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Abbreviations

CAR	Central African Republic
CARICOM	Caribbean Community and Common Market
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
INTERFET	International Force for East Timor
MINUSCA	Multidimensional Integrated Stabilization Mission in the CAR
MINUSTAH	United Nations Stabilization Mission in Haiti
MISCA	African-led International Support Mission to the CAR
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
ONUC	United Nations Mission in the Congo
ONUVEH	UN Observer Group for the Verification of Elections in Haiti
OSCE	Organization for Security and Cooperation in Europe
PLO	Palestine Liberation Organization
RPF	Rwandese Patriotic Front
SOC	Syrian Opposition Coalition
UK	United Kingdom
UN	United Nations
UNAMID	United Nations African Union Hybrid Operation in Darfur
UNAMIS	United Nations Advance Mission in the Sudan
UNAMIR	United Nations Assistance Mission for Rwanda
UNIFIL	United Nations Interim Force in Lebanon
UNITAF	Unified Task Force
UNTAET	United Nations Administration in East Timor
UNMIH	United Nations Mission in Haiti
UNMIS	United Nations Mission in the Sudan
UNOMUR	United Nations Observer Mission Uganda-Rwanda
UNOSOM	United Nations Operation in Somalia
UNPROFOR	United Nations Protection Force
USA	United States of America
USSR	Union of Soviet Socialist Republics

Acknowledgments

During my exchange at Charles University in Prague last fall, I became interested in the field of public international law, particularly the law of armed conflict. Media reports on the ongoing civil war in Syria and the response, or rather the inaction, of the international community was one of the inspirations behind the theme of this thesis, leading to my desire to analyse the legal framework regarding foreign intervention in civil wars.

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Introduction

On 26 June 1945, the United Nations (UN) was established by the UN Charter.¹ By that time, the world had experienced the outbreak of two World Wars and the founders were hopeful that states would bear history in mind in attempts to maintain peace and respect the provisions of the Charter.² Accordingly, it should not be of surprise that the UN Charter was written with inter-state conflicts in mind and its provisions accurately reflect that.³ However, since the Second World War, the vast majority of armed conflicts in the world have been internal conflicts, rather than inter-state conflicts.⁴ Now, states rarely attempt to expand their territory by deploying armies to the territory of other states.⁵ The current controversial situation in Crimea is relatively unique in the modern world, whether or not it is seen as Russia's attempt to annex Crimea or Crimea's secession from Ukraine.⁶ Still, there is always a risk that civil wars escalate into inter-state conflicts as well as civil wars can have international dimensions, such as when opposition forces are operating from surrounding states or when neighbouring states are affected by the flow of refugees.⁷ Moreover, massive human suffering within a state has increasingly been considered a matter of international concern.⁸ The media undoubtedly plays a part in the development of bringing internal conflicts closer to the rest of the world, as reports are more accessible, frequent and descriptive in the modern world than before. Consequently, civil wars have more frequently been put on the international agenda and a debate has emerged on foreign military intervention in civil wars.⁹

The purpose of this thesis is to examine on what grounds third states can legitimately resort to the use of force in the form of military intervention in civil wars. To answer this question, an examination of the substantive rules governing the use of force in international relations is required. Thus, the first Chapter of this thesis will be devoted to the legal framework for interventions in civil wars. It provides a short summary of the characteristics of international law, which is essential to understanding how international law comes into being and its binding nature towards states. Further, it provides a general classification of

¹ Anthony Aust: *Handbook of International Law*, p. 186.

² Jeremy Greenstock: "The Security Council in the Post-Cold War World", p. 249.

³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 1; Christine Gray: *International Law and the Use of Force*, p. 7.

⁴ Christine Gray: "The Use of Force and the International Legal Order", p. 591.

⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 218.

⁶ Marko Milanovic: "Crimea, Kosovo, Hobgoblins and Hypocrisy", www.ejiltalk.org.

⁷ James Cockayne et al.: "The United Nations Security Council and Civil War.", p. 42; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 241, 318, 341; Christine Gray: *International Law and the Use of Force*, p. 105.

⁸ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", pp. 524-525.

⁹ Christine Gray: *International Law and the Use of Force*, p. 7.

conflicts and discusses the general principles regarding military interventions, including the general prohibition on the use of force, the principle of state sovereignty and the principle of non-intervention. This might suggest that no legal ground could be found for international intervention in civil wars, but the matter is not that simple. Military interventions by foreign states in civil wars may presumably be justified on various grounds.¹⁰ But the rules regarding the intervention of foreign states in civil wars are not as straightforward as the rules prohibiting international wars.¹¹

The clearest exception of legitimate military intervention in civil wars is the Security Council's competence to authorize enforcement measures under Chapter VII of the UN Charter, described in Chapter 2 of this thesis. The Chapter will cover the structure of the UN, the idea of a collective security system and examine the legal basis for the Security Council's involvement in civil wars and its practice. In the absence of Security Council authorization, there is only one generally accepted justification for the otherwise illegal use of force, which is self-defence due to armed attack.¹² How collective self-defence can be exercised as to cover foreign intervention in civil wars will be discussed in Chapter 1.6. Other possibilities of legitimate resort to force have been debated and will be examined with regards to civil wars in Chapter 3, which deals with intervention upon invitation, and Chapter 4, discussing unilateral interventions such as humanitarian intervention, intervention in pursuit of democracy and unilateral military intervention by regional organizations.

In order to reveal the current law regarding the matter, an assessment of both the relevant rules and their implementation in practice is required. It should be noted that it can be difficult to draw conclusions from state practice since states often invoke several justifications for their interventions and sometimes none at all. Interventions often may also have been illegal without a court or other instruments defining it as such. As has been described, every chapter of this thesis covers a very broad sphere of studies and state practice. The aim of this thesis is to present a clear overview of the above-mentioned issues, though it of course cannot present a comprehensive assessment of this section of international law.

The rules on when the resort to force can be legally justified, or the *jus ad bellum*,¹³ are the main topic of this thesis. Therefore, the discussion on the rules governing the actual

¹⁰ Malcom N. Shaw: *International Law*, p. 1150.

¹¹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 318.

¹² Christopher C. Joyner: *The United Nations and International Law*, pp. 102-104; Malcom N. Shaw: *International Law*, p. 1126.

¹³ Malcom N. Shaw: *International Law*, p. 4.

conduct of hostilities, or the *ius in bello*, is excluded, as are the possible consequences of an illegal military intervention into civil wars.¹⁴

1 Legal Framework

1.1 General Characteristics of International Law

It is apparent that the subject of international involvement in civil wars calls for an understanding of the legal framework governing international relations. The term ‘international law’ refers to the rules and principles primarily applicable between states. Despite the emergence of new actors on the international scene, such as individuals, governmental and non-governmental organizations, international law is still predominantly made and implemented by states. Thus, states remain the principal players shaping international law.¹⁵

Founded on the idea of sovereignty and equality of states, the system of international law relies on principles of reciprocity and consensus. For this reason state consent is an essential element in international relations and rules can normally not be imposed on states.¹⁶ International law is created by states primarily in two different ways, either through state practice generating customary international law, or through obligations deriving from agreements entered into by the signing of bilateral or multilateral treaties binding on the contracting parties.¹⁷ These two methods of lawmaking are also the primary sources of international law, recognized under Article 38(1) of the Statute of the International Court of Justice.¹⁸ In fact, custom mirrors the characteristics of the international system where all states take part in the formulation of the rules. This might be considered to indicate that individual states are empowered to pick and choose which rules form a part of international law. However, this is not the case, as customary international law applies to all states regardless of formal recognition, with the possible exception of persistent objectors.¹⁹ Consequently, when examining the legal framework governing military intervention in civil wars, both relevant general principles of international law and state practice should be taken into consideration.

¹⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 342.

¹⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 1-2; Malcom N. Shaw: *International Law*, pp. 2, 5, 6, 67; Antonio Cassese: *International Law*, pp. 3-4.

¹⁶ Malcom N. Shaw: *International Law*, p. 10; Antonio Cassese: *International Law*, p. 46; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 4.

¹⁷ Antonio Cassese: *International Law*, p. 6; James Crawford: *Brownlie's Principles of Public International Law*, p. 20.

¹⁸ Anthony Aust: *Handbook of International Law*, p. 5.

¹⁹ Malcom N. Shaw: *International Law*, pp. 73-74; Antonio Cassese: *International Law*, p. 28.

In order to clarify the nature of international law it can be convenient to compare it to the centralized systems of municipal law. The international legal system lacks the supreme authority represented in the domestic legal systems that entrusts central organs with the power of lawmaking, law determination and law enforcement. The legal structure of the international system now consisting of 193 independent states is therefore often described as horizontal, opposed to the vertical hierarchy of domestic legal systems.²⁰ Yet a few international organizations contain some features of the above-mentioned central organs but they are still to a large degree dependent on states and the support of their governments. The UN General Assembly is a plenary organ comprising delegates from all the UN member states but is in no manner a world legislator, as its resolutions are generally recommendations and not legally binding.²¹ There is no international judicial system but the International Court of Justice (ICJ) in The Hague, the principal judicial organ of the UN, comes closest to being a world court. The Court decides cases that are submitted to it by states but can only operate with the consent of states, with no system in place to ensure compliance with its decisions.²² Finally, the UN Security Council has some features of an executive organ but its capacity to law enforcement is restricted both legally and politically.²³ Overall, the international legal system is generally less accessible, coherent and certain than the centralized domestic systems.²⁴

These characteristics are quite evident with regards to the use of force. Within domestic legal systems, the use of force is, on the whole, prescribed exclusively in the hands of governmental institutions. The international system on the other hand, lacking this hierarchical construction of authority and control, seeks to regulate the use of force by states but is dependent on the states' will, consensus and good faith for proper implementation.²⁵ Although the aforementioned UN organs exist, in the absence of a centralized system, it is up to each individual state to decide how to implement international law and react to breaches of the law. This includes the power to decide whether to settle disputes peacefully or to enforce the law unilaterally or collectively.²⁶

²⁰ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 3-7; Antonio Cassese: *International Law*, pp. 3-4; Malcom N. Shaw: *International Law*, p. 6.

²¹ Anthony Aust: *Handbook of International Law*, p. 190; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 3.

²² Anthony Aust: *Handbook of International Law*, p. 412; Malcom N. Shaw: *International Law*, p. 1075; see also Article 36(1) of the Statute of the ICJ regarding the Court's jurisdiction.

²³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 3.

²⁴ Anthony Aust: *Handbook of International Law*, p. 5; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 35; Malcom N. Shaw: *International Law*, pp. 2-3.

²⁵ Malcom N. Shaw: *International Law*, p. 1118.

²⁶ Antonio Cassese: *International Law*, p. 6; Malcom N. Shaw: *International Law*, p. 4; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 4.

1.2 Classification of Conflicts

The International Criminal Tribunal for the former Yugoslavia (ICTY) provided a definition of armed conflicts in the *Tadic Appeal Decision*, stating that “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”²⁷ Armed conflict can therefore be an inter-state (international) or internal conflict (within the territory of a single state). An internal conflict has to reach a certain magnitude to amount to civil war.²⁸ A general definition of a civil war provides that it is a situation consisting of armed forces or organized groups fighting within the territory of a single state. Most commonly, the government of a state is among the warring parties while it is not a prerequisite.²⁹ In this thesis, the concept of ‘civil war’ will not be pinpointed to a certain number of casualties related to the use of armed force, such as in datasets,³⁰ though it remains important to understand that a distinction is made between mere internal unrest and civil war with respect to their respective magnitude.³¹ The formal distinction between limited unrest and a civil war is important as to the application of international humanitarian law (*jus in bello*) as well as the rights of foreign states to intervene in civil wars (*jus ad bellum*), described in the following Chapter.³²

Although civil wars can occur for many reasons, they are most commonly fought between the government of a state and rebels, which are either trying to attain control of the government or want to secede from the state and form a new one. Moreover, the government does not necessarily have to take part in the conflict, such as in Lebanon 1975–6 where the government had a neutral position and remained ineffective in the fighting.³³

1.3 Law of Armed Conflict — *jus ad bellum* and *jus in bello*

The rules governing the use of force by states form the core of the framework for international order.³⁴ These rules are referred to as the law of armed conflict and deal with situations when states deviate from ‘normal’ peaceful conduct of international relations. The law of armed conflict, or more traditionally law of war, both covers the rules concerning the rights of states

²⁷ *Tadic Appeal Decision*, para. 70.

²⁸ Christine Gray: *International Law and the Use of Force*, p. 82.

²⁹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 318.

³⁰ The International Peace Institute required 500 battle-related deaths a year, the dataset of Correlates of War used the threshold of 1000 battle-related deaths but the Uppsala dataset had a lower threshold of 25 battle casualties.

³¹ Christine Gray: *International Law and the Use of Force*, p. 82.

³² Christine Gray: *International Law and the Use of Force*, p. 82.

³³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 318.

³⁴ Malcom N. Shaw: *International Law*, p. 1118.

to resort to armed force in international relations (*jus ad bellum*), and the rules pertaining to the actual conduct of armed conflict, termed humanitarian law (*jus in bello*).³⁵ The rules of the former category are the subject of this thesis.

The idea behind the distinction of the two categories is that, provided that the law is not capable of preventing armed conflict, then the armed conflict should at least be subject to constraints as regards the means and methods of warfare in order to prevent unnecessary suffering.³⁶ Although the laws governing the conduct of armed conflict will not be discussed further in this thesis, the main conventions governing this field should still be mentioned here for clarification. These are the four Geneva Conventions of 1949 ratified by most states of the world, along with the two protocols of 1977. The first two Conventions regard the protection of sick and wounded soldiers and sailors,³⁷ the third Convention regards prisoners of war,³⁸ and the fourth Convention regards protection of civilians.³⁹ The Hague Conventions of 1899 and 1907,⁴⁰ are still in force and address the more general conduct of warfare.⁴¹ The ICJ has noted that these laws “have become so closely interrelated that they are considered to have gradually formed one single complex system, known today as international humanitarian law”.⁴²

Historically a distinction was made between internal and inter-state armed conflicts as to the application of humanitarian law, that is, it only applied to international armed conflicts.⁴³ Hence, the laws generally applied to the conduct of all military interventions in civil wars by third states, but were not necessarily applicable to the conduct of internal armed conflict.⁴⁴ Common Article 3 of the Geneva Conventions extended some basic laws of humanitarian law to civil wars, which the ICJ in the *Nicaragua case* affirmed to be customary international law,

³⁵ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 1; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 306; Malcom N. Shaw: *International Law*, p. 1167.

³⁶ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 342; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 209.

³⁷ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members, Armed Forces at Sea.

³⁸ Geneva Convention Relative to the Treatment of Prisoners of War.

³⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

⁴⁰ Available at: <http://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByTopics.xsp>.

⁴¹ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 325; Antonio Cassese: *International Law*, p. 404.

⁴² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports 1996*, p. 226, para. 75. [Nuclear Weapons Advisory Opinion]

⁴³ Malcom N. Shaw: *International Law*, p. 1191.

⁴⁴ Malcom N. Shaw: *International Law*, p. 1194. See the common Article 3 of the Geneva Conventions of 1949 and Article 1 of the Additional Protocol II.

thus applying independently of treaty ratifications.⁴⁵ This division corresponds to the traditional conception of international law governing inter-state relations.⁴⁶ However, today all of these conventions are largely considered to represent customary international law, and the traditional division has gradually been breaking down.⁴⁷ In the *Tadic Appeal Decision* before the ICTY, the Court asserted that international humanitarian law had developed to the extent where it applied both to international and internal conflicts. The Court identified several reasons for this development, including increased frequency and escalating cruelty of civil wars, the interdependence of states making third-party involvement more likely and the propagation of human rights law.⁴⁸

Certainly, third states may for a variety of political reasons decide to intervene in civil wars.⁴⁹ It is crucial to determine whether military intervention by a third state in a civil war finds basis in the substantive rules of the right to resort to armed force (*jus ad bellum*). This determination makes the distinction between legal and illegal use of force. The first step for any deliberation on the present law is to examine the basic principles of prohibition on the use of force and state sovereignty, which is also interlinked with the principle of non-intervention.

1.4 The Principle of State Sovereignty

The concept of sovereignty dates back to the sixteenth century when it served the purpose of describing the internal structure of a state (internal sovereignty), emphasizing the supremacy of the governmental institutions within the state. Later, by a change of meaning, the concept also covered the relationship of the state towards other states (external sovereignty), i.e. the supremacy of the state as a legal person.⁵⁰ The origin of this concept, with the overtone of limitless power above the law, appears to have influenced international relations to some extent. It has been suggested by some international lawyers that this conception of state sovereignty, excessively focusing on self-interest, does not provide the right picture of international relations and propose that ‘sovereignty’ should be replaced with the term ‘independence’.⁵¹ At any rate, the concept represents powers and privileges of states resting

⁴⁵ *Nicaragua case*, paras. 217-218; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 352; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 326.

⁴⁶ Malcom N. Shaw: *International Law*, p. 1191.

⁴⁷ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 325; Malcom N. Shaw: *International Law*, pp. 1191-1192.

⁴⁸ *Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, paras. 70, 97. [Tadic Appeal Decision].

⁴⁹ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 300.

⁵⁰ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 17; Malcom N. Shaw: *International Law*, p. 487.

⁵¹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 17-18.

on customary law such as the equality of states reflected in their independence and, in principle, their uniform legal personality. In summary, the rights and duties deriving from the principle of state sovereignty are: a) *prima facie* exclusive jurisdiction over the state's territory and the permanent population living there, b) a duty of non-intervention in that same area and c) general dependence upon consent of obligations.⁵²

1.4.1 The Principle of Non-Intervention

Together with the principle of sovereign equality of states, the principle of non-intervention is considered essential for maintaining reasonable stability within the international legal order.⁵³ The principle of non-intervention acquired general recognition in the nineteenth century and is considered a principle of customary international law.⁵⁴ In the *Corfu Channel case* the ICJ declared: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations."⁵⁵ In practice, states normally refrain from interfering in the domestic affairs of other states, as they expect the same respect from other states.⁵⁶ The outbreak of a civil war within a state does not alter the duty of non-intervention that other states are under, as such an internal situation does not change the juridical status of the state under international law.⁵⁷

The principle of non-intervention has developed from the period before 1945 when it provided precarious protection,⁵⁸ to the present time where it has acquired more significance and impact. Three major developments can be identified for having had a significant impact on the principle. First, the establishment of intensified legal restraints on the prohibition on the use of force. Second, the increased international co-operation that has led to the correlative need for a more distinct definition of the spheres where states are to remain immune from foreign interference. The third development has been the rise of human rights protection, which has increased the possibility of states and individuals to require other states to respect and fulfill human rights standards.⁵⁹

Under Article 2(1) of the UN Charter both the UN and its member states are obliged to act in conformity with the principle of sovereign equality of all its members. The Charter does

⁵² James Crawford: *Brownlie's Principles of Public International Law*, pp. 447-448.

⁵³ Malcolm N. Shaw: *International Law*, pp. 213, 488.

⁵⁴ Antonio Cassese: *International Law*, p. 53; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 19-20; *Nicaragua case*, para. 246.

⁵⁵ *Corfu Channel Case, Judgement*, 9 April 1949, *ICJ Reports 1949*, p. 35. [*Corfu Channel Case*].

⁵⁶ *Corfu Channel Case*, p. 35.

⁵⁷ Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 191.

⁵⁸ Further explained in connection to the prohibition on the use of force, see Chapter 1.5.1 with regards to the doctrine of vital interests ect.

⁵⁹ Antonio Cassese: *International Law*, p. 54.

not prescribe which activities constitute a violation of the sovereignty of states and it is, in fact, not easy to assert because it is constantly changing and open to dispute.⁶⁰ However, several UN General Assembly resolutions further elaborate on the rules against forcible intervention in civil wars, and are therefore useful when distinguishing between lawful and unlawful intervention of other states.⁶¹ Although the Assembly's resolutions are not themselves legally binding, they may confirm the existence of *opinio juris*, that is, states' opinion of the obligatory law.⁶² In the 1965 *Declaration on Non-Intervention*, unanimous emphasis on mutual respect for sovereignty between states was prominent. Article 1 provides the following: "No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state." The resolution provides that armed intervention is equivalent to aggression and is contrary to the basic principles regarding peaceful relations of states. Furthermore, it establishes that subversion, direct intervention and all forms of indirect intervention are violations of the UN Charter.⁶³ In the 1970 *Declaration of Friendly Relations* the sovereign equality of states was extended to *all* states, regardless of their membership in the UN and emphasized the duty of states to refrain from interfering in civil strife in foreign states.⁶⁴ The principle of state sovereignty and non-intervention were reaffirmed and further detailed in the *Declaration on Non Intervention*, adopted in 1981 by a vote of 109 to none in the General Assembly.⁶⁵ The substance of these resolutions also has a role as regards the interpretation of Article 2(4) of the Charter,⁶⁶ and will be further discussed in the following Chapter on the prohibition on the use of force.

In the *Nicaragua case*, the ICJ dealt with the question whether the military and paramilitary activities of the USA against Nicaragua from 1981 to 1984 constituted a violation of international law.⁶⁷ The Court referred to the aforementioned General Assembly resolutions of 1965 and 1970, further establishing that the substance of the resolutions represents customary international law.⁶⁸ The Court stated that the principle of non-intervention prohibits states to intervene directly or indirectly, with or without armed force, in

⁶⁰ Malcom N. Shaw: *International Law*, p. 212.

⁶¹ Christine Gray: "The Use of Force and the International Legal Order", p. 597; Christine Gray: *International Law and the Use of Force*, p. 67.

⁶² Malcom N. Shaw: *International Law*, pp. 84, 88; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 31.

⁶³ UN Doc. A/RES/2131 (XX), 21 December 1965.

⁶⁴ Antonio Cassese: *International Law*, p. 48; Christine Gray: *International Law and the Use of Force*, p. 68; UN Doc. A/RES/25/2625, 24 October 1970.

⁶⁵ UN Doc. A/RES/36/103, 9 December 1981; Christopher C. Joyner: *The United Nations and International Law*, p. 98.

⁶⁶ Malcom N. Shaw: *International Law*, p. 1123.

⁶⁷ Christine Gray: *International Law and the Use of Force*, p. 75; *Nicaragua case*, para. 15

⁶⁸ *Nicaragua case*, paras. 168, 188, 266; Anthony Aust: *Handbook of International Law*, p. 190.

internal or external affairs of other States. It explained that the element of coercion is decisive when defining when intervention is wrongful because intervention is prohibited when coercion is used regarding matters, which are to remain free to the state to decide by the principle of state sovereignty. Coercion is particularly obvious in cases of interventions where force is used, either directly in the form of military enforcement action or indirectly with external support of opposition forces. Hence, interventions that contradict the customary principle of non-intervention also breach the principle of prohibition on the use of force, if they involve direct or indirect use of force.⁶⁹

In the case of *Armed Activities on the Territory of Congo* before the ICJ,⁷⁰ the Court was given the mandate to consider whether Uganda's assistance to armed rebels in Rwanda could be justified on the grounds of self-defence. The Court took a rather strict stand and decided that Rwanda's inability or ineffectiveness to act against rebels operating from within its territory into Uganda did not amount to unlawful intervention in the internal matters of Uganda. Rather it required actual toleration or direct consent.⁷¹ Moreover, in the *Corfu Channel case*, the ICJ affirmed that states have an obligation not knowingly to allow their territory to be used for conduct that contradicts rights of other states.⁷²

From this it transpires that not every form of intervention in internal affairs of states constitutes a violation of international law but only those that constitute a breach against the sovereignty of another state. For instance, acts of material support to opposition groups would breach the principle of non-intervention, whereas giving political recognition to an opposition group within a foreign state would not constitute such a breach.⁷³ The same applies to humanitarian assistance to persons or groups in another country, which is not unlawful intervention under international law.⁷⁴ Another example is cessation of economic relations with a foreign country, as it is considered to be optional political considerations.⁷⁵

Illegal intervention can be categorized into three levels: First, armed attack, which is the gravest intervention, both constituting a breach of state sovereignty and the prohibition on use of force under Article 2(4) of the Charter. Thus, also granting the right to resort to self-

⁶⁹ *Nicaragua case*, para 205; Malcom N. Shaw: *International Law*, p. 1153.

⁷⁰ *Armed Activities on the Territory of Congo, Judgement, 19 December 2005, I.C.J. Reports 2005, p. 168. [Congo v. Uganda]*.

⁷¹ Christine Gray: *International Law and the Use of Force*, p. 80.

⁷² *Corfu Channel Case*, p. 22.

⁷³ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", pp. 27-28; *Nicaragua case*, paras. 228, 124-125, 241-243.

⁷⁴ *Nicaragua case*, paras. 242-243; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 34.

⁷⁵ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 27; *Nicaragua case*, paras. 244-245.

defence under Article 51 of the Charter,⁷⁶ which will be further elaborated upon in Chapter 1.6 of this thesis. The next level of intervention covers all other kinds of unilateral use of force, not amounting to armed attack that violates the prohibition on the use of force under Article 2(4) of the Charter, enabling the victim state to adopt proportionate countermeasures.⁷⁷ It therefore lies between armed attack and unlawful intervention without the use of force, as regards the intensity of intervention.⁷⁸ Lastly, direct or indirect intervention not amounting to the use of force under Article 2(4) of the Charter, but violating the principle of state sovereignty because of intervention in matters that the state has a right to decide freely upon.⁷⁹ It is evident that distinguishing between the breaches of the prohibition on the use of force and breaches of state sovereignty can have an effect on the available permissible countermeasures of the victim state.⁸⁰

1.4.2 Legal Interventions — Distinction between Domestic and International Matters

The laws and practices of state sovereignty make a distinction between domestic and international matters. This distinction is considered crucial for the determination of the power of the international community to interfere in internal matters of a state.⁸¹ Consequently, the concept of domestic jurisdiction is said to delineate international and domestic spheres of operations,⁸² as it applies to those matters that international law does not touch upon and the state's discretion remains fairly unlimited.⁸³

Under Chapter VII of the Charter, the Security Council has the competence to authorize enforcement measures. As stipulated in Article 2(7) of the Charter, the UN may not *intervene* in matters being essentially within the domestic jurisdiction of states. Certain academics argue that Article 2(7) prohibits the Security Council from authorizing any kind of coercive action against sovereign states for whatever takes place within their borders.⁸⁴ However, it is doubtful that a matter remains within the domestic jurisdiction of a state if it, for example, constitutes a breach of international law, contravenes the interests of other states, constitutes a breach of peace or violates fundamental human rights.⁸⁵ Moreover, Article 2(7) specifically

⁷⁶ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 34, 39.

⁷⁷ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 321.

⁷⁸ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 62.

⁷⁹ Malcom N. Shaw: *International Law*, p. 1148.

⁸⁰ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 39.

⁸¹ Ian Hurd: *International Organizations*, p. 8.

⁸² James Crawford: *Brownlie's Principles of Public International Law*, p. 453.

⁸³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 369.

⁸⁴ Report of the High Level Panel on Threats, Challenges and Change, UN Doc. A/59/595, 2 December 2004, p. 65. [*A More Secure World*].

⁸⁵ James Crawford: *Brownlie's Principles of Public International Law*, p. 369.

states that the principle “shall not prejudice the application of enforcement measures under Chapter VII.”⁸⁶ As a result, it seems clear that the Security Council is allowed to interfere in the domestic affairs of states without their consent when such affairs have reached the threshold of becoming international matters.⁸⁷

Precisely what is considered internal affairs of a state is open to interpretation and has been a constantly changing criterion. The Security Council has been finding more and more matters to be within its jurisdiction and its ability to do so is perhaps effectively unlimited.⁸⁸ The gradual expansion of situations considered to be international matters over the years has in turn led to a shrinking scope of Article 2(7) and the standard of ‘internal matters’.⁸⁹ The reason for this is not a narrow interpretation of the term ‘intervention’; rather, it rests on the development and growth of international relations. As a conclusion, Article 2(7) has not worked as originally intended, that is, as an operative restriction on matters that the UN can get actively involved in.⁹⁰ However, it can be presumed that some activities are *prima facie* within the domestic jurisdiction of states because of their character, such as tax assessment.⁹¹ In this context it should be noted that the principle of state sovereignty and its surrounding principles, are principles of international law, thus susceptible to change through international law and do not rely on the unilateral determination of individual states.⁹²

1.5 The Prohibition on the Use of Force

Accompanying the principle of state sovereignty is the prohibition on the use of force, which comes into account when evaluating possible options of international intervention in civil wars. It is crucial for further analysis of the available options of military intervention in civil wars to understand the history, legal status and scope of the prohibition on the use of force.

1.5.1 Historical Background

Evidence suggests that societies regulated the conditions for resorting to the use of force even before pre-Roman era. The formal concept of *bellum justum* or ‘just war’ arose in the Roman period, yet at the time it rather emphasized procedural constraints than a moral cause or justification for the use of armed force.⁹³ Early Christian theorists stressed lawful reasons for

⁸⁶ Article 2(7) of the UN Charter.

⁸⁷ James Crawford: *Brownlie’s Principles of Public International Law*, p. 454.

⁸⁸ Ian Hurd: *International Organizations*, pp. 102, 150; Malcom N. Shaw: *International Law*, p. 212.

⁸⁹ Ian Hurd: *International Organizations*, pp. 103, 137.

⁹⁰ James Crawford: *Brownlie’s Principles of Public International Law*, pp. 453-454.

⁹¹ James Crawford: *Brownlie’s Principles of Public International Law*, p. 455.

⁹² Malcom N. Shaw: *International Law*, pp. 212, 1205.

⁹³ Ian Brownlie: *International Law and the Use of Force by States*, p. 3; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 17-18.

resorting to war and believed that wars that 'God Himself ordained' were undoubtedly just. Resort to war was a legal reaction to a prior illegal act committed by the other side. It was regarded as a form of reparation but had to be proportional to the magnitude of the illegality of the actions of the enemy.⁹⁴ Followed by the natural law theories of Thomas Aquinas and Hugo Grotius with reference to 'inherent rights' in the late sixteenth century gave way to positivism that scientifically described the norms adopted by state practice. This period had a lasting impact on international law where it became a creation of primary sources, custom and treaties, rather than secondary sources such as the writings of publicists.⁹⁵

Leading up to the eighteenth and nineteenth centuries a theory of absolute sovereign power of states emerged allowing states to wage war whenever it was felt necessary, thereby breaking up the distinction between a just and an unjust war. The theory developed with the classical and positivist conception of neutrality that included the absolute right of states to resort to war unless a treaty of alliance modified the relationship. Wars could be justified with allusion to vital interests judged by the states themselves. The doctrine of vital interests was rather a source for political justifications and excuses for resorting to war than a legal criterion.⁹⁶

In the period between the Final Act of the Congress of Vienna in 1815 and the creation of the League of Nations in 1919, a doctrine developed considering war as an ultimate option of enforcing legal rights, provided that peaceful settlement had failed. This complete change in attitude towards war was largely due to the unprecedented suffering of the First World War. Trends towards peaceful settlement of disputes were nevertheless affected by state practice still indicating an unlimited right to go to war as an aspect of sovereignty. The provisions of the League of Nations Covenant from 1919 included re-emergence of formalities as they provided certain restrictions on the use of force but did not completely prohibit such actions.⁹⁷

Another important development can be detected with the conclusion of the General Treaty for the Renunciation of War in 1928, referred to as the Kellogg-Briand Pact or Pact of Paris.⁹⁸

⁹⁴ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 18; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 306; Ian Brownlie: *International Law and the Use of Force by States*, pp. 5-6.

⁹⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 306-307; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 18-19.

⁹⁶ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 18-19; Ian Brownlie: *International Law and the Use of Force by States*, pp. 16, 402; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 307.

⁹⁷ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 19; Ian Brownlie: *International Law and the Use of Force by States*, pp. 49-50; *Akehurst's Modern Introduction to International Law*, p. 308.

⁹⁸ 1928 General Treaty for the Renunciation of War.

Members agreed that settlement of all disputes should be sought by pacific means. The treaty, which was binding on 63 nations, condemned the “recourse to war for the solution of international controversies” but did not prohibit use of force comprehensively.⁹⁹ The Pact of Paris influenced the subsequent legal framework on the resort to force and is apparently still valid.¹⁰⁰ A general prohibition on the threat or use of force is now set forth in Article 2(4) of the UN Charter. The article provides the following:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The prohibition is further complemented by the obligation of states to settle their disputes peacefully, cf. paragraph 3 of Article 2 and Chapter VI of the Charter on Pacific Settlement of Disputes.¹⁰¹ It is clear by the wording of Article 2(4), prohibiting the use of force ‘in international relations’, that the provision is directed at inter-state conflicts.¹⁰² In fact, all of the above-mentioned treaty obligations address the problem of inter-state conflicts and leave out situations of internal conflicts. This makes sense, firstly because at the time of drafting these treaties inter-state conflicts were more common than civil wars and secondly because of the nature of international law at the time, which primarily focused on regulating international relations.¹⁰³

Due to the fact that the prohibition on the use of force does not apply to purely internal situations, such as civil wars, states do not need to justify the use of force in internal situations with regard to Article 2(4). Civil wars and rebellions within the domestic jurisdiction of states are not prohibited in international law and are accordingly dealt with by domestic law.¹⁰⁴ As a general rule, participants of civil wars are not breaching international law, and rebels can overthrow a government or secede from a state, if they have the strength to do so.¹⁰⁵ On the contrary, the prohibition on the use of force is the primary basis for every speculation on foreign armed intervention in civil wars. It is therefore important to realize what legal status

⁹⁹ Article 2 of the Kellogg-Briand Pact; Hilaire McCoubrey: *International Law and Armed Conflict*, p. 22.

¹⁰⁰ James Crawford: *Brownlie's Principles of Public International Law*, p. 745.

¹⁰¹ Ian Brownlie: *International Law and the Use of Force by States*, p. 113.

¹⁰² Christine Gray: “The Use of Force and the International Legal Order”, pp. 591-592.

¹⁰³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 1; Christine Gray: “The Use of Force and the International Legal Order”, p. 591; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 33.

¹⁰⁴ Malcolm N. Shaw: *International Law*, pp. 1148-1149; Jörg Kammerhofer: “The Armed Activities Case and Non-State Actors in Self-Defence Law”, p. 105.

¹⁰⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 318-319; Malcom N. Shaw: *International Law*, p. 1149.

the prohibition has in international law, which actions are considered to fall under the scope of the prohibition and whether there are any exceptions to it.

1.5.2 The Legal Status of the Prohibition on the Use of Force

The prohibition on the use of force under Article 2(4) has been proclaimed a cornerstone of the UN Charter.¹⁰⁶ Despite this clear prohibition and its general recognition among member states, it has still not hindered the outbreak of over 100 major conflicts in the world and the loss of approximately 20 million lives.¹⁰⁷ Unlike ordinary treaty obligations, the legal obligation to abstain from the use of force under Article 2(4), is not restricted to the UN member states as it is considered a principle of customary international law,¹⁰⁸ and even as *jus cogens*, thus binding upon all members of the international community.¹⁰⁹ It therefore has a higher legal status than other norms and obligations of international law, from which no derogation is allowed.¹¹⁰ It is further written under Article 2(6) that the UN has the obligation to ensure that even states which are not UN members act in accordance with these principles so far as may be necessary for the maintenance of international peace and security. The ICJ affirmed the legal status of the principle as a custom and even *jus cogens* in the *Nicaragua case* in 1986 although the Court also acknowledged the fact that breaches of this principle were common.¹¹¹ This can seem peculiar with regard to the two requirements of confirming international custom, i.e. *usus longaevis*; a uniform and consistent state practice and *opinio juris*; a belief among states that such practice is legally compelled.¹¹² The Court further elaborated on this and stated:

It is not to be expected that in the practice of States the application of the rules in question should have been perfect, in the sense that States should have refrained, with complete consistency, from the use of force or from intervention in each other's internal affairs. The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule.¹¹³

The Court concluded that in order to confirm the existence of a customary rule it is sufficient that state behaviour has in general been consistent with the rule, and that cases of

¹⁰⁶ *Congo v. Uganda*, para. 148; James Crawford: *Brownlie's Principles of Public International Law*, p. 746.

¹⁰⁷ Christine Gray: "The Use of Force and the International Legal Order", p. 589.

¹⁰⁸ Ian Brownlie: *International Law and the Use of Force by States*, p. 112.

¹⁰⁹ Christine Gray: "The Use of Force and the International Legal Order", p. 591; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 309.

¹¹⁰ Malcom N. Shaw: *International Law*, pp. 124-125; Article 53 of the *Vienna Convention on the Law of the Treaties*, 23 May 1969.

¹¹¹ *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgement, I.C.J. Reports 1986*, p. 14, paras. 184, 190. [Nicaragua Case].

¹¹² James Crawford: *Brownlie's Principles of Public International Law*, p. 24-25; Pétur Dam Leifsson: "Um réttarheimildir þjóðaréttarins", pp. 170-171.

¹¹³ *Nicaragua Case*, para. 186.

inconsistency with the rule have been treated as breaches of that rule, not as indications of the recognition of a new rule. The Court was of the opinion that when states justify their conduct by referring to exceptions within the rule itself, regardless of whether the conduct is in fact justifiable on that basis, that attitude rather confirms than weakens the rule.¹¹⁴ The reality is that states, with only a tiny number of exceptions, do provide legal arguments for their use of force usually along with political explanations and justifications. However, the idea of breaches being seen as strengthening rather than weakening rules can obviously not be stretched too far without losing plausibility.¹¹⁵

As a conclusion, the prohibition on the use of force is a customary rule which has been recognized as *jus cogens*, although it allows for a few narrow exceptions under the Charter, which will be explained below, and has in state practice been breached numerous times.¹¹⁶ Hence, all other norms of international law must give way in cases of clashes or overlap.¹¹⁷

1.5.3 The Scope of the Prohibition on the Use of Force

Although the principle on the use of force as such has been firmly entrenched in international law, its exact content and scope is quite elusive.¹¹⁸ There can be little doubt that the term *use of force* covers both the technical state of war in the classical sense and every armed action of states.¹¹⁹ It is also clear that a government is equally responsible regardless of whether it acts through the military or other forces under the control of a ministry of defence, militia, security forces, or police forces; but in practice the principle has a wider significance. Notably, the preparatory documents (*travaux préparatoires*) for the Charter do not indicate that the prohibition should only apply to armed force. Further, in comparison to the preamble to the Charter and Article 51, which specifically use the phrase *armed force*; Article 2(4) only uses the term *force*. Still there is no comprehensive conclusion on what other types of activities are considered to amount to the use of force.¹²⁰ This has caused controversy in the implementation of the prohibition.

¹¹⁴ *Nicaragua Case*, para. 186.

¹¹⁵ Christine Gray: *International Law and the Use of Force*, pp. 25, 28; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 26-27.

¹¹⁶ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 311.

¹¹⁷ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 27.

¹¹⁸ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 27.

¹¹⁹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 309; Momir Milojević: "Prohibition of Use of Force and Threats in International Relations", p. 592.

¹²⁰ Ian Brownlie: *International Law and the Use of Force by States*, pp. 361-362; Malcom N. Shaw: *International Law*, p. 1124.

Several General Assembly declarations and resolutions have further consolidated Article 2(4) and developed the principle on prohibition on the use of force.¹²¹ These are the 1965 *Declaration on Non-Intervention*,¹²² 1970 *Declaration of Friendly Relations*,¹²³ 1974 *Declaration on the Definition of Aggression*,¹²⁴ and the 1987 *Declaration on the Non-Use of Force*.¹²⁵ They have for example extended the prohibition to *indirect* use of force.¹²⁶ However, what precisely amounts to indirect use of force has been debated.

Hans Kelsen argued that a violation of international law, which involves an exercise of power in the territorial domain but without the use of arms, would be considered to include the use of force in the meaning of Article 2(4).¹²⁷ This understanding would mean that the phrase covers economic coercion, which is also the stance of the developing countries.¹²⁸ Contrary to this theory, Ian Brownlie asserted that with regards to the predominant view of aggression and the use of force in the previous years, it is unlikely that the use of force was intended to have such a meaning.¹²⁹ The latter understanding, which is based on comparative interpretation of the provisions of the Charter and the purposes of the UN Charter, has gained more support in practice.¹³⁰ However, the division with respect to economic coercion is no longer of practical importance because such activity is now expressly prohibited in General Assembly resolutions, such as the *Declaration of Friendly Relations*.¹³¹

The *Nicaragua case* remains important in this aspect as it provided a categorization of the various actions of the USA with the purpose of overthrowing the government of Nicaragua. The Court held that in addition to the actual use of arms including the laying of mines in Nicaraguan waters and attacks on Nicaraguan ports and oil installations (direct use of force), the arming and training of the armed opposition forces, known as *contras*, also amounted to the use of force (indirect use of force).¹³² Several General Assembly resolutions affirm this understanding, such as the *Declaration of Friendly Relations*, which equates assistance to

¹²¹ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 30, 32.

¹²² UN Doc. A/RES/2131 (XX), 21 December 1965.

¹²³ UN Doc. A/RES/25/2625, 24 October 1970.

¹²⁴ UN Doc. A/RES/29/3314, 14 December 1974.

¹²⁵ UN Doc. A/RES/42/22, 18 November 1987.

¹²⁶ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 30.

¹²⁷ Ian Brownlie: *International Law and the Use of Force by States*, p. 362.

¹²⁸ Christine Gray: "The Use of Force and the International Legal Order", p. 592.

¹²⁹ Ian Brownlie: *International Law and the Use of Force by States*, pp. 362-363.

¹³⁰ Malcom N. Shaw: *International Law*, p. 1125.

¹³¹ Christine Gray: *International Law and the Use of Force*, p. 592; Malcom N. Shaw: *International Law*, p. 1125; UN Doc. A/RES/25/2625, 24 October 1970. Although not always followed in practice, f.ex. USA towards Cuba since 1960 and the Dominican Republic 1960–1962.

¹³² *Nicaragua case*, para. 228; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 319-320.

rebels with the threat or use of force,¹³³ and the 1987 *Declaration on the Non Use of Force* recalling the obligation of states to refrain from “organizing, instigating, or assisting or participating in paramilitary, terrorist or subversive acts” in other states.¹³⁴ However, in the *Nicaragua case*, the Court found that the mere supply of funds to the opposition did not amount to the use of force although it was undoubtedly an act of illegal intervention in the internal affairs of Nicaragua. It would have been preferable that the judgement indicated a more general criterion explaining which kind of acts of assistance and under which circumstances are to be considered a threat or use of force. But due to the lack of such a criteria the scope of the prohibition of the indirect use of force is still unsettled.¹³⁵

Not only is use of force prohibited under Article 2(4) but also the *threat* of use of force. A threat of use of force has been defined as an express or implied promise by a government of resorting to force if its conditions or demands are not accepted.¹³⁶ Such threats have been condemned for a long time; they were for example proclaimed an offence against the peace and security of mankind in the 1954 *Draft Code of Offences against the Peace and Security of Mankind* adopted by the International Law Commission (ILC).¹³⁷ When the UN Charter was being drafted the main arguments against including threats to the definition of aggression was that it would at the same time widen the scope of self-defence to including anticipatory self-defence.¹³⁸ The ICJ had the opportunity to clarify the meaning of ‘threat to force’ in the *Nuclear Weapons case*, but decided to limit itself to the quite predictable conclusion that the illegality of the threat of force depends on whether the actual use of force threatened would itself be unlawful.¹³⁹

At last, there has been a debate on the interpretation of Article 2(4). In short, the controversy is directed at the second part of the article: “[A]gainst the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.” Some academics, such as Bowett, have construed the clause restrictively, as allowing the use of force provided that it does not contravene the phrase.¹⁴⁰ Advocates for unilateral humanitarian intervention have supported this approach since such interventions are

¹³³ UN Doc. A/RES/25/2625, 24 October 1970.

¹³⁴ UN Doc. A/RES/42/22, 18 November 1987.

¹³⁵ *Nicaragua case*, para. 228; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, pp. 319-320.

¹³⁶ Ian Brownlie: *International Law and the Use of Force by States*, p. 364.

¹³⁷ *Yearbook of the International Law Commission*, 2001, vol. II. Article 2(2).

¹³⁸ Ian Brownlie: *International Law and the Use of Force by States*, p. 365.

¹³⁹ *Nuclear Weapons Advisory Opinion*, para. 48; Malcom N. Shaw: *International Law*, p. 1125.

¹⁴⁰ Malcom N. Shaw: *International Law*, p. 1127; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 291.

not directed against the territorial integrity or political independence of states and could on these grounds be justified.¹⁴¹

However, states have in practice generally not defended the legality of their interventions in internal matters of other states by using this narrow interpretation or reference to unilateral humanitarian intervention or some revolutionary new rights. States have rather tried to rely on a broad conception of self-defence under Article 51 of the Charter.¹⁴² The prevailing view is that the clause further reinforces the basic prohibition.¹⁴³ The purposes of the UN Charter further support this, and the fact that the phrase was not originally in the Dumbarton Oaks proposals but was added later at the proposal of weaker states that feared armed intervention by more powerful ones.¹⁴⁴ Hence, in order for foreign military intervention in civil wars to be legitimate, the conduct must fall within one of the generally accepted exceptions.¹⁴⁵ It should be underlined that possible justifications for enforcement interventions in civil wars would always be treated as exceptions from the prohibition on the use of force and the principle of state sovereignty, and should therefore be narrowly construed.¹⁴⁶

1.6 Armed Attack — Self-Defence

Under Article 51 of the UN Charter individual or collective use of force is allowed for in self-defence in the event of an armed attack, awaiting measures being taken by the UN Security Council. The provision refers to an armed attack by one state against another.¹⁴⁷ It is clear that civil wars themselves occurring exclusively within the territory of a certain state do not constitute an armed attack against another state. Consequently, civil wars generally give no reason for the international community to react with force on the grounds of self-defence.¹⁴⁸ However, a state beset by civil war may invoke the right to self-defence in cases of a foreign intervention that amounts to an armed attack. In such cases the civil war in question has been ‘internationalized’ and is no longer an internal conflict but an inter-state conflict. In turn, if the conditions for invoking self-defence are fulfilled the state in question can invoke self-

¹⁴¹ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 120; Malcom N. Shaw: *International Law*, p. 1156.

¹⁴² Christine Gray: *International Law and the Use of Force*, pp. 24, 31-33.

¹⁴³ Ian Brownlie: *International Law and the Use of Force by States*, p. 267; Malcom N. Shaw: *International Law*, p. 1127.

¹⁴⁴ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 25; Ian Brownlie: *International Law and the Use of Force by States*, pp. 266-267.

¹⁴⁵ Malcom N. Shaw: *International Law*, p. 1126.

¹⁴⁶ Ian Brownlie: *International Law and the Use of Force by States*, p. 113.

¹⁴⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2001*, p. 136, para. 139.

¹⁴⁸ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 40; Christine Gray: “The Use of Force and the International Legal Order”, pp. 590, 598; Malcom N. Shaw: *International law*, pp. 1148-1149.

defence as well as collective self-defence; that is, to request assistance from another state in the form of use of force in order to defend itself.¹⁴⁹ Therefore, the right to act in collective self-defence on behalf of another state in its territory is one of the possible military interventions in a civil war and should be discussed further.

While the scope of the right to self-defence is debated, it is generally recognized that actions taken while exercising this must be necessary and proportionate.¹⁵⁰ The ICJ has in several cases confirmed that these two conditions are part of customary law and thus further elaborate Article 51 of the UN Charter.¹⁵¹ Exactly what fulfills these requirements depends on the factual circumstances of each case, but typically they have been considered to limit self-defence to measures that are necessary to regain territory or fight off an attack on a state's forces and which are proportionate to achieve this aim.¹⁵²

The right to self-defence also exists under customary international law although the right has been developed by the Charter.¹⁵³ There exists a long-standing debate on whether the phrase "nothing in the present Charter shall impair the inherent right" refers to a wider customary right of self-defence than described in the Charter and whether Article 51 limits this wider inherent right; or, finally, whether the Article is exhaustive and only allows self-defence "if an armed attack occurs".¹⁵⁴ The followers of the wider right of self-defence are thus open to anticipatory, or pre-emptive self-defence and to protection of nationals abroad.¹⁵⁵ However, it has not been confirmed, for example in the practice of the ICJ, whether the customary right of self-defence is wider or narrower than Article 51 allows. Furthermore, state and UN practice does not bear out a wider right than the Article provides.¹⁵⁶

The prevailing view has been to look to the narrow and explicit terms of Article 51 and interpret the provision in line with Article 2(4) on the prohibition on the use of force and the purpose of the UN organization, which is to have a near-monopoly on the exercise of the use

¹⁴⁹ Antonio Cassese: *International Law*, p. 365; Malcom N. Shaw: *International Law*, p. 1146.

¹⁵⁰ Christine Gray: "The Use of Force and the International Legal Order", p. 599; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 316.

¹⁵¹ *Nuclear Weapons Advisory Opinion*, paras. 41-42; *Nicaragua case*, para. 194; *Oil Platforms Case (Islamic Republic of Iran v. USA)*, *Judgement*, ICJ Reports 2003, p. 151, para. 76.

¹⁵² Christine Gray: "The Use of Force and the International Legal Order", p. 599.

¹⁵³ *Nicaragua case*, paras. 193-195, 200; Malcom N. Shaw: *International Law*, pp. 1132, 1146; Antonio Cassese: *International Law*, p. 359.

¹⁵⁴ Christine Gray: *International Law and the Use of Force*, pp. 117-118.

¹⁵⁵ Christine Gray: "The Use of Force and the International Legal Order", pp. 598-599; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 311-312; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 52; Antonio Cassese: *International Law*, p. 358.

¹⁵⁶ *Nicaragua*, paras. 176, 194; Antonio Cassese: *International Law*, pp. 359-361.

of force.¹⁵⁷ Further, it may be argued that if the intention was not to set conditions pertaining to the circumstances in which states can legally resort to self-defence, Article 51 would not have any purpose at all.¹⁵⁸ This understanding leads to a narrow conception of the right of self-defence which should, as an exception to Article 2(4), be construed restrictively,¹⁵⁹ i.e. not allowing for anticipatory self-defence¹⁶⁰ or the right to use force to protect nationals abroad.¹⁶¹ This is in harmony with the view of most states believing that it would be difficult to foresee the modification of such a right.¹⁶² However, this does not necessarily rule out the option that there may be certain limited exceptions where moral and political reasons may justify a state invoking the right to anticipatory self-defence, provided that there exist convincing evidence of an imminent attack and a restriction on the use of force to remove the threat.¹⁶³

The term ‘armed attack’ is not defined in the Charter. Thus, the term is generally understood as it has developed through customary international law.¹⁶⁴ The clearest form of an armed attack is by military troops against the territory of another sovereign state (sea, air or land). However, such actions do not fall under the definition of civil wars. Even so, there are examples of other states infiltrating the territory of other states, engaged in civil war, with armed forces and volunteers.¹⁶⁵ This raises the question posed above: Faced with such an act of indirect aggression, can a state invoke collective self-defence against the foreign state in question?¹⁶⁶ While the assessment of the conditions of “regular” self-defence have proven difficult in practice, the assessment of collective self-defence as a response to civil wars with such international dimensions has proven even more complicated.¹⁶⁷

The USA, for instance, invoked the right to collective self-defence on behalf of South Vietnam during the Vietnam War. It claimed that the gradual infiltration of armed forces from North Vietnam and the Viet Cong into South Vietnam amounted to an act of aggression.

¹⁵⁷ Ian Brownlie: *International Law and the Use of Force by States*, pp. 271-273; Antonio Cassese: *International Law*, p. 361; Christine Gray: *International Law and the Use of Force*, p. 166.

¹⁵⁸ Christine Gray: “The Use of Force and the International Legal Order”, p. 599; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 312.

¹⁵⁹ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 312; Ian Brownlie: *International Law and the Use of Force by States*, p. 113.

¹⁶⁰ Ian Brownlie: *International Law and the Use of Force by States*, p. 278.

¹⁶¹ This right has been invoked in practice by the USA in the Dominican Republic 1965, Grenada 1983, and Panama 1989. By the UK in Suez 1956, and by Israel in Entebbe 1976. In all cases it was used as a false excuse for overthrowing the government, with the exception of Entebbe. The majority of states did not accept these interventions as legitimate. Christine Gray: “The Use of Force and the International Legal Order”, p. 600.

¹⁶² Malcom N. Shaw: *International Law*, pp. 1138-1139.

¹⁶³ Antonio Cassese: *International Law*, p. 362.

¹⁶⁴ Christine Gray: “The Use of Force and the International Legal Order”, p. 599.

¹⁶⁵ Antonio Cassese: *International Law*, p. 363.

¹⁶⁶ Antonio Cassese: *International Law*, p. 365.

¹⁶⁷ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 165.

Accordingly, the USA claimed that its support for South Vietnam grew in proportion to the magnitude of North Vietnamese forces engaged in the conflict. In contrast, North Vietnam argued that it was taking part in a conflict aimed at decolonization, which in turn would mean that the USA were illegally intervening in the internal affairs of Vietnam (not recognizing the division of the country).¹⁶⁸

In the *Nicaragua case* the USA again argued that they were acting in collective-defence. This time it was on behalf of El Salvador, as a response to Nicaragua supplying weapons to rebels in that country.¹⁶⁹ The Court stated that economic, military or logistical assistance to rebels may be considered to amount to the threat or use of force or as intervention, but it does not amount to armed attack unless it is of a certain gravity.¹⁷⁰ The Court supported its position by referring to Article 3, paragraph (g) of the 1974 *Declaration on the Definition of Aggression*,¹⁷¹ which according to the Court reflected customary international law. Moreover, the Court stated that the scale and effects of the armed bands in the territory of another state is the decisive factor when defining what constitutes an armed attack.¹⁷²

The Court's conclusion still leaves open to interpretation at what point aid to rebels, in the form of providing arms or logistical support, becomes so grave that it should be considered to amount to an armed attack.¹⁷³ Thus, the Court's conclusion is indecisive. In the absence of decisive criteria of when states can legally resort to collective self-defence against a state assisting an insurgency, Antonio Cassese came to the conclusion that state practice indicates that it depends on the magnitude of foreign support, the evidence of that support, which would be evaluated by the ICJ or another UN organ, and that the means of the response should be legal and proportional to the aim.¹⁷⁴

It should be noted that if a previous foreign intervention in favour of rebels in a civil war falls short of constituting an armed attack, it might perhaps still affect the legality of foreign military assistance to the government.¹⁷⁵ This will be discussed further in Chapter 3 below which deals with the possibility of foreign intervention in civil wars upon the government's request. It was for example disputed in the controversial interventions by the USSR in

¹⁶⁸ Christine Gray: *International Law and the Use of Force*, p. 82; Malcom N. Shaw: *International Law*, p. 1150; Antonio Cassese: *International Law*, p. 364.

¹⁶⁹ *Nicaragua case*, para. 19. The Court concluded that the government of Nicaragua was not responsible for this.

¹⁷⁰ Antonio Cassese: *International Law*, p. 365; *Nicaragua case*, para. 195.

¹⁷¹ UN Doc. A/RES/29/3314, 14 December 1974.

¹⁷² *Nicaragua case*, para. 195.

¹⁷³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 321.

¹⁷⁴ Antonio Cassese: *International Law*, p. 365.

¹⁷⁵ Christine Gray: *International Law and the Use of Force*, p. 82.

Hungary in 1956, Czechoslovakia in 1968, and Afghanistan in 1979, whether there had been an armed attack allowing for collective self-defence or an actual consent of the states. Both arguments were rejected by the majority of states.¹⁷⁶ In fact, since the Second World War, all state practice on states invoking the right to collective self-defence has been disputed.¹⁷⁷

The right to collective self-defence belongs to the state that suffered an armed attack, not to the foreign state claiming support. Thus, collective self-defence also requires the request of the state that suffered the armed attack.¹⁷⁸ Evidently the difference between an intervention in a civil war upon request and collective self-defence is theoretical and not very clear in practice with respect to suppression of the rebels within the state.¹⁷⁹ But if the state beset by civil war wants to use force across borders against the state providing assistance to the rebels, it is clear that the indirect intervention needs to amount to an armed attack and allow for self-defence. In the absence of an armed attack, a state of course has no authority to invite another state to use force beyond its borders.¹⁸⁰

Lastly, there is a procedural requirement obligating states, relying on self-defence, to report any use of force immediately to the Security Council, and to cease using force as soon as the Council has taken necessary measures, provided that the Council's measures have proven to be effective.¹⁸¹ States have been conscientious on reporting their self-defence, especially since the *Nicaragua case*, as the Court stated that the USA's negligence to report to the Security Council indicated that they were not convinced themselves that they could legally resort to self-defence.¹⁸²

2 UN Security Council Military Intervention in Civil Wars

2.1 The UN and the Idea of a Collective Security System

Now that the legal framework surrounding military intervention in civil wars has been explained, it is relevant to consider the mechanism which plays the important role of maintaining international peace and security. The idea of a collective security system has a long history, at least dating back to 1629 when Cardinal Richelieu of France introduced such a scheme. These ideas continued to develop and are to some extent reflected in the 1648

¹⁷⁶ Christine Gray: "The Use of Force and the International Legal Order", p. 604.

¹⁷⁷ Christine Gray: *International Law and the Use of Force*, p. 191.

¹⁷⁸ Antonio Cassese: *International Law*, p. 365.

¹⁷⁹ Christine Gray: *International Law and the Use of Force*, p. 168; Malcom N. Shaw: *International Law*, p. 1135.

¹⁸⁰ Malcom N. Shaw: *International Law*, pp. 214, 1135.

¹⁸¹ Anthony Aust: *Handbook of International Law*, p. 211; Christine Gray: *International Law and the Use of Force*, pp. 119, 121.

¹⁸² *Nicaragua case*, para. 235; Christine Gray: "The Use of Force and the International Legal Order", p. 605.

Treaty of Westphalia. In its classical sense a collective security system centralizes the use of force by states in international relations where states recognize that the security of one state is a concern to the whole.¹⁸³ In other words, a wronged state is to be protected by all, and wrongdoer punished by all.¹⁸⁴

In this regard, the creation of the League of Nations in 1919, as a general international organization, was significant for the further development of a collective security system moving towards institutionalization of the concept. However, the system was limited to deal with the state of war and aggression and did not provide a clear prohibition on the use of force by states, being strongly influenced by national rather than collective interests. As a result of its failure to prevent outbreak of the Second World War, the system collapsed.¹⁸⁵ The structure that has come closest to operating successfully as a system of collective security is the UN-based security system created in 1945, which considerably differs from all its predecessors such as the League of Nations.¹⁸⁶ The founders of the UN set up an elaborate treaty-based system, which required states to accept strict limitations on their right to resort to force and to depend on a collective response for protection.¹⁸⁷ Theoretically, the system is collective in the way that it provides a collective ‘police force’, which has an exclusive right to resort to force. However, this UN right does not infringe upon the right of states to self-defence and authorized enforcement measures by regional organizations according to Article 53. In principle, no individual state should be able to dominate a collective security system. Yet, in reality, the UN’s independence is restricted as illustrated by the power of veto by the permanent members of the Security Council and by the lack of a standing police force. Strictly speaking, the inherent right of states to self-defence and the role of regional organizations within the UN also include a departure from a collective security system.¹⁸⁸

Currently there are 193 UN Member States; the most recent member, South Sudan, was admitted on 14 July 2011.¹⁸⁹ Thus, virtually all states of the world have accepted the rights and obligations of the Charter. Article 102 and 103 of the Charter require that in the event of a

¹⁸³ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 126; Vaughan Lowe ect.: *The United Nations Security Council and War*, p. 13.

¹⁸⁴ Malcom N. Shaw: *International Law*, p. 1136; Edward C. Luck: “A Council for all Seasons”, p. 62.

¹⁸⁵ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, pp. 23-24.

¹⁸⁶ Vaughan Lowe ect.: *The United Nations Security Council and War*, pp. 13-14; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 23.

¹⁸⁷ Christine Gray: “The Charter Limitations on the Use of Force”, p. 86; Vaughan Lowe ect.: *The United Nations Security Council and War*, pp. 12; Christine Gray: “The Use of Force and the International Legal Order”, pp. 589-590.

¹⁸⁸ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 125-126; Vaughan Lowe ect.: *The United Nations Security Council and War*, pp. 13-14; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, pp. 337-338.

¹⁸⁹ “Member States of the United Nations”, <http://www.un.org/en/members/index.shtml>.

conflict with any other international agreement, the Charter shall prevail, though presumably not over peremptory norms.¹⁹⁰ In fact, with regards to international organizations, there are two moments where a state's consent is explicit, i.e. when states join the organization and at the point where states decide whether to follow or violate its rules.¹⁹¹

Although the purposes of the United Nations, laid out in Article 1(1), are wide-ranging and constantly subject to controversy and change,¹⁹² there is a clear emphasis on maintaining international peace and security through various ways.¹⁹³ The UN's role of promoting international co-operation, friendly relations among nations and peaceful settlement of international disputes show that the original intent of the UN was to guarantee peace between states, focusing on inter-state relations. However, because of changes in world politics internal conflicts have become more common and in turn the UN has constantly been expanding its jurisdiction.¹⁹⁴ As described in 1992 by the President of the Security Council at the time, "absence of war and military conflicts *amongst* States does not in itself ensure international peace and security".¹⁹⁵

Facing this reality, a new vision on collective security was set out by the 2003 *High Level Panel on Threats*, especially addressing contemporary threats that could not have been foreseen when the UN was founded in 1945. Any event or practice resulting in large-scale death or reduced life chances, undermining states as the fundamental unit of the international system, were recognized as a threat to international security. Internal conflicts, including civil wars, were mentioned in this context.¹⁹⁶ There is a general consensus between States as to which principles of the Charter are applicable to the situation of international intervention in civil conflicts. It is the application of the principles that has been debated.¹⁹⁷

Within the UN system there are two central political organs dealing with peace and security, the General Assembly and the Security Council.¹⁹⁸ The General Assembly, consisting of all the Members of the UN, can discuss and make non-binding recommendations regarding all matters within the scope of the Charter.¹⁹⁹ According to

¹⁹⁰ James Crawford: *Brownlie's Principles of Public International Law*, p. 758.

¹⁹¹ Ian Hurd: *International Organizations*, pp. 5, 101.

¹⁹² Malcom N. Shaw: *International Law*, pp. 1204-1205.

¹⁹³ J.G. Merrills: *International Dispute Settlement*, p. 220.

¹⁹⁴ Christine Gray: "The Use of Force and the International Legal Order", p. 591.

¹⁹⁵ UN Doc. S/23500, 31 January 1992.

¹⁹⁶ Christine Gray: "A Crisis of Legitimacy for the UN Collective Security System", p. 158; *A More Secure World*, para. 34.

¹⁹⁷ Christine Gray: "The Use of Force and the International Legal Order", pp. 589, 597.

¹⁹⁸ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 385; Anthony Aust: *Handbook of International Law*, p. 186.

¹⁹⁹ Articles 9 and 10 of the UN Charter.

Article 12 of the Charter, the Assembly may not make any recommendations regarding a situation or dispute which is already being handled in the Security Council, unless upon request of the Council. The only legally binding decisions it can make concern the internal matters of the Assembly, such as elections to UN organs and bodies, budgetary and personnel issues.²⁰⁰ The Security Council on the other hand is provided with the exclusive power to authorize coercive enforcement actions under Chapter VII.²⁰¹ The boundaries between the two organs were put to the test during the Cold War when the Security Council proved unable to take action against breaches of the peace and acts of aggression because of the division between Western and Eastern blocks. In response to a paralysed Security Council the General Assembly passed the controversial *Uniting for Peace Resolution* (1950),²⁰² where it claimed authority to recommend collective measures in cases when the Security Council was unable to take action due to a veto. Among other things, these measures entailed in calling emergency meetings and making recommendations to States on the use of force.²⁰³ The communist states strongly opposed this and challenged the legitimacy of these changes by referring to Article 11(2) which requires “any such question on which action is necessary...[to] be referred to the Security Council.”²⁰⁴

In practice, the General Assembly generally does not exercise this alleged right but the ICJ has recognized an increasing tendency for the two organs to simultaneously deal with particular matters.²⁰⁵ The Court has in fact expressed that although the Security Council has the primary responsibility for the maintenance of international peace and security, under Article 24, the responsibility is *primary* and not *exclusive*. In the *Certain Expenses case* the Court considered the word *action* in Article 11(2) to mean *enforcement action*, providing that although the Security Council has the exclusive authority to decide upon enforcement actions, the General Assembly has the right to create peace forces not exercising the use of force.²⁰⁶ Given that the division of these organs’ power is not clearly laid out in the Charter this debate over the precise allocation of authority in this area is understandable. Interpretation of Article 11(2) and 12 has not provided a clear distinction of authority and functions. In any case, the

²⁰⁰ Anthony Aust: *Handbook of International Law*, p. 189.

²⁰¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion*, ICJ Reports 2004, p. 136, para. 26; *Certain Expenses of the United Nations, Advisory Opinion*, ICJ Reports 1962, p. 163, [Certain Expenses Case]; World Summit Outcome, GA Res 60/1, 25 October 2005, para. 79.

²⁰² *Uniting for Peace*, UN Doc. A/RES/377, 3 November 1950.

²⁰³ Christine Gray: “The Use of Force and the International Legal Order”, p. 610.

²⁰⁴ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 393.

²⁰⁵ Anthony Aust: *Handbook of International Law*, p. 190; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion*, ICJ Reports 2004, p. 136, paras. 24-28.

²⁰⁶ *Certain Expenses case*, pp. 151, 165, 171-2; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 393.

Security Council and the General Assembly need to be understood together as the primary organs of the UN that have the responsibility to regulate the use of force.²⁰⁷

2.2 The UN Security Council

2.2.1 General Structure and Purpose of the Security Council

Established under the UN Charter, the Security Council was intended to centralize the use of force and operate as an efficient executive organ of limited membership, functioning continuously.²⁰⁸ Theoretically, the Security Council has a wide range of powers and duties.²⁰⁹ Most importantly, under Article 24 of the Charter, the organization has the “primary responsibility for the maintenance of international peace and security”²¹⁰ in international politics and has the authority to decide what kind of collective response is warranted in times of crisis.²¹¹ The Security Council’s composition, functions, powers, voting and procedure are specified in Chapter V (Articles 23–32) of the Charter. Originally the Council consisted of eleven members of the UN,²¹² but following the increase in membership to the UN an amendment was made to the Charter in 1966 resulting in fifteen states having a seat in the Council.²¹³ Five of them are permanent members, holding the right to veto, i.e. the United States of America, the United Kingdom, Russia, China and France. The other ten members are non-permanent members, voted by the General Assembly for a term of two years.²¹⁴ When the Security Council decides upon matters, other than procedural matters, an affirmative vote of nine out of the fifteen members is sufficient, provided that none of the permanent members exercises their right to veto.²¹⁵ The veto has undoubtedly affected the efficiency of the Security Council and prevented it from taking action in conflicts of direct or indirect interest to the permanent members.²¹⁶

While most of the Council’s resolutions consider the pacific settlement of disputes under Chapter VI of the Charter and are merely recommendatory, its resolutions dealing with threats to, or breaches of, the peace or acts of aggression, under Chapter VII, are legally binding

²⁰⁷ Ian Hurd: *International Organizations*, p. 99; Christine Gray: *International Law and the Use of Force*, p. 259.

²⁰⁸ Malcom N. Shaw: *International Law*, p. 1206; Articles 23, 24, 25 and 28 of the UN Charter.

²⁰⁹ Vaughan Lowe et al.: *The United Nations Security Council and War*, p. 1.

²¹⁰ Article 24(1) of the UN Charter.

²¹¹ Article 39 of the UN Charter.

²¹² Article 23 of the UN Charter.

²¹³ UN Doc. A/RES/1991 A and B (XVIII), 17 December 1963.

²¹⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 373.

²¹⁵ Article 27(3) of the UN Charter.

²¹⁶ Malcom N. Shaw: *International Law*, p. 1237; Christine Gray: “The Charter Limitations on the Use of Force”, p. 87.

towards the targeted state, cf. Articles 25 and 2(6) of the Charter.²¹⁷ The Chapter VI resolutions regard situations which the Security Council considers to ‘endanger’ international peace and security without posing a ‘threat’. Yet in practice it is not essentially the character of the situation that distinguishes between whether a Chapter VI or VII resolution is submitted. It rather depends on the political climate within the Council with regard to possible consequences that are either recommendations or coercive.²¹⁸ The coercive Chapter VII resolutions allowing for military action against member states constitute an exception to both the principle of non-intervention in the internal matters of states, under Article 2(7) and to the general prohibition on the use of force, under Article 2(4) of the Charter.²¹⁹

When the Security Council authorizes military interventions in its resolutions, it is apparently sufficient for it to do so implicitly, without expressly mentioning the use of force or the specific Article under which it is acting, either by referring to Chapter VII in general or by using the language used in Article 39.²²⁰ It frequently uses the phrase ‘by all necessary means’ which is presumed to cover the use of force. The Security Council uses the language of Article 39 to emphasize that it is making a legally binding call to the member states to respond to its demands.²²¹

2.2.2 The Security Council’s Competence for Enforcement Action

Before the Security Council can decide whether to adopt enforcement measures under Chapter VII, it is obliged to determine the existence of any “threat to peace, breach of the peace or act of aggression” under Article 39 of the Charter.²²² Any incident that the Council finds to endanger international peace and security can legally invoke the authorization to the use of force.²²³ According to Article 35(1)(2), member states as well as non-member states may bring such situations to the attention of the Council. But regardless of whether a situation is brought to the Council’s attention or not, the Council itself is at all times permitted to

²¹⁷ Malcom N. Shaw: *International Law*, p. 1236; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 128; Anthony Aust: *Handbook of International Law*, p. 195; Peter Malanczuk: *Akehurt’s Modern Introduction to International Law*, p. 390.

²¹⁸ Nigel D. White: *Keeping the Peace*, pp. 38-39.

²¹⁹ Malcom N. Shaw: *International Law*, p. 1237; Anthony Aust: *Handbook of International Law*, p. 206.

²²⁰ Malcom N. Shaw: *International Law*, p. 1237; Anthony Aust: *Handbook of International Law*, p. 206; Christine Gray: “The Use of Force and the International Legal Order”, p. 606; Christine Gray: *International Law and the Use of Force*, p. 256.

²²¹ Ian Hurd: *International Organizations*, p. 147; Christine Gray: “The Use of Force and the International Legal Order”, pp. 607-608.

²²² Malcom N. Shaw: *International Law*, pp. 1236-1237; Anthony Aust: *Handbook of International Law*, p. 196.

²²³ Pétur Dam Leifsson: “Öryggisráð Sameinuðu þjóðanna og réttur ríkja til að beita vopnavaldi sakvæmt reglum þjóðaréttarins”, p. 598.

investigate any dispute or situation which might endanger the maintenance of international peace and security, cf. Article 34.

In general, the Security Council has been reluctant to find an “act of aggression”²²⁴ or that a “breach of the peace” has occurred although it has consistently interpreted ‘threat to the peace’ rather broadly.²²⁵ The Security Council has only on four occasions identified a ‘breach of peace’,²²⁶ i.e. the North Korean invasion of South Korea,²²⁷ the Argentine invasion of the Falkland Islands,²²⁸ the Iran-Iraq war,²²⁹ and the Iraqi invasion of Kuwait.²³⁰ Resort to the use of force was only authorized in two²³¹ of those situations.²³² All of the resolutions identifying acts of aggression or breaches of peace have regarded inter-state conflicts,²³³ and will therefore not be considered any further.

The broadest category of Article 39 regards situations that constitute a ‘threat to the peace’. The word ‘threat’ indicates that the situation does not need to amount to an actual outbreak of armed conflict but still have the potential of causing one.²³⁴ In the absence of such a threat, the Security Council has no authority at all to impose enforcement measures. However, in practice a ‘threat’ is whatever the Council finds to constitute a threat. The Council’s interpretation of this key phrase has evolved through time and led to expansion of its authority to the extent where it covers internal situations, which once would have been excluded from UN interference as per Article 2(7) of the Charter. Internal conflict of some intensity may no longer be “essentially within the domestic jurisdiction of Member States”.²³⁵ Thus, unlike the prohibition on the use of force and the right to self-defence, the Council’s authority according to Article 39 has not been limited to inter-state conflicts. Consequently, the UN can respond to a much broader range of situations than individual states unilaterally, since unilateral enforcement reactions are essentially limited to a prior armed attack.²³⁶ In

²²⁴ Among rare examples are the condemning of South Africa for perpetrating acts of aggression against the People’s Republic of Angola, Israel for attacks on neighbouring states and Rhodesia for continued, intensified and unprovoked acts of aggression against the Republic of Zambia. Christine Gray: *International Law and the Use of Force*, p. 256.

²²⁵ Christine Gray: “The Use of Force and the International Legal Order”, pp. 606, 608.

²²⁶ Malcom N. Shaw: *International Law*, p. 1241.

²²⁷ UN Doc. S/RES/1501, 25 June 1950, although neither was a member State.

²²⁸ UN Doc. S/RES/502, 3 April 1982.

²²⁹ UN Doc. S/RES/598, 16 January 1987.

²³⁰ UN Doc. S/RES/660, 6 August 1990.

²³¹ The first time in South Korea UN Doc. S/RES/83, 27 June 1950 and the second time against Iraq UN Doc. S/RES/660, 2 August 1990.

²³² Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 391.

²³³ Antonio Cassese: *International Law*, p. 346.

²³⁴ Erika de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 138.

²³⁵ Ian Hurd: *International Organizations*, p. 137; Malcom N. Shaw: *International Law*, p. 1237; Nigel D. White: *Keeping the Peace*, pp. 35, 36, 41.

²³⁶ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 125.

brief, the UN organs' flexibility and textual interpretation of the Charter in practice is the main reason why the system has not failed altogether.²³⁷

Determining threat to peace under Article 39 is not easily subject to legal assessment and appears to rest mostly upon the political decision of the Security Council.²³⁸ The wording of the Article is broad, which is necessary in order for it to be able to cover all situations.²³⁹ The veto perhaps reveals the most decisive political feature, by reason of one negative vote resulting in the defeat of a draft resolution. Military actions are thus dependent on the political will of the permanent members.²⁴⁰ This has been a drawback for the Council's effectiveness and it has on several occasions failed to take action in response to serious human rights violations, as in the cases of Cambodia, Uganda, Rwanda, Burma and Zimbabwe.²⁴¹ The veto power has the effect that the decisions authorizing the use of force do often not reflect the will of the international community as a whole.²⁴² Despite the Council's wide discretion when evaluating what situations or acts amount to threat to peace, the decision-making is not completely arbitrary.²⁴³ The decision must remain within the purposes of the Charter, i.e. to maintain international peace and security, and the enforcement action itself should be proportional to its aim.²⁴⁴

The political aspect of the Council's authorization of the use of force does not only appear in the decision-making but also when it comes to the implementation of the resolutions under Chapter VII. According to Article 25 of the Charter the member states "agree to accept and carry out the decisions of the Security Council". The original intent was that the Security Council would have a standing army, see Article 43, enabling it to take direct enforcement action. The practice turned out differently and the member states did not conclude agreements to make troops available for the UN. However, the lack of special agreements does not prevent member states from providing troops *ad hoc* to the Council.²⁴⁵ Therefore, the implementation of resolutions authorizing the use of force depends on the will of each state to hand over control of troops for enforcement action, referred to as the 'coalitions of the willing'. This means that the Security Council can authorize the use of force and not directly

²³⁷ Malcom N. Shaw: *International Law*, p. 1236.

²³⁸ Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, p. 426.

²³⁹ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", p. 588.

²⁴⁰ Martin Dixon: *Textbook on International Law*, p. 7.

²⁴¹ Martin Dawidowicz: "Public Law Enforcement without Public Law Safeguards?", p. 335.

²⁴² Martin Dawidowicz: "Public Law Enforcement without Public Law Safeguards?", p. 342.

²⁴³ Erika de Wet: *The Chapter VII Powers of the United Nations Security Council*, pp. 136-137.

²⁴⁴ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 125.

²⁴⁵ Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, p. 389; Christine Gray: *International Law and the Use of Force*, p. 254. Articles 43-47 of the UN Charter have from the beginning been seen as a dead letter.

decide it.²⁴⁶ Although resolutions authorizing the use of force cannot bind member states to provide their troops to the Council, it does bind the target state, which is prohibited from invoking self-defence under Article 51 of the Charter.²⁴⁷

It is not entirely certain but practice indicates that no international body, such as the ICJ, would have the power to legally review the Council's determination of a situation under Article 39.²⁴⁸ Although it might be desirable in order to limit the political power of the Council, it was at least was not the original intent when establishing the organs of the UN that the ICJ should have the power to review their decisions.²⁴⁹ It is evident that the effectiveness of the security system provided by the UN depends largely on the common perception of the legitimacy of the Council's decisions. Therefore it is urgent that such decisions are made on solid evidentiary grounds and for the right moral and legal reasons.²⁵⁰

2.2.3 Enforcement Measures Under the UN Charter — Articles 41 and 42

When threats or breaches of peace have been determined under Article 39, the Security Council can decide to authorize enforcement measures against a state or a non-state actor to respond to those threats in order to maintain or restore international peace and security.²⁵¹ This does not necessarily mean that the Council *will* resort to authorizing enforcement action, as the Council is permitted but not obliged to respond.²⁵² These measures are defined in Articles 41 and 42 of the Charter. Article 41 does not provide an exhaustive list of measures but they may include economic sanctions or blockades, severance of diplomatic relations and other non-military means. An arms embargo is commonly imposed as an instant non-military reaction to civil wars, as evidenced by the case of the civil wars in Yugoslavia, Somalia, Rwanda and Liberia. Provided that the Security Council considers the measures under Article 41 insufficient, it has the power to authorize military action, making it the only competent international organ to allow states to use force.²⁵³

Article 42 of the Charter enables the Council to authorize states to use force when it considers that other measures “would be inadequate or have proved to be inadequate”. Thus,

²⁴⁶ Christine Gray: *International Law and the Use of Force*, p. 21; Christine Gray: “The Use of Force and the International Legal Order”, pp. 590, 605-607.

²⁴⁷ Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, p. 390.

²⁴⁸ Christine Gray: “The Use of Force and the International Legal Order”, p. 606. The Court has never ruled on the matter and avoided the issue in the *Lockerbie* and *Bosnia-Herzegovina Genocide* cases.

²⁴⁹ Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, pp. 292-293.

²⁵⁰ *A More Secure World*, p. 66.

²⁵¹ J.G. Merrills: *International Dispute Settlement*, p. 246; Malcom N. Shaw: *International Law*, p. 1237.

²⁵² Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, pp. 136, 184.

²⁵³ Ian Hurd: *International Organizations*, p. 136; Christine Gray: “The Use of Force and the International Legal Order”, pp. 606-607.

the Council has no obligation to resort to non-forceful measures before authorizing the use of force, although, in practice, it almost always does so. This arrangement promotes effectiveness and prevents the Council from being forced to spend precious time on measures that have no possibility of achieving the objective aimed for.²⁵⁴

It should be noted that under Article 40 of the Charter, the Security Council can resort to provisional measures with the purpose of preventing an aggravation of a particular situation, such as troop withdrawal, suspension of hostilities or demanding a cease-fire. Although Article 40 presupposes a determination of the situation under Article 39, is located under Chapter VII of the Charter, and can be legally binding; it was intended to provide optional provisional measures before applying enforcement measures under Article 41 and 42. Thus according to traditional understanding, Article 40 does not include coercive measures such as military intervention. However, it is of no practical relevance to determine whether the Council is acting under Article 40 or 42 when authorizing the use of force in a particular case, since the Council only refers to Chapter VII in general when authorizing military action. From the viewpoint of this thesis it is more useful to identify the substantive norms of international law that can limit the Security Council's discretion to adopt military enforcement measures. These are norms of *jus cogens* and the principles of purposes of the United Nations. This means that the Council's measures should be consistent with basic human rights, international humanitarian law and the UN Charter itself.²⁵⁵

Since protection of human rights has increasingly become a matter of international concern, international peace and security have a much broader meaning than before.²⁵⁶ The Council deals with human rights situations when it considers them to constitute threat to peace. Although such situations often simultaneously involve illegal acts, the upholding of international law is not the Security Council's main concern and it is not necessary, nor always possible or desirable, for the Council to identify a certain state responsible for posing threat to peace. Consequently, enforcement measures should not be seen as punishment for states' wrongdoings but rather a reaction in order to maintain international peace and security.²⁵⁷

²⁵⁴ Anthony Aust: *Handbook of International Law*, pp. 206-207; Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 184.

²⁵⁵ Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, pp. 179-180, 215-216; Nigel D. White: *Keeping the Peace*, p. 92.

²⁵⁶ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", pp. 524-525.

²⁵⁷ Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 183.

For the purpose of illustrating how the competence of the Security Council for military action in civil wars translates into practical politics, the practice of the Council's authorization on the use of force in civil wars will be examined in the next Chapter.

2.3 The Practice of Security Council Intervention in Civil Wars

After the Cold War, the Security Council started to increase its engagement in situations of internal conflict. By adopting resolutions, it formally addressed 27 out of the 44 civil wars that were ongoing between 1989 and 2006 (61%). These numbers pertain to any kind of engagement, ranging from applying non-coercive measures and recommendations to the authorization of military intervention.²⁵⁸ The number of resolutions authorizing of the use of force in civil wars is much lower.²⁵⁹ The increased overall involvement reached its peak during the 1990s and by 2006 the Security Council was issuing fewer but more complex resolutions making more specific demands to the conflicting parties of civil wars than it did before. For various reasons, 17 of the 44 civil wars occurring during that period were not put on the Council's agenda (39%). It should be noted that the Security Council neither has the legal competence nor the political aim of engaging in every occurring civil war in the world.²⁶⁰ Furthermore, it seems like the Security Council is moving towards involvement in earlier stages of internal conflicts. Notably, after 1993, requirements concerning governance and political arrangements of states became more common in the Council's resolutions than demands directed at the military conduct of the warring parties. This reflects the Council's increased involvement in post-conflict situations where it seeks to sustain peace and hinder recurrence of conflict.²⁶¹

The following summary will be limited to civil wars that have been determined by the Security Council as constituting a threat to peace under Article 39, and which have ultimately lead to the Council authorizing military intervention. The goal is not to describe all Security Council military interventions in civil wars. The deliberation will be limited to the interventions that contribute to the law and practice and are important for the sake of comparison. From a legal standpoint it is necessary to identify the Council's reasons and arguments for intervention and shed some light on development leading to recent practice.

²⁵⁸ James Cockayne ect.: "The United Nations Security Council and Civil War", pp. 1-2.

²⁵⁹ Christine Gray: *International Law and the Use of Force*, p. 245.

²⁶⁰ James Cockayne ect.: "The United Nations Security Council and Civil War", pp. 1-2.

²⁶¹ James Cockayne ect.: "The United Nations Security Council and Civil War", pp. 1-2.

2.3.1 Military Intervention in the Former Yugoslavia (1992)

Following a severe outbreak of hostilities in Yugoslavia, the Security Council adopted a resolution identifying the situation as constituting threat to peace and imposed an arms embargo.²⁶² At this time, despite massive loss of lives, most delegates of the Security Council regarded the situation as a solely internal matter and the threat to peace was determined only because of the effects on neighbouring states.²⁶³ Upon the request of the government, a traditional peacekeeping force was set up under the appellation of UN Protection Force (UNPROFOR) in February 1992, consisting of 13,870 military and police personnel.²⁶⁴ The UN forces had the mandate of supervising the withdrawal of the Yugoslav People's Army, aiding humanitarian organizations and protecting civilians from armed attacks.²⁶⁵ Due to a deteriorating situation involving reports of ethnic cleansing and sexual assaults by the Bosnian Serb forces, humanitarian issues were increasingly the subject of Security Council resolutions.²⁶⁶ The UNPROFOR was enlarged and its mandate was repeatedly extended. On 13 August 1992, the Council further called upon all states to take *all necessary measures*, in co-ordination with the UN, to facilitate the delivery of humanitarian assistance to and within Bosnia.²⁶⁷ In September, UNPROFOR was given the mandate of providing protection where required without using force, except for in self-defence.²⁶⁸ All subsequent resolutions on UNPROFOR referred to Chapter VII of the Charter, causing higher expectations as to what the force could accomplish, since it still only could resort to force in self-defence.²⁶⁹

The UNPROFOR continued to work under expanded mandate, but was never explicitly authorized to use force going beyond self-defence.²⁷⁰ The situation required major political commitment and deployment of forces, which states were apparently not willing to deliver. This resulted in an unsuccessful operation of a UN force trying to work as a peacekeeping force in situations where there was no peace to keep.²⁷¹ Eventually in 1993, the Security Council authorized member states, acting nationally or through regional

²⁶² UN Doc. S/RES/713, 25 September 1991; Malcom N. Shaw: *International Law*, p. 1257.

²⁶³ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 303; Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, pp. 409-410.

²⁶⁴ Christine Gray: *International Law and the Use of Force*, p. 282; Malcom N. Shaw: *International Law*, p. 1257; UN Doc. S/RES/743, 21 February 1992.

²⁶⁵ Peter Malanczuk: *Akehurt's Modern Introduction to International Law*, p. 410.

²⁶⁶ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 302.

²⁶⁷ Malcom N. Shaw: *International Law*, pp. 1257-1258; UN Doc. S/RES/770, 13 August 1992.

²⁶⁸ UN Doc. S/RES/776, 14 September 1992.

²⁶⁹ Christine Gray: *International Law and the Use of Force*, pp. 283, 285.

²⁷⁰ Malcom N. Shaw: *International Law*, p. 1258.

²⁷¹ Malcom N. Shaw: *International Law*, pp. 1258, 1260.

organizations, to *take all necessary measures* to ensure compliance with the ban on flights.²⁷² NATO became involved on 30 August 1995 and heavily bombarded parts of Bosnia-Herzegovina held by Serbian forces. In November the same year, a peace treaty was signed and in December a multinational implementation force consisting of 60,000 troops was established to ensure compliance.²⁷³ Notably, the parties of the war consisted of six states within the former Socialist Federal Republic of Yugoslavia, with outside involvement of neighbouring countries. Nevertheless, the war was viewed as an internal conflict. The UN's involvement evinces how states were concerned with containing the conflict and reducing suffering but without fully committing, hoping that the conflicting parties themselves would resolve the conflict of their own accord.²⁷⁴

2.3.2 *Military Intervention in Somalia (1992)*

Despite only being composed of one ethnic group, Somalia has constantly been suffering clan-based civil wars. After gaining independence from colonial powers, President Siad Barre struggled to establish an effective government for two decades, which eventually failed with the collapse of his regime in January 1991. This instigated severe fighting between the warring factions seriously affecting millions of people.²⁷⁵ The previous failures of UN involvement in Yugoslavia caused the Council to be reluctant to respond to the Somalia crisis, although citizens of Somalia were facing even greater casualties than in Yugoslavia.²⁷⁶ It was not until 23 January 1992 that the situation was described as a threat to international peace and an arms embargo was imposed.²⁷⁷ In April 1992 a peacekeeping force, UNOSOM I, was established with the purpose of monitoring a supposed ceasefire and securing the delivery of humanitarian aid, but proved unable to fulfill its mission due to perpetual attacks. In December 1992, the Security Council addressed the human tragedy in Somalia and determined that the hindrance to the delivery of humanitarian support constituted a threat to peace, which was unique at the time. It authorized the use of force “to restore peace, stability and law and order” in Somalia.²⁷⁸ This kind of enforcement mission under Chapter VII, in order to provide emergency assistance to a population suffering the pains of civil war, had not been undertaken before in the history of the UN. Twenty-four member states jointly deployed

²⁷² UN Doc. S/RES/816, 31 March 1993.

²⁷³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 414; UN Doc. S/RES/1031, 15 December 1995.

²⁷⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 409, 415.

²⁷⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 402-403.

²⁷⁶ Christine Gray: *International Law and the Use of Force*, p. 286.

²⁷⁷ UN Doc. S/RES/733, 23 January 1992.

²⁷⁸ Christine Gray: *International Law and the Use of Force*, p. 287; UN Doc. S/RES/794, 3 December 1992.

37,000 troops under the acronym UNITAF, a US-led task force which faced serious difficulties in achieving its goals. Subsequently, the UNITAF was transformed into UNOSOM II, established under Chapter VII in March 1993 as the first peacekeeping force with the authority to use force beyond self-defence. This caused blurring of the lines between peacekeeping operations and enforcement operations.²⁷⁹ The UNOSOM II had the extended mandate to secure the situation and assist with rebuilding political institutions and the economy.²⁸⁰ It became involved in the conflict and suffered from attacks, resulting in the loss of many lives among UN personnel and Somalian civilians. Once again, this led to the redefining of the UNOSOM's mandate, which was ordered to turn back to traditional peacekeeping. In 1994 the Secretary-General stated that the presence of UNOSOM II forces only had had limited impact on peace process and security. The operation was finally terminated on 5 March 1995.²⁸¹ Never before had a UN operation been withdrawn without fulfilling its mission.²⁸² Today Somalia still does not have an effective government with territorial control.²⁸³

The intervention in Somalia as a reaction to a humanitarian crisis resulting from a civil war was momentous.²⁸⁴ Before Somalia, the Security Council always supported determinations of threats to peace with arguments of international repercussions and external effects; such as refugee flow to neighbouring countries.²⁸⁵ This has been called a “spillover effect” because of internal violence spreading beyond the country's borders with the potential of causing international turmoil.²⁸⁶ Determination of international dimensions of the conflict was considered to be a necessary condition for intervention in an internal conflict.²⁸⁷ Such as was the case with Resolution 688, adopted in 1991 on the situation in Iraq, where the “massive flow of refugees towards and across international frontiers and to cross-border incursions” was seen as threatening international peace and security in the region.²⁸⁸ It is noteworthy that the situation in Iraq in 1991 had in reality only minimal external effects. The

²⁷⁹ Christine Gray: *International Law and the Use of Force*, pp. 287-288; UN Doc. S/RES/814, 26 March 1993.

²⁸⁰ UN Doc. S/RES/814, 26 March 1993. The Security Council still emphasised: “that the people of Somalia bear the ultimate responsibility for national reconciliation and reconstruction of their own country”.

²⁸¹ The Comprehensive Report on Lessons Learned from United Nations Operation in Somalia (UNOSOM), <http://www.peacekeepingbestpractices.unlb.org/>; UN Doc. S/1994/1166, 14 October 1994; UN Doc. S/RES/954, 4 November 1994.

²⁸² Christine Gray: *International Law and the Use of Force*, p. 288.

²⁸³ “Somalia profile”, www.bbc.com.

²⁸⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 395.

²⁸⁵ Nigel D. White: *Keeping the Peace*, p. 45; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 403-404.

²⁸⁶ Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 141.

²⁸⁷ Ruth Gordon: “UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond”, p. 541.

²⁸⁸ UN Doc. S/RES/688, 5 April 1991.

situation was above all marked by the Iraqi government oppressing and harassing its civilian population. On account of this, the Security Council resolution on the situation in Iraq has been referred to as the first instance where the Council made a direct link between human rights deprivations within a state and threats to international peace and security.²⁸⁹ The resolution did not authorize the use of force.

It should be pointed out that the Security Council, in its resolution authorizing the use of force in Somalia, considers the situation to be of “unique character” and describes it as “complex and extraordinary [in] nature”, arguably with the intention of limiting the relevance of the intervention as precedent.²⁹⁰ Although the reaction to the situation combined peacekeeping and military forces, which proved only partially successful,²⁹¹ it marked the beginning of the Security Council’s practice of humanitarian intervention authorized under Chapter VII of the Charter.²⁹²

2.3.3 Military Intervention in Rwanda (1994)

Rwanda, which was under colonial rule until 1967, had for a long time suffered from internal clashes between ethnic groups. In October 1990, a civil war broke out between the French-supported government forces, consisting of the Hutu majority, and the Rwandese Patriotic Front (RPF), mostly consisting of the Tutsi minority. The conflict was not purely internal as the RPF rebels, situated in the North of Rwanda, also operated from Uganda.²⁹³ At the request of both Rwanda and Uganda, a UN Observer Mission (UNOMUR) was set up with the purpose of monitoring the border.²⁹⁴ On 4 August 1993, the parties signed a peace agreement and the Security Council established the UN Assistance Mission for Rwanda (UNAMIR) in order to assist with the implementation of the agreement. The UNAMIR, consisting of 2,500 lightly armed troops, also had the mandate to secure the situation in the country until the election of a transitional government.²⁹⁵ However, due to lack of the warring parties’ commitment to the agreement and the killing of the Presidents of Rwanda and Burundi, the situation escalated intensely. By September 1994, the estimated numbers of slaughtered

²⁸⁹ Richard B. Lillich: “The Role of the UN Security Council in Protecting Human Rights in Crisis Situations”, pp. 6-7.

²⁹⁰ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 403; UN Doc. S/RES/794, 3 December 1992.

²⁹¹ Christine Gray: *International Law and the Use of Force*, p. 326; Malcom N. Shaw: *International Law*, pp. 1260-1261.

²⁹² Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 402.

²⁹³ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 405.

²⁹⁴ UN Doc. S/RES/812, 12 March 1993; UN Doc. S/RES/846, 22 June 1993; UN Doc. S/RES/891, 20 December 1993.

²⁹⁵ Malcom N. Shaw: *International Law*, p. 1262; Christine Gray: *International Law and the Use of Force*, p. 292; UN Doc. S/RES/872, 5 October 1993.

people were up to one million.²⁹⁶ The UNOMUR was terminated with in June 1994,²⁹⁷ and the UNAMIR neither had the resources nor the mandate to handle the situation.

Despite the gross mistreatment of innocent people the Security Council did not consider the situation a ‘threat to international peace and security’ and rejected to empower the UNAMIR under Chapter VII.²⁹⁸ In May 1994, an embargo was imposed on Rwanda and the enlarged UNAMIR of 5,500 authorized troops was given the mandate of establishing secure humanitarian areas, although it only had authority to act with force in self-defence. However, states had no interest in engaging in another civil war and a month later, only Ethiopia had proved prepared to contribute military assistance.²⁹⁹ At last, when the inaction had become unbearably shameful and was harshly criticized by the international community, France offered troops and the Council determined that the magnitude of the humanitarian crisis in Rwanda constituted a threat to peace and security in the region. Acting under Chapter VII of the Charter the Council authorized the member states as a temporary and impartial operation to *use all necessary means* to achieve the humanitarian objectives set out in the resolution.³⁰⁰ The force was able to establish a humanitarian protected area and was discharged in August 1994, when the UNAMIR was strong enough to take over the operation. The civil war came to an end on 18 July 1994 when the RPF had gained control of the country and declared a ceasefire. The operation of UNAMIR was terminated on 6 March 1996.³⁰¹

It is clear that the previous experience of involvement in the civil war of Yugoslavia and Somalia resulted in the reluctance to get involved in Rwanda. The inaction resulted in failure to prevent genocide and caused the continued lack of confidence on Africa’s behalf in the UN organization.³⁰² In April 2014, twenty years after the genocide in Rwanda, the UN Secretary-General Ban Ki-moon said: “[I]n Rwanda, troops were withdrawn when they were most needed” and that the UN is still ashamed over its failure.³⁰³ The case of Rwanda resembles how it has proven difficult for states to put collective interests before their own. It also shows how the Security Council can in practice only authorize the use of force, not decide it. Hence,

²⁹⁶ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 406; Christine Gray: *International Law and the Use of Force*, p. 292.

²⁹⁷ UN Doc. S/RES/928, 20 June 1994.

²⁹⁸ Malcom N. Shaw: *International Law*, pp. 1262-1263; Ian Hurd: *International Organizations*, p. 149; UN Doc. S/RES/912, 21 April 1994.

²⁹⁹ UN Doc. S/RES/918, 17 May 1994; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 406; Malcom N. Shaw: *International Law*, p. 1263; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 406.

³⁰⁰ UN Doc. S/RES/929, 22 June 1994.

³⁰¹ Christine Gray: *International Law and The Use of Force*, p. 293.

³⁰² Christine Gray: *International Law and The Use of Force*, p. 294.

³⁰³ “Rwanda genocide. UN ashamed, says Ban Ki-moon”, www.bbc.com.

the UN intervention system is dependent upon both an affirmative vote in the Security Council as well as deployment of funds and troops, mostly from the stronger and larger states, sometimes referred to as double standards.³⁰⁴

2.3.4 Military Intervention in Haiti (1994)

The citizens of Haiti were under the rule of dictator François Duvalier from 1957 to 1971 and then under the rule of his son, Jean-Claude Duvalier, from 1971 to 198, when their rule was put to an end due to popular discontent.³⁰⁵ Upon request of a provisional government, a UN Observer Group for the Verification of the Elections in Haiti (ONUVEH) was established with the mandate to monitor the elections that were to be held. However, this first democratically elected government in the history of Haiti, led by the Reverend Jean-Bertrand Aristide, was removed from office in a military coup in September 1991. The Security Council did not formally respond to the situation until June 1993, when it condemned the illegal regime and imposed economic sanctions,³⁰⁶ because the majority of states viewed the situation as solely within the domestic jurisdiction of Haiti.³⁰⁷ In the aftermath, the *Governors Island Agreement* was signed, where the parties agreed on bringing Jean-Bertrand Aristide back to power. A peacekeeping mission was established, the UN Mission in Haiti (UNMIH), but was not able to carry out its mandate due to increasing violence.³⁰⁸ On 31 July 1994, the Security Council (with China and Brazil abstaining), under Chapter VII, authorized the member states to form a multinational force and use *all necessary means* to restore the democratically elected government. The Security Council also extended the mandate of the UNMIH, to monitor the operation of the multinational force and prepare for completing the mission of the multinational force.³⁰⁹ The US-led multinational force consisting of approximately 20,000 troops achieved its mandate on 15 October 1994 and its mission was transferred to the peacekeeping force in March 1995.³¹⁰

Several aspects of the military intervention in Haiti in 1994 should be noted. First, the Security Council never explicitly determined the situation as constituting a threat to international peace,³¹¹ which is unusual since it is a prerequisite for resorting to military

³⁰⁴ Jeremy Greenstock: "The Security Council in the Post-Cold War World", p. 261.

³⁰⁵ "Timeline: Haiti", www.bbc.com.

³⁰⁶ UN Doc. S/RES/841, 16 June 1993; Antonio Cassese: *International Law*, p. 347; Malcom N. Shaw: *International Law*, p. 1239.

³⁰⁷ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 407.

³⁰⁸ Christine Gray: *International Law and The Use of Force*, p. 329.

³⁰⁹ UN Doc. S/RES/940, 31 July 1994.

³¹⁰ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 408.

³¹¹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 407.

action.³¹² Second, it was the first time (and has to the present day been the only time) that the mandate of a UN military intervention was to restore a democratic government. A probable reason for this infrequency is that international law has prescribed that states have the inalienable right to choose its political systems without interference. Moreover, given the various forms of governance in the states of the world, intervention in pursuit of democracy has not appeared attractive to states.³¹³ Although the resolution emphasized the unique character of the situation requiring an exceptional response, the intervention in Haiti has been referred to as precedent for intervention in pursuit of democracy and even collective humanitarian intervention.³¹⁴ The military intervention in Haiti remains unique in many ways as a new course was taken in UN military actions in internal situations.³¹⁵

2.3.5 Military Intervention in East Timor (1999)

In May 1999 the East Timorese were allowed to vote on their independence, after Indonesia's intervention in 1975, resulting in 78% voting in favour. The results of the referendum were not accepted and militias supported by the Indonesian military launched attacks, leading to a complete breakdown of law and order.³¹⁶ In September 1999, the Security Council determined the situation as constituting threat to peace and security.³¹⁷ Upon the request of the government of Indonesia, the Security Council established a multinational force under a unified command (INTERFET) with the mandate of restoring peace and security, support the UN mission in carrying out its tasks and to facilitate humanitarian assistance operations. Acting under Chapter VII of the Charter it authorized the states participating in the multinational force to take *all necessary measures* to complete its mandate. The resolution provided that the multinational force should operate until replaced *as soon as possible* by a UN peacekeeping operation.³¹⁸ The case of East Timor is noteworthy in the way that after the intervention, a UN Transitional Administration (UNTAET) was established. UNTAET exercised legislative and executive authority and had the mandate to administer the territory and assist with the establishment of self-governance. Within six months, the peacekeeping

³¹² Malcom N. Shaw: *International Law*, pp. 1236-1237; Anthony Aust: *Handbook of International Law*, p. 196.

³¹³ Christine Gray: *International Law and the Use of Force*, pp. 56, 81.

³¹⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 408; Christine Gray: *International Law and The Use of Force*, p. 329.

³¹⁵ Christine Gray: *International Law and the Use of force*, p. 328; Malcom N. Shaw: *International Law*, p. 1239.

³¹⁶ "East Timor profile", www.bbc.com.

³¹⁷ UN Doc. S/RES/1264, 15 September 1999.

³¹⁸ UN Doc. S/RES/1264, 15 September 1999.

operation was handed over to UNTAET.³¹⁹ In January 2002, UNTAET's mandate was extended until the date of independence.³²⁰ East Timor became an independent state on 20 May 2002.³²¹ After thirteen years of peacekeeping the UN mission left the country in December 2012.³²²

2.3.6 Military Intervention in Liberia (2003)

The Security Council intervention in Liberia is an example of an intervention upon the request of the Secretary-General for humanitarian reasons. In June 2003, President Charles Taylor accepted to leave office after armed opposition forces had acquired control over large territories and the Security Council had imposed sanctions. Subsequently, when a ceasefire was agreed upon but not complied with, the Secretary-General called upon the Security Council to intervene.³²³ This was the second time in three months that he had proposed intervention by a multinational force to prevent humanitarian tragedies, as a multinational force had been established in Côte d'Ivoire in May on his initiative, to bring about a democratically elected government.³²⁴ The Security Council was reluctant to intervene but in August 2003, it eventually established a multinational force led by France. It authorized member states under Chapter VII to *use all necessary means* to secure the situation for delivery of humanitarian aid, assist with the implementation of the ceasefire and prepare the arrival of a UN stabilization force. The intervention was followed by a comprehensive peace agreement in August 2003.³²⁵

2.3.7 Military Intervention in Haiti (2004)

On 29 February 2004, the Security Council once again adopted a resolution under Chapter VII authorizing the use of force by multinational forces in Haiti, which were to secure and stabilize the situation, facilitate humanitarian assistance and establish law and order.³²⁶ The left-wing government of President Aristide, which had been restored in 1994, became unpopular with the Bush administration ten years later. Despite its democratic legitimacy, Aristide's regime was cut from previous international financial support and recognition,

³¹⁹ Christine Gray: *International Law and the Use of Force*, p. 332; "Completed Peacekeeping Operations", www.un.org.

³²⁰ UN Doc. S/RES/1392, 31 January 2002.

³²¹ "Indonesia minus", www.economist.com.

³²² "Peacekeepers Exit East Timor", www.nytimes.com.

³²³ Christine Gray: *International Law and the Use of Force*, p. 338; UN Doc. S/RES/1343, 7 March 2001.

³²⁴ UN Doc. S/RES/1484, 30 May 2003; Christine Gray: *International Law and the Use of Force*, p. 59.

³²⁵ Christine Gray: *International Law and the Use of Force*, p. 339; UN Doc. S/RES/1497, 1 August 2003.

³²⁶ UN Doc. S/RES/1529, 29 February 2004.

causing an insurrection where opposition groups gained control of large territories.³²⁷ Eventually, Aristide stepped down, blaming the USA for kidnapping him and forcing into exile.³²⁸ This time, the resolution authorizing the use of force explicitly determined the situation constituting threat to peace and security, but made no reference to a unique or exceptional character of the case, as a pro-democratic intervention could not be argued for.³²⁹ The intervention was harshly criticized, for example by the CARICOM. The Security Council regretted its resort to such severe measures in one of the poorest states in the world, where peacekeeping forces might have been adequate.³³⁰ Within three months a UN stabilization force, MINUSTAH, took over from the multinational force.³³¹ The 2004 intervention in Haiti is among those that resemble the political aspect of the decision-making within the Security Council and reflects how matters of pure traditional domestic nature have been put on the international agenda with varying success. It also underlines how the United Nations appears to be more likely to intervene in situations where it has previously been involved.

2.3.8 Military Intervention in Darfur, Sudan (2006)

The crisis in Darfur, Sudan, broke out in February 2003 and consisted of large-scale violence and severe fighting between ethnic groups, mainly the Fur, the Masalit, and the Zaghawa. There were also religious tensions and escalating opposition against the government, which became involved with the aim of eliminating potential source of political opposition. After large-scale killings of over 200,000 people and displacement of millions, the Security Council struggled for a long time with the question whether the situation amounted to a threat to international peace or a problem of domestic turmoil and civil war.³³² In June 2004, the UN created a special political mission, UNAMIS, to work towards peace between the parties. It was not until July 2004 that the Security Council determined the situation as threat to international peace and security in the region.³³³

In March 2005, the UNAMIS was replaced by the UN Mission in the Sudan (UNMIS), which was authorized to take *all necessary action* to protect UN personnel and prevent further violations of human rights and humanitarian law.³³⁴ A peace agreement was signed in May

³²⁷ Christine Gray: *International Law and the Use of Force*, p. 330.

³²⁸ "Whose coup in Haiti", www.economist.com.

³²⁹ Christine Gray: *International Law and the Use of Force*, p. 330.

³³⁰ Christine Gray: *International Law and the Use of Force*, pp. 330-331.

³³¹ UN Doc. S/RES/1542, 30 April 2004.

³³² Ian Hurd: *International Organizations*, pp.148-149; Christine Gray: *International Law and the Use of Force*, p. 53.

³³³ UN Doc. S/RES/1564, 18 September 2004.

³³⁴ UN Doc. S/RES/1590, 24 March 2005.

2006 but because of non-compliance of two major rebel forces the fighting continued.³³⁵ After further expansion of the UNMIS forces and its mandate to protect civilians *by all necessary means* in 2006,³³⁶ the Security Council proposed the establishment of a major UN or African Union force to protect civilians and put an end to the killings. The establishment of such a force was seriously delayed, which demonstrates the fact that the Security Council can only authorize military intervention and is dependent upon the member states to deploy troops and implement its resolutions.³³⁷ Finally in 2007, the UN African Union Hybrid Operation in Darfur (UNAMID) of 26,000 troops was established in consultation with the African Union to implement the peace agreement.³³⁸ The reason for the late reaction was that states were unwilling to intervene without the consent of the government.³³⁹

It should also be noted that the Security Council took action for the first time under the 1948 *Genocide Convention*,³⁴⁰ when it established the Commission of Inquiry to investigate whether acts of genocide or violations of humanitarian law had been committed in Darfur. Based on the Commission's results, the Security Council referred the case to the International Criminal Court in March 2005.³⁴¹

2.3.9 Military Intervention in Libya (2011)

As a response to widespread violence because of the fighting between the Gaddafi regime and rebel forces, the Security Council imposed an arms embargo on Libya and sanctions on high-ranking officials in the Libyan regime in February 2011. In addition, the Council referred the situation to the International Criminal Court, this being the second time since Darfur.³⁴² On 17 March 2011, the Security Council imposed a no-fly zone on Libya and authorized member states to take *all necessary measures* to protect civilians under threat of attack, notwithstanding the arms embargo.³⁴³ Consequently, any transfer of arms to Libya in support of either side of the conflict was still illegal. Naturally, the only exception from the transfer of arms was for the states authorized to use force, which could transfer their own arms.³⁴⁴ The authorization was very broad as the use of force was only limited in the sense that it should

³³⁵ Christine Gray: *International Law and the Use of Force*, p. 55.

³³⁶ UN Doc. S/RES/1706, 31 August 2006.

³³⁷ Christine Gray: *International Law and the Use of Force*, p. 55.

³³⁸ Malcom N. Shaw: *International Law*, p. 1266; UN S/RES/1769, 31 July 2007.

³³⁹ Christine Gray: *International Law and the Use of Force*, p. 55.

³⁴⁰ *The Convention on the Prevention and Punishment of Crime of Genocide*, 9 December 1948.

³⁴¹ UN Doc. S/RES/1593, 31 March 2005; "Sudan profile", www.bbc.com, 10 December 2013; Christine Gray: *International Law and the Use of Force*, pp. 54-55.

³⁴² UN Doc. S/RES/1970, 26 February 2011; "Libya profile", www.bbc.com.

³⁴³ UN Doc. S/RES/1973, 17 March 2011.

³⁴⁴ Dapo Akande: "Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?", www.ejiltalk.org.

not amount to foreign occupation, thus both authorizing air power and ground forces in general.³⁴⁵ While Gaddafi promised “no mercy” to the rebels, it seemed clear that the mandate of protecting civilians included the final goal of removing the Gaddafi regime.³⁴⁶ On 20 October 2011, Gaddafi was captured and killed and foreign military forces were removed.³⁴⁷ Although frequently referred to as a successful foreign intervention, it left the country vulnerable to civil war and human rights abuses, while the transitional government still struggles to control local militias.³⁴⁸

Following media reports on the Syrian government’s use of chemical weapons against its own citizens in 2013,³⁴⁹ many pointed to the intervention in Libya which had the purpose of protecting citizens and claimed inconsistency in the Security Council’s decisions on when to intervene. While the situation in Libya caused about 14,000 deaths, the Syrian civil war had in late 2013 after two years of armed conflict resulted in at least 110,000 deaths and a massive refugee flow.³⁵⁰ Comparison of the two situations demonstrates the many factors that affect decisions of military intervention in civil wars. Several elements make the Syrian situation more complicated than the situation in Libya and only a few factors will be mentioned here. Firstly, the apparent foreign support of Bashar al-Assad’s government in Syria, including Russia, Iran, China, the al-Maliki government in Iraq and the Hezbollah in Lebanon, as opposed to the widely unsupported Gaddafi regime. It was significant that the Arab League supported the intervention in Libya, which it does not in the case of military intervention in Syria. Another important element is that the rebels in Syria have been far less cohesive than the rebels were in Libya. Hence, if the motive were to remove the Assad regime, it remains unclear who would succeed. Additionally, the Syrian armed forces are much stronger than Gaddafi’s armies, thus an intervention in Syria would have more risk of widespread regional impact.³⁵¹

Because of the Security Council’s previous inability to effectively address the situation in Syria, the resolution adopted unanimously in February 2014 is somewhat significant. The resolution addressed the humanitarian crisis in Syria and called upon the warring parties to put an end to the violence and allow delivery of humanitarian assistance. Without mentioning

³⁴⁵ Robert Chesney: “Surprisingly Broad Scope of UN Security Council 1973”, www.lawfareblog.com.

³⁴⁶ “Libya: UK forces prepare after UN no-fly zone vote”, www.bbc.com.

³⁴⁷ “Libya profile”, www.bbc.com.

³⁴⁸ Owen Jones: “Libya is a disaster we helped create”, www.theguardian.com.

³⁴⁹ “Clear and convincing evidence of chemical weapons use in Syria, UN team reports”, www.un.org.com.

³⁵⁰ UN Doc. S/RES/11292, 22 February 2014.

³⁵¹ Ari Shapiro: “Why Syria Is More Complicated Than Libya”, www.npr.com; “How Syria and Libya compare”, www.theguardian.com.

the ICC, it also demanded that those responsible for the human rights violations to be brought to justice.³⁵²

2.3.10 Military Intervention in the Central African Republic (2013)

A more recent example of Security Council authorization of the use of force is in the Central African Republic (CAR). In December 2013, the Council determined that the situation constituted a threat under Article 39 of the Charter. Acting under Chapter VII of the Charter, it allowed the African-led International Support Mission (MISCA) and the French troops already located in the country to support, *by all necessary measures*, the Mission in discharging its mandate. The goal was to restore the government in order to stabilize the situation as well as to protect civilians and facilitate conditions for humanitarian assistance. Thus, it has sometimes been referred to as a pro-democratic intervention. The Council also alluded to the duty of every State to refrain from organizing, instigating, assisting or participating in acts of civil strife in another state and imposed a sanctions regime, including a year-long embargo banning the sale or transfer to the CAR of weapons of all types.³⁵³ On 28 January 2014, the Council welcomed the establishment of a European Union (EU) operation to support MISCA and authorized it to *take all necessary measures* for a period of six months to carry out their mandate.³⁵⁴ These resolutions were in response to gross human rights violations, notably by Muslim Séléka rebels and militia groups that had for decades been plaguing the population by massive killings of civilians, acts of sexual violence and the looting of homes.³⁵⁵ When the Muslim president Michel Djotodia resigned in January 2014, the Séléka forces began to withdraw. In response the Christian militias, such as the Anti-balaka, started to target Muslims in large-scale massacres. Recent reports reveal the seriousness of the situation claiming that the acts could constitute crimes against humanity and war crimes. Amnesty International has referred to the situation as ethnic cleansing and the UN Secretary-General warning against repeating of the mistakes of the genocide in Rwanda in 1994.³⁵⁶ On 7 April 2014, the EU Council finally launched a temporary EU military operation in conformity with the previous authorization of the Security Council in January, with the purpose of eventually handing the operation over to a UN peacekeeping operation or

³⁵² UN Doc. S/RES/2139, 22 February 2014.

³⁵³ UN Doc. S/RES/2127, 5 December 2013; Christine Gray: *International Law and the Use of Force*, p. 58.

³⁵⁴ UN Doc. S/RES/2134, 28 January 2014.

³⁵⁵ "Central African Republic: UN underscores grave humanitarian human rights situation", www.un.org.

³⁵⁶ "Q&A: The Central African Republic's human rights crisis", www.amnesty.org; David Smith: "Christian threats force Muslim convoy to turn back in CAR exodus", www.theguardian.com; UN Doc. SG/SM/15751/AFR/2850, 5 April 2014.

African partners.³⁵⁷ On 10 April 2014, the Security Council established a new peacekeeping mission, the UN Multidimensional Integrated Stabilization Mission in the CAR (MINUSCA) of up to 10,000 military and 1,800 police personnel. On 15 September 2014, MISCA will transfer its authority over to the MINUSCA.³⁵⁸

2.4 Conclusions

Since the end of the Cold War the UN Security Council has systematically engaged in the resolution of internal conflicts, extensively departing from the original intentions of the UN Charter.³⁵⁹ Over the course of this period the Council's practice has evolved substantially, yet not evenly, over time to the point where it has been prepared to determine internal conflicts to constitute threat to *international* peace and security under Article 39 of the Charter.³⁶⁰ Simultaneously, the scope of Article 2(7) and the domestic jurisdiction of states have been limited.³⁶¹ Most of the aforementioned interventions reveal how humanitarian crises and the breakdown of law and order, which originally were considered to be within the domestic jurisdiction of states, have been put on the international agenda by considering them as threats to international peace under Article 39.³⁶² The development of finding internal situations to constitute threat to international peace began with the Security Council referring to external effects of otherwise internal situation, such as the case of Iraq 1991,³⁶³ but ever since the case of Somalia in 1992, a "spillover effect" does not appear to be a necessary condition anymore.³⁶⁴

In the case of Yugoslavia, the situation had many of the typical elements considered to make an internal conflict international, such as the armed participation of many countries, a massive refugee flow to neighbouring countries and severe human rights abuses.³⁶⁵ However, the intervention in Haiti concerning the governance of the state, is perhaps among the cases that have stretched the scope of Article 39 the most and contributed further difficulties in determining the boundaries of threat to peace.³⁶⁶ In the absence of limiting standards, this flexible interpretation has proved vital to the Security Council's competence to fulfill its

³⁵⁷ "EU military operation in the CAR launched", <http://www.consilium.europa.eu/press>.

³⁵⁸ UN Doc. S/RES/2149, 10 April 2014.

³⁵⁹ Malcom N. Shaw: *International Law*, p. 1267; Christine Gray: *International Law and the Use of Force*, p. 326.

³⁶⁰ James Cockayne ect.: "The United Nations Security Council and Civil War", pp. 1, 42; Christine Gray: *International Law and the Use of Force*, p. 257.

³⁶¹ Malcom N. Shaw: *International Law*, p. 1267.

³⁶² Antonio Cassese: *International Law*, p. 347.

³⁶³ UN Doc. S/RES/688, 5 April 1991.

³⁶⁴ Erica de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 141.

³⁶⁵ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", p. 579.

³⁶⁶ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", p. 574.

obligation to maintain international peace and security.³⁶⁷ Yet at the same time it has caused further uncertainty as regards the threshold of when internal conflicts constitute threat to peace, thus becoming international matters.³⁶⁸ The increased interventions in internal conflicts appear to have influenced the perspective and expectations of many states as regards the legitimacy and probabilities of UN or UN-authorized humanitarian interventions in internal catastrophes.³⁶⁹ It seems that states increasingly request the UN to intervene in internal conflicts.³⁷⁰ However, the Security Council authorizations have been inconsistent and situations of humanitarian catastrophes have also been left unattended, such as the case of Syria.³⁷¹ Although the Charter “reaffirm[s] faith in fundamental human rights,” it does not provide clear provisions on how to protect them and deal with situations of mass atrocities within a particular state.³⁷² In this way, intervention in situations of humanitarian suffering is dependent on the Security Council’s determination under Article 39 and its decisions of appropriate action.

When examining the Security Council resolutions authorizing the use of force it becomes apparent that there has been a development towards providing clearer objectives for the use of force, which are often described in the mandate of the operation.³⁷³ Furthermore, the Security Council resolutions increasingly have a certain time limit, and are thus dependent upon the Council for renewal of the operation.³⁷⁴ Time limits have been set either by specifying a certain amount of months, such as in Rwanda,³⁷⁵ where the operation forces also had to report regularly on the progress of implementation of the resolutions (a duty which is increasingly imposed upon states),³⁷⁶ or by setting an open frame within which to reach a certain goal (functional limits), such as in the case of Haiti where the multinational forces were ordered to terminate their mission when “a secure and stable environment [had] been established.”³⁷⁷ A very uncertain time limit was set in the case of East Timor where the multinational force was to be replaced by a peacekeeping force “as soon as possible,”³⁷⁸ and the resolutions regarding

³⁶⁷ Erika de Wet: *The Chapter VII Powers of the United Nations Security Council*, p. 140.

³⁶⁸ Ruth Gordon: “UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond”, p. 588.

³⁶⁹ Richard B. Lillich: “The Role of the UN Security Council in Protecting Human Rights in Crisis Situations”, p. 8.

³⁷⁰ Ruth Gordon: “UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond”, p. 588.

³⁷¹ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 924.

³⁷² *A More Secure World*, p. 65.

³⁷³ Antonio Cassese: *International law*, pp. 348-349.

³⁷⁴ Christine Gray: *International Law and the Use of Force*, p. 334.

³⁷⁵ UN Doc. S/RES/929, 22 June 1994.

³⁷⁶ Christine Gray: *International Law and the Use of Force*, p. 334; Antonio Cassese: *International Law*, p. 349.

³⁷⁷ Antonio Cassese: *International law*, p. 349; UN Doc. S/RES/940, 31 July 1994.

³⁷⁸ UN Doc. S/RES/1262, 15 September 1999.

the former Yugoslavia³⁷⁹ and Somalia³⁸⁰ of 1992 are among the few that did not prescribe any duration of the mandate.³⁸¹ It can be assumed that the resolution on Iraq in 1991 remained a lesson learned, where the USA and the UK made an attempt to refer to an implied authorization of a ten-year-old resolution without time limits.³⁸²

Since states have been willing to undertake authorized military actions themselves, rather than deploying their forces under UN command as was originally intended, the implementation of military actions has in practice been dependent on the coalitions of willing states.³⁸³ Despite the lack of a clear legal basis in the Charter, it appears to be generally accepted that the UN can delegate its power to bring about enforcement actions to its member states.³⁸⁴ Many of the aforementioned cases show how the self-interest of states affect whether they are willing to deploy troops to enforce military action under Chapter VII.³⁸⁵ States have generally been reluctant to deploy troops for peacekeeping missions, particularly in Africa, where the EU has recently been more actively involved, such as in the intervention in the CAR described above, but also in the DRC in 2003 and in Côte d'Ivoire in 2006.³⁸⁶ The interventions in Rwanda and Somalia bear witness to the fact that forces with elements of both consent and imposition have resulted in blurred lines between peacekeeping and enforcement actions.³⁸⁷ The distinction between a peacekeeping force and a multinational one was clearer in the intervention of East Timor, where INTERFET had a clearer mandate of peacekeeping and the multinational force was authorized to use force *by all necessary means*.³⁸⁸

The military interventions authorized by the Security Council have both been upon the request of the government of states (Rwanda, East Timor, Yugoslavia, Sudan) or in the absence of consent (Haiti, Liberia, Libya). Generally speaking, the cases where states request or grant consent for foreign military intervention are less likely to cause problems as regards domestic jurisdiction of states.³⁸⁹ The main aspects of foreign interventions in civil wars upon request of the government of a state, but without Security Council authorization, will be examined in the following Chapter.

³⁷⁹ UN Doc. S/RES/770, 13 August 1992.

³⁸⁰ UN Doc. S/RES/794, 3 December 1992.

³⁸¹ Christine Gray: *International Law and the Use of Force*, p. 333.

³⁸² Christine Gray: *International Law and the Use of Force*, pp. 348-250; UN Doc. S/RES/688, 5 April 1991.

³⁸³ Christine Gray: *International Law and the Use of Force*, p. 366.

³⁸⁴ Christine Gray: *International Law and the Use of Force*, pp. 332, 328.

³⁸⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 406.

³⁸⁶ Christine Gray: *International Law and the Use of Force*, p. 340.

³⁸⁷ Malcom N. Shaw: *International Law*, p. 1267.

³⁸⁸ UN Doc. S/RES/1264, 15 September 1999.

³⁸⁹ Ruth Gordon: "UN Intervention in Internal Conflicts: Iraq, Somalia, and Beyond", p. 588.

3 State Intervention in Civil War with Government Consent

3.1 General Aspects of Foreign Intervention by Invitation

It follows from the principle of state sovereignty that outside involvement in internal affairs of a state is not impermissible *per se* but only unlawful interference.³⁹⁰ The sphere of permissible actions has been debated, but it seems logical that actions by a third state cannot be unlawful when requested or allowed by the consenting state (*volenti non fit injuria*).³⁹¹ In a general manner, Article 20 of the 2001 ILC's Draft Articles on Responsibility of States for Internationally Wrongful Acts provides the following:

Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.³⁹²

This idea undoubtedly lies behind the basic principle of the right of a legitimate government to invite a third state to use force in its territory, although the theoretical basis for the rule is not entirely clear.³⁹³ For example, no mention is made of the principle in the UN Charter but in traditional international law it was definitely in full force.³⁹⁴ According to the principle, a valid state consent precludes the act of sending troops to another state from constituting an international unlawful act. Of course, provided that the consent is freely given by the legitimate authority and that the actions of the invited state remain within the boundaries of the consent.³⁹⁵

The principle does not appear to contradict any interpretation of the principle of state sovereignty,³⁹⁶ and there is no rule in international law especially prohibiting the government of a state assisting the established legitimate government of another state to suppress insurrection.³⁹⁷ However, it may be questioned whether the foreign use of force to assist another state suppressing opposition forces contradicts the "territorial integrity or political independence" of a state under Article 2(4) of the Charter.³⁹⁸ The validity of the principle is recognized in the *Nicaragua case* where the Court formulated a brief authoritative general

³⁹⁰ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 28; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 210.

³⁹¹ Malcom N. Shaw: *International Law*, p. 1151; Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 191.

³⁹² *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, p. 72; UN Doc. A/RES/56/83, 12 December 2001.

³⁹³ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 209.

³⁹⁴ Antonio Cassese: *International Law*, p. 369.

³⁹⁵ Malcom N. Shaw: *International Law*, p. 793; Antonio Cassese: *International Law*, pp. 370-371.

³⁹⁶ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 322.

³⁹⁷ Ian Brownlie: *International Law and the Use of Force by States*, p. 321.

³⁹⁸ Antonio Cassese: *International Law*, p. 371.

dictum stating that external intervention is allowable at the request of the government.³⁹⁹ Contrary to unilateral intervention such action acts as a form of bilateral agreement between the consenting and intervening states.⁴⁰⁰

The right to invite or give consent for outside intervention in a state belongs exclusively to the government of a state and is not at hand for an opposition.⁴⁰¹ More precisely, since the state and government are abstract entities without the capacity to express their will, it falls on the legal representatives of the governments of states to speak for the state and act on its behalf.⁴⁰² In the *Nicaragua case*, after concluding that US activities in relation to the contras constituted a *prima facie* act of intervention, the ICJ considered whether any legal justifications could possibly exist for US assistance to the opposition. The Court concluded that not much would remain of the principle of non-intervention if intervention were also lawful upon the request of opposition groups. Such a rule would result in the authority of any state to intervene at any time in the internal affairs of other states and would not correspond to present international law.⁴⁰³ Intervention by third states in support of rebels is prohibited and this is in fact a customary rule of international law.⁴⁰⁴ Formulated in the 1970 *Declaration of Friendly Relations*:

[N]o state shall organize, assist, foment, finance, invite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state.⁴⁰⁵

Although the principle of foreign intervention at the request of the established authorities is accepted in theory,⁴⁰⁶ its scope and application in practice has caused complications. The *Nicaragua case* provides that the rule does exist and is at hand for governments but it considerably lacks detail on how to implement the principle.⁴⁰⁷ The purposes of this thesis render necessary a discussion that attempts to analyse whether foreign military intervention in civil wars based on the invitation or consent of the government can be lawful. The main issue

³⁹⁹ *Nicaragua case*, para. 246.

⁴⁰⁰ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 209-210.

⁴⁰¹ Christine Gray: *International Law and the Use of Force*, p. 81; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 78.

⁴⁰² In accordance with the basic principle of State representation in international law. Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 190; David Wippman: "Military Intervention, Regional Organizations", p. 211.

⁴⁰³ *Nicaragua case*, para 246; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 319; Christine Gray: "The Use of Force and the International Legal Order", p. 597. See also UN Doc. S/RES/1234, 9 April 1999.

⁴⁰⁴ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 78; Antonio Cassese: *International Law*, p. 54.

⁴⁰⁵ UN Doc. A/RES/25/2625.

⁴⁰⁶ UN Doc. A/RES/3314 (XXIX) of 14 December 1974.

⁴⁰⁷ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 322.

is to determine what actually constitutes valid consent by a legitimate government. Several factors come into consideration, such as how to establish who is considered the legitimate government in civil wars and whether the entity considered being the 'government' can allow foreign intervention in a situation of civil war.

Due to a lack of clear treaty provisions or judicial precedents, assessing the position of modern international customary law in this respect requires a study of the interplay of relevant general principles of international law together with state practice. The rationale of the principles of non-intervention and state sovereignty as well as the inalienable right of a state to choose its political, economic, social, and cultural systems (self-determination) suggest that the admissibility of forcible intervention by invitation of the government needs to be carefully analysed.⁴⁰⁸

3.2 The Legitimate Government

3.2.1 *Effective Control over the State's Territory*

Identifying who is the legitimate government of a state is a decisive factor for the application of the rule of consent. Because international law consists of general norms it can determine a decisive criteria for *what* a government is in abstract terms, but not *who* is the government in a given case.⁴⁰⁹ International law does not provide a simple definition or test of legitimacy,⁴¹⁰ but effective control over all or most of the territory of a state and that the government is likely to continue to exercise that control, is generally put forward as the most important criterion when deciding whether a government is valid.⁴¹¹ In modern state practice 'effectiveness' refers to control; in particular, control of the machinery of state, which generally requires at least control of the capital city.⁴¹² Widespread recognition of a government can also *prima facie* be strong evidence for the existence of a government as it implies that the regime in question has effective control of a state.⁴¹³

It seems undisputed that external aid to a government by its request is legal when there is no organized opposition to the government with the aim of replacing that government or when the opposition is limited to a particular policy of the government, because the

⁴⁰⁸ Christine Gray: *International Law and the Use of Force*, p. 81; Antonio Cassese: *International Law*, p. 61.

⁴⁰⁹ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 15.

⁴¹⁰ Ian Brownlie: *International Law and the Use of Force by States*, p. 323; Guy S. Goodwin-Gill and Stefan Talmon: *The Reality of International Law*, p. 536.

⁴¹¹ James Crawford: *Brownlie's Principles of Public International Law*, p. 152; Malcom N. Shaw: *International Law*, p. 455.

⁴¹² Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 14.

⁴¹³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 82; Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 194.

government remains effective.⁴¹⁴ Complications arise when the legal status of the government, which is alleged to have provided consent, is a matter of doubt because consequently the presumption that the government represents the state becomes untenable.⁴¹⁵ In a civil war, when an outbreak of insurrection results in an internal armed opposition effectively threatening the government's control over the state, it challenges the condition of state control and authority.⁴¹⁶ Thus, the question remains whether a state beset by civil war is competent to request outside military assistance.⁴¹⁷

Scholars have put forward different views regarding the matter. Oppenheim states that military intervention to help a foreign government quell an insurrection is not unlawful interference. This right belongs to the government until it is completely overthrown with the exception of insurgents recognized as belligerents.⁴¹⁸ Belligerency is a formal status of the insurgents as lawful combatants entailing rights and duties according to classic international law, such as neutrality.⁴¹⁹ Belligerency has never been recognized in civil wars during the twentieth century, which makes the exception of no practical importance nowadays. Although states have often argued this stance of an absolute right of the government to invite outside aid this assessment of the law appears to reflect traditional customary law.⁴²⁰ Brownlie argues with reference to the principle of self-determination and non-intervention as well as the danger of making an internal conflict international, that it is harder to find a legal basis for external aid to the government in situations of obvious support to the insurgents, providing a serious challenge to the government.⁴²¹

This calls for a categorization of conflicts, for if domestic unrest does not reach the threshold of a civil war, outside help would be permissible.⁴²² Many scholars support this view,⁴²³ and add that the mere fact of civil war casts serious doubt on the legal representative of the state, which results in the state not being capable of granting consent.⁴²⁴ This view is supported by the fact that generally it is precisely the authority of the sitting government that

⁴¹⁴ Ian Brownlie: *International Law and the Use of Force by States*, p. 327.

⁴¹⁵ Ian Brownlie: *International Law and the Use of Force by States*, p. 317.

⁴¹⁶ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 212.

⁴¹⁷ Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 197.

⁴¹⁸ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 322; Ian Brownlie: *International Law and the Use of Force by States*, p. 322.

⁴¹⁹ Malcom N. Shaw: *International Law*, p. 1149; Antonio Cassese: *International Law*, p. 429.

⁴²⁰ Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", pp. 191, 252; Antonio Cassese: *International Law*, p. 369.

⁴²¹ Ian Brownlie: *International Law and the Use of Force by States*, p. 327.

⁴²² Christine Gray: *International Law and the Use of Force*, pp. 81-82.

⁴²³ Malcom N. Shaw: *International Law*, p. 1152.

⁴²⁴ Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 196-197; Ian Brownlie: *International Law and the Use of Force by States*, p. 323.

is the matter of dispute in an internal conflict.⁴²⁵ The situation of civil war would therefore result in the prohibition of external assistance to either side of the internal conflict, particularly through military means, as the people of the state should have the right to determine the outcome of the conflict themselves (political independence of the state).⁴²⁶ Disrupting the interplay between forces may also threaten the peace of a larger area and therefore contradict the UN Charter.⁴²⁷ However, the consequences of international interference vary from case to case and it should not be overlooked that foreign military bases or other forms of foreign military presence may also contribute stability to the area.⁴²⁸ Although it might be politically desirable that the right of the government to invite outside help would be restricted to limited local unrest and not extend to civil wars, it may put fully legitimate governments at serious risk.⁴²⁹

State practice indicates that the right of a state to use force at the invitation of a government fighting a limited unrest, not amounting to a civil war, has been taken for granted by states.⁴³⁰ Examples of such interventions are those by France in situations of local unrest in Gabon in 1964, and Chad in 1968, which were limited to repressing local protests or army mutinies with the purpose of re-establishing the government. France invoked defence treaties and based its intervention on the invitation of the governments.⁴³¹ Accordingly, states are often reluctant to acknowledge that situations amount to civil war, in fear of internationalizing the situation.⁴³² When limited unrest has been classified as civil war, many forms of outside aid to governments have been accepted, such as financial, technical and arms provisions, or indeed training of armed forces.⁴³³ During the Cold War, superpowers and other states used these means to support governments suiting their political taste. The USA helped to install pro-Western governments such as in Guatemala (1954), in Chile (1973) and in Iran (1953) while the USSR supported governments as those of Cuba, Angola, Vietnam and Ethiopia. Likewise, France supported friendly regimes in Africa and retained military bases in its

⁴²⁵ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 323; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 212.

⁴²⁶ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 220; Christine Gray: *International Law and the Use of Force*, p. 81.

⁴²⁷ Ian Brownlie: *International Law and the Use of Force by States*, p. 323; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 212.

⁴²⁸ Christine Gray: *International Law and the Use of Force*, p. 84.

⁴²⁹ Malcom N. Shaw: *International Law*, p. 1152; Ian Brownlie: *International Law and the Use of Force*, p. 324.

⁴³⁰ Christine Gray: *International Law and the Use of Force*, p. 85.

⁴³¹ Christine Gray: *International Law and the Use of Force*, p. 85.

⁴³² Christine Gray: *International Law and the Use of Force*, p. 86; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 226.

⁴³³ Malcom N. Shaw: *International Law*, p. 1152; Christine Gray: *International Law and the Use of Force*, p. 84.

former colonies in order to maintain influence.⁴³⁴ At the time, there was general agreement on the principle of non-interference in civil wars, but it is clear that states manipulated the rules to fit their own interests.⁴³⁵

Minor and rapid external military interventions with the purpose of restoring a *de jure* government have in practice been enforced without much attention from other states. Thus a brief discontinuity in the effective control of governments appears to have been accepted. During the Cold War, both France and the UK frequently relied on consent for interventions in former colonies in order to restore friendly governments that had already lost their hold on power.⁴³⁶ A few examples of military interventions that did not meet resistance on the international scene are the UK military aids to the incumbent governments of Uganda, Kenya and Tanganyika in 1964, suppressing rebel movements that had increased their power substantially and in the case of Tanganyika even controlled the capital. Another example is the intervention of Senegal into Guinea-Bissau civil war in 1998 helping the incumbent government to restrain opposition forces that had rapidly gained control over the armed forces of the country.⁴³⁷

In addition, there are examples of invitations having been regarded as legal despite a longer discontinuance in a government's effective control. For example, during the civil war of Lebanon the government was assumed to be capable of validly giving consent for the peacekeeping mission of UNIFIL, installed in 1978,⁴³⁸ and to request military assistance from the Multinational Forces in 1982, despite the fact that the Lebanese Army only controlled a very limited piece of the territory of the country. Similarly, in 1960 the Security Council established the United Nations Mission in the Congo (ONUC) with the mission of preventing the occurrence of a civil war in the Congo by all appropriate means, including the use of force if necessary. During the time of ONUC's operation there were several governmental changes, the incumbent government did not control large territories of the country and had problems controlling its own army. Despite this the 'government' was thought to have the authority to grant consent.⁴³⁹ However, it should be noted that in both cases a prior external intervention

⁴³⁴ Christine Gray: *International Law and the Use of Force*, pp. 84-85.

⁴³⁵ Christine Gray: "The Use of Force and the International Legal Order", p. 598.

⁴³⁶ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", pp. 210, 217; Christine Gray: *International Law and the Use of Force*, p. 84.

⁴³⁷ Christine Gray: *International Law and the Use of Force*, p. 86; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", pp. 216-217.

⁴³⁸ UN Doc. S/RES/425, 19 March 1978.

⁴³⁹ Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 198; UN Doc. S/RES/143, 14 July 1960; UN Doc. S/RES/161, 21 February 1961; UN Doc. S/RES/169, 24 November 1961.

had occurred, i.e. Israel had invaded Lebanon⁴⁴⁰ and Belgian forces were present in the Congo,⁴⁴¹ thus presumably affecting the right to invitation (see Chapter 3.4 on counter-intervention).

3.2.2 *Recognition of Opposition Groups*

Since the right to request or give consent for foreign intervention in a state only belongs to governments of states and not to opposition groups,⁴⁴² it is not surprising that state practice indicates that when states assist opposition groups they generally do so covertly and tend to challenge the legitimacy of the incumbent governments. Examples of this are the US support to opposition forces in Angola, Cambodia, and Afghanistan.⁴⁴³ Clearly, if the incumbent government is not the legitimate one, it leaves open the possibility of someone else being the government. If the opposition would be considered to be the legitimate government, external assistance to it would not be prohibited. This leads to the question whether an opposition group can in case of governmental collapse, be recognized as the legitimate government, and thereby be capable of providing consent to foreign military intervention.

Recognition of governments only really comes into question where the change in government is unconstitutional,⁴⁴⁴ such as governmental changes due to a civil war.⁴⁴⁵ In general, recognition of an entity as the government of a state implies that it is considered to fulfill relevant factual criteria and that the recognizing state is prepared to deal with the government as the governing authority of the state, accepting the legal consequences that follow.⁴⁴⁶ Two theories exist as regards the legal effects of recognition. Elaborated by Anzilotti and Kelsen, the constitutive theory considers recognition to be an invariable condition for the establishment or creation of a government. According to this theory a government cannot exist without recognition. The prevailing view today is that recognition is declaratory, i.e. merely an acknowledgement of the fact that an entity objectively fulfils the requirements of a government, thus without legal effects. However, the declaratory theory does not clarify who ultimately determines whether an entity meets the objective test or not. It

⁴⁴⁰ “Lebanon profile”, www.bbc.com.

⁴⁴¹ UN Doc. S/RES/143, 14 July 1960.

⁴⁴² Christine Gray: *International Law and the Use of Force*, p. 81; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 78.

⁴⁴³ Christine Gray: “The Use of Force and the International Legal Order”, p. 598.

⁴⁴⁴ Malcom N. Shaw: *International Law*, p. 454.

⁴⁴⁵ David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, p. 212.

⁴⁴⁶ Malcom N. Shaw: *International Law*, p. 455.

is in fact left to other states to decide whether to recognize or not, granting them great discretion, especially in terms of governments obtaining power by violent means.⁴⁴⁷

It can be of help to view recognition as an incremental process beginning with political measures, and then ultimately if certain conditions are met, followed by legal measures. A distinction should therefore be made between political and legal recognition. Political recognition of an opposition group resembles that the recognizing state is acknowledging that it is willing to enter into political relations with that group.⁴⁴⁸ As every state has the freedom to choose whether or not to have political relations with another state, the political recognition of an opposition group is voluntary and does not amount to unlawful intervention in the internal affairs of a state, although it may be presumed as an unfriendly act to the incumbent government.⁴⁴⁹ Correspondingly, political recognition can be made subject to various conditions and can be unilaterally withdrawn at any time for political purposes. The Canadian Minister of Foreign Affairs for example made it a precondition for political recognition of the Syrian Opposition Coalition (SOC), formed in November 2012, that it would reject extremism and embrace minorities.⁴⁵⁰

The act of political recognition can be very valuable for the group as to its prestige and economic situation. However, it does not create any legal obligations and has only a limited practical effect.⁴⁵¹ The most prominent effect is that a state recognizing an opposition group cannot validly engage in the act of concluding treaties or contracts with the government they consider illegitimate and unrepresentative. Furthermore, other states that conclude agreements with a widely de-recognized government might have to face the consequences of the agreements being reviewed by the (new) legitimate representative, if the opposition becomes the government of the state.⁴⁵² Certainly, political recognition of an opposition group entails the withdrawal of political recognition to the incumbent government, but the incumbent government nevertheless remains the ‘government’ and a subject of international law holding all the rights and duties in the mutual relations between both states. The existence of the rights

⁴⁴⁷ Antonio Cassese: *International Law*, p. 73; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 83-84, 86-87; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 75.

⁴⁴⁸ Antonio Cassese: *International Law*, p. 74. Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 11-12.

⁴⁴⁹ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 13, 27, 29. Similar to the conclusion of the ICJ in the *Nicaragua case*, para 244-245, that the cessation of optional economic relations did not breach the principle of non-intervention.

⁴⁵⁰ Kathryn Blaze Carlson, Stewart Bell: “Canada tells Syrian opposition it won’t be recognized until it rejects extremism despite U.S. acceptance”, <http://news.nationalpost.com>; Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 2, 12; Malcom N. Shaw: *International Law*, p. 465.

⁴⁵¹ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 12.

⁴⁵² Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 26.

and duties between the states is not affected and they remain in force, although asserting the rights might cause complications.⁴⁵³ Thus, an opposition group, despite widespread political recognition by other states, does not have the authority to ask for outside military intervention in civil wars.⁴⁵⁴

Legal recognition, on the other hand, is the establishment of the view of the recognizing state that a certain group or entity fulfils the factual conditions for governmental status in international law. Accordingly, as an establishment of a fact, legal recognition cannot be subject to conditions and it can only be withdrawn upon changes of factual circumstances.⁴⁵⁵ Legal recognition can refer to a *de jure* or a *de facto* government. A *de jure* government is usually defined as a permanent and firmly rooted government, standing on its own without subservience to a foreign power. This is opposed to a *de facto* government which implies that the government has territorial control but that there is some doubt as to its long-term viability. The former has a more solid legal basis than the latter. Usually a distinction between the two is not of great importance, both because unless especially referring to one rather than the other, recognition should be assumed to regard a *de jure* government and because the effects of both recognitions are quite the same.⁴⁵⁶ An example of the usage of the two kinds of recognition is the UK's *de jure* recognition of the Republican government during the Spanish Civil war of 1936–1939, while at the same time extending *de facto* recognition to the forces of the dictator General Franco due to the territorial control his forces had attained.⁴⁵⁷

The most important criterion for governmental status is the aforementioned territorial control, exercised by the group claiming to be the legitimate government of a state. The logic behind this measure is that entities that do not exercise territorial control should not be made responsible for parts of the country that they do not control. In addition, it is not desirable to derecognize governments still in control of the country and thereby exonerate them of responsibility in parts of the country that they do control.⁴⁵⁸

State practice of recognition is not fully congruent to the criterion of territorial control. In general, the principle of territorial control of the country is strictly applied to the recognition

⁴⁵³ Malcom N. Shaw: *International Law*, pp. 470–471; Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 13, 25.

⁴⁵⁴ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 18, 26.

⁴⁵⁵ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 13, 15; Antonio Cassese: *International Law*, p. 74.

⁴⁵⁶ Malcom N. Shaw: *International Law*, pp. 459–460; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 88; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 79.

⁴⁵⁷ Malcom N. Shaw: *International Law*, p. 460.

⁴⁵⁸ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 14. See also Chapter II of the ILC's Articles on State Responsibility.

of new regimes overthrowing a central government, as oppositions will rarely be recognized without almost complete territorial control.⁴⁵⁹ A cautious application of legal recognition in these circumstances is appropriate since premature recognition of a new government is generally considered an international wrong against the old government,⁴⁶⁰ establishing international responsibility.⁴⁶¹ However, governments that no longer have control of a particular country have in practice still enjoyed continued recognition from other states and in fact acted on behalf of the state well beyond the moment they lost control. This situation often lasts as long as the government has control over the capital city and does not seem to be likely to collapse, or until another identifiable group has obtained control of the territory.⁴⁶² Examples of governments accepted as representing the state despite rebels holding large territories are Chad, Angola, El Salvador and Ethiopia.⁴⁶³ Effective territorial control thus cannot be regarded as an absolute principle.⁴⁶⁴

Whether recognition of an opposition group can have legal effects depends largely on the situation of the ‘legitimate representative of a people’.⁴⁶⁵ The main factor to determine is whether the group has a separate legal status from its government and is thus entitled to certain independent rights under international law, such as the right to *external* self-determination.⁴⁶⁶ That is, the right to establish an independent and sovereign state, to integrate into another state, or emerge “into any other political status freely determined by the people concerned”.⁴⁶⁷ States are not allowed to suppress groups entitled to the right of self-determination.⁴⁶⁸ Consequently, third states are not allowed to assist states denying self-determination to a people by provision of troops.⁴⁶⁹ On the other hand, the later General

⁴⁵⁹ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, p. 197.

⁴⁶⁰ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, p. 199.

⁴⁶¹ Malcom N. Shaw: *International Law*, p. 778; see also Article 1 of ILC’s Articles on State Responsibility: “Every internationally wrongful act of a State entails the international responsibility of that State.”

⁴⁶² Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, p. 198; David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, p. 220; Guy S. Goodwin-Gill and Stefan Talmon: *The Reality of International Law*, p. 533.

⁴⁶³ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, p. 199.

⁴⁶⁴ Malcom N. Shaw: *International Law*, p. 455.

⁴⁶⁵ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 16.

⁴⁶⁶ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 16. See also Articles 1(2), 55, 73 and 76(b) of the UN Charter, Article 1 of the ICCPR and ICESCR.

⁴⁶⁷ UN Doc. A/RES/2625 (XXV), 24 October 1970; Peter Malanczuk: *Akehurt’s Modern Introduction to International Law*, p. 326.

⁴⁶⁸ UN Doc. A/RES/1514, 14 December 1960; UN Doc. A/RES/2105, 20 December 1965; UN Doc. A/RES/2131 (XX), 21 December 1965; UN Doc. A/RES/42/22, 18 November 1987.

⁴⁶⁹ Antonio Cassese: *International Law*, pp. 62-63; Peter Malanczuk: *Akehurt’s Modern Introduction to International Law*, p. 78.

Assembly resolutions that have contributed to the law on this matter appear to suggest that foreign military intervention on behalf of people legally invoking the right to self-determination is lawful.⁴⁷⁰ However, this is not entirely clear and the developing and developed states disagree whether the resolutions refer to material or moral support. With reference to the general rule prohibiting military assistance to rebels, as well as the absence of a rule for the use of force against a state which violates international law, many believe that this right can only be resorted to if the people have suffered an armed attack by the government, allowing for collective self-defence.⁴⁷¹

The clearest example of a people holding the right to self-determination are the representatives of a people under colonial or alien subjugation.⁴⁷² The General Assembly has only expressly recognized two non-colonial peoples to have the right to self-determination, i.e. the population of South Africa (until the dissolution of the apartheid regime) and the Palestinians.⁴⁷³ In 1982 the General Assembly encouraged all states and international organizations to “extend their support to the Palestinian people through its sole and legitimate representative, the Palestine Liberation Organization (PLO), in its struggle to regain its right to self-determination and independence”.⁴⁷⁴ Subsequently, the PLO entered into several agreements with Israel regarding Palestinian self-rule. On 9 September 1993, Israel recognized the PLO as the representative of the Palestinian people.⁴⁷⁵ This recognition was considered to be a necessary act for the conclusion of these agreements, constituting a legal recognition of the PLO.⁴⁷⁶

Another possibility of the revival of the right to external self-determination is in situations where the government of *multinational* states does not represent the whole population without distinction as to race, creed or colour.⁴⁷⁷ An example of this is the exclusion of a racial group

⁴⁷⁰ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 30; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 337.

⁴⁷¹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 337-338; Christine Gray: *International Law and the Use of Force*, pp. 60-61.

⁴⁷² Antonio Cassese: *International Law*, p. 61; Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 16; Christine Gray: *International Law and the Use of Force*, p. 64.

⁴⁷³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 333. See for instance the UN Doc. A/RES/2396 (XXIII), 2 December 1968, UN Doc. G/RES/2672 C (XXV), 8 December 1970 and UN Doc. A/RES/3236 (XXIX), 22 November 1974.

⁴⁷⁴ UN Doc A/RES/37/43, 3 December 1982.

⁴⁷⁵ By that time, in 1993, over a hundred states had recognized Palestine as a state. James Crawford: *The Creation of States in International Law*, p. 438.

⁴⁷⁶ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 16-17.

⁴⁷⁷ Antonio Cassese: *International Law*, p. 61; Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 18; *The Declaration on Friendly Relations*, UN Doc. A/RES/2625 (XXV), 24 October 1970.

from equal access to government in a state.⁴⁷⁸ This situation is not possible when a single people has already exercised its right of external self-determination by establishing a sovereign and independent state, because thereby the people as a legal person have been subsumed into the state. The term ‘people’ then refers to the population of the state as a whole; consequently not capable of enjoying the right of external self-determination as it becomes the right of the state and is directed against external interference by other states.⁴⁷⁹ In fact, this situation is only possible in the most extreme cases.⁴⁸⁰ It was asserted by the Supreme Court of Canada in the *Secession of Quebec case* that the group in question has to be suffering extreme and ceaseless persecution and lack any reasonable prospect for challenge.⁴⁸¹

The example of the Syrian Opposition Coalition (SOC), led by Ahmed Moaz al-Khatib, illustrates this further. The SOC was formed in November 2012, opposing the authority of President Bashar al-Assad. It claimed to be ‘the legitimate representative of the Syrian people’ and was recognized as such by many states.⁴⁸² However, the recognitions of the SOC⁴⁸³ could only be political, because the Syrian people do not exist as a legal person separate from the Syrian state. Firstly, because there is only a single people within the Syrian state, i.e. the Syrian people. Secondly, because the government, although it may be a dictatorship favouring the Alawite minority, it was not discriminatory with regards to racial groups.⁴⁸⁴ Thirdly, because the majority of Syrian territory was not controlled by the SOC.⁴⁸⁵ Political recognitions of the SOC demonstrated a moral support and judgment on the legitimacy of the opposition but did not change the fact that the Assad government was still the government of Syria.⁴⁸⁶

For further clarification, Stefan Talmon has established criteria for the determination of whether an opposition can be recognized as the legitimate representative of a people. He states that: “[T]he incumbent government must have lost legitimacy and the opposition must be representative, broad, and enjoy a reasonable prospect of permanence.” This is a stricter

⁴⁷⁸ Antonio Cassese: *International Law*, pp. 61-62.

⁴⁷⁹ James Crawford: *The Creation of States in International Law*, pp. 127-128; Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 16-17.

⁴⁸⁰ Malcom N. Shaw: *International Law*, p. 523.

⁴⁸¹ *Reference re Secession of Quebec Case*, (1998) 161 DLR (4th) 385.

⁴⁸² Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 2, 16, 17, 33.

⁴⁸³ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 2-7.

⁴⁸⁴ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 18.

⁴⁸⁵ Jill Dougherty: “What will recognizing the opposition accomplish?”, <http://security.blogs.cnn.com/>.

⁴⁸⁶ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, p. 28.

criterion than for the determination of a government, which for example does not need to be representative according to international law.⁴⁸⁷

A more recent example combining the elements that have been discussed above is the intervention by unidentified armed forces to Ukraine's Crimea region in late February 2014, described by the Ukrainian ambassador to the UN, Yuriy Sergeyev, as Russia's "clear act of aggression".⁴⁸⁸ Although partly relying on the right to rescue their own nationals, one of Russia's main argument is the right of the people in the Crimea region to external self-determination and intervention upon invitation.⁴⁸⁹ Russia asserts that the former Ukrainian President Viktor Yanukovich was ousted out of Ukraine in an illegal coup and is therefore still Ukraine's legitimate head of state.⁴⁹⁰ With reference to a letter written by the ousted president, Russia claims that the troops in Crimea are there at his request.⁴⁹¹ However, this argument fails to support the legitimacy of intervention because at the time of the alleged invitation, Mr Yanukovich did not exercise effective control over the country. Nevertheless, following a referendum held on 16 March 2014 in the Autonomous Republic of Crimea and the city of Sevastopol, where over 95% of the voters claimed that they wanted to join Russia as a federal subject,⁴⁹² President Vladimir Putin formally recognized the Crimea region as "a sovereign and independent state".⁴⁹³

The day before the referendum the Security Council made an attempt to adopt a text urging member states not to recognize the planned referendum, but failed, due to a Russian veto. The draft would have "reaffirmed the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders".⁴⁹⁴ However, the General Assembly adopted a resolution on 27 March 2014 where it urged states not to recognize changes in the *status quo* of the Crimea region and affirmed that the referendum was not authorized by Ukraine and therefore had no validity.⁴⁹⁵ The referendum, valid or not, does not change the fact that even if the people of the Crimea region have a right to self-determination,

⁴⁸⁷ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", pp. 19-20.

⁴⁸⁸ Chelsea J. Carter, Diana Magnay, Victoria Eastwood: "Ukraine mobilizes troops amid crisis with Russia", www.edition.cnn.com. See also UN Doc. A/RES/3314 (XXIX), 14 December 1974 on the Definition of Aggression, which asserts that the use of foreign armed forces on the territory of a state, with or without occupation of the territory, is considered an act of aggression.

⁴⁸⁹ Nico Krisch: "Crimea and the Limits of International Law", www.ejiltalk.org.

⁴⁹⁰ Halimah Abdullah: "Crimea's vote: Was it legal?", www.edition.cnn.com.

⁴⁹¹ Denver Nicks: "Russia Says Ousted Ukrainian Leader Asked for Military Intervention", www.time.com; Marko Milanovic: "Yanukovich Confirms He Invited Russian Intervention", www.ejiltalk.com.

⁴⁹² "Analysis: Why Russia's Crimea move fails legal test", www.bbc.com.

⁴⁹³ Andrew Katz: "Putin Signs Decree to Recognize Crimea as Independent", www.time.com.

⁴⁹⁴ UN Doc. SC/11319; Bill Chappel: "Russia Vetoes U.N. Security Council Resolution On Crimea", www.nrp.org.

⁴⁹⁵ UN Doc. A/68/L.39, 24 March 2014.

they cannot secede from Ukraine unilaterally. Outside the context of decolonization or illegal occupation, international law does not support the use or threat of force to attain self-determination or secession from existing states. However, if states forcibly repress rightful claims of secession, that might strengthen the case of self-determination.⁴⁹⁶ Due to the comparison to NATO's military action in Kosovo in 1999,⁴⁹⁷ Ukraine's UN ambassador asserted that there "is no evidence that the Russian ethnic population or Russian-speaking population is under threat."⁴⁹⁸ While there are immense complications to the situation in Crimea it at least manifests the fact that elastic rules provide openings for abuse.⁴⁹⁹

3.3 Validity of Consent

In order for consent for military intervention to be valid it has to be voluntarily alleged, clearly established and given before the intervention.⁵⁰⁰ The timing of consent for example was a matter of doubt in France's intervention of 1979 in the Central African Republic in order to overthrow Emperor Jean-Bédél Bokassa, because, while relying on an invitation by the new ruler, French troops and the new President actually arrived together. If consent is manufactured or granted under pressure the consent may be regarded as vitiated, i.e. coerced consent can never be valid.⁵⁰¹ In this regard, the principles regarding the validity of state consent to treaties can be of relevance.⁵⁰²

Generally, state consent can be withdrawn at any time by the effective government and does not need any formalities to be valid. Continuing presence of foreign troops may then constitute unlawful use of force and be in breach of the principle of non-intervention.⁵⁰³ Furthermore, there are situations where consent cannot preclude wrongfulness, for example with regards to compliance with peremptory norms (*jus cogens*) and in cases of grave human rights violations.⁵⁰⁴ In Article 16 of the ILC's Articles on State Responsibility the following is to be found:

⁴⁹⁶ Christine Gray: *International Law and the Use of Force*, p. 64.

⁴⁹⁷ Analysis: Why Russia's Crimea move fails legal test", www.bbc.com; Christine Gray: *International Law and the Use of Force*, p. 64.

⁴⁹⁸ Catherine E. Shoichet, Marie-Louise Gumuchian, Susanna Capelouto: "Ukraine crisis: Russia stands firm despite rebukes, threats of sanctions", www.edition.cnn.com.

⁴⁹⁹ Nico Krisch: "Crimea and the Limits of International Law", www.ejotalk.org.

⁵⁰⁰ Ian Brownlie: *International Law and the Use of Force by States*, p. 317; Antonio Cassese: *International Law*, pp. 370-371.

⁵⁰¹ Christine Gray: *International Law and the Use of Force*, p. 85-86.

⁵⁰² *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 73.

⁵⁰³ Malcom N. Shaw: *International Law*, p. 1152; David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 234.

⁵⁰⁴ Antonio Cassese: *International Law*, p. 371. See also Article 16 of ILC's Articles on State Responsibility.

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.⁵⁰⁵

The case of *Armed Activities on the Territory of Congo*⁵⁰⁶ deals with several aspects of consent, as there was a dispute between the DRC and Uganda regarding whether troops from Uganda had permission to act in Eastern Congo from May 1997 until 11 September 1998. President Laurent Kabila had invited Ugandan troops into Eastern Congo in mid-1997 and in April 1998 a *Protocol on Security along the Common Border* was signed between the two countries making reference to their common interest of controlling anti-government rebels who were acting at the border.⁵⁰⁷ However, after overthrowing the government of President Mobutu Sese Seko with the help of Uganda and Rwanda, President Kabila turned against his former allies and started using the insurgent forces against them. This led to extensive military activities on the territory of the DRC and later court proceedings before the ICJ.⁵⁰⁸

The Court came to the conclusion that the Protocol's phrase to "co-operate in order to insure security and peace along the common border" could be interpreted as a continued authorization for Ugandan troops on the border but did not constitute a legal basis for such authorization or consent. On 28 July 1998, President Kabila made an official statement where he terminated the Rwandan military presence and claimed that it marked "the end of the presence of *all* foreign military forces in the Congo". The Court concluded that no formalities would have been required for the DRC to withdraw its consent. Without coming to conclusion whether the consent was considered to have been alleged by the President's statement or earlier, it had at the latest been withdrawn by 8 August 1998 with the Victoria Falls Summit where the DRC claimed that Rwanda and Uganda had invaded its territory.

It is also noteworthy that the Court pointed out that the original consent was not open-ended but only a permission to act against rebels on the Eastern border. Thus it would not suffice to justify the actions of the Ugandan troops in terms of geographic location.⁵⁰⁹ The case affirms that no formalities are needed for withdrawal of consent and consent can be

⁵⁰⁵ *Yearbook of the International Law Commission, 2001*, vol. II, Part Two, p. 72; UN Doc. A/RES/56/83, 12 December 2001.

⁵⁰⁶ *Congo v. Uganda*, p. 168.

⁵⁰⁷ *Congo v. Uganda*, paras. 42-46.

⁵⁰⁸ Christine Gray: *International Law and the Use of Force*, pp. 68-69.

⁵⁰⁹ *Congo v. Uganda*, paras. 46-54. The Security Council implicitly accepted the DRC viewpoint and affirmed that despite not being a purely internal conflict, activities of outside states were threatening the territorial integrity and political independence of the DRC. See. UN Doc. S/RES/1234, 9 April 1999.

granted beforehand by treaty but needs to allow explicitly for the actions of the state relying on consent.

3.4 Legitimate Counter-Intervention

It has been explained that aid to rebels is generally prohibited in international law. Therefore, foreign military intervention in support of opposition forces in a civil war can allow for counter-intervention on behalf of the government at its request.⁵¹⁰ In such circumstances, external intervention is introduced as legitimate response to earlier illegal involvement by a third party.⁵¹¹ For instance, France frequently relied on this argument when intervening with force in support of the governments of Africa. In the case of Tunisia in 1980, France claimed that Libya was supporting the insurgents. When helping the dictator Gnassingbé Eyadéma to keep power in Togo in 1986 it said that Ghana and Burkina Faso had already intervened against the government. However, also referring to a defence treaty allowing for interference in case of a foreign threat, France intervened to support the government in Djibouti in 1991 in response to an alleged Ethiopian intervention.⁵¹²

When other states materially assist rebel movements with the use of force, legal grounds for counter-intervention could presumably also be found in the doctrine of collective self-defence under Article 51 of the Charter,⁵¹³ explained in Chapter 1.6 above. Certainly, there is no clear distinction between the two.⁵¹⁴ But since collective self-defence requires a prior armed attack, it always constitutes a counter-intervention.⁵¹⁵ The main difference can be found within the requirement of an armed attack for resort to self-defence, that is, the magnitude of prior outside intervention. Counter-intervention could therefore be a response to prior activities by a third state not amounting to an armed attack and is thus a broader concept, still requiring previous illegal intervention.⁵¹⁶

A completely reversed situation can occur, that is, if a prior outside intervention on the government's side would be regarded as illegal it could allow for outside aid to the rebels.⁵¹⁷ This potential right to counter-intervention would constitute an exception to the rule prohibiting assistance to insurgents. The rule is often supported by the argument that the established authorities in civil wars, which lack popular support but are still in power because

⁵¹⁰ Christine Gray: *International Law and the Use of Force*, p. 81, 92.

⁵¹¹ Malcolm N. Shaw: *International Law*, p. 1150.

⁵¹² Christine Gray: *International Law and the Use of Force*, p. 98.

⁵¹³ Malcolm N. Shaw: *International Law*, p. 1152.

⁵¹⁴ Christine Gray: *International Law and the Use of Force*, p. 168; Malcolm N. Shaw: *International Law*, p. 1135.

⁵¹⁵ Ian Brownlie: *International Law and the Use of Force by States*, p. 271.

⁵¹⁶ Antonio Cassese: *International Law*, p. 369.

⁵¹⁷ Malcolm N. Shaw: *International Law*, p. 1153.

of outside aid, are puppet governments controlled by their foreign supporters. Thus counter-intervention is necessary to protect the independence of the country. State practice is far from clear but this has been argued in circumstances where states are sympathetic to the insurgents and wish to counterbalance the support provided to the established government. This was for example the case in the Afghanistan situation where states claimed that the Soviet intervention at the end of 1979 amounted to an invasion thus allowing other states to aid the opposition forces.⁵¹⁸ On these grounds, Egypt started providing military training and arms in support of the Muslim insurgents and Saudi Arabia financially supported the insurgents.⁵¹⁹ Further, the USSR and Cuba presented the argument of previous South African involvement when they intervened in the Angolan civil war of 1975–6 in support of the People's Movement for the Liberation of Angola (MPLA).⁵²⁰ It is difficult to determine whether USSR was supporting the 'government' or the opposition group, because the war broke out following a decolonization conflict, fought by two former liberation movements, i.e. there was no incumbent government.⁵²¹

Since 1945, states have frequently tried to justify their intervention in foreign civil wars by saying that they are defending the incumbent governments against external subversion. Examples of this are the perfunctory justifications provided by the USSR because of their interventions in Hungary in 1956 and Afghanistan in 1979. Further, the interventions by the US in the Dominican Republic in 1965 and Grenada in 1983 were certainly not undisputed and all received negative international reaction. In all instances both the alleged invitation and the legal capacity of the regime allegedly inviting or requesting military aid were seriously unpersuasive.⁵²² The USSR tried to justify the interventions by arguing that it was defending the countries against Western subversion.⁵²³ The intervention in Hungary in 1956 had the purpose of repressing governmental changes as the USSR supported the former one-party rule. The USSR claimed that the Soviet armies already present in Hungary were acting at the request of the former Prime Minister and that the Hungarian Government had the right to ask for aid to suppress the insurrection. The intervention was condemned by a majority in the General Assembly and would have been condemned by the Security Council as well, had the

⁵¹⁸ Malcolm N. Shaw: *International Law*, p. 1153; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 320.

⁵¹⁹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 320.

⁵²⁰ Malcolm N. Shaw: *International Law*, p. 1150.

⁵²¹ "Angola profile", www.bbc.com.

⁵²² Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 213.

⁵²³ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 326.

resolution not been vetoed by the Soviet Union.⁵²⁴ Another example is the US intervention in Lebanon in 1958, citing the request of the government to stabilize the situation brought on by threats from outside, supposedly from Syria, thus also justifying the intervention on the basis of collective self-defence. Other states argued that the incumbent authorities were political puppets of the USA, doubting the validity of the invitation.⁵²⁵

Another debated intervention was the one by the USA in Grenada in 1983.⁵²⁶ It raised the question whether an invitation given by a ceremonial Head of State, i.e. the Prime Minister of Barbados speaking on behalf of the Organization of East Caribbean States (OECS), apparently received after the intervention took place and against the wishes of the *de facto* seat of power, the Governor-General of Grenada, could have any validity. The main reason for the broad criticism it received was that the action went well beyond peacekeeping and amounted to unlawful military intervention.⁵²⁷ In these cases, the validity of the principle itself was not in dispute but whether consent from proper state authorities had been given.⁵²⁸ The fact that many of these justifications are in fact abuses of the rule is beside the point. The significance lies in the frequency of the attempted justifications, implying that the justification is necessary in order for the intervention to be legal.⁵²⁹

Overall, international involvement on either side raises the question whether a conflict is an inter-state conflict or a civil war considerably affecting the applicable law, such as in the Vietnam War of 1961–75.⁵³⁰ It is particularly noteworthy that since 1945 a surprisingly consistent practice has emerged where states justify their intervention as a counter-intervention, even when the existence of an invitation from a recognized government was not disputed.⁵³¹ This indicates that states assume it is not sufficient to rely on consent or invitation by a legitimate government alone.

3.5 Conclusions

Despite the simple appearance of the principle of the right of a legitimate government to invite or give consent for external military intervention, the application of the rule has in

⁵²⁴ Ian Brownlie: *International Law and the Use of Force by States*, p. 322; Christine Gray: *International Law and the Use of Force*, p. 87; UN Doc. S/RES/120, 4 November 1956; UN Doc. S/RES/3730, 4 November 1956.

⁵²⁵ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, pp. 214-217.

⁵²⁶ Malcom N. Shaw: *International Law*, p. 1151.

⁵²⁷ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, pp. 234-236; Christine Gray: “The Use of Force and the International Legal Order”, p. 616.

⁵²⁸ David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, p. 211.

⁵²⁹ Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 326.

⁵³⁰ Christine Gray: *International Law and the Use of Force*, p. 82; Malcom N. Shaw: *International Law*, p. 1150.

⁵³¹ Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”, p. 213.

practice been strikingly complicated.⁵³² When situations move beyond the simple case of a recognized and effective governments, fighting limited unrest and inviting external intervention for limited practices, it remains difficult to determine precisely the cases in which invited intervention will be generally accepted.⁵³³ The most decisive criterion appears to be whether the inviting government exercises effective control of the state at the time when the invitation is granted.⁵³⁴ Thus, it has come to be accepted that states have a duty not to intervene with military force in civil wars, even at the request of the government, unless there is a prior Security Council authorization or foreign military intervention on behalf of opposition groups.⁵³⁵

Whether the prior foreign military intervention allows for collective self-defence on behalf of the government or allows for counter-intervention is not quite clear in practice, but it has been debated whether assistance to opposition groups (not in the form of military intervention) can ever amount to an armed attack.⁵³⁶ The exception from the prohibition on the use of force allowing forcible counter-intervention at the request of the government appears to be well-established but state practice reveals that it is perhaps the most abused.⁵³⁷

Although military intervention is generally prohibited in civil wars, less drastic operations in support of the government such as economic aid and provision of arms have been accepted.⁵³⁸ To illustrate an example of legitimate external operations upon invitation from the legitimate government, one could point to the British and Soviets supplying the Nigerian government with arms, during the civil war in 1960s when it was fighting insurgents and external subversion.⁵³⁹

Finally, it follows from the nature of legal recognition as an establishment of a fact, that if there are any doubts regarding the nature of the act of recognition in a certain case, the lack of clear guidelines for meeting the criteria manifests that it is ineligible for being a legal act.⁵⁴⁰ It is clear from the foregoing that recognition of opposition groups can only in a very limited number of cases constitute legal recognition, that is, only when the factual circumstances of

⁵³² Christine Gray: *International Law and the Use of Force*, p. 82.

⁵³³ Christine Gray: *International Law and the Use of Force*, p. 81.

⁵³⁴ Malcom N. Shaw: *International Law*, pp. 455, 1151; James Crawford: *Brownlie's Principles of Public International Law*, p. 152.

⁵³⁵ Christine Gray: *International Law and the Use of Force*, p. 92.

⁵³⁶ Antonio Cassese: *International Law*, p. 369.

⁵³⁷ Christine Gray: *International Law and the Use of Force*, p. 92.

⁵³⁸ Malcom N. Shaw: *International Law*, p. 1152; Christine Gray: *International Law and the Use of Force*, p. 84; Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 326.

⁵³⁹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 326; Louise Doswald-Beck: "The Legal Validity of Military Intervention by Invitation of the Government", p. 252.

⁵⁴⁰ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 23.

an opposition group certainly constitute that the group is the 'government'. This means that the recognition itself does not bring legitimacy to the group.⁵⁴¹ Several factors come into consideration when assessing legitimacy, such as Talmon's criteria,⁵⁴² territorial control,⁵⁴³ and the situation of the opposition group claiming to be the legitimate representative of a people.⁵⁴⁴ Other factors, such as how widely the opposition group is politically recognized by other states, do not affect the test of legitimacy. Non-recognition of firmly established governments with effective territorial control will not affect the legal character of that government.⁵⁴⁵ Thus, recognition of opposition groups as the legitimate representative of a people does not change the fact that the incumbent government holds the right to invite outside military aid.⁵⁴⁶

It should be noted, that if an opposition group would be considered the new legitimate government following a civil war, provided that the civil war is over, that government would of course hold the basic right to invite foreign military assistance.⁵⁴⁷

4 Unilateral State Intervention in Civil Wars

4.1 Humanitarian Intervention

It has been explained how the modern world has more commonly been facing the outbreak of civil wars rather than inter-state conflicts.⁵⁴⁸ Internal situations, such as civil wars, have caused immense human suffering, deaths and destruction where they occur.⁵⁴⁹ For this reason, the focus of the international community has had to be shifted from securing the safety of states in inter-state conflicts to the protection of citizens situated within states.⁵⁵⁰ It seems to be a broadly supported opinion that the international community should be prepared to take collective action to protect populations when sovereign governments fail in their

⁵⁴¹ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 83.

⁵⁴² Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", pp. 19-20.

⁵⁴³ James Crawford: *Brownlie's Principles of Public International Law*, p. 152 Malcom N. Shaw: *International Law*, p. 455.

⁵⁴⁴ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 16.

⁵⁴⁵ Malcom N. Shaw: *International Law*, p. 456.

⁵⁴⁶ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 18, 26; Malcom N. Shaw: *International Law*, pp. 470-471.

⁵⁴⁷ Article 10 of the ILC's Articles on State Responsibility: "The conduct of an insurrectional movement which becomes the new Government of a State shall be considered an act of that State under international law."

⁵⁴⁸ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, p. 1; Christine Gray: "The Use of Force and the International Legal Order", p. 591.

⁵⁴⁹ James Cockayne ect.: "The United Nations Security Council and Civil War", pp. vi, 28.

⁵⁵⁰ Barbara von Tigerstrom: *Human Security and International Law*, p. 2; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 304.

responsibility to protect their own citizens.⁵⁵¹ Some argue that States should be permitted to act unilaterally as ‘international policemen’ and react to the most serious breaches of international law, especially when a treaty-specific enforcement mechanism fails to react.⁵⁵² However, there is no general consensus in the identification of legal justifications for the international community to intervene with force in such situations.⁵⁵³ The doctrine of humanitarian intervention provides such a right and has been described as the unilateral use of force in a state, by one or more other states for humanitarian purposes, in the absence of a Security Council authorization and without the state’s consent.⁵⁵⁴

4.1.1 Legal Analysis of Humanitarian Intervention

The practice of the Security Council’s authorization for military interventions in civil wars, described in Chapter 2.3, reveals how situations of complete breakdown of law and order within a state and humanitarian distress have been determined as threats to peace and security, calling for international military involvement under the Charter. However, the Security Council’s arguments for authorizing the use of force within states can hardly be interpreted as indication of a right to unilateral humanitarian intervention, independent of the provisions of the UN Charter.⁵⁵⁵ With respect to the legal framework governing the use of force in international relations, discussed in Chapter 1, the obtrusive problem is the tension between the principles of state sovereignty, principle of non-intervention and the prohibition on the use of force on the one hand and active protection of human rights on the other.⁵⁵⁶ The Charter itself in several articles provides that the UN should encourage respect for human rights and fundamental freedoms,⁵⁵⁷ which indicates some intention to incorporate human rights into international jurisdiction.

With respect to the principle of non-intervention, it has been argued that when people are deprived of fundamental human rights within a state, the principle of non-intervention does not apply because such conduct does not fall under the scope of the domestic jurisdiction of states.⁵⁵⁸ As a result, the principle of state sovereignty can no longer be used as a shield

⁵⁵¹ Christine Gray: “The use of Force and the International Legal Order”, p. 569.

⁵⁵² Martin Dawidowicz: “Public Law Enforcement without Public Law Safeguards? An Analysis of State Practice on Third-party Countermeasures and Their Relationship to the UN Security Council”, p. 334.

⁵⁵³ Barbara von Tigerstrom: *Human Security and International Law*, pp. 92-93.

⁵⁵⁴ Barbara von Tigerstrom: *Human Security and International Law*, p. 92.

⁵⁵⁵ Christine Gray: *International Law and the Use of Force*, p. 49; Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 919.

⁵⁵⁶ James Crawford: *Brownlie’s Principles of International Law*, p. 754.

⁵⁵⁷ See Article 2(3), 55, and 56 of the UN Charter.

⁵⁵⁸ Barbara von Tigerstrom: *Human Security and International Law*, p. 92; James Crawford: *Brownlie’s Principles of Public International Law*, p. 369.

against international scrutiny of human rights within the borders of a state.⁵⁵⁹ However, this argument does not go as far as justifying intervention with the use of force, because it does not take the general prohibition on the use of force into account. Since military intervention for humanitarian purposes is not one of the exceptions from the use of force provided for in the UN Charter, the question remains whether humanitarian intervention can be detected as a rule of customary law that has evolved separately but in consistency with the Charter.⁵⁶⁰

It may very well be the case that a customary rule of humanitarian intervention can be identified to have existed in the nineteenth century.⁵⁶¹ At least, it seems that most publicists at the time admitted that such a right existed, although they might not have agreed on the exact scope.⁵⁶² However, it is quite clear that the doctrine of humanitarian intervention did not continue to exist in the post-1919 era.⁵⁶³ It would hardly reconcile with the provisions of the Charter, especially Article 2(4), which has been interpreted narrowly.⁵⁶⁴ Moreover, states have in practice not justified their military interventions with reference to a right of unilateral humanitarian intervention, even in situations that could presumably have occasioned it.⁵⁶⁵ A relatively isolated example can be found in the *Corfu Channel case* where the UK made an attempt to claim that its forcible intervention in Albanian waters, to recover evidence that might reveal who was responsible for the destruction of two British warships, did not violate Article 2(4), because the action did not threaten the territorial integrity or the political independence of Albania.⁵⁶⁶ This argument was rejected by the ICJ and was said to be a “manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever the present defects in international organization, find a place in international law”.⁵⁶⁷

4.1.2 State Practice of Humanitarian Intervention

The cases frequently referred to as potentials for state practice of humanitarian intervention are the Indian intervention in Bangladesh in 1971, which had the purpose of assisting its

⁵⁵⁹ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 918; Antonio Cassese: “Ex iniuria ius oritur”, p. 26.

⁵⁶⁰ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 910; Barbara von Tigerstrom: *Human Security and International Law*, pp. 93-94; Bruno Simma: “NATO, the UN and the Use of Force”, pp. 3,5.

⁵⁶¹ Malcom N. Shaw: *International Law*, p. 1155.

⁵⁶² Ian Brownlie: *International Law and the Use of Force by States*, p. 338; Peter Malanczuk: *Akehurst’s Modern Introduction to International Law*, p. 19.

⁵⁶³ James Crawford: *Brownlie’s Principles of Public International Law*, pp. 752-753.

⁵⁶⁴ Malcom N. Shaw: *International Law*, pp. 1155-1156; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 120.

⁵⁶⁵ James Crawford: *Brownlie’s Principles of Public International Law*, p. 753.

⁵⁶⁶ *Corfu Channel Case*, pp. 2, 34; Christine Gray: *International Law and the Use of Force*, p. 32.

⁵⁶⁷ *Corfu Channel Case*, p. 35.

citizens in gaining independence and ending suppression; the intervention by Vietnam in Cambodia in 1978 to overthrow the Khmer Rouge led by Pol Pot; and the Tanzanian intervention in Uganda in 1979 in order to overthrow Idi Amin.⁵⁶⁸ However, in all these cases states predominantly relied on a right to self-defence and made no mention of humanitarian reasons, thus not indicating *opinio juris* among states for such a right. Moreover, other intentions than humanitarian purposes can be detected in these cases on behalf of the intervening states. The examples cited can therefore hardly support the existence of a customary rule of humanitarian intervention, which some were even condemned by the General Assembly.⁵⁶⁹

In recent practice, there have been some signs of states being prepared to rely openly on a customary rule of humanitarian intervention. The first occasion was the justification of the UK for the intervention in Iraq in 1991, which it subsequently proclaimed to have been a response to immense humanitarian necessity.⁵⁷⁰ The Security Council had passed a resolution condemning Iraq's widespread repression of its population, urging the state to co-operate with international humanitarian agencies and determined the situation as a threat to peace and security.⁵⁷¹ After the military intervention in Iraq by the USA, the UK and France, the states referred to this resolution for the establishment of "no-fly-zones" in Northern Iraq. They claimed that their use of force was legitimate since the operation remained within the objectives of the resolutions as they were protecting the Kurd and Shiite populations. However, the resolution made no reference to Chapter VII and by no means authorized the use of force by states.⁵⁷² This also raised questions as to whether states could rely on implied authorization and act with force in response to violations of demands articulated in Security Council resolutions.⁵⁷³ Although the operation avoided condemnation of the Security Council and General Assembly, it did not change the fact that the doctrine of humanitarian intervention was still controversial, thus not an established customary rule.⁵⁷⁴

The 1999 NATO intervention in Kosovo, *Operation Allied Force*, which was neither authorized nor condemned by the Security Council,⁵⁷⁵ again raised the question whether a

⁵⁶⁸ Christine Gray: *International Law and the Use of Force*, p. 33.

⁵⁶⁹ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 118. For example the intervention in Cambodia, cf. A/RES/34/22, 16 November 1989.

⁵⁷⁰ Christine Gray: *International Law*, pp. 35, 37; James Crawford: *Brownlie's Principles of International Law*, p. 754.

⁵⁷¹ UN Doc. S/RES/688, 5 April 1991.

⁵⁷² Christine Gray: *International Law*, p. 36; James Crawford: *Principles of International Law*, p. 754; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 301.

⁵⁷³ Christine Gray: "The Use of Force and the International Legal Order", p. 608.

⁵⁷⁴ Christine Gray: *International Law and the Use of Force*, pp. 36-38.

⁵⁷⁵ Anthony Aust: *Handbook of International Law*, p. 213.

legal doctrine of humanitarian intervention could be said to have emerged.⁵⁷⁶ The operation started in March 1999 and consisted of a 78-day air bombing campaign. Without expressly providing a detailed legal justification, NATO appears to have relied on a combination of implied authorization and humanitarian reasons.⁵⁷⁷ NATO could not invoke collective self-defence,⁵⁷⁸ both because no member of NATO had suffered an armed attack and because only states can invoke self-defence, which the Kosovo region is not.⁵⁷⁹

In March 1998, the Security Council adopted a resolution under Chapter VII of the Charter where it imposed an arms embargo on Yugoslavia, thereby considering the situation to constitute threat to peace and security without expressly determining it as such.⁵⁸⁰ The Council called upon states to “act strictly in conformity with” the resolution without making specific obligations to the warring parties.⁵⁸¹ In September 1998, the Council called upon states to provide recourses for humanitarian assistance and decided that in case of non-compliance with the resolution it would “consider further action” to maintain or restore peace and security in the region. Resolution 1203 of October 1998 condemned all acts of violence, urged all states to provide the humanitarian mission in Kosovo personnel and demanded that Yugoslavia and the Kosovo Albanians would cooperate with the Organization for Security and Cooperation in Europe (OSCE).⁵⁸² The resolution also provided that “in the event of an emergency, action may be needed” to guarantee the OSCE’s safety and freedom of movement. Thus, not authorizing any military action and even if the resolution was to serve the purpose of an ‘implied authorization’ it would only have been for the limited purposes of protecting the OSCE.⁵⁸³

By Resolution 1203 in November 1998, the Security Council demanded full implementation of the agreement between Yugoslavia, the OSCE and NATO.⁵⁸⁴ A few states argued that NATO’s operation followed directly from the resolution, as a response to

⁵⁷⁶ Christine Gray: “The Use of Force and the International Legal Order”, p. 596.

⁵⁷⁷ Christine Gray: “The Use of Force and the International Legal Order”, p. 594.

⁵⁷⁸ Antonio Cassese: “Ex iniuria ius oritur”, p. 24.

⁵⁷⁹ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, 911.

⁵⁸⁰ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, 911.

⁵⁸¹ UN Doc. S/RES/1160, 31 March 1998; Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 911.

⁵⁸² UN Doc. S/RES/1203, 24 October 1998.

⁵⁸³ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 912.

⁵⁸⁴ UN Doc. S/RES/1203, 24 October 1998; Christine Gray: *International Law and the Use of Force*, p. 43; Antonio Cassese: “Ex iniuria ius oritur”, p. 25.

Yugoslavia's failure to comply with its demands.⁵⁸⁵ In the aftermath of Resolution 1203, it became clear that further action would not be authorized due to the Russian veto and the situation deteriorated. At this point NATO decided to take over and *Operation Allied Force* took place.⁵⁸⁶ After the end of NATO's operation, the Security Council rejected by twelve votes to three to pass a resolution condemning NATO's use of force,⁵⁸⁷ but managed to pass a resolution endorsing the *agreement* between the parties putting an end to the crisis, not the NATO action.⁵⁸⁸ Nevertheless, it can be argued that a subsequent endorsement of the peace agreement cannot be made without also approving the action that led to it.⁵⁸⁹ It is noteworthy that at the time of the operation only a few states⁵⁹⁰ proclaimed the operation illegal,⁵⁹¹ but subsequently many states have.⁵⁹²

The case was brought before the ICJ by Yugoslavia, claiming that ten NATO member states had violated the prohibition on the use of force and non-intervention. In eight of the cases, the Court lacked *prima facie* jurisdiction and in all cases it refused provisional measures.⁵⁹³ Without ruling on the legality of NATO's use of force, it nevertheless deemed it necessary to emphasize that "all parties appearing before [the Court] must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law."⁵⁹⁴ Belgium was one of the few states that went into the merits of the case and relied on the doctrine of humanitarian intervention. Belgium argued that the action was necessary for the protection of fundamental human rights, which had obtained the status of *jus cogens* principles.⁵⁹⁵ It should be noted that the mere fact that certain human rights may now be recognized as *jus cogens* principles, is not sufficient to override the prohibition on the use of force. It also has to be established that it is accepted to use force to protect them.⁵⁹⁶ The ICJ affirmed in the *Nicaragua case* that the use of force could not be the appropriate method to monitor or ensure respect for human rights, thus seemingly rejecting

⁵⁸⁵ Christine Gray: *International Law and the Use of Force*, p. 43.

⁵⁸⁶ Bruno Simma: "NATO, the UN and the Use of Force", p. 7.

⁵⁸⁷ SC Press Release, SC/6659, 26 March 1999.

⁵⁸⁸ UN Doc. S/RES/1244, 10 June 1999; Malcom N. Shaw: *International Law*, p. 1157.

⁵⁸⁹ Christine Chinkin: "The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law", p. 914.

⁵⁹⁰ These are China, Cuba, Yugoslavia, Russia, Belarus, Ukraine, Namibia and India.

⁵⁹¹ Antonio Cassese: "A Follow-Up", p. 792.

⁵⁹² Christine Gray: *International Law and the Use of Force*, p. 47.

⁵⁹³ Christine Gray: *International Law and the Use of Force*, pp.46-47.

⁵⁹⁴ *Legality of the Use of Force*, *Provisional Measures*, ICJ Reports 1999, p. 124, para. 19. (All the other order also contain an identical paragraph).

⁵⁹⁵ Antonio Cassese: "Follow-Up", p. 793.

⁵⁹⁶ Christine Gray: *International Law and the Use of Force*, p. 48.

the doctrine of humanitarian intervention.⁵⁹⁷ The 1970 *Declaration on Friendly Relations* provides that countermeasures (reprisals) must not entail threat or use of armed force.⁵⁹⁸ Consequently, there is no doubt that human rights form a part of international law, but it is not generally accepted that breaches of human rights justify military intervention.⁵⁹⁹

When the UK invoked humanitarian justifications for the legality of NATO's intervention, it did not refer to a specific source of international law, such as a customary rule of that nature.⁶⁰⁰ This was presumably because when the action took place, there was no authority or state practice to support a rule of unilateral humanitarian intervention, cf. for example the 2000 *Declaration of the South Summit*, adopted by about 130 member states declaring that they reject the so-called 'right' of humanitarian intervention, which has no legal basis in international law.⁶⁰¹ As it seems, a majority of authors have described the intervention as being formally illegal because there was no Security Council authorization, the action did not fall under the scope of self-defence, and at the time of the operation no customary rule on humanitarian intervention had emerged.⁶⁰² Furthermore, it can be questioned whether bombing campaigns, with their foreseeable civilian casualties, can ever be seen as humanitarian intervention.⁶⁰³

However, this does not mean that the action cannot be justified from an ethical viewpoint, such as was the view of the Independent International Commission on Kosovo (IICK), which found that the military intervention was illegal but legitimate.⁶⁰⁴ Nor does this preclude that a new customary rule of unilateral humanitarian intervention may gradually be emerging based upon the purposes of the UN Charter, the increased commitment of states to protect human rights actively and limited state practice.⁶⁰⁵ In order to be able to establish a new customary rule of such nature, repetition of other instances of military actions under the same or similar circumstances must be detected.⁶⁰⁶ Certainly, a rule of military intervention on humanitarian grounds would always be an exception from the general prohibition on the use of force and

⁵⁹⁷ *Nicaragua case*, para. 268.

⁵⁹⁸ UN Doc. A/RES/25/2625, 24 October 1970.

⁵⁹⁹ Hilaire McCoubrey etc.: *International Law and Armed Conflict*, p. 119.

⁶⁰⁰ James Crawford: *Brownlie's Principles of International Law*, p. 753.

⁶⁰¹ *Declaration of the South Summit*, Group of 77 South Summit, 10-14 April 2000.

⁶⁰² Antonio Cassese: "Ex iniuria ius oritur", p. 23; Bruno Simma: "NATO, the UN and the Use of Force", pp. 3-4.

⁶⁰³ Christine Chinkin: "The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law", p. 925; Christine Gray: *International Law and the Use of Force*, pp. 44-45.

⁶⁰⁴ IICK: "The Kosovo Report", www.reliefweb.int.

⁶⁰⁵ Antonio Cassese: "Ex iniuria ius oritur", pp. 23, 25, 27; Christine Chinkin: "The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law", p. 920.

⁶⁰⁶ Antonio Cassese: "A Follow-Up", p. 797.

only be available upon strict conditions.⁶⁰⁷ Theories regarding what conditions are necessary in order for such intervention to be lawful and prevent abuses of the right will not be discussed on this occasion as it does not touch upon the issue of this thesis, that is, of finding the existing law (*lex lata*) governing military interventions in civil wars, but rather what the law should be (*lex ferenda*). Nevertheless, it should be noted that the UK produced *Guidelines on Humanitarian Intervention*,⁶⁰⁸ for the purpose of establishing a framework for humanitarian intervention within the Charter system. The *Guidelines* especially assert that: “[N]o individual country can reserve to itself the right to act on behalf of the international community”. The *Guidelines* emphasize that military interventions should always be a last resort, there should be convincing evidence of large-scale humanitarian distress requiring immediate relief and the use of force must be proportionate to achieving the humanitarian goal.⁶⁰⁹ It can be assumed that similar parameters would apply to a possible doctrine of unilateral humanitarian intervention. Furthermore, Chapter 4.4 on the ‘responsibility to protect’ will provide some insight into the struggle of clarifying how the international community should respond to humanitarian crises.

Disturbing reports of the civil war in Syria in August 2013 regarding the government’s use of chemical weapons against its own citizens illustrate how the question on humanitarian intervention continues to be relevant. The Secretary-General of the UN stressed that the conduct was a war crime.⁶¹⁰ In April 2013, US President Barack Obama stated that the world could not “stand by and permit” such actions.⁶¹¹ While the Geneva II talks of January and February 2014 proved unsuccessful and Bashar al-Assad’s regime stands strong against a divided opposition,⁶¹² commentators have speculated on possible justifications for the international community to intervene. Provided that Russia would presumably stand in the way of the adoption of a Security Council resolution, invoking humanitarian arguments for military intervention appears to be the most plausible attempt of justification.⁶¹³ While there is an emerging consensus among states that governments which use excessive force against their own citizens lose their legitimacy and should leave office, foreign removal of such regimes with the use of force has not been generally accepted outside Chapter VII of the

⁶⁰⁷ Antonio Cassese: “Ex iniuria ius oritur”, p. 23.

⁶⁰⁸ *United Kingdom Guidelines on Humanitarian Intervention*.

⁶⁰⁹ Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 304.

⁶¹⁰ “Clear and convincing evidence of chemical weapons use in Syria, UN team reports”, www.un.org.com.

⁶¹¹ “Barack Obama warns Syria chemical arms a ‘game changer’”, www.bbc.com.

⁶¹² “What is the Geneva II conference on Syria?”, www.bbc.com; “Analysis: Why Assad can have confidence in his survival”, www.bbc.com.

⁶¹³ Dapo Akande: “Does Use of Chemical Weapons Justify Intervention in Syria?”, www.ejiltalk.com.

Charter.⁶¹⁴ It should be noted that the choice of reaction is not only between complete inaction and military intervention; however reaction in the form of other less drastic measures falls outside of the scope this thesis.

In conclusion, it appears that states cannot justify their military interventions in civil wars by invoking a customary rule of humanitarian intervention, as it is at odds with Article 2(4) and remains controversial.⁶¹⁵ This position still needs to be somewhat qualified as leading academics have suggested that an armed intervention would be justified when the states in question are facing the crime of genocide, which in turn would justify the use of force to prevent the materialization of such events.⁶¹⁶ In this context the special status of genocide should be noted, i.e. its uncontroversial status as a *jus cogens* norm and that states have undertaken obligations to “prevent and punish” genocide under the 1948 Genocide Convention.⁶¹⁷

4.2 Unilateral Military Intervention in Pursuit of Democracy

A variant to the doctrine of humanitarian intervention is the debate whether foreign military intervention can be justified in pursuit of democracy.⁶¹⁸ Since the UN Charter does not provide a right to pro-democratic intervention as an exception from the prohibition on the use of force, such a rule would have to have evolved separately but in consistency with Article 2(4) as a customary rule of international law, allowing for the use of force to protect it (just as explained above concerning unilateral humanitarian intervention). It is therefore appropriate to analyze whether state practice supports such a right.

In the aftermath of the Cold War, there were some indications of governments in Eastern Europe arguing for their citizens having the right to elect their government democratically, including the right to invite foreign use of force to achieve this goal. However, states have in practice not justified their military interventions by referring to a right of restoring a democratic government. The reason the United States gave for their unilateral military intervention in Panama in 1989 comes close to an argument of this type, but it still made a rather clear distinction between the legal basis for the intervention and the purpose. The US

⁶¹⁴ Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”, pp. 19-20.

⁶¹⁵ Christine Gray: “The Use of Force and the International Legal Order”, p. 597; Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, p. 300.

⁶¹⁶ Bruno Simma: “NATO, the UN and the Use of Force”, p. 2; Hilaire McCoubrey etc.: *International Law and Armed Conflict*, pp. 116-117; Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 920.

⁶¹⁷ UN Doc. A/80, 10 December 1948; *The Convention on the Prevention and Punishment of Crime of Genocide*, 9 December 1948; Malcom N. Shaw: *International Law*, p. 124.

⁶¹⁸ Malcom N. Shaw: *International Law*, p. 1158.

invoked self-defence as a legal justification with the alleged goal to defend democracy.⁶¹⁹ Furthermore, many democratic regimes have been overthrown and the implementation of democratic elections has on many occasions been ignored, without any response from the international community.⁶²⁰ The *opinio juris* of states and state practice thus corresponds to the Charter framework governing the use of force.

It has been explained how the Security Council authorized military intervention in pursuit of democracy in Haiti (1994). The authorized interventions in the CAR and in Côte d'Ivoire could presumably also be described as such.⁶²¹ These interventions may be seen as a new development in the Security Council's action, but just like the Security Council's authorizations for military interventions for humanitarian purposes, it is not possible to extrapolate from this a legal basis for unilateral intervention by states. In fact, mainly scholars have argued for pro-democratic intervention as an exception from the prohibition on the use of force, but the same does not apply to states.⁶²²

In addition to the prohibition on the use of force and the principle of non-intervention, the 1970 *Declaration on Friendly Relations* explicitly asserts that "armed activities directed towards the violent overthrow of the regime of another state" is prohibited.⁶²³ In the *Nicaragua case* the ICJ stressed the right of every state to conduct its affairs and to choose its own form of government without outside interference.⁶²⁴ The duty of foreign states to refrain from intervention in other states does not depend on whether the government is democratically elected or not, since political governance is an internal matter at each state's discretion.⁶²⁵ In this respect international law treats dictators and democrats the same.⁶²⁶ In addition, defining 'democracy' is not necessarily straightforward.⁶²⁷

It should be noted that there is no general rule of international law on the illegality of rebels within a state overthrowing a democratically elected government.⁶²⁸ However, states can undertake treaty obligations that include provisions prohibiting governments that are not

⁶¹⁹ Christine Gray: *International Law and the Use of Force*, pp. 56-57.

⁶²⁰ Christine Gray: *International Law and the Use of Force*, p. 59.

⁶²¹ Christine Gray: *International Law and the Use of Force*, p. 58.

⁶²² Christine Gray: *International Law and the Use of Force*, p. 56, 328; Christine Gray: "The Use of Force and the International Legal Order", p. 594.

⁶²³ UN Doc. A/RES/2625 (XXV), 24 October 1970.

⁶²⁴ *Nicaragua case*, para. 202.

⁶²⁵ Christine Gray: *International Law and the Use of Force*, p. 81.

⁶²⁶ Stefan Talmon: "Recognition of Opposition Groups as the Legitimate Representative of a People", p. 19.

⁶²⁷ Malcom N. Shaw: *International Law*, p. 1158.

⁶²⁸ Peter Malanczuk: *Akehurst's Modern Introduction to International Law*, pp. 318-319; Malcom N. Shaw: *International Law*, p. 1149.

democratically elected, but the legal effects will only be between parties. Hence, a third state cannot rely on such agreement for military intervention.⁶²⁹

As a conclusion, it can be asserted that the legal framework regarding the use of force by states does not allow for unilateral intervention in civil wars in pursuit of democracy and no such rule can be detected to have emerged as a new customary rule of international law.⁶³⁰

4.3 Unilateral Military Intervention by Regional Organizations

Under Chapter VIII of the Charter, the use of force by regional organizations limited to peacekeeping, with the consent of the host state, has not caused controversy. Similarly, if regional organizations are to go beyond peacekeeping activities the Security Council should authorize such actions.⁶³¹ In the absence of a Security Council authorization, it perhaps remains a far-fetched question whether a regional authority can legally give consent for intervention by foreign troops in civil wars.⁶³²

As discussed in Chapter 3 above, it can be argued that if a civil war results in the government losing control over most of the country and it no longer exercises any substantial administrative or governmental powers, the government simply becomes one of the warring factions. Therefore, it would be untenable to conclude that the invitation of only one faction, irrespective of their previous control, could be valid for military intervention.⁶³³ In such situations it would be reasonable to conclude that the collective consent of all parties of the internal struggle would provide the best alternative to consent by a recognized, effective government.⁶³⁴ However, in civil wars, a mutual consent of all of the warring factions is not necessarily a very probable option. Thus, some commentators have argued that in cases when the UN itself is reluctant to get involved, regional organizations have authority to intervene at their own initiative in situations of complete breakdown of internal authority to restore order pursuant to Chapter VIII of the Charter.⁶³⁵

This view has for example been supported by the argument that since ‘government’ is a condition for statehood, intervention in this situation could not be action against a state.

⁶²⁹ Guy S. Goodwin-Gill and Stefan Talmon: *The Reality of International Law*, pp. 534-535.

⁶³⁰ Guy S. Goodwin-Gill and Stefan Talmon: *The Reality of International Law*, p. 534.

⁶³¹ Christine Gray: “The Use of Force and the International Legal Order”, pp. 614-615; Christine Gray: *International Law and the Use of Force*, p. 370; Article 52 and 53 of the UN Charter.

⁶³² *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 73.

⁶³³ David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, pp. 224, 228.

⁶³⁴ David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, p. 230.

⁶³⁵ Christine Gray: *International Law and the Use of Force*, p. 407. Article 52 of the Charter: “Nothing in this present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.”

Consequently, it could not constitute enforcement action that requires Security Council authorization under Article 53 of the Charter.⁶³⁶ The application of this rule is based on the assumption that the regional organizations act on behalf of the interests of the affected state, which would have given its consent if it had the power. The authority would be limited to the collective decision-making process provided by regional organizations, and is therefore not available to individual states.⁶³⁷ For example in the *Legality of Use of Force case*,⁶³⁸ all states emphasized the fact that NATO's military action in Kosovo was not carried out by one state, but by a group of states acting collectively within the framework of a regional organization.⁶³⁹ This was done to add legitimacy to the operation, but NATO's framework had been expanded from being purely defensive in nature, at hand for its members, towards contributing peace and security in the 'Euro-Atlantic region'.⁶⁴⁰

Another argument provides that since the Security Council has authorized regional organizations to take military action for humanitarian purposes, such as in the case of Yugoslavia,⁶⁴¹ it has through practice adopted Article 53 and tacitly approved unilateral military action by regional agencies. However, all of the arguments cited ignore the fact that Article 53 explicitly provides that regional agencies shall take no enforcement action without the authorization of the Security Council.⁶⁴² According to Article 31 of the 1969 *Vienna Convention on the Law of Treaties*, words shall be given their literal meaning.⁶⁴³

Furthermore, it should be noted that there is no compelling state practice supporting a right of regional agencies to unilateral military intervention. For instance, the legality of the OAS intervention against Cuba in 1962 and the Dominican Republic in 1965 were seriously questioned and still are to this day. The veto power of the permanent members hindered it being condemned.⁶⁴⁴ However, the intervention by the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone through its enforcement arm,

⁶³⁶ Article 1 of the Montevideo Convention on the Rights and Duties of States, 26 December 1933.

⁶³⁷ David Wippman: "Military Intervention, Regional Organizations, and Host-State Consent", p. 231.

⁶³⁸ *Legality of the Use of Force*, *Provisional Measures*, ICJ Reports 1999, p. 124.

⁶³⁹ Antonio Cassese: "Follow-Up", p. 794.

⁶⁴⁰ Christine Gray: *International Law and the Use of Force*, pp. 39-40; Malcom N. Shaw: *International Law*, p. 1156.

⁶⁴¹ UN Doc. S/RES/770, 13 August 1992.

⁶⁴² Christine Chinkin: "The Legality of NATO's Action in the Former Republic of Yugoslavia (FRY) under International Law", p. 913.

⁶⁴³ *Vienna Convention on the Law of the Treaties*, 23 May 1969.

⁶⁴⁴ Christine Gray: "The Use of Force and the International Legal Order", p. 615.

ECOMOG, which gradually went beyond peacekeeping, comes closest to resembling this situation.⁶⁴⁵

When ECOWAS intervened in the Liberian civil war (1990–1992), it referred to a treaty obligation under the *Protocol Relating to Mutual Assistance of Defence*, which provided that the member states could call upon ECOMOG to act “in cases of armed conflict between two or several Member States”, thus not allowing for intervention in internal conflict.⁶⁴⁶ ECOWAS also based its military intervention on an invitation by President Samuel Doe, but at the time of the consent, most government ministers had fled the country and the rebels had territorial control over most of Liberia.⁶⁴⁷ Despite this, the Security Council resolutions indicate that the ECOMOG forces were legitimate peacekeeping forces as well as the Council commended the intervention by ECOWAS.⁶⁴⁸

In 1991, ECOWAS intervened in the internal matters of Sierra Leone in order to restore the government that had been overthrown, using measures considered by many to go well beyond traditional peacekeeping. It relied on the consent of the democratically elected president. The Security Council considered ECOWAS to be a legitimate peacekeeping force and authorized ECOWAS to operate as such, implementing sanctions against the opposition forces. The Council made no attempts to clarify the legality of the operations, neither with regard to the instruments of ECOWAS nor the UN Charter. Further, the Council never approved the use of force beyond peacekeeping.⁶⁴⁹ It should be noted that although the Security Council commended the status quo of the situation after the interventions of ECOWAS, it should not be seen as a substitute for a prior authorization of the action.⁶⁵⁰

From the viewpoint of the present author, the arguments in support of the right of regional organizations to grant their consent in situations of unstable governments or humanitarian catastrophes are based on assumptions that cannot be taken for granted, such as the impartiality of these organizations. Moreover, they ignore the unambiguous wording of Article 53, which requires Security Council authorization. The Security Council resolutions regarding the matter do not indicate a radical shift in the role and power of regional

⁶⁴⁵ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 915.

⁶⁴⁶ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, p. 915; Protocol Relating to Mutual Assistance of Defence, www.operationspaix.net.

⁶⁴⁷ David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”, pp. 224, 228; Christine Gray: “The Use of Force and the International Legal Order”, p. 616.

⁶⁴⁸ UN Doc. S/RES/788, 19 November 1992; Christine Gray: *International Law and the Use of Force*, p. 49.

⁶⁴⁹ Christine Gray: “The Use of Force and the International Legal Order”, p. 616; Christine Gray: *International Law and the Use of Force*, p. 59.

⁶⁵⁰ Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, pp. 915-916.

organizations and the same can be said with regard to state practice. Consequently, the legality of an authorization by a regional organization to send foreign troops into the territory of another state is seriously questioned.

4.4 A Responsibility to Protect?

The term ‘responsibility to protect’ emerged in the field of international law in 2001 in the *Report of the International Commission on Intervention and State Sovereignty (ICISS)*.⁶⁵¹ The purpose of the Commission was to articulate more robust guidelines on how the international community should respond to humanitarian crises; hence developing the law on humanitarian intervention rather than creating a new doctrine or a ‘new approach’.⁶⁵² The ICISS was established by the Government of Canada in response to the catastrophes facing the international community, which exposed the incapacity of the Security Council to react with consistency and effective solutions. The Commission pointed out that foreign military intervention for humanitarian reasons “has been controversial both when it has happened — as in Somalia, Bosnia and Herzegovina and Kosovo — and when it has failed to happen, as in Rwanda”.⁶⁵³ It was considered urgent to find a common ground on when and how to respond internationally to massive violations of human rights and humanitarian law within individual states.⁶⁵⁴

In essence, the concept provides that in cases where a state fails in its duty to protect its own citizens from the most serious human rights abuses, international action is permitted and even required.⁶⁵⁵ It is therefore clear that the responsibility to protect lies first and foremost with the state and that international reaction only comes into question when a state fails in that responsibility. Using the phrase ‘responsibility to protect’ rather than the previous one ‘right to intervene’, was an attempt to make states feel morally and legally obliged to protect and intervene in situations of humanitarian crisis; trying to put an end to the ‘pick and choose’ policy which had been allowed to emerge in this field.⁶⁵⁶

In the 2001 Report, the ICISS divided the concept ‘responsibility to protect’ into three specific responsibilities, i.e. the responsibility to prevent, to react and to rebuild.⁶⁵⁷ The responsibility to react should only in extreme and exceptional cases involve the need to resort

⁶⁵¹ *Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*. December 2001.

⁶⁵² James Crawford: *Brownlie’s Principles of Public International Law*, p. 755.

⁶⁵³ *ICISS Report*, p. vii.

⁶⁵⁴ Christine Gray: *International Law and the Use of Force*, p. 51.

⁶⁵⁵ James Crawford: *Brownlie’s Principles of Public International Law*, p. 755.

⁶⁵⁶ *ICISS Report*, paras. 2.28, 2.4.

⁶⁵⁷ *ICISS Report*, para. 2.29.

to military action.⁶⁵⁸ Moreover, three situations were identified where the ‘residual responsibility’ of the states to take action was activated: (a) when a particular state is clearly unwilling or unable to fulfill its responsibility to protect; (b) where a particular state is itself the perpetrator of crimes or atrocities; or (c) where people living outside a particular state are directly threatened by actions taking place there.⁶⁵⁹ In order to prevent the misuse of military interventions on the basis of the ‘responsibility to protect’, a framework for such decisions was set up, and dubbed the ‘precautionary criteria’. They were articulated in Chapter 4 of the Report as just cause, right intention, last resort, proportional means and reasonable prospects.⁶⁶⁰

The term ‘responsibility to protect’ subsequently appeared in several other United Nations documents.⁶⁶¹ Most notably in one of the largest gatherings of Heads of State and Government in history, the General Assembly’s 2005 World Summit Outcome,⁶⁶² where it was adapted in a more general manner. The scope of the concept was limited as it transformed from including humanitarian crises in general to only including the four specified crimes and violations, i.e. genocide, war crimes, ethnic cleansing and crimes against humanity. Moreover, it was stressed that states were prepared to take such collective action through the Security Council. The primary responsibility of states was described as to “encourage and help states” to perform their responsibility of protecting their populations. It was reiterated that intervention on the grounds of the responsibility to protect should only be resorted to after peaceful means had proven inadequate,⁶⁶³ and although the doctrine should be carefully applied, the response ought to be deep.⁶⁶⁴

The ICISS Report and the Outcome document both stressed that the ‘responsibility to protect’ was indeed congruent to the principle of state sovereignty, as it grows from the positive and affirmative notion of sovereignty as a state responsibility.⁶⁶⁵ This approach was explained in 1991 by the former UN Secretary-General Kofi Annan: “[S]tates are now widely understood to be instruments at the service of their peoples, and not vice versa”.⁶⁶⁶ In 2000, he asserted that no principles of international law could ever shield crimes against

⁶⁵⁸ *ICISS Report*, para. 4.10.

⁶⁵⁹ *ICISS Report*, para. 2.31.

⁶⁶⁰ *ICISS Report*, para. 6.1.

⁶⁶¹ *A More Secure World*. Report of the Secretary-General, UN Doc. A/59/2005, 21 March 2005.

⁶⁶² World Summit Outcome, GA Res 60/1, 25 October 2005, paras. 138-9.

⁶⁶³ World Summit Outcome, UN Doc. A/RES/60/1, 25 October 2005, para. 139.

⁶⁶⁴ Implementing the Responsibility to Protect, UN Doc. A/63/677, 12 January 2009, para. 10 (c) [Implementing the Responsibility to Protect].

⁶⁶⁵ *Implementing the Responsibility to Protect*, p. 7-8; *ICISS Report*, paras. 1.32-1.36.

⁶⁶⁶ Kofi Annan: “Two Concepts of Sovereignty”, <http://www.economist.com>.

humanity”.⁶⁶⁷ The ICISS noted that during their worldwide consultation, not even the strongest supporters of the defence of state sovereignty claimed that state sovereignty included the power of a state to do what it wanted to its own people. A dual responsibility was recognized within the concept; externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of people within the state.⁶⁶⁸ Responsible sovereignty can therefore not be employed without respect for human rights.⁶⁶⁹ Consequently, states that fulfill their fundamental protection obligations and respect core human rights have far less reason to be concerned about unwanted external intervention.⁶⁷⁰ Therefore, by not overlooking the responsibilities that follow the concept of state sovereignty, it can be argued that the ‘responsibility to protect’ and state sovereignty are fully consistent with each other.

Although support for the concept of ‘responsibility to protect’ quickly gathered speed and has by some been identified as an emerging norm of international law,⁶⁷¹ the scope of the doctrine remains uncertain. The documents elaborating upon the concept still leave open the crucial question as to who has the authority to authorize humanitarian intervention on account of the responsibility to protect.⁶⁷² While the ICISS Report recognizes the right to unilateral action as a natural consequence to a Security Council failure to react, the Outcome document and the *High Level Panel on Threats* claim that unilateral intervention is illegal in the absence of the Security Council authorization.⁶⁷³ In March 2005, the Secretary General took a strong stance against unilateralism in his report *In Larger Freedom* stating that “the task is not to find alternatives to the Security Council as a source of authority but to make it work better.”⁶⁷⁴ However, he endorsed the code of conduct set forth by the ICISS, and argued that if the Security Council would come to a common view on guidelines regarding the use of force, it “would add transparency to [the Council’s] deliberations and make its decisions more likely to be respected.”⁶⁷⁵ In that way, both the decision-making on when to intervene and the practice of carrying out the resolutions would be more effective.

⁶⁶⁷ We the Peoples, UN Doc. A/54/2000, 27 March 2000, para. 219.

⁶⁶⁸ ICISS Report, para. 1.35.

⁶⁶⁹ *Implementing the Responsibility to Protect*, para. 16.

⁶⁷⁰ *Implementing the Responsibility to Protect*, para. 7.

⁶⁷¹ James Crawford: *Brownlie’s Principles of Public International Law*, p. 756; Report of the High Level Panel on Threats, Challenges and Change, UN Doc. A/59/595, 6 December 2004, para. 203; Report of the Secretary-General, UN Doc. A/59/2005, 21 March 2005, para. 135.

⁶⁷² Christine Gray: *International Law and the Use of Force*, p. 52.

⁶⁷³ World Summit Outcome, UN Doc. A/RES/60/1, 24 October 2005, para. 138-9; Report of the High Level Panel on Threats, Challenges and Change, UN Doc. A/59/595, 6 December 2004, para. 203.

⁶⁷⁴ *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report by the Secretary-General, UN Doc. A/59/2005, 26 May 2005, para. 126.

⁶⁷⁵ UN Doc. A/59/2005, 26 May 2005, para. 126.

In April 2006, the Security Council approved the concept of ‘responsibility to protect’ but made no attempt to clarify its scope or answer the question of authority.⁶⁷⁶ However, in the Secretary-General report on *Implementing the Responsibility to Protect* in 2009 it was clearly stated that coercive military action should only be used in “extreme cases” and must be authorized by the Security Council. The emphasis was on forming a common strategy based on the existing system rather than proposing new programs or new approaches. Addressing the shortcomings of the existing system, the five permanent members of the Security Council were encouraged not to use the veto in situations of states manifestly failing to meet their obligations relating to the responsibility to protect.⁶⁷⁷

The foregoing leads to the conclusion that the Security Council has been vested with exclusive *de jure* authority for interventions since 1945 and the ‘responsibility to protect’ cannot be said to have changed that.⁶⁷⁸ Although the result regarding authority turned out differently than originally intended in the ICISS report, the ‘responsibility to protect’ appears to have affected the perception in which international authority is represented. However, it may also have brought expectations which practice appears to be unable to fulfill, as the late Security Council reaction to the situation in Darfur in 2006 demonstrates, cf. Chapter 2.3.8.

5 Conclusions

The law of armed conflict (*jus ad bellum*) significantly restricts the resort to force in international relations. The main principles concerning military interventions in civil wars are the prohibition on the use of force, codified under Article 2(4) of the UN Charter, the principle of state sovereignty, under Article 2(7) of the Charter, and the principle of non-intervention. All of these principles have been recognized as part of customary international law. Hence, in order for foreign military intervention in civil wars to be justified it must find a place within one of the generally accepted exceptions, such as the right to self-defence, under Article 51 of the Charter, or intervention with the authorization of the Security Council under Chapter VII of the Charter. There is a general consensus between states as to which principles of the Charter are applicable to the situation of foreign intervention in civil conflicts; it is merely the application of the principles that has been debated. The biggest defect in the contemporary rules governing military interventions in civil wars is that the rules were essentially intended to apply to classic inter-state armed conflicts (international wars).

⁶⁷⁶ UN Doc. S/RES/1674, 27 April 2006.

⁶⁷⁷ *Implementing the Responsibility to Protect*, paras. 29, 56, 61.

⁶⁷⁸ James Crawford: *Brownlie's Principles of Public International Law*, pp. 756-757.

Consequently, applying those general principles to military interventions in civil wars has caused some difficulties.

The UN Security Council has responded to this and through its practice it has taken a wide view of the concept 'threat to peace', under Article 39 of the Charter, well beyond the obvious case of one state threatening another. The Security Council's ambit to determine a situation as threat to international peace and security is essentially unlimited. It has now become firmly established that the Council has the competence to authorize military interventions in mere internal conflicts without referring to any "spillover effect", i.e. cross-border dimensions. Upon the Security Council's authorization, states have intervened in civil wars with the use of force for a variety of reasons, such as in response to serious human rights violations (for example in the cases of Yugoslavia, Somalia, Rwanda, East Timor, Liberia, Darfur, Libya and the CAR), in pursuit of democracy (in the case of Haiti in 1994) and to restore law and order (in Somalia, East Timor, Haiti in 2004, and the CAR). This flexible interpretation has proved to be of vital importance for the Security Council's ability to fulfill its mandate to maintain international peace and security, but it has also caused uncertainty as to the spheres of action that remain within the domestic jurisdiction of states. While inter-state conflicts are no longer the touchstone, it would perhaps be preferable that there existed some kind of criterion of guidance in order to delineate when internal conflicts constitute a threat to peace. However, it should be pointed out that although the Security Council has been expanding its sphere of actions, it is usually rather criticized for its inactivity than activity.

When the UN Charter was being drafted, intervention in response to situations of serious humanitarian distress did not form part of the security debate. Consequently, there are no provisions within the Charter that clearly lay out how to respond to such situations. The Security Council's inconsistency of intervening in situations of severe human rights violations and humanitarian distress in civil wars, has given rise for arguments in support of unilateral military intervention outside the Charter system, i.e. without Security Council authorization and outside of the scope of self-defence. The most prominent of such doctrines is the humanitarian intervention doctrine. The reason for this development is not only the Security Council's failure to respond in situations where it is regarded to have a 'responsibility to protect' but also the incidents of unilateral military interventions by states in recent years, which have seriously challenged the UN collective security system. Nevertheless, it can be asserted that although a new customary rule of humanitarian intervention may be emerging, it has not yet firmly been entrenched in international law. Foreign military intervention can thus

not be justified by invoking the doctrine of humanitarian intervention, with the possible exception of genocide.

Despite certain setbacks, the expectations and hopes for an effective collective security system based on the Charter have not disappeared and the UN Security Council is still viewed as the core of that system. Although several problems can be detected within the UN security system, such as the right of the permanent members of the Security Council to veto and the lack of a standing army at its disposal, the present author believes that the solution will not be found in a fundamental reform of the whole international security mechanism. The already established mechanism can be used but perhaps with a more proactive and legally calibrated Security Council acting with more quality and objectivity in its decision-making.

Another possibility of foreign intervention in civil wars is upon the request of the legitimate government of a state. As a general rule, the government of a state can request military assistance from another state, provided that it exercises effective control of the state. In contrast, opposition groups do not have this right. Because of the prerequisite of territorial control, it has become accepted that the government of a state beset by civil war does not have the right to invite foreign military assistance to suppress opposition groups, unless there has been a prior intervention on behalf of the rebels. There is no need to identify whether the prior intervention amounted to an armed attack or not, since a state would always have the right to counter-intervention within the proportionality principle and is not dependent upon invoking collective self-defence.

Civil wars have increasingly been viewed as a matter of concern to the international community. One can point to several reasons for this development, such as increased frequency of civil wars, the rise of human rights doctrines, increased interdependency of states and in certain cases international dimensions of civil wars affecting neighbouring countries. While states have felt a responsibility to intervene in situations of severe humanitarian distress, their intentions of military intervention in civil wars have often proved to be less than noble and in many cases outright self-serving. Accordingly, international law governing the use of force by states (law of armed conflict) has retained its relevance.

In conclusion, it can be asserted that international law of armed conflict provides only a few generally accepted justifications for military interventions in civil wars. With respect to the countless breaches of the prohibition on the use of force in state practice, the law of armed conflict may seem to be ineffective. Nevertheless, the law still appears to affect the conduct of states, at least to some extent. In practice, states generally try to justify their military interventions in civil wars by using the language of international law and by invoking its

principles. While it is impossible to know exactly what impact international law has on state behaviour in reality, it may still be speculated that the law at least has some deterrence effect.

REFERENCES

“Analysis: Why Assad can have confidence in his survival”, <http://www.bbc.com/news/world-middle-east-27018798>, 14 April 2014 (accessed 16 April 2014).

“Analysis: Why Russia’s Crimea move fails legal test”, <http://www.bbc.com/news/world-europe-26481423>, 7 March 2014 (accessed 31 March 2014).

Andrew Katz: “Putin Signs Decree to Recognize Crimea as Independent”, <http://time.com/27671/putin-signs-decree-to-recognize-crimea-as-independent/>, 17 March 2014 (accessed 31 March 2014).

“Angola profile”, <http://www.bbc.com/news/world-africa-13037271>, 22 December 2013 (accessed 20 March 2014).

Antonio Cassese: “A Follow-Up: Forcible Humanitarian Countermeasures and *Opinio Necessitatis*”. *European Journal of International Law*, vol. 10 (4), 1999, pp. 791-799.

Antonio Cassese: “Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?”. *European Journal of International Law*, vol. 10 (1) 1999, pp. 23-30.

Antonio Cassese: *International Law*. 2nd Edition. Oxford 2005.

Anthony Aust: *Handbook of International Law*. 2nd Edition. Cambridge 2010.

Ari Shapiro: “Why Syria Is More Complicated Than Libya”, <http://www.npr.org/2013/08/29/216858049/why-syria-is-more-complicated-than-libya>, 29 August 2013 (accessed 14 March 2014).

“Barack Obama warns Syria chemical arms a ‘game changer’”, <http://www.bbc.com/news/world-middle-east-22318749>, 26 April 2013 (accessed 16 April 2014).

Barbara von Tigerstrom: *Human Security and International Law. Prospects and Problems*. Oxford and Portland 2007.

Bill Chappel: “Russia Vetoes U.N. Security Council Resolution On Crimea”, <http://www.npr.org/blogs/thetwo-way/2014/03/15/290404691/russia-vetoes-u-n-security-council-resolution-on-crimea>, 15 March 2014 (accessed 31 March 2014).

Bruno Simma: “NATO, the UN and the Use of Force: Legal Aspects”. *European Journal of International Law*, vol. 10 (1999), pp. 1-22.

Catherine E. Shoichet, Marie-Louise Gumuchian, Susanna Capelouto: “Ukraine crisis: Russia stands firm despite rebukes, threats of sanctions”, <http://edition.cnn.com/2014/03/03/world/europe/ukraine-tensions/>, 4 March 2014 (accessed 21 March 2014).

Chelsea J. Carter, Diana Magnay and Victoria Eastwood: “Ukraine mobilizes troops amid crisi with Russia”, http://edition.cnn.com/2014/03/01/world/europe/ukraine-politics/index.html?hpt=hp_t1, 2 March 2014 (accessed 3 March 2014).

Christine Chinkin: “The Legality of NATO’s Action in the Former Republic of Yugoslavia (FRY) under International Law”, *The International and Comparative Law Quarterly*, vol. 49 (4) 2000, pp. 910-925.

Christine Gray: “A Crisis of Legitimacy for the UN Collective Security System?” *The International and Comparative Law Quarterly*, vol. 56 (1) 2007, pp. 157-170.

Christine Gray: *International Law and the Use of Force*. Oxford 2008.

Christine Gray: “The Charter Limitations on the Use of Force: Theory and Practice”. *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*. Edited by Vaughan Lowe ect. Oxford 2008, pp. 86-98.

Christine Gray: “The Use of Force and the International Legal Order”. *International Law*. 3rd Edition. Edited by Malcom Evans. Oxford 2000, pp. 589-619.

Christopher C. Joyner: *The United Nations and International Law*. Cambridge 1997.

“Clear and convincing evidence of chemical weapons use in Syria, UN team reports”, http://www.un.org/apps/news/story.asp?NewsID=45856#.U112ga1_vfY, 16 September 2013 (accessed 13 April 2014).

Dapo Akande: “Does Use of Chemical Weapons Justify Intervention in Syria?”, <http://www.ejiltalk.org/does-use-of-chemical-weapons-justify-intervention-in-syria/>, 27 April 2013, (accessed 4 March 2014).

Dapo Akande: “Does SC Resolution 1973 Permit Coalition Military Support for the Libyan Rebels?”, <http://www.ejiltalk.org/does-sc-resolution-1973-permit-coalition-military-support-for-the-libyan-rebels/>, 31 March 2011 (accessed 27 April 2014).

David Smith: “Christian threats force Muslim convoy to turn back in CAR exodus”, <http://www.theguardian.com/world/2014/feb/14/muslim-convoy-central-african-republic-exodus>, 14 February 2014 (accessed 10 April 2014).

David Wippman: “Military Intervention, Regional Organizations, and Host-State Consent”. *Duke Journal of Comparative & International Law*, vol. 7(1) 1996, pp. 209-240.

Denver Nicks: “Russia Says Ousted Ukrainian Leader Asked for Military Intervention”, <http://time.com/12000/ukraine-leader-requested-russian-military-force/>, 3 March 2014 (accessed 19 March 2014).

“East Timor profile”, <http://www.bbc.com/news/world-asia-pacific-14952883>, 25 July 2013 (accessed 19 March 2014).

Edward C. Luck: "A Council for all Seasons: The Creation of the Security Council and its Relevance Today", *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*. Edited by Vaughan Lowe et. Oxford 2008, pp. 61-85.

Eliav Lieblich: "Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements". *Boston University International Law Journal*, vol. 29(337) 2011, pp. 339-381.

Erika de Wet: *The Chapter VII Powers of the United Nations Security Council*. Oxford and Portland Oregon 2004.

"EU military operation in the CAR launched", http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/142049.pdf, 1 April 2014 (accessed 20 April 2014).

Guy S. Goodwin-Gill and Stefan Talmon: *The Reality of International Law. Essays in Honour of Ian Brownlie*. Oxford 1999.

Halimah Abdullah: "Crimea's vote: Was it legal?" <http://edition.cnn.com/2014/03/17/world/europe/ukraine-vote-legality/index.html>, 19 March 2014 (accessed 31 March 2014).

Hilary McCoubrey and Nigel D. White: *International Law and Armed Conflict*. Dartmouth 1992.

"How Syria and Libya compare", <http://www.theguardian.com/world/2011/apr/28/syria-libya-how-they-compare>, 28 April 2011 (accessed 18 March 2014).

Ian Brownlie: *International Law and the Use of Force by States*. Oxford 1991.

Ian Hurd: *International Organizations. Politics, Law, Practice*. Cambridge 2011.

"Indonesia minus", <http://www.economist.com/node/1131450>, 16 May 2002 (accessed 22 April 2014).

James Cockayne, Christoph Mikulaschek and Chris Perry: "The United Nations Security Council and Civil War: First Insights from a New Dataset". *New York International Peace Institute*, New York 2010.

James Crawford: *Brownlie's Principles of Public International Law*. 8th Edition. Oxford 2012.

James Crawford: *The Creation of States in International Law*. 2nd Edition. Oxford 2006.

Jeremy Greenstock: "The Security Council in the Post-Cold War World". *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*. Edited by Vaughan Lowe et. Oxford 2008, pp. 248-262.

J.G. Merrills: *International Dispute Settlement*. 3rd Edition. Cambridge 1998.

Jill Dougherty: “What will recognizing the opposition accomplish?”, <http://security.blogs.cnn.com/2012/12/11/recognizing-the-syrian-opposition-what-does-it-really-mean/>, 11 December 2012 (accessed 31 March 2014).

Kathryn Blaze Carlson, Stewart Bell: “Canada tells Syrian opposition it won’t be recognized until it rejects extremism despite U.S. acceptance”, <http://news.nationalpost.com/2012/12/11/canada-tells-syrian-opposition-it-wont-be-recognized-until-it-rejects-extremism-source/>, 11 December 2012 (accessed 29 March).

Kofi Annan: “Two Concepts of Sovereignty”, <http://www.economist.com/node/324795>, 16 September 1999 (accessed 12 February 2014).

“Lebanon profile”, <http://www.bbc.com/news/world-middle-east-14649284>, 4 April 2014 (accessed 6 April 2014).

“Libya profile”, <http://www.bbc.com/news/world-africa-13755445>, 18 March 2014 (accessed 24 April 2014).

“Libya: UK forces prepare after UN no-fly zone vote”, <http://www.bbc.co.uk/news/uk-politics-12770467>, 18 March 2011 (accessed 22 April 2014).

Louise Doswald-Beck: “The Legal Validity of Military Intervention by Invitation of the Government”. *The British Yearbook of International Law*, vol. 56(1) 1985, pp. 189-252.

Malcolm N. Shaw: *International Law*. 5th Edition. Cambridge 2010.

Marko Milanovic: “Crimea, Kosovo, Hobgoblins and Hypocrisy”, <http://www.ejiltalk.org/?s=crimea>, 20 March 2014, (accessed 24 March 2014).

Marko Milanovic: “Yanukovych Confirms He Invited Russian Intervention”, <http://www.ejiltalk.org/yanukovych-confirms-he-invited-russian-intervention/>, 2 April 2014 (accessed 10 April 2014).

Martin Dawidowicz: “Public Law Enforcement without Public Law Safeguards? An Analysis of State Practice on Third-party Countermeasures and Their Relationship to the UN Security Council”. *The British Yearbook of International Law* 2006, vol. 77(1) 2006, pp. 333-418.

“Member States of the United Nations”, <http://www.un.org/en/members/index.shtml>, (accessed 7 April 2014).

Nico Krisch: “Crimea and the Limits of International Law”, <http://www.ejiltalk.org/crimea-and-the-limits-of-international-law/>, 10 March 2014 (accessed 19 March 2014).

Nigel D. White: *Keeping the Peace. The United Nations and the maintenance of international peace and security*. 2nd Edition. Manchester 1997.

Owen Jones: “Libya is a disaster we helped create”, <http://www.theguardian.com/commentisfree/2014/mar/24/libya-disaster-shames-western-interventionists>, 24 March 2014 (accessed 23 April 2014).

“Peacekeepers Exit East Timor”, <http://www.nytimes.com/2013/01/01/world/asia/in-east-timor-un-ends-peacekeeping-role.html>, 31 December 2012 (accessed 22 April 2014)

Peter Malanczuk: *Akehurst's Modern Introduction to International Law*. 7th Edition. London 1997.

Pétur Dam Leifsson: “Um réttarheimildir þjóðaréttarins”. *Úlfjótur*, 2. útg. 2010, pp. 167-184.

“Q&A: The Central African Republic’s human rights crisis”, <http://www.amnesty.org/en/news/qa-central-african-republic-s-human-rights-crisis-2014-04-09>, 9 April 2014 (accessed 10 April 2014).

Rebecca M.M. Wallace, Olga Martin-Ortega: *International Law*, 6th Edition. London 2009.

Richard B. Lillich: “The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World”, *Tulane Journal of International and Comparative Law*, vol. 3 (1995).

Robert Chesney: “Surprisingly Broad Scope of UN Security Council 1973”, <http://www.lawfareblog.com/2011/03/the-surprisingly-broad-scope-of-un-security-council-1973-not-just-a-no-fly-zone-at-least-so-long-as-gaddafi-is-on-offense/>, 17 March 2011 (accessed 11 March 2014).

Robert W. Gomulkiewicz: “International Law Governing Aid to Opposition Groups in Civil War: Resurrecting the Standards of Belligerency”. *Washington Law Review*, vol. 63(43) 1988.

Ruth Gordon: “United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond”. *Michigan Journal of International Law*, vol. 15(519) 1994, pp. 519-589.

“Rwanda genocide. UN ashamed, says Ban Ki-moon”, <http://www.bbc.com/news/world-africa-26917419>, 7 April 2014 (accessed 14 April 2014).

“Somalia profile”, <http://www.bbc.com/news/world-africa-14094632>, 19 December 2013 (accessed 13 March 2014).

Stefan Talmon: “Recognition of Opposition Groups as the Legitimate Representative of a People”. *Chinese Journal of International Law*, vol.12 (2013). *Bonn Research Papers on Public International Law*, no. 1 (2013).

“Sudan profile”, <http://www.bbc.com/news/world-africa-14095300>, 10 December 2013 (accessed 22 April 2014).

The Kosovo Report. Conflict. International Response. Lessons Learned. The Independent International Commission on Kosovo. Oxford 2000.

“Timeline: Haiti”, <http://news.bbc.co.uk/2/hi/americas/1202857.stm>, 17 October 2002 (accessed 24 March 2014).

Vaughan Lowe ect.: “Introduction”. *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*. Edited by Vaughan Lowe ect. Oxford 2008, pp. 1-58.

“What is the Geneva II conference on Syria?”. <http://www.bbc.com/news/world-middle-east-24628442>, 22 January 2014 (accessed 24 April 2014).

“Whose coup in Haiti”, <http://www.economist.com/node/2478583>, 4 March 2004 (accessed 20 March 2014).

TABLE OF CASES

ICJ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgement, *ICJ Reports*, 19 December 2005, p. 168. [DRC v Uganda]

ICJ *Certain Expenses of the United Nations, Advisory Opinion of July 20th, 1962: ICJ Reports 1962*, p. 163. [Certain Expenses case]

ICJ *Corfu Channel Case Judgement of April 9th, 1949: ICJ Reports 1949*, p. 4. [Corfu Channel Case]

ICJ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion of July 9th, 2004: ICJ Reports 2004*, p. 136.

ICJ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports 1996*, p. 226. [Nuclear Weapons Advisory Opinion]

ICJ *Legality of the Use of Force, Provisional Measures, 2 June 1999, ICJ Reports 1999*, p. 124. [Legality of the Use of Force]

ICJ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgement, 6 November 2003, *ICJ Reports 2003*, p. 161. [Oil Platforms case]

Prosecutor v. Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-I-AR72, 2 October 1995. [Tadic Appeal Decision].

TABLE OF TREATIES

Hague Conventions I-IV, 29 July 1899.

Hague Conventions I-XIII, 18 October 1907.

Covenant on the League of Nations, 28 April 1919.

General Treaty for the Renunciation of War, (Kellogg-Briand Pact), 27 August 1928.

Statute of the International Court of Justice, 26 June 1945.

The United Nations Charter, 26 June 1945.

Universal Declaration of Human Rights, UN Doc. A/RES/217 A(III), 10 December 1948.

Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948.

Draft Code of Offences against the Peace and Security of Mankind 1954. *Yearbook of the International Law Commission*, 1954, vol. II.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, (Geneva Convention I), 12 August 1949.

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members, Armed Forces at Sea, (Geneva Convention II), 12 August 1949.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War, (Geneva Convention IV), 12 August 1949.

Geneva Convention Relative to the Treatment of Prisoners of War, (Geneva Convention III), 12 August 1949.

International Covenant on Civil and Political Rights, 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

Vienna Convention on the Law of the Treaties, 23 May 1969.

Statute of the International Criminal Court, 17 July 1998.

Declaration of the South Summit, Group of 77 South Summit, 10-14 April 2000.

TABLE OF SECUTIRY COUNCIL DOCUMENTS

Resolution on the North Korea invasion of South Korea, UN Doc. S/RES/1501, 25 June 1950.

Resolution on the situation in the Republic of Korea, UN Doc. S/RES/83, 27 June 1950.

Resolution on the establishment of ONUC, UN Doc. S/RES/143, 14 July 1960.

Resolution on the situation in Congo, UN Doc. S/RES/161, 21 February 1961.

Resolution on the situation in Congo, UN Doc. S/RES/169, 24 November 1961.

Resolution on UNIFIL in Lebanon, UN Doc. S/RES/425, 19 March 1978.

Resolution on the Argentine invasion in the Falkland Island, UN Doc. S/RES/502, 3 April 1982.

Resolution on the situation of Iran and Iraq, UN Doc. S/RES/598, 16 January 1987.

Resolution condemning Iraq invasion of Kuwait by, UN Doc. S/RES/660, 2 August 1990.

Resolution on the situation of Iraq and Kuwait, UN Doc. S/RES/660, 6 August 1990.

Resolution on the situation of Iraq, UN Doc. S/RES/688, 5 April 1991.

Resolution on the situation in the former Yugoslavia, UN Doc. S/RES/713, 25 September 1991.

Resolution on the situation in Somalia, UN Doc. S/RES/733, 23 January 1992.

Resolution establishing UNPROFOR, UN Doc. S/RES/743, 21 February 1992.

Resolution on the situation in Bosnia, Herzegovina, UN Doc. S/RES/770, 13 August 1992.

Resolution on the UNPROFOR, UN Doc. S/RES/776, 14 September 1992.

Resolution on the situation in Somalia, Resolution UN Doc. S/RES/794, 3 December 1992.

Resolution on the situation in Rwanda, UN Doc. S/RES/812, 12 March 1993.

Resolution authorizing the use of force in former Yugoslavia, UN Doc. S/RES/816, 31 March 1993.

Resolution on the situation in Somalia, UN Doc. S/RES/814, 26 March 1993.

Resolution imposing economic sanctions on Haiti, UN Doc. S/RES/841, 16 June 1993.

Resolution on UNOMUR's mandate, UN Doc. S/RES/846, 22 June 1993.

Resolution establishing UNAMIR, UN Doc. S/RES/872, 5 October 1993.

Resolution on the UNOMOUR, UN Doc. S/RES/891, 20 December 1993.

Resolution on the mandate of UNAMIR, UN Doc. S/RES/912, 21 April 1994.

Resolution on the situation in Rwanda, UN Doc. S/RES/918, 17 May 1994.

Resolution on UNOMUR's mandate, UN Doc. S/RES/928, 20 June 1994.

Resolution authorizing the use of force in Rwanda, UN Doc. S/RES/929, 22 June 1994.

Resolution authorizing the use of force in Haiti, UN Doc. S/RES/940, 31 July 1994.

Secretary-General report on Somalia, UN Doc. S/1994/1166, 14 October 1994.

Resolution regarding UNOSOM II, UN Doc. S/RES/954, 4 November 1994.

Resolution on former Yugoslavia, UN Doc. S/RES/1031, 15 December 1995.

Resolution on the situation in former Yugoslavia, UN Doc. S/RES/1160, 31 March 1998.

Resolution on the situation in former Yugoslavia, UN Doc. S/RES/1203, 24 October 1998.

“Security Council Rejects Demand for Cessation of Use of Force Against Federal Republic of Yugoslavia”, SC Press Release, SC/6659, 26 March 1999.

Resolution on the agreement ending the Kosovo crisis, UN Doc. S/RES/1244, 10 June 1999.

Resolution on East Timor, UN Doc. S/RES/1264, 15 September 1999.

Resolution imposing sanctions on Liberia, UN Doc. S/RES/1343, 7 March 2001.

Resolution on the UNTAET's mandate. UN Doc. S/RES/1392, 31 January 2002.

Resolution authorizing the use of force in Côte d'Ivoire, UN Doc. S/RES/1484, 30 May 2003.

Resolution authorizing the use of force in Liberia, UN Doc. S/RES/1497, 1 August 2003.

Resolution authorizing the use of force in Haiti, UN Doc. S/RES/1529, 29 February 2004.

Resolution on the MINUSTAH in Haiti, UN Doc. S/RES/1542, 30 April 2004.

Resolution on Darfur, Sudan, UN Doc. S/RES/1564, 18 September 2004.

Resolution authorizing the use of force in Sudan, UN Doc. S/RES/1590, 24 March 2005.

Resolution referring the situation in Sudan to ICC, UN Doc. S/RES/1593, 31 March 2005.

Resolution authorizing the use of force in Sudan, UN Doc. S/RES/1706, 31 August 2006.

Resolution establishing the UNAMID in Sudan, UN S/RES/1769, 31 July 2007.

Resolution referring the situation in Libya to ICC, UN Doc. S/RES/1970, 26 February 2011.

Resolution authorizing the use of force in Libya, UN Doc. S/RES/1973, 17 March 2011.

Resolution authorizing the Use of Force in the Central African Republic, UN Doc. S/RES/2127, 5 December 2013.

Resolution authorizing EU operation to use force in the CAR, UN Doc. S/RES/2134, 28 January 2014.

Resolution on the situation in Syria. UN Doc. S/RES/2139, 22 February 2014.

“Security Council Fails to Adopt Text Urging Member States not to Recognize Planned 16 March Referendum in Ukraine’s Crimea Region”. SC Press Release, UN Doc. SC/11319, 15 March 2014.

“Citing Atrocities, ‘Total Impunity’ in Central African Republic, Secretary-General Warns against Repeat of Rwanda 20 Years Later”. UN Doc. SG/SM/15751, AFR/2850, 5 April 2014.

TABLE OF GENERAL ASSEMBLY DOCUMENTS:

1950 Uniting for Peace, UN Doc. A/RES/377, 3 November 1950.

1960 Declaration on the granting of independence to colonial countries and peoples. UN Doc. A/RES/1514, 14 December 1960.

1963 Question of equitable representation on the Security Council and the Economic and Social Council. UN Doc. A/RES/1991 A and B (XVIII), 17 December 1963.

1965 Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/2105, 20 December 1965.

1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. UN Doc. A/RES/2131 (XX), 21 December 1965.

1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN Doc. A/RES/25/2625, 24 October 1970.

1970 UN Relief and Works Agency for Palestine Refugees in the Near East, UN Doc. G/RES/2672 C (XXV), 8 December 1970.

1974 “Question of Palestine”, UN Doc. G/RES/3236 (XXIX), 22 November 1974.

1974 Declaration on the Definition of Aggression, UN Doc. A/RES/29/3314, 14 December 1974.

1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, UN Doc. A/RES/36/103, 9 December 1981.

1981 Protocol Relating to Mutual Assistance of Defence, UN. Doc. A/SP3/5/81, 29 May 1981.

1982 Importance of the Universal Realization of the Right of Peoples to Self-determination, UN Doc. A/RES/37/43, 3 December 1982.

1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, UN Doc. A/RES/42/22, 18 November 1987.

1989 Resolution condemning the intervention in Cambodia, A/RES/34/22, 16 November 1989.

2000 We the Peoples: The Role of the United Nations in the Twenty-first Century. Report of the Secretary-General. UN Doc. A/54/2000, 27 March 2000.

2001 Responsibility of States for Internationally Wrongful Acts, *International Law Commission*, UN Doc. A/RES/56/83, 12 December 2001.

2002 Responsibility of States for internationally wrongful acts, UN Doc. A/RES/56/83, 28 January 2002.

2002 Follow-up to the Outcome of the Millennium Summit, A/57/303, 14 August 2002.

2004 Report of the High Level Panel on Threats, Challenges and Change, UN Doc. A/59/595, 2 December 2004. [*A More Secure World*].

2005 In Larger Freedom: Towards Development, Security and Human Rights for All, Report by the Secretary-General, UN Doc. A/59/2005, 26 May 2005.

2005 World Summit Outcome, A/RES/60/1, 24 October 2005.

2006 Protection of Civilians in Armed Conflict, UN Doc. S/RES/1674, 27 April 2006.

2009 Implementing the Responsibility to Protect, UN Doc. A/63/677, 12 January 2009.

2014 Resolution on the territorial integrity of Ukraine, UN Doc. A/68/L.39, 24 March 2014, available at: <http://mfa.gov.ua/mediafiles/files/misc/A-68-L.39.pdf>.

TABLE OF OTHER DOCUMENTS

Completed Peacekeeping Operations. East Timor. UNTAET, available at: <http://www.un.org/en/peacekeeping/missions/past/etimor/etimor.htm>, (accessed 22 April 2014).

Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>, (accessed 6 February 2014).

“The Comprehensive Report on Lessons Learned from United Nations Operation in Somalia (UNOSOM). April 1992 - March 1995,” available at: <http://www.peacekeepingbestpractices.unlb.org/PBPS/Library/UNOSOM.pdf>, (accessed 10 March 2014).

United Kingdom Guidelines on Humanitarian Intervention, 71 BYIL 646 (2000).