CHAPTER SEVEN

CONCLUSION

As demand for UN peacekeeping operations is likely to rise, political challenges will continue to represent the central obstacle to establishing long-term peace. To ensure that peace operations continue to serve their intended role and bring relief to conflict-ridden states, it is important that UN peacekeeping rests on a solid political consensus around both the aims and means to which achieve its ambitious goals.

The politics surrounding peacekeeping—from its inception to its exit phase—have also become more complex. Tensions between the Security Council and troop-contributing countries, between the Council, the Secretariat, and the General Assembly, between the North and the South, as well as the East and West, persist. The UN's inability to raise troops for the hardest missions calls into question its relevance as the principal arbiter for the maintenance of international peace and security.

Uncertainty and unpredictability are growing across many levels of the peace-keeping system today. At the level of the Security Council, the political consensus which provides the "fuel" for an operation is often strained. We have seen strong differences among the SC members on the question of how to move forward on a wide range of

missions, from Darfur to Georgia, to Kosovo to Somalia. At the broader international level, there are open questions regarding how UN peacekeeping should evolve, how robust it should be, on burden sharing between troop contributors and the Security Council and on the linkages with other multilateral peacekeeping options. Differing views on these questions impact how the Secretariat, and member states, respond to ongoing operations and the degree of consensus they enjoy in New York. At the regional and national levels, too, political support is often hard to come by and strong counterveiling trends are working against many UN operations. We have seen the impact of diminished host-government support in Eritrea and at the outset of UNAMID [African Union/United Nations Hybrid Operation in Darfur] in Sudan. And in Afghanistan, the regional context for the peace process is increasingly complex and difficult.

At the level of resources, the availability of troops and resources from member-states is increasingly under strain. The lack of helicopters for Darfur is emblematic of the issue, but in fact, across peacekeeping as a whole, it is increasingly difficult to generate and

sustain the resources needed. The mandated tasks of the peace-keeping missions are growing, and each task also depends on a complex political, economic, and security dynamic. This uncertainty impacts, in turn, on the rest of the mandates there. Security is an ever greater concern for staff vulnerable to the military and terrorist threat, even as they are asked to carry out more complex mandates that require close interaction with local populations which, therefore, exposes them.

In terms of peacekeeping operations today, we are witnessing a much broader approach, going across the entire spectrum, in terms of not just the military option of bringing about security, but also to maintaining law and order and finally stabilization. This, therefore, brings the entire peacekeeping operations beyond the focus of just military forces to include civilian forces, judicial officers and rule of law mechanisms. Therefore, in course of reform of the UN and these operations, one is seeing a much greater emphasis being laid on the role of the Rule of Law Office, which works at creating a sort of a country specific approach, by keeping in mind cultural specificities of the rule of law in that region, in order to be able to implement it. Where this cannot

be done there is an attempt to create a whole new framework of rule of law.

The need for greater sensitivity in peace-building operations has been recognised. The thrust now is towards creating 'best practices' in this field through a continuous process of examining previous experiences and working with regional organizations as well as with the Rule of Law and Police Organizations at the UN Secretariat. As a result, one is now seeing less dogmatic approaches towards peacekeeping. There has also been an exponential growth in terms of the peacekeeping commitments of the UN.

While one is looking at this broad-range approach towards peace-keeping, one has to keep in mind certain political developments concerning the entire reform process of the United Nations, as a result of which there is now a certain amount of tightness in the managerial process along with there being greater budgetary constraints. The recent scandals have resulted in greater scrutiny of the UN operations by the media and general managerial scrutiny within the organisation. The department of Peacekeeping is one of the departments which has come

under a great deal of scrutiny and criticism with regard to its procurement patterns, the contacts with national governments, the scheduling pattern etc. With all this excessive emphasis on 'managerial minutiae' there is a tendency to overlook the fact that peacekeeping essentially involves a certain element of unpredictability, inevitably leading to certain amount of 'redundancy' or 'wastage' and thus certain allowances should be made in this regard, though, in the current circumstances, these allowances do not seem to be forthcoming.

As concluded by the Brahmi Report, 'Military peacekeeping is never a substitute for an effective political process.'

The Role of the UN Security Council after the Cold War

Despite the existence of various non-coercive mechanisms to uphold universal human rights, there is a broad acceptance that there might be times where their protection can be achieved only through the use of force by outsiders in the jurisdiction of a sovereign state. The doctrine of humanitarian intervention, defined as "forcible action by a state, a group of states or international organizations to prevent or to end

gross violations of human rights on behalf of the nationals of the target state, through the use or threat of armed force without the consent of the target government,"[1] has been a subject of intense academic discussion in international law, ethics, political theory, and international relations. This conventional idea has been further strengthened in the post-Cold War period owing to the enhanced opportunities for international cooperation on the one hand, and the formidable challenges which created various situations of human suffering, on the other. Hence, humanitarian intervention came to the fore as one of the possible mechanisms at the disposal of the international community while addressing the humanitarian challenges of the new era.

The idea of using force to end human suffering makes humanitarian intervention a morally appealing tool. Yet its implementation is far from perfect and its place in state practice is constrained by a number of legal and political obstacles. The humanitarian intervention debate is a subset of the question of whether force can be used legitimately in international relations. Therefore, the place given to humanitarian intervention is

[1] Şaban Karda, 'Humanitarian Intervention: A Conceptual Analysis,' Alternatives: Turkish Journal of International Relations, Vol.2. No.3-4, Fall-Winter2003, pp. 21-49.

directly related to the international milieu; i.e., the norms on the rightful use of force. Currently, the use of force to enforce international humanitarian norms is severely limited by the existing international legal and political regimes. Because the legality of the use of force is based on compliance with the UN Charter's provisions, which monopolises coercive measures within the Security Council (SC), an analysis of humanitarian intervention might be conducted along a classification based on the existence of authorisation given by the SC. In other words, contemporary practices of humanitarian intervention could be classified under two categories: humanitarian interventions with SC authorisation and unauthorised interventions.

Moreover, an analysis of the brand of humanitarian interventions conducted under a SC mandate (the cases considered under this category include: ECOWAS intervention in Liberia; Allied intervention in Northern Iraq; UN and coalition operations in Somalia; French intervention in Rwanda; International involvement in Bosnia) as an instance of interpreting the existing law in a broader way to accommodate a morally and politically accepted practice into the legal order.

This thesis unfolds in the following way:

First, it examined how the SC was able to engage in an expanding interpretation of its Chapter VII powers regarding the maintenance of international peace and security to accommodate humanitarian intervention within the UN system of collective security. In so doing, to provide a better account of the post-Cold War changes, it starts with an examination of the SC's role in humanitarian intervention throughout the Cold War years.

Second, it undertook an extensive analysis of the arguments raised against the SC's growing activity and broad interpretation in this area, and makes a case to the effect that these actions must be classified as instances of humanitarian intervention.

Since its inception in 1945, the United Nations (UN) has undertaken responsibility for maintaining world peace and security. Drafters of the UN Charter envisioned an organisation engaged in the entire spectrum of conflict management and resolution, from preventive measures, to ad hoc responses to crisis, to the long term stabilisation of conflict areas.

The UN's responses to conflict are often grouped into the three stages of peacemaking, peacekeeping and peace-building. Peacemaking involves diplomatic efforts to manage or resolve the conflict[2] and peace-building strives to stabilise post-conflict situations by creating or strengthening national institutions[3].

The UN defines peacekeeping as "an operation involving military personnel, but without enforcement powers, established by the United Nations to help maintain or restore international peace and security in areas of conflict."[4] Peacekeepers have become an indispensable tool in UN peace achievement efforts. Whether monitoring cease-fire agreements, separating the parties to a conflict, or, more recently, monitoring elections, the UN peacekeeping forces have served an important role since its inception.

[2] Article 33 describes the basic techniques of peacemaking as negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement and resorting to regional agencies and organisations.

[3] Peace-building activities can include monitoring elections, promoting human rights, providing reintegration and rehabilitation programmes, and creating conditions for resumed development.

[4] United Nations, The Blue Helmets, 1985, p. 3.

With the end of the Cold War came two important challenges. Armed conflicts more often emerged at the intra-state level. The level and scope of the UN Security Council involvement had to change accordingly. The changing nature of conflicts following the end of the Cold War made it imperative for the UN to launch a new era of humanitarian interventions, some of which came into conflict with the concept of sovereignty.

But, the UN over-extended its resources and lost much of its political backing. Peacekeeping forces were plagued with conceptual and structural problems. Two solutions followed: reform and regionalisation. For reform to be successful, it needs to help the UN to adapt to the changing nature of armed conflicts. But, the policy of regionalisation could prove dangerous for the UN's credibility and ultimate mission.

The UN System of Collective Security and Humanitarian Intervention

The UN Charter introduced a new solution to the use of force in international relations by qualifying the use of force in the international society and imposing limits upon it.

First, it extended the doctrine of non-intervention to all states and made it a universal norm for the first time in history. Second, it allowed the use of force only in cases of self-defense or collective security measures under Chapter VII of the Charter. By doing so, it left the notion of threat to international peace and security as the only justification for intervention in the domestic affairs of a state. Moreover, all acts of intervention were subject to authorisation by the UN, acting as the representative of the international community[5].

Along with the emergence of non-intervention as a universal norm, a parallel UN-initiated development was in conflict with this principle; the internationalisation of human rights. Article 1 of the Charter emphasises promoting respect for human rights and justice as one of the fundamental missions of the organization. Article 55 states that the UN shall promote and respect the human rights and basic freedoms of people, and subsequent UN initiatives have strengthened these claims. Humanitarian intervention as the most assertive form of promoting

[5] Bhikhu Parekh, 'Rethinking Humanitarian Intervention', in Jan Nederveen Pieterse (editor), World Orders in the Making (London: Macmillan Press Ltd, 1998), p.143.

human rights at global level was clearly incompatible with the norms such as non-intervention and acceptance of state sovereignty.

Nonetheless, the fact that there is no specific reference to humanitarian intervention under the UN Charter added to the controversy around the issue and rendered its legal foundations tenuous.

The Cold War Debate on Humanitarian Intervention

During the Cold War years the academic debate on humanitarian intervention was characterised by its concentration on the legal discussions; in this sense it is similar to the debate among scholars in the pre-Charter era regarding the legality of humanitarian intervention.

The legal discussions on humanitarian intervention were mainly linked to one of the classical debates in international law; whether force can lawfully be used in international relations. Considering the transformations in international system, the context of the debate on humanitarian intervention during this period inevitably differed from the classical debate prior to the enactment of the UN Charter regime in 1945.

Whereas the use of force was a legitimate instrument of international relations before the advent of the UN system, UN Charter's provisions regarding the prohibition on the use of force and the institutionalisation of the non- intervention in domestic affairs rendered any use of coercive force within the jurisdiction of a sovereign state out of the UN framework illegitimate.

This development, in turn, drastically altered the political and legal context of humanitarian intervention. Consequently, even if one is to assume that there had been a classical doctrine of humanitarian intervention in customary international law, the question arose whether this doctrine of humanitarian intervention survived after the establishment of the UN system. Since the Article 2(4) of the UN Charter introduced a ban on the use of force, most of the scholars tended to follow what Arend and Beck call a restrictionist approach in interpreting Charter provisions[6]. Restrictionists claim that the language of the Article

[6] Anthony C. Arend and Robert J. Beck, International Law and the Use of Force (London: Routledge, 1993), pp. 131-135; the principal advocates of this position include; Michael Akehurst, 'Humanitarian Intervention', in Hedley Bull (editor), Intervention in World Politics (Oxford: Clarendon Press, 1984); Thomas Franck and Nigel S. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', The American Journal of International Law , Vol.67, 1973; , Nigel S. Rodley, 'Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework', in N. S. Rodley (editor), To Loose the Bands of Wickedness (London: Brassey's ltd, 1992), pp. 14-42; Ian Brownlie, International Law and the Use of Force by States (Oxford: Clarendon Press, 1963), op.cit.; for references to the defenders of this position also see Francis Kofi Abiew, The Evolution of the Doctrine and Practice of Humanitarian Intervention (The Hague: Kluwer

2(4), together with the Article 2(7), does not allow any kind of use of force, however laudable its motive, except in cases of self-defense (Article 51) and collective security measures under Chapter VII; thus various doctrines of international law that had developed in the pre-Charter era, such as self-help, forcible self-help, reprisal, protection of nationals, and humanitarian intervention, became unlawful.

Therefore, notwithstanding whether there was a classical doctrine of humanitarian intervention prior to the enactment of the UN Charter, humanitarian intervention is not permissible under the current provisions of the UN Charter and international law. In contrast, besides claiming that the traditional doctrine of humanitarian intervention survived into the UN-period, the counter- restrictionist view claims that the restrictionist view is unnecessarily too rigid. They argue that the Article 2(4) and other related provisions of the UN Charter cannot be interpreted as prohibiting a 'pure' humanitarian intervention, mainly in that since humanitarian intervention in a proper sense does not threaten

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Law International, 1999), p. 62, footnote.2; Murphy, op.cit. , Chapter III, and also p. 136, footnote.136; Ramsbotham and Woodhouse, op.cit. , p. 61; Martha Brenfors and Malene Maxe Petersen, 'The Legality of Unilateral Humanitarian Intervention: A Defence', Nordic Journal of International Law, 69, 2000, p. 473, footnote.121.

the attributes of sovereignty, territorial integrity, or political independence of the target state it does not fall within the scope of the prohibition on the use of force laid down in the Charter. Moreover, they claim that since the collective security mechanism originally envisaged by the UN Charter failed to function due to the Cold War conditions, Charter's provisions regarding the use of force should be approached more critically. They further point out Charter's provisions regarding the promotion of human rights and emerging human rights regime as possible grounds to provide justification for intervention on the basis of human rights.

In addition to these discussions in the legal doctrine, there were also some examples of humanitarian intervention in state practice throughout the Cold War era. A growing number of cases had important implications for the content of the academic debates on the subject. Although non-intervention in domestic affairs, non-use of force in international relations and sovereign equality of states emerged as universal norms, the practice of intervention did not disappear from the state practice during the Cold War years. There were many cases of

intervention in breach of the non-intervention norm, some of which are cited as examples to humanitarian intervention.

Since the Cold War rivalry between the superpowers led to the paralysis of the UN Security Council, the issue of intervention was considered to be related with forcible self-help by states to defend human rights in the domestic jurisdiction of another country. Hence, the instances of intervention which are given as examples to humanitarian intervention from the Cold War era were all unilateral actions undertaken by states in their individual capability without authorisation from the SC. Although the Cold-War debate on the legality of humanitarian intervention produced extensive writings on humanitarian intervention, there was no serious discussion on humanitarian intervention through the UN, let alone any practice of UN-led humanitarian intervention.

This lack of interest was mainly a result of the inability of the SC to address international security challenges due to the competition between the two superpowers. Indeed, an examination of the Cold War legal debate shows that even the opponents of humanitarian intervention recognised the possibility of the SC determining that human right

violations in a particular country constituted a threat to international peace and security for the purpose of using force to stop such violations. But legal scholars stopped short of elaborating the conditions under which the SC could make use of its Chapter VII powers to address such situations, considering the impracticality of this option under the prevailing political conditions.

Meanwhile, the proponents of humanitarian intervention were occupied with the debate about the legality of unilateral humanitarian intervention under international law and the UN system. This preoccupation prevented them from focusing on a more fruitful debate about the possibilities for an UN-authorised humanitarian intervention, and the ways in which such an intervention should be conducted. Their attempts were focused on developing the framework criteria for a justifiable humanitarian intervention. Yet, even these attempts were mainly confined to the ways of limiting the abuse of unilateral intervention. As part of their criteria, they often underlined the preferability of an action through the UN rather than letting states engage

in unilateral action, but there was little thought on how to enable the involvement of the UN in such processes.

To accommodate humanitarian intervention within the UN system, the post-Cold War practice of the SC developed what the scholars during the Cold War saw a rather distant possibility: resort to the Chapter VII of the UN Charter. Actually a brief analysis of the UN Charter shows that it was the only possible avenue which might open door to UN involvement in situations warranting humanitarian intervention. Attempts to find a legal basis for humanitarian intervention within the UN Charter can be traced back to the Cold War years. In 1984, while arguing that humanitarian intervention by self-help was illegal under the UN Charter, Akehurst was asking whether there was "any other provisions of the United Nations Charter which could be interpreted as authorising humanitarian intervention by way of an exception to the general prohibition on the use of force in Article 2(4)?"[7]

[7] In answering this question he was pointing out Chapter VII, and expressing his hope that the SC could make a greater use of its Chapter VII powers in future, Akehurst, p. 106 in Michael Akehurst, 'Humanitarian Intervention', in Hedley Bull (editor), Intervention in World Politics (Oxford: Clarendon Press, 1984);

Although there is a minority view that such an authority lies in Articles, 55, 56, and 57 of the Charter which call member states to take joint actions to ensure human rights throughout the world, the majority opinion is that these articles cannot provide the necessary basis for humanitarian intervention within the UN system. An examination of the Charter provisions pertaining to human rights shows that the terms used to identify the enhancement of human rights are 'promoting', 'encouraging' and 'assisting in the realisation of' and they give little support to the view that they can constitute grounds to the use of force either by the states or by the UN for the purpose of enforcing these provisions.

Considering that humanitarian intervention involves the use of coercive force, in accordance with the UN Charter, the proper framework for the use of force, therefore, rests in Chapter VII. Under Chapter VII, the SC is sanctioned with the responsibility to maintain or restore international peace and security. According to Article 39, to be able to take necessary measures in pursuant to Chapter VII, the SC shall first "determine the existence of any threat to the peace, breach of the peace,

or act of aggression". Having determined the existence of such a situation, the SC may decide to employ "measures not involving the use of armed force," such as economic sanctions or the severance of diplomatic relations (Article 41). Only if the SC decides 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" (Article 42).

The situations triggering humanitarian intervention do not amount to instances of 'aggression,' or 'breaches of peace.' Therefore the most relevant basis to invoke Chapter VII with regard to humanitarian intervention is the notion of a 'threat to the peace' or the determination by the SC that a given situation constitutes threats to international peace and security. Consequently, the main question can be put as follows; whether and under what circumstances a domestic situation characterised by human suffering may be regarded as a threat to peace within the confines of Article 39. Since there is no clear definition of what constitutes a threat to peace (and thus the decision to intervene) in the

Charter, which situations would be classified as sources of a threat as such remains vague.

Therefore, the determination of a threat to peace would inevitably be a political decision, depending on how the members of the SC will interpret any given situation. The SC practice regarding the interpretation of this notion during the Cold War was 'restrictive' due to a range of factors that hampered a broader SC involvement in world politics. Therefore, the notion of threat to the peace was interpreted as existence of an objective threat or aggression by one state against another or a risk of inter-state armed conflict in any other form. As a result, together with the strict definitions of the principles of sovereignty and nonintervention, the narrow interpretation of threat to the peace during the Cold War period created a perception that humanitarian intervention was illegal per se because the situations warranting humanitarian intervention fell short of constituting threats to peace; hence any attempt to carry out humanitarian intervention breached the ban on intervention laid down in the Charter.

Although it is generally assumed that the broad interpretation of the threat to peace is a product of the SC practice during the post-Cold War period, there are two Cold War instances which can be mentioned as the precedents of this new trend. In 1966, in the case of Southern Rhodesia, the SC for the first time regarded violations of basic human rights as a threat to international peace. Yet, the case of S. Rhodesia remains as a special case regarding humanitarian intervention debate. Although the SC called upon the United Kingdom to use force if necessary in order to enforce the embargo, given the fact that this use of force was in the high seas, that is, outside the territory of the targeted entity, and S. Rhodesia was a self- governing colony of the UK, it cannot be regarded as a humanitarian intervention.

In 1977, in the case of South Africa, the SC regarded the policy of apartheid a threat to international peace and imposed an arms embargo, yet also mentioned "the military build-up by South Africa and its persistent acts of aggression against the neighboring States" (Article 39). Since there is no clear definition of what constitutes a threat to peace (and thus the decision to intervene) in the Charter, which situations

would be classified as sources of a threat as such remains vague. Therefore, the determination of a threat to peace would inevitably be a political decision, depending on how the members of the SC will interpret any given situation. The SC practice regarding the interpretation of this notion during the Cold War was 'restrictive' due to a range of factors that hampered a broader SC involvement in world politics.

The importance of these cases lies in the fact that by claiming that a human rights situation may amount to a threat to peace they opened the way for the SC involvement to remedy the situation. Yet it was not until the 1990s that the SC could utilize this avenue, and act on the basis of this notion in a broader way.

The changing international atmosphere in the post-Cold War era, and the expanding scope of global human rights regimes created suitable conditions for a wider interpretation of the threat to peace, thus the larger SC involvement in crises taking place within the boundaries of states. This development, in turn, gave way to UN-authorised humanitarian interventions in this period, linking human rights and widespread

human rights violations within a country with the Chapter VII of the UN Charter, starting from Resolution 688.

In this way, the traditional understanding that humanitarian intervention is unlawful because it involved neither self- defense (Art. 51) nor enforcement action under Chapter VII was overcome. Furthermore, the ban on UN intervention in domestic affairs without the consent of the target state regulated in Article 2(7) was eliminated since that paragraph makes an exception in that "this principle shall not prejudice the application of the enforcement measures under Chapter VII".

Consequently, the shift of focus in the UN practice has opened the whole matter to a reinterpretation and we have a situation, where as Greenwood states: "… it is no longer tenable to assert whenever a government massacres its own people or a state collapses into anarchy that international law forbids military intervention altogether."[8]

[8]Christopher Greenwood, 'Is There a Right of Humanitarian Intervention?', The World Today February 1993), p.40.

Critics Against the Broad Interpretation of Threat to Peace

The practice of the SC, at the same time, radically altered the scholarly debate on humanitarian intervention. The question of whether humanitarian intervention was legal under international law was losing its relevance. Having been accommodated within Chapter VII, there was no reason to question the legality of use of force for humanitarian purposes. Since the ban on interference in domestic affairs was by-passed, the SC took care of the problem and the opposition to a humanitarian intervention through the UN diminished.

As a result, the crises that were characterised with external implications severe enough to make an exception to the non- intervention principle have warranted, and may, in the future, warrant humanitarian interventions. The remainder of this chapter will undertake an analysis of the arguments raised against the SC's growing activity in this area. In doing so, an effort is made to respond to the critics by raising counter-arguments in order to advance the case for UN-authorised humanitarian intervention.

Does the Security Council go beyond its Powers?

The invocation of Chapter VII in order to accommodate humanitarian intervention largely solved the problem regarding the legality of humanitarian intervention under international law and the UN Charter. Yet, the broad interpretation of the notion of threat to peace is objected by some legal experts. In their view, "nothing in the travois suggests that the parties [to the UN Charter] envisioned a government's treatment of its nationals as likely to catalyse a threat or breach. Nor had they much reason to do so"[9].

Moving from this point, they claim that by extending the threat to peace to include the situations happening within the domestic jurisdiction of states, the SC may exceed the powers under Chapter VII. Therefore, according to this view, it was argued that "continuing to stretch the concept of threat to peace ultimately undermines the legitimacy and authority of the entire UN Charter. Once a threat to peace

[9] A. Slaughter Burley, cited in Lori F. Damrosch, 'Concluding Reflections', in Damrosch (editor), op.cit. , p. 356; also for a similar critics see Nicholas Wheeler, and Justin Morris, 'Humanitarian Intervention and State Practice at the End of the Cold War', in Rick Fawn and Jeremy Larkins (editors), International Society after the Cold War: Anarchy and Order Reconsidered (London: Macmillan Press Ltd., 1996), p. 153.

can mean anything from famine to the invasion of a sovereign state, the concept is so broad as to be useless. We need a new concept".[10]

Moreover, concerns about the expanding definition of threat to peace have been expressed in international politics. In particular, developing countries expressed their uneasiness with the broadening interpretation of what amounts to a threat to peace in a direction to cover issues which had been previously considered to fall within the domestic affairs of states. The ever-increasing expansion of the SC's powers sparked off fear among some of the developing countries that had reasons to believe that this process might infringe upon sovereignty and independence of member-states.

The fears increased worries on the part of the developing countries about subjective interpretation due to continuation of this process without setting any objective threshold. In responding to the criticism that the SC is exceeding its powers to start with, two counter-arguments raised by Murphy have some merits. First, the main rationale behind

[10] Dorinda G. Dallmeyer, 'National Perspectives on International Intervention: From the Outside Looking In', in C. F. Daniel and B. C. Hayes (editors), Beyond Traditional Peacekeeping (New York: St. Martin's Press, 1995), pp. 20-39.

maintaining international peace and security is not for the sake of peace itself but, rather, for the well-being of the people. In this light, considering the fact that the well-being of people is threatened more by violations of human rights taking place within the borders of states than by inter-state conflicts, a flexible interpretation that allows for UN authorised humanitarian intervention is acceptable. Second, there might be a correlation between a state committing human rights violations and its propensity to engage in external aggression. Therefore, a counter case might be made that action taken to address human rights violations may avert external aggression and contribute to the maintenance of international peace, which is the SC's main responsibility under Chapter VII.

Furthermore, the linkage between human rights situation within a state and international peace is increasingly recognised by the international community. As it became obvious in many humanitarian tragedies in the post-Cold War era, the violations of human rights will sooner or later create cross-border security implications, not least in the form of exodus of refugees fleeing persecution at home into neighboring

nations, and affect regional and international peace and security. If the SC is not able to deal with such circumstances in an effective and timely fashion, the resulting humanitarian catastrophe and regional instability will not go untouched forever, and states acting alone or under the framework of any organization will take the initiative in their own hands. Hence, the failure of the UN to act will most probably give way to unauthorised humanitarian interventions as happened during the Cold War, or during the Kosovo crisis. One negative consequence of such unauthorised interventions is the effect they will have on the SC's position in international politics. Such practices are likely to undermine the SC's primary role in the maintenance of international peace and security. If unauthorised interventions are also objected to prevent the erosion of the SC authority, such situations will trigger further moral dilemmas. In effect, such inactivity would imply that the world community would be standing idle and keeping silent while a particular government is committing atrocities against its own people. The SC's failure to act in extreme cases of human suffering that shock the human conscience equally undermines the role of the SC as well as the legitimacy of international legal order.

In both cases, the UN, as the expressed will of the international community, would fall into disrepute. To address this dilemma, opening ways for a broader UN involvement is necessary because the international community has reached a stage where widespread violations of human rights cannot be regarded as purely domestic affairs. Therefore, if we are to have an effective working UN mechanism to advance the well-being of people and maintain international peace simultaneously, two sets of principles laid down in the Preamble to the Charter, the UN should not be jailed into strict legal interpretations. In some cases, certain actions might be desirable from a political and moral point of view, but that might be in conflict with the limits of the existing legal framework, since legal rules may not evolve in accordance with the state practice. In such cases, in order to achieve a certain degree of legitimacy for a given action, especially when changing the positive law is difficult to accomplish, there emerges a need to interpret the existing law in a broader sense. In this vein, the expanding interpretation by the SC of its Chapter VII powers so that it could respond to the violations of human rights should be deemed as one of the successes of the SC in the post-Cold War period.

Whether the SC actions under Chapter VII can be called as Humanitarian Intervention?

The second cluster of critics concerns the question whether SC actions under Chapter VII can be considered as an instance of humanitarian intervention. As underlined in the previous section, traditionally, humanitarian intervention was mainly understood as self-help by states that are acting without any authorisation from the UN. The post-Cold War practice of the SC, in a remarkable departure from this notion, allowed for the possibility of discussing the UN-authorised humanitarian interventions.

Although this practice was largely accepted as a form of humanitarian intervention by the legal community, there is still a minority view that opposes this trend and prefers to confine the term 'humanitarian intervention' to the self-help by states and do not include interventions under the UN within the scope of humanitarian intervention.

They argue that measures decided upon by the SC pursuant to Chapter VII cannot fall within the parameters of the doctrine of humanitarian intervention. Since these actions are authorised under Chapter VII, 'humanitarian' and 'intervention' characteristics of the term become dubious. For one, they underline that, as Article 2(7) states measures decided upon by the SC under Chapter VII are exempted from the ban on intervention; hence when the use of force is authorised by the SC, there is no dictatorial interference involved, which might render such use of force politically questionable. Moreover, they claim that actions under Chapter VII "whatever their scope, contents and nature, are directed towards the maintenance and/or restoration of international peace and security. They are not undertaken for humanitarian purposes and the introduction or use of this terminology might contribute to further misunderstandings and ambiguities."[11]

Johansen, another scholar who opposes establishing linkage between maintaining international peace and security and halting gross violations of human rights, claims that the failure to distinguish between

[11] Some representatives of this view are Tanja, *op.cit.*; Wil. D. Verwey, 'Humanitarian Intervention in the 1990s and Beyond: An International Law Perspective' in Pieterse (editor), *op.cit.*

the two may lead to confusion about mandates, the nature of military deployments, rules of engagement, and reasons for offering or denying political support[12].

These scholars, therefore, maintain that SC actions to address human rights violations must be kept as a separate hybrid category, or in the words of Tanja they may be called as 'enforcement measures for humanitarian purposes'.

Despite such objections, it is argued here that the concept of humanitarian intervention needs to be extended to cover UN-authorised cases as well. It is true that just as the collective enforcement actions; the UN-authorised humanitarian intervention is also based on Chapter VII. Yet, for the purposes of our analysis, such actions cannot be lumped together with the 'collective security operations' and it is warranted to classify them as humanitarian intervention in view of these points. First, although from a strict legal point of view, the SC could act only on the basis of the existence of a threat to peace, an examination of the SC

[12] Robert C. Johansen, 'Limits and Opportunities in Humanitarian Intervention,' in Stanley Hoffmann, *The Ethics and Politics*, pp. 63-66.

practice reveals that the characteristics of such threats are quite different from the notion of threat to the peace in original sense. The traditional understanding of maintaining international peace is confined to dealing with interstate aggression, whereas the SC practice has increasingly addressed the domestic situations with imminent humanitarian catastrophe.

Moreover, as will be discussed below, the recent practice also shows that while invoking its Chapter VII powers and determining that a situation constitutes a threat to international peace, the SC does not necessarily make reference to cross-border repercussions in every case, and a situation of human suffering in itself may trigger humanitarian intervention.

Furthermore, it also appears that those who oppose to the UN-authorised humanitarian intervention, in fact, implicitly suppose the purity of motives on the part of interveners. Therefore, they conclude that any intervention aiming at the maintenance of peace and security cannot classify as humanitarian. Yet, while classifying cases of humanitarian

intervention, the mixture of motives, rather than the purity of motives, is the relevant point for the assessment of humanitarian intervention.

The fact that a certain action contributes to the maintenance of international peace and the protection of human rights simultaneously cannot provide a ground to reject the humanitarian character of that particular intervention. Taken together with the humanitarian outcomes of these interventions in terms of ending suffering of the people in the target country, the arguments advanced here support the view that the actions of the SC under Chapter VII can be classified as a distinct form of humanitarian intervention.

When is there a Threat to Peace?

Another problematic aspect of the notion of threat to peace and security stems from the question of whether an internal situation must have trans-boundary implications to be classified as a source of threat to the peace, and if yes what these implications might be. What led some scholars to approach the SC practice skeptically was the following hypothetical question: whether the SC can declare a situation

characterised by massive violations of human rights but with no cross-border repercussions as a threat to international peace. The examination of the SC practice so far shows that it was developed on a case by case approach and the SC refrained from any explicit codification. This ambiguity regarding the character of the situations which may properly call for SC action, in turn, presents many challenges against the trend to place humanitarian intervention within Chapter VII.

For some, the tendency to locate humanitarian intervention within Chapter VII is nothing but a proof that human rights violations are not sufficient in and of themselves as a basis for intervention; therefore, no binding norm exists for intervention for the purpose of stopping human rights violations.

In the opinion of Richard Gardner, the Council may be "more likely than it was before to deal with mass repression when it can reasonably find a threat to 'international peace and security.' . . . What the members of the Security Council will not do, however, is authorise military intervention in a country on human rights ground alone. . . . This is

where we stand in the evolving balance between national sovereignty and human rights.[13]"

In a skeptical article on humanitarian intervention, Abrams calls this trend as "both non-humanitarian and unpersuasive". In his view, it will not fit to real world, because "while all human rights crimes may not be local, they are not all international either[14]". Therefore, he calls for the establishment of a firmer legal basis in order to justify the UN-authorised humanitarian intervention. Others criticise this practice from a moral perspective by claiming that such 'stability-based' arguments may be used as an excuse for non-intervention in situations, "where it is morally justified, practicable and would threaten neither global nor regional stability"[15].

Hoffmann, too, acknowledges that the ad hoc approach of the SC puts the consistency of this practice into question unless one takes "the

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[13] Richard Gardner, 'International Law and the Use of Force' in Gardner Scheffer and Helman, Post-Gulf War Challenges to the UN Collective Security System: Three Views on the Issue of Humanitarian Intervention (Washington: United States Institute of Peace, 1992), p. 27, cited by Kenneth R. Himes, 'The Morality of Humanitarian Intervention', Theological Studies, Vol.5, Issue.1, March 1994.
[14] Elliott Abrams, 'To Fight the Good Fight', *The National Interest*, Spring 2000, p.73.
[15] John N. Clarke, 'Ethics and Humanitarian Intervention', *Global Society: Journal of Interdisciplinary International Relations, Vol.13*, Issue.4, October 1999, pp. 489- 510.

moral stance that any such violations concern all of us and constitutes ipso act of such a threat"[16]. In his article, he further adds that the possible arbitrariness of the SC creates a danger in that the SC "might apply this criterion capriciously, either by invoking threats to international security when they are not at all obvious, or by failing to recognise such threats in cases where, for whatever reason, intervention is deemed unwise.

These claims can be responded through an examination of the SC practice. The accumulating SC practice suggests a growing willingness to characterise the suffering of the people in itself as a source of threat to peace. As underlined by Murphy, although there were some trans-boundary effects in almost all cases of humanitarian intervention in the post-Cold War era, they were not the central focus of the interventions and the SC was motivated more by the plight of the people than concerns for security. Therefore "a candid assessment of the interventions leads to the conclusion that the 'threats to peace' identified had much less to do

[16] Stanley Hoffmann, 'The Politics and Ethics of Military Intervention', *Survival* , Vol.37, No.4, Winter 1995-1996, p. 37; for a similar argument see Adam Roberts, *Humanitarian Action in War: Aid, Protection and Impartiality in a Policy Vacuum* (London: The International Institute for Strategic Studies, Adelphi Paper 305, 1996), pp. 24-25.

with trans boundary effects than with a concern for the rights of the civilian populations of those countries[17]".

Moreover, as it was further demonstrated by the SC practice in the post- Cold War era, in the deliberations of the SC on intervention what is really at stake is not whether there were any cross-border effects of a given situation. The decisive factor enabling these interventions was whether there emerged a political consensus among the major powers on the need to act, and on the feasibility of carrying out a successful operation. If the members of the SC could reach an agreement to respond to cases of gross violations of human rights, the debate about the trans boundary effects turns out to be irrelevant. This debate is, therefore, more of a theoretical exercise than a practical concern. The best example to support this claim can be found in different responses to the interventions in Somalia, Rwanda and Bosnia.

In the case of Somalia, the threat to neighbouring states was much smaller than in many of the other cases. Due to the positive atmosphere

[17] Murphy, *op.cit.*, p. 285; Greenwood also reaches at a similar conclusion regarding the case of Somalia, Greenwood, *op.cit.*, p. 38.

generated by the intervention in Northern Iraq, there was a willingness to intervene both within the UN bureaucracy and among the major powers. Yet, the unexpected course of this operation resulted in disillusionment with the whole idea of humanitarian intervention and led to the inaction at the earlier phases of genocide in Rwanda, where trans-boundary effects were much more visible than in Somalia. In both cases, while the related SC Resolutions stated that the magnitude of humanitarian crisis constituted a threat to peace and security, there was no mentioning of any cross-border effects.

In Bosnia, however, although the interstate character of the conflict provided a much firmer legal basis than humanitarian intervention, the international community failed to stop ethnic cleansing for years. In fact, the Bosnian government was recognised under international law and there was involvement of Yugoslav and Croat armies in the civil war. In view of these factors, international involvement to help Bosnian government had a strong legal standing. Yet, the existence of other practical problems and the lack of political determination among the

major powers hindered an effective involvement by the international community.

Furthermore, as stated before, the link between the violations of human rights and international peace and security is not a mere academic argument, but deeply rooted in the reality of regional and international politics. Within an increasingly globalising world, it is hardly possible to imagine a local crisis without any trans-boundary repercussions. Local humanitarian emergencies will often produce international consequences like cross-border refugee flows and will pose the risk of political and military destabilization in the concerned regions.

Therefore, the position taken here is that the SC practice regarding the threat to peace, though not consistent, can be seen as the reflection of a belief that under certain conditions human suffering is unacceptable to the international community and warrants humanitarian intervention, regardless of international repercussions, provided that the prevailing political conditions are conducive to initiate such an action. Nonetheless, it must be noted that, in doing so, the SC also paid attention to underline

the 'unique' and 'exceptional' character of the interventions and refrained from setting a clear precedent for future involvement in similar cases.

This has been employed as yet another argument against the whole idea of humanitarian intervention. Although the case by case approach of the SC reflects a certain degree of inconsistency it does not necessarily reflect a lack of interest in human suffering. As underlined so far, several practical conditions might hinder the realisation of an intervention, such as the limitations of the UN itself, feasibility of any given intervention, lack of available resources, including financial, personnel and military capabilities, and the divisions among the major powers. There might also be powerful domestic political considerations from the perspective of the intervening states that make it difficult to engage in interventions abroad. In that regard, one could refer to the international and domestic political repercussions of challenging military interventions in complex humanitarian emergencies, domestic aversion to putting the troops of a country at risk in a far-away country, and the inherent difficulties of involvement in civil conflicts. In most cases what produces the

appearance of selective application, are the combination of such practical considerations than the inherent disinterest in human suffering.

Effectiveness of Today's Peace-keeping Operations

Determining the effectiveness of UN peacekeeping in any era, but particularly in the post-Cold War context depends on the interpretation of "peacekeeping." Is it to keep the conflict from escalating and protect lives in the process, or is it to end the conflict completely? Based on the choice of interpretation, different missions will be labeled "successes" or "failures." For example, the UN peacekeepers have not been able to successfully end fighting in Darfur. They have certainly protected the lives of civilian non-combatants though, which is the main premise of UNAMID's mandate. During the Cold War, peacekeeping existed to keep the major powers out of conflicts, and they did succeed in doing that. Now that the same threat to international security no longer exists, the concept of peacekeeping must adapt to suit international demands if it wishes to remain relevant. Of late, it had taken on a more humanitarian objective, where protecting innocent lives has been the main goal, and in that, most

peacekeeping operations have been successful.

Peacekeeping seems to resemble nothing of its traditional self, but is the "new" form of peacekeeping better or worse?. MacQueen (2006) argues that peacekeeping has not undergone any qualitative transformation, although it has undergone a significant quantitative change, in that many more missions have been deployed in the post-Cold War period than were prior to that. The political landscape in which the UN is now deploying peacekeeping operations has changed significantly from the Cold War context, with internal ethnic conflict predominantly defining present-day missions, rather than ideological clashes like before. Peacekeeping classically conceived is not effective in the present political landscape since many of these new conflicts require the use of force, and with many more parties than simply two sovereign governments involved, consent from all parties is not always possible.

Returning to the idea that perhaps today peacekeeping, can be merely a component of a larger conflict intervention, the UN has been forced to adapt the purposes of its peacekeeping operations to meet

global needs in the post-cold war world. It is difficult to argue that UN peacekeeping is effective today, because that original concept really no longer exists, and yet peacekeeping operations continue to take place. The term is still used because it connotes a familiar sense of morality and impartiality, but forces labeled as such do much more today than work to keep the peace. Their involvement in "nation-building" initiatives has expanded their missions and history has not yet ruled on the true effectiveness of this change. The validity of this argument can be understood by having an overview on current peace-keeping operations continuing in various parts of the globe.

By way of conclusion, it may be stated that this thesis endeavoured to understand and interpret the changing role and dynamics of the UN peace-keeping and peace-making operations after the Cold War. As discussed above, the United Nations functioned in an entirely different strategic environment in which the earlier power politics between the two super-powers ceased to prevail. It enabled the UN Security Council to take a less polarised view of the Bosnian conflict in the 1990s. The greater involvement and commitment of the major powers in the former

Yugoslavia facilitated the resolution of the underlying ethnicity-based rivalries that fuelled the Bosnian conflict. However, there were divisions within the major powers in regard to the strategic and tactical aspects of the ongoing crisis, which were alluded in the Second Chapter of this thesis.

Political conditions surrounding the UN peace-keeping operations in the post-cold war world were identified and assessed in Chapter Four of this thesis. It includes discussion of issues of sovereignty, humanitarian intervention, consent of the parties etc.

Thereafter, the role of the UN Security Council in the post-cold war world was discussed in detail in Chapter Five. The implications of the dynamics of power-politics among the major powers were outlined, and their impact on the functioning of the UN peace operations. Here the question relating to the broad interpretation of threat to peace and security in the post-cold war international political system is examined.

In Chapter six, the challenges and future prospects of the UN peace enforcement operations are identified and discussed. In this concluding

chapter, several research findings are derived by referring to the available case-material of the two case-studies and drawing from the detailed exposition on the functioning of the UN peace-keeping operations after the Cold War.

As regards future directions of research, several theoretical and empirical issues can be highlighted. Theoretically speaking, there is a need to distinguish the defining characteristics of both 'realist' and 'liberal' perspectives and relate them to actual peace-keeping operations in the post-cold war world. One needs to assess the impact of changing power-equations among the major powers at the present moment to address the grave humanitarian crisis in Syria. The collapse of talks between the US & Russia on the matter of ceasefire among the warring parties in the armed conflict in Syria amplifies the predicament of the UN to restore peace and security in the troubled region.

For the purposes of future research agenda, various interpretations regarding the UN intervention in humanitarian crises need to be reexamined, in light of changing ground-realities of international politics

and differing perceptions of major powers on the place and role of the UN in the changing global strategic and economic environment.