COLLECTIVE SECURITY AND THE USE OF FORCE

BONN, 12.12.2017

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The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

(art. 39 UN Charter)
By 1950 the veto power had already rendered the SC rather ineffective.

In response hereto, the GA passed Uniting for Peace Resolution allowing “collective measures, including, in the case of breach of the peace or act of aggression, the use of armed force, when necessary, to maintain or restore international peace and security”.
Expenses case (ICJ, 1962)

In determining the lawfulness of such peace operations by GA the Court held that they are lawful if:

- with consent of state
- neutrality
- force used only in self-defense

Nowadays the SC uses this model for ‘blue helm operations’ e.g. Eritrea/Ethiopian boarder (troops integrated in UN command structure)
COERCIVE MILITARY MEASURES: ART. 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

- System of Art. 43-47 never came into being
- UN does not have its own troops (except for blue helms in ‘soft’ operations)
- Authorizations of ‘coalitions of the willing’
The Security Council,

‘Reaffirming its resolution 743 (1992) and all subsequent resolutions relating to the United Nations Protection Force (UNPROFOR),

....

Reiterating its determination to ensure the security of UNPROFOR and its freedom of movement for all its missions, and to these ends, as regards UNPROFOR in the Republic of Croatia and in the Republic of Bosnia and Herzegovina, acting under Chapter VII of the Charter of the United Nations

......

Authorizes UNPROFOR, in carrying out its mandate in the Republic of Croatia, acting in self-defence, to take the necessary measures, including the use of force, to ensure its security and its freedom of movement;

The Security Council,

... 13. Determines that the provision of security and stability is essential to the successful completion of the political process ... and to the ability of the United Nations to contribute effectively to that process and the implementation of resolution 1483 (2003),

and authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, including for the purpose of ensuring necessary conditions for the implementation of the timetable and program.

(Res. 1511 (2003))
Determining that the situation in the Libyan Arab Jamahiriya continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

4. Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;
“Determining that the situation in Côte d’Ivoire continues to constitute a threat to international peace and security,
Acting under Chapter VII of the Charter of the United Nations,

1. Urges all the Ivorian parties and other stakeholders to respect the will of the people and the election of Alassane Dramane Ouattara as President of Côte d’Ivoire,

Recalls its authorization and stresses its full support given to the UNOCI, while impartially implementing its mandate, to use all necessary means to carry out its mandate to protect civilians under imminent threat of physical violence, within its capabilities and its areas of deployment, including to prevent the use of heavy weapons against the civilian population...”
Art. 4 Draft Articles: wrongful act implies (a) breach of a primary obligation through act or omission and (b) that it is attributable to IO

Conduct of agent or organ is attributable (Art. 6) – concept of agent broadly defined (Art. 2(d))

Example would be Special Rapporteur on mission for UN who out carries UN mandate – IO then acts through that person
• **Ultra vires** acts (in excess of authority) also attributable (Art. 8)

• Organ/agent has to Act in official capacity and within overall functions of IO

• This implies close link between the *ultra vires* conduct and the functions of the organ/agent
  – (Wrong) operational decision by soldiers in peace-keeping mission
  – *Mothers of Srebrenica v Netherlands* (2017, Hague Court of Appel, paras 14-17)

Does not cover private actions or omissions of persons who happen to be organs or agents of IOs
ATTRIBUTION (III)

Article 7 Draft Art – concerns organs of State placed at disposal of IO

Effective control test is decisive – this is the position of the UN and the ILC. Confirmed by Dutch Supreme Court Nuhanovic and Mothers of Srbrenica v Netherlands.

Dual attribution is possible (to State and IO) where both have effective control.

In Nuhanovic and Mothers of Srbrenica peace keepers under UN Command where placed in Srbrenica
• Dutch commanders however also directly gave orders/ had effective control regarding Nuhanovic relatives (Dutch Supreme Court, 2013)

• and had effective control over evacuation of military base (Mothers of Srebrenica v The Netherlands)

• Actual facts of case were decisive for determining effective control

• This position to be distinguished from Behrami case of ECtHR in 2007 (pp. 23-24) – much criticized
Behrami concerned NATO Troops in Kosovo under ‘unified command and control’ – not integrated into UN command structure

According to court the UN had ‘ultimate control’ as it authorized the military operation. So it was not concerned with effective control on the ground.

Whereas peace-keepers (blue helms) and UN officials are in principle under effective control of UN, the exact opposite is the case for troops under unified command and control

Behrami case very badly received and rejected by UN and ILC (who are in any case not bound by it). Behrami out of touch with military reality and would essentially always make UN responsible merely because of formal authorization.
QUESTIONS FOR DISCUSSION (I)

• Compare the *Behrami* and *Nuhanovic* decisions
  
  – What were the similarities and differences between these decisions?
  
  – Which of these decisions seems to follow the ILC Draft Articles on the Responsibility of IO’s most accurately?
QUESTIONS FOR DISCUSSION (II)

• “NATO’s intervention in Libya in 2011 overstepped the mandate it received in UNSC Resolution 1973 (2011)”
  – Identify arguments in favor of this statement
  – Identify arguments opposing this statement

• The UNSC authorized military interventions in Libya and Côte d’Ivoire in 2011 resulted in regime change
  – What were the differences in these operations?
  – Did these differences affect the legality of the respective operations?
In Larger Freedom, UN Doc. A/59/2005 (2005), at para. 125:

Genocide, ethnic cleansing and other such crimes against humanity constitute threats to international peace and security, as a result of which the Security Council could authorize enforcement action under Chapter VII.

Primary responsibility to protect remains with State.
Article 53(1) of the UN Charter determines that: ‘[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council.’
R2P AND THE AFRICAN UNION

• Article 4(h) of the Constitutive Act of the African Union:
  – may intervene in member State in grave circumstance:
    ▪ War Crimes
    ▪ Genocide
    ▪ crimes against humanity

• How effective has the AU been in protecting civilians on the continent?

• S/RES/2033 (12 January 2012): better cooperation and coherence between UNSC and AU
AU MILITARY INTERVENTIONS

• All AU operations so far are by invitation of government and often combined with UNSC resolutions under Chapter VII e.g.
  – Burundi
  – Sudan (Darfur)
  – Somalia
  – Comores

• Article 4 (h) irrelevant in practice

• Article 4 (j) – intervention by invitation important – separate lecture