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A Critical Analysis of the Collective Aspects of the UN Document a More Secure World

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With the creation of the UN in 1945 was revolutionary indeed. The most extensive powers of the Council in Pursuance of its responsibility for the maintenance of international Peace and Security are laid down in Chapter V11, entitled "Action with Respect to Threats to the peace, Breaches of the Peace, and Acts of Aggression." The end of the Cold War launched a different period for the work of the Security Council has proved indispensable and indisputably successful in a great many years. The aims of the UN charter are to guarantee human rights and international security , and while the danger of increasing the scale of a conflict is always to be considered, the use of military action to protect a beleaguered population may advance human values without significant danger to stability. The Security Council has authorized member states to take action in Somalia (resolution 794/1992), Yugoslavia (resolutions 787/1992 and 820/1993), Haiti (resolutions 875/1993 and 917/1994), Rwanda (925/1994 and 929/1994), The Great Lakes (1078/1996), Albania (1101/1997), The Central African Republic (1136/1997), Sierra Leone (1132/1997), East Timor (1264/1999), Afghanistan (1368/2001 and 1373/2001), Bosnia – Herzegovina (1244/1999) as well as Iraq (678/1990). It should be added that Resolution 678/1990 (Iraqi aggression against Kuwait) appeared to mark the end of the end of the stifling of the Security Council , so much a feature of the Cold War . The system appeared to be about to come into its own. Cameron R. Hume added ; " Iraq's invasion of Kuwait in August 1990 pushed the Council's work to a new level. Which led to the belief that agreement among the five permanent members of the Security Council was the beginning of a new era for 'Collective Security.' The history of the second half of the twentieth century is on of non-intervention for humanitarian purpose. The few intervention that might have been justified on a humanitarian basis - Bangladesh 2796 (XXV1), Cambodia , Uganda , - were justified on other terms , while interventions in Liberia, Somalia , Bosnia Haiti and Rwanda were conducted on the basis of security council authorizations and in some cases also at the invitation of the targeted state. This essay focus on the justification of UN interventions , its principles and mechanisms in the context of collective security and international law. Tensions between ethnic Albanians and Serbs in the Serb province of Kosovo[1] intensified during the 1990s. The autonomous status of the province revoked by Milosevic in 1989, and since then both groups have lived in what has been described as a "system of apartheid". In 1998 the Kosovo Liberation Army started an armed struggle for independence from FRY.[2] UN Security Council response to the tensions that were attendant on the Breakup of Yugoslavia . Fighting was " a threat to international Peace and Security ."[3] UN Security Council adopted four resolutions in in the space of eight months : Resolutions 1160 (March 1998), 1199 (September 1998), 1203 (October 1998) and 1207 (November 1998) . The Council used Resolution 1160 (1998) to express its support for an "enhanced status for Kosovo".[4] The March – June

[1] The Socialist Federal People's Republic of Yogoslavia (SFPRY) was formed in 1946 under communist rule headed by President Tito. The state consisted of six republics and tow provinces: Bosnia and Herzegovina; Crotia ; Macedonia ; Montenegro; Serbia (which included the autonomous provinces of Kosovo and Vojvodina); and Slovenia . With the death of President Tito in 1980 internal stability was threatened, and in the late 1980s nationalist sentiments came to play and increasing role in Yogoslav politics. David Scheigman, **The Authority of the Security Council under Chapter V11 of the UN Charter** (Kluwer Law International , London , 2001)P.94 .

[2]David Scheigman, **The Authority of the Security Council under Chapter V11 of the UN Charter**, P.96-97.

[3] Adam Gearey , **Globalization and Law: Trade , Right , War** (Rowman and Littlefield Publishers INC. Oxford , (2005) , P.123

1999 NATO operation Allied Force took place in the absence of an explicit UN resolution authorizing the use of force , and was triggered by the spectre of a humanitarian disaster in the context of the escalation of the Serbian paramilitary offensive against Kosovar Albianians .[5] Kosovo was the first war[6] of the new world order formally conducted in the name of the post modern just cause, human rights. In Kosovo, the bombers flew at extremely high attitudes, which put them beyond the reach of anti-aircraft fire, and used smart bombs and stealth technology. The tactic was successful and NATO forces concluded their campaign without single casualty. If the declared war aim was to 'avert a humanitarian catastrophe', it failed badly Secondly, the high flight attitudes of the bombers increased significantly civilian 'collateral damage'.[7]

The intervention by the NATO in Kosovo during the spring of1999 aroused controversy at the time and still provokes questions about the legality of action[8] , its precedential effect, and procedures for developing new international law,[9] sovereignty and self- determination, grave human rights abuses[10] and expulsions, condemnations,[11] military intervention

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[4] Dino Kritsiotis , The Kosovo Crisis and Nato's Application of Armed Force against the Federal Republic of Yogoslavia ,**International and Comparative Law Quarterly, Vol. 49**(2000) , P.332-3.

[5] Cornelia Bjola , Legitimating the Use of Force in International Politics : A Communicative Action Perspective , **European Journal of International Relations , Vol. 11,** No.2(2005) P.282

[6] On March 22th (1999) Secretary - General reported that there were 269,000 kosovar refugees outside Kosovo and 235,000 displaced people inside, including 25,000 who had fled their homes since March 20. See generally, Paul Heinbecker , Kosovo , in David M. Malone (Ed.) **The United Security Council : From the Cold War to the 21st Century** (Lynne Rienner Publishers , London , 2004) P.537-548.

[7] Costas Douzinas , Post modern Just wars : Kosovo , Afghanistan and the new world order , in John Strowson (Ed**.) Law after Ground Zero**, (Glasshouse Press , London , 2002 ,P.26) P.25-26.

[8] Article 2(4) provides that '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 purposes of the United Nations.' At the same time, Article 51 indicates that there are certain uses of force that will not contravene the prohibitions in Article 2 (4).It provides: 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. Rosalyn Higgins, **Problems & Process: International Law and How We Use it** (Clarendon Press .Oxford) P.239. NATO's behaviour within the legal framework of the United Nations Charter , arguing that the "fundamental rule from which inquiry must proceed" is Article 2(4) .and it admits just two exceptions : Article 51 (the right of individual and Collective self –defence) and Chapter V11 (" the global system of Collective Security") .Bruno Simma , NATO , the UN and the Use of Force : Legal Aspects , **European Journal of International Law** , Vol.10 ,No.1(1999) , P.2-4

Article 24 and 51, although important guidelines, are no longer dispositive in relation to inquires as to legality. **American Journal of International Law**, Vol.93, No.4 (1999), P.855.

[9] Louis Kenkin , Ruth Wedgwood , Jonathan I Charney , Christine M Chinkin , Richard A Falk, W. Michael Reisman , Editorial Comments : Nato's Kosovo Intervention ,**American Journal of International Law,**Vol.93, No.4 (1999) P.834 . " Operation Allied Force" initiated on 24 March 1999 , was began without taking the matter to the united nations security council under Chapter V11 of the United Nations Charter , which set out the international legal regime to respond to matters threatening international Peace and Security . The campaign continued for tow and half months. 500 Serbian and Kosovar civilian deaths caused by NATO have been confirmed and 6000 wounded. Hilary Charles worth, International Law: A Discipline Crisis, **Modern Law Review,** Vol. 65, No.3 (2002) P.378.

[10] Unauthorized humanitarian interventions refers to humanitarian intervention that has not been authorized by the United Nations Security Council under Chapter V11 of the Charter. NATO's military actions in Kosovo are a prominent example of unauthorized humanitarian intervention. J.L. Holzgrefe and Robert O. Keohane (Ed**.) Humanitarian Intervention: Ethical, Legal and Political Dilemmas**, Cambridge University Press (2003) , P.1.

[11] Jonathan I. Charney argued Kosovo as a useful catalyst for the development of an international legal principal that, properly qualified , would allow humanitarian intervention in cases of "widespread and gross violations of human rights". **Modern Law Review**, Vol.65, No.3 (2002) , P.380.

by a regional alliance, international peace keeping [12] and role of international criminal tribunals.[13] A case on the legality of the NATO intervention was brought by the FRY (The Federal Republic of Yugoslavia ,On 29 April 1999 Yugoslavia field an application instituting proceedings against Spain "for violation of the obligation not to use force", accusing that State of bombing Yugoslav territory " together with other Member states of NATO". On the same day, it submitted a request for the indication of provisional measures, asking the Court to order Spain to "cease immediately its acts of use of force" and to "refrain from any act of threat or use of force" against the FRY.) before the international court of justice in pril 1999.[14] THE HAGUE, 2 June 1999. Today, the International Court of ustice (ICJ) rejected the request for the indication of provisional measures submitted by the Federal Republic of Yugoslavia (FRY) in the case concerning Legality of Use of Force (Yugoslavia v. Spain). The decision was taken by fourteen votes to two.[15] The procedures for deciding and appraising the lawfulness of the Kosovo action were not those contemplated by the Charter. That is not good and , no matter how noble and urgent the outcome , it will not be good when it happens in the future .[16] On the other hand , in December ,1971 , India's armed forces invaded East Pakistan and thereby facilitated that province's secession from Pakistan .New Delhi's representative spoke of "gross violation of basic human rights" by the Pakistani military "amounting to genocide , with the object of stifling the democratically expressed wishes of a people.[17] India justified its armed intervention in East Pakistan in 1971 among other things as an act of self-defence against the Pakistani aggression and also on account of the inhuman conditions of the Bengali population in what alter became Bangladesh.[18]

[12] Genocide, crimes against humanity and war crimes are not usually associated with Peacekeeping forces. A Commentator might state that these forces should play a decisive role in protecting potential victims from serious international crimes. Marten Zwanenburg , The statute for an International Criminal Court and the United States: Peace keepers under Fire ? **European Journal of International Law**, Vol. 10, No.1 (1999) P.124.

[13] **Modern Law Review,** Vol. 65, No.3 (2002), P.381. The Trial Chamber (the ICTY Trial Chamber Judgement in the Tadic Case) held that for individual liability for Crimes against humanity it is required that: the perpetrator must know that there is an attack on the civilian population [and] know that his act fits in with the attack . **European Journal of International Law**, Vol. 10, No.1 (1999), P.134.

[14] **Modern Law Review,** Vol. 65 , No.3(2002) , P.379.

[15] http://www.icj-cij.org in its Order, the Court first emphasizes that it is "deeply concerned with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background" of the dispute and "with the continuing loss of life and human suffering in all parts of Yugoslavia". It declares itself "profoundly concerned with the use of force in Yugoslavia", which "under the present circumstances. . . raises very serious issues of international law". While being "mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of peace and security under the Charter and [its] Statute", the Court "deems it necessary to emphasize that all parties before it must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law".

[16] **American Journal of International Law,** Vol.93, No.4 (1999) , P.862.

[17] `Thomas M. Franck, **Recourse to Force :State Action Against Threats and Armed Attacks**, Cambridge University Press(2002),P.139-40.

[18] Antonio Cassese **, International Law** , Oxford University Press(2001), P.321. On December 7, the Assembly by a lop sided majority of 104 to 11 with 10 abstentions decided that the hostilities continued " an immediate threat to international peace and security" and called for withdrawal of ------ armed forces----- ," G.A . Resolution 2793(XXV1) of December 1971. **Recourse to Force :State Action Against Threats and Armed Attacks ,** P.142. . "Humanitarian intervention" will be taken to mean the coercive threat or use of force by a state , group of states or international organization in the sphere of jurisdiction of a sovereign state for the purpose of protecting the nationals of that sovereign state from widespread deprivations of internationally recognised human rights. Murphy , **Humanitarian Intervention : the United Nations is an Evolving World Orde**r , University of Pennsylvania Press , Philadelphia , 1996, P.12.

The most extensive elaboration[19] by the Court on its role in the settlement of disputes alongside the Security Council was made in the Nicaragua case. Nicaragua had instituted proceedings[20] against the United States on 9 April 1984.[21] Nicaragua accused the United States of attacks on pipelines , storage and port facilities , and Nicaraguan naval patrol boats ; the mining of Nicaraguan ports ; and violation of Nicaraguan air space ; as well as training , arming , equipping , financing , and supplying counter –revolutionary forces (called the contras) that sought to overthrow the government of Nicaragua .[22] The Nicaragua case led to a large increase in the caseload of the Court; it has been followed by 25 applicants to the Court in new contentious cases on the use of force (including the 10 cases concerning legality of use of force brought by Yugoslavia against NATO states).[23] In its Application, Nicaragua Claims that the United States has breached "express obligations under the charter of the United Nations, the Charter of the Organization of American States and other multilateral treaties, and has violated fundamental rules of general and customary international law …….".[24] The Court undertook an examination of the prohibition of intervention and scope of the prohibition of the use of force;[25] it elaborated on the context of these two sets of rules and on the relationship between them. As regards the identification of the customary law[26] on the prohibition of the use of force codified in Art.2 (4),[27] the court used the 'Friendly Relations

[19] An optimistic phase –i.e. 1988-1991- due to the first successes of appeasement (Salvador, Nicaragua, Namibia) Maurice Bertrand, The UN as an Organization. A Critique of its Functioning , **European Journal of International Law. Vol.6(1995),** P.350.

[20] The treaty provisions invoked by Nicaragua in its application include Art.2 (4) of the UN Charter; **Art .18** (Respect for and the faithful observance of treaties constitute standards for the development of peaceful relations among States. International treaties and agreements should be public.) And **20** (No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.) of the OAS Charter; **Art. 8** (No state has the right to intervene in the internal or external affairs of another) of the Convention on Rights and Duties of states; and **Art.1 (3)**(To forbid the Traffic in arms and war material , except when intended the government ,while the belligerency of the rebels has not been recognized , in which latter case the rules of neutrality shall be applied)of the convention concerning the Duties and Rights of states in the Event of Civil Strife. Moreover, Nicaragua contended that US had breached various obligations under general and customary law, such as the principles of non-intervention; the non –use of force ; and respect for the freedom of the high seas . David Schweigman , **The Authority of the Security Council under Chapter VII of the UN Charter : Legal limits and the Role of the International Court of Justice** , Kluwer Law International , London (2001), P.238.

[21] **The Authority of the Security Council under Chapter VII of the UN Charter: Legal limits and the Role of the International Court of Justice,** P.238.

[22] John F. Murphy, **the United States and the Rule of Law in International Affairs,** Cambridge University Press (2004), P.255.

[23] Christine Gray, The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force after Nicaragua, **European Journal of International Law**, vol.14, No.5 (2003), P.867-868.

[24] **International Law Reports, Vol. 76,** 1988, P.341.

[25] As art. 1(1) and (2) of the UN Charter state , the primary purposes of the United Nations are :

art.1(1):To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

(2): To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

[26] The Court was not considering Art 2(4) of the Charter but the comparable obligations in customary international law . Simon Chesterman **, Just War or Just Peace ? Humanitarian Intervention and International Law,** Oxford University Press (2001), P.60-61

[27] 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.

Resolutions' among states accordance with the charter of the United Nations (General Assembly Resolutions 2625[28] (XXV).[29]

Consistent with its position before that the International Court of Justice did not have jurisdiction in the issue, as (a) the dispute between the two countries was political and not legal (under art.36 the Court only has jurisdiction over disputes of a legal charter , the United States attempted to argue that their conflict with Nicaragua was purely political and thus beyond the jurisdiction of the Court) and (b) under the United Nations Charter the Security Council has the 'primary Responsibility for the maintenance of international peace and security ; thus the Charter 'superseded and supervened' all other sources of law on the use of force . The latter argument had accepted the jurisdiction of the Court in 1949 , it had included a reservation that it would not accept jurisdiction in a case involving the interpretation of a multilateral treaty unless all parties to the treaty were joined in the case. The Court famously rejected the jurisdictional arguments and proceeded to the second, merits, stage of the case, despite the boycott of the United States.[30] In the Nicaragua V. US Case the Court found , as findings of fact , that the United States for a period provided funds for military and paramilitary activities by the Contras –Nicaraguans in opposition to their own government, but whose military activity had been characterized by the United States as defence in aid of Honduras , Costa Rica , and El Salvador against Nicaraguan incursions into their territories. Rejecting the self-defence arguments, the court found this US assistance unlawful.[31] After referring the North Sea Continental Shelf Cases[32] on the formation of customary international law , the court noted that it had no jurisdiction to rule on the legality of the conduct of states not parties to the dispute.[33] The ICJ decision in the Nicaragua case on the legality of the US use of force and intervention in Nicaragua renewed the passion of the debate on the scope of collective self-defense [34]. The Court's decision, its first extended discussion of the law on the use of force , was based on customary law because of the US reservation to its optional clause acceptance.[35]A merit [36] of the high

[28] Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among states and fulfilment in good faith obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations.

[29] **Modern Law Reports**, Vol.76, 1988, P.435, Christine Gray, **International Law and the Use of Force,** Oxford University Press (2004), P.65

[30] Kim Van Der Borght and John Strawson , Cuba and the axis of evil : an old outlaw in the new order , in John Strawson , **Law after Ground Zero**, P.64-65.

[31] Rosalyn Higgins, **Problems and Process** : International Law and How we use it ? Clarendon Press, Oxford (1994) P.250.

[32]The Court delivered judgment, by 11 votes to 6, in the North Sea Continental Shelf cases. International law.

Rejecting the contentions of Denmark and the Netherlands, the Court considered that the principle of equidistance, as it figured in Article 6 of the Geneva Convention, had not been proposed by the International Law Commission as an emerging rule of customary international law. This Article could not be said to have reflected or crystallized such a rule. This was confirmed by the fact that any State might make reservations in respect of Article 6, unlike Articles 1, 2 and 3, on signing, ratifying or acceding to the Convention. While certain other provisions of the Convention, although relating to matters that lay within the field of received customary law, were also not excluded from the faculty of reservation, they all related to rules of general maritime law very considerably antedating the Convention which were only incidental to continental shelf rights as such, and had been mentioned in the Convention simply to ensure that they were not prejudiced by the exercise of continental shelf rights. Article 6, however, related directly to continental shelf rights as such, and since it was not excluded from the faculty of reservation, it was a legitimate inference that it was not considered to reflect emergent customary law.

[33]. Simon Chesterman **, Just War or Just Peace ? Humanitarian Intervention and International Law ,** P.61.

[34] Assessments of self-defense begin with the question whether an armed attack against a state has occurred. The proponents of the most restrictive view of self-defence argue that Art.51 means that an armed attack must actually be in progress- neither imminent nor concluded. David Kaye , Adjudicating Self-defense : Discretion , Perception , and the Resort to Force in International Law , **Columbia Journal of Transnational Law**, Vol.44, No.1(2005), P.161.

threshold established in the Nicaragua Case is that, any time self –defence is invoked, the potential for full-scale war permitting maximal power and the involvement of allies arises. If self-defence is invoked against private actors not under the control of a state , it becomes difficult to set legal constraints on measures that can be taken in response.[37] As a matter of customary international law, the international Court of Justice in Nicaragua v United States concluded that custom does not permit UHI[38] (Unilateral Humanitarian Intervention). And according to leading international law treaties, despite divergent state practices in the 1990s, the legal prohibition persists under both treaty and custom.[39]

The central challenge for the twenty-first century is to fashion a new and broader understanding, bringing together all these strands, of what collective security means – and of all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient and equitable.[40] Collective security today depends on accepting that the treat which each region of the world perceives as most urgent are in fact equally so for all.[41] Collective Security became, however, an institutional system only with the creation of the League of Nations in 1919. It was further developed in the UN Charter of 1945. It main characteristic is that it is "inward-looking", i.e. that all members committing a grave violation of agreed rules of behaviour.[42] A collective security system can be defined in broad terms as a system where a collective measure is taken against a member of community that has violated certain community defined values. An important feature of collective Security is the maintenance of the status quo of the system.[43]

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[35] Christine Gray, **International Law and the Use of Force ,** P.138-139.

[36] As regards the suggestion that the areas covered by the tow sources of law are identical, the Court observes that the United Nations Charter, the convention to which most of the United States argument is directed , by no means covers the whole area of the regulation of the use of force in international relations. On one essential point, this treaty itself refers to pre-existing customary international law; this reference to customary law is contained in the actual text of Article 51,which mentions the "inherent right"(in the French text the "droit naturel")of individual or collective self-defence , which "nothing in the present Charter shall impair" and which applies in the event of an armed attack. The Court therefore finds that Article 51 of the Charter is only meaningful on the basis that there is a "natural" or "inherent" right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its resent content has been confirmed and influenced by the Charter. Moreover, a definition of the "armed attack" which if found to exist, authorizes the exercise of the "inherent right" of self- defence , is not provided in the charter, is not part of treaty law. Military and Paramilitary Activities in and against Nicaragua (Nicaragua V USA) Merits, **International Law Reports** , **VOL.76** (1986), Para 176, P.428.

[37] Ian Johnstone , The Plea of "Necessity" in International Legal Discourse : Humanitarian Intervention and Counter-terrorism , **Columbia Journal of Transnational Law** , Vol.43,No.2 (2005),P.369.

[38] The term "unilateral humanitarian intervention" commonly refers to the threat or use of force by one or more states acting without Security Council authorization. Ryan Goodman, Humanitarian Intervention and Pretexts for War, **American Journal of International Law**, Vol.100, No.1 (2006), P.107.

[39] Ryan Goodman, Humanitarian Intervention and Pretexts for War, **American Journal of International Law, Vol.100, No.1** (2006), P.111.

[40] UN Secretary – General's High-Level Panel on Threats, Challenges and Change, A more Secure World: Our Shared Responsibilities, at http://www.un.org/secureworld/ , P.11.

[41] http://www.un.org/largerfreedom/chap3.htm

[42] To be distinguished from such a system of collective security are measures of cooperative security (conflict prevention, peaceful settlement of disputes) and collective defence, either through ad hoc agreements or previously concluded military alliances. Franz Cede and Lilly Sucharipa – Behrmann (Ed) **The United Nations : Law and Practice** , Kluwer Law International , London(2001),P.73.

[43] Daresh Sarooshi , **The United Nations and the Development of Collective Security** : The Delegation by the UN Security Council of its Chapter V11 Powers , Clarendon Press, Oxford (1999), P.5. Collective Security , system by which states have attempted to prevent or stop wars. Under a collective security arrangement, an aggressor against any one state is considered an aggressor against all other states, which act together to repel the aggressor. **The New Encyclopaedia Britannica** , Vol.111(1975), P.6

There are six clusters of threats with which the world must be concerned now and in the decades ahead:

- Economic and social threats, including poverty , infectious disease and environmental degradation
- Inter-state conflict
- Internal conflict, including civil war, genocide and other large-scale atrocities
- Nuclear, radiological, chemical and biological weapons
- Terrorism
- Transnational organized crime.[44]

Today, more than ever before, threats are interrelated and a threat to one is a threat to all.[45] One is struck first of all by the sheer magnitude of all that happened relating to the UN's role in peace and security during these years.[46] In considering whether to authorize or endorse the use of military force , the Security Council should always address – whatever other considerations it may take into account – at least the following five basic criteria of legitimacy:[47] (a) Seriousness of threat [48] (b)Proper purpose[49] (c) Last resort[50] (d)Proportional means[51](e)Balance of consequences.[52] The Security Council has , since 1990, interpreted its powers under the UN Charter very broadly.[53] Chapter VII itself does not expressly limit the measures the Council may take pursuant to its determination of a threat to or breach of the peace.[54] The experiences of the UN Nations in Kosovo and East Timor have shown that the reestablishment, at a minimum, of basic judicial functions-comprising all segments of the justice sector –must among a mission's top priorities from the earliest stages of

[44] UN Secretary – General's High-Level Panel on Threats, Challenges and Change, A more Secure World: Our Shared Responsibilities, at http://www.un.org/secureworld/ , P.25.

[45] UN Secretary – General's High-Level Panel on Threats, Challenges and Change, A more Secure World: Our Shared Responsibilities, at http://www.un.org/secureworld/ , P.19.

[46] Rosalyn Higgins, Peace and Security Achievements and Failures, **European Journal of International Law. Vol.6 (1995),** P.445.

[47] UN Secretary – General's High-Level Panel on Threats, Challenges and Change, A more Secure World: Our Shared Responsibilities, at http://www.un.org/secureworld/ , P.57-58.

[48] Is the threatened harm to state or human security of a kind , and sufficiently clear and serious , to justify prima facie the use of military force ? in the case of international threats, does it involve genocide and other large – scale killing , ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended ?

[49] It is clear that the primary purpose of the proposed military action is to halt or avert the threat is question , whatever other purposes or motives may be involved?

[50] Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

[51] Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

[52] Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

[53] George Nolte, The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections in Michael Byers, , **The Role of Law in International Politics**, Oxford University Press(2000) P.316.

[54] Article 51 preserves the right of States to individual or collective self-defense , but makes clear that the exercise of this right does not affect the council's authority to maintain or restore international peace and security. Michael J. Matheson, United Nations Goverance of Post conflict Societies, **American Journal of International Law**, Vol.95, No.1(2001),P.85.

deployment.[55] Kosovo demonstrates yet again a compelling need to address the deficiencies in the law and practice of the UN Charter. The sometimes-compelling need for humanitarian intervention (as at Kosovo), like the compelling need for responding to interstate aggression (as against Iraq over Kuwait), brings home again the need for responsible reaction to gross violations of the charter, or to massive violations of human rights, by responsible forces acting in the common interest.[56] Moreover, The Court in the Nicaragua v. USA case distinguished between issues concerning Art 2(4) and chapter VII of the UN Charter, and suggested rather cryptically that the Court's role might depend on whether the case concerned the former or the latter. Thus the Court would almost certainly accept as authoritative a determination of aggression by the Security, even if it is less likely expressly to acknowledge that the Security Council's power is exclusive.[57]

The aim of the UN Charter are to guarantee human rights and international security , and while the danger of increasing the scale of a conflict is always to be considered, the use of military action to protect a beleaguered population may advance humane values withousignificant danger to stability.[58] Furthermore, we should consider our owpersonal and professional investment in crises. We need to analyse the way we exercise power, and who wins and who loses in this operation.

In asking this question, we will undermine that pleasurable sense of internationalist virtue that comes with being an international lawyer, but perhaps in the contribute something to countering the justices of everyday life.[59] Lack of cooperation or "its deliberate or unjustified restriction" would contribute to widening the gap between the developed and developing countries.[60] Regardless of whether the Council has the power to attribute responsibility for purposes which lie beyond its own (preliminary) function, one should be careful not to infer too great an intention on its part conclusively to attribute responsibility in any of its decisions.[61] The true efficacy of the UN can only be attained if its decisions carry with them a global , or at least a near global , endorsement of states.[62] The protection and promotion of the universal values of the rule of law, human rights and democracy are ends in themselves. They are also essential for a world of justice, opportunity and stability. No security agenda and no drive for development will be successful unless they are based on the sure foundation of respect for human dignity. [63] A central recurring theme is the necessity for all members of the international community, developed and developing States alike, to be much more forthcoming in providing and supporting deployable military resources, Empty gestures are all too easy to make: an effective, efficient and equitable

[55] Hansjorg Strohmeyer, Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor, American Journal of International Law, Vol.95,No.1,(2001), P.60.

[56] Louis Kenkin , Ruth Wedgood , Jonathan I Charney , Christine M Chinkin , Richard A Falk, W. Michael Reisman , Editorial Comments :Nato's Kosovo Intervention , **American Journal of International Law , Vol. No.4** (1999) , P.828.

[57] Christine Gray, The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force after Nicaragua, **European Journal of International Law**, vol.14, No.5 (2003),P.898.

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collective security system demands real commitment.[64] The aim of any collective security system is to preserve, and ensure the observance of, certain community defined values. The determination of what are these community values in the case of the United Nations –what constitutes a threat to, or breach of , international peace – and what is the appropriate measure to maintain or restore peace has been left to the Security Council under Chapter VII of the Charter.. Accordingly, the Limitations on the process of a delegation of Chapter VII powers must be constantly kept in view , even while acting with imagination in the new world order.[65] Now the position of the security council under the UN Charter is , as we have seen , that of the technician of peace , the police. Its composition, procedures and practices are completely indefensible if we assume that its tasks extend to assessing and enforcing the conditions of good life –including rules of international law- among and within states. The Council's recent activity has brought to light its practical inappropriateness as a forum to justice.[66] Stanley Hoffman suggested, two norms for collective intervention are needed.[67] The world today does not have enough international institutions that can confer legitimacy on collective action, and creating new institutions that will better balance the requirements of legitimacy and effectiveness will be the prime task for the coming generation.[68] Neither the league nor the United Nations were able to operate the principle successfully to prevent aggression because of the conflicts of interest among states, especially among the major powers.[69] We should always remember that the international legal obligation to provide reparation depends on the establishment of international responsibility of the state.[70] In today's world, no State, however powerful , can protect itself on its own. Likewise, no country, weak or strong, can realize prosperity in a vacuum. We can and must act together. We owe each other an account oh how we do so. If we live up to those mutual commitments, we can make the new millennium worthy of its name.[71]

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[66] **Martti Koskenniemi,** the Police in the Temple Order, Justice and the UN: A Dialectical View, **European Journal of International Law. Vol.6 (1995),** P.344-345.There is no 'due process' clause in the Council's (provisional) Rules of Procedures. The treatment or non-treatment –of the Libyan views in connection with the passing of Resolution 731 in January 1992 that effectively determined Libya's guilt in sponsoring terrorism was below all standards of procedural fairness. **European Journal of International Law. Vol.6 (1995),** P.345.

[67] One, already in place , deals with order , and concerns domestic strife that is a genuine threat to peace and security across borders; the other one , that is painfully and slowly emerging, deals with justice ,and concerns massive violations of human of human rights; these ought to be seen *ipso facto* as a legitimate cause for collective intervention in a civil war. **Stanley Hoffman,** Thoughts on the UN at Fifty**, European Journal of International Law, Vol.6(1995)** P.321.

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