CHAPTER FIVE

ROLE OF THE UN SECURITY COUNCIL AFTER THE COLD WAR

The place of the Security Council in the United Nations organization is unique, in the sense that it is dominated by few major powers on account of the veto power enjoyed by the permanent five members of the UN Security Council. Organizationally speaking, the UN is quite different from its predecessor, the League of Nations. As Soviet Foreign Minister Vyacheslav M. Molotov reminded the opening plenary of the UN's founding conference in San Francisco, "The League had betrayed the hopes of those who believed in it. It is obvious that no one wishes to restore a League of Nations which had no rights or power, which did not interfere with any aggressors preparing for war against peace-loving nations and which sometimes even lulled the nation's vigilance with regard to impending aggression."[1]

So the intent of the founding members of the United Nations was to establish a world body in which the major powers would have the basic mandate to function as an empowered and authentic international organization to maintain international peace and security in the emerging world order after the Second

[1] V. M. Molotov, Speeches and Statement of the People's Commissar of Foreign Affairs of the USSR and Chairman of the Soviet Delegation at the United Nations Conference on International Organization in San Francisco, Embassy of the USSR, 24 May 1945, P.6

World War. In a sense, the emergence of the UN on October 24, 1945 marked the beginning of the project of realising the values of 'order', 'peace' and 'justice'[2] in the wake of the Second World War and the emerging world order in the 20th Century.

As far as the United Nations was concerned, the value of 'peace' was uppermost in the minds of the architects of the UN. The idea was to create conditions within the global strategic environment whereby 'preventive diplomacy' by the major powers after the Second World War was undertaken to maintain international peace and security. The UN Security Council was required, at that point of time, to prevent warring parties in a given armed conflict from further escalating their conflict, and keep peace within the troubled region.

The UN Security Council after the Second World War had certain distinct features. First of all, it included all major powers--- i.e., the United Sated of America, the erstwhile Soviet Union, Formosa or Taiwan, Britain and France. So the victorious powers in the Second World War were all committed to creating

[2] These are the three most important values that drive the member-states of the UN in there larger deliberations in various bodies of the UN. However, these values are not fully realised in the UN peace operations.

and sustaining the United Nations for the larger purpose of maintaining international peace and security. It enabled the United States to embed American power and dynamism in the new structure of the UN Security council.

Thirdly, the UN Security Council's permanent membership was limited to the five powers mentioned above. It did not opt for the consensus rule in the League of Nations' Council, which the Dutch delegate had labelled the "exaggerated equality between great and small powers". The Council of the League of Nations reached its greatest girth--- double its initial eight members--- in 1934, on the eve of the World War it was supposed to prevent. [3]

And fourthly, the new UN Security Council had the authority to enforce its decision, while its members had the experience and the capacity to counter aggressors through the collective use of force if necessary. In other words, the UN Security Council was at

[3] While Germany and Japan gave notice of their withdrawl from the League in 1933, the two countries did not cease to be League members until 1935. For a useful summary of the experience of the league's Council without analysis or editorial comment, see League of Nations, The Council of the League of Nations: Composition, Competence, Procedure. (Geneva, 1938); for a list of the non-permanent members of the League of Nations from 1920 to 1940, see Essential Facts About the League of Nations, 9th edn rev. (Geneva: League of nations, 1938)

the forefront to institutionalise the idea of collective security in a clear and bold fashion.

The United States insisted on the term 'United Nations' was the title used by the anti-Axis alliance, as per the Declaration by the United Nations on 1 January, 1942. The postwar extension of the alliance, and particularly of the collaboration among its key members was the central task of the UN Security Council. US President Franklin Delano Roosevelt was supportive of the notion that Four Policemen (US, USSR, UK and China) were capable and willing to enforce peace in the emerging post-war world order in the latter half of 20th Century. Roosevelt's Christmas Eve speech in December 1943 reflected his vision in the following words:

"Britain, Russia, China and the United States and their allies represent more than three-quarters of the total population of the earth. As long as these four nations with great military power stick together in determination to keep the peace there will be no possibility of an aggressor nation arising to start another world war".[4] Roosevelt continued to say that "We must be prepared to keep the peace by force". He declared that the people of the world

[4] See The New York Times, 25 December, 1943

"are fighting for the attainment of peace— not just a truce, not just an armistice— but peace that is as strongly enforced and as durable as mortal man can make it".

Earlier in 1943, in an interview, Roosevelt stressed that the post-war organization (the United Nations Organization, as it was called so then) must be built on an explicit foundation of power politics, not welfare politics or wishful thinking. Considering the prospects of American military dominance in the postwar world, he opposed any sort of distinct military capacity of the United Nations, or the delegation of sovereignty from member-states of the UN to the world body of the UN in any formal way.[5]

As far as America's allies in the Second World War were concerned, both the United Kingdom and the Soviet Union shared America's idea of having a smaller Security Council, that was created around the cooperation of the main wartime allies.

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[5] See Forrest Davis, "Roosevelt's World Blueprint," Saturday Evening Post, 10 April 1943. For a detailed treatment of the President's role in developing the plans for the United Nations, see Townsend Hoopes and Douglas Brinkley, FDR and the Creation of the U.N. New Haven, CT: Yale University Press, 1997. Though Roosevelt has been rightly credited with being the guiding spirit behind the creation of the UN, he passed away just two weeks before the opening of the San Francisco founding conference.

There was realisation among the allies that the alliance was cemented by necessity; it was due to the strategic reason of countering ambitions of the Axis powers (Germany, Italy and Japan) during the Second World War. Clearly, there was no ideological convergence among the main allied powers such as the US, the UK and the USSR.

Although there was certain convergence of societal values between the United States and the United Kingdom, one of the aims of the post-war American foreign policy was to dismantle British and other European colonial empires. On the other hand, after the Second World War, both the USA and the USSR emerged as the two most powerful countries in the post-war international political system.

In the Second World War, both the USA and the USSR came together to fight a war against a common enemy, Germany. The UN Security Council provided a potential platform for these countries to attempt further collaboration in continuation of the original wartime collaboration, in the eventiality of potential aggressors, or if difference surface among the wartime allies.

Although the allies in the Second World War were aware of benefit to the proposed UN if more countries join it, they were not visualising the UN as a universal organization.[6] The Soviet Union, in particular, was wary of being outnumbered in the UN. It is also important to point out that the large part of the planning for creating the UN was carried out by the USA, whose territory and infrastructure were least affected by the devastation caused by the Second World War.[7]

The emergence of the USA as a super-power after the Second World War and recognition of the USSR as a formidable great power, were two distinct power-realities prevailing at that time. Clearly, elaborate and intense consultations between the UK and the USA, followed by a series of wartime conferences between Roosevelt, Churchill and Stalin led to a high degree of convergence on the basic structures and purposes of the prospective world body. At a two-part series of "conversations" at Dumbarton Oaks,

[6] At the time, Kelsen made the distinction between the assumptions behind the League and its successor, the UN. See Hans Kelsen, "The Old and the New League: The Covenant and the Dumbarton Oaks Proposals," American Journal of International Law, 39, No. 1 (January 1945): pp. 46-47

[7] See Hoopes and Brinkley, FDR and the Creation of the UN. Also, Ruth B. Russell, A History of the United Nations Charter: The Rule of the United Sates 1940-1945. Washington, DC: Brookings Institution Press, 1958

in the Georgetown section of Washington DC, detailed proposals were worked out from August to October, 1944.

The "Proposals for the Establishment of a General International Organization" formed the basis for broader discussions at the UN's founding conference in San Francisco in the spring of 1945, which was sponsored by the four powers represented at Dumbarton Oaks. During the course of the founding conference, France began participating in the inner deliberations among the leading powers. In San Francisco, the Big Four, after France's joining in, became the Big Five in the UN hierarchy.

In the San Francisco Conference, invitations were issued to those states that had declared war on one of the Axis powers. The goal of universality of the membership for all sovereign nation-states was not preferred. The UN Charter left membership "open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgement of the Organization are able and willing to carry out these obligations" (Article 4)

The Veto Power of the Big Five:

As regards the provision of the non-negotiable veto for the Big Five, its source can be traced to the Dumbarton Oaks proposals that provided a detailed blueprint of the UN's purposes, principles, procedures, and structure.[8] Most of these formulations found its way into the UN Charter, including several controversial provisions related to the composition and functioning of the Security Council.[9] It was abundantly clear that the big powers endorsed the centrality of the UN Security Council, in order to realise their larger vision of establishing international peace and security. There were gaps in the Dumbarton Oaks plans regarding the voting procedures in the UN Security Council.

The US, the USSR, the UK and Formosa Taiwan (the Big Four) agreed on the need for unanimity among them for the authorisation of collective enforcement action, so as to ensure that the organization would not be turned against any one of them. However, there were divergent views about the scope of this veto.

[8] See Russell, A History of the United Nations, Appendix I, pp. 1029-28

[9] Some points, at Dumbarton Oaks and San Francisco, have proved controversial over time. For instance, for a detailed discussion of the US role in introducing the language in Article on the non-use of force that it now finds awkward, See Edward C. Luck," Article 2 (4) on the Non-Use of Force: What Were We Thinking?," in David P. Forsythe, Patrice C. McMahon and Andrew Wedeman (eds.), American foreign Policy in a globalized World (New York: Routledge, 2006).

It related to matters of peaceful settlement of disputes, the admission of new members, the appointment of the UN Secretary-General, the amendment of the Charter and/or the inclusion of matters on the UN Security Council's agenda.

At the Black Sea Resort of Yalta in February, 1945, on the question of the veto, the American formula prevailed.[10] The idea that the great powers should have a veto over the authorisation of enforcement measures (that might well involve the use of their armed forces) was shared by the major powers. But the notion that unanimity among the great powers should be required for peaceful settlement efforts generated debate within the US delegation. The Soviet delegation, at San Francisco, announced that it interpreted Yalta as requiring great power unanimity even for introducing a topic into the UN Security Council's agenda.[11] Due to a united opposition and appeals to Stalin in Moscow's Kremlin led to a reversal of the Soviet position.

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[10] Hoopes and Brinkley, FDR and the Creation of the U.N, p 199

[11] For an explanation of the Yalta agreement by the four sponsoring governments, dated 8 June, 1945, See Appendix III, 455-8 of Sydney D. Bailey and Sam Daws, The Procedure of the UN Security Council, 3rd edn. (Oxford: Clarendon Press, 1998)

As regards the veto power, the dilemma faced by the major powers was real. On the one hand, they because it was inequitable and because it could prevent action from the UNSC when it was most needed. On the other hand, they realized that the viability and effectiveness of the UN would depend largely on the collaboration of the major powers. At the end of the day, the veto was accepted by the major powers in matters relating to the peaceful settlement of disputes, new members, appointment of the UN Secretary-General, and the UN Charter amendment, as well to all other non-procedural matters. As regards Amendment, it would require a vote of two thirds of the members of the General Assembly and ratification by two thirds of the members of the United Nations, including all five permanent members of the UN Security Council (Article 108). In other words, any of the five would have the option of vetoing any attempts to constrain or limit their veto powers. The veto provision inserted inequities within the structure of the UN Security Council. Delegations from other founding member-states of the UN were able to bring in a provision for a General Conference, to be held no later than the tenth annual session of the UN General Assembly, to review the provisions of the Charter (Article 109). Subsequently, though, the world politics had

entered the longer phase of the Cold War between the USA and the USSR.

The UN Charter provided the guidelines to enable the major powers to contribute to the maintenance of international peace and security. The provisions relating to peaceful settlement in Chapter VI of the UN Charter provided political and diplomatic tools to realise the wider objective of peace operations under the UN auspices.

In the next section, we shall explore the role of the UN Security Council in greater detail.

II.

In its first few years, the UN Security Council faced a series of regional conflicts with broader security implications. But it did not fulfill the classic state-to-state aggression. These candidates were not fit for the imposition of Chapter VII enforcement measures.[12]

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[12] Resolution 54 of 15 July, 1948, invoked Articles 59 and 40------ the UN Security Council's first references to Chapter VII----concerning the first war in Palestine, but it did not impose enforcement measures. The first enforcement action was undertaken in response to the North Korean invasion of South Korea in June, 1950. That vote in the Council materialised only because the Soviet representatives had boycotted the Council at the time, in protest of Taipei's continued occupancy of the Chinese Seat on the UN Security Council

The matter of the withdrawal of Soviet forces from northern Iran, followed by the question of whether the continuation of the Franco regime in Spain constituted a threat to international peace and security; tensions in Northern Greece; the Corfu Chanel dispute between the United Kingdom and Albania; and colonial hostilities between the Netherlands and Indonesia---- these matters figured in the initial years. At the time, traditional diplomatic tools, such as mediation, good offices, and fact-finding were invoked by the UN Security Council, often in tandem with the efforts of the UN Security-General and his envoys.

In 1948, the UN Security Council was faced with two conflicts, in Palestine and in the Indian sub-continent. On 21 April, in Resolution 47 (1948), the Council called on India and Pakistan to end their hostilities over Jammu and Kashmir. It also expanded the fact-finding commission, and instructed it both to provide good offices to the parties and to create an observer group, which became the United Nations Military Observer Group in India and Pakistan (UNMOGIP).

In another resolution 48 (1948), the UN Security Council established a Truce Commission for Palestine, including a group of international military observers. It was called the UN Truce Supervision Organization (UNTSO). These were the two peace-keeping missions in the initial time-period since the establishment of the UN.

In early 1949, Ralph Bunche achieved negotiating armistice accords between Israel and its four Arab neighbours.[13] For this accomplishment, Bunche received the UN's first Nobel Peace Prize.

In the UN peace-keeping missions, certain level of co-operation among the UN Security Council, the UN Secretary-General and a range of other actors has been acknowledged. It is noticed that in such peace-keeping missions, regional groups or major powers often take the lead in mediation efforts and the UN, at best, plays a marginal role in the peace process.[14]

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[13] For details regarding those complex negotiation, See Brian Urquhart, Ralph Bunche: An American Life, New York; W. W. Nortan, pp. 139-200

[14] Peter Wallensteen has reviewed armed conflict prevention efforts in thirty inter-state and intra-state disputes from 1992 to 1999. He concluded that in only five of those cases the UN was a leading outside actor, compared to eleven times for the US and ten for the European Union. See Wallensteen, "Reassessing Recent Conflicts: Direct vs. Structural Prevention", in Fen Osler Hampon and David M. Malone (eds). From Reaction to conflict: Opportunities for the UN System: Boulder, CO: Lynne Rienner, 2002, pp. 205-21, esp. Table 9.1

Despite the existence of various non-coercive mechanisms to uphold universal human rights, there is a broad acceptance that there might be times where their protection can be achieved only through the use of force by outsiders in the jurisdiction of a sovereign state. The doctrine of humanitarian intervention, defined as "forcible action by a state, a group of states or international organizations to prevent or to end gross violations of human rights on behalf of the nationals of the target state, through the use or threat of armed force without the consent of the target government,"[15] has been a subject of intense academic discussion in international law, ethics, political theory, and international relations. This conventional idea has been further strengthened in the post-Cold War period owing to the enhanced opportunities for international cooperation on the one hand, and the formidable challenges which created various situations of human suffering, on the other.

Hence, humanitarian intervention came to the fore as one of the possible mechanisms at the disposal of the international

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

community while addressing the humanitarian challenges of the new era.

The idea of using force to end human suffering makes humanitarian intervention a morally appealing tool. Yet its implementation is far from perfect and its place in state practice is constrained by a number of legal and political obstacles. The humanitarian intervention debate is a subset of the question of whether force can be used legitimately in international relations. So the place given to humanitarian intervention is directly related to the international milieu, the role of norms in regard to the rightful use of force. Currently, the use of force to enforce international humanitarian norms is severely limited by the existing international legal and political regimes. Since the legality of the use of force is based on compliance with the UN Charter's provisions, which are actually monopolised by the Security Council (SC). Also, an analysis of humanitarian intervention might be conducted along a classification based on the existence of authorisation given by the SC. In other words, contemporary practices of humanitarian intervention could be classified under two categories: humanitarian interventions with the SC

authorisation and unauthorised interventions carried out by outside powers (external to the theatre of the conflict).

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

In this chapter, we shall explore the role of the UN Security Council in the post-cold war era in greater detail. First, it examines how the SC was able to engage in an expanding interpretation of its Chapter VII powers regarding the maintenance of international peace and security to accommodate humanitarian intervention within the UN system of collective security. In so doing, it provides an account of the post-cold war changes. To begin with, we shall briefly examine the SC's role in humanitarian intervention throughout the Cold War years. Second, it undertakes an analysis of the arguments raised against the SC's growing activity and

broad interpretation in this area, and makes a case to the effect that these actions must be classified as instances of humanitarian intervention.

Since its inception in 1945, the United Nations (UN) has undertaken responsibility for maintaining world peace and security. Drafters of the UN Charter envisioned an organisation engaged in the entire spectrum of conflict management and resolution, from preventive measures, to ad hoc responses to crisis, to the long-term stabilisation of conflict areas. The UN's responses to conflict are often grouped into the three stages of peace-making, peace-keeping and peace-building. Peacemaking involves diplomatic efforts to manage or resolve the conflict[16] and peace-building strives to stabilise post-conflict situations by creating or strengthening national institutions[17].

The UN defines peacekeeping as "an operation involving military personnel, but without enforcement powers, established by the United Nations to help maintain or restore international

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

[17] Peace-building activities can include monitoring elections, promoting human rights, providing reintegration and rehabilitation programmes, and creating conditions for resuming development in the concerned region.

peace and security in areas of conflict.[18] Peace-keepers have become an indispensable tool in the UN peace achievement efforts. Whether monitoring cease-fire agreements, separating the parties to a conflict, or, more recently, monitoring elections, UN peacekeeping forces have served an important role since the establishment of the UN.

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

But, the UN over-extended its resources and lost much of its political backing from some of the major powers and others states in the international political system. Peacekeeping forces were plagued with conceptual and structural problems. Two solutions followed: reform and regionalisation. For reform to be successful, it needs to help the UN to adapt to the changing nature of armed

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

conflicts. But, the policy of regionalisation had dented the UN's credibility over the years, a point we shall take up in the subsequent chapter.

UN System of Collective Security and Humanitarian Intervention

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

First, it extended the doctrine of non-intervention to all states and made it a universal norm for the first time in history. Second, it allowed the use of force only in cases of self-defense or collective security measures under Chapter VII of the Charter. By doing so, it left the notion of threat to international peace and security as the only justification for intervention in the domestic affairs of a state. Moreover, all acts of intervention were subject to authorisation by the UN, acting as the representative of the international community[19].

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

Along with the emergence of non-intervention as a universal norm, a parallel UN-initiated development of the internationalization of human rights was not in consonance with this norm. Article 1 of the Charter emphasises promoting respect for human rights and justice as one of the fundamental missions of the organization; Article 55 states that the UN shall promote and respect the human rights and basic freedoms of people, and subsequent UN initiatives have strengthened these claims. Humanitarian intervention as the most assertive form of promoting human rights at global level was clearly incompatible with the norms such as non-intervention and state sovereignty.

Nonetheless, the fact that there is no specific reference to humanitarian intervention under the UN Charter added to the controversy around the issue and the legal basis of humanitarian intervention was not necessarily sound in all cases and situations of armed conflict.

Cold War Debate on Humanitarian Intervention

During the Cold War years, the academic debate on humanitarian intervention was characterised by its exclusive

concentration on the legal dimension. In this sense, it is similar to the debate among scholars in the pre-Charter era regarding the legality of humanitarian intervention.

The legal debates on humanitarian intervention were mainly linked to one of the classical debates in international law; whether force can lawfully be used in international relations. Considering the transformation in international system during the Cold War era, the context of the debate on humanitarian intervention during this period inevitably differed from the classical debate prior to the enactment of the UN Charter regime in 1945. Whereas the use of force was a legitimate instrument of international relations before the advent of the UN system, UN Charter's provisions regarding the prohibition on the use of force and the institutionalistion of the non- intervention in domestic affairs rendered any use of coercive force within the jurisdiction of a sovereign state as illegitimate within the prevailing UN famework.

This development, in turn, drastically altered the political and legal context of humanitarian intervention. Consequently, even if one is to assume that there had been a classical doctrine of humanitarian intervention in customary international law, the question arose whether this doctrine of humanitarian intervention

survived after the establishment of the UN system. Since Article 2(4) of the UN Charter introduced a ban on the use of force, most of the scholars tended to follow what Arend and Beck call a restrictionist approach in interpreting Charter provisions[20]. Restrictionists claim that the language of the Article 2(4), together with the Article 2(7), does not allow any kind of use of force, however laudable its motive, except in cases of self-defense (Article 51) and collective security measures under Chapter VII. Thus various doctrines of international law that had developed in the pre-Charter era, such as self-help, forcible self-help, reprisal, protection of nationals, and humanitarian intervention, became unlawful.

Therefore, notwithstanding whether there was a classical doctrine of humanitarian intervention prior to the enactment of the

[20] See Anthony C. Arend and Robert J. Beck, International Law and the Use of Force (London: Routledge, 1993), pp. 131-135. The principal advocates of this position include: Michael Akehurst, 'Humanitarian Intervention', in Hedley Bull (editor), Intervention in World Politics (Oxford: Clarendon Press, 1984); Thomas Franck and Nigel S. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force', The American Journal of International Law , Vol.67, 1973; , Nigel S. Rodley, 'Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework', in N. S. Rodley (editor), To Loose the Bands of Wickedness (London: Brassey's ltd, 1992), pp. 14-42; Ian Brownlie, International Law and the Use of Force by States (Oxford: Clarendon Press, 1963), op.cit.; for references to the defenders of this position also see Francis Kofi Abiew, The Evolution of the Doctrine and Practice of Humanitarian Intervention (The Hague: Kluwer Law International, 1999), p. 62, footnote.2; Murphy, op.cit. , Chapter III, and also p. 136, footnote.136; Ramsbotham and Woodhouse, op.cit. , p. 61; Martha Brenfors and Malene Maxe Petersen, 'The Legality of Unilateral Humanitarian Intervention: A Defence', Nordic Journal of International Law, 69, 2000, p. 473, footnote.121.

UN Charter, humanitarian intervention is not permissible under the current provisions of the UN Charter and international law. In contrast, besides claiming that the traditional doctrine of humanitarian intervention survived into the UN functioning, the counter- restrictionist view claims that the restrictionist view is unnecessarily too rigid. They argue that the Article 2(4) and other related provisions of the UN Charter cannot be interpreted as prohibiting a 'pure' humanitarian intervention, mainly in that since humanitarian intervention in a proper sense does not threaten the attributes of sovereignty, territorial integrity, or political independence of the target state; it does not fall within the scope of the prohibition on the use of force laid down in the Charter. Moreover, they claim that since the collective security mechanism originally envisaged by the UN Charter failed to function due to the Cold War political conditions, the Charter's provisions regarding the use of force should be approached more critically. They further point out the Charter's provisions regarding the promotion of human rights and emerging human rights regime as possible grounds to provide justification for intervention in view of human rights violations.

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

Since the Cold War rivalry between the super-powers led to the paralysis of the UN Security Council, any collective action made through the UN was difficult to realise. The issue of intervention was considered to be related with forcible self-help by states to defend human rights in the domestic jurisdiction of another country. Hence, the instances of intervention which are given as examples to humanitarian intervention from the Cold War era were all unilateral actions undertaken by states in their individual capability without authorisation from the SC. Although the Cold War debate on the legality of humanitarian intervention

produced extensive writings on humanitarian intervention, there was no serious discussion on humanitarian intervention through the UN, let alone any practice of UN-led humanitarian intervention.

This lack of interest was mainly a result of the inability of the SC to address international security challenges due to the competition between the two super-powers. Indeed, an examination of the Cold War legal debate shows that even the opponents of humanitarian intervention recognised the possibility of the SC determining that human rights violations in a particular country constituted a threat to international peace and security for the purpose of using force to stop such violations. But legal scholars stopped short of elaborating the conditions under which the SC could make use of its Chapter VII powers to address such situations, considering the impracticality of this option under the prevailing political conditions in the international political system.

Meanwhile, the proponents of humanitarian intervention were associated with the debate about the legality of unilateral humanitarian intervention under international law and the UN system. This preoccupation prevented them from focusing on a more fruitful debate about the possibilities for an UN-authorised

humanitarian intervention, and the ways in which such an intervention should be conducted. Their attempts were focused on developing the framework criteria for a justifiable humanitarian intervention. Yet, even these attempts were mainly confined to the ways of limiting the abuse of unilateral intervention. As part of their criteria, they often underlined the preference of an action through the UN rather than letting states engage in unilateral action, but there was little thought given on how to enable the involvement of the UN in such processes.

Consequently, the issue of humanitarian intervention through the UN remained largely unexplored until the end of the Cold War era. To accommodate humanitarian intervention within the UN system, the post-Cold War practice of the SC developed what the scholars during the Cold War saw as a rather distant possibility: resort to the Chapter VII of the UN Charter. Actually a brief analysis of the UN Charter shows that it was the only possible avenue which could open door to UN involvement in situations warranting humanitarian intervention. Attempts to find a legal basis for humanitarian intervention within the UN Charter can be traced back to the Cold War years. In 1984, while arguing that humanitarian intervention by self-help was illegal under the UN

Charter, Akehurst was asking whether there was "any other provisions of the United Nations Charter which could be interpreted as authorising humanitarian intervention by way of an exception to the general prohibition on the use of force in Article 2(4)?"[21]

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

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

Considering that humanitarian intervention involves the use of coercive force, in accordance with the UN Charter, the proper framework for the use of force, therefore, rests in Chapter VII. Under Chapter VII, the SC is sanctioned with the responsibility to maintain or restore international peace and security. According to Article 39, to be able to take necessary measures in pursuance to Chapter VII, the SC shall first "determine the existence of any threat to the peace, breach of the peace, or act of aggression". Having determined the existence of such a situation, the SC may decide to employ "measures not involving the use of armed force," such as economic sanctions or the severance of diplomatic relations (Article 41). Only if the SC decides that "measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security" (Article 42).

The situations triggering humanitarian intervention do not amount to instances of 'aggression,' or 'breaches of peace.' Therefore, the most relevant basis to invoke Chapter VII with regard to humanitarian intervention is the notion of a 'threat to the peace' or the determination by the SC that a given situation

constitutes threats to international peace and security. Consequently, the main question can be put as follows--- whether and under what circumstances a domestic situation characterised by human suffering may be regarded as a threat to the peace within the confines of Article 39. Since there is no clear definition of what constitutes a threat to the peace (and thus the decision to intervene) in the Charter, which situations would be classified as sources of a threat as such remains vague.

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

situations warranting humanitarian intervention fell short of constituting threats to peace; hence any attempt to carry out humanitarian intervention breached the ban on intervention laid down in the Charter.

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

In 1977, in the case of South Africa, the SC regarded the policy of apartheid a threat to international peace and imposed an arms embargo, yet also mentioned “the military build-up by South Africa and its persistent acts of aggression against the neighboring

States" (Article 39). Since there is no clear definition of what constitutes a threat to peace (and thus the decision to intervene) in the Charter, which situations would be classified as sources of a threat as such remains vague. Therefore the determination of a threat to peace would inevitably be a political decision, depending on how the members of the SC will interpret any given situation. The practice of the SC regarding the interpretation of this notion during the Cold War was 'restrictive' due to a range of factors that hampered a broader SC involvement in world politics.

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

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

country with the Chapter VII of the UN Charter, starting from Resolution 688.

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

Consequently, the shift of focus in the UN practice has opened the whole matter to a reinterpretation and we have a situation, where as Greenwood states: "… it is no longer tenable to assert whenever a government massacres its own people or a state collapses into anarchy that international law forbids military intervention altogether."[22]

Critics Against the Broad Interpretation of Threat to Peace

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

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

As a result, the crises that were characterised with external implications severe enough to make an exception to the non-intervention principle have warranted, and may, in the future, warrant humanitarian interventions. Nevertheless, this broad interpretation by the SC of its Chapter VII powers in a way to accommodate humanitarian intervention in international politics has been targeted on several grounds.

The remainder of this chapter will undertake an analysis of the arguments raised against the SC's growing activity in this area. In doing so, here the attempt is to respond to the critics by raising counter-arguments in order to advance the case for UN-authorised humanitarian intervention.

Does the Security Council Go Beyond Its Powers?

The invocation of Chapter VII in order to accommodate humanitarian intervention largely solved the problem regarding the legality of humanitarian intervention under international law and the UN Charter. Yet, the broad interpretation of the notion of threat to peace is objected by some legal experts. In their view, "nothing in the travois suggests that the parties [to the UN Charter] envisioned a government's treatment of its nationals as likely to catalyse a threat or breach. Nor had they much reason to do so"[23].

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

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

from famine to the invasion of a sovereign state, the concept is so broad as to be useless. We need a new concept".[24]

Moreover, concerns about the expanding definition of threat to peace have been expressed in international politics. Especially developing countries expressed their uneasiness with the broadening interpretation of what amounts to a threat to peace in a direction to cover issues which had been previously considered to fall within the domestic affairs of states. The ever-increasing expansion of the SC's powers sparked off fear among some of the developing countries that had reasons to believe that this process might infringe upon sovereignty and independence of member-states. The fears increased worries on the part of the developing countries about subjective interpretation due to continuation of this process without setting any objective threshold.

In responding to the criticism that the SC is exceeding its powers, to start with, two counter-arguments raised by Murphy have some merits. First, the main rationale behind maintaining international peace and security is not for the sake of peace itself

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

but, rather, for the well-being of the people. In this light, considering the fact that the well-being of people is threatened more by violations of human rights taking place within the borders of states than by inter-state conflicts, a flexible interpretation that allows for UN authorised humanitarian intervention is acceptable. Second, there might be a correlation between a state committing human rights violations and its propensity to engage in external aggression. Therefore, a counter case might be made that action taken to address human rights violations may avert external aggression and contribute to the maintenance of international peace, which is the SC's main responsibility under Chapter VII.

Furthermore, the linkage between human rights situation within a state and international peace is increasingly recognised by the international community. As it became obvious in many humanitarian tragedies in the post-Cold War era, the violations of human rights will sooner or later create cross-border security implications, not least in the form of exodus of refugees fleeing persecution at home into neighboring nations, and affect regional and international peace and security. If the SC is not able to deal with such circumstances in an effective and timely fashion, the resulting humanitarian catastrophe and regional instability will

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

In both cases, the UN, as the expressed will of the international community, would fall into disrepute. To address this dilemma, opening ways for a broader involvement of the UN is necessary because the international community has reached a

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

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

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

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

They argue that measures decided upon by the SC pursuant to Chapter VII cannot fall within the parameters of the doctrine of humanitarian intervention. Since these actions are authorised under Chapter VII, 'humanitarian' and 'intervention' characteristics of the term become dubious. For one, they underline that, as Article 2(7) states measures decided upon by the SC under Chapter VII are exempted from the ban on intervention;

hence when the use of force is authorised by the SC, there is no dictatorial interference involved, which might render such use of force politically questionable. Moreover, they claim that actions under Chapter VII "whatever their scope, contents and nature, are directed towards the maintenance and/or restoration of international peace and security. They are not undertaken for humanitarian purposes and the introduction or use of this terminology might contribute to further misunderstandings and ambiguities."[25]

Johansen, another scholar who opposes establishing linkage between maintaining international peace and security and halting gross violations of human rights, claims that the failure to distinguish between the two may lead to confusion about mandates, the nature of military deployments, rules of engagement, and reasons for offering or denying political support[26].

These scholars, therefore, maintain that SC actions to address human rights violations must be kept as a separate hybrid

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

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

category, or in the words of Tanja they may be called as 'enforcement measures for humanitarian purposes'.

It is argued here that the concept of humanitarian intervention needs to be extended to cover UN-authorised cases as well. It is true that just as the collective enforcement actions figure based on Chapter Seven of the UN Charter, the UN-authorised humanitarian intervention is also based on the same Chapter. Yet, for the purposes of our analysis, such actions cannot be lumped together with the 'collective security operations' and it is warranted to classify them as humanitarian intervention considering these points. First, although from a strict legal point of view, the SC could act only on the basis of the existence of a threat to peace, an examination of the SC practice reveals that the characteristics of such threats are quite different from the notion of threat to peace in original sense. The traditional understanding of maintaining international peace is confined to dealing with interstate aggression, whereas the SC practice has increasingly addressed the domestic situations with imminent humanitarian catastrophe.

Moreover, as will be discussed below, the recent practice also shows that while invoking its Chapter VII powers and determining that a situation constitutes a threat to international peace, the SC

does not necessarily make reference to cross-border repercussions in every case, and a situation of human suffering in itself may trigger humanitarian intervention.

Therefore, since the potential beneficiaries of these interventions are people of the target state, and not other states in the international system as in the classical enforcement actions; they need to be treated as instances of humanitarian intervention.

Furthermore, it also appears that those who are opposed to a UN-authorised humanitarian intervention, in fact, implicitly assume the purity of motives on the part of interveners. Therefore, they conclude that any intervention aiming at maintenance of peace and security cannot classify as humanitarian. Yet, while classifying cases of humanitarian intervention, the mixture of motives, rather than the purity of motives, is the relevant point for the assessment of humanitarian intervention.

The fact that a certain action contributes to the maintenance of international peace and the protection of human rights simultaneously cannot provide a ground to reject the humanitarian character of that particular intervention. Taken together with the humanitarian outcomes of these interventions in

terms of ending suffering of the people in the target country, the arguments advanced here support the view that the actions of the SC under Chapter VII can be classified as a distinct form of humanitarian intervention.

When is there a Threat to Peace?

Another problematic aspect of the notion of threat to peace and security stems from the question of whether an internal situation must have trans-boundary implications to be classified as a source of threat to peace, and if yes what these implications might be. What led some scholars to approach the SC practice skeptically was the following hypothetical question: whether the SC can declare a situation characterised by massive violations of human rights but with no cross-border repercussions as a threat to international peace. The examination of the SC practice so far shows that it was developed on a case by case approach and the SC refrained from any explicit codification. This ambiguity regarding the character of the situations which may properly call for SC action, in turn, presents many challenges against the trend to place humanitarian intervention within Chapter VII.

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

In the opinion of Richard Gardner, the Council may be "more likely than it was before to deal with mass repression when it can reasonably find a threat to 'international peace and security.' . . . What the members of the Security Council will not do, however, is authorise military intervention in a country on human rights ground alone. . . . This is where we stand in the evolving balance between national sovereignty and human rights.[27]"

In a skeptical article on humanitarian intervention, Abrams calls this trend as "both non-humanitarian and unpersuasive". In his view, it will not fit to real world, because "while all human rights crimes may not be local, they are not all international either[28]".

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[27] Richard Gardner, 'International Law and the Use of Force' in Gardner Scheffer and Helman, Post-Gulf War Challenges to the UN Collective Security System: Three Views on the Issue of Humanitarian Intervention (Washington: United States Institute of Peace, 1992), p. 27, cited by Kenneth R. Himes, 'The Morality of Humanitarian Intervention', Theological Studies, Vol.5, Issue.1, March 1994.

[28] Elliott Abrams, 'To Fight the Good Fight', *The National Interest*, Spring 2000, p.73

Therefore, he calls for the establishment of a firmer legal basis in order to justify a UN-authorised humanitarian intervention. Others criticise this practice from a moral perspective by claiming that such 'stability-based' arguments may be used as an excuse for non-intervention in situations, "where it is morally justified, practicable and would threaten neither global nor regional stability"[29].

Hoffmann, too, acknowledges that the ad hoc approach of the SC puts the consistency of this practice into question unless one takes "the moral stance that any such violations concern all of us and constitutes ipso act of such a threat"[30]. In his article, he further adds that the possible arbitrariness of the SC creates a danger in that the SC "might apply this criterion capriciously, either by invoking threats to international security when they are not at all obvious, or by failing to recognise such threats in cases where, for whatever reason, intervention is deemed unwise.

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[29] John N. Clarke, 'Ethics and Humanitarian Intervention', *Global Society: Journal of Interdisciplinary International Relations*, *Vol.13*, Issue.4, October 1999, pp. 489- 510.

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

These claims can be responded through an examination of the SC practice. The accumulating SC practice suggests a growing willingness to characterise the suffering of the people in itself as a source of threat to peace. As underlined by Murphy, although there were some trans-boundary effects in almost all cases of humanitarian intervention in the post-Cold War era, they were not the central focus of the interventions and the SC was motivated more by the plight of the people than concerns for security. Therefore "a candid assessment of the interventions leads to the conclusion that the 'threats to peace' identified had much less to do with trans-boundary effects than with a concern for the rights of the civilian populations of those countries[31]".

Moreover, as it was further demonstrated by the SC practice in the post- Cold War era, in the deliberations of the SC on intervention what is really at stake is not whether there were any cross-border effects of a given situation. The decisive factor enabling these interventions was whether there emerged a political consensus among the major powers on the need to act, and on the feasibility of carrying out a successful operation. If the members of

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

the SC could reach an agreement to respond to cases of gross violations of human rights, the debate about the trans-boundary effects turns out to be irrelevant. This debate is, therefore, more of a theoretical exercise than a practical concern. The best example to support this claim can be found in different responses to the interventions in Somalia, Rwanda and Bosnia.

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

In Bosnia, however, although the inter-state character of the conflict provided a much firmer legal basis than humanitarian intervention, the international community failed to stop ethnic

cleansing for years. In fact, the Bosnian government was recognised under international law and there was involvement of Yugoslav and Croat armies in the civil war. Due to these factors international involvement to help Bosnian government had a strong legal standing. Yet, the existence of other practical problems and the lack of a political determination among the major powers hindered an effective involvement by the international community.

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

This reality also makes the debate whether a domestic situation should have cross-border implications to warrant humanitarian intervention irrelevant to today's realities governing state conduct.

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

This has been employed as yet another argument against the whole idea of humanitarian intervention. Although the case by case approach of the SC reflects a certain degree of inconsistency, it does not necessarily reflect a lack of interest in human suffering. As underlined so far, several practical conditions might hinder the realisation of an intervention, such as the limitations of the UN itself, feasibility of any given intervention, lack of available resources, including financial, personnel and military capabilities, and the divisions among the major powers. There might also be powerful domestic political considerations from the perspective of

the intervening states that make it difficult to engage in interventions abroad. In that regard, one could refer to the international and domestic political repercussions of challenging military interventions in complex humanitarian emergencies, domestic aversion to putting the troops of a country at risk in a far-away country, and the inherent difficulties of involvement in civil conflicts. In most cases what produces the appearance of selective application, are the combination of such practical considerations than the inherent disinterest in human suffering.