The Legitimacy of the United Nations in the Wake of Non-Authorised Military Interventions

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Abstract
The main aim of aim this study is to analyse the challenges faced by the United Nations in its involvement in countries that have been targeted by foreign military interventions that have not been authorised by the Security Council of the United Nations. The study does not examine the patterns of reaction to military intervention as such. Instead, the focus is on the United Nations’ response to the outcome of the military interventions at two main levels. The first is at the level of the Security Council and the decisions taken there on the nature and scope of the involvement of the United Nations in the post-intervention developments in the target state. The second level is the level of the target state and the challenges that the United Nations may face in carrying a given mission. A core dimension addressed in the study is how the United Nations’ responds to demands that it involves itself in situation resulting from actions that it had not authorised beforehand. Another dimension is the question of the legitimacy of the United Nations on the ground in the target state of the intervention. The later is of particular relevance when there is armed resistance to the intervening forces.

Keywords

Biography
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1. Purpose and Structure
The main aim of this study is to analyse the challenges faced by the United Nations in its involvement in countries that have been targeted by foreign military interventions that have not been authorised by the Security Council of the United Nations. The focus is on the United Nations’ response to the outcome of the military interventions at two main levels. The first is at the level of the Security Council and the decisions taken there on the nature and scope of the involvement of the United Nations in the post-intervention developments in the target state. The second level is the level of the target state and the challenges that the United Nations may face in carrying a given mission.

The structure of the paper is as follows. First, the phenomenon of non-authorised military intervention is defined and cases are selected. Second, the United Nations’ responses to the selected cases are outlined. Third, the impact of the United Nations’ response on its legitimacy is assessed.

2 Defining non-authorised military intervention and selecting cases
2.1 Non-authorised military interventions
The definition of a non-authorised military intervention to be used in the context of this paper is the use of force by one or more states against the territorial integrity of a state against the will of that state without prior authorisation of the Security Council of the United Nations.

This definition not only defines what kind of action will be studied but also encompasses some criteria for reducing the number of interventions to be included in the study. One criterion is of course implicit that is the use of force in the context of a military intervention. The second is that military interventions within a country, e.g. military coups, are not encompassed only foreign interventions will be considered. Third, the military intervention must involve military action against the territorial integrity of a state, this relates to military action not only by land but also against the territorial waters and the airspace of a state. Fourth, the intervention has to be carried out against the will of the target state. This criteria is necessary in order to avoid cases that can be motivate on the basis that they have been carried out after a request, an invitation, and/or in exercising the provisions of a bilateral or multilateral treaty. Fifth, the non-authorising by the Security Council, this is as indicated in the title of the paper a key aspect to be studied and thus it is a necessary criteria. It implies that the intervening state(s) has either not sought an authorisation or it has not obtained an authorisation from the Security Council. Sixth, only non-authorised interventions in connection with which an authorising was sough but not given by the Security Council will be selected. The rationale for this sixth criteria is that the way in which the Security Council acts in response to interventions that has not

* The paper draws on research carried out by the two authors on the UN’s reactions to foreign military intervention (Amer) and international intervention in Balkans (Sahovic). An earlier version of this study was presented as paper with he 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.
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previous been authorised is of particular relevance since the Council’s authority has been challenged.

2.2 Selecting cases

In selecting the cases of foreign military intervention to be studied in the context of this study the six criteria identified above will be used and in addition the time period will be limited to the post-Cold War era. The rationale for this time limitation is that the practice of seeking United Nations (Security Council) authorisation to carry out military interventions is primarily a phenomenon of the post-Cold War with the Security Council response to Iraq’s military intervention in Kuwait in 1990 as the most prominent case and also the case that initiated a new phenomenon namely, that the Security Council would allow member-states to ‘use all necessary means’ without United Nations command, i.e. using force if deemed necessary by the intervening state(s).1

Based on the set of criteria and the time period two cases of non-authorised foreign military interventions are selected for the purpose of this study. The first case is the military intervention carried out by the North Atlantic Treaty Organisation (NATO) against the Federal Republic of Yugoslavia (FRY) in 1999. The second case is the military intervention carried out by the coalition led the United States of America (USA) and the United Kingdom of Great Britain and Northern Ireland (UK) against Iraq in 2003. In the following section the responses of the United Nations through its Security Council will be outlined.

3 The United Nations response to the selected interventions

3.1 FRY

An overview of the United Nations reactions to the NATO intervention in the FRY reveals that the Security Council adopted three Resolutions of high relevance for the discussion in this paper before the NATO military intervention and one relevant resolution after the air-campaign was over. Also, there was one failed attempt to introduce a resolution condemning the NATO military intervention against the FRY.

First, there Resolution 1160 was adopted already on 31 March 1998 and it reinforced the arms embargo against the FRY. The resolution identified Serbian misdemeanours, namely the security forces ‘atrocities’ against the civilian population in Kosovo and implied United Nations’ action should the ‘atrocities’ not stop. However, the threat of United Nations action was formulated rather vaguely, namely that inability to comply with the resolution “will lead to the consideration of additional measures” (S/RES/1160 (1998)).

Second, Resolution 1199 resolution was adopted on 23 September 1998 and moved on step further than Resolution 1160, as it also identified the FRY forces activities against civilian population and it called on FRY to ‘Cease all action by the security forces affecting the civilian population’ or face ‘further action’ (S/RES/1199 (1998)).

In addition, there was one relevant point made in Resolution 1203 adopted on 24 October 1998. In this resolution the Security Council accepted that NATO had direct standing and interest in the Kosovo issue (S/RES/1203 (1998)). Given the fact that NATO later launched a military intervention against the FRY the inclusion of such reference in a Security Council resolution is notable.

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1 The Security Council’s decision to allow a military intervention in the Korean peninsula in 1950 was taken when the representative of the Union of Socialist Soviet Republics (USSR) was boycotting procedures in protest over the fact the Republic of China (Taiwan) was allowed to represent China in the United Nations. The USSR wanted the People’s Republic of China the represent China.
However, none of these resolutions allowed for an international military intervention. Instead, they all included provisions regarding the sovereignty of the FRY as each of the resolutions clearly stated the affirmation of ‘the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia’ (S/RES/1160; S/RES/1199; S/RES/1203 (1998)). These resolutions also merely anticipated a United Nations’ action in the future, should the situation not improve. None of these resolutions clarified which actions, nor did they define any entity other than the UN Security Council that would conduct such actions. However, according to some scholars, the formulations that warned of ‘further actions’ still enabled an argument that NATO acted ‘in the spirit’ of the abovementioned resolutions (Roberts, 1999:105)

The US led NATO intervention started on 24 March 1999 with an air campaign, which included Tomahawk missiles and amounted to more than 27,000 sorties and 23,000 bombs and missiles. Immediately upon the start of the air-campaign, on 26 March 1999, Russia – together with non-Council members Belarus and India – initiated a draft resolution that demanded ‘an immediate cessation of the use of force against the Federal Republic of Yugoslavia’ (Press Release, SC/6659). The draft resolution was put to vote but it was not adopted since twelve members if the Security Council including three of the permanent members – France, the UK and the USA – voted against and only three members voted in favour – China, Namibia and Russia (Press Release, SC/6659). As the Security Council did not condemn the NATO action, the Council can be perceived to have legitimised the intervention. However, the fact that the Council did not adopt the resolution could not be treated as approval as such. Interestingly, the fact that the resolution had been rejected did not feature as a major theme in the discourse of NATO commanders (Roberts, 1999:105)

The air-campaign ended in June of 1999, when the FRY accepted to remove their forces and allow for international forces to be deployed throughout the province of Kosovo. In other words, although the immediate effect of the NATO campaign was to strengthen Milosevic’s grip on power and to rally Serb public opinion against NATO and the USA, thus increasing the opposition to any possibility of deployment of an international military force in Serbia. The military developments on the ground gradually led to a broader acceptance of the notion that an international force was needed. Still, Milosevic and the FRY preferred a United Nations’ led force rather than NATO led forces, and FRY did not allow such force to have an unlimited access and right of passage throughout the FRY, i.e. the rest of Serbia. Also, while the Rambouillet accords were to be ‘taken into account’ when ‘facilitating a political process designed to determine Kosovo’s final status’, there was no mention of a three-year transition period, nor of Madeleine Albright’s assurance to the KLA that the political process would involve a referendum (Mcgwire, 2000:11)

These FRY demands were adhered to, and in the Resolution 1244 that was adopted on 10 June 1999, the Security Council established a transitional civilian administration and the peace plan already accepted by Belgrade was legitimised and amplified. In addition, as the air-campaign stopped, the UN Security Council opted to offer a legitimisation of NATO troops in Kosovo as it authorised the ‘Member States and relevant international organizations to establish the international security presence in Kosovo’ (S/RES/1244 (1999)). Of course, the Security Council implied NATO and the USA by this statement. Thus, by legitimising the post-war presence of the security force dominated by NATO (what will later become K-FOR), the Security Council legitimised the outcome of the intervention and this has also been interpreted as at least indirect legitimisation of the intervention itself.
The effect of the UN Security Council reactions to the non-authorised intervention in FRY can be summarised as a partial legitimisation after the fact. Before the air-campaign, the Security Council provided NATO with necessary arguments for intervention, while not giving direct authorisation. During the military intervention, the Security Council did not adopt a resolution defining the intervention as illegitimate. After the air-campaign had ended and a peace agreement had been reached, the Security Council opted to authorise member states and international organisations to establish a ‘security presence’ in Kosovo, including NATO and its members. The latter legitimised the outcome of the intervention.

3.2 Iraq

An overview of the United Nations reaction to the military intervention in Iraq in 2003 has to start with the developments in the Security Council prior to the intervention. The issue of the use for force against Iraq was on the agenda of the Security Council in early 2003 with the USA and UK pushing for a resolution specifically authorising the use of force against Iraq pursuant to Resolution 1441 adopted 8 November on 2002 which had found Iraq in material breach of Resolution 687 (1991) and which had given Iraq a ‘final chance to comply with its disarmament obligations under relevant resolutions of the Council’ (S/RES/1441 (2002)). These attempts failed to gain the approval of a majority of the Council among those opposing a resolution authorising the use of force against Iraq where the other three permanent members of the Security Council, i.e. China, France and Russia.

After the intervention was launched on 20 March 2003 and the existing government in Iraq had been overthrown the Security Council began to adopt 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 on the post-intervention developments in Iraq have been legitimised through Security Council resolutions as can be seen from the following.

First, the occupation of Iraq was legitimised in resolution 1483 adopted on 22 May 2003. This resolution contains references to the occupied status in Iraq but not to the legality of the intervention that brought about the occupation of the country. In the preamble part of the resolution reference is made to the USA and the UK as ‘occupying powers under unified command (the ‘Authority’)’ (S/RES/1483 (2003)). In the operative parts of the resolution references are only made to the ‘Authority’. The Resolution does not call for an end to the occupation. Instead in operative paragraph 24 of the resolution the following text has been included: ‘…encourages the United Kingdom of Great Britain and Northern Ireland and the United States of America to inform the Council at regular intervals of their efforts under this resolution.’ (S/RES/1483 (2003)) In Resolution 1511 adopted on 16 October 2003 operative paragraph 1 refers to the ‘temporary nature of the exercise by the Coalition Provisional Authority (Authority) of the specific responsibilities, authorities, and obligations under applicable international law recognized and set forth in resolution 1483 (2003)’ (S/RES/1511 (2003)). However, resolution 1511 does not explicitly refer to an occupation situation. A reference to the occupation of Iraq was included in operative paragraph 2 of Resolution 1546 adopted on 8 June 2004 in connection to the welcoming of the announced end of the occupation by 30 June 2004 (S/RES/1546 (2004)).

Second, the various Iraqi ‘administrations’ established since the intervention have gradually been legitimised through resolutions adopted by the Security Council in 2003, 2004, 2005, and 2006. In the preamble of resolution 1511 the Security Council welcomed the decisions of the ‘Governing Council of Iraq’ to form a preparatory constitutional meeting for a constitutional conference to draft a constitution (S/RES/1511 (2003)). In operative paragraph 3 the resolution also ‘supports’ the Governing Council’s efforts to
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‘mobilize the people of Iraq’ (S/RES/1511 (2003)). In the preamble of Resolution 1546 the commitment of the ‘Interim Government of Iraq’ to work towards ‘a federal democratic, pluralist, and unified Iraq, in full respect for political and human rights’ is welcomed (S/RES/1546 (2004)). Furthermore, in operative paragraph 1 the resolution ‘Endorses the formation of a sovereign Interim Government of Iraq, as presented on 1 June 2004, which will assume full responsibility and authority by 30 June for governing Iraq’ (S/RES/1546 (2004)). In the preamble of resolution 1637 adopted on 8 November 2005 the ‘assumption of full government authority by the Interim Government of Iraq on 28 June 2004’ is welcomed. The resolution also contains references to the ‘Government of Iraq’ in both the preamble and operative parts (S/RES/1637 (2005)). In the preamble of resolution 1723 adopted by the Security Council on 28 November 2006 the formation of a ‘national unity government in Iraq’ is welcomed the operative part of the resolution contains reference to the ‘Government of Iraq’ (S/RES/1723 (2006)).

Third, the transformation of the occupying forces into a Multinational Force (MNF). This was initiated already in Resolution 1511. Operative paragraph 13 is of direct relevance as exemplified by the following text:

… authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq, … to contribute to the security of the United Nations Assistance Mission in Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure; (S/RES/1511 (2003)).

The resolution goes on step further in operative paragraph 14 in which it ‘urges’ member states of the United Nations to ‘contribute assistance under this United Nations mandate, including military forces, to the multinational force’ (S/RES/1511 (2003)). In resolution 1546 operative paragraph 9 ‘Notes that the presence of the multinational force in Iraq is at the request of the incoming Interim Government of Iraq and therefore reaffirms the authorization for the multinational force under unified command established under resolution 1511 (2003)’ (S/RES/1546 (2004)). In operative paragraph 10 the Security Council decides that the MNF ‘shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq’ (S/RES/1546 (2004)). Furthermore, operative paragraph 15 includes a request to member states as well as to international and regional organisations to ‘contribute assistance to the multinational force, including military forces, as agreed with the Government of Iraq’ (S/RES/1546 (2004)).

As concluded in an earlier study on the pattern of reactions to foreign military intervention by the United Nations’ the reaction to the case of Iraq constitutes a legitimisation of the outcome of the intervention (Amer, 2007: 13-15).

4 Assessing the impact on the legitimacy of the United Nations

Both cases, i.e. the FYR and Iraq, display an active Security Council in the wake of the non-authorised interventions with one notable difference in the case of the FYR there was an attempt to criticise the intervention but it failed to gain the support of the majority of the Security Council including three of the permanent members, whereas in the case of Iraq no such attempt was made.

In the case of the NATO military intervention in the FRY the ambiguous position of the United Nations throughout the non-authorised military intervention in FRY, and the legitimisation of the post-conflict dominance of NATO forces in the K-FOR had certainly
raised questions relating to the legitimacy of the United Nations, both through the reactions by the warring parties in the field and in the international community in general. The actions and reactions of the Security Council in connection with NATO campaign in FR Yugoslavia have been seriously questioned. Perhaps, the way the Security Council handled the Kosovo issue opened up for future non-authorised interventions, such as the intervention in Iraq.

In both cases resolutions adopted by the Security Council after the interventions were carried-out displays that the situations resulting from the interventions in both the FR Yugoslavia, i.e. in Kosovo and in Iraq, have been legitimised. The case of Iraq displays that this process was gradual and that the ‘occupying forces’ were transformed into MNF with Security Council mandate. Also in Kosovo the intervening forces presence in Kosovo was legitimised after the air-campaign was completed, with the Security Council mandate outlined in Resolution 1244. In both cases, the United Nations also moved in to assume various functions a process that has been more far-reaching and ambitious in Kosovo then in Iraq. This can be attributed to the fact that in Iraq the United Nations has been directly target by armed groups opposed to the presence of forces military forces in the country. The most dramatic of these attacks was the bombing of the United Nations headquarters in Baghdad in 2003.

The Iraq situation highlights one of the problems with the involvement of United Nations in a country following a non-authorised foreign military intervention. In Iraq the United Nations has assumed a role that is perceived by those resisting the military intervention as working in favour of and with the intervening forces. In the case of Iraq this implies that those opposing the presence of the USA-UK led foreign forces perceive the United Nations as working together with these forces. Given the fact the Security Council has legitimised the presence of these troops and turned them into a MNF with United Nations’ mandate gives credence to the perception of those in Iraq who oppose the presence of these armed forces, that the United Nations supports the presence and activities of the foreign forces.

The situation in Iraq clearly displays the negative impact that a legitimisation of the outcome of a foreign military intervention can have on the possibilities for the United Nations to operate in the target state of such an intervention. It puts United Nations personnel at direct physical risk and it makes it difficult and in some areas even impossible for the United Nations to operate.

Given this situation the United Nation should not to have legitimised to outcome of the intervention in Iraq. Such a course of action would have implied that the United Nations would not have involved itself in Iraq. The argumentation in favour of this line of action is that it would have safeguarded the integrity of the United Nations and it would have prevented the United Nations from being targeted in Iraq due to its association with the USA-UK led forces. The argumentation against it is that such a course of action would deny the civilian population of Iraq much needed assistance through the United Nations.

The experience of Cambodia following the foreign military intervention carried out by Vietnam in late 1978, with a denial of official United Nations assistance to Cambodia for over a decade,² does give credence to the line of argumentation against a non-involvement of the United Nations following non-authorised foreign military intervention. However, to provide assistance does not imply that the outcome intervention has to be legitimised through Security Council resolutions nor that the intervening forces have to be transformed into a MNF with Security Council mandate.

Another dimension of the question of the impact on the United Nations’ legitimacy relates to the perceptions and expectations of how the United Nations should respond to non-authorised foreign military interventions. Given that the use of force in inter-state relations is only permitted in self-defence or when a mandate has been provided by the Security Council under Chapter VII of the Charter of the United Nations, it would be expected that member-states of the United Nations would seek to uphold the integrity of the Charter and not weaken one of its key provisions namely the ban of the use and the threat of the use of force as expressed in Article 2(4) of the Charter. Evidently this has not been the case in response to the non-authorised foreign military interventions in the FRY and Iraq, respectively. Although the interventions as such have not been condoned their outcomes have been legitimised. This pattern of Security Council reactions does not deter its member-states from the use of force if they fail to get an authorisation from the Security Council to do so in the first place.

The interventionary behaviour as such indicates a blatant disregard for the United Nations system in general and the Security Council in particular. The logic seems to be that if the Security Council does not grant authorisation for an intervention then a member-state will carry out an intervention anyhow. Thus, undermining both the authority of the United Nations and established principles of international law as expressed in the provisions of the Charter of the United Nations. To legitimise the outcome of such interventions certainly does not contribute to strengthen the authority of the United Nations nor the respect for its Charter.
5 References

5.1 United Nations documents

4.1.1 The Charter of the United Nations


4.1.2 Security Council resolutions

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4.1.3 Other documents


4.2 Other sources


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