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## THE UNITED NATIONS AND STATE RESPONSIBILITIES IN MAINTAINING PEACE

### Abstract

To undertake military intervention or not, is a question that affects all countries in the world in situations of mass violations of human rights and the rules of international humanitarian law, especially the states that have resources and means for direct engagement in the resolution of such situations. For many countries, the answer is simply negative. Their justification is that these crimes do not occur on their territory and it is not worthy that their soldiers die trying to restore peace and security in other countries.

The most powerful countries should actively be involved in the prevention and ending of situations of gross human rights violations, which at the same time represent a shame for the whole civilized world. The most powerful countries should intervene because they have the necessary capacity to maintain the peace and security in the world.

**Key words:** UN, Security Council; humanitarian intervention; military actions.

## INTRODUCTION

Safeguarding international peace and security was the primary reason for the establishment of the United Nations in 1945. The aspiration “to save succeeding generations from the scourge of war” is enshrined in the opening lines of the UN Charter. Maintaining peace and security appears first in the Charter’s statement of purposes and principles. Peace and security figure prominently in Articles 73(c) and 76(a) for dependent territories and peoples.

The great frequency of armed conflict since 1945 testifies that the UN security system has not worked as intended.

Security is still the central concern of all states, but the UN has been less central to the security of its members than the Charter might indicate. States rely primarily on their own might and that of their allies to deter aggression against themselves and should peace fail, to vindicate their interests by force of arms.

The UN war prevention role has often been called as collective security although in practice the United Nations has been largely an adjunct to the operations of local and global balances of power.

## PRIMARY RESPONSIBILITY FOR PEACE KEEPING AND SECURITY AND THE NEED TO TAKE ON HUMANITARIAN INTERVENTIONS

The United Nations Security Council has the authority to declare a situation a threat to or breach of the peace. When the council so declares it can invoke Chapter VII of the Charter and reach a decision binding on all states. These decisions can entail military action. On several occasions the Security Council has linked human rights situations to a threat to or breach of the peace or it has otherwise reached a legally binding decision declaring that military steps are needed to correct a human rights problem.

Considering the fact that the Security Council is the most important body in the process of decision-making for undertaking humanitarian intervention, it is necessary to list its competences. The Security Council is a political body. It consists of representatives of countries with different interests. Its rules and decisions are contained in Article 27 (3) and reflect the power of states, allowing the most powerful states (permanent members) to veto any important decision that concerns keeping peace and security in the world (Evans and Sahnoun 2001: 49-53). This body adopts and executes its decisions in accordance with the goals and principles of the UN<sup>1</sup>. But whenever it acts, there is a presumption that it has the authority to do so.

The Security Council is competent to determine the existence of a threat to peace, disturbance of the peace or act of aggression, to make recommendations and to decide which measures are needed to be taken in order to keep and re-establishment of the international peace and security.

The Security Council in exercising its powers before using the measures of forced

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<sup>1</sup> Article 24 paragraph 2 of UN Charter.

character uses and adopts non military measures such as economic sanctions, abolition/termination of diplomatic relations, cutting of communication means, including subway, air, radio and phone traffic, etc (Frčkovski i Ortakovski 1995: 259). Only in the case when these measures are to be shown inadequate<sup>2</sup>, Security Council can authorize actions in which the use of military force will be used<sup>3</sup>.

This means that the Council has the exclusive competence to apply forced measures or to use military force, and accordingly it is authorized to undertake all types of military actions, such as land, air or maritime character (Frčkovski i Ortakovski 1995: 259).

The greatest disadvantage of the collective security system is that the Security Council does not have its own military forces. There are no specific (special) agreements between Security Council and Member States on this issue, which means that none of the member states is legally bound to make available its own resources if that is required by the Security Council. However, the special arrangements are not a condition that can prevent the Security Council to undertake action. Hence, although the Security Council according to Chapter VII is competent to authorize the undertaking of an action, including here also the use of force which should be exercised by member states, where the participation in the action should be on a voluntary basis (Henkin 1990:3).

The authority of the Security Council may be attributed to all member states, to a particular member state and to a particular regional organization or agency. Once the Security Council has been granted authorization, the undertaking of an action should be in close coordination and compliance with the rules of international humanitarian law, which refer to international military conflicts. The action is carried out on behalf of the UN and in principle lies under the responsibility and control of the Security Council.

States or regional organizations are not obliged to carry out tasks assigned by the Security Council. However, when they do it, all the conditions envisaged in the authorizations relating to the objectives of the action, the limitations in terms of time, and volume are enforced according to the authorizations and objectives of the intervention. Any use of force that exceeds the authorizations granted by the Council constitutes a violation of international law (unless an alternative legal basis is established).

Looking at another aspect, a very important question is raised - what happens when the Security Council undertakes an action that, according to the UN Charter itself, is debatable or unfounded? Does in this case some kind of court guarantees exist against the undertaken action or the whole situation will come down only to the conviction of such an action after a certain period of time from those who unreasonably overlooked it?! In any case, the limits of the competences of Security Council are protected by effective judicial guarantees. Although the Charter does not authorize the International Court of Justice to review decisions taken by the bodies of the UN, they may request the court to give a reasoned

2 The NICARAGUA vs USA case from 1986 and the International Court of Justice verdict that US intervention in Nicaragua can not be justified solely with the need of respecting human rights and that the use of force can not be the only method for control and compliance of those right, represents a clear signal that the armed humanitarian intervention is unfounded if it doesn't comply with the rules envisaged in the Charter of the UN, where the cases and means of use of force are foreseen and, consequently, undertaking it without arguing the widespread goals of its takeover can lead to violation of relations between the states, especially among the mightiest

3 Clan 42, Povelja Ujedinjenih Naroda, Beograd

opinion on the legality of a certain action of UN<sup>4</sup>.

According to UN Charter, the use of military means for humanitarian purposes can only be undertaken if the Security Council determines that there is a threat for the international peace, violation of peace or acts of aggression. At the moment, the intervention by the member states with the authorization of Security Council is the only available option. Since the term *threat for the international peace and order* is not clear, the UN Charter leaves to Security Council to assess freely when one situation represents a threat to international peace. Finally, there is no option that allows the Court of Justice to review the decisions made by the Council (Slomanson 2003:278).

The secondary responsibility for keeping the world peace and security remains in the competence of other UN bodies, mainly to General Assembly and regional and international organizations (Cassese 2002: 298).

## SECONDARY RESPONSIBILITIES OF OTHER UN BODIES FOR PEACE KEEPING

If the Security Council, as competent body to make a decision to undertake a humanitarian intervention, is not in a position to decide, the alternative bodies that are obliged to do so are the General Assembly and the regional organizations.

### General Assembly

In 1950, the General Assembly adopted the Joint Resolution on Peace (Evans and Sahnoun 2001: 52), in which its additional secondary responsibility was established for keeping international peace and its competence to give recommendations regarding the measures that are necessary for keeping or establishing peace. The central part of the resolution provides the competence of General Assembly - to decide in situations where Security Council, due to the absence of the unanimous approval of the permanent members for a particular issue, fails to carry out its primary competence (keeping international peace and security) regardless of where the threat appears. The General Assembly should immediately analyze the given situation and in an extraordinary special session has to bring recommendations to the member states for undertaking collective measures, including the use of military force in order to establish or implement the international peace and security (Evans and Sahnoun 2001:53).

During the 1950's, at the time of stagnation (*cul de sac*) of the work of Security Council, the General Assembly, based on the Joint Peace Resolution, took the task of keeping the peace by convening special sessions, calling for the withdrawal of forces, etc. Despite that, no recommendations were adopted on the basis of the resolution on taking collective military measures. Today, this resolution has lost many of its significance.

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4 Article 96 of UN Charter

The Joint Peace Resolution does not, however, represent legal basis for authorizing a humanitarian intervention. In accordance with the practice of Security Council, the humanitarian danger may be a threat to peace, but the resolution foresees only the competence of the General Assembly to give recommendations for military action in the event of threats to peace or in the case of aggression. The General Assembly may give recommendations only for non military measures. According to the resolution, the recommendation of General Assembly does not constitute a legal basis which allows the use of force.

Although it is generally agreed among the UN bodies that Security Council has exclusive competence in undertaking or giving authorization to take action, meanwhile the authorizations of General Assembly are not strong enough in order to determine whether the action will be undertaken, the decision of this a body, if supported by a larger number of member states, nevertheless ensures a high degree of legitimacy of the decision to undertake humanitarian intervention and influences the position of Security Council, by which it forces it to review another possibility for making a different decision from the previous one (if it is made at all), for the same issue (Evans and Sahnoun 2001:55).

Although, according to the common Resolution for Peace (United for Peace), the decision-making process is complex because it requires approval of 2/3 of member states, which still represents an alternative mechanism that functions in case the Security Council cannot make a decision.

## **Regional Organizations**

The second alternative is undertaking a collective intervention (in case the Security Council and the General Assembly haven't made a decision on the same issue) by regional organizations.

The UN Charter recognizes the role of regional organizations in Chapter VII. It also points out that not a single action can be taken without prior authorization of Security Council with the exception of measures provided in Article 107 or in regional agreements that take place against the state<sup>5</sup>.

## HUMANITARIAN INTERVENTION WITHOUT THE AUTHORITY OF SECURITY COUNCIL

### **Humanity vs. the state sovereignty**

The dilemma either to uphold the principle of sovereignty and to leave states to act arbitrarily or to give priority to protection of human rights through undertaking of humanitarian intervention, regardless if it is authorized or not, is a subject of many discussions among legal experts.

Here we talk about the clash of ideas on humanity and the sovereignty of the states.

<sup>5</sup> Član 53, Povelja Ujedinjenih Naroda, Beograd

The undertaking of humanitarian interventions, independently of whether it was previously authorized by the Council, clearly indicates that today more importance is given to the protection of human rights than the sovereignty of the states.

Evidence of a decrease of significance of the sovereignty of states is the evolution of this concept from absolute to extremely relative.

My personal opinion is that today the sovereignty of the states is relative due to the fact that the vast majority of countries in the world depend on the bigger countries, especially the small countries. If the big powers create an international legal order through legal rules, then they also impose the rules of behaviour of the countries on the international scene. If some countries have opposite policies to those of the big powers, they risk their own existence as they cannot fulfil the conditions imposed by the bigger countries. The birth and disappearance of states is a fact rather than a legal issue, and the facts emphasize that without directives and assistance from the big countries, the existence of states is brought into question.

Undertaking armed interventions in situations where certain dictatorship regimes conduct ethnic cleansing in their countries becomes a perceptible option for a large number of countries in the world. According to them, the traditional understanding of sovereignty of the state should be abandoned in situations of genocide and serious violations of human rights.

In this lines are the views of the Institute for International Studies at the Brown University in USA which emphasizes eight principles that are related to the humanitarian action in times of armed activities. Among them, the most specific is the principle of “subsidiary sovereignty”. In accordance with this principle, in situations where the need for humanity and sovereignty clash, then sovereignty should be given up before the need for assistance of the people who are victims of the armed acts.<sup>6</sup>

On the other hand, the prediction of state sovereignty is emphasized. The “Peace Agenda” report of 1992 states that even in situations of internal crises and violations of the rules of international law, the UN is obliged to respect the sovereignty of the state, thus each procedure with which state sovereignty is violated, is considered against the principle of the UN. Also, the resolution of the General Assembly 46/181 of 1991 states that the humanitarian intervention and assistance provided to the countries during armed conflicts should be carried out while at the same time respecting the principle of humanity, neutrality and impartiality, while sovereignty, territorial integrity and national unity of states should be respected in accordance with the rules provided for in the UN statute. In such a case the state sovereignty is not put into question nor it violates the provision of Article 2 paragraph 7 of the Charter with which the intervention of the UN in the internal state matters is prohibited (Evans and Sahnoun 2001:12).

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<sup>6</sup> Listed are the principles of humanitarian action in armed conflicts: aid to the individuals whose life is threatened, proportionality, impartiality, independence, responsibility, adequacy of sovereignty

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## JUSTIFICATION FOR HUMANITARIAN INTERVENTION WITHOUT AUTHORIZATION OF THE SECURITY COUNCIL

The point of reference for the legality of humanitarian intervention without prior authorization from the Security Council article 2 (4) of the UN Charter, derives from the general ban on the use of force in international relations.

Article 2 (4) should be interpreted as general prohibition on the use of force between the states in their relations, without any exception but in the cases envisaged in the UN Charter, and consequently the humanitarian intervention without the prior authorization of the Security Council is prohibited. (Wallace 1986: 217).

A large number of legal experts (from US) defend and develop the thesis for humanitarian intervention without prior authorization from the Security Council. One of the arguments that they use, is that the humanitarian intervention is not in the contradictory nature of Article 2 (4), because it does not contradict the territorial integrity or political independence of the state, and is not in contradiction with the principles of UN but on the contrary, is in accordance with one of the main objectives of the UN, the promotion of the protection of human rights (Article 1 (3)) (Wallace 1986: 217).

An additional argument is that humanitarian intervention is not incompatible with Article 2 (4), as long as it is based on the obligation of Member States to maintain the international peace and security in a situation where the Security Council does not have the ability to perform its tasks.

In a situation where the government brutally violates civil standards and general principles of human rights, it is considered that each state (which is not party to the dispute without the prohibition of Protocol II of 1977) is empowered to take significant steps toward humanitarian intervention, even though such action represents intervention in the internal state matters.

From this, it is clear that it is permitted to eliminate the bigger evil through the lesser evil, namely to commit a smaller international offense in order to eliminate a bigger international crime. With this thesis, humanitarian intervention is justified only in situations of extreme necessity.

The current practice of humanitarian interventions undertaken without the prior approval of the Security Council reaffirms a new customary right which permits interventions with a legitimate excuse. However, we cannot freely speak of an intervention without a mandate on the UN as a generally accepted practice. The development of the contemporary international law is characterized by the inclusion of new negotiating rules and not with the unwritten rules. It is very difficult to enact a new international custom, which at the same time is against the basic principles of the UN Charter.

Regardless of the fact that humanitarian intervention without authorization from the US Security Council is very problematic, it is a fact that the sometimes in practice there is a blockade of the Council because of the different interests of the existing members. With the aim to minimize or escape the potential misuse of such a defect at the United Nations, as well as due to the possible legalization of planned and executed humanitarian interventions before the international community, it is necessary to assess the existence of material and

legal prerequisites for undertaking such an action.

As long as the intervening countries have a previously provided assessment of the impartial authorized institution, agency or body at the United Nations, that in the country where the intervention is taking place there is an essential and systematic breach of human rights and the rules of international humanitarian law, violations that threaten the peace and security and as long as the use of adequate force is required to achieve exclusively humanitarian aims, in this case the problem may be reduced to procedural error and the omission of authorization by the Security Council for the presumption of humanitarian intervention can be treated as procedurally lacking in an uncontested character.

Thus, the legal fate of the humanitarian interventions, and their consequences, which are carried out without prior approval of the Security Council should depend on the intentions of the participants in the intervention and the justification for its undertaking. If the UN Security Council additionally finds that the intervention itself does not have a humanitarian character and represents a violation of international peace and security and an act of aggression, then the required measures, as envisaged in the UN Charter for such cases, are taken.

#### ARGUMENTS FOR AND AGAINST HUMANITARIAN INTERVENTION WITHOUT THE SECURITY COUNCIL APPROVAL

The events from recent history are imposing the view that the future of humanitarian intervention will be subject to case-by-case decisions, whereof the taking of such an action without the authority of the Security Council becomes a legitimate option. Supporters of the idea that the humanitarian intervention can be undertaken without prior authorization from the Security Council, use strong moral and legal-political arguments for the legitimacy of the humanitarian intervention<sup>7</sup>:

1. The first argument is that the humanitarian intervention is undertaken on the behalf of protecting humankind and its dignity; whence, there is a moral justification behind it;
2. The intervention protects the moral legitimacy of international law
3. Although the procedure is not followed, an unjust act is performed to correct a greater injustice (extreme necessity). In other words, the humanitarian intervention constitutes a "legal violation" of international law with the intention of preventing or ending more serious violations of international law.
4. The humanitarian intervention does not violate the sovereignty of the states. The basis of the sovereignty of a state consists of its territorial integrity and political independence. The humanitarian intervention has a strict, limited and purely humanitarian goal.
5. The humanitarian intervention can increase the level of respect for human rights in the states. The absence of humanitarian intervention in cases of genocide, massive

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<sup>7</sup> Danish Institute for International Affairs, *Humanitarian Intervention, Legal and Political Aspects*, Copenhagen, 1999, p. 99.



and systematic violations of human rights may encourage states to act with unlawful forceful methods. However, the humanitarian intervention actions, compels states to consider the level of respect of the human rights and seek peaceful solutions to conflict situations.

6. The need for the enforcement of international law when the Security Councils can not perform its duties. The existence of an automatic and absolute limitation of humanitarian intervention by delegating powers to the Security Council may lead to paralysation of the whole security system of the UN. Consequently, there may arise situations in which a quick reaction is needed without requiring prior authorization by the Security Council in order to re-establish peace or to prevent a major violation of human rights.
7. The existence of an automatic and absolute obstacle for the humanitarian intervention by the Security Council can be abused. If a state that commits the massive violations of human rights or genocide is an ally of one of the member states with a veto able power (which can prevent a decision on humanitarian intervention), with certainty can be said that a proper action against the perpetrator state cannot be brought. The supporters of this idea say that states that oppose the use of force without prior authorization from the Security Council aim to exclude the possibility of applying individual and collective rights.

On the other hand, opponents of the humanitarian intervention undertaken without prior authorization from the Security Council, also use compelling political and legal arguments against humanitarian intervention and especially humanitarian intervention without the authority of the Security Council.<sup>8</sup>

The arguments that are used are briefly discussed below:

1. Humanitarian intervention threatens the international legal order. It may provoke the general international prohibition of the use of force, and may put the collective security system at risk, and may violate the basic principles of the current international legal order.
2. The humanitarian intervention taken without prior authorization from the Council increases the risk of division between the permanent members of the Security Council. The veto right of the permanent members of the Security Council is a legally recognized fact that the use of force for purposes that are contrary to self-defence must be subject to the consensus of the great powers.
3. It leads to undermining of the authority of the Security Council. If states support the policy that the authorization of the Security Council is desirable but not compulsory for undertaking a humanitarian intervention, it can at any time undermine the role of the Security Council as the only centre that is competent to take a decision on use of force for humanitarian purposes.
4. Humanitarian intervention may threaten the political order in weaker states. The frequent use of humanitarian intervention can encourage the unsatisfied groups to use force against the government forces.

<sup>8</sup> Danish Institute for International Affairs, *Humanitarian Intervention, Legal and Political Aspects*, Copenhagen, 1999; p. 101.

5. In the majority of cases, humanitarian interventions are taken by stronger states against weaker ones. Accordingly, the humanitarian intervention is seen as an action that reflects the inequality of states in the international scene, which, on the other hand, is contrary to the basic principle of equality of states
6. The permission of an intervention without prior authorization of the Security Council increases the risk of abuse of the same for political purposes.

The critics of humanitarian intervention undertaken without an authorization of the Security Council believe that it is a mistake that violates the principle of non-interference. According to them, an intervention without prior approval by the Security Council is illegal. Circumventing the Security Council in order to avoid the veto is equated with the violation of the Constitution in a national legal order. The disregard of the principle of the use of force other than self-defence can cause uncertainty and tensions in relations between states and may undermine the International order (Janis1999: 187).

The deliberate violation of the UN's charter as a legal act with universal validity threatens the functionality of the entire international system.

If the view that any state can individually undertake a humanitarian intervention is accepted, the right to use force is returned at a time when the use of force for the settlement of disputes was permitted. A humanitarian intervention outside the framework of the UN Charter, i.e. without a prior authorization from the Security Council, can encourage strongest political and military states to take arbitrary actions.

Finally, in spite of the absence in the current international law of a legal basis for humanitarian intervention without the authorization of the Security Council, it is difficult to expect that states will refrain from such actions in the foreseeable future, if it is assessed that it is necessary and based on political and moral grounds.

## CONCLUSION

Undertaking military intervention or not, is a question that affects all countries in the world in situations of gross violations of human rights and the rules of international humanitarian law, especially the states that have resources and means for direct engagement in the resolution of such situations. For many countries, the answer is simply negative. The justification is that these crimes do not occur on their territory and it is not worthy that their soldiers die trying to restore peace and security in other countries. The most powerful countries should actively be involved in the prevention and ending of situations of gross human rights violations, which at the same time represent a shame for the whole civilized world. The most powerful countries should intervene because they have the necessary capacity to maintain the peace and security in the world.

The best solution is to undertake humanitarian interventions at multilateral level. Although multilateral interventions do not guarantee that the cessation of transgressions, they are still expressing the attitude of a growing number of countries in the world, which

does not leave space for new divisions, particularly amongst great powers.

Considering the fact that the United Nations is a large organization with a large number of administrators, the decision to undertake military action can be very slow. Hence, it would be of paramount importance to define an exact period of time in which the Security Council should bring a decision on undertaking or not a military humanitarian intervention.

I recommend that the international community should allow individual humanitarian interventions but only when it can be proved in front of the General Assembly of the UN that there are not any hidden intentions and claims by the state which is undertaking the intervention.

It would be preferable in the decision-making process, in cases when the disagreements between the permanent members of the Security Council are visible, to foresee the possibility of involvement of international institute that enjoys a great international reputation, as auxiliary of the process of adopting decisions for undertaking military (humanitarian) interventions.

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