

Umeå University
Department of Political Science



The United Nations Security Council and the Enduring Challenge of the Use of Force in Inter-state Relations

Patrik Johansson and Ramses Amer
Department of Political Science, Umeå University

Umeå Working Papers in Peace and Conflict Studies, no 3

ISSN 1654-2398
Publication date: 2007-07-02
© Patrik Johansson and Ramses Amer

Guest editor: Susanne Alldén
Series editor: Associate professor Ramses Amer
Department of Political Science, Umeå University,
SE-901 87 Umeå, Sweden

Patrik Johansson and Ramses Amer:

The United Nations Security Council and the Enduring Challenge of the Use of Force in Inter-state Relations

Umeå Working Papers in Peace and Conflict Studies, no 3
ISSN 1654-2398

Abstract

The United Nations Security Council has, after the end of the Cold War, become a markedly more active player on the international stage. The number of resolutions adopted – in particular resolutions adopted under Chapter VII of the Charter of the United Nations – the number of peacekeeping missions, and the number of mandatory sanctions regimes have all increased considerably. The Council has also broadened its view of security, and adopted several resolutions that deal with thematic issues rather than with specific conflicts. In this paper, we raise the question of whether this increased activity has been accompanied by a corresponding increase in the effectiveness of the Council. We do this by analysing how the Council has developed its reaction to the use of force in inter-state relations. Throughout the existence of the United Nations, the prohibition of the use of force, other than in self-defence, has been one of the most fundamental rules that the Council is assigned the responsibility to uphold. We conclude that despite the increased level of activity on the part of the Council since the end of the Cold War, its ability to react consistently and authoritatively to violations of the prohibition of the use of force has not been strengthened.

Keywords

United Nations, Security Council, use of force, Charter of the United Nations, military intervention, Security Council resolutions.

Biography

Patrik Johansson is a PhD Candidate at the Department of Political Science at Umeå University, Sweden.

Ramses Amer, PhD and Associate Professor, is a Senior Lecturer at the Department of Political Science, Umeå University, Sweden.

Contact information

Patrik Johansson

Department of Political Science, Umeå University, SE-90187 Umeå, Sweden

E-mail: patrik.johansson@pol.umu.se

Ramses Amer

Department of Political Science, Umeå University, SE-90187 Umeå, Sweden

E-mail: ramses.amer@pol.umu.se

The United Nations Security Council and the Enduring Challenge of the Use of Force in Inter-state Relations*

1. Purpose and Structure

The end of the Cold War saw a dramatic increase in the activity of the United Nations Security Council. This is evident in terms of the number of resolutions adopted, particularly the number of resolutions adopted under Chapter VII of the Charter of the United Nations,¹ as well as in the number of peacekeeping missions and mandatory sanctions regimes. The main aim of this paper is to assess if this increased activity of the Security Council in the post-Cold War Era has been accompanied by a corresponding increase in the effectiveness of the Council. We do this by analysing how the Council has developed its reaction to the use of force in inter-state relations. Throughout the existence of the United Nations, the prohibition of the use of force, other than in self-defence, has been one of the most fundamental rules that the Council is assigned the responsibility to uphold. We assess the Security Council's reaction to the use of force in inter-state relations through its patterns of reactions to military interventions.

The structure of the paper is as follows. First, the regulation of the use of the Charter of the United Nations is identified and outlined through an overview of the main features of the legal debate. Second, the activities of the Security Council as reflected in the pattern of adoption of resolutions in the post-Cold War Era is presented. Third, the pattern of United Nations' reactions to foreign military interventions is outlined. Fourth, the trends in Security Council behaviour are assessed.

2 Regulating the use of force in inter-state relations in the Charter of the United Nations²

2.1 The provisions of the Charter of the United Nations³

There are three clauses in the Charter of the United Nations that regulate the use of force by the individual member-states, namely Article 2(3), Article 2(4), and Article 51. Furthermore, Article 39 outlines the regulations pertaining to the use of force by the United Nations in response to 'any threat to the peace, breach of the peace, or act of

* This paper draws on the two authors' research on the decision-making in the Security Council in the post-Cold War era (Johansson) and on the United Nations' reactions to foreign military intervention (Amer). An earlier version of this study was presented as paper with the same title at the Workshop on "Rule of Law on the International Agenda: Policy Politics and Morality", Organised by the Department of Law, Umeå University, the Asian Law Center, School of Law, University of Washington, and College of Law, University of Illinois, Umeå 15-16 June 2007.

¹ A Security Council Resolution is considered to be adopted under Chapter VII if it makes an explicit determination that the situation under consideration constitutes a threat to or breach of the peace, or an act of aggression, in accordance with Article 39, and/or explicitly states that the Council is 'acting under Chapter VII' in the adoption of some or all operative paragraphs.

² This section is adapted from Amer (2007b). The overview of the scholarly also draws on Amer (1994a: 22-30, 1994b: 428-430; 2007a: 5-7).

³ The text of the Charter of The United Nations can be found on the web site of the United Nations (<http://www.un.org/aboutun/charter/index.html>).

aggression'. It is essential to look at what is literally stated in clauses that regulate the use of force by member-states of the.

Article 2(3) reads as follows:

'All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.'

Article 2(4) reads as follows:

'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 any other manner inconsistent with the purposes of the United Nations.'

Article 51 reads as follows:

'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.'

2.2 Assessing the scholarly debate on the interpretation of Article 2 (4) of the Charter

The debate among international lawyers pertaining to the provisions of Article 2(4) of the Charter of the United Nations regarding the use of force by states in inter-state relations displays considerable controversy as to how these provisions should be interpreted. This controversy can partly be ascribed to the wording of Article 2(4). The wording of Article 2(4) and for that matter the whole Charter was based on considerations and decisions among the original member-states of the United Nations. It is the result of a series of compromises reached by these states after having reconciled each other's views and, consequently, the text is in some instances 'ambiguous' and 'unclear'.⁴

In the context of Article 2(4) the term 'force' has caused debate among scholars. A restrictive interpretation is that 'force' refers to the threat or to the use of 'armed force' against the territorial integrity or political independence of a state. An extensive interpretation is that 'force' refers to any threat of 'action' or to any 'action' initiated against the territorial integrity or political independence of a state.

The restrictive interpretation prohibits the threat or the use of 'armed force' but does not, in principle, prohibit an economic embargo directed at another state. Scholars adhering to such a restrictive interpretation usually point to the fact that other forms of intervention in the internal affairs of a state than by 'armed force' are addressed by the provisions of Article 2(7) and the principle of non-intervention. The extensive interpretation implies that the threat or the use of 'force' in whatever form in inter-state relations is prohibited, i.e. 'any' kind of interference which is not acceptable to the government of the target state.

Another point of disagreement is how the wording 'against the territorial integrity or political independence of any State', in Article 2(4), should be interpreted. A restrictive interpretation argues that only the threat or the use of force that directly affects the

⁴ References to the discussions about Article 2(4) can be found in: Asrat, 1991: 38-40, 199-200; Bowett, 1955-56: 131; Brownlie, 1962: 223-33.

territorial integrity or the political independence of a state is encompassed by the prohibition. An extensive interpretation centers around the argument that not only the threat or the use of force affecting the territorial integrity or the political independence of a state but also any action against the political authority of a state is encompassed by the prohibition.

The interpretation of the wording ‘against the territorial integrity or political independence of any State’, in Article 2(4), has a bearing on what kind of inter-state behaviour that would fall under the phenomenon known as ‘use of force’. Nevertheless, despite the divergent interpretations of Article 2(4) there is a consensus that this Article provides a general prohibition of the threat or the use of ‘force’ in inter-state relations.

The scholarly interpretations of the provisions of Article 2(4) have their weaknesses from the point of view of restricting the use of ‘force’ in inter-state relations.⁵

Restrictive interpretations of the term ‘force’ would not prohibit economic and political activities that could undermine the political stability in a state or create hardship for its population. Furthermore, it would not prohibit foreign interference in a state as long as such interference does not involve direct engagement of troops in the affected state.

Restrictive interpretations of the wording ‘against the territorial integrity or political independence of any State’ would imply that many kinds of foreign interventions short of armed attacks would not be prohibited, notwithstanding their effects on the political structure of the affected state.

2.3 Assessing the scholarly debate on the interpretation of Article 51 of the Charter

The debate among international lawyers pertaining to the provisions of Article 51 of the Charter of the United Nations displays considerable controversy as to how these provisions should be interpreted. This controversy can partly be ascribed to the wording of Article.⁶

If the wording of Article 51 is looked at from the purely literal point of view – in its English language version – a state or a group of states can use force in self-defence only ‘if an armed attack occurs against a Member of the United Nations’. Thus, contrary to the wording in the case of Article 2(4), the provisions of Article 51 can be literally interpreted, at least in the English language version of the Charter.

Nevertheless, the interpretation of the right of self-defence has been subject to controversy in the scholarly debate and, as in the case of Article 2(4), a restrictive and an extensive line of interpretation can be identified. The former argues along the line that the use of force is only permitted when an ‘armed attack occurs’ against a member-state of the United Nations and under no other circumstances. While the latter does not view Article 51 as comprehensive in assessing the right of self-defence. It argues along the line that the customary right of self-defence is still valid under the Charter. This means that ‘anticipatory’ self-defence is not necessarily a violation of the provisions of the Charter.

⁵ In this context the listed weaknesses are only seen from the perspective of the provisions of the Charter of the United Nations, and they do not take into consideration whether customary international law or General Assembly Resolutions address these weaknesses.

⁶ References to the discussions about Article 51 can be found in: Asrat, 1991: 38-40, 199-200; Bowett, 1955-56: 131; Brownlie, 1962: 223-33.

The scholarly interpretations of Article 51 have their weaknesses from the point of view of restricting the use of 'force' in inter-state relations.⁷ An extensive interpretation of the right of self-defence could have serious implications. First, it would not prohibit the pre-emptive use of force against a state under the guise of self-defence in a situation in which no real threat of force exists. Second, it would not prohibit the use of force against another state under the guise of rescuing its own nationals, residing in that state, without sufficient indications that the well being of these nationals was really threatened. Third, and more fundamentally, an extensive interpretation of self-defence could contribute to condone the use of force that the intervening state(s) claim to have carried out in self-defence, but that is in fact aimed at changing the political structure of another state.

In the context of discussion the possible negative implications of an extensive interpretation of the provisions of Article 51 it is important to acknowledge that representatives of the school of extensive interpretation put strong emphasis on the aspect of proportionality when force is used in self-defence. In addition emphasis is put on the temporary aspect when force is used in self-defence. Incidentally, the need for proponents of an extensive interpretation to put emphasis on the proportionality and temporary aspects, displays that they understand that the line of interpretation they pursue runs the risk of being misused by states.

2.4 Interpretation of the provisions on the Charter for the purpose of this paper

The interpretation of the provisions of Article 2(4) in the context of foreign military interventions supports the interpretation of 'use of force' as *armed force* in the sense that one or more states use their troops or military material against the territory of another state. The term 'against the territorial integrity or political independence of any State' is interpreted as *entering the territory of a state or altering the political situation in a state*. Thus the interpretation of the provisions of Article 2(4) is:

- *The use of armed force by one or more states against the territory and/or the territorial waters of a state and/or against the political structure of a state is prohibited.*

The interpretation of the provisions of Article 51 is formulated in such a manner as to define the conditions that can motivate used in self-defence are clearly taken into account. The interpretation of the right of a state to use force in self-defence for the purpose of this study is:

- *A state can invoke the right to use force in self-defence if it is subject to an armed attack against its territory or its territorial waters.*

This interpretation adheres to the restrictive school of thought taking into account the potentially negative repercussions of the extensive interpretations of the provisions of Article 51.

3 The Security Council in the Post Cold War Era – More Active

Wallenstein and Johansson (2004) analyse Security Council decisions from 1946 through 2002. They demonstrate that while the Security Council adopted an annual average of fifteen resolutions during the period 1946-1989, for the period 1990-2002 the annual

⁷ In this context the listed weaknesses are only seen from the perspective of the provisions of the Charter of the United Nations, and they do not take into consideration whether customary international law or General Assembly Resolutions address these weaknesses.

average was more than sixty adopted resolutions. In other words, the Council went from adopting roughly one resolution per month to one per week (Wallensteen and Johansson 2004: 18).

The increase in the use of Chapter VII was even more dramatic. Under Chapter VII the Council can make binding decisions, a unique authority in the international system. Wallensteen and Johansson (2004: 19) show that 93 per cent of all Chapter VII resolutions adopted during the period 1946-2002 were adopted after the end of the Cold War. Of all Security Council Resolutions adopted until 1989, Chapter VII resolutions constituted approximately five percent. From 1990, more than twenty-five percent of all resolutions have been adopted under Chapter VII. Similar increases are demonstrated concerning peacekeeping missions and mandatory sanctions regimes. Wallensteen and Johansson (2004: 20) also note that the number of vetoes have stabilised at a very low level compared with the Cold War era.

We can now present data up to and including 2006. Figure 1 (which is an updated version of figure 2.1 from Wallensteen and Johansson 2004: 18) summarises data on Security Council Resolutions for the period 1946-2006.

Figure 1 Security Council Resolutions, 1946-2006⁸

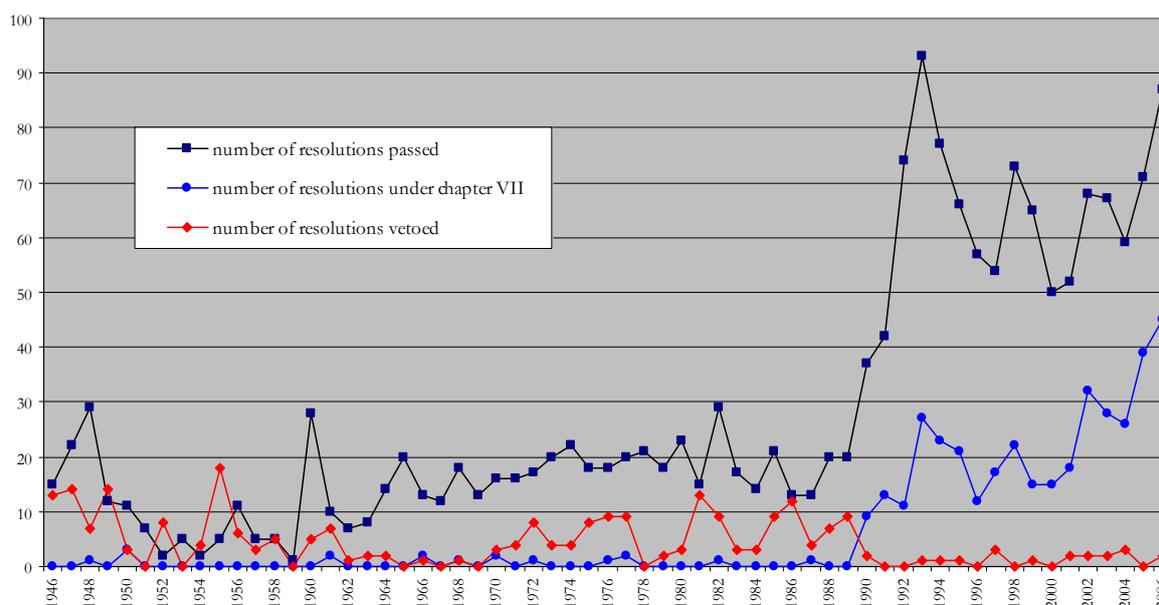


Figure 1 bears testimony to Wallensteen and Johansson's (2004: 17) assertion that 'the end of the Cold War has been the single most formative experience in the existence of the Security Council.' The trends they identify for the period until and including 2002 continue to characterise the past four years, 2003-2006.

The number of Security Council Resolutions adopted each year has remained on a high level. 1990 was the first year ever to see the adoption of more than 30 Security Council Resolutions, and since 1992 there have never been fewer than 50 resolutions adopted each. The all-time-high is the 93 Security Council Resolutions adopted in 1993. The 87 resolutions adopted in 2006 is the second highest number of adopted resolutions in a single calendar year in history of the United Nations.

⁸ Figure 1 is an updated version of figure 2.1 in Wallensteen and Johansson (2004: 18).

The number of resolutions adopted under Chapter VII has also remained high. Until 1989, the Council had never adopted more than three Chapter VII resolutions in a single year while from 1991 there have never been fewer than ten per year. The total number of Chapter VII resolutions adopted during course of the Cold War was seventeen, and since 1990, the yearly average has been over twenty resolutions. This signifies a dramatic increase in the Council's resorting to the unique authority vested in it through Chapter VII of the Charter. In 2006, for the first time, more than forty Chapter VII resolutions were adopted during a single year. A few individual Cold War years are interesting in terms of Chapter VII resolutions. Most notably in 1950, three of eleven resolutions – twenty-seven percent of all resolutions adopted during the year – were adopted under Chapter VII – all concerning the conflict in Korea. However, this was followed by ten years without the adoption of a single Chapter VII resolution. Of all Security Council Resolutions adopted during the Cold War only 2.6 per cent were adopted under Chapter VII. During the period 1990-2006, more than one-third of all Security Council Resolutions have been adopted under Chapter VII. In 2005 and 2006, Chapter VII resolutions constituted more than 50 per cent of all resolutions.

The use of the veto by permanent members of the Security Council has varied over time. In some years during the 1950s, more resolutions were in fact vetoed than adopted. An example is 1955, when eighteen resolutions were vetoed – the vast majority being Soviet vetoes of membership applications – and only five resolutions were adopted. Since 1990, no single year has seen more than three vetoes, and there has been an average of 1.2 vetoes per year.

Further, two-thirds of all peacekeeping missions have been established after the end of the Cold War. On average, post-Cold War missions are shorter and have more specific mandates. Of eighteen peacekeeping missions established during the Cold War, five are still active: the United Nations Truce Supervision Organization (UNTSO) established in 1948 for the Middle East, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) established in 1949, the United Nations Peacekeeping Force in Cyprus (UNFICYP) established in 1964, the United Nations Disengagement Observer Force (UNDOF) established in 1974 for the Golan Heights, and the United Nations Interim Force in Lebanon (UNIFIL) established in 1978.

As a contrast, of the forty-three peacekeeping missions established after 1989, thirty-three have been completed and terminated. Still, some post-Cold War missions have lasted for quite some time, for example the United Nations Mission for the Referendum in Western Sahara (MINURSO) established in 1999, and the United Nations Observer Mission in Georgia (UNOMIG) established in 1993. Both Missions are still active at the time of writing. In October 2006, the deployment of United Nations peacekeepers reached an all-time high, with over 80,000 military and police and some 15,000 civilian personnel serving in peace operations around the world.

Similarly, the more active Security Council of the post-Cold War is evident in the number of mandatory sanctions regimes. Since 1946, the Council has introduced mandatory sanctions on twenty-two occasions. Two – Southern Rhodesia and South Africa – were initiated during the Cold War. The remaining twenty have been introduced after the end of the Cold War, starting with sanctions against Iraq after the military intervention of Kuwait in 1990. During 2006 and 2007, twelve different mandatory sanctions regimes have been in force simultaneously, a higher number than ever before.

Finally, in addition to these quantitative measures of the increased activity of the Security Council in the post-Cold War era, there has also been a qualitative broadening of the Council's agenda. Wallensteen and Johansson (2004: 28-29) exemplify with resolutions concerning the role of women in the prevention and resolution of armed

conflicts and in peacebuilding, on children in armed conflict, on the issue of HIV/AIDS, and on sustainable development. International terrorism has also become an important issue on the Council's agenda. Several resolutions have been adopted on this issue – also under Chapter VII – both before and after 11 September 2001. Matheson (2006: 41-64) addresses this development in terms of an expansion of the concept 'threat to the peace' to include humanitarian disasters, internal repression, and threats to democracy.

On the basis of their findings regarding the Security Council up to and including 2002, Wallensteen and Johansson (2004: 17) suggest 'the emergence of a new Security Council, which for the first time is functioning as was originally intended under the United Nations Charter.' However, one should be careful not to confuse increased activity with increased effectiveness. As argued in the introduction, the prohibition of the use of force is one of the most fundamental rules that the Council is assigned the responsibility to uphold. Therefore, we argue, in order for the post-Cold War Security Council to be considered effective, in addition to active, we should at least be able to find strong and consistent reactions to violations of the prohibition of the use of force. In the next section, we take a closer look at patterns of Security Council reactions to foreign military interventions.

4 Patterns of reactions to foreign military intervention⁹

4.1 Defining intervention

In the broadest sense, a person, organisation or state, which is aimed at another person, organisation, or state, can use the term intervention to define any action. The interventions of interest in this study are foreign interventions, i.e. interventions undertaken by foreign actors.

Researchers taking part in the debate on intervention can be broadly divided into 'behaviouralists' and 'traditionalists'.¹⁰ The behaviouralists have generally generated extensive systematic knowledge on interventionary behaviour through their research. The traditionalists tend to provide discussions about interventionary behaviour from a general perspective without the systematic strength of the behaviouralists.

For the purpose of this study the general definition of foreign intervention is formulated as *actions of one or more states, which alter the internal affairs of another state against the will of that state*. This definition draws upon the definition given by Rosenau (1969: 153-154) as well as the definitions given by Bull and Friedmann respectively (Bull, 1984: 1; and, Friedmann, 1971: 40).

4.2 Selected cases of foreign military intervention

Based on the following criteria: 1. The intervention has been carried out by one or more states. 2. The intervention has been carried out against a state which is a member-state of the United Nations or recognised as independent by the United Nations. 3. The intervention has involved the movement of foreign troops into the airspace, the national

⁹ This section of the paper draws on earlier research on the United Nations' reactions to foreign military interventions. The United Nations' reactions to all eight cases have been studied in Amer (2007a). The reactions to seven of the cases (all except Iraq 2003) have been studied in Amer (1994b: 430-432). For a detailed study of the United Nations' reactions to the six of the cases (all except Kuwait 1990 and Iraq 2003) see Amer (1994a: 56-175).

¹⁰ These terms have been used by Richard Little to classify the published research on intervention, Little, 1987: 50. For a discussion on Little's assessment of the scholarly literature on intervention see Amer, 1994a: 12-14.

territory or territorial waters of the target state. 4. The intervention has been carried out without the consent of the government¹¹ of the target state. 5. The intervention has resulted in the overthrow of the existing government in the target state.¹²

The selected military interventions are in chronological order: 1. Vietnam's intervention in Kampuchea,¹³ resulting in the overthrow of the existing government in January 1979. 2. Tanzania's intervention in Uganda, resulting in the overthrow of the existing government in April 1979. 3. France's intervention in the Central African Empire (CAE), resulting in the overthrow of the existing government in September 1979. 4. The intervention by the Union of Soviet Socialist Republics (USSR) in Afghanistan, resulting in the overthrow of the existing government in December 1979. 5. The intervention in Grenada by the United States of America (USA) and several Caribbean states, resulting in the overthrow of the existing government in October 1983. 6. The USA's intervention in Panama, resulting in the overthrow of the existing government in December 1989. 7. Iraq's intervention in Kuwait, resulting in the overthrow of the existing government in August 1990. 8. The USA and the United Kingdom of Great Britain and Northern Ireland (UK) led intervention in Iraq, resulting in the overthrow of the existing government in April 2003.

4.3 The United Nations' reactions to the foreign military interventions

The pattern of reactions by the United Nations to the eight interventions varies considerably and can be classified according to the following four aspects: 1. The reaction versus no-reaction aspect refers to whether the United Nations considered a case of foreign military intervention at the time it occurred. 2. The termination versus non-termination aspect is related to whether the United Nations pursued its consideration of a case until the intervention was deemed as terminated. 3. The action versus non-action aspect assesses whether the United Nations resorted to punitive measures in order to ensure the termination of an intervention. 4. The legitimisation of the outcome aspect concerns whether the United Nations through resolutions adopted after the intervention was initiated legitimised the outcome of the intervention, for example the overthrow of the administration or the presence of the intervening forces. For convenience these aspects of the United Nations' reactions will be referred to as the reaction, the termination, the action, and the legitimisation aspect.

Based on the four aspects the United Nations' reactions to the eight cases fall into five categories that can be described as follows (see Table 1). A. The category encompassing the case that did not result in a direct consideration but in a legitimisation of the outcome of the intervention is referred to as: *Legitimation of outcome – Iraq*. B. The category encompassing the two cases that did not result in any consideration on the part of the United Nations is referred to as: *No reaction – Uganda and the CAE*. C. The category encompassing the two cases that the General Assembly considered without including any

¹¹ The term 'government' refers to the national governing structure in a given target state, i.e. not just the formal government and its ministers but also the Head of state. In earlier studies the term 'administration' has been used see Amer, 1994a; 1994b; and 2007a.

¹² This set of criteria is derived from Amer (1994b: 426-427; 2007a: 3-4).

¹³ The General Assembly of the United Nations used the term Democratic Kampuchea and Kampuchea until it decided to start using the term Cambodia at the 45th session in 1990 (A/45/PV.3 par. 8). The terms Democratic Kampuchea and Kampuchea will be used in this study, except when directly referring to United Nations' documents using the term Cambodia, since this study deals predominantly with the period during which the terms Democratic Kampuchea and Kampuchea were in use.

reference to a termination of the interventions in the adopted resolutions. This category is referred to as: *Single reaction – Grenada and Panama*. D. The category encompassing the two cases that were subject to a strong and continued consideration by the General Assembly and which were deemed as terminated in an adopted resolution in each case. This category is referred to as: *Extensive reaction – Kampuchea and Afghanistan*. E. The category encompassing the case that was subject to active measures, decided upon by the Security Council in adopted resolutions. This category is referred to as: *Active reaction – Kuwait*.

Table 1 The United Nations’ reactions to the eight cases in relation to the reaction, termination, action, and legitimisation aspects¹⁴

Case	Reaction	Termination	Action	Legitimation
Kampuchea	yes	yes	no	no
Uganda	no	no	no	no
CAE	no	no	no	no
Afghanistan	yes	yes	no	no
Grenada	yes	no	no	no
Panama	yes	no	no	no
Kuwait	yes	yes	yes	no
Iraq	no	no	no	yes

It can be observed that the Security Council adopted resolutions condemning the intervention only in the case of Kuwait. In the cases of Afghanistan, Grenada, Kampuchea, and Afghanistan the resolutions criticising the interventions were adopted by the General Assembly. The draft resolutions in the Security Council criticising the interventions were vetoed in all four cases.

In the case of Iraq, the intervention has not been directly considered by the Security Council or by the General Assembly. However, the issue of use of force against Iraq was on the agenda of the Security Council in early 2003 prior to the intervention, with the USA and the UK pushing for a resolution specifically authorising the use of force against Iraq pursuant to S/RES/1441 (2002). These attempts failed to gain the approval of a majority of the Council. Among those opposing a resolution authorisation the use of force against Iraq were the other three permanent members, i.e. China, France and Russia. After the intervention was launched in March 2003 and the existing administration had been overthrown the Security Council has adopted resolutions dealing with the situation in Iraq but none of these resolutions contained any reference to the intervention as such. In fact step-by-step various aspects of the post-intervention developments in Iraq have been legitimised through Security Council resolutions adopted since the intervention was initiated on 20 March 2003.

Earlier research has displayed that the eight interventions violated the prohibition of the use force against the territorial integrity of states as well as the prohibition of the use of force against the political structure of states, i.e. Article 2(4) of the Charter (Amer, 2007a:

¹⁴ Table 1 is derived from Amer (2007a: 14).

16-24). Thus, from the point of view of the violation of the prohibition of the use of force, no difference could be identified between the cases. Furthermore, the intervening states claimed to have acted in self-defence – in accordance with Article 51 of the Charter – in five of the cases – the interventions in Uganda, Grenada, Panama, Kuwait, and Iraq. However, a basis for invoking the right to use force in self-defence by the intervening state could only be documented in the cases of Kampuchea and Uganda, but not in the other cases. Thus, the application of relevant provisions of the Charter of the United Nations relating to the use of force in inter-state relations cannot explain the variation in the pattern of the United Nations' reactions to the eight cases of foreign military intervention. This will be analysed further in the final section of this paper.

4.4 Assessing the United Nations' reactions to the foreign military interventions

The overview above has displayed the full variety of reactions to foreign military interventions by the United Nations. However, in all eight cases only one has led to the legitimisation of the outcome of the intervention through Security Council resolutions, namely the case of Iraq. The other cases were either condemned or warranted no reaction. This constitutes a qualitative difference given the growing importance of the Security Council in the post-Cold War Era (see Wallensteen and Johansson 2004 and Section 3 in this paper).

The reaction in the case of Iraq is even more remarkable given the fact that of all the eight cases Iraq was the only one in connection with which the intervening forces sought the authorisation from the Security Council before the intervention and they failed to obtain such an authorisation. Thus, in all logic a number of members of the Security Council – including some permanent ones – opposed the intervention, yet they have voted in favour of all subsequently adopted resolutions relating to developments in Iraq. Furthermore, no attempt at condemning the intervention was done through a draft resolution to that effect. This can be contrasted to the cases of Kampuchea, Afghanistan, Grenada, Panama, and Kuwait. The cases of Kampuchea, Afghanistan, Grenada, and Panama display that the use of the veto to prevent the Security Council from adopting resolutions criticising the intervention did not deter countries from putting them to the vote. Following the vetoes that were cast in the Security Council the four cases were brought to the agenda of General Assembly. In the General Assembly interventions were criticised in adopted resolutions relating to all four cases. In the case of Afghanistan an Emergency Session of the General Assembly was organised to deal with the issues in early 1980 displaying the urgency of the issue of intervention in that case (Amer, 1994a: 56-170). Thus, the threat of veto cannot help explain why no such initiative was taken in the case of Iraq.

Interestingly enough if the three cases in which the USA was one of the intervening actors, i.e. Grenada, Panama and Iraq, are compared a trend of steadily but clearly weakening reaction is displayed. In the case of Grenada the USA vetoed the draft resolution. In the General Assembly the resolution was adopted by 108 votes in favour, nine votes against and with 27 states abstaining in the vote (Amer 1994a: 78-83, 159-167). In the case of Panama draft resolution in the Security Council was not adopted due to a triple-veto, i.e. the USA, the UK and France voted against. The resolution in the General Assembly was adopted by 75 votes in favour, 20 against and with 38 states abstaining (Amer, 1994a: 83-87, 167-168). In the case of Iraq no draft resolution condemning the interventions has been considered in the Security Council or in the General Assembly (Amer 2007a: 11-13). This pattern of reaction displays a continuous trend in weakening reaction to the cases with the USA as intervening actor. Interestingly enough the reaction was stronger during the Cold war, it weakened but was still in evidence by the end of the

Cold War, while the latest case of Iraq displays an acceptance and a legitimisation of the outcome of the intervention, although not an explicit acceptance of the military intervention as such.

5 Contending explanations to diverging trends in Security Council behaviour

In terms of the United Nations' reaction to foreign military interventions, the cases of Kuwait and Iraq clearly illustrate the full extent of inconsistencies. After all in the early 1990s the United Nations' reaction – through its Security Council – to Iraq's intervention in Kuwait was hailed as an example of how the United Nations system should react to breaches of the provisions of the Charter of the United Nations and it was also said to herald a new era when breaches of the Charter would no longer be tolerated. In contrast, the Security Council's reaction – and thus the United Nations' – to the intervention in Iraq in 2003 is an example of the diametrically opposite trend, namely a weaker response than against any of the other interventions involving the USA encompassed by this study. Furthermore, it could be seen as setting a trend of legitimising the outcome of actions that breach the provisions of the Charter.

How can this be explained and how does it fit into the broader context of Security Council decision-making in the post-Cold War era? Also how can one explain that the Security Council adopts an increase number of resolutions and initiate ambitious operations, a number of them with references to Chapter VII of the Charter, while at same time the reaction non-authorized use of force – as exemplified by the case of Iraq in 2003 – points to a weakened upholding of fundamental provisions of the Charter relating to the prohibition of the use of force in inter-state relation?

The developments point to two diametrically opposite developments on the one hand an Organisation – the United Nations – that is assuming a more active role and which takes an increasing number of decisions in its Security Council and which is increasingly involved in ambitious peace-keeping operations with far reaching mandates, some with peace-enforcement aspects, and on the other hand a weakening response to the non-authorized use of force and even to the legitimisation of the outcome of such actions as most explicitly displayed in the case of Iraq. Not that it can be expected that the Security Council would be able to adopt resolutions criticising the military interventions carried out by one or more of its permanent members, i.e. China, France, Russia, the UK, and the USA, but as was done in the 1970s and 1980s, if draft resolutions are vetoed in the Security Council then the interventions can be included on the agenda of the General Assembly where all member-states would have the possibility the voice there stand on the action and to vote on draft resolutions that can not be vetoed.

Taken together the two trends display a trend towards an enhanced tolerance of the use of force in inter-state relations and an increased willingness to use force in United Nations' operations. Given the emphasis in the Charter on non-interference in the internal affairs of member-states (Article 2(7)), the prohibition of the use and threat of use of force (Article 2(4)), and the peaceful settlement of disputes (Chapter VI), the two trends point to a shift towards a loosening of the prohibition of the use of force, as well as a weakening of the principle of non-interference.

6 References

6.1 United Nations documents

6.1.1 The Charter of the United Nations

From the web site of the United Nations (<http://www.un.org/aboutun/charter/index.html>).

6.2 Other sources

- Amer, Ramses. 1994a. *The United Nations and Foreign Military Interventions. A Comparative Study of the Application of the Charter*, Second Edition, Report (33), Uppsala: Department of Peace and Conflict Research, Uppsala University.
- Amer, Ramses. 1994b. 'The United Nations' Reactions to Foreign Military Interventions', *Journal of Peace Research*, 31 (2, November): 425-444.
- Amer, Ramses. 2007a. *The United Nations' Reactions to Foreign Military Interventions – A Comparative case Study Analysis*, Umeå Working Papers in Peace and Conflict Studies (2). Umeå: Department of Political Science, Umeå University.
- Amer, Ramses. 2007b. 'Pre-emptive Self-Defence New Legal Principle or Political Action?', in *Globalization and Challenges to Building Peace*, edited by Ashok Swain, Ramses Amer and Joakim Öjendal. London, Chicago and New Delhi: Anthem Press). (Forthcoming)
- Asrat, Belatchew. 1991. *Prohibition of Force Under the UN Charter; A Study of Art. 2 (4)*, Studies in International Law, 10. Uppsala University, Swedish Institute of International Law. Uppsala: IUSTUS förlag.
- Bowett, D. W. 1955-56. 'Collective Self-Defence Under the Charter of the United Nations', *British Yearbook of International Law*, XXXII: 130-161.
- Brownlie, Ian. 1962. 'The Use of Force in Self-Defence', *British Yearbook of International Law*, XXXVII: 183-268.
- Bull, Hedley. 1984. 'Introduction', in *Intervention in World Politics*, edited by Hedley Bull. Oxford: Clarendon Press: 1-6.
- Friedmann, Wolfgang, 1971. 'Intervention and international law I', in *Intervention in International Politics*, edited by Louis G. M. Jaquet. Netherlands Institute of International Affairs and Martinus Nijhoff, The Hague: 40-68.
- Gazzini, Tarcisio. 2005. *The Changing Rules on the Use of Force in International Law*. Manchester: Manchester University Press.
- Little, Richard. 1987. 'Revisiting intervention: a survey of recent developments', *Review of International Studies*, 13 (1, January): 49-60.
- Matheson, Michael J. 2006. *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War*. Washington, D.C.: United States Institute of Peace Press.
- Rosenau, James N. 1969. 'Intervention as a scientific concept', *The Journal of Conflict Resolution*, 13 (2, June):149-171.
- Wallenstein, Peter & Patrik Johansson. 2004. 'Security Council Decisions in Perspective', in *The UN Security Council: From the Cold War to the 21st Century*, edited by David M. Malone. Boulder: Lynne Rienner: 17-33.

Umea, June 2007