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# Authorized Humanitarian Intervention and Its Problems in International Law

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**Abstract.** After the end of the cold war the situation changed and the United NationsSecurity Council authorized many interventions on humanitarian on humanitarian basis. The SC considered internal conflict and violation of human rights as a threat to international peace and security invoking collective use of force rules of the charter hitherto, there were no proper rules for the consideration of the issue and many cases of humanitarian catastrophe were left untouched. Likewise, self interest of the intervening states was bold in many interventions. The problem of double standard and selectivity may also not be ignored by consideration of the NATO intervention in Kosovo as illegal but legitimate the situation worsened, and it led to the creation of the ICISS and the formation of its repost the R2P. The new idea of responsibility to protect, inter alia emphasized on the responsibility of the states to protect its citizens. Likewise, it required that if the state failed to carry on its responsibility. The responsibility would transfer to international community. It changed the debate from right to intervene to that of responsibility to protect (R2P) almost a new name for HI but with a decorated from.

**Keywords:**UNSecurity Council,Use of force, Humanitarian intervention, UN charter, International law, Human Rights and Responsibility to Protect

## 1. Introduction

Due to incoherency in the decisions and practice of the Council in its authorization for human protection purposes and the selective interventions thereof, skepticism about legitimacy and authenticity of the Council's actions was increased. Having regard to the chaotic situation of some States and grave violations of human rights, some thinkers Considered the strict application of the Charter rules in pleno regarding the use of force as unhealthy and put forward the ideas of right to intervene, sovereignty as responsibility, and so forth. Different interpretations of Article 2 (4) of the Charter along with many ideas such as customary international law of HI, etc., were proposed. Controversies were at its heat while North Atlantic Treaty Organization (NATO) intervened in Kosovo in 1999 without authorization of the United Nations' SC (UNSC), which was considered illegal but legitimate. It boosted the controversies regarding the issue to its apogee.

The main problem at that stage was the paralysis of the UNSC in face of human rights violations that could prove harbinger of annihilation. The result was the formation of International Commission on Intervention and State Sovereignty (ICISS) in 2000 and publication of its report named responsibility to protect (R2P) in 2001. The report changed the debate from right

to intervene to that of responsibility to protect and sovereignty as control to that of sovereignty as responsibility, which would shift to international community by the failure of the State concerned. Thus, in order to diverge the people and make them yield to the norm of R2P against far more controversial HI, it kept the same skeleton with a bit change in fleshes. Despite the responsibility to prevent and rebuild, the main focus was on responsibility to react, and therefore, was stamped with different apocalyptic words and expressions. Although the norm of R2P is still a hot issue among the writers, yet it has not achieved the desired results of who should intervene when and why if the SC fails to tackle the issue of human rights violations.

This paper explains the tenets of authorized HI in omnibus. It considers the legalityof authorized HI, though it points out the problems of the SC in conducting these kinds of interventions. The choosy nature of the SC in these kinds of interventions; the devilish acquisition of agreement of the Permanent Five (P5) in these matters; the lack of principles for decisions of the SC in these issues; and the problem of taking ad hoc decisions which may be different in each case are among the problems that have caused much hullabaloo. Considering the *intra legem* status of authorized HI, the chapter considers the discriminatory distribution of power among the States as one that creates pestilences in the properfunctionality of the UN in these issues. It recommends the aggravated form ofcontemporary recommendations *vis-à-vis* reformation of the SC.

It goes on further to put some light on the newly emerged idea of the R2P and its relation with HI. It considers its materialization as a premeditated attempt to legalize HI with a different name. The chapter reaches the end that R2P is still not enriched with an adequate amount of legality, and therefore, cannot legalize HI.

## 2. Method

I have studied and examined relevant legislation, case law and legal doctrines. I started with the UN Charter particularly Art.2(4) for examining legality of humanitarian intervention. Furthermore, I have studied human rights provisions of the Charter and as well of other relevant human rights conventions such as the Genocide Convention 1948 and the International Convents on Human Rights 1966. I have also examined customary law and decisions of the international court of justice. Additional sources have been utilized to explore different perspectives and views on humanitarian intervention in the contemporary legal discourse.

## 3. Authorized Humanitarian Intervention and Its Problems in international law

To recall the primary discussion on the use of force for humanitarian purposes, it was argued that anyone wishing to use force after the charter era has to relay on either of the established exceptions set out by the charter itself, which ere self defense and collection use of force under the auspices of the UNSC. The possibility of use of force in HI by the way of self-defense has already been refuted. This chapter will discuss the possibility of the use of force in HI on the basis of collective security as enshrined in the UN charter. One may consider the authorized HI as being without any problem, albeit, the selective nature of the SC in these kinds of

interventions; the devilish acquisition of the agreement of the permanent five in these matters; the problematic nature of the consideration by the UNSC of the humanitarian catastrophes as threat to peace and security; the lack of principles for the decisions of the SC in these issues; and the problem of taking ad bac decisions which may be different in each case are among the problem that have cause much controversy therefore, a close examination of the issue is necessary.

### 3.1. UN Security Council and authorization of the Use of force for Humanitarian intervention: the law, practice, grounds, and problems

**3.1.1.** Maintenance of peace and security as a ground for the Security Council authorization for humanitarian intervention.

The UNSC has the primary responsibility of the maintenance of peace and security under the UN charter. Article 24(1) of the UN charter provides as follow.

I order to ensure prompt and effective action by the United Nations. Its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

The UNSC is further obliged under charter VII of the charter for the maintenance of international peace and security. Article 39 of the UN charter reads as follow:

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.

For carrying on with the responsibility of the maintenance of peace and security the UNSC is further empowered to take soft and hard actions in order to maintain or restore international peace and security. Article 41 empowers the SC to take soft actions such as economic related sanctions, etc, and article 42 empowers it to take hard actions such as use of military force, etc. the later will come into force if the soft actions prove inadequate for the maintenance and restoration of peace and security. Articles 41 and 42 exactly read as follow:

Article 41: 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.

Article 42: should the Security Council 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 operation by air, sea, or land forces of members of the United Nations.

By careful reading of these articles we see that there is no explicit mention of HI as a ground for either soft or hard sanctions. The only possibility of justifying HI on this ground is to consider internal conflict, disorder, and human rights violations as

threats to international peace and security which could invoke the application of Article 42 of the charter under auspices of the UNSC. The position after 1990 seems to have gone this way, as in 1991 the SC considered by its resolution 688 the Iraqi government cruel dealing with its population as a threat to international peace and security. The SC in the paragraph 1 of the resolution condemned the action of the government by stating that in condemns the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in the region thus the UNSC position after the cold war era seems to have considered the internal instability as a ground for action under chapter VII of the Un charter.

**3.1.2.Criticisms and problems in the consideration of internal instability and human rights violations by the Security Council as basis for intervention.**

The consideration of the internal instability by the SC as a case for intervention however has caused some controversy. Some writers consider the resolutions passed by the SC in this regard under chapter VII of the UN charter in 1990s as taken in random and more by accident than design. Or to put it order way, the decisions of the council were inconsistent and not based on fixed rules and regulations. They consider the resolutions ambiguous and thus abstruse, and their interpretations as conflicting[1i] moreover they are skeptic of these interventions claiming to be 'depended more upon a coincidence of national interest than on procedural legality.[ii] They also question the authority of the SC for the determination of internal state matters as threats to international peace and security under chapter VII of the charter. Danish institute of international affairs (DHA) sates the following in the regard:

*It was hardly the intention of the framers of the charter that internal conflict and human rights violations should be regarded as a threat to international peace. There is no evidence that they might have envisaged a competence for the Security Council under chapter VII to take action to cope with situations of humanitarian emergency within a state resulting from civil war or systematic repression*[2]

To substantiate their argument, they claim that in 1946 the UNSC refused the conditions of Spain under the Franco rule as being threat to international peace and security.[3] The SC considered the charters rule as constituting a very sharp instrument. And further explained that instrument is not blunted or used in any way which would strain the intentions of the charter or which would not be applicable in all similar cases. The IICK`s view was also n the same footing it stated that "at present the charter does not explicitly give the UN Security Council the power to take measures in cases of violations of human rights"[4] some legal positivist consider the authorization by the

[1] Chesterman, *just war or just peace*5.

[2] DHA, *Humanitarian Intervention: legal and political aspects* (Copenhagen: Danish institute of international affairs 1999), 62 quoted in Hehir, *Humanitarian Intervention*, 90.

[3] Chesterman, *just war or just peace*130.

[4] IICK, *Kosovo Report, 196.*

SC very wide,[5] they take, inter alia, the plea, of Article 2(7) of the Un charter that seizes the authority of the UNSC in the matters that are essentially within the domestic ambit of a state. Article 2(7) 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 or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under chapter VII.*

Although the proviso to the Article 2(7) excludes from the ambit of the article the initiatives taken under chapter VII, yet, they carry on with their argument by stating that humanitarian may sporadically cause a threat to international peace and security. Hence, they claim that the reliance on authorization of the UNSC for HI is based on flimsy grounds.[6] Again, this argument may be rejected on the basis that under article 39 of the charter the SC have been given the power to determine the threats to peace and security, and thus, if the SC considers a situation as threat to international peace and security and authorizes preventive of restorative measures, then it acts intra virs and not ultra vires. Furthermore, the promotion in the status of R2P by the agreement reached in 2005 by the World summit is indicative of the states inclination towards the acceptance of the role of the UNSC in the issue of authorization on the basis of HI even if the situation is not considered threat to international peace and security.[7]

Although the legality of the determination of internal instability as a threat to international peace and security may not be contested, albeit, there are no hard and fast rules for the determination of a particular act or situation that could cause the SC to consider it as a threat to international peace and security therefore, those who are skeptic of the issue claim that because of the lack of binding criteria for the determination of threats , the SC determines the threats on an ad adboc basis in conformity with the interests of the veto powers which makes the intervention self-interested and not on the basis of altruism and humanitarianism.[8]

They claim that the determination of the threat to international peace and security by the UNSC lacks coherence. They refer to the case of Haiti 194 in which the SC passed the resolution 940 that considered the situation in Haiti as causing a threat to international peace and security to the effect that demanded the restoration of the democratically elected president.[iii] But, may worst situations than Haiti were left untouched, which makes the council`s decisions go through a severe lack of coherence and decisive principles for the determination of the threats that could invoke chapter VII. The argument runs, the SC officially considered this resolution of an exceptional response,' which makes the things more blur. Moreover, they claim that the responses of the SC in 1992 against Somalia and in 1994 against Rwanda were also stamped with similar terms of being of exceptional and unique natures. This incoherent decisions and

[5] Aidan Hehir, Humanitarian Intervention after Kosovo: Iraq, Darfur and the Record of Global Civil Society (Basingstoke: Palgrave Macmillan, 2008), 13-32.

[6] Pattion, Humanitarian Intervention and the Responsibility to Protect, 46.

[7] Ibid 147.

[8] See HehirHumanitarian Intervention, 91.

resolutions of the SC have caused many states to accuse it of hypocrisy.

Those who are the flag bearers of the morality instead of strict legality in the case of HI further discredit the Sc on many grounds. They claim inter alia, that the SC does not duly represent the states, and most importantly, the individuals which are the subject of humanitarian catastrophe.[9] It ignores the demand of cachet morality in the determination of the issues. Likewise, they severely criticize the Veto powers, as Robert Keohane and Allen Buchanan affirm that there is found no slightest justification for the superior position of the Veto Power against other states, they consider this distribution as arbitrary and one which compromises the legal status quo of the states.[10]

Brain Lepard considers the veto system as against the norms of democracy and asserts that it is a closed door process in which often non permanent members may not have a say. The argument runs, its relations with other Un organs is also not satisfactory and its decisions lacks consistency and coherence which demonstrate the P5`s interests.[11]

James Pattison further adds to these criticisms with the help of the following words:

*The permanent members mostly act as they please, whether it be engaging in unathurziaed and unjust wars, violating their citizens and non-citizens rights refusing to sign up to climate change protocols, or conducting nuclear tests. Moreover, it could be claimed that giving these five states permanent status reinforce their power . . . similarly, it is doubtful whether the council is effective in its governance. For years it was stymied by the cold war. Yet even in the less divisive international system of the past two decades, the council has failed in a number of areas. Most notably, it did not adequately respond within any acceptable time frame to a number of humanitarian crisis, such as those in Rwanda, Chechnya, Bosnia, Sudan, and Indonesia.. it has also failed to enforce its resolutions or to fulfill its supposed purpose of achieving international peace and security.*[12]

Apart from the above criticisms the council faces another problem which is lack of its own forces and authorization of others. The question of authorization itself has caused great controversy as misinterpretations of the council`s resolutions are commonplace after the 1990s. Some states and writers are now of the opinion that even implied authorization could suffice. Aggravated form is the ex post facto authorization which is also claimed by some states and writers. The issue thus needs proper explanation.

### 3.1.3. The law as to authorization by the UN security council of the use of force.

The authorization of the SC is based on the established exception in the UN charter

[9] Pattion, *Humanitarian Intervention and the Responsibility to Protect*, 55.

[10] Allen Buchanan and Rebert O. Keohane, "The Preventive Use of Force: A Cosmopolitan Institutional Proposal," Ethics & international Affairs 18, no. 1 (2004), 9, http://onlinelibrary.wiley.com/doi/10.1111/j.1747.7093.2004.tb00447.x/pdf

[11] Brian D. Lepard, Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions (Pennsylvania: Pennsylvania State University Press, 2002, 324-325.

[12] Pattion, *Humanitarian Intervention and the Responsibility to Protect*, 56.

from the general prohibition of the use of force under chapter VII measures. It is generally referred to as collective security though the term finds no place in the charter as such.[13] Article 43 to 47 is one way or other connected with this concept. Article 43 of the UN charter establishes this right with the help of the following paragraphs:

1. All members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council on its call and in accordance with a special agreement or agreements. Armed forces. Assistance, and facilities, including right of passage. Necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces. Their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and members or between the Security Council and groups of members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

The philosophy behind this seems to be the consideration of conflict among the members as affecting all the community therefore; the community has been given the right of collective security in order to maintain international peace and security. Werner Levi, while discussing the ideas of collective security, states as follow:

*The idea of collective security is that by pooling their strength and collectively organizing international forces and security all nations will be relieved of their anxiety over national security. All will co-operate in controlling a disturber of the peace. They will act as one for all and all for one. Their combined power will serve as guarantee of the security of each. In the face of such overwhelming strength, the theory goes; every nation will fulfill its international obligations as it could not resist collective enforcement any way. The use of peaceful methods will be stimulated. Greater trust among nations will be created, and aggression will cease as an obviously enterprise.*[14]

Thus, a united nations force was foreseen by the UN charter for the enforcement of the resolutions of the SC, however, this part of the charter remained without application due to the political incoherence among super powers.[15] The authorization replaced the original scheme, and the Korean case of 1950 is considered a precursor in this practice. During the Cold war the SC rarely invoked chapter VII, albeit, no use of forces was authorized Rhodesia (1966) and south Africa (1977) is often quoted in this regard, as the UNC considered the apartheid and the issue of racial discrimination in these places as one of concern and passed Resolutions

[13] Willard N. Hogan, *International Conflict and Collective Security: The Principle of Concern International Organization (University of Kentucky Press, 1955), 179, cited in Tandon and Kapoor, International Law, 551.*

[14] Werner Levi, *Fundamentals of World Organization (Minneapolis University of Minnesota Press, 1950), 72,* http://www.jstor.org/stable/10.5749/jctttv4h2

[15] Brownlie, *Principles of Public International Law, 741.*

referring to chapter VII, yet, no use of military force was undertaken.[16]

**3.1.3.1 Some cases of authorization of coercive measures by the Security Council**

The hesitance of the SC relaxed in the issue of authorization after the collapse of the USSR. After then, the SC has time and again authorized use of force. The Following may serve examples:

**Resolution 678 of (1990) on Iraq**

In this resolution the UNSC authorized the member states to take all necessary means for the maintenance of international peace and security which was breached by the annexation of Kuwait by Iraq. Acting under chapter VII of the charter the UNSC passed the above resolution the second paragraph of which 'authorizes member states co opening with the government of Kuwait . . . . . to use all necessary means to uphold and implement Resolution 660 (1990) and subsequent relevant Resolutions and to restore international peace and security in the area.

This was, almost the first authorization of the use of force by the SC in 1990s however, this authorization was not that of humanitarian nature as the basis for use of force was liberation of Kuwait and not removal of humanitarian catastrophe.

**Resolution 794 of (1992) on Somalia**

Because of the worst humanitarian situations of Somalia, the SC had passed a resolution for making the situation better, yet, was not acted upon therefore, by the request of the secretary general and some member states, the UNSC, considering the deteriorating humanitarian situation of Somalia: the grave violation of international humanitarian law: and the obstacles and difficulties of humanitarian assistance organization, passed the above resolution in which it authorized the member states to inter alia pave the way for the humanitarian relief. Paragraph 10 of the resolution reads: acting under chapter VII of the charter of the UN, authorizes the secretary general and member states cooperating . . . . . to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operation in Somalia.

**Resolution 940 of (1994) on Haiti**

The democratic elected president of Haiti was overthrown from his seat by a military coup in Haiti. This resolution authorized the use of force for, inter alia, the restoration of the democratically elected president. Paragraph 4 of the Resolution is as follow:

Acting under chapter VII of the charter of the United Nations. Authorizes member states to form a multinational force under unified command and control and. In this framework to use all necessary means to facilitate the departure from Haiti of the military leadership. Consistent with the Governors Island agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the government of Haiti.

**Resolution 929 of (1994) on Rwanda**

The situation of Rwanda and late action of the UNSC was condemned by many thinkers Paul Kennedy considers it as the single worst decision the United Nations ever made. The Genocide in Rwanda was the result of enmity of two ethnic Groups, the Huru and Tutsi in which the target of genocide was Tutsis, yet, some Hutus were

[16] Roberts, "The United Nations and Humanitarian Intervention," 71.

also killed. It was the remaining of colonialism that caused such genocide in Rwanda, as the ethnicity was propagated by the Belgians when they were in control of the area.

One of the reasons that heated criticisms on the United Nations is its lack of action in Rwanda despite the existence of the United nations assistance mission in Rwanda (UNAMIR) in the area which had received intelligence of the mass killings. And still, the action was not taken. Romeo Dallier, the force commander of the UNAMIR on 11 January 1994 informed the United Nations department of Peace Keeping Operation that he had received intelligence indicating that the Hutus are preparing for the exterminations of 1000 Tutsis every 20 minutes. He informed the authorities that he had information about the location of weapons and required for its seizure, yet, his request was rejected by the authorities.[17]

Thus, mass killings began in which the Rwandan Ministry for education claimed, after a survey, 1,364,000 deaths. Though, general estimations confine themselves between 500,000 to 1,000,000. Between 250,000 to 500,000 rapes have also been claimed, unfortunately, after the mass killing had occurred, the UNSC passed the Resolution at hand which authorized member states cooperating with the secretary general to use all necessary means for the achievement of humanitarian objectives. Consequently on 22 June the multinational force led by France intervened which created safe areas for civilians from which, instead May perpetrators of the genocide took advantage.[18]

[17] Hehir, *Humanitarian Intervention, 180-182*
[18] Ibid, 183

The case of Rwanda is one of the weak points of the SC, as it failed to stop the genocide and became subject to many criticisms affecting, generally its status in international community. These kinds of inactions have further cause doubts in the minds of people about the effectiveness of the SC and have disappointed the international community having in mind the cases like this, many writers in the field approve the failure of the SC to deal with these cases and demand for another viable alternative in shape of a new law allowing HI to hat of reforming the Council in order to become in conformity with demands of the day.

**Resolutions 836 of (1993), 1031 of (1995), and 1088 of (1996) on Bosnia and Herzegovina**

The republic of Bosnia and Herzegovina, which had come into being as a result of split apart of the former Yugoslavia in 1991, had recently been recognized by the European powers.[19] It was the place of many ethnicities with predominant Muslim Bosniaks, which consisted, almost, 44% of the population. Second in number were Orthodox Serbs with almost 32% and third in number were Catholic Croats with almost 17% the remaining of the population was consisting of other small ethnicities. Following the declaration of independence, the political elites of the Serbs rejected referendum, and thus, announced their own republic. Later on the Croats also reached an agreement with the Serbs which severed the conditions for the Muslim Bosniaks, the Serbs and Croats were largely supported by Serbia and

[19] Carol McQueen, *Humanitarian Intervention and Safety Zones (New York: Palgrave Macmillan, 2005), 53-4.*

Croatia respectively, and Yugoslavs had also heated the fire against the Muslims Bosniaks.[20]

The result was the death of almost 100,000 people and an estimated rape of 200,000 to 500,000 about 2,200,000 people were displaced. The siege of Sarajevo, which is considered the longest siege of a capital city in modern warfare history, is one of its bad memories. It started from 5 April 1992 to 29 February 1996. The siege is considered as a year longer than the siege of Leningrad and almost three times longer than that of Stalingrad. Likewise, the massacre of Srebrenica, which was considered by the secretary general as th worst crime in the soil of Europe since the Second World War, is one of its unforgettable memories. By the intervention of NATO in 1995, authorized b the SC, it is claimed that a full stop has been put on hostilities.

During the conflict and the mass killings in the Bosnia, the SC passed many Resolutions for the determination of the Issue as one of threat to international peace and security, and required actions to be taken. In each of the above resolutions, acting under chapter VII of the charter, the SC authorzed the use of all necessary means and measures for the required achievements. This is another worst case that further undermined the status of SC and diluted its position.

**Resolution 1101 of (1997) on Albania**

For the maintenance of peace and security of the region, the UNSC acting under chapter VII of the charter determined the situation in Albania, caused by the revolt of the Albanians because of the collapse of an economic activity called the pyramid Schemes, as one of threat to international peace and security, and authorized the member states that participated in the multinational protection force to achieve objectives of the resolutions.

**Resolution 1264 of (1999) on East Timor**

Against the independence of the East Timor from Indonesia, the Timorese militias started resistance and targeting pro-independence Timorese.[21] They were arguably backed by the Indonesian army. The SC, through the above resolution, determined the issue as threat to international peace and security, and acting under Chapter VII of the charter authorized the use of all necessary means for the achievement of objectives of the Resolution.

**Resolution 1973 of (2011) on Libya**

The unrest and violation of human rights of civilians by the Libyan government were considered by the SC as threat to international peace and security. The SC acting under Chapter VII of the Charter, established no-fly zones and authorized the use of all necessary means short of occupation force to achieve objectives of the Resolution.

**Resolutions 1739 of (2007), 1933 of (2010) and 1975 of (2011) on Cote D Ivoire**

Because of the chaotic situation of the place the above mentioned Resolutions were passed authorizing all necessary means for the protection of civilians who

[20] See McQueen, *Humanitarian Intervention and Safety Zones, Chapter 3. See also Janzekovie, The Use of Force in Humanitarian Intervention, Chapter 5.*

[21] Seybolt, Humanitarian Military Intervention, 86-93.

were under imminent threat, and to stop one of the parties to the conflict form using heavy weapons against civilians.

**Resolution 2085 of (2012) on Mali**

This is the most recent case of authorization by the UNSC. Although the Council had authorized taking all necessary means under the auspices of African led International support Mission in Mali, yet, the leading position looks that of France. Anyhow, someone was authorized. The words of paragraph 9 of the Resolution authorizing achievement of objectives of the Resolution as follow:

Decides to authorize the deployment of an African led international support Mission in Mali (AFISMA) for an initial period of one year, which shall take all necessary measures, in compliance with applicable international humanitarian law and human rights law and full respect of the sovereignty, territorial integrity and unity of Mali. . . .

Without the SC resolution for the support of Kuwait against Iraq. In all subsequent SC resolution there are elements of human rights, and the internal disorder and poor human rights situations have been considered as threat to international peace and security. Thus, the legality of authorization could safely be argued. Even it is considered that it was not legal on the basis of the UN charter, one could argue that the security council`s practice and the acquiescence of the States have enriched it with enough legality. However one must also have in mind allegations of those who argue the lack of the security Council`s effectiveness on the basis of its selective nature, lack of principles for determinations of the issues, and foremost, the problem of hang on caused by the P5.

Having considered the authorization of the SC as recognized legal practice, one comes to hesitate in acceptance of equivocal terms used in the Resolution of the SC which are claimed as forming the basis for some interventions. In other words, having considered the legality of authorized interventions, what if authorization is implied or is rendered j ex past factor.

**3.1.3.2 Implied authorization and its status**

There are claims to the effect that the authorization could be taken impliedly form the open terms of the SC resolutions. The same has been done In many occasions. For the intervention in northern Iraq to halt the suffering of the Kurdish and Shia population the interveners (United States, United Kingdom, and France) took the plea of the C Resolution 688 of (1991).[22] Likewise, the Resolution 678 was used in combination with the previous resolution for the justification of the actions taken in Iraq, such as establishment of safe havens and creation of no-fly zones. Despite no reference to chapter VII and no use of the term ‘ all necessary means’ or ‘ all necessary measures’ the interveners put forward the justification of their action on the basis of implicit authorization. The resolution had just called on Iraq not to create impediments in the way of humanitarian organizations; likewise it had called the member states to participate in the relief efforts.

[22] Vera Gowlland-Debbas, “The Limits of Unilateral Enforcement of Community Objective in the Framework of UN Peace Maintenance,” European Journal of International Law 11, no. 2 (2002): 372, http//: ssrn.com/abstract=238257

The resolutions 1154 of 1998 have also been used as an implicit authorization on the basis of its content that warned Iraq of the severest consequences in the case of disobedience from the content of the resolution. Thus the resolution was used as an authorization after consideration by the interveners of the Iraqi behavior as violation of the Resolution terms. Similarly, the air strikes by the US in Iraq were also justified on equivocal terms of the SC resolution 687 of (1999). Furthermore, the NATO`s intervention in the federal Republic of Yugoslavia was also initially justified on the basis of the terms of the SC Resolution 1199 of (1998), which stated that if the demanded measures required by the resolution were not taken, the SC would take further action. Albeit, Russia had explicitly manifested that had there been something to the effect of authorization of the use of force, Russia wouldn`t have supported the resolution.[23] These implied authorizations have no legal basis, neither in the charter nor in customer international law. Sir Michael wood states:

*Sometimes there are references to implied or implicit council authorizations to use force. These are misleading. Either the use of force has been authorized or it has not, and that is a matter of interpretation of the Resolution or resolutions in question. So-called implied or implicit authorizations are not a separate category or mode of authorization by the council for the use of force.*[24]

Hence it is important to interpret the council`s resolution in the way in which it is actually aimed by the council, and not to try to find loopholes. In order for a resolution to quality for the authorization proper, there have to complete some requirements in the text and context of the resolution. The recent practice of the council indicates that when it passes a resolution to the effect that military force could be used by it. It usually makes reference to chapter VII of the charter, determines the issued as one of threat to international peace and security, authorizes someone for the achievement of the objectives of the resolution and additionally uses the term ‘ all necessary means’ or ‘ all necessary measure’. Albeit, there is no consensus on the above requirements, and there are many who argue that the resolutions should be interpreted with having in mind the situation at hand and the whole context of the issue and resolution.

Likewise, while interpreting the SC resolution, the general rules regarding interpretation should be kept in mind. More importantly, it is the SC or any other body empowered by the council that could authoritatively make an authentic interpretation of its resolutions. As permanent court of international Justice (PCIJ)in its advisory opinion said. It is an established principle that the right of giving an authoritative interpretation of a legal rule . . . belongs solely to the person or body who has power to modify or suppress it. Although no consensus is seen on the isse, most writers are of the opinion that reference to chapter VII and the use of ‘all necessary means … is necessary for an Authorizing resolution.

[23] Gowlland-Debbas, “The Limits of Unilateral Enforcement of Community Objective in the Framework of UN Peace Maintenance,” 372-374.
[24] See the Security Council Authorizing Resolutions against Iraq, Somalia, Haiti, Rwanda, Bosnia, the former Yugoslavia, Libya, etc.

Resultantly, it could be said that, having in mind the recent authorizing resolutions of the SC, the reference to Chapter VII and the use of the term' all necessary means' is considered a clear case of authorization which could overcome the suspicions about the status of the resolution. Other terms may not do so . as far as implied authorizations is concerned, such as those extracted from the terms severe consequences and taking further measures, it has no legal background and is pretext and pretense for international use of force.

**3.1.3.3 Ex post facto authorization of the use of force by the UN Security Council**

Some interventions have been considered as having received the SC authorization retrospectively and hence legal. This was argued about the NATO`s intervention in Kosovo (1999). The ECOWAS intervention in Liberia (1999), about the intervention in Iraq by United States and its allies (2003), etc. as far as the NATO`s intervention in Kosovo is concerned, the SC passed the Resolution 1244 on 10th June (1999) considering the need for the presence of international security personnel under the auspices of the United Nations with a definite mandate. Taking plea of the above resolution, some writers in the field claim ex post facto authorization of the SC as rendering the required legality on the NATO`s intervention.[25] However, this claim seems to be baseless, as there is nothing in the resolution that could be considered ex post facto authorization. Similarly the council`s discussion does not reveal any inference to that effect.[26] It rather does its duty of controlling the situation and keeping it safe from further chaos. A quotation of Vera GowllandDebbas would sum up this point. He states:

*It can therefore be argued that the council, by means of resolution 1244, simply makes its own the principles contained in an agreement concluded outside as framework, without any attempt at legitimization of the threat and use of force behind it. It should be mentioned that some of these principles echo what the council was advocating in its previous resolutions, such as an end to the violence and repression in Kosovo and the safe and free return of all refugees and displaced persons, and that the council had been following closely the negotiations on a political settlement of the situation in Kosovo by the members of the contact group[27].*

The proclamation of India, while rejecting the legality of NATO`s intervention in Kosovo, will make the point crystal clear. India stated:

*Those who continue to attack the Federal Republic of Yugoslavia profess to do so on behalf of the international community and on pressing humanitarian grounds. They say that they are acting in the name of humanity. Very few members of the international community have spoken in this debate, but even among those who have. NATO would have noted that China, Russia and India have all opposed the violence that it has unleashed. The*

[25] Lowe and Tzanakopoulos, "Humanitarian Intervention," 7. Gowlland-Debbas, "The Limits of Unilateral Enforcement of Community Objective in the Framework of UN Peace Maintenance," 374.

[26] Wood, "Third lecture: The Security Council and the Use of Force," 9.

[27] Gowlland-Debbas, "The Limits of Unilateral Enforcement of Community Objective in the Framework of UN Peace Maintenance," 375-6.

*international community can hardly be said to have endorsed their actions when already representatives of half of humanity have said that they do not agree with what they have done.*[28]

The claim of ex post facto authorization by the SC of the use of force in 2003 against Iraq by the US and its allies, on the basis of cooperation of the UN with the occupying powers, could also be rejected with the above explanations. Moreover, the follow up of the council of a situation could not be rendered as ex post facto authorization. Last but not the Least, it was made clear by several members of the council that their vote in favor of the Resolution 1483 should not be considered as acquiescing to the legality of the use of force in Iraq.

In the same way, the commendation by the SC of ECOWAS action in Liberia and Sierra Leone between 1990 and 1999 have been claimed to be eases of express ex post facto authorization. This claim also seems to be fruitless, s the commendation may not be that of unilateral action in there but that of its diplomatic efforts later on for the betterment of the situation. Likewise, there is nothing in the SC Resolution 788 that could be claimed as having retroactively authorized the initial use of force by ECOWAS, as the resolution contains no word or phrase stating expressly thath it has authorized the intervention by ECOWAS retroactively. Moreover, absence of condemnation by the SC does not render the intervention legal ex post facto, as knowing the reason for no condemnation is also difficult and may be due to severe political issues.[29]

The ex post factor authorization is strongly connected with regional organizations. Keeping in mind article 53 of the UN charter, which empowers the SC for activating regional or sub regional originations when and where it seems appropriate, has caused some people to consider the ex post factor authorization as being within the limits of article 53 of the Un charter. Yet, they ignore the phrase, no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the SC. Likewise, the position of a regional organization in the use of force is not more than that of an individual state. Sir Michael Wood states:

*Possible ex post facto Council authorization of the use of force has arisen in particular in communication with regional organizations. The starting point is that stats acting collectively within a regional, sub-regional or other organization have no greater right to use force than they have as individual states. It was not, for example. Claimed that NATO, when it intervened over Kosovo in 1999, had any right to use force over and above that of its member states . . . . . and what applies to one regional or sub-regional organization presumably applies to all of them. Moreover, it is difficult to see why the same should not then apply to ad box groups of states coalition of the willing' or to individual States'.*[30]

Thus, it seems appropriate to claim that the claims of ex post factor authorization by the SC are based on flimsy grounds. If

[28] Ibid, 377.

[29] Lowe and Tzanakopoulos, " Humanitarian Intervention," 8. Gowlland-Debbas, "The Limits of Unilateral Enforcement of Community Objective in the Framework of UN Peace Maintenance," 375.

[30] Wood, "Third lecture: The Security Council and the Use of Force," 10.

allowed, there may accrue many problems, for example the issue of self-defense of the target state is very critical what would be the target stat would have the right of self-defense which is one of the accepted exception to the general prohibition on the use of force. Likewise, other states could legally help the target state by his call for help in such a situation. Military treaties to the effect of collective self-defense may also come into force which would arguable deteriorate the situation instead of alleviating it.

Furthermore if the ex post facto authorization considered legal, it would cause problems t the very important to the very important skeleton of the UN, as it would relax the general prohibition on the use of force by allowing the states to act when they deem fit and to require authorization later on, which would make the charter a clone for ply. Sir Michael wood states:

*It is difficult to see how it would work in practice, or indeed how it could provide satisfactory basis for states wanting to take action. Can the lawfulness of a use of force really depend upon what happens subsequently? To act in the exception that the council will subsequently authorize the action pre-empts the council, taking it for granted as it were or suggests that those acting do not really mind whether their actions are eventually seen as lawful or not.*[31]

Article 13 of the resolution of the 10th commission of the institute of international law, passed on 9 September 2011, reads as follow:

*The lack of a Security Council reaction to or condemnation of the use of force not previously authorized may not be interpreted as an implicit or ex post facto authorization. This is without prejudice to the power of the Security Council to review the situation and to authorize and to authorize ongoing military operations*[32].

The article conclusively rejects the implicit authorization. As far as the last part of the article is concerned, which seems to reserve a room for the SC for the ex post facto authorization, it could be claimed that such an authorization has never taken place, and the reason may be that the SC might have perceived the problems which could initiate from such an authorization and might have intentionally decided not to do so. Thus, the literature on the illegality of implicit authorization is quite clear, and although there may be a narrow line for the ex post facto authorization, yet, it has never taken place which further undermines its status as being legal.

## 4. Paralysis of the Security Council and the Way-Out

### 4.1 Paralysis of the Security Council and the practice of uniting for peace resolution

One may contend that the use of force for humanitarian purposes is legal if authorized by the UNSC, what if the council is paralyzed due to the lack of majority or a veto? Will the atrocities and violations of human rights be allowed to take place and no action taken? This is the question which has made the writers differ from each other greatly, and have caused many to criticize the charter system on the basis of its inefficacy and ineffectiveness. Similarly, many proponents of moral

[31] Ibid.

[32] Resolution of the Institute of International Law, "Authorization of the Use of Force by the United Nations," *Teuth Commission sub-group D.*

norms superiority criticize this particular paralysis, and consider it as paving the way for the takeover of the moral norms in the issue. Yet, the supporters of the charter law and the general prohibition on the use of force fit themselves in relation to this paralysis in another cave dug by the GA of the UN the so called, Uniting for peace resolution. If such a situation occurs, the GA may take the lead, and accordingly, decide what to be done in a particular issue.

Although the charter lacks any term as uniting for peace, nevertheless. Its workability is claimed on the basis of charter, and there are several instances in which the UNGA have gathered under this principle and have thus decided the required action to be taken. For the very first time it was invoked in relation to the Korean War 1950 when, by return of the USSR to the SC after a short absence, the SC hang on the issue. The united States Secretary of state claimed that if the SC is suffocated in an issue, it does not mean that the issue be lef unchecked, rather, the responsibility to deal with the issue shifts to the GA to substantiate his argument, he pointed out to article 10,11 and 14 of the UN charter which makes the GA eligible to tackle the issues of international peace, similarly, the united states ambassador to the UN further required the flexible interpretation of the Charter rules in order to be harmonious with the different unforeseen circumstances resultantly, the Uniting for peace resolution was endorsed with two abstentions and the opposition of the soviet bloc. The Resolution resolves that:

*If the Security Council, because of lack of unanimity of the permanent member, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, or act of aggression, the general assembly shall consider the matter immediately with a view to making appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the general assembly may meet in emergency special session within twenty-four hours of the request thereof. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members or by a majority of the members of the United Nations*[33].

It was the suez crisis of 1956 when Israel invaded the Sinai and the UK and France bombed the Suez Canal cities in which the resolution fully examined. The United Nations truce supervisory organization (UNTSO), already being in the field, reported to the secretary general whereby he, after consideration, rejected the Israel`s claim of self defense. The resolution brought by the US calling for withdrawal of Israel and no interference of UK and France, which was vetoed by UK and France making the situation hang in the Security Council. Shortly after this the Yugoslavia, which had showed extreme opposition to the idea of uniting for Peace in the Korean crisis, brought up a similar resolution in which she called for the emergency meeting of the assembly which came into effect and tackled the issue.

[33] GA/RES/377(V) (1950) on Uniting for Peace.

The assemble voiced for cease fire which did not come into force. Canada, having regard to this sorry state of affairs, proposed to the Assembly the deployment of an emergency force UNEF(United Nations Emergency Force) for the achievement of the ceasefire and security of the area, which was adopted with a great majority. The Resolution empowered the deployment of the military force by member states other than P5 which caused Israel to unconditional ceasefire and the UK and France to accept it, the Secretary General emphasized the status of the use of military personnel as in pursuance of the practice of Uniting for peace. And stated that 'there was no obvious difference between establishing the force in order to secure the cessation of hostilities, with a withdrawal of forces, and establishing such a force with a view to enforcing a withdrawal of forces. Although the USSR had been considering the GA as acting ultra vines, yet, it did not cast a negative vote.

The procedure was again applied in the Congo in 1960. the resolution was voted by the majority of states, which instructed the assistance of the Congo`s central government in the restoration and maintenance of law and order throughout the territory of the Republic of Congo, and to safeguard its unity, territorial integrity, and political independence in the interests of international peace and security. Russia and France denied their obligation to participate in the expenses of the military operations on the basis of the Uniting for Peace Resolution, i.e. the expenses of the UNEF and United Nations operation in the Congo (ONUC). Their claim was based on the notion that the Assembly`s action was not in conformity with the charter, and thus, ultra vires, the ICJ was asked for its advisory opinion by the Assembly to consider the expenses caused by these deployments as coming or not under Article 17(2) of the charter, which obligates the members for the expenses of the organization. The court decided on the legality of both UNEF and ONUC, and considered them intra vires of the assembly`s powers. In addition, the court took the plea of the wordings of Article 24 of the charter. Article 24 states: in order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security.

The court, while interpreting the article, considered that the article appoints primary responsibility to the SC and not the whole responsibility, therefore, the terms of the Article itself implies a secondary responsibility to the GA in cases in which the SC is suffocated.

It must be noted, however, that in order for the GA to come into force under the Uniting for peace resolution, either of the following two must have confirmed: the agreement of the nine members of the Council for leaving the issue to the assembly, or, the agreement of the majority of the UN members to take the issue to the GA,

Although the practice of Uniting for peace has been criticized on the basis of time consumption, lack of guaranty as to satisfactory disposal of the issues, and so on and so forth, nevertheless, it has been proposed by many scholars in the field and the ICISS report as a proper course when the SC fails to tackle the issue. This later view seems to be in touch with the current circumstances of the world. As acting

under the auspices of the UN Is better than acting unilaterally, which makes the suspicions marifold? The claim of those who undermine the practice of Uniting for peace on the account of time consumption, which they argue deteriorate the situation, could be relaxed by the state`s proper punctually requirements in these situations. The ICISS report considering the importance of time puts forward:

Since speed will often be of the essence, it is provided that an emergency special session must not only be convened within 24 hours of the request being made, but must also, under rule of procedure 65 of the general assembly, convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General committee or to any other committee.

Likewise, the claim of impossibility of obtaining an overwhelming majority in the UN membership required for the Uniting for Peace could also be rejected on the assertion that if there is no such aa majority, it means that the situation is not that grave as to shock the conscious of the people, the criteria considered necessary by many scholars for humanitarian intervention. And thus, no HI is needed. Moreover, giving wide support to the idea of Uniting for Peace may force the SC for relaxation in the issue. The ICISS report in this regard reads: the commission believes, nonetheless, that the mere possibility that this action might be taken will be an important additional form of leverage on the Security Council to encourage it to act decisively and appropriately.

It could be claimed that the practice of Uniting for peace is a justified practice on the basis of the above literature and on the basis that the GA represents the actual majority of the world states and populations, which makes its decision, to some extent, in conformity with justice instead of mere peace and Security maintenance. Hence, the practice of Uniting for peace is a good way- out in the time of paralysis of the Security Council for the protection of human rights. Those interveners who intervene without the authority of the Security Council claim that the egregious violations of human rights of the people shock their minds and therefore they cannot remain indifferent. They could be asked, why you do not bring the issue to the GA? The answer is not that difficult. As acting under the auspices of the UN will dilute their position which will in turn affect their national and political interests. Thus, the practice of Uniting for peace is a good answer for them and completely satisfies their concerns about the protection of human rights.

The practice of Uniting for Peace resolution may overcome the problem of the paralysis of the SC in some cases, but what if the C intervenes in a state in which the violation of human rights do not reach the standard of intervention? Likewise, what if the council becomes choosy in these kinds of intervention? Moreover, what if one of the Veto powers is the culprit? And so on and so forth. Thus, despite being a good alternative in the cases of the paralysis of the SC, the practice of Uniting for peace fails to overcome many other problems of the above nature. Therefore, the practice provides a satisfactory solution for some part of the problem and not to the whole. Accordingly, the need accrues for the just,

permanent, and whole solution of the problem, which could be satisfied for some substantial extent with applying the following literature.

### 4.2. Reforms to the Security Council

As far as legality of authorized HI is concerned, it may be claimed, keeping in mind the present law governing the global system, that it is uite legal. Yet, being legal does not mean that the law is flexible enough to adjust itself with the different circumstances it confronts at a particular time and place. And thus. Viable and just. Had legality alone sufficed, there would have been no controversy regarding the issue. One may decide to form this distorted picture as to equate legality with justice. If legality is equated with justice, then there is no need for further discussion in the issue after having decided the legal status of the authorized HI likewise, if legality is equated with justice, then one has to consider the Veto power legal and hence just, which could not be accepted by a common mentality. Albeit, if legality is not equated with justice, then there is room for new proposals in order to make the laws in conformity with justice, which could, substantially, bring an end to the sorrows of the oppressed caused by injustices. Is it required for a law to be just in order to be a law or not is a separate issue out of the ambit of the treatise, yet, for this part, it may be claimed that in order for laws to be viable they have to be jst, otherwise, after having some pace they fail and become desuelude. The deficiency of the leaue of Nations is a stark example in this regard, as it could not stop the WWII.

The failure of the existing international system is very obvious and needs not be explained. To reiterate some problems of the system, reference could be made to the failure of the SC to take active action in many situations such as Rwanda, Chechnya, Kosovo, etc. likewise, the astonishing look of the Council itself and the world community to unauthorized interventions of the US and its allies in places such as Kosovo, Iraq Afghanistan, etc. are not exceptions. Furthermore, the lack of criteria and principles for the decisions of the Security Council and the lack of coherency in them undermines the existing system to a halt.

Thus, the dissatisfactory tackling of the issues of threat and security by the UNSC have caused much controversy, and have gained much criticisms, which in turn have paved the way for the legal reforms in the existing system of the UN. The reforms range from simple reforms of introducing new rules for the consideration of the issues in the cases of peace and security to the putting an end to the powers of the P5 and empowering the GA in all issues.[34] Although the claims for reforms have more seniority, yet, it heated after the IICK`s report of 2000, which considered the intervention in Kosovo as illegal but legitimate though, it considered the existence of this gap between the two "unhealthy".[35]

The aim here is not to approve the idea of illegal but legitimate, as accepting such an idea and practice will make the law subject to the decisions of the states on an ad box basis without any settled rules and procedure, and will pave the way for the unilateral use of force, which would break the backbone of the charter system by relaxing the prohibition on the use of

[34] Hehir, Humanitarian Intervention, 99-102.
[35] IICK, Kosovo Report, 189.

force. Approval of such an idea will lead to incoherency and lawlessness. As despite the existence of the legal rules of conduct, the rules would be ignored, and the decisions would be made by a particular state or states which may or may not be accepted by others. Moreover, the powerful states would make it a loophole for their abusive uses of force. Therefore, accepting the current legal system, one has to decide on the legality of authorized HI, but, because of the above mentioned problems, one has to put forward the proposal for the reformation of the current governing bodies, and the change in law within the legal framework acceptable to all.

In relation to reforms some writers are of the opinion that a separate right of HI should be set out which would become an exception from the general prohibition on the use of force, yet, it seems no good idea, and many others have rejected it on the basis of internationally paving the way for abusive interventions. For example, Osearschachter considers such a rule 'highly undesirable'. He further claims that it provides a pretext for abusive intervention. If such a right as give, the states will, to the great extent, ignore the UN pamphlet, and will engage in many illegal and abusive interventions on the basis of such a right.

There are also proposal that propose the enlargement of the SC membership in order to make its representativeness acceptable to international community and pave the way for the necessary non-abusive action when needed. Yet, it does not seem convincing, as enlarging the council will give few states some rights, though inferior to that of Veto, but cannot represent the international community in a true sense. Thus, still the decisions would be made by Veto Powers; some proposals go further by asserting the dissolution of the Veto power and enlarging the SC for its true representativeness. This is also not without its problems, as now, the Council members would have the power to do whatever they want without having regard to the problems of other states. Let`s suppose that the council consist of 21 states of the total of more than 1% states. The decisions of 21 against the remaining may be enforce which is again unjust.

Last but not the least, there are proposals that require the council to yield to a particular criteria when deciding the use of force. It was attempted in 1969 by the international law commission, but was abandoned in 1976 due to extreme controversies and without reaching any conclusion. The criteria were again proposed by the ICISS report and the UN high-level panel on Threats, challenges, and changes. The later set out five criteria for considering the legitimacy of an intervention on humanitarian grounds, namely: seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences, which are in a great touch with the just War tradition. Nonetheless, no consensus is found on it, as the panel itself considered that these are not ' agreed conclusions with push-button predictability' rather, to maximize the possibility of achieving Security Council consensus around when it is appropriate or not to use coercive action.

The criteria were further undermined by the refusal of the United States to admit them, because she feared the use of its veto in the existence of such criteria. Thus, despite the consideration by the council of the set out criteria, the nonbinding nature

of the criteria makes it loose its credibility against interest of the states. Likewise, even if there is a binding criteria for the consideration, the question is, who will decide whether a particular criterion has met or not? Of course, the question goes to the council, which may again interpret the criteria and situation based on states, self-interest. In the same way, what if y considering the criteria met, one of the P5 vetoes the resolutions? Thus, in order to make the criteria workable, at least for a short term, the criteria must be so obvious and accepted as to create no doubt when under consideration. Furthermore, the acceptance of criteria should be made obligatory and should be ousted from the ambit of the veto, though, the later seems difficult, rather, impossible to be acted upon.

Strictly applying the set out criteria may alleviate the situation for a short term, albeit, it cannot put an end to the problem. For there to be a peaceful environment In the world, the international community have to be equally represented; the veto power have to be dissolved; the viable binding criteria for the use of force have to be set, and the states forming the GA have to be given the sole right and responsibility of the affairs of the international community without any discrimination, with the decisions taking effect with simple or two third majority of the states subject to the prior agreement.

These proposals may not take the lead, because the powerful states may never Vield to such a position, as the impulse behind the use of force in general and HI in particular is self-interest and political achievements rather than legal incentives. Hehir assertion is very interesting to note here. He notes that ‘it is difficult to think of anycase where a state wanted to intervene but did not because it would have been illegal to do so. State power and interest, not international law, have therefore been the key variables influencing the decision not to intervene. Therefore, the use of force is inevitable on different interval until and unless the world system is based on a just ground.

## 5. The Idea of responsibility to protect and its association with Humanitarian intervention

The idea of the responsibility to protect has caused great controversy among the withers and scholars of international law and international relations. It is considered, by many writers in the field, a loophole or a way for legalizing the far more controversial HI, though, the contention is rejected by the proponents of the R2P. the cases of Rwanda, Kosovo, Bosnia, and Somalia; the inaction, late action and ineffective actions of the SC in some situations; the emergence of new actors; the changed circumstances of the world; the new security issues; the decision of the IICk on the Kosovo intervention as illegal but legitimate, and particularly the challenge of Annan, among other things, caused the emergence and development of the R2P.

The challenge of Annan was an immediate reason for the birth of R2P. by a Canadian initiative an international Commission on Intervention and state sovereignty was formed in September 2000 for dealing with the issues in the context, and published its report after one year in December 2001 named the Responsibility to protect. The report inter alia made the following contribution to the question under consideration. First of all, it changed

the discussion from HI to that of responsibility to protect. It interpreted the Westphalian concept of sovereignty as control to that of sovereignty as responsibility. Last but not the least, the ICISS did not confine the R2Pto the military intention alone, but provided for pre and post measures as well.

**5.1 Evaluating the legal force R2P**

International customs, treaties, and general principles of law are the primary sources of international law mentioned in Article 38 of the ICJ. Therefore, in order to make the states legally bound by R2P, it must fit in either of these. As far as treaties are concerned, there is no mention of any binding treaty or convention among the states to the effect that could legally bind the states to the tenets of R2P. The requirements of a practice to become customary law is very high; therefore, for a practice to become customary law take a lot of time. State practice and opinio juris, which are considered the backbone of customary law. Seem to lack in the R2P. Moreover, many writers consider the R2P as another name for unilateral HI which does not find any legality in the charter, and therefore, reject it at once on the basis of being against the charter which holds the superior position in international law. Likewise, many writers in the field are of the opinion that the norm of nonintervention is one of jascongens and cannot be changed except by jus cogen, and consider the current Position of R2P as not having reached this position.[36]

Despite the efforts made for the implementations and general acceptance of R2P, its acceptance as an international norm has been contested. At most, it may be in the first stages of becoming a binding law through a custom or treaty. Badescu states that, 'as a soft law R2P currently marks a stage in the formulation of custom or treaty. Yet, these are others who doubt the emergence of the norm of R2P on the basis of controversy surrounding it. Having gone through the above literature, it seems appropriate to conclude that currently R2P is not a binding law and its legality depends upon the behavior of states in the future. If state practice builds on a continuum of actions to prevent and stop mass atrocities, and opinio juris is created over time, R2P could eventually emerge as a norm of international law customary law.[37]

**5.2. Has R2P legalized unilateral humanitarian intervention?**

It is interesting to note that despite the hot discussion about R2P and the emergence of R2P as a way out in front of paralysis of the SC in cases of inevitable humanitarian interventions. R2P has not provided any legal basis, whatsoever, for the unilateral HI, and the approval of the SC is still considered necessary for interventions on humanitarian basis, although the initial ICISS report about R2P implicitly provided for the possibility of unilateral intervention in some grave cases of human rights violations in the event of the failure of the SC; nevertheless, these implications were not adopted in the subsequent resolution and reposts. For example the 2005 world summit explicitly confined the

[36] Cristina Gabriela Badescu, Humanitarian Intervention and the Responsibility to Protect: Security and Human Rights (London and New York: Routledge, 2011), 134.

[37] Ibid.

process to the approval of the UNSC.[38] Moreover, as discussed earlier, had R2P provided for the unilateral use of force in some cases of grave human rights violations, even then, it would have not provided sufficient legal basis for the unilateral HI due to the lack of proper normatively required for being a binding source of International law. Therefore, it could be concluded that R2P has not legalized unilateral HI.

## 6. Conclusions

Although just war might have helped in the development of the laws of war, nevertheless, its impact on the behavior of states is a contested issue. Therefore, it cannot go parallel with the debate of HI in the contemporary world. Thus, it seems plausible not to base the use of force in general and HI in particular on pure moral grounds. As there exists no perfect theory that could perfectly deal with the questions of who should act when and where.

Even the legal regime regarding the use of force in general and HI in particular is, somewhat, clearer than that of moral and political perspectives in the same, nevertheless, the moral and political aspects of the issue try t compete with the former and make it yield to the later totally or at least to some extent. Making legal arguments for a particular use of force seems to have no fruit. Thus, in pre UN charter era the resort to force was generally justified on the bases of just War, right of sovereign and state, etc, though, no formal justifications were required due to unclear rules and the absence of binding law.

It was the UN charter that put a comprehensive ban on the use of force, though, with the exceptions of self defense and collective use of force. Article 2(4) of the charter is very explicit on the prohibition of the threat or use of force that affects the territorial integrity or political independence of other states or is determinately to the purposes of the UN. The use of force in HI may be authorized or unauthorized. If it was carried out under the auspices of the SC as a collective use of force. Then it is authorized. But if it was carried out under the auspices of the SC as a collective use of force, then it is authorized. But if it was carried out outside the authority of the UN. Then is is not authorized. The legality of unauthorized HI could safely be refuted, though some withers do favor conduction these kinds of interventions.

Thus, those who are in favor of interventions in general and HI in particular try to put forward many distorted interpretations of the legal regime of the charter regarding the use of force along with many other disguised justifications such as, clash in the charter law between the prohibition of the use of force and he intervention for the protection of human rights, new norm of customary international law, change in the law, obsoleteness of the legal regime of the charter regarding the use of force , etc. nevertheless, none of their claims are satisfactory and have been rejected by the majority of international law scholars and related intellectual.

It seems very implausible to sustain the claims of those who consider little uses of force as not affecting territorial integrity or political independence of the target state, and thus, allowing HI on the same basis

[38] See for example SC Resolution no. A/ RES/ 60 1, para 138, 139.

respectively , as it is impossible to use force without having affected either or both of them, likewise, the *travanx* of the charter is crystal clear on the negation of the above claims. Moreover, the norm of non-intervention was further strengthened by the decisions of the ICJ in Corfu channel (1949) and Nicaragua (1986).

Taking into account the frequent violation of Article 2(4) of the charter, some writhers consider it obsolete and without a force. This claim may be rejected on the basis of the decisions of the ICJ in Corfu channel and Nicaragua. Likewise, many resolutions of thegeneral assembly have reiterated the importance and the binding nature of the Article.

Moreover, the idea was further strengthened by the idea of R2P, as it reiterated the importance and the binding nature of the Article.

The claim of those who want to legalize HI on the basis of human rights provisions of the charter could be rejected on the ground that the charter did no contemplate coercive implementation of these rights, similarly, the charter law does not provide sufficient information about the rights that could invoke HI, and therefore, suffers from deficiency in this regard. The UDHR, though provide some explanation about human rights, albeit the declaratory status of it is indicative of its inability in this regard. Moreover, the HDHR does not indicate anything to the effect that could legalize use of military force on the basis of human rights violations. The two covenants also fail to provide any legal authority to legalize HI on the basis of human rights violations. There is nothing in the *travaux* of the two covenants that could be claimed to have allowed coercive enforcement mechanisms for the protection of human rights. Likewise, using force for the violation of every minor right such as right to form trade union, etc, could not be accepted by a person with *compus mentis*.

As far as the legality of the authorized HI is concerned, it may be claimed, keeping in mind the present law governing the global system, that it is quite legal. Yet, being legal does not mean that the law is flexible enough to adjust itself with the different circumstances it confirms at a particular time and place, and thus, viable and just. The failure of the existing international system is very obvious and needs not be explained. To reiterate some problems of the system reference could be made to the failure of the SC to take active action in many situations such as Rwanda, Chechnya, Kosovo, etc. likewise, the astonishing look of the Council itself and the world community to unauthorized interventions of the United States and its allies in places such as Kosovo, Iraq, Afghanistan, etc., are not exception furthermore, the lack of criteria and principles for the decisions of the SC and the lack of coherency in them undermines the existing system to a halt.

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