

Under what Conditions has the UN been able to use its Chapter VII Powers?

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KATHARINA REMSHARDT, NOV 13 2010

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The collective security system as outlined in the Charter of the United Nations is undoubtedly reflecting its authors' urge to provide the new organization with "teeth" and make it -after two devastating World Wars – a more functional guarantor of international peace and security than its predecessor, the League of Nations, had been.

The responsibilities and powers enshrined in Chapter VII of the Charter are central to the Security Council's ability to uphold international stability and peace by averting or ending conflicts. Whenever the Council ascertains "the existence of any threats to the peace, breaches of the peace or acts of aggression"[1], Chapter VII presents its members with a "loophole" to the general prohibition of the use of force encompassed in Art 2(4) of the Charter[2]. By passing binding resolutions under Chapter VII, the Council is entitled to authorize "measures not involving military force"[3], i.e. economic and diplomatic sanctions or the use of military force in order to reinstate international peace and security[4].

Despite this prerogative to take action when the situation demands it, the Security Council (SC) has failed to address a range of major conflicts that have occurred over the past 64 years, although it has successfully dealt with others. My aim in the following shall therefore be to analyze the preconditions which prevail both in the respective conflict situation and within the United Nation's most powerful organ itself, and which will determine the Council's action or inaction.

Broadening Interpretation of Chapter VII

The major powers had decided during the Dumbarton Oaks Conference[5] to leave Article 39 of the Charter without any further explanation as to what actually constitutes a "threat to the peace, breach of the peace or an act of aggression"[6]. Consequently, the Council members' reading of a specific situation and its authority to measure the gravity of a conflict[7] has become central to a decision in favour of or against the use of force. The analysis of different cases of intervention throughout the years has suggested that the way in which the SC has justified the implementation of the Chapter VII powers, has not been static, but changing in nature. This is mainly due to the fact, that the international order established after the end of the Second World War has fairly little in common with today's increasingly globalizing post-cold war world.

The last 60 years have seen the emergence of new forms of threats and conflicts: classical interstate wars have been marginalized by the growing frequency of civil wars, mixed conflicts and the more recent phenomenon of international terrorism[8]. Naturally, these new challenges have prompted the SC to readjust its understanding of when and under what circumstances to apply its right of peace-enforcement[9].

Throughout the Cold War period, the conceptualization of peace-threatening conflicts was mainly focused on territorial aggression initiated by states[10], and whatever atrocities like civil war or the persecution of ethnic minorities might have taken place inside a state's border, they were perceived as entirely domestic issues. Any UN

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involvement, and notably the use of force under Chapter VII, would doubtlessly have been regarded as an unacceptable violation of national sovereignty[11].

A series of developments lead the SC to reconsider these principles. Firstly, the density of the international legal framework was constantly growing since 1945, covering ever more aspects of the international order and narrowing the grey zones which had long been sheltering abusive governments from the reach of the international community[12]. Secondly, the increase of intra-state conflicts (as opposed to inter-state confrontations) brought the existence of state-internal threats to the Council's attention, culminating in the SC Summit Declaration in January 1992, in which "non-military sources of instability in the economic, social, humanitarian and ecological fields" were recognized as a potential menace international peace and security[13].

It was the result of this altered perception of "threat" and "security"[14] that had prepared the moral ground for the Security Council's decision in December of the same year to authorize the use force to end the civil war raging in Somalia, justified in Resolution 794 by the "magnitude of the human tragedy"[15]. This was the first time that Chapter VII powers had officially been employed out of purely humanitarian motivations[16] and despite the absence of any external aggression[17], a scenario that reoccurred two years later, when the Council adopted Resolution 940 on Haiti[18].

Whereas the Security Council's role in both Somalia and Haiti had still been categorized as "an exceptional response" reflecting the "unique character of the present situation"[19], the approach in the case of former East Timor was different[20]. The Council's reluctance to get involved in inner-state quarrels had diminished and the international community found it now both acceptable and desirable for the Council to do so without having to emphasize the exceptionality of the circumstances[21].

The way how SC Resolution 1236 on East Timor is worded demonstrates the new international tolerance regarding the extended use of Chapter VII powers, as well as the fundamental transformation the definition of state sovereignty had undergone. Stating that it was "the responsibility of the government of Indonesia[22] to maintain peace and security in East Timor"[23], the SC indirectly acknowledged that state sovereignty was not only accompanied by *authority*, but also and more importantly by *responsibility*[24], a point later reaffirmed by former Secretary General Kofi Annan, who coined the term "dual responsibility" of the state[25].

In summary, following the shifts that have occurred in the global perception of international affairs since 1945, the SC has been able to broaden its field of activity, notably with regards to the authority given to it in Chapter VII. In creating new precedence for the use of force, the Council is constantly redefining the conditions a situation must meet in order to be perceived as a threat to the peace. Thereby, the UN has increasingly engaged in areas that previously had been looked upon as exclusively domestic matters[26].

The Role of National Interests

It is important to notice, that the UN Security Council is by no means a supranational institution; it should rather be likened to an exclusive club controlled by a powerful few (the P5) who are largely driven by their respective national interests, at times to the detriment of collective security[27]. The conditions upon which the authorization of enforcement measures is applicable have above been described as adaptable and broadening.

However, interestingly the UN member states have proven to be not very keen on setting up clearer guidelines when it comes to the Council's decision making. The proposal of five criteria designed to police the Council's right to resort to the use of force, put forward by the High Level Panel on the occasion of the UN World Summit in 2005, was not met with great enthusiasm[28].

The Panel's suggestions neither seem to be a radical departure from what SC decisions had been officially based on before, nor do they seem exceedingly constraining. In fact, they were essentially following common sense, listing the "seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences (i.e., whether military action is likely to have better or worse results than inaction)"[29] as basic decisive factors to be taken into

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consideration prior to any SC enforcement measures. What could have prevented the member states from adopting these basic rules of conduct other than their desire to protect the option of partisanship whenever it serves the national interest?

National interests are always embedded into the topical international context; therefore it is necessary to differentiate between the two main geopolitical eras of SC activity which are namely the Cold War and the post-cold war period.

During the Cold War, the SC was largely deadlocked because of its members' everlasting antagonism, cooperation amongst the permanent five was almost impossible and so seemed the passing of resolutions under Chapter VII, the veto power tremendously limited the United Nations' scope of action in the first decades of its existence[30].

One of the very few cases in which the Council has been able to use the Chapter VII powers in times of the Cold War, can only be explained by the peculiarity of the circumstances within the SC.

An "act of aggression" could hardly have been more exemplary than communist North Korea's military attack on its Southern neighbour in June 1950[31]. However, the Security Council's ability to respond to this derived from the simple fact that neither of its communist members was present when it came to the decision whether to authorize enforcement measures to restore the peace[32]. Had China or the Soviet Union been represented in the Council, the resolutions hastily introduced by the United States and narrowly accepted by the non-permanent members[33], would have been vetoed, and the Korean War would have figured on the long list of conflicts unaddressed by the UN[34].

As often as the Soviet Union paralyzed the Council by its veto, the communist bloc was by no means the only spoilsport in the game. When Indonesia invaded East Timor during its civil war in 1975, the SC got seized of the matter from the start, but was unable to make use of its Chapter VII powers as the United States and its allies were opposed to anything that could upset the aggressor Indonesia, which at that time was a politically important friend in overwhelmingly communist Indochina[35]. As Peter Carey notes, in comparison to Indonesia, one of the last strongholds of Western influence in the region, East Timor "counted for nothing"[36]. National interests had overruled the Security Council's moral obligation to act as a watchdog for international peace.

Yet another striking example of the Council's relatively arbitrary decision making is the war between Iran and Iraq in the aftermath of the Iranian Revolution 1979. Notwithstanding the scale and violence of Saddam Hussein's invasion, the human cost of the conflict, and the destabilizing effect it had on the region, in 1980 neither of the superpowers supported UN involvement on behalf of the victim, Khomeini's Iran[37]. Having overthrown the Americans' most precious ally in the Middle East, the Shah, and criticized the USSR for invading Afghanistan, the new Iranian regime could not count on the Security Council's help[38]. In the contrary, the war was seen as an opportunity "to put Iran in its place"[39].

The SC members' selectiveness in their interpretation and implementation of Chapter VII during the Cold War clearly followed the pattern of East-West antipathy. Bloc adherence mattered more than the ideal of collective security.

However, when the relationships between East and West began to improve after Mikhail Gorbachev's accession to power, the SC was reanimated as a collective security organ[40]. Over 90% of all SC resolutions referring to Chapter VII between 1946 and 2002 have been passed after the end of the Cold War[41]. The international system had changed and the new multipolarity allowed for more flexibility in inter-state relations and accordingly more room for the SC to agree on issues that formerly had been contentious.

The case of East Timor is exemplifying in this regard. As soon as the spectre of communist world revolution had ceased to exist, the strategic relationship the West had entertained with Indonesia, still occupying power in East Timor, lost its importance[42]. The issue was reconsidered and the SC managed to establish its InterFET and UNTAET missions "to restore peace and security in East Timor"[43].

Nevertheless, national interests continue to determine the role the UN can play in the post-cold war order and the

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general feasibility of UN resolutions. Still, a number of preconditions have to be met before the Council can use the tools granted to it in Chapter VII. The Security Council's actions are limited by the extent to which its most influential members consent to let the international society take on responsibility in issues which directly concern them.

Powerful nations have often used their political leverage in the Council to protect their own sphere of influence from UN involvement. India, albeit not being a permanent member, has managed to keep its feud with Pakistan over Kashmir out of reach of the Council's agenda[44]. Considering the permanent five's right to veto, issues like Chechnya, Taiwan, Tibet or Northern Ireland have been and will be tacitly overlooked by the Council[45]. From the "Middle East Peace Process" to the second Gulf War in 2003, there is a plethora of examples which demonstrate how the UN in general has been sidelined and how the SC in particular has frequently become secondary to national political considerations[46].

However, the post-cold war climate has permitted the successful implementation of Chapter VII powers, as the occasion of the first Gulf War in 1991 demonstrates. The new readiness to work together within the Council was certainly a crucial factor, but what was probably even more important was the conscious decision of George Bush Senior to integrate the UN authorization of enforcement measures (according to him "a well-spring of legitimacy for military action"[47]) into his vision of a "new world order" under American auspices[48].

The likelihood for the use of force to be authorized is therefore highly dependent on the degree to which the envisaged action proves compatible with the prevailing interests of leading member states within and outside the SC.

Having sufficiently dealt with the difficulties the SC encounters when having to decide whether or not to bring its Chapter VII powers into play, it is now time to turn to the prerequisites upon which the fruitful execution of these powers is based.

If the process of decision making is a matter of inter-state bargaining, the establishment of the respective mandate clarifying goals and means of an operation is not less so[49]. A functional mandate does not only have to be flexible enough to apply to different stages of the problem it is expected to solve[50], it also has to narrow the scope of possible interpretation in order to prevent disunity within the Council. This had happened in the 1960s during the Congo Crisis, when both the USSR and France incapacitated the operation by back-peddalling and cancelling their support[51].

The necessity to compromise differing national interests has on some occasions watered down the mandate considerably, creating a document inappropriate to the matter at hand and therefore dysfunctional. The most notorious example is the Council's inadequate reaction to the 1994 genocide in Rwanda[52]. The United States, reluctant to step in, effectively hampered any efforts made by other nations, which eventually led to the French-orchestrated *Opération Turquoise* being hopelessly constrained by the weakness of the mandate the SC members could agree on[53].

Diplomatic support from the key member states may be crucial for the efficiency of Chapter VII mandates, but it is certainly useless if not entailed by the donation of troops and equipment. Although clearly envisaged in Art. 43 of the

Charter[54], the UN has never been able to acquire a police force or army of its own and remains therefore dependent on *ad hoc* arrangements in conflict situations[55]. Those spontaneous contributions can come from a single state, a "coalition of the willing" or regional organizations like NATO[56]. In the past it has often been the role of the United States to contribute the majority of armed forces and take the lead, which has been the case in Korea, in the first Gulf War, in Somali and Haiti[57]. The absence of US support can have dire consequences if no other militarily prominent power is ready to step in to hold up the ideal of international peace and security.

Conclusion

The UN Security Council had been designed to play a pivotal role in the collective security system established after the Second World War. Although the political and normative transitions in the international system and especially the end of the Cold War's bipolarity have broadened the possibilities for the SC to get actively involved in various sets of

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circumstances, numerous factors do impinge on the decision making process in the Council and prevent the successful appliance and execution of its Chapter VII powers. Its capacity to act is largely conditional on the highly complex interplay of national interests, i.e. the level of cooperation between Council members, the level of involvement of member states in the respective conflict situation and the resulting partisanship. In the case a common position can be achieved, further diplomatic and economic commitment of potent members is necessary to draft and implement a comprehensive mandate. In conclusion, the United Nations generally remain dominated by the preferences and political ambitions of the states which created it and their willingness to use the organization to settle international conflicts.

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