of international treaties under the umbrella of the United Nations, dealing with the protection of human rights. Among these, the Universal Declaration of Human Rights and optional protocols¹²¹, International Convention on the Elimination of All Forms of Racial Discrimination¹²², International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights¹²³ and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment¹²⁴ can be mentioned. Other treaties sponsored by the UN system, dealing with specific rights are matters as genocide, political rights of women, refugees, children and freedom of association to mention a few.¹²⁵

More than half of the international community is legal party to some of these instruments, or to all of them. About a quarter of the international community have accepted monitoring systems of varying strength for the supervision of the implementation of these internationally recognized human rights. There seems to be an overwhelming international consensus, that at least the discussion on human rights belongs to the international arena.¹²⁶

In the regional context, three regions have developed separate human rights treaties: Western Europe with the European Convention for the Protection of Human Rights and the Fundamental Freedoms¹²⁷ and the European Convention for the Prevention of Torture and Inhuman or Degrading treatment or Punishment¹²⁸, the Western Hemisphere with the Organization of American States and the American Convention on Human Rights¹²⁹, and Africa with the Organization of African Unity and the African Charter on Human and People's Rights.

Both the Council of Europe and the Organization of American States have human rights courts. The courts were given functional sovereignty by state consent. The courts are given the ultimate authority to interpret the treaty in question states have a duty to obey the decisions. In this case, the states had

¹²⁰ Pease and Forsythe, p. 294

¹²¹ UN General Assembly resolution 217 A (III), 10 December 1946

¹²² New York, 7 March 1966

¹²³ Both Covenants signed in New York, 19 December 1966

¹²⁴ New York, 10 December 1984

¹²⁵ Pease and Forsythe, p. 295

¹²⁶ Pease and Forsythe, p. 295

¹²⁷ Rome, 4 November 1950

¹²⁸ Strasbourg, 26 November, 1987

¹²⁹ Convention concluded on 22 November 1969 and entered into force on July 18 1978 (Marlies Galenkamp, *Collective Rights: SIM Special No 16*, p. 54-55)

the preliminary sovereignty, but used it to create functional sovereignty for an international body.¹³⁰

Apart from these instruments, the ICJ has also recognized certain ‘basic rights of the human person’ such as the protection from slavery and racial discrimination, as *obligations erga omnes*.¹³¹

At the first summit meeting in 1992, the members of the Security Council declared that the international community “no longer can allow advancement of fundamental rights to stop at national borders.”¹³²

4.2.1 Human security

The relatively new concept of human security will be briefly mentioned in the context of sovereignty and the internationalization of human rights, since it concerns both.

The meaning and scope of security has become much broader since the UN Charter was signed in 1945. Human security means the security of people, their physical safety, economic and social well being, respect for their dignity and worth as human beings. This also includes the protection of their human rights and fundamental freedoms. The growing recognition that the wider concept of security must include people as well as states has marked an important shift in international thinking during the past decade.¹³³

This shift can be noticed both in Secretary-General Kofi Annan’s opening of the 54th session of the General Assembly, where he made clear his intention to “address the prospects for human security and intervention in the next century.”¹³⁴ The UN Under-Secretary-General for Legal Affairs, Hans Corell, also addressed the importance of human security in an address delivered at the Canadian Council of international Law 1999 Annual Conference.¹³⁵

¹³⁰ Pease and Forsythe, p. 296

¹³¹ Barcelona Traction Case, 1970, Malanczuk 1993, p 13

¹³² “Excerpts from Speeches by Leaders of Permanent Members of UN Council,” New York Times, 1 Feb. 1992, sec. A, 5 (Pease and Forsythe, p. 296)

¹³³ The Responsibility to Protect, p. 15

¹³⁴ “Secretary-General Presents His Annual Report to General Assembly” 20 September 1999, Press Release SG/SM/!/&, GA/9596, p. 1

¹³⁵ Hans Corell, “From Territorial Sovereignty to Human Security”, Address delivered at the Canadian Council of International Law 1999 Annual Conference, 29 October 1999. Taken from the UN homepage, under the Office of Legal Affairs, OLA. www.un.org

4.3 Human Rights and state sovereignty

The modern state system is often said to have emerged in Europe some time between the Treaty of Chateau-Cambrésis (1559) and the series of treaties which ended the Thirty Years War, the Peace of Westphalia (1648). The evolution of the modern state was slow and was not completed in many parts of Europe for at least two more centuries. At the second half of the sixteenth century, the Frenchman Jean Bodin and the Italian Alberico Gentili recognized the significance of the central organizing element, the sovereign state.¹³⁶

Sovereignty has come to signify, in the Westphalian concept, the legal identity of a state in international law. Internally, sovereignty signifies the capacity to make authoritative decisions with regard to the people and resources within the territory of that state. Sovereignty is more than a principle under international law. For many states and people's it also a recognition of their equal worth and dignity, and their right to determine their own future. All states are equally sovereign under international law, a principle found in Article 2(1) of the UN Charter.¹³⁷

The most fundamental principle of international law is state sovereignty. Each state is granted monopoly of power within its own territory. It was laid down in the *Island of Palmas Arbitration* that the state has "...the right to exercise therein, to the exclusion of any other state, the functions of a state."¹³⁸ In international law it is clear that the state sovereign can say and do as it pleases within its jurisdiction. The principle of state sovereignty is derived from another important principle in international law, the principle of non-intervention.¹³⁹

The sovereignty of states and their rulers is not in any way absolute, and is very much limited by international law. The limitations cover both the way states act externally towards other states, and internally, within its own jurisdiction.¹⁴⁰ Even the strongest supporters of state sovereignty do not include a claim of unlimited power of a state to do what it wants to its own people. It is acknowledged that states have a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all people within a state.¹⁴¹ The UN Secretary-General, Kofi Annan, supports this line of reasoning. He stated in his opening address of the 54th session of the General Assembly, that state sovereignty 'is being redefined by the forces of globalization and

¹³⁶ Ramsbotham and Woodhouse, p. 34, Weiss, Forsythe and Coate, pp. 2 and 18.

¹³⁷ "The Responsibility to Protect", Report of the International Commission on Intervention and State Sovereignty, December 2001, p. 7

¹³⁸ *Island of Palmas Arbitration*, 22 American Journal of International Law (1928), p. 875

¹³⁹ Pease and Forsythe, p. 291

¹⁴⁰ Falk, p. 12

¹⁴¹ The Responsibility to Protect, p. 8

international cooperation'. He also stated that the 'State is now widely understood to be a servant of its people, and not vice versa'.¹⁴²

Sovereignty also means responsibility, and that has been increasingly recognized in state practice. This responsibility has threefold significance. First, it implies that the state authorities are responsible for the protecting the safety and lives of citizens, and the promotion of their welfare. Secondly, the national political authorities are responsible to the citizens internally and to the international community through the UN. Thirdly, it means that the state agents of a state are responsible for their actions. This way of viewing sovereignty is strengthened by the impact of international human rights norms, and the increasing impact of the concept of human security.¹⁴³

As shown above, states have given up parts of their sovereignty when signing different conventions and covenants on the protection of human rights. States are then bound to a greater or lesser extent by these international instruments, and cannot exercise its sovereignty in conflict with them.

Evolving international law has set many constraints on what states can do, not only in the realm of human rights. The emerging concept of human security has created additional demands and expectations in relation to the way states treat their own people.¹⁴⁴ There seem to be support that human rights have 'long been subtracted from the exclusive domestic jurisdiction of states'¹⁴⁵, and that they do not belong to the "domian reservé" of states any longer, irrespective of the Charter and Article 2(7).¹⁴⁶

To this line of reasoning some comments can be made. It is interesting to see to what extent international human rights can penetrate the territorial jurisdiction of non-consenting states. It is generally accepted that rules and procedures in human rights treaties only apply to those states that have ratified the treaties. Can these human rights treaties go beyond international law in general and create international human rights obligations to states that have failed to ratify human rights treaties?¹⁴⁷ The international scholars are disagreeing on this very issue. The ones that think states are bound by treaties even when not ratified base this position on mainly two grounds. First, they argue, by ratifying the UN Charter all member states accepted the general human rights obligations set out in Articles 55(c) and 56. Human rights treaties are seen as elaborating rather than transforming those

¹⁴² "Secretary-General presents his annual report to General Assembly. UN Press Release SG/SM/7136, 20 September 1999, p. 1

¹⁴³ The Responsibility to Protect, p. 13

¹⁴⁴ "The Responsibility to Protect, pp. 7 and 12

¹⁴⁵ F. Tésou, *Humanitarian Intervention: An Inquiry into Law and Morality*, 1997, 2nd Edition, p. 140

¹⁴⁶ Peter Malanczuk, *Humanitarian Intervention and the legitimacy of the use of force*, 1993, p 12

¹⁴⁷ Michael Byers, *Power and International Law*, in: *Custom, Power and the Power of Rules*, Oxford University Press, 1999, p. 43

obligations. Secondly, the argument is set forth that rules of customary international law have developed in respect of the content of specific human rights and the jurisdiction of international society to monitor, encourage respect for and even the implementation of those rights within the territory of a non-consenting state.¹⁴⁸

This line of reasoning is in many non-industrialized states referred to as 'cultural imperialism'. This is due to the disagreement in the world on what are the most important human rights.¹⁴⁹ How internationalized are human rights? Are they customary international law?

In the words of former Secretary-General, Boutros Boutros-Ghali, in *An Agenda for Peace*:

The time of absolute and exclusive sovereignty has passed; its theory was never matched by reality. It is the task of leaders of states today to understand and find a balance between the needs of good internal governance and the requirements of an ever more independent world.¹⁵⁰

Between 1989 and 1992, three wars occurred between states, and 79 intrastate conflict occurred. This gives an indication of the new challenges of the UN.¹⁵¹

4.4 Can gross violations of human rights be considered a threat to the peace?

According to Article 2(7), the UN shall not 'intervene' in matters 'essentially' within the domestic jurisdiction of states. Looking at state practice, most human rights matters are no longer viewed to be within the domestic jurisdiction of states.¹⁵²

As stated before, *threat to the peace* is a very wide concept. At the time of the drafting of the UN Charter, the intention of the drafters seems to have been to limit the notion of a threat to the peace to *military threats*. This was

¹⁴⁸ Byers, p. 43

¹⁴⁹ For a discussion, see, e.g., Jack Donnelly, *The Interdependence and Indivisibility of Human Rights*, in: Jack Donnelly (ed.), *Universal Human Rights in Theory and Practice*, Ithaca and London: Cornell University Press, 1989, pp. 28-37; *Human rights and Human Dignity : An Analytical Critique of Non-Western Conceptions of Human Rights*, The American Political Science Review 76, 1982, pp. 303-315; Fons Coomans, *Economic, Social and Cultural Rights*, SIM Special No 16, Utrecht 1995, pp. 3-23; Manfred Nowak, *The International Covenant on Civil and Political Rights*, in Raija Hanski and Markku Suksi (eds.), *An Introduction to the International Protection of Human Rights – A textbook*, Åbo, 1997, pp. 79-98

¹⁵⁰ Boutros Boutros-Ghali, *An Agenda for Peace*, para.43. (Weiss, Forsythe and Coate, p. 90)

¹⁵¹ *The Politics of Humanitarian Intervention*, Harriss, (ed) p. 1

¹⁵² Weiss, Forsythe and Coate, p. 123

what the world community knew and feared. This is now somewhat altered. As mentioned above, the number of international conflicts after the Second World War is very limited. What have been more frequent are civil wars and national conflicts. National conflicts have often moved beyond state borders, and might therefor be considered a threat to international peace and security.

In the debate on whether to intervene to protect human rights, there are basically two lines of thought in the international debate; the restrictionists and the counter-restrictionists. They disagree mainly for these reasons: a) the interpretation of the Charter; b) the interpretation of UN General Assembly Resolutions and International Court of Justice decisions; c) interpretation of customary international law; and d) the assessment of likely consequences.

- a) If read literally, the Charter seems to impose an absolute ban on the use of force for whatever reason, except the reasons laid down in the Charter. The counter-restrictionists, claim that intervention for humanitarian purposes are below the 'threshold' of Article 2(4), because the use of force in these cases are strictly limited and temporary, and it does not threaten the 'territorial integrity and the political independence' of a target state. Furthermore, the protection of human rights is one of the two main *raison d'être* of the United Nations, thus, intervention to protect them are not inconsistent with the purposes.
- b) The General Assembly has in two resolutions, with specific reference to intervention, prohibited the threat or the use of force¹⁵³. It was also declared by the ICJ in the *Nicaragua* judgement, where the ICJ stated that the use of force was a part of customary international law. This clearly supports the restrictionists. The counter-restrictionists point out that the General Assembly Resolutions are not binding.
- c) The counter-restrictionists claim, that even if an authorization of humanitarian intervention cannot be found in the Charter, there is a rule of customary international law that has re-emerged from the time before 1945. Then the argumentation goes on whether there was such a right before 1945. The restrictionists point out the *Corfu Channel* case, where the ICJ stated that intervention is prohibited 'whatever the present defects in international organization.'
- d) Here the debate is whether it is *de lege lata*, or *de lege ferenda*. Is it as it should be, or is the law in one way and should be in another.¹⁵⁴

Some support for the view that human rights prevail over justice can be found in the doctrine. Malnczuk claims that for intervene with force, the international community is not limited to the cases of military aggression or

¹⁵³ General Assembly Resolution 2131 (1965) on the Inadmissibility of Intervention in the Domestic Affairs of States and General Assembly Resolution 2625 (1970) on Principles of International Law Concerning Friendly Relations and Co-operation Among States.

¹⁵⁴ Ramsbotham and Woodhouse, p. 61-65

military threats to international peace. If there is a collapsed state or if an internal conflict has transboundary effects, such as large flows of refugees. He also suggests that a threat to the peace may include internal situations that may be 'potentially a threat to the peace'.¹⁵⁵

4.4.1 Which human rights?

What human right might constitute a threat to international peace and security? There is of course no clear answer to this question, and it will be further discussed with the cases, but some introductory remarks will be made here. In the line of humanitarian intervention, there has been a lot of discussion on this topic. That discussion might be applied *ex analogica* in this case. Verwey has made a compilation of the views presented in the doctrine, and the following discussion will be based on this presentation. One can argue that *any* (even a minor) violation of *any* (even a non-fundamental) human right would do it. However, the majority of scholars seem to be of the opinion that there need to be a *serious* violation of a *fundamental* human right. There also seems to be support for a violation that is 'gross', 'massive', 'large-scale' or 'persistent' and of 'elementary' or 'fundamental' human rights, in such a way that 'atrocities', 'barbaric acts' or 'repulsive practices' are committed which constitutes 'crimes against (the laws of) humanity' or 'genocide', and are considered to 'shock the conscience of mankind' or 'flagrantly violate standards of morality and civilization'. Verwey also states that there should be, or at least a threat of substantial loss of human life.¹⁵⁶

Even these arguments are on whether an intervention is legal or not, some indication is given on what human rights might constitute a threat.

Another question that needs to be examined is what 'elementary' or 'fundamental' human rights are. Is it the 'first-generation negative rights', civil and political rights, the 'second-generation positive rights', economic and social rights or the 'third-generation rights' the so-called solidarity rights? Is there such a thing as basic or fundamental rights, 'non-derogable' rights that they cannot be set aside even in national emergency?¹⁵⁷ Is there a difference between positive and negative rights? Are human rights universal? There seem to be more voices raised against the universality of human rights than in support of it. It is therefore extremely hard to determine what human rights needs to be violated in order for it to be a threat to the peace.

Particular conceptions of human rights vary in the different parts of the world. The 'classic' human rights concepts are based on Christian values. Since this is the case, people of other religions will question the universality

¹⁵⁵ Malanczuk 1993, p. 25

¹⁵⁶ Verwey, p. 369

¹⁵⁷ Ramsbotham and Woodhouse, p. 22

of some rights. There are some values that can be found in all the great religions of the world, but they still display some differences.¹⁵⁸ Take the Universal Declaration of Human Rights from 1948 as an example. Some Islamic commentators dismiss the idea of human rights as ‘Western’, whereas others argue that the Declaration can be regarded as reflection of values laid down in the Qur’an.¹⁵⁹

The Vienna Declaration and Programme of Action of June 1993, adopted at the World Conference on Human Rights highlighted some of these problems. The concepts of human rights are culturally, but also politically, conditioned. However, the different parts of the Vienna Declaration affirmed the universality of human rights.¹⁶⁰

At first glance, there seem to be few rights that are universally accepted. One of them is the right to life. In the western world, this is a cornerstone of our civilization. Yet, it is not a non-derogable principle, a part of *jus cogens*, since there are exceptions to it. Some western countries still practice the death penalty in war times, and fewer still practice it in peace time, but still, exceptions can be made, and therefore it is not a non-derogable principle under international law. Personally I can agree that there are some principles, some human rights that are common for all mankind. However, it seems hard for the international community of today to agree upon some basic rights if they go against religion or culture. As long as we accept difference in the human rights treaties, there will never emerge a common norm of human rights, and to base an intervention on these not fully accepted rights are doomed to fail.

Who is to determine what a fundamental right is? To illustrate this problem one can take the example of access to minimal health care, is this a fundamental human right? Looking at the Canadian legal system, health care is a fundamental human right. But comparing it to the U.S. legal system, one gets puzzled. In the U.S. access to health care is only for the ones that can afford it. How can the same legal system recognize the legal right of a patient to sue a doctor for negligence but not allow the same person access to adequate health care as a human right?¹⁶¹

Should the positivist view prevail, namely that human rights only exists in a legal system? Or the naturalist view, that human rights exists on a higher moral ground, independently of legislation?¹⁶²

During the last few years, the UN Security Council has made decisions under Chapter VII pertaining to peace and security that involved such

¹⁵⁸ Ramsbotham and Woodhouse, p. 27

¹⁵⁹ For an interesting elaboration on Christianity and human rights, see Ramsbotham and Woodhouse, p. 29

¹⁶⁰ Ramsbotham and Woodhouse, p. 29

¹⁶¹ Weiss, Forsythe and Coate, p. 105

¹⁶² Weiss, Forsythe and Coate, p. 106

fundamental rights as the rights to adequate nutrition (for example, in Somalia), and freedom from repression (for example, in Iraq). In Haiti, the Council vetoed a binding comprehensive economic embargo on the country during the summer of 1993 after military elements deposed an elected civilian president.¹⁶³

In order to intervene at all, it can first be noted that there must be a 'gross and persistent human rights violations that shock the world's conscience' and occur 'from systematic and indiscriminate attacks on civilians by a central government, or a system breakdown in law and order producing the dislocation and starvation of the civilian population.'¹⁶⁴

¹⁶³ Weiss, Forsythe and Coate, p. 236

¹⁶⁴ Martin Griffiths, Iain Levine and Mark Weller, "Sovereignty and suffering", in ...Harris (ed.), p. 40

5 Article 39, in theory

In this section, the two of the main bodies of the United Nation will be presented. Their role in the system of keeping the peace will be examined more in detail. The emphasis will be on the Security Council, since it plays a bigger part. The practice of the Security Council will also be examined.

5.1 Presentation of the Security Council

In the UN system there are two central bodies to safeguard the peace; the Security Council and the General Assembly. Chapter V of the UN Charter makes the Security Council the organ mainly responsible for the maintenance of international peace and security. In the beginning the Security Council had eleven members, but in 1965 to reflect the rapid increase in UN membership after decolonization, the number was increased to fifteen.¹⁶⁵

5.1.1 The permanent members

The Security Council consists of five permanent members, the Allied great powers after the Second World War, namely the United States, the Soviet Union (now Russia has taken its seat after the breakup), France, Great Britain and China. These five members have a veto power over any decision in the Security Council. The other ten members are elected on a two-year term by the General Assembly. When electing the non-permanent members, the General Assembly tries to maintain a geographical balance by including representatives from the four major regions in the world; usually three from Africa, two from Asia, three from Europe, and two from Latin America.¹⁶⁶

Unlike the League of Nations, the members of the UN are legally required to abide by the decisions by the Security Council. The point is, since the permanent members possess the military capability to take action quickly, no potential aggressor can challenge the organizational structures.¹⁶⁷

The permanent members have greater responsibilities, but also greater privileges in the UN structure. They pay more to the UN system, but on the other hand, no decision can be made on non-procedural questions unless they agree. The veto power ensures them that no decision can be made on important issues unless they agree, or abstain. In order to make a decision in the Security Council, nine affirmative votes are needed to pass a resolution.¹⁶⁸

¹⁶⁵ Weiss, Forsythe and Coate, p. 25

¹⁶⁶ Weiss, Forsythe and Coate, p. 25

¹⁶⁷ Weiss, Forsythe and Coate, p. 25

¹⁶⁸ Weiss, Forsythe and Coate, p. 25-26

5.1.2 The Veto

A permanent member can hinder a resolution from passing with its veto. “Barring permanent member vetoes, all permanent members and one non-permanent member could theoretically abstain from a vote without jeopardizing the passage of a resolution, although, some unity among the permanent members is practically indispensable”¹⁶⁹. The unity of the Non-Aligned Movement (NAM) on most issues has introduced a type of ‘sixth veto’ when developing countries coalesce against a particular action.¹⁷⁰

Since the enlargement of the Security Council, the disagreement in the formal voting procedure has been largely reduced, due to efforts to reach consensus during informal consultations before any vote. During the Cold War, two hundred seventy-nine vetoes were cast. From May 1990 until May 1993, only one veto was cast. Today, crucial discussions now occur informally under the aegis of the President of the Council until it is ready either to make a decision or vote formally. The presidency revolves monthly, and the President meets with the Secretary-General to identify the parties to a dispute, negotiates with the permanent members to make sure the veto is not used, and consults with the non-aligned members of the Security Council and other relevant groups or actors.¹⁷¹

The veto in the present form has been questioned, since it can actually block out the Security Council from taking any action.¹⁷²

After the thaw of the Cold War, however, the Security Council has started to fulfill its duties in the maintenance of international peace and security in a more satisfying manner. It is acting in a more unified way to avoid disagreements about procedures and other, more important matters. The permanent members displayed their good will by shelving the veto for three years in May 1990. In order to maintain this positive development, it seems inevitable to change the composition of the Security Council to better match the situation in the world.¹⁷³

With the collapse of the Soviet Union, the composition of the Security Council is now a bit too sympathetic to the West. With the Soviet Union no longer acting as a counterbalance to the United States, states like India, Brazil, Nigeria and Egypt believe that they should have more influence over the Security Council’s decisions. States like Great Britain and France have had their permanent membership questioned since their international

¹⁶⁹ Weiss, Forsythe and Coate, p. 26

¹⁷⁰ Weiss, Forsythe and Coate, p. 26

¹⁷¹ Weiss, Forsythe and Coate, p. 26

¹⁷² Ove Bring, “Should NATO take the lead in formulating a doctrine on humanitarian intervention?” *NATO Review* 1999(47):3, p. 25

¹⁷³ Weiss, Forsythe and Coate, p. 93

influence have declined since 1945. Japan and Germany feel that they are still paying a hard price from the Second World War, and their financial contribution in no way corresponds with their influence over the decision-making.

Some changes have been proposed to improve the situation in the Security Council, above all a reform of the veto system. First it would be possible to limit the range of areas of veto, and only allow the permanent members to use the veto if it affects 'supreme national interest'. One might also consider a 'weighed veto', allowing the non-permanent members, with some of the permanent members, to override the veto.¹⁷⁴

5.1.3 The Security Council and human rights

The Security Council has the authority to declare a situation a threat to the peace or a breach of the peace. If such a situation is at hand, the Council can invoke Chapter VII of the UN Charter and reach a decision binding on all member states. The decisions are either about economical sanctions or military action. As we shall see soon, the Security Council has linked a human rights situation to a threat or breach of the peace. The action by the Security Council shows that human rights are a grave concern of the UN.¹⁷⁵

5.2 The General Assembly

The General Assembly differs from the Security Council in many ways. First of all, all members of the UN are represented in the Assembly. It is a more open forum for discussion and the main duties include the "election of heads of other UN organs, budgetary and administrative decisions, and joint control of decisions on Charter amendments and admission of new members of the organization".¹⁷⁶

The decisions of the General Assembly are not binding, and only serve as recommendations, except for decisions setting the budget.¹⁷⁷

5.2.1 The Uniting for Peace Resolution

During the Korean War (1950-53) the Security Council was unable to address the North Korean aggression against South Korea. At first, the Security Council passed a number of resolutions¹⁷⁸ condemning the aggression of North Korea and recommending states to take action against North Korea. This was possible, because at the time of the invasion, the

¹⁷⁴ Weiss, Forsythe and Coate, p. 93-94. For a more elaborate discussion, see Weiss, Forsythe and Coate, p. 94-96

¹⁷⁵ Weiss, Forsythe and Coate, p. 125-126

¹⁷⁶ Weiss, Forsythe and Coate, p. 26

¹⁷⁷ Weiss, Forsythe and Coate, p. 30

¹⁷⁸ Resolution 82, 25 June, Resolution 83, 27 June, and Resolution 84, 7 July 1950

Soviet Union was boycotting the Security Council. The boycott was in protest at the seating of a representative of the Republic of China (Nationalist China) at the Council. Once the Soviet Union returned to the Council, however, it effectively blocked any further action. Therefore, a number of states turned their attention to the General Assembly.¹⁷⁹

The General Assembly's role in the maintenance of international peace and security suddenly increased with the passing of the Uniting for Peace Resolution in 1950¹⁸⁰. In circumstances where the Security Council is unable to act, a qualified majority of the General Assembly, acting in accordance with the Uniting for Peace Resolution, can take measures in accordance with the purpose and spirit of the UN.¹⁸¹

...that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where it appears to be a threat to the peace, breach of the peace, or an act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations...for collective measures, including...the use of armed force when necessary, to maintain or restore international peace and security.¹⁸²

When used, the Uniting for Peace Resolution obscured the distinctions between the General assembly and the Security Council. The resolution has been much debated, and one of the questions raised is if the procedure is at all legal. Does it represent a *de facto* alteration of the Charter, or does it constitute a new legal rule in spite of the provisions for formal amendments of the Charter in Articles 108 and 109? Supporters claimed that the Security Council's role in the maintenance of international peace and security was 'primary' and not 'exclusive'.¹⁸³

The Resolution was not used again until 1956, when permanent members were involved in two crises. The General Assembly approved actions in the Suez crisis, because the Security Council was blocked by Great Britain and France; earlier it had censured the use of armed force by the Soviet Union in Hungary. The last use of the Uniting for Peace Resolution was in 1960, after the Security Council was deadlocked over the Congo crisis because the Soviet Union and the United States supported different sides in the conflict.¹⁸⁴

5.2.2 The General Assembly and human rights

The General Assembly practices, beyond standard-setting, indirect protection of human rights in two ways. It passes resolutions to condemn or otherwise draw the attention to violation of human rights. It also creates

¹⁷⁹ Arend and Beck, pp. 52 and 59

¹⁸⁰ UN General Assembly Resolution 377 A (V) 'Uniting for Peace', 3 November 1950

¹⁸¹ Bring, p. 26

¹⁸² *Uniting for Peace*, A1.

¹⁸³ Weiss, Forsythe and Coate, p. 26

¹⁸⁴ Weiss, Forsythe and Coate, p. 27

agencies to deal with human rights and funds them. Among the agencies, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Human Rights Commission (whose or of which? 53 state members are elected by the Economic and Social Council, ECOSOC).¹⁸⁵

¹⁸⁵ Weiss, Forsythe and Coate, pp. 131 and 135

6 Article 39, in practice

In this section, a presentation of the Security Council's practice on what has constituted a threat to the peace will be made. Many of the conflicts in question stem from very complicated backgrounds, and there will be a brief background given when necessary. The reader is given some indications where to develop further knowledge on the conflicts in question.

The international scene is a changing arena. The course of action is very rapid, especially in Africa. There has been a need to limit the conflicts of the world when conducting the research. Therefore, some conflicts are not mentioned, even though they have been determined as a threat to international peace and security, such as Sierra Leone.

6.1 Cold war cases

The division of the cases into 'cold war cases' and 'post cold war cases' are due to the difference in the Security Council's practice during these years. Before 1990, the hands of the Council were in many cases tied, due to the tension between the Soviet Union and the US. After the fall of the Berlin wall, however, the scope of action of the Council was extended considerably. The cases that are mentioned here, Congo, South Africa and Rhodesia, are in a way exceptional since the Council was able to take action.

6.1.1 Congo, South Africa and Rhodesia

The first time the Security Council determined an internal conflict a threat to international peace and security was in the 1960's, when the civil war in Congo (later Zaire and recently renamed the Democratic Republic of the Congo) was determined to constitute a threat to the peace.¹⁸⁶

The situation in Congo was chaotic in the aftermath of the independence. The UN deployed the United Nations Operation in the Congo, ONUC, in 1960 to assist the Government. Later that year, the Security Council passed resolution 161 where it expressed its concern that the danger of civil war constituted a threat to international peace and security. ONUC was authorized to use force beyond self-defense in order to prevent civil war.¹⁸⁷

During the Cold War, the Security Council also imposed economic sanctions in the cases of South Africa and Rhodesia. Economic sanctions were a form of 'non-forcible enforcement'.¹⁸⁸

¹⁸⁶ UN SC Resolution 16 of 21 February 1961 (UN doc. S/4741). Österdahl, p. 44

¹⁸⁷ Gray, p. 152

¹⁸⁸ Weiss, Forsythe and Coate, p. 56

As a reaction to Rhodesia's Unilateral Declaration of Independence (UDI) from the United Kingdom in 1966, the Security Council, in 1966, ordered 'limited economic sanctions' under Chapter VII for the first time in UN history. Even though the racist policies of Rhodesia was a part of the domestic policy of a state, the Security Council determined these domestic policies to be threatening enough to international peace and security to justify Chapter VII action.¹⁸⁹ It is, however, debatable whether the trigger in this case was the human rights situation or the UDI. The sanctions on Ian Smith's white minority regime came to include all exports and imports in 1968.¹⁹⁰

The resolutions mentioned the human rights situation as one justification for the sanctions. The other justification was the illegal succession from the United Kingdom. These sanctions remained effective until 1979 when majority rule was obtained in the new state of Zimbabwe. These were the first mandatory sanctions in the name of human rights.¹⁹¹

In the case of South Africa, the Security Council in 1977 determined the racial discrimination system of apartheid as a threat to the peace.¹⁹² Human rights were not explicitly mentioned, only 'the situation in South Africa', but the basic concern to the international community was apartheid.¹⁹³ The UN imposed sanctions on South Africa also reflected the judgement that racial discrimination was to be considered a threat to the peace. Limited economic sanctions, an arms embargo on arms sales to South Africa, embargoes against South African athletic teams, and selective divestment were all a part of a visible campaign to isolate South Africa.¹⁹⁴

These three cases were isolated in time and in space. Due to the political structure at the time, it is according to Österdahl impossible to review these events as a new trend in the decision-making on what is considered to be a threat to the peace.¹⁹⁵

On an interesting discussion on what the sanctions against these two states actually might have accomplished, see Weiss, Forsythe and Coate, p 56-57

¹⁸⁹ Weiss, Forsythe and Coate, p. 56, (SC Resolution 216 of 12 Nov 1965, Resolution 217 of 20 Nov 1965 and Resolution 253 of 29 May 1968)

¹⁹⁰ Weiss, Forsythe and Coate, p. 30

¹⁹¹ Weiss, Forsythe and Coate, p. 126

¹⁹² UN SC Resolution 417 of 31 October 1977; UN SC Resolution 418 of 4 November 1977

¹⁹³ Weiss, Forsythe and Coate, p. 127

¹⁹⁴ Weiss, Forsythe and Coate, p. 57

¹⁹⁵ Österdahl, p. 44-45

6.2 Post cold war cases

6.2.1 Iraq

The eyes of the international community were on Iraq after its aggression against Kuwait in the early 1990's. In 1991, the repression of the civilian population of Kurds and Shiite muslims in northern Iraq, led to large trans-frontier refugee flows. The Security Council considered that the situation constituted a threat to peace and security in the region.¹⁹⁶ The resolution stated that the Security Council it was:

Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, which led to a massive flow of refugees toward and across international frontiers and crossborder incursions which threaten international peace and security in the region¹⁹⁷

The Security Council also declared to be “(d)eeply disturbed by the magnitude of the human suffering involved”¹⁹⁸, and condemned the repression of the Iraqi civilian population.¹⁹⁹ The Security Council demanded that Iraq, “as a contribution to removing the threat to international peace and security in the region, immediately end this repression”.²⁰⁰

In resolution 688, there was no explicit reference to Chapter VII of the UN Charter, but the language that used was basically the same as the Security Council had previously used in resolutions with explicit references to Chapter VII. No enforcement measures were recommended or decided upon by the Security Council as a follow-up to its determination that the repression of Iraqi civilians and its consequences threatened international peace and security in the region.²⁰¹ The Security Council never expressly authorize the use of force, but some states interpreted the resolution 688 as the Council had implicitly authorized the use of force to stop Iraqi repression of civilians. Led by the United States, these states (United Kingdom, France and the Netherlands) created a protected area for Iraqi Kurds in Northern Iraq. The safe haven created above the thirty-sixth parallel was to ensure the security of UN relief operations.²⁰²

It is not absolutely clear from the resolution whether it is the refugee flows or the repression of civilians that constituted the threat to peace and security in the region.²⁰³ When the Security Council declared the human rights situation a threat to international peace and security, it was the first

¹⁹⁶ SC Resolution 688 of 5 April 1991

¹⁹⁷ UN SC Res. 688, pp. 3

¹⁹⁸ UN SC Res. 688, pp. 4

¹⁹⁹ UN SC Res. 688, op. 1

²⁰⁰ UN SC Res. 688, op. 2

²⁰¹ Österdahl, p. 46-47, Weiss, Forsythe and Coate, p. 127

²⁰² Weiss, Forsythe and Coate, p. 27 and 127

²⁰³ Österdahl, p. 45

declaration that a human rights situation constituted a threat to the peace since the resolutions on Rhodesia and South Africa.²⁰⁴

6.2.2 Yugoslavia

The conflict in the former Yugoslavia can shortly be described as follows: 1) a period of rising tension before the outbreak of fighting; 2) a brief Slovene war at the end of June and beginning of July 1991, ending with the Brioni Accords of July 8 brokered by the European Community, which recognized Slovene independence, no doubt mainly because there were so few Serbs in Slovenia; 3) the savage Croat war which immediately followed, through to the cease-fire of 2 January 1992, which brought the shock of the shelling of Dubrovnik, destruction of Vukovar and the onset of 'ethnic cleansing', and by the end of which a third of Croatia was effectively controlled by the self-styled Serb Republic of Krajina; 4) the Bosnian war initiated by the Serb assault of 6 April 1992; and 5) the threatened further spread of the war to Macedonia and beyond, so far headed off.²⁰⁵ To this can be added the war in Kosovo.

6.2.2.1 Croatia

The dissolution of the former socialist republic of Yugoslavia entailed violence and displacement of a magnitude not seen in Europe not seen since the Second World War.²⁰⁶ A civil war broke out between Croatia, who wanted to break loose from the Socialist Federal Republic of Yugoslavia. An arms embargo was imposed under Chapter VII of the UN Charter covering the whole country "for the purposes of establishing peace and stability in Yugoslavia"²⁰⁷. This embargo remained in force until the end of the war.²⁰⁸

In February 1992, in the wake of the January cease-fire to the Croat war, the UN formally launched the United Nations Protection Force (UNPROFOR) in former Yugoslavia.²⁰⁹

In Resolution 770 of 13 August 1992, the Security Council stated that the situation in Croatia constituted a threat to international peace and security, and that the provision of humanitarian assistance was an important element in the Council's efforts to restore international peace and security in the area.²¹⁰

²⁰⁴ Weiss, Forsythe and Coate, p. 127

²⁰⁵ Ramsbotham and Woodhouse, pp. 170-1. A quotation except some minor changes, thus not within quotation marks.

²⁰⁶ Weiss, Forsythe and Coate, p.77

²⁰⁷ UN SC Resolution 713 of 25 September 1991, op. 6

²⁰⁸ The embargo was lifted gradually by UN SC Resolution 1021 of 22 November 1995.

Österdahl, p. 47, note 14

²⁰⁹ UN SC Resolution 743 of 21 February 1992 (Ramsbotham and Woodhouse, p. 173)

²¹⁰ UN SC Resolution 770 (1992) of 13 August 1992, pp. 5

6.2.2.2 Bosnia-Herzegovina

When Bosnia Herzegovina became an independent state in March/April 1992, fighting broke out between the Bosnian, the Croat and the Serb communities within Bosnia, with outside support from *inter alia* the Serb dominated Yugoslav People's Army (Yugoslav National Army?) and the Croatian Army.²¹¹ The Security Council declared that the situation in Bosnia-Herzegovina and other parts of the former Socialist Federal Republic of Yugoslavia constituted a threat to international peace and security.²¹² Comprehensive economic sanctions were imposed on Serbia and Montenegro under Chapter VII of the UN Charter.²¹³

In 1992, the Security Council, acting under Chapter VII of the UN Charter called upon all states to take "all measures necessary" to facilitate the deliverance of humanitarian assistance to Bosnia-Herzegovina.²¹⁴ The formulation of "all measures necessary" includes the use of force. This was the first time the Security Council authorized the use of military means to enforce humanitarian undertakings. These efforts were strengthened further by a ban on all flights, except those authorized by the United Nations Protection force (UNPROFOR) in the airspace of Bosnia-Herzegovina.²¹⁵

In 1993, the Security Council authorized the member states to use air power in and around the "safe areas" established in Bosnia in order to support the UNPROFOR in the performance of its mandate (to keep the peace in the "safe areas" and to protect the deliverance of humanitarian aid to these areas). The states were authorized to act nationally or through regional organizations or arrangements. In practice this meant that the North Atlantic Treaty Organization (NATO) was authorized to intervene in the conflict. This was not used, however, until two years later when NATO forces eventually attacked the Bosnian Serbs and forced them to surrender.²¹⁶

The situation in Bosnia and Herzegovina was still considered to constitute a threat to international peace and security in June of 2001.²¹⁷ The UN has created new forces to monitor the peace process and the peace agreement.²¹⁸ These are the SFOR (multinational stabilization force)²¹⁹, and the UNMIBH (the United Nations Mission in Bosnia and Herzegovina) which includes the

²¹¹ Österdahl, p. 47

²¹² UN SC Resolution 757 of 30 May 1992, pp. 17

²¹³ Österdahl, p. 47

²¹⁴ UN SC Resolution 770 of 13 August 1992

²¹⁵ UN SC Resolutions 718 of 9 October 1992 and 816 of 31 March 1993. Österdahl, p. 48

²¹⁶ Österdahl, p. 49

²¹⁷ UN SC Resolution 1357 of 21 June 2001, pp 11

²¹⁸ General Framework for Peace in Bosnia and Herzegovina (S/1995/999)

²¹⁹ SFOR established in accordance with UN SC Resolution 1088 of 12 December 1996

IPTF (the International Police Task Force)²²⁰. The UNMIBH's mandate has recently been extended until 21 June 2002.²²¹

Bosnia-Herzegovina had become an independent state, and there was military interference from other states, this was perhaps more obviously a threat to the peace in the traditional sense than the Croatian and Iraqi cases. Österdahl points out that the case in Bosnia-Herzegovina was more a breach of the peace than a threat to the peace. An indicator of this is also that an aggressor was pointed out, Serbia and Montenegro, through the imposition of economic sanctions.²²²

6.2.2.3 Kosovo

Kosovo gained autonomy within the state of Serbia in 1946, and its special status was confirmed by Tito's 1974 Yugoslav Constitution. In 1989 Belgrade revoked the province's autonomy, following the assertion by Serbian President Slobodan Milosevic that the Serbian minority in Kosovo were at risk. Kosovo Albanians, facing discrimination in public and private employment and in the exercise of civil rights, developed parallel national institutions and sought independence by insurrection. When neighboring Albania collapsed in 1997, men, materiel and arms could easily flow across the unguarded borders, and the Kosovo Liberation Army (KLA) began its attacks. The Yugoslav forces responded with large scale and indiscriminate military assaults to reverse KLA gains, and in 1998, more than two hundred thousand Kosovo Albanians fled their villages. In a temporary resolution of the crisis in October 1998, Belgrade agreed to the presence of international observers in Kosovo to guarantee that the Serb police action would not abuse civilians. These were to be called 'verifiers' in deference of Yugoslav sovereignty, and displaced families were able to return to their homes.²²³

In January of 1999, a so-called contact group²²⁴ was set up, and convened negotiations between Kosovo Albanians and the Yugoslav Government to address the political framework for Kosovo's autonomy. An agreement was reached at Rambouillet, France, where an annex gave NATO the right to operate within Yugoslavia to guarantee its terms. After a initial refusal from both sides, the Albanians signed the agreement. The Serbs then started a military campaign with the purpose of expelling large proportions of Kosovo's ethnic Albanians. This, referred to by NATO as 'Operation Horseshoe', deported eight hundred thousand Kosovo Albanians and the suspected killing of as many as ten thousand civilians.²²⁵

²²⁰ IPTF was given its mandate from UN SC Resolution 1035 of 21 December 1995

²²¹ UN SC Res. 1137, op. 19

²²² Österdahl, p. 48

²²³ Ruth Wedgewood, "NATO's Campaign in Yugoslavia", in *Editorial Comments: NATO's Kosovo Intervention*, from *American Journal of International Law*, Vol. 93:824, 1999, p. 829

²²⁴ The contact group consisted of the US, the UK, France, Germany, Italy and the Russian Federation. Wedgewood, p. 829

²²⁵ Wedgewood, p. 829

The Security Council determined the situation in Kosovo as a threat to regional peace and security, rather than an internal matter of the state of Yugoslavia. In March 1998, the Security Council acted under Chapter VII to impose an arms embargo on Yugoslavia until Belgrade should “withdraw [...] the special police units and cease [...] action by the security forces affecting the civilian population”, and allow international access to Kosovo for the contact group, the OSCE, the UNHCHR and humanitarian organizations.²²⁶

In September 1998, in Resolution 1199, the Security Council declared that it was “[g]ravelly concerned” at “the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav army” and the resulting displacement of over 230,000 persons from their homes and “flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries”.²²⁷ The Council demanded an immediate cease-fire, acting under Chapter VII.²²⁸

In October 1998, the Security Council adopted resolution 1203.²²⁹ The Security Council had voted in Resolution 1203 to authorize the use of force under Chapter VII of the Charter in order to protect the OSCE ‘verifiers’. China and the Russian Federation abstained in the voting because the Resolution would authorize the use of force. In the Resolution, the Council gave the agreement of the withdrawal of most Yugoslav forces between Belgrade and OSCE and NATO its “[e]ndorse[ment] and support”. Furthermore, the Council “[d]emand[ed]” that Belgrade cooperated with the NATO and OSCE efforts to verify compliance, including a the establishment of a NATO air verification mission over Kosovo.²³⁰

In the following resolutions, the Security Council gave the OSCE and NATO further mandate. In resolution 1244, the Council “[a]uthorize[d]” the international security presence in Kosovo to exercise “all necessary means to fulfil its responsibilities”.²³¹ It also entrusted the Secretary-General with the organization of a parallel “international civil presence” to “[p]romot[e] the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo” while “taking full account...of the Rambouillet accords.”²³²

²²⁶ SC Res. 1160 of 31 March 1998, pp. 8 and 16. Wedgewood, p. 830

²²⁷ SC Res. 1199 of 23 September 1998, preamble. Wedgewood, p. 830

²²⁸ Res. 1199, op. 1

²²⁹ SC Resolution 1203 of 24 October 1998

²³⁰ Res. 1203, preamble and para. 1. Wedgewood, p. 830

²³¹ SC Resolution 1244 10 June 1999, op. 7

²³² Res. 1244, op. 10 and 11. Wedgewood, p. 830

The NATO campaign *Operation Allied Force* began in March 1999. The NATO air campaign was widely criticized.²³³ The Security Council did authorize the use of force *post facto*.²³⁴ This is not, however, the most important part of the Kosovo conflict, but it is the fact that the Security Council once again considered massive human rights violations, in this case ethnic cleansing, as a threat to peace and security in the region. This was mentioned in a number of resolutions.²³⁵

6.2.3 Somalia

Somalia's Said Barre government collapsed in early 1991. A single ethnic group sharing the same religion, history, and language split into heavily armed clans.²³⁶ For over a year, Somalia was a collapsed state with no working economy or politics, and one-third of the population risked death from starvation because help could not reach the needy.²³⁷ It was not until the beginning of 1992 that the UN addressed the situation. The Security Council stated that it was "[g]ravely alarmed at the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread damage resulting from the conflict in the country and aware of its consequences on the stability and peace in the region".²³⁸ The Security Council was concerned that the situation would constitute a threat to international peace and security.²³⁹ How the situation constitutes a threat to international peace and security was not specified in the resolution. The first action of the Security Council was that an arms embargo was decided upon under Chapter VII of the UN Charter in order to bring peace and stability to Somalia.²⁴⁰

In the following resolutions on Somalia, the Security Council declared itself "[d]eeply disturbed by the magnitude of the human suffering caused by the conflict"²⁴¹ and "gravely alarmed by the deterioration of the humanitarian situation on Somalia"²⁴² and emphasized the need for a quick delivery of humanitarian assistance to the country, by international, regional and NGO's.²⁴³

²³³ See, for example, Jorri Duursma, "Justifying NATO's Use of Force in Kosovo?" *Leiden Journal of International Law* (12 LJIL (1999)), p. 287-295

²³⁴ Gray, p. 31

²³⁵ Res. 1199, the preamble; res. 1203, the preamble; res. 1244, the preamble

²³⁶ Weiss, Forsythe and Coate, p. 79

²³⁷ Mohamed Sahnoun, *Mixed Intervention in Somalia and the Great Lakes*, in Hard Choices: Moral Dilemmas in Humanitarian Intervention, Jonathan Moore (ed.), Rowman and Littlefield Publishers, Oxford, 1998, p. 88, and Weiss, Forsythe and Coate, p. 79

²³⁸ UN SC Resolution 733 of 23 January 1992, pp. 3

²³⁹ Res. 733, pp. 4 (Österdahl, p. 53)

²⁴⁰ Res. 733, op. 5 (Österdahl, p. 53)

²⁴¹ UN SC Resolutions 746 of March 1992, pp. 6; res. 751 of 24 April 1992, pp. 6; res. 767 of 27 July 1992, pp. 7; and res. 775 of 28 August 1992, pp. 6. (Österdahl, p. 53, note 43)

²⁴² Res. 767, pp. 8; res. 775, pp. 7; and res. 794 of 3 December 1992, pp. 4 (Österdahl, p. 53)

²⁴³ Res 751, pp. 8; res. 767, pp. 8; res. 775, pp. 7; and res. 794, pp. 4 (Österdahl, p. 53)

The arms embargo did not stop the situation from deteriorating further. Again, the Security Council declared the situation in Somalia as a threat to international peace and security. The Council declared 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”.²⁴⁴ In the interpretation of Österdahl, the Security Council seemed to look exclusively at the conflict and the humanitarian situation in Somalia and seemed to regard this situation as serious enough threat to international peace and security in itself. The other explanation possible, according to Österdahl, is that the Security Council may have regarded the situation in Somalia as of such a serious nature that the Council must react in some way, irrespectively if the situation really posed a threat to international peace and security or not.²⁴⁵ Weiss, Forsythe and Coate states that “[i]n the Somali case, there was not much risk of international violence, or even much international disruption outside the country”²⁴⁶. They argue that the Security Council was applying Chapter VII to an internal conflict²⁴⁷, which supports Österdahl’s second theory.

The Security Council authorized the member states that wanted, to use “all necessary means” to create “a secure environment”²⁴⁸ for the delivery of humanitarian relief to Somalia. Anyone blocking delivery of that assistance would be committing a war crime for which there was individual responsibility.²⁴⁹ An US-led multinational force intervened in Somalia shortly after the adoption of the resolution.²⁵⁰ The operation was called Operation Restore Hope by the Americans, or the Unified Task Force (UNITAF), an acronym that reflected the Security Council authorization to use force.²⁵¹

In the case of Somalia, the Security Council was ambitious. It set out to “restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation in Somalia”.²⁵² This proved to be too difficult, and the efforts to rebuild Somalia sanctioned by the Security Council were interrupted in the spring of 1995.²⁵³

In its efforts to work out the situation in Somalia, the Security Council authorized the Secretary-General of the UN to secure the arrest and

²⁴⁴ UN SC Res. 794, pp. 3 (Österdahl, p. 53)

²⁴⁵ Österdahl, p. 53-54

²⁴⁶ Weiss, Forsythe and Coate, p. 129

²⁴⁷ Weiss, Forsythe and Coate, p. 129

²⁴⁸ UN SC Res. 794, op. 10

²⁴⁹ Weiss, Forsythe and Coate, p. 128

²⁵⁰ Österdahl, p. 54

²⁵¹ Weiss, Forsythe and Coate, p. 80

²⁵² UN SC Res. 794, pp. 14

²⁵³ Österdahl, p. 55

detention for prosecution, trial and punishment of the war lords responsible for attacking UN peace-keeping troops in Somalia (the United Nations Operation in Somalia, UNOSOM). The UNOSOM was to take over the peace-keeping/peace-making in Somalia after the UNITAF.²⁵⁴ UNSOM was authorized under Chapter VII of the UN Charter to use whatever force necessary to disarm Somali warlords who might refuse to surrender their arms and too ensure access to suffering civilians.²⁵⁵

The Security Council declared the situation in Somalia as a threat to international peace and security. It is unclear on what basis, since the grounds for it is not explicitly mentioned in the resolutions. What is clear, however, is that the humanitarian situation in Somalia was “bad” and that the Security Council authorized states to end the suffering of the Somali people. It is up to the Security Council to decide what constitutes a threat to international peace and security. In this case the grave human suffering was considered as such. Understanding the nature of the conflict, it seems to be clear that the Somali war was truly an internal war, and, unusually enough, there were never any danger that the conflict would spread beyond its borders. The problems were with the clan structure.²⁵⁶ In the traditional sense, there were no threat to international peace and security.

The reference to a threat to international peace and security is made only in the preamble, compared to the mentioning of the word ‘humanitarian’, which counts to 18. The threat to international peace and security does not come from cross-border disturbances, but only from the humanitarian catastrophe within the country itself. The UN Charter provisions are being stretched to the limit to accommodate legitimate forcible humanitarian intervention within a rubric that had not envisaged it.²⁵⁷

For a stinging criticism of the UN (non)action in Somalia, Ramsbotham and Woodhouse, p 192 ff. The world was too pre-occupied with the conflict in Iraq and in Bosnia, therefore it took so long for the UN to react.

²⁵⁴ Österdahl, p. 55

²⁵⁵ Weiss Forsythe and Coate, p. 80

²⁵⁶ Ramsbotham and Woodhouse, p. 193 ff and Sahnoun, p. 87 ff

²⁵⁷ Ramsbotham and Woodhouse, p. 207. For further strong criticism of the world community and the UN in the Somali conflict, see Ramsbotham and Woodhouse, p. 192 ff., j. Stevenson, Hope restored in Somalia? *Foreign Policy*, 91, 1993, pp. 138-154; Jeffrey Clark, Debacle in Somalia; failure of the collective response. In Damrosch (ed), 1993, pp. 205-40; A DeWaal, Dangerous precedents? Famine relief in Somalia 1991-93. In MacCrae and Zwi (eds.), 1994, pp. 139-59; Adam Roberts, Humanitarian war: military intervention and human rights. 69 *International Affairs* (1993), pp. 429-49; S Makinda, Seeking Peace from Chaos: Humanitarian Intervention in Somalia, International Peace Academy Occasional Paper, 1993

6.2.4 Liberia

On 24 December 1989, a Liberian ex-patriot named Charles Taylor invaded Liberia with a rebel group known as the National Patriotic Front of Liberia, plunging the country into a bloody civil war. Large flows of refugees crossed the borders to neighboring Côte d'Ivoire and Guinea. Although the situation could have been labeled a 'threat to the peace' already at this point in time, the Security Council did not discuss the problems in Liberia until January of 1991. The situation was, however, dealt with by the Economic Community of West African States, ECOWAS²⁵⁸. In May of 1990, ECOWAS adopted a resolution that called for an end to the hostilities in Liberia, and a 'standing mediation committee' was established. The committee could intervene whenever a conflict threatened the stability in the region.²⁵⁹

Unfortunately, the situation in Liberia worsened. In July 1990, ECOWAS formulated a detailed plan to address the civil war. Rebel leader Charles Taylor did not accept the plan, and in late August 1990, an ECOWAS-sponsored 'peacekeeping' force, the Economic Community of West African States Cease-fire Monitoring Group (ECOMOG), headed by Nigeria, entered Liberia.²⁶⁰ Liberia tried to get the Security Council involved in the matter, but the Council regarded the situation as an internal issue, and the matter was not discussed until a meeting on 22 January 1991. The Council President issued a statement endorsing the efforts of ECOWAS.²⁶¹

The Security Council seized the matter, and declared that the "deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in the West Africa as a whole".²⁶² The Security Council did not give any concrete reasons for why the situation constituted a threat to international peace and security in West Africa. The civil war seemed to be reason enough to determine the situation as a threat. An arms embargo was instituted to establish peace and stability in Liberia.²⁶³

The Security Council also authorized the ECOWAS intervention *post factum* in resolution 788, where it commended 'ECOWAS for its efforts to restore peace, security and stability in Liberia'.²⁶⁴ In September of 1993, the United Nations Observer Mission in Liberia (UNOMIL) was created to cooperate with ECOMOG and monitor the implementation of a peace

²⁵⁸ The members of ECOWAS are: Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Côte d'Ivoire, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo. (Arend and Beck, p. 65, note 99)

²⁵⁹ Arend and Beck, p. 65

²⁶⁰ ECOWAS Monitoring Group (ECOMOG) was composed of troops from Gambia, Ghana, Guinea, Nigeria and Sierra Leone. (Arend and Beck, p. 65, note 105)

²⁶¹ Arend and Beck, p. 65

²⁶² UN SC Resolution 788 of 19 November 1992, pp. 5

²⁶³ Res. 788, op. 8 (Österdahl, p. 56)

²⁶⁴ Res. 788, op. 1

agreement concluded in July 1993, and to assist in the coordination of humanitarian assistance activities.²⁶⁵

The ECOWAS intervention has been criticized; it has been accused of replicate regional power imbalances, because it was ‘used by the more powerful to expand their influence at the expense of the weak’, and Nigeria’s ‘manipulation of ECOWAS in Liberia is perhaps the most obvious case’.²⁶⁶

Since 1993, there have been other peace agreements of which the last was concluded in Abuja, Nigeria in August 1996, under which general elections were held in Liberia in July 1997.²⁶⁷

6.2.5 Angola

Angola is yet another African country ravaged by civil war. The war broke out when Angola was declared an independent state in 1975. The war involved three fighting parties: the UNITA (National Union for the total Independence of Angola), supported by South Africa and Zaire (now the Democratic Republic of the Congo, which ended by the with the fall of President Mobutu Sese Seko in 1997), the MPLA (Popular Movement for the Liberation of Angola), supported by the Soviet Union, the countries of Eastern Europe and Cuba, and finally the FNLA (National Front of the Liberation of Angola) supported by Zaire, the US, Romania and the North Korea. FNLA disappeared as a fighting party in 1975.²⁶⁸

In 1993, the Security Council determined that “as a result of UNITA’s [...] military action, the situation on Angola constitutes a threat to international peace and security”.²⁶⁹ UNITA refused to implement the peace negotiating process under the aegis of the United Nations, which they had agreed on. UNITA did not respect the results of a democratic election held in 1992, that they lost, but continued its military campaign. At the time when the Security Council intervened, the foreign involvement had probably ended.²⁷⁰

²⁶⁵ UN SC Resolution 866 of 22 September 1993. (Österdahl, p. 57)

²⁶⁶ Weiss, Forsythe and Coate, p. 37

²⁶⁷ Österdahl, p. 57. A new government was elected in a process declared free and fair by UNOMIL and ECOWAS. After the election, UNOMIL was withdrawn, and after consultations held with president Charles Taylor, the United Nations Peace-building Support Office in Liberia (UNOL) was established on 1 November 1997. The Security Council has extended the mandate of UNOL until 31 December 2001. (UN Department of Public Information, *United Nations and Liberia*, 2000)

²⁶⁸ Österdahl, p. 58

²⁶⁹ UN SC Resolution 864 of 15 September 1993, part B, pp. 4 (Österdahl, p. 57)

²⁷⁰ Österdahl, p. 57-8

Again, the Security Council did not specify exactly what constituted a threat to international peace and security. The Council expressed its “grave concern at the continuing deterioration of the political and military situation” and noted “the further deterioration of the already grave humanitarian situation”.²⁷¹ According to Österdahl, it was the civil war and the human suffering caused by it that constituted a threat to international peace and security, partly to act on the situation, and partly to put pressure on UNITA. This was another case where the Security Council applied a broad interpretation on what constitutes a ‘threat to the peace’.²⁷²

The Security Council also imposed an arms and petroleum embargo against UNITA under Chapter VII of the UN Charter²⁷³, and the sanctions against UNITA were tightened up further in August 1997.²⁷⁴

6.2.6 Rwanda

When the President Juvénal Habyarimana was killed in a plane crash on 6 April 1994, the fragile peace process in Rwanda was abruptly brought to an end. Within hours, violence erupted in the capital of Kigali, as the security forces started executing the political opponents of the former President. The violence and killings spread rapidly across the country, and it developed into what many observers describe as genocide: a systematic attempt to eliminate the Tutsi ethnic minority group in Rwanda. Assisted by the Rwandan authorities, party militia groups organizing members of the Hutu ethnic group committed a very large amount of massacres, and it is estimated that out of a population of about 7 million, between 250 000 and 500 000 Rwandans were killed.²⁷⁵

Shortly after the civilian massacres had begun, the Tutsi dominated rebel group Rwanda Patriotic Front (RPF) resumed its military campaign against the Rwandan Army, thus ending the cease-fire in effect since 1993. The rebels made rapid advances and were soon able to control large parts of the Rwandan territory.²⁷⁶ The violence had created large number of refugees, an estimated between one and two million sought refuge in the neighboring

²⁷¹ Res. 864, pp. 3 (to the resolution as a whole). (Österdahl, p. 58)

²⁷² Österdahl, p. 58

²⁷³ Res. 864, part B, op. 19

²⁷⁴ UN SC Resolution 1127 of 28 August 1997. (Österdahl, p. 58)

²⁷⁵ Falk, pp. 76-7

²⁷⁶ Falk, p. 77

states.²⁷⁷ Enormous refugee-camps were created and the resources of the international aid agencies were hopelessly inadequate.²⁷⁸

At the time when the civil war broke out, the UN already had a force of 2500 troops in Rwanda.²⁷⁹ The United Nations Assistance Mission in Rwanda (UNAMIR)²⁸⁰ was established to monitor the cease-fire of the peace agreement from 4 August 1993, signed in Arusha, Tanzania, and to contribute to the security in Kigali. UNAMIR was a peace-keeping mission with limited mandate.²⁸¹ When the violence started in April 1994, the UNAMIR could not act, due to their limited mandate and their total lack of adequate resources. The UN troops could do little but observe the atrocities that went on around them.²⁸² The situation deteriorated, and after the slaughter of ten Belgian paratroopers, Belgium withdrew its troops from the region.²⁸³ At this point, the UNAMIR's future was questioned. The security of the troops could not be guaranteed. The Security Council adopted unanimously Resolution 912 of 21 April 1994, which ordered the reduction of UNAMIR to a 'skeleton force of 270 troops'.²⁸⁴

The decision to withdraw the troops was widely criticized. When the full extent of the horrible situation in Rwanda became clear, on 9 April, the Secretary-General urged the Security Council to consider what action "including forceful action" it could take to end the massacres.²⁸⁵ In Resolution 918²⁸⁶, the Council agreed to expand the UN force to 5500 troops, together with a mandate to protect the distribution of humanitarian relief operations and the establishment of secure human areas. This resolution also determined the situation in Rwanda constituted a threat to peace and security in the region, and imposed an arms embargo under Chapter VII of the UN Charter.²⁸⁷ The determination of the situation as a threat to peace and security in the region was followed by an authorization by the Security Council of the member states who wanted to co-operate in

²⁷⁷ There was an exodus of Hutu refugees into Tanzania, Zaire and Burundi. In Tanzania, over 500,000 Hutus sought refuge. The largest exodus, over 850,000 refugees into the northern province of Kivu in Zaire, took place over only five days in mid-July. Also southern Kivu and Burundi received a large number of refugees, and the total outside Rwanda to around two million. Ian Martin, "Hard Choices after Genocide; Human Rights and Political Failures in Rwanda", in *Hard Choices – Moral Dilemmas in Humanitarian Intervention*, p 159

²⁷⁸ Falk, p. 77

²⁷⁹ Falk, p. 77

²⁸⁰ UNAMIR was established through SC Resolution 872 of 5 October 1993.

²⁸¹ Romeo A. Dallaire, "End of Innocence: Rwanda 1994", in *Hard Choices – Moral Dilemmas in Humanitarian Intervention*, edited by Jonathan Moore, Rowman and Littlefield Publishers, 1998, p. 73

²⁸² Falk, p. 77

²⁸³ Dallaire, p. 78

²⁸⁴ Falk, p. 78

²⁸⁵ Letter dated 29 April 1994 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/1194/518. Falk, p. 78

²⁸⁶ SC Resolution 918 of 17 May 1994

²⁸⁷ Falk, p. 78

this operation to “use all necessary means” in order to protect displaced persons, refugees and civilians in Rwanda. The military intervention was headed by France, and is referred to as Operation Turquoise.²⁸⁸

The Security Council determined that “the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region”. The Security Council also declared that it was “deeply concerned by the continuation of the systematic and widespread killings of the civilian population in Rwanda”.²⁸⁹ The Security Council did not specify exactly what in the humanitarian crisis in Rwanda that constituted a threat to peace and security in the region. In this case, the massive flow of refugees into neighboring countries, primarily Zaire (now the DRC), might actually have had a destabilizing effect on the regional peace. The two ethnic groups also live on both sides of national borders in this area might have contributed in making the Rwandan conflict a threat to the peace.²⁹⁰ In this case one might wonder if the Security Council would have made it easier for themselves if they left out the humanitarian aspect of the resolution and only relied on the less controversial fact that the violence could spread and cause international implications, and *that* was what threatened the peace.

In November 1994, the Security Council decided to establish an ad hoc tribunal to prosecute the suspected perpetrators of the crime of genocide or of crimes against international humanitarian law.²⁹¹ The tribunal was established, like the Tribunal for former Yugoslavia, under Chapter VII of the UN Charter. In the resolution, the Security Council expressed its “grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda” and determined that the “situation continue[d] to constitute threat to international peace and security”.²⁹² The establishment of the Tribunal is evidence of that the Security Council considered the large scale killings of civilians in Rwanda as a threat to international peace.²⁹³

6.2.7 Haiti

President Jean-Bertrand Aristide was democratically elected on 16 December 1990 by 67 percent of the Haitian voters.²⁹⁴ The election was

²⁸⁸ Österdahl, p. 60. The French operation was criticized by Dallaire, see p. 81

²⁸⁹ SC Resolution 929 of 22 June 1994, pp 10 and 8. (Österdahl, p. 59)

²⁹⁰ Österdahl, p. 59-60

²⁹¹ UN SC Resolution 955 of 8 November 1994 established the “International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of Humanitarian International Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994”.

Österdahl, p. 61

²⁹² Res. 955, pp. 4-5

²⁹³ Österdahl, p. 61

²⁹⁴ “The United Nations and the Situation in Haiti”, UN Department of Public Information, 1994, p. 1

called “the first free and fair popular elections in Haitian history”.²⁹⁵ It was hoped that the election would end a long period encompassing the dictatorship of Francois and Jean-Claude Duvalier, followed by five years of political instability under different regimes. This hope was shattered when President Aristide was overthrown in a *coup d'état*, headed by Lieutenant-General Raoul Cédras, on 30 September 1991. President Aristide was forced into exile.²⁹⁶

The international community strongly condemned the violent and unconstitutional actions of the Haitian military. The Permanent Council of OAS (Organization of American States) condemned the coup and its perpetrators and demanded adherence to the Constitution and respect for the legitimate Government, the physical safety of the President and the rights of the Haitian people. It also called for the reinstatement of the president. Also the UN Secretary-General, Javier Pérez de Cuéllar, and the President of the Security Council condemned the situation.²⁹⁷

The coup was followed by a rapid deterioration of the human rights situation in Haiti. The new military regime subjected the population of Haiti to gross and systematic state-inflicted or state-sanctioned violations of human rights, including widespread practices of extrajudicial executions, arbitrary arrests, torture and rape. As a result, large number of the population were internally displaced, and tens of thousands of Haitian “boat people” attempted to seek refuge in other states of the region.²⁹⁸

The fact that the democratically elected president was not reinstated, and the number of refugees was in 1993 declared as a threat to international peace and security in the region.²⁹⁹ The Security Council also declared that the persistence of the situation “contributes to a climate of fear of persecution and economic dislocation which could increase the number of Haitians seeking refuge in neighbouring Member States” and the Council was “convinced that a reversal of this situation is needed to prevent its negative repercussions on the region”.³⁰⁰

The Security Council decided on an embargo on arms and oil products to Haiti, acting under Chapter VII of the Charter. It also required Member States to freeze any Haitian funds abroad of the Government of Haiti or the *de facto* authorities in Haiti.³⁰¹ The situation was quite unique, since the internationally recognized representative of Haiti requested the adoption of such measures upon the *de facto* authorities. The embargo would be in effect until the *de facto* authorities had signed and begun implementing an

²⁹⁵ Colin Granderson, “Military-Humanitarian Ambiguities in Haiti”, in Moore (ed.), p. 99

²⁹⁶ The United Nations and the Situation in Haiti, p. 1

²⁹⁷ The United Nations and the Situation in Haiti, p. 1

²⁹⁸ Falk, p. 83

²⁹⁹ UN SC Resolution 841 of 16 June 1993, pp. 9-11 and 14

³⁰⁰ Res. 841, pp. 11. Österdahl, p. 66

³⁰¹ Res. 841, op. 8

agreement to reinstate the legitimate government of Jean-Bertrand Aristide.³⁰²

Following such an agreement in August 1993 (the Governors Island Agreement)³⁰³, the UN sanctions were temporarily suspended. It soon became evident that the military authorities were not fulfilling their obligations under the agreement, and the human rights abuses intensified. The UN established a peace-keeping force (United Nations Mission in Haiti, UNMIH)³⁰⁴ to help implement the accord. In October 1993, the Council reinstated the embargo.³⁰⁵

In May 1994, the Security Council reaffirmed that “the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected president” under the framework of the two agreements.³⁰⁶ Once again, the Security Council declared that “the situation created by the failure of the military authorities in Haiti to fulfil their obligations under the Governors Island Agreement and to comply with relevant Security Council resolutions constitutes a threat to peace and security in the region”.³⁰⁷ In this resolution it was the failure of the military regime to fulfil its obligations under the agreement and failure to comply with relevant Security Council resolutions that constituted a threat to the peace, and the refugee flows were not mentioned here.³⁰⁸

Another fact mentioned as a threat to the peace was that, according to the Security Council, the UNMIH was hindered from carrying out its mandate.³⁰⁹ The UNMIH personnel were not Haitian, and the refusal of the *de facto* authorities to cooperate gave the conflict an international dimension.³¹⁰

In July of 1994, the Security Council again determined that “the situation in Haiti continues to constitute a threat to the peace and security in the region”.³¹¹ In this resolution, the deteriorating situation for human rights, as well as the “desperate plight of Haitian refugees” was most likely what constituted a threat to the peace.³¹² The Security Council also authorized the member States to form a multinational force and with “all necessary means

³⁰² Falk, p. 83

³⁰³ The Governors Island Agreement was turned into the more detailed New York Pact of 16 July 1993.

³⁰⁴ The UNMIH, United Nations Mission in Haiti was established in accordance with Resolution 867 of 23 September 1993

³⁰⁵ Falk, p. 83

³⁰⁶ UN SC Resolution 917 of 6 May 1994, pp. 8

³⁰⁷ Res. 917, pp.13

³⁰⁸ Österdahl, p. 68

³⁰⁹ UN SC Resolution 867 of 23 September 1993

³¹⁰ Österdahl, p. 68

³¹¹ UN SC Resolution 940 of 31 July 1994, pp. 10

³¹² Österdahl, p. 68

to facilitate the departure from Haiti of the military leadership”.³¹³ The US headed the force formed. The military regime stepped back voluntarily at the eleventh hour, so the intervention was peaceful.³¹⁴

In the case of Haiti, the ‘threat to the peace’ was initially from the refugees. As in the case of Rwanda, they had a destabilizing effect on the region. The refugees are internationalizing the conflict. In 1994, the human rights situation in Haiti, as well as the *de facto* authorities was determined to constitute a threat. Sanctions were imposed at the request of the democratically elected president, but not the authority in effective control of the territory. They were carried out by a government in effective control. Human rights are the concern of mankind as a whole, the violations constitute a threat.

6.2.8 Burundi

Burundi, like its neighbor Rwanda, was tormented by a civil conflict between the ethnic groups the Hutu and the Tutsis. In 1996, the Hutu-Tutsi coalition government was overthrown in a military coup by the Tutsi-dominated army. The new government was evenly divided between the two groups.³¹⁵

In August of 1996, the Security Council found that the situation in Burundi constituted a threat to international peace and security. The Council expressed its deep concern at “the continued deterioration in the security and humanitarian situation in Burundi that has been characterized in the last years by killings, massacres, torture and arbitrary detention, and the threat that this poses to the peace and security of the Great Lakes Region as a whole”.³¹⁶

The Security Council also condemned “the overthrow of the legitimate government and constitutional order in Burundi” and condemned “all those parties and factions which resort to force and violence to advance their political objectives”.³¹⁷ The Council also decided that if negotiations between all of Burundi’s political parties and factions were not initiated, the Council would “consider the imposition of measures” under the UN Charter in order to ensure compliance.³¹⁸ The Security Council was considering imposing an arms embargo to the regime in Burundi.³¹⁹

The Security Council then noted that the “persons who commit or authorize” serious violations of humanitarian law in Burundi, were “individually

³¹³ Res. 940, op. 4

³¹⁴ Österdahl, p. 70

³¹⁵ Österdahl, p. 70

³¹⁶ UN SC Resolution 1072 of 30 August 1996, pp. 4

³¹⁷ Res. 1072, part A, op. 1

³¹⁸ Res. 1072, part A, op. 6 and part B, op. 11

³¹⁹ Res. 1072, part B, op. 11

responsible and should be held accountable”, and reaffirmed “the need to put an end to impunity for such acts and the climate that fosters them”.³²⁰

In the case of Burundi, no international circumstances were mentioned by the Security Council that could constitute a threat to the peace. The refugee flows to neighboring countries were not mentioned, neither any foreign involvement. The Council was focusing on the internal political and humanitarian situation. The violent and unstable situation in the country in itself posed a threat to the peace and security in the region. As in the case of Rwanda, the fact that the ethnic groups were to be found in other states as well made the conflict international.³²¹

6.2.9 Zaire (Democratic Republic of the Congo)

Zaire, now renamed the Democratic Republic of Congo, is yet another example of a disintegrated African state. In the end of 1996, the Security Council determined that “the magnitude of the present humanitarian crisis in eastern Zaire constitutes a threat to peace and security in the region”. Among the circumstances making the situation a threat to regional peace and security were the large-scale movements of refugees and internally displaced persons.³²² The refugees were the over one million Hutu refugees from Rwanda who never left Zaire after the spring and summer of 1994 out of fear of the Tutsi FPR (Rwandan Patriotic front).³²³ The Security Council also underlined the importance of adopting measures in order to enable the return of humanitarian agencies to the region, to secure the delivery of humanitarian assistance to those in need. The urgent need for the orderly and voluntarily repatriation and resettlement of refugees and the return of IDP’s were mentioned as crucial elements for stability in the region.³²⁴

Not even a week after the first resolution, the Security Council, once again, determined that the humanitarian crisis in eastern Zaire constituted a threat to international peace and security. The Council mentioned the deteriorating situation in the Great Lakes Region and declared that the situation in eastern Zaire demanded an urgent response.³²⁵ Under Chapter VII of the Charter, the Council also authorized the Member States to establish a temporary multinational force “to facilitate the immediate return of humanitarian organizations and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire” and to facilitate the voluntary repatriation of refugees as well as the voluntary return of displaced persons.³²⁶ To achieve these humanitarian objectives, the Member States

³²⁰ Res. 1072, pp. 7

³²¹ Österdahl, p. 72

³²² UN SC Resolution 1078 of 9 November 1996, pp. 4 and 19. Österdahl, p. 73

³²³ Österdahl, p. 73

³²⁴ Res. 1078, pp. 6 and 14. Österdahl, p. 73

³²⁵ UN SC Resolution 1080 of 15 November 1996, pp. 2 and 11. Österdahl, p. 73

³²⁶ Res. 1080, op. 3

were authorized to use “all necessary means”.³²⁷ However, the force was never formed, mainly because the Hutu refugees in Zaire had started to return to Rwanda.³²⁸

The peace and stability in Zaire was short. The conflict continued in the renamed Zaire, the Democratic Republic of Congo (DRC). In May 1997, President Mobutu was overthrown, after thirty-two years power, by Laurent Kabila, supposedly supported Rwanda and Angola.³²⁹ President Kabila also sought help from Zimbabwe and forces were sent to support Kabila in August 1998. They were motivated by hostility against ex-president Mobutu, who had been supporting the UNITA forces in Mozambique for many years, which had been operating against the governments of Angola and Zimbabwe. Congo (Brazzaville), Central African Republic, Sudan, Chad and Gabon also offered Kabila their support. Thus, the civil conflict in DRC was fuelled by outside involvement from many states because the conflicts from their states spilled over into the DRC, and because the DRC had played a role in the conflicts of other states.³³⁰

In Resolution 1234, the Security Council called upon the states involved in the conflict to sign a cease-fire agreement.³³¹ On 15 July 1999, six states signed the Lusaka Cease-fire Agreement as a reflection of their involvement in the DRC conflict.³³² The agreement proposed the establishment of a multinational force to be constituted, facilitated and deployed by the UN and the OAU. The deployment of a peace-keeping force was considered too difficult, so instead the Security Council established an observer mission, the MONUC. In February 2000, the MONUC was enlarged and its mandate was to monitor the implementation of the Lusaka Agreement and to investigate violations of the cease-fire.³³³ MONUC was authorized under Chapter VII “to take the necessary action” to protect UN personnel and to protect civilians under imminent threat of physical violence.³³⁴

In resolution 1234, the Security Council also expressed its concern at the continuing hostilities and stressed its firm commitment in preserving the national sovereignty, territorial integrity and political independence of the DRC.³³⁵ The fighting continued, and the Security Council reiterated this demand in a number of resolutions.³³⁶ In February 2000, the Security

³²⁷ Res. 1080, op. 5

³²⁸ Österdahl, p. 74

³²⁹ Österdahl, p. 132

³³⁰ Gray, p 52-53

³³¹ UN SC Resolution 1234 of 9 April 1999, op. 4

³³² These states were DRC; Namibia, Rwanda, Uganda, Zimbabwe and Angola. Report of the Secretary-General on the United Nations Preliminary Deployment in the Democratic Republic of the Congo (S/1999/790)

³³³ Gray, p 182

³³⁴ UN SC Res. 1291, op. 8

³³⁵ Gray, p. 53

³³⁶ UN SC Resolution 1291 of 24 February 2000, pp. 3; UN SC Resolution 1355 of 15 June 2001, pp. 2; UN SC Resolution 1376 of 9 November 2001, pp. 2

Council determined that “the situation in the Democratic Republic of the Congo constitutes a threat to international peace and security in the region”.³³⁷ In the preambular part, the Security Council mentioned the different factors that made the situation constitute a threat to the peace.³³⁸ The Security Council expressed “its deep concern at all violations and abuses of human rights and international humanitarian law”.³³⁹

In June 2001, the Security Council again determined the situation in the DRC continued to pose a threat to international peace and security in the region.³⁴⁰ This time, the Security Council stressed the consequences the conflict had on the civilian population, especially the increasing number of refugees and displaced persons, but also the violations of human rights and international humanitarian law.³⁴¹ The Security Council also decided to prolong the mandate of MONUC until June 2002.³⁴² In November 2001, the Security Council affirmed the launching of phase III of MONUC, the establishment of a peace-keeping force.³⁴³

6.2.10 Albania

Civil unrest broke out in Albania in March 1997. The Security Council responded quickly and determined that “the present situation of crisis in Albania constitutes a threat to peace and security in the region”.³⁴⁴ The Council gave no further motivation on exactly what constituted a threat to the peace and security in the region. The reason why could, however, be detected in the fact that Albania borders former Yugoslavia, and that ethnic Albanians live in Serbia and Montenegro, in Kosovo and in the former Yugoslav Republic of Macedonia, and that the horrors of former Yugoslavia would not be repeated in Albania.³⁴⁵

The determination that the conflict in Albania constituted a threat to peace and security in the region was followed by an authorization by the Security Council for Member States to establish a multinational force. A force was formed, led by Italy, to conduct an “operation” in Albania “to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organizations in Albania, including those providing humanitarian assistance”.³⁴⁶

³³⁷ UN SC Res. Pp.20

³³⁸ UN SC Res. 1291

³³⁹ UN SC Res. 1291, pp. 18

³⁴⁰ UN SC Res. 1355, pp. 16

³⁴¹ UN SC Res. 1355, pp. 5 and 6

³⁴² UN SC Res. 1355 op. 29

³⁴³ UN SC Res. 1376, op. 12

³⁴⁴ UN SC Resolution 1101 of 28 March 1997, pp. 10

³⁴⁵ Österdahl, p 74

³⁴⁶ Res. 1101, op. 2 and 4

Again, no specific reason for what constituted a threat to the peace. Human rights were mentioned as one of many reasons.

6.3 Summary of the cases

What do all these cases have in common? They are examples from different places in time and in space. The common denominator is that domestic unrest, civil wars, with little or no international linkage, has been determined as a threat to international peace and security. Furthermore, the threat to the peace, the civil unrest has been characterized by massive human rights violations. In some of the cases, the violations have even amounted to genocide.

In Congo, in 1960, the civil war, an internal conflict was considered a threat to the peace. In South Africa and Rhodesia, the domestic policy of the racist regimes constituted a threat to the peace. In Iraq, the repression of the Kurds and the Shiites was considered a threat, which is also an internal affair in the traditional sense. In Yugoslavia, the horrid civil war was considered a threat to international peace and security. In Liberia, the situation as such, together with large flows of refugees was considered a threat to the whole of West Africa. In Burundi and Angola the humanitarian situation was so grave it constituted a threat to the peace. In Zaire (the DRC) and Rwanda, the gruesome civil war, together with the large flows of refugees was a threat to the peace in the region. In Somalia, the great loss of human life threatened the peace. In Haiti, the lack of democracy and the refugees was a threat to international peace and security. In Albania, the fact that it was located in the Balkans was enough to have a situation, which in the context was not as grave, considered a threat to the peace.

7 Conclusions

Can gross violations of human rights constitute a threat to the peace in the meaning of Article 39, Charter of the United Nations? One can answer the question with the ‘older glasses’ on, and in that case, the protection of human rights is within the domestic jurisdiction of states, and therefore, the UN or other states cannot interfere, according to Article 2(7) of the UN Charter. The protection of state sovereignty is more important than the protection of human rights. If one puts on the ‘new glasses’, some human rights are universal. They are a part of *jus cogens*. The protection of some fundamental rights is thus of higher priority than the protection of state sovereignty. The fact that some human rights are universal, together with the fact that the Security Council has absolute discretion on what constitutes a threat to international peace and security, makes the violation of these rights a threat to international peace and security.

7.1 Con: State Sovereignty takes precedence over Human Rights

In the classical conception of international law, the most important notion is state sovereignty. This ancient notion can be regarded as the foundation of the world; a world made up of sovereign, equal states. Within the state, the state sovereign has absolute power. It can be in form of a republic or a monarchy. Either way, the rulers have a wide discretion on what to do, or not do with the people. According to this conception, state sovereignty is absolute. Support for this is found in Article 2(7) of the UN Charter. In this article, the principle “shall not prejudice the application of enforcement measures under Chapter VII”. The UN Charter does not provide for absolute sovereignty.

Was it the intention of the founders of the United Nations to make states give up such a large portion of their sovereignty? The Security Council can decide on measures under Chapter VII, even military measures, and the discretion of the Security Council is absolute! The Security Council is a small elite, consisting of primarily Western states, with full discretion in their decision-making power, and there is no organ to review their policy. Surely, this cannot have been the intention of the founders! Therefore, it is crucial to keep the concept of state sovereignty as intact as possible. The treatment of the people of a state should therefore be left to the discretion of that state, and not of the UN Security Council. State sovereignty takes precedence over human rights.

7.2 Pro: Human Rights takes precedence over State Sovereignty

At the same time the sovereign has had the discretion to do as he pleases with his people, there has been a parallel development trying to limit this power, and ensuring the people certain rights that the sovereign cannot take away. There must be said to be general agreement in the world that there are certain rights that need protection. There are a number of resolutions, decisions, court cases and international conventions, as well as regional instruments for the protection of human rights. The protection of human rights is also laid down as one of the purposes of the United Nations.³⁴⁷

In this context, it must also be declared that some rights are universal. Not all rights are the same for all people of the world, but some are. Given the flaws of the Security Council, the somewhat unfair geographical division, the fact remains that there are ten non-permanent members as well. They have a bit of influence in the decisions. They do not have the right of veto, but they still participate in the decision-making. The decisions of the Security Council do have some international bearing. If there is agreement on the universality of certain human rights, the Security Council is authorized to intervene in states' domestic affairs.

In all of the cases referred to above, the Security Council interfered in affairs essentially within the domestic jurisdiction of states. Civil war is a domestic affair. Article 2(7) should apply and limit the frame of action for the Security Council. If the civil war violates human rights? Human rights must today be considered as an affair not essentially within the domestic jurisdiction of states. The violation of some human rights is the concern of the entire international community. The dignity the different conventions on the protection of human rights has achieved, together with the practice of the Security Council to react firmly wherever human rights violations occur, have risen some human rights to another level. The protection of human rights has become an obligation *erga omnes*.

7.3 Are violations of human rights a threat to the peace?

How does this relatively new concept of human rights correspond with the notion of a threat to international peace and security? Is the mere fact that human rights are being violated enough to internationalize a conflict? Ponder this question answered in the affirmative. If that is the case, there need not be any other international link than the mere violation of certain human rights. It is not up the Security Council to determine that human rights are universal and the protection of them is above state sovereignty.

³⁴⁷ Article 1(3) Charter of the United Nations

This has become a fairly established rule under customary international law. Once this is established, the Security Council has full discretion to decide what a threat to international peace and security may be. Thus, in all the cases above, the Security Council was in its full rights to declare these situations as a threat to international peace and security, or a threat to the peace and security in the region. (Threat to the peace and security in the *region* is a phrasing I am not entirely happy with. In my opinion, the Security Council here acts outside the scope of the UN Charter. Chapter VII is only applicable if there is a threat to *international* peace and security. However, the result is the same, since it is determined that the mere violation of some rights makes it a threat to international peace and security. To avoid confusions, the Security Council needs to be more careful in its phrasing.)

In neither of the cases referred to above, the Security Council clearly stated exactly what exactly constituted a threat to the peace. In all the resolutions, the Council states in the preambular part a number of factors of concern, and then declares that the situation constitutes a threat to the peace. It is never explicitly states that it is the human rights violations that are the threat.

We are now faced with another problem. In the view of most states, individuals cannot violate human rights. This is something 'exclusive' for governments. However, in a recent General Assembly resolution on human rights and terrorism³⁴⁸ it was stated that terrorists can violate human rights. The resolution is of course non-binding being a General Assembly resolution. The Western states tried to strike out this reference in the negotiations, but were insisted on by G77. The traditional western view is that individuals cannot violate human rights, and thus can a people fighting for self-determination not violates rights. The western states (the larger part of EU, the United States and CANZ) abstained in the voting, due to the political climate after the terrorist attacks on the US on September 11. It was politically impossible to vote against the traditional terrorism resolution this year.³⁴⁹

In only a few of the above mentioned cases does human rights violations in a strict sense occur; that is violations of a right by a state in effective control of the territory. This problem, however, might easily be solved. Humanitarian law is human rights, but in armed conflict. Violations of humanitarian law are automatically a violation of human rights. There is no need to be this technical if the Security Council sees no need for it.

In Somalia, for instance, warlords committed the violations. The intervention in Somalia was to prevent a humanitarian catastrophe, but there were no human rights violations in the strict sense. Also in Rwanda, the atrocities were not committed by a central government, and there were no

³⁴⁸ A/RES/56/161, introduced by Algeria

³⁴⁹ Third Committee Press Release of the 54th meeting, 30 November 2001 (GA/SHC/3678)

human rights violations. In both these cases, there were massive violations of humanitarian law. In the case of Iraq, former Yugoslavia and Haiti, there were clearly human rights violations by a government in control. In Yugoslavia, the 'other side' violated humanitarian law to some extent. In Rhodesia and South Africa, governments in effective control violated human rights on a large scale. In my opinion, these two last cases are the only purely threats to the peace in the name of human rights. There were no other factors mentioned. In all the other cases one or more factors have been mentioned as well. Refugees, the humanitarian situation, etc.

There are a few cases where the Security Council has actually determined a situation as a threat to the peace based on human rights violations that really are human rights violation, in a strict technical sense. In many of the cases, intervention is necessary, and the UN should act, but only in a few cases has the peace really been threatened due to human rights violations.

7.4 My evaluation

Gross violations of human rights can constitute a threat to international peace and security. Human rights have risen to a level above state sovereignty, and thus prevail. This is due to the practice of the Security Council. If the Council did not act it has the last ten years, this would not be the case. Legally, the result is questionable. Morally, the result is understandable. Politically, the result is defensible. The Security Council is a political organ with a lot of power. According to the UN system today, it has absolute power. Maybe it is time for some limitations to the Council, or the possibility of judicial review.

8 Bibliography

Treaties

African Charter on Human and People's Rights (1981)

American Convention on Human Rights (1969)

Charter of the United Nations (1944)

Covenant of the League of Nations

European Convention on the Protection of Human Rights (1950)

European Convention for the Prevention of Torture and Inhuman or Degrading treatment or Punishment (1987)

General Framework Agreement for Peace in Bosnia and Herzegovina (1995)

Governors Island Agreement (1993)

International Convention on the Elimination on All Forms of Racial Discrimination (1966)

International Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984)

International Covenant on Civil and Political Rights (1966)

International Covenant on Economic, Social and Cultural Rights (1966)

The New York Pact (1993)

Vienna Convention on the Law of Treaties (1969)

Cases

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ, 8 July, 1996

Barcelona Traction, Light and Power Company, Ltd., ICJ Reports, 1970

Corfu Channel Case, ICJ Reports, 1949

Island of Palmas Arbitration, 22 American Journal of International Law, 1928

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America), Merits, ICJ Reports 1986

Nationalities Decrees in Tunisia and Morocco, PICJ, Series B, No. 4, 1923

Official UN Documents

An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping, Report of the Secretary-General Boutros Boutros-Ghali

Hans Corell, "From Territorial Sovereignty to Human Security", Address delivered at the Canadian Council of International Law 1999 Annual Conference, 29 October 1999. Taken from the UN homepage, under the Office of Legal Affairs, OLA. www.un.org

"Secretary-General presents his annual report to General Assembly." UN Press Release SG/SM/7136, 20 September 1999

"The United Nations and the Situation in Haiti", UN Department for Public Information, 1994

Letter dated 29 April 1994 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/1194/518

Security Council Resolutions

UN SC Res. 82, 25 June 1950

Res. 83, 27 June 1950

Res. 84, 7 July 1950

Res. 16, 21 February 1961

Res. 216, 12 November 1965

Res. 217, 20 November 1965

Res. 221, 9 April 1966

Res. 253, 29 May 1968

Res. 417, 31 October 1977

Res. 418, 4 November 1977

Res. 479, September 1980

Res. 688, 5 April 1991

Res. 713, 25 September 1991

Res. 731, 21 January 1992

Res. 733, 23 January 1992

Res. 743, 21 February 1992

Res. 746, 17 March 1992

Res. 748, 31 March 1992

Res. 751, 24 April 1992
Res. 757, 30 May 1992
Res. 767, 27 July 1992
Res. 770, 13 August 1992
Res. 775, 28 August 1992
Res. 781, 9 October 1992
Res. 788, 19 November 1992
Res. 794, 3 December 1992
Res. 816, 31 March 1993
Res. 841, 16 June 1993
Res. 864, 15 September 1993
Res. 866, 22 September 1993
Res. 867, 23 September 1993
Res. 917, 6 May 1994
Res. 918, 17 May 1994
Res. 929, 22 June 1994
Res. 940, 31 July 1994
Res. 955, 8 November 1994
Res. 1035, 21 December 1995
Res. 1072, 30 August 1996
Res. 1078, 9 November 1996
Res. 1080, 15 November 1996
Res. 1088, 12 December 1996
Res. 1101, 28 March 1997
Res. 1127, 28 August 1997
Res. 1160, 31 March 1998
Res. 1199, 23 September 1998
Res. 1203, 24 October 1998
Res. 1234, 9 April 1999
Res. 1244, 10 June 1999
Res. 1291, 24 February, 2000
Res. 1355, 15 June 2001
Res. 1337, 21 June 2001

General Assembly resolutions

UN GA Resolution 217 A (III) of 10 December 1946, *Universal Declaration of Human Rights*

UN GA Resolution 2131 (1965) on the *Inadmissibility of Intervention in the Domestic Affairs of States and General Assembly*

UN GA Resolution 2625 (XXV) of 24 October 1970, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*

UN GA Resolution 3314 *Definition of Aggression* (1974)

UN GA Resolution 377 A (V), 3 November 1950, *Uniting for Peace*

A/RES/56/161 *Human rights and Terrorism* (2001)

Articles and Books

Anthony Clark Arend and Robert J Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm*, London and New York, 1993

Ove Bring, "Should NATO take the lead in formulating a doctrine on humanitarian intervention?" *NATO Review* 1999(47):3

Michael Byers, "Power and International Law", in: *Custom, Power and the Power of Rules*, Oxford University Press, 1999

Jeffrey Clark, "Debacle in Somalia; failure of the collective response", in Lori Damrosch (ed), *Enforcing restraint: collective intervention in internal conflict*. Council on Foreign Relations Press, New York, 1993

Benedetto Conforti, *The Law and Practice of the United Nations*, 2nd Revised Edition, Kluwer Law International, 2000

Fons Coomans, "Economic, Social and Cultural Rights", *SIM Special No 16*, Utrecht 1995

Lori Fisler Damrosch, "Commentary on Collective Military Intervention to enforce Human rights", in Damrosch and Scheffer (eds.), *Law and Force in the New International Order* (1991)

Alex DeWaal, "Dangerous precedents? Famine relief in Somalia 1991-93", in MacCrae and Zwi (eds.) *War and hunger: rethinking international responses to complex emergencies*, London, 1994

Helen Duffy, *Responding to September 11: the Framework of International Law*, Interights, October 2001 (www.interights.com)

Jack Donnelly, "The Interdependence and Indivisibility of Human Rights", in: Jack Donnelly (ed.), *Universal Human Rights in Theory and Practice*, Ithaca and London: Cornell University Press, 1989

Jorri Duursma, "Justifying NATO's Use of Force in Kosovo?", in *Leiden Journal of International Law* (12 LJIL (1999))

Mattias Falk, *The Legality of Humanitarian Intervention – A review in Light of Recent UN Practice*, Juristförlaget, Stockholm 1997

Marlies Galenkamp, “Collective Rights”: *SIM Special No 16*

Colin Granderson, “Military-Humanitarian Ambiguities in Haiti”, in Jonathan Moore (Editor), *Hard Choices – Moral Dilemmas in Humanitarian Intervention*, Rowman and Littlefield Publishers, Ltd, Oxford, 1998

Christine Gray, *International Law and the Use of Force*, Oxford University Press, 2001

Martin Griffiths, Iain Levine and Mark Weller, ”Sovereignty and suffering”, in Harris (ed.) *The politics of humanitarian intervention*, Save the Children Fund, London 1995

Hans Kelsen, *The Law of the United Nations*, 2nd impression, 1951

S Makinda, *Seeking Peace from Chaos: Humanitarian Intervention in Somalia*, International Peace Academy Occasional Paper, 1993

Peter Malanczuk, *Humanitarian Intervention and the legitimacy of the use of force*, 1993

Peter Malanczuk, *Akehurst’s Modern Introduction to International Law*, Seventh revised Edition, RefineCatch Ltd, Bugay, Suffolk, 1999

Ian Martin, “Hard Choices after Genocide; Human Rights and Political Failures in Rwanda”, in Moore (ed.)

Manfred Nowak, “The International Covenant on Civil and Political Rights”, in Raija Hanski and Markku Suksi (eds.), *An Introduction to the International Protection of Human Rights – A textbook*, Åbo, 1997

Kelly Kate Pease and David P. Forsythe, “Human Rights, Humanitarian Intervention and World Politics”, *Human Rights Quarterly*, Vol. 15 No. 3 August 1993

Adam Roberts, “Humanitarian war: military intervention and human rights”. *69 International Affairs* (1993),

Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict*, Polity Press, 1996

Bruno Simma, *The Charter of the United Nations: A Commentary*, Oxford University Press, 1994

Bruno Simma, "NATO, the UN and the Use of Force: Legal Aspects", in *European Journal of International Law*, 1999

Mohamed Sahnoun, "Mixed Intervention in Somalia and the Great Lakes", in Moore (ed.)

Stevenson, "Hope restored in Somalia?" *Foreign Policy*, 91, 1993

F. Tesson, *Humanitarian Intervention: An Inquiry into Law and Morality*, New York, 1996, 2nd Edition

Thomas G. Weiss, David P Forsythe and Roger A. Coate, *The United Nations and Changing World Politics*, Westview Press, Boulder, 1994

Alex de Waal and Rakiya Omaar, "Can Military Intervention Be 'Humanitarian'?", *Middle East Report*, 1994(24)

W.D. Verwey, "Humanitarian Intervention under International Law", *Netherlands International Law Journal*, 1985, Vol 32, issue 3

Inger Österdahl, *Threat to the Peace: The interpretation by the Security Council of Article 39 of the UN Charter*, Iustus Publishing, Uppsala 1998

"The Responsibility to Protect", *Report of the International Commission on Intervention and State Sovereignty*, December 2001

"Excerpts from Speeches by Leaders of Permanent Members of UN Council," *New York Times*, 1 Feb. 1992, sec. A

Human rights and Human Dignity : An Analytical Critique of Non-Western Conceptions of Human Rights, *The American Political Science Review* 76, 1982

"Editorial Comments: NATO's Kosovo Intervention"; *The American Journal of International Law*, Vol. 93:828, 1999