THE REGULATION OF THE USE OF FORCE IN INTERNATIONAL RELATIONS AFTER THE CASES OF LYBIA, MALI AND CAR

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April 29, 2014
1. THE REGULATION OF THE USE OF FORCE IN INTERNATIONAL RELATIONS AND THE UN CHARTER

2. THE EXCEPTIONS TO THE PROHIBITION TO RECOUSE TO FORCE

3. CURRENT CHALLENGES FOR THE INTERNATIONAL COMMUNITY IN REGULATING THE USE OF FORCE


5. CONCLUSIONS
THE REGULATION OF THE USE OF FORCE IN INTERNATIONAL RELATIONS AND THE UN CHARTER

- The regulation of the use of force before 1945
- The innovative approach of the UN Charter
- 1. The obligation to solve disputes through peaceful means

Article 2.3
The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. (...)
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

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

(................)

4- All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
1. THE REGULATION OF THE USE OF FORCE IN INTERNATIONAL RELATIONS AND THE UN CHARTER

- The notion of Force prohibited by article 2(4): an evolving concept?

- The legal nature of art. 2.4: treaty law, customary law and/or Jus Cogens?
2. **THE EXCEPTIONS TO THE PROHIBITION TO RECOUPSE TO FORCE**

- **ART 51 OF THE UN CHARTER: SELF DEFENCE**

  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. The 1970 UNGA Resolution on the Definition of Aggression.
3. **THE EXCEPTIONS TO THE PROHIBITION TO RE COURSE TO FORCE**

- **ART. 42 OF THE UN CHARTER**
  Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations Article 42.
ART. 53 OF THE UN CHARTER

Article 53

The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council......
Humanitarian Interventions

Cases in which Humanitarian Intervention has been threatened but not enforced: Myanmar 2008 (after the devastating cyclone); Darfur, Syria 2012

The evolving concept of responsible sovereignty

The R2P doctrine (the Security Council invoked the R2P doctrine for first time in its 2006 Resolution on Darfur)

Where do we stand today?
3. THE EXCEPTIONS TO THE PROHIBITION TO RECOUSE TO FORCE

- The role of the consent of the state as an excuse to use force
- Use of force against states promoting/spONSORING TERRORISM AND/OR NARCOTRAFFIC
- Use of force against states repeatedly violating UNSC Resolutions
- Rescue operations abroad to protect own citizens in serious danger
- Preventive self defense
- Peace-keeping operations with muscles
3. CURRENT CHALLENGES FOR THE INTERNATIONAL COMMUNITY IN REGULATING THE USE OF FORCE NOWADAYS

- IS THE PROHIBITION CONTAINED IN ARTICLE 2.4 STILL VALID?
  - Increased number of “rough” States or States disregarding basic international law rules
  - Failure of the UN collective security system to work properly (due to the veto right and due to the non implementation of articles 43 and ff of the UN Charter)
  - New challenges posed by non-traditional wars and forms of terror: terrorism, narco-traffic, massive pollution caused on purpose, nuclear threat, etc.
  - Proven difficulty (impossibility?) to reform and amend the UN Charter
3. CURRENT CHALLENGES FOR THE INTERNATIONAL COMMUNITY IN REGULATING THE USE OF FORCE NOWADAYS

- WHICH ARE (OR MIGHT BE) THE CONSEQUENCES OF REPEATED ATTEMPTS TO DESTROY ART 2.4?

- WHO HAS (OR SHOULD REASONABLY HAVE) AN INTEREST IN PROTECTING AND SAVEGUARDING ART 2.4?

- THE PRACTICE OF THE UNSC “AUTHORIZING” THE USE OF FORCE BY STATES

- An important precedent: UNSC 794/1992 (UNITAF/Somalia)

- “The UNSC, acting under Chapter VII..., authorizes...member States....to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”...

“Requests the Secretary-General and, as appropriate, the States concerned to report to the Council on a regular basis...on the implementation of this resolution and the attainment of the objective of establishing a secure environment...”
THE PRACTICE OF THE UNSC “AUTHORIZING” THE USE OF FORCE BY STATES

UNSC Resolution 1973/2011 LIBYA (based on Chapter VII of the Charter)
4. Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall be immediately reported to the Security Council;
6. Decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians;

BURNING ISSUES related to the UNSC Resolution 1973:

1. Who controls if the activities carried out against Libya are coherent with the mandate of the UNSC

2. When does the Mandate expire? The worrying silence of the Resolution 1973...

3. Is the 1973 UNSC Resolution legal or does it contradict the UN Charter
Will the case of Libya represent a significant precedent and a new trend in the UNSC practice?

Will there be new similar cases?

Analysing the Syria case under this perspective...

- **THE PRACTICE OF THE UNSC “AUTHORIZING” THE USE OF FORCE BY STATES**
- **UNSC Resolution 2085/2012 MALI (based on Chapter VII of the Charter)**
- **....The UNSC**

Recalling the letter of the Transitional authorities of Mali dated 18 September 2012 addressed to the Secretary-General, requesting the authorization of deployment through a Security Council resolution, under Chapter VII as provided by the United Nations Charter, of an international military force to assist the Armed Forces of Mali to recover the occupied regions in the north of Mali.
9. Decides to authorize the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year, which shall take all necessary measures, in compliance with applicable international humanitarian law and human rights law and in full respect of the sovereignty territorial integrity and unity of Mali to carry out the following tasks:

(a) To contribute to the rebuilding of the capacity of the Malian Defence and Security Forces, in close coordination with other international partners involved in this process, including the European Union and other Member States;
(b) To support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups and in reducing the threat posed by terrorist organizations, including AQIM, MUJWA and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population;

....

- **International support**
- **13. Calls upon Member States, including from the Sahel region, to contribute troops to AFISMA in order to enable AFISMA to fulfill its mandate, welcomes the troop contributions already pledged by ECOWAS countries and further encourages Member States to cooperate closely with the African Union, ECOWAS, the United Nations, countries contributing troops and other donors to this end;**

- UNSC Resolution 2127/2013 CAR (based on Chapter VII of the Charter)
- ....The UNSC
  - “Taking note of the AU-PSC Communiqué of 13 November 2013, which urges the Security Council to quickly adopt a resolution endorsing and authorizing the deployment of MISCA"
Authorizes the deployment of MISCA for a period of twelve months after the adoption of this resolution, to be reviewed six months after the adoption of this resolution, which shall take all necessary measures, consistent with the concept of operations adopted on 19 July 2013 and reviewed on 10 October 2013, to contribute to:

– (i) the protection of civilians and the restoration of security and public order, through the use of appropriate measures;

- (ii) the stabilization the country and the restoration of State authority over the whole territory of the country;
- (iii) the creation of conditions conducive to the provision of humanitarian assistance to populations in need;
- (iv) the DDR or DDRRR process led by the Transitional Authorities and coordinated by BINUCA;
- (v) national and international efforts to reform and restructure the defence and security
• Authorizes the French forces in the CAR, within the limits of their capacities and areas of deployment, and for a temporary period, to take all necessary measures to support MISCA in the discharge of its mandate as provided by paragraph 28 above;

• requests France to report to the Council on the implementation of this mandate in the CAR and to coordinate its reporting with the reporting by the African Union referred to in paragraph 32 above and decides to review this mandate within six months after its commencement and calls upon the Transitional Authorities to cooperate fully with the deployment and operations of French forces,
in particular by ensuring its safety, security and freedom of movement with unhindered and immediate access throughout the territory of CAR and further calls upon neighbouring countries of CAR to take appropriate measures to support the action of French forces;
5. CONCLUSIONS

- A URGENT NEED FOR THE INTERNATIONAL COMMUNITY: A NEW APPROACH FOCUSED MUCH MORE ON CONFLICT PREVENTION
- THE POTENTIAL ROLE TO BE PLAYED BY REGIONAL ORGANISATIONS
- THE IMPORTANCE OF USING ALL AVAILABLE MEANS TO PREVENT AND MANAGE CONFLICTS: FROM PREVENTIVE DIPLOMACY (PEACE-MAKING) TO MILITARY INTERVENTION (ONLY AS A LAST RESORT)
- THE PORTFOLIO OF ALTERNATIVE INSTRUMENTS TO THE RE COURSE TO FORCE AVAILABLE IS BECOMING SIGNIFICANT: FROM TECHNICAL ASSISTANCE TO SANCTIONS, FROM THE CONDITIONALITY CLAUSE TO INCENTIVES.
Any questions?