FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 1, N° 4, 2000, pp. 493 - 508

THE UNITED NATIONS BETWEEN THE PACIFIC SETTLEMENT OF DISPUTES AND IMPOSITION OF PEACE

UDC 341.123:[341.62+341.652

Obrad Račić

Faculty of Political Sciencies of the University of Belgrade

Abstract. *Today, when extensive discussions are being held within and around the United Nations on expanding the rights for interventions with internal conflicts and clashes – while discussions on the subject matter were commenced in the scientific literature a long time ago – one should be reminded that resorting to different modes of peaceful disputes resolution depends upon the agreement of disputants, on the other hand, the Security Council may give orders that enforcement measures should be taken. This is important, first of all, because the peace-keeping operations increasingly take on both functions.*

Just because of that to lessen, to the extent possible, the influence of the political factor (also including here the factor of unequal power of participants in the negotiation process and decision-making), consideration of these problems should be, first and foremost, directed to: establishing the circumstances under which the United Nations can get down to the peace-keeping (or even imposing) operations; creating the rules which will contribute both to the objectivization of establishing factual conditions and finding out what the international interest is; defining how these operations should be carried out; and expanding the number of organs of the United Nations to take part in decision-making.

Key words. *United Nations, Security Council, imposition of peace*

1. The system of collective security of the United Nations – probably exaggeratedly ambitious regardless of the development that has proved it – has soon come to the state of blockade. Under those circumstances the fact has been forgotten that – under the conditions of harmony of the most powerful states of the world – the system of collective security has relied upon the directorate of five permanent members of the Security Council who would, along with the agreement of another four non-permanent members of this organ, could make binding decisions in case of threat to the peace, breaches of peace or act of aggression, that is, in the spheres of vital interest for the sovereign states. In keeping

Received February 15, 2000

with the manner of voting on the Security Council, such decisions, standing behind which is enormous military force and other power, can be made by nine states on behalf of the rest of member states of the United Nations.

On the other hand, the sovereign states have in the course of adopting the Charter of the United Nations given priority to repression – and it was for a long time that they expressed their will the barriers to the more effective actions by the decades blocked system of repression to be removed (the five permanent members of the Security Council being the principal actors) and to the lesser extent they were ready to work on the improvement of the system of pacific settlement of disputes (where along with all that diversity of ways of pacific settlement the role of great power is not predominant).

Today, after the essential changes in the global international relations, the Security Council has become more effective - while the situation in the sphere of pacific settlement of international disputes has basically remained the same. That what should particularly be pointed out, however, is that there occurred certain interweaving of prevention and repression (not predicted in the slightest in the Charter of the United Nations) – which is sometimes designated as a factual arising of "Chapter Six and Half" of the UN Charter.

Mostly pointing to that interweaving is spreading of authorizations granted lately to the peace-keeping operations of the United Nations.

2. In his report known as An Agenda for Peace,[1] the then Secretary-General of the United Nations has made upon the request of the Security Council, the following information has been provided: from the establishment of the United Nations in 1945 to the submission of that report, there occurred more than 100 conflicts all over the world in which some 20 million of people lost their lives. The United Nations could not intervene in a great number of those conflicts because a veto was used for 279 times on the Security Council – which is a striking picture of the division governing in the world in that time. Over the period between 1945 and 1987 (for 42 years) 13 peace-keeping operations were established and sent to the terrain – while from 1987 to January, 1992, (for 5 yeas only) also thirteen.

Only three years later in the Supplement to An Agenda for Peace,[2] the then Secretary-General of the United Nations has presented information which speak more convincingly on the essentially changed circumstances under which the Organisation should work on implementing its own objective – maintenance of the international peace and security. This information says that out of five peace-keeping operations of the United Nations which took place at the beginning of 1988, four were undertaken for international wars, but only one (20%) for conflicts within one state. Very soon, however, the situation will be fundamentally changed: out of 21 operations undertaken after that date, it was only in eight cases that conflicts between states were in question, while in 13 cases (62%) conflicts within states were in question (understanding that in some of them there were interventions outside). Out of 11 peace-keeping operations of the United Nations commenced

[1] An Agenda for Peace, Preventive Diplomacy, Peace-making and Peacekeeping, UN. Doc. A/47/277 – S/24111, 17 June, 1992.

[2] Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, UN. Doc. A/50/60 –S/1995/1, 3 January, 1995.

in January, 1992, and later, all except two (82%) were undertaken for the purpose of resolving conflicts that had occurred within states.

The situations have also changed in which actions should have been undertaken. At the same time, after the relations of the global balance of powers have been changed, the use of veto in the UN Security Council became – in contrast to the times prior to the fall of the Berlin Wall – rather an exception than a rule.[3]

3. But there has occurred not only an obvious increase in the number of situations in which the United Nations – and recently the earlier inactive Security Council – worked, but the circumstances under which these operations had to proceed have also changed. Thus, a need was felt for the United Nations to find out new ways of action – and, as it is pointed out in the Organisation, to modify the old concepts.

The fact is, as noticed by the former Secretary-General, that many conflicts today the United Nations are called to resolve are not conflicts between states, but conflicts within states. And those internal conflicts (which in many ways resemble of the situation the UN Operation found itself in Congo in 1960s) have characteristics to which an adequate answer must be found. Those armed actions are frequently taken not by regular armies, but by paramilitary formations and civilian persons lacking discipline and definite chain of commanding. Frequently, guerrilla warfare without distinct front lines is in question, the victims most frequently being civilian population. And that, further, points to the next qualitative change: a need arises not only to provide humanitarian aid to the victims of conflicts, but to use forces of the United Nations to protects humanitarian operations.

The next essential change refers to the nature of operations of the United Nations intended for the maintenance of the peace. During the cold war those were usually military operations deployed after the arrangement on cease-fire has been reached – but before the final peace agreement. By the late 1980s, however, new kind of peace-keeping operations are established: they are sent after an agreement has been reached for the purpose of helping the parties to the dispute to apply that agreement.

Sure that the assignments of the peace-keeping forces are, in that context, by far more complex than those they are charged with in situations when they only should supervise the performance of provisions on the cease-fire or to supervise the neutralized zone with the agreement of states that have provided their approval.

Bloomfield, analysing that situation, explicitly says: "Working under drastically changed circumstances, the reborn Security Council has commenced a new era in creating rights of new intervening doctrines so as to oppose the anarchy producing famine, ethnic cleansing and deliberate creation of refugees. It is not a "peace-keeping operation" as on Cyprus, but surely either the action of collective security such as in the Persian Gulf. It is a "police" action without precedent – temporarily bearing the names like "imposition of peace" "humanitarian enforcement" and "the second generation operation" – led by the United States attached to the "independent multilaterally" attitude. The criteria of the UN

[3] Publications of the United Nations 1945-1995 – between recognition and reproach (ed. Branislav Milinković, published by Medjunarodna knjiga i dr., Beograd 1995) there are translations of 70 resolutions adopted by the UN Security Council over the period from 25 September, 1991, to 10 August, 1995, dedicated to resolving the crisis arisen in the territory of former Yugoslavia.

Charter "for the establishment of threats to the maintenance of the international peace and security" are stretched "to the unrecognisableness"".[4]

Urquhart states his attitude like this: sure that actions and mechanisms of the United Nations – such as good services, conciliation and maintenance of peace – have been intended to resolve disputes and conflicts between states, and that today, under the changed conditions, it is expected to act as a world fire brigade or rescue team in situations such as civil wars within the borders of states or former states, where protagonists are different kinds of militia and local "masters of wars". Because of that, he says, it is not surprising that old techniques are not effective under the new circumstances.[5]

4. Under that, new situation, the United Nations has used several kinds of actions to maintain or restore the peace. They, of course, may be classified in different ways.

It was ascertained, on the occasion of the 50th anniversary of actions of the peace-keeping operations, that the following functions had been performed by the United Nations: observance; performance of the cease-fire agreements and separation of parties to the conflict; carrying out of detailed provisions of the peace-keeping agreements (most frequently in situations of civil wars); keeping track of demobilization and reintegration; protection of delivery and distribution of the humanitarian aid; organizing, supervision and holding of elections; reporting on the authorities actions, particularly in the domain of protection of human rights; removal of mines.[6] Of course, there is no need to emphasise that the functions of many operations have been many-sided and that have evolved with the passage of time. Thus, there occurs that after the peace has been restored the forces of the United Nations take part in organizing certain elements of internal legal order.

The roles of the United Nations in resolving the internal conflicts and crises have been categorized by an author as follows: First, restoration of order (Zaire, Somalia). Second, alleviation of crisis (activities directed to the improvement of local situation reduced to mediation in the maintenance of peace (UNPROFOR II). Third, the situation freeze in serous crises as a temporary measure to achieve an agreement (South Lebanon, Croatia and to a certain extent Bosnia and Herzegovina). Fourth, political "cleansing" support, where the United Nations endeavours to contribute to the completion of intervention (Afghanistan, Angola). Fifth, contribution to the national reconciliation (Nicaragua, Haiti, Somalia, Cambodia). Sixth, putting a controversial problem in a kind of "quarantine" and supervision of the United Nations that the arrangement should be observed (Macedonia). The seventh category for the maintenance of peace refers to the performance of right for self-determination (Namibia, Eritrea, West Sahara), Finally, the eighth category falls into a form of humanitarian activities (Bosnia and Herzegovina, Somalia).[7]

Homak, on the other hand, speaks about the multinational operations second generation, which ranges from preventing combats between the armed groups, offer of humanitarian aid – up to performance of administrative assignments in the restoration of the war-

[4] L.P. Bloomfield, The Premature Burial of Global Law and Order: Looking Beyond the Three Cases from Hell, The Washington Quarterly, 3/1994, p. 146.
[5] Urquhart, B., The United Nations: Post-Cold War Challenges, International Spectator, November 1993, p. 619.
[6] See, Internet, 50 Years of Peace-keeping: http://www.un.org/peace/.
[7] James, A.: A Review of UN Peace-keeping, International Spectator, November 1993, pp. 628-629.

devastated countries. At the same time, he reminds that some of the functions performed today by these forces are not an invention of the United Nations and, as an examples, cites that in one phase of the conflict between Columbia and Peru a temporary power has been established to administer the controversial territory which, under the aegis of the League of Nations, was exercised by an international committee (from June 1933 to June 1934), and plebiscite in Saar, that is, the region which was placed under the administration of a commission of the former League of Nations, while the international forces were supervising the plebiscite activities of the population.[8]

Leaving aside numerous more or less successful classifications, let us rely upon that provided by Boutros-Boutros Ghali in his report An Agenda for Peace. First, it is a preventive diplomacy that he defines as *"action that should prevent arising of disputes, to prevent the existing disputes to escalate into conflicts, and to limit conflicts to spread when they arise (included here are the measures for strengthening confidence, establishing factual state, early warning, preventive deployment of forces and forming of demilitarised zones). Under the creation of peace endeavours are meant to make the hostile forces to reach an agreement by means of pacific settlements of disputes set forth in Chapter VI of the UN Charter, Third, maintenance of peace is defined as sending the UN forces to the subject region, till today (the report was written in 1992; remark by O.R.) with the agreement of all interested forces, participating in which is usually military and/or police personnel and civilian as well"*.[9] Also added to this should be operations of improvement of peace after the conflict has been settled and which include: demilitarization, light armament control, institutional reforms, improvement of police and judiciary systems, keeping track of development in the field of protection of human rights, supervision of elections and providing help in carrying out economic and social reforms.[10]

Already in the Supplement to An Agenda for Peace, Boutros-Boutros Ghali thought it appropriate to say: "*There are three aspects of the latest mandates which have, particularly, caused that the peace-keeping operations act without the agreement of parties, to behave in a way thought of as to be only partial and/or to use force beyond the needs of self-defence*." It was that "assignments of protection of humanitarian operations in the course of combat operations, protection of civilian population in the regions determined as the security zones and exertion of pressure on the parties to come to the national reconciliation quicker than they were ready to accept" were in question.[11] In both cases (Somalia and Bosnia and Herzegovina) says the former Secretary-General, the peace-keeping operations that have already been in the terrain have obtained additional authorizations referring to the employment of force and, thus, could not be combined with former authorizations which were based upon the agreement of the interested parties, impartiality and nonemployment of force. Following is the word-for-word pronouncement of the Secretary-General: "*The logic of the peace-keeping operations results from the political and military assumptions which are quire different from those upon which enforcement is based; and the dynamics of the latter is different from the political process that should be alleviated by the peace-keeping*

[8] Homan, C.: Regional and Multinational Peace-keeping Forces, International Spectator, 1993, pp. 653-654.
[9] An Agenda for Peace, para. 20.
[10] Supplement to An Agenda for Peace, para. 47.
[11] Supplement to An Agenda for Peace, para. 34 and 35.

forces. Stalling the borders between one and the other may undermine maintenance of the peace-keeping operations and endanger their personnel."[12]

Really, a serious warning bearing on the increasing practice of interweaving of prevention (pacific settlement of disputes) and reprisals (imposition of measures without the consent of interested parties) is in question.

5. Now, let us have a look what measures have been taken in the course of settlement of the crisis on the territory of former Socialist Federative Republic of Yugoslavia.

It should be immediately said that preventive diplomacy of the United Nations has not had any role in the settlement of that crisis. In contrast to the activities of the European Union and the Organization for Security and Cooperation in Europe – which have, among other things, resorted to some ways of pacific settlement of disputes – the United Nations has to a great extent neglected its assignment and authorizations under Chapter VI of the Charter. The Security Council has very soon established that the situation in that country is a threat to the international peace and, first of all, imposes embargo on export of arms[13] to soon make decisions on imposing "measures" (sanctions) provided for under Article 41 of the Charter.[14]

The decision-making process on deploying peace-keeping forces was commenced on the Security Council upon the request of the then government of SFRY[15] resulting very soon in a decision on establishing UNPROFOR[16] and, also, very soon on deployment of the UNPROFOR forces in Macedonia[17] as well. Much later, when the UNPROFOR mandate in Croatia had expired, the Security Council set up the UN Operation for restoration of confidence in Croatia under the name of UNCRO[18] as well as the UN Preventive Forces (UNPREDEP) in Macedonia[19].

The situation in Bosnia and Herzegovina, however, has come out of usual frameworks. First, the authorizations of UNPROFOR in that country have taken the course that – in contrast to those of the UN forces in Croatia and Macedonia – gradually included the increasing degree of enforcement.

Roughly speaking, the sequence is as follows. Under Resolution 781/1992 (on the prohibition of military flights in the air space of Bosnia and Herzegovina), the Security Council calls upon the states to provide UNPROFOR "on the national level or through the regional organizations or arrangements" with rather modest but concrete support, "based on expert supervision". Resolution 816/1993 (under which prohibition of flights is being

[12] This paper will not deal with those situations in which the Security Council undertakes enforcement measures under Chapter VII of the Charter in conflicts over the internationally recognized borders – the authorizations of the Security Council to employ force for the purpose of achieving peace of the Korean peninsula (1950) neither with the similar authorizations granted for the purpose of offering an adequate answer to the armed attack of Iraq against Kuwait (1990). Also, sanctions that by themselves are particular problems will not be dealt with.

[13] Security Council Resolution 713 of 25 September, 1991.

[14] The most important are the Security Council Resolution 757 of 30 May, 1992, and 787 of 16 November, 1992.

[15] Security Council Resolution 721 of 27 November, 1991.

[16] Security Council Resolution 743 of 21 February, 1992.

[17] Security Council Resolution 795 of 11 December, 1992.

[18] Security Council Resolution 981 of 31 March, 1995.

[19] Security Council Resolution 983 of 31 March, 1995.

intensified) will add certain, although insufficient, more precise conditions: namely, according to Point 4 of the Resolution the member states are authorized to undertake, separately or through regional organisations and arrangements, "according to the authorizations of the Security Council and in close cooperation with the Secretary-General and UNPROFOR, all necessary measures in the air space of Bosnia and Herzegovina in case of further violations, so as to insure conduct in keeping with the flights prohibition..."

Resolution 820/1993 of the Security Council makes, however, a great step forward. Here "the responsibility of the coastal countries is approved to take necessary measures so as to provide the Danube navigation to be carried out in keeping with Resolutions 713/1991, 757/1992, 787/1992 and this Resolution, so as to stop or in any other way to control every river traffic and to effect inspection and verification of the cargo and destination for the purpose of providing effective supervision and strict application of the relevant resolutions". It should also be noted that the Security Council, at the same time with pointing to the responsibility of the coastal countries, calls upon those non-coastal countries to join the action and that they "acting on a national basis or through the regional organizations or arrangements" should provide the necessary aid. It is only the Security Council Resolution 836/1993 (on employment of air forces in Bosnia and Herzegovina) that will provide a mandate for performance of armed actions. Under Point 9 of this Resolution a mandate for performance of armed actions is granted, first and last, to UNPROFOR: namely, according to it UNPROFOR is authorized "acting in self-defence to take necessary measures, including employment of force as an answer to bombing of zones of security by whatever party or to armed invasion into those zones or in case of any intentional disturbance of freedom of movement of UNPROFOR or protected humanitarian convoys or nearby those zones". Others are, however, according to Point 10, also granted mandate to employ force. Namely, based on it, the Security Council "decides that member states ... acting at the national level or through the regional organizations or arrangements, may take, on the basis of authorizations of the Security Council and in close cooperation with the Secretary-General and UNPROFOR, all necessary measures employing air forces in and around the zones of security in the Republic of Bosnia and Herzegovina, as a support to UNPROFOR in accomplishing its mandate..."[20]

Introduction of really special kinds of peace-keeping forces, first in Bosnia and Herzegovina and later in Kosovo and Metohia – although based upon the specifically expressed agreement of the states upon the territory of which they were being deployed – was carried out in to that time unusual way. Authorizations entrusted to those forces were also exceptional.

Namely, it was agreed upon under Article I 1 (a) of the Annex I-A to the Dayton (Paris) Peace Accord to request the Security Council to adopt a resolution under which the member states or regional organizations are to establish multinational forces for the purpose of carrying out the agreement (hereinafter referred to as "IFOR").[21] The Security

[20] For more details on this, see: O. Račić. Medjunarodnopravni osnov zajedničkog delovanja NATO i UN u Bosnia – Lessons for European security in: Nakarada-Račić, Raspad Jugoslavije – izazov evropskoj bezbednosti, published by Institut za Evropske studije, Beograd 1998, pp. 69-127.

[21] Further, it says: "The parties understand and agree that IFOR could be composed of land, air and naval units from member or non-member states of NATO and that these forces shall be deployed in Bosnia and

Council has satisfied that request and it was under Resolution 1031/1995, referring to Chapter VII of the Charter, that it has greeted and supported the Peace Agreement and called up the parties in good faith to fulfil the obligations taken over under the Agreement. And more concrete: The Security Council empowers the member states to establish multinational forces (IFOR) under the unique command and control (Point 14); authorizes the member states to take all necessary measures to safeguard respect for rules and procedures to be set up by the IFOR commander, which will refer to commanding and control of the air space above Bosnia and Herzegovina (Point 16); authorizes the member states to take all necessary measures, upon request of IFOR, either for defence of IFOR or for the purpose of providing aid to forces in carrying out their missions and recognizes the right to forces to take all necessary measures for the purpose of defence against the attack or threat with attack (Point 17). Of course, the Security Council shall make a decision that on the day the authorizations have been transferred from UNPROFOR to IFOR the authorizations granted to UNPROFOR shall cease to be effective which are contained in many former resolutions of the Security Council.

Introduction of KFOR and UMNIK in Kosovo and Metohia has been done in a manner showing that these operations are introduced based on the agreement of the interested parties. Resolution 1244/1999 has been adopted referring to Chapter VII of the UN Charter – but after an agreement (not too formal) has been reached. Namely, among the introductory provisions of the Resolution it has been said that "general principles of the political solution of the Kosovo crisis, adopted on 6 May, 1999 (S/1999/516, Annex 1 to this Resolution) are greeted as well as the acceptance by FRY of the principles contained in Points 1-9 of the document submitted in Belgrade on 2 June, 1999, (S/199/649, Annex 2 to this Resolution) and acceptance of that document by the Federal Republic of Yugoslavia.

Point 5 of the Resolution says that it has been decided to provide "under the aegis of the United Nations international civilian and military presence". Without going into details, let us say only this: under Point 7 the member states and corresponding international organizations are empowered to realize "the international military presence", while Point 9 sets forth what shall be the responsibilities of that international military presence.

Under Point 10 the Secretary-General of the United Nations shall be authorized, supported by the corresponding international organizations to implement "international civilian presence", while Point 11 lays down what shall be the responsibilities of that presence.

It is worth reminding here of numerous misunderstandings bearing on the interpretation of provisions of the (too lengthy, complicated and often contradictory) Dayton (Paris) Peace Accord as well as those (worded in very generalized formulations) of both the documents the 1244/99 Resolution refers to and the Security Council Resolution itself being discussed here. In situations where elements of prevention and repression are interwoven this cannot be neglected.

If all the peace-keeping operations which were effective or are effective in the terri-

---

Herzegovina for support and safeguard of observance of provisions of this Agreement... (b) It is understood and agreed that NATO may set up such forces which will act and be under the political control and command of the North Atlantic Council (NAC) through the commanding chain of NATO ...".

tory of former Yugoslavia are taken together – and if we start from the classification of all peace-keeping operations all over the world till 1988 given in the already mentioned document on the Internet – a conclusion can be drawn that more or less all previously known methods were used in resolving that crisis: (i) supervision over the respect for the armistice and observation of military activities; (ii) disarmament; (iii) humanitarian aid; (iv) support in holding elections; (v) supervision over the respect for human rights; (vi) supervision over the work of the civilian police; (vii) mines removing. The operations set up by the United Nations – or have, at least, been given the legitimacy by them – demonstrate lately (first of all UNPROFOR and IFOR in Bosnia and Herzegovina, as well as UMNIK and KFOR in Kosovo and Metohia) that their functions are not exhausted by the above mentioned functions, but that they also include – in addition to considerable influences in running the local administration – authorizations to serious forms of enforcements, first of all those military (at least implicitly, by the participation of respectable military contingents).

Vid Vukasović says: "So far, the United Nations has participated in resolving the crisis in the territory of former Yugoslavia in three capacities: (a) as a mediator in keeping with Chapter VI of the UN Charter, (b) within the Peace-keeping operation which need not interfere in the conflict but endeavours to do peace-observing and peace-keeping and (c) in the capacity of an organization which, in conformance with the provisions of the Chapter VII of the UN Charter, is responsible for peace-enforcement)."[22] After all, Leurdijk also says that interventions in the Yugoslav crisis include "mixture" of preventive diplomacy, peace-keeping, peace-enforcement, and humanitarian aid accompanied by the military protection.[23]

6. We have already said that the peace-keeping operations are taken with the agreement of interested states (such as, after all, is the case with resorting to all methods of the pacific settlement of disputes stated in Chapter VI) – while those including the elements of enforcement are decided on, with or without their agreement, by the UN Security Council (referring to Chapter VII of the UN Charter). However, particularly specific problems arise when actions according to "Chapter Six and Half" are taken, when by means of a series of additionally made decisions the initial peace-keeping operations objectives begin to be blurred, when authorizations granted to them are made complex, when (fabricated or real) problems arise in interpreting numerous documents – the domain of prevention being gradually left for the sphere of repression.

Speaking about the actions of the peace-keeping forces and about establishing their assignment as well, the key question, of course, is reduced exactly to the "agreement". Recently, according to a writer who has dealt with the problem in more details, the United Nations has acted (i) with the consent of the parties, expressed through the agreement

---

[22] V. Vukasović, Ujedinjene nacije i kriza na prostoru prethodne Jugoslavije, Proceedings on International Law and Yugoslav Crisis (ed. M. Šahović), published by Institut za medjunarodnu politiku i privredu, Beograd 1996, p. 210.
Please note that the paper was written four years ago.

[23] D.A. Leurdijk, The United Nations and NATO in Former Yugoslavia, Netherlands Atlantic Commission, The Hague 1994, p. 667.

reached (Cambodia); (ii) by force, against the will of the government in question (security zones in the North Iraq, prohibited flight zones in the North and South Iraq); (iii) without the agreement in case of the central power nonfunctioning (Somalia); (iv) with the agreement and without it (prohibited flight zone in the air space of Bosnia and Herzegovina and possible air raids against the Serbian positions in Bosnia – with the agreement of the Izetbegović administration, but against the will of Serbs in Bosnia).[24]

An Agenda for Peace with a lot of diplomatic cautiousness says: "The cornerstone of that work is and must remain the state. Respect for its basic sovereignty and integrity is essential for whatever common international order. Nevertheless, the age of absolute and exclusive sovereignty has gone: the reality has never corresponded to theory. Today, the leaders of states should understand and find out the balance between the needs of good internal administration and the increasing interdependence in the world ... Nevertheless, if each ethnic, religious or linguistic group would demand statehood, there would be no end to fragmentation, and it would be increasingly harder to safeguard the peace, security and economic welfare for all".[25] It was nicely said. However, there remains a question: how to translate it into precise formulations by means of which the future practice both of states and of the United Nations should be guided?

Consequently, this is how we come to the fundamental question: how are we to define where the (relative) sovereignty of states ends and where begins the right of the United Nations to intervene in internal conflicts without the agreement of the state upon the territory of which they occur. Put in other words, when ceases under the UN Charter regulated use of the legitimate enforcement – and begins the unallowed intervention.

Considering the problem from the UN practice point of view, Bailey has, rightfully, written: "The Security Council has in early years given priority to the nonintervention principle. Over the last five years, however, there is a tendency of the Security Council to improve human rights within a state, often, although not always, with the agreement of the interested governments. However, it is hard to find out what were the criteria the Security Council was guided in making decisions to intervene in some case, but not in others".[26]

Mackinlay emphasises some elements that are perhaps more important if the problems were rather viewed from the political point of view, but less in a way the lawyers do. And he says: over the last two years we saw three types of multinational forces sent to Cambodia, Somalia and former Yugoslavia with the exceptionally active mandates and military capabilities. Thus, the old susceptibilities bearing on the intervention and respect for sovereignty have been awakened, and it seems as if the new era has come in connection with the multinational operations. According to him, three lessons can be drawn from that development: first, the UN Secretariat will increasingly be less in position to meet the ever-growing number of requests for peace-keeping forces, while the great powers will still support those arrangements and, thus, continue to exert national influence on the subject components of the UN forces. Second, the needs for forces that will be able to effectively act will decrease the number of states providing the contingents and will mainly be reduced to the members of NATO, which even today irritates the nonaligned lobby. Third,

[24] D. Leurdijk, Options for a Civil Authority of the UN, International Spectator, November 1993, p. 671.
[25] An Agenda for Peace, para 17.
[26] S.D. Bailey, Intervention: Article 2.7 Versus Articles 55-56, International Relations, Vol. XII, 2/1995, pp. 2-3.

and probably the most important: there is no an established method on how to use those forces, while it is understood that concessions must be granted to the states that provide their contingents. That, however, means that the forces are today employed in keeping with the national military priorities than under the strict control of the United Nations.[27]

Zaal and Santen, also considering the problems arising from the settlement of conflicts within states, point to the problem of finding out solutions for the situations in which several fundamental requests are confronted: "Intervention without the agreement of the subject government, or siding with the rebels against the regime, are breaches of the basic principles of international order. ... On the other hand ... the sovereignty has never been aimed to protect dictators who massacre their own people ... nor to permit permanent threats on a large scale within a state where anarchy took place", and conclude: "... the borders between the operations are disturbed in an effort to harmonize the impossible, that is, the need that the action should be approved by the government of the subject state, to respect the sovereignty of the state, that the action should be effective, to provide the necessary humanitarian aid and, finally, to satisfy different loyalties and interests of interested states".[28]

Ottonu tries to give an answer to the fundamental question: when an intervention in internal conflicts in a state is legitimate in view of the provisions of Article 2/7 of the Charter? And says that the intervention is acceptable in the following cases: first, in the form of enforcement measures according to Chapter VII; second, when the subject state agrees with the intervention in its internal affairs (supervision of elections and the like); third, when the internal conflict assumes an international dimension (Cambodia, Afghanistan); fourth, when the Committee for Human Rights and the UN General Assembly accuse some state for violations of human rights. Further, this author ascertains that there are two schools of thought today: "activist" and "status quo" – while, according to him, in certain things consensus is reached, such as can be seen, according to him, in the following examples: the Security Council Resolution 770 under which the states are authorised to individually or within the framework of regional organizations or arrangements take necessary measures for providing humanitarian aid (for Sarajevo and if needed for other parts of Bosnia and Herzegovina); the Security Council 794 on Somalia under which the Secretary-general and the member states are authorised to employ all means so as to safeguard security of humanitarian operations; the Security Council Resolutions 819 and 824/1993 under which security zones are created in Bosnia and Herzegovina which must not be attacked and to which UNPROFOR and humanitarian institutions have the right of access; and finally, Resolution 816/93 under which the United Nations are authorized to take "all necessary measures" so as to safeguard respect for the matters agreed upon.[29]

Sure, an important question is being been poised immediately: what kind of consensus does this author mean? If he thinks of a political consensus within the UN Security Council, care must be taken that this consensus will in every concrete case depend upon the ratio of powers at that moment and that, simply, the political consensus cannot change the

[27] J. Mackinlay, Successful Intervention, International Spectator, November 1993, pp. 656-658.
[28] H. Zaal and van H. Santen, Peace-keeping and the Role of Preventive Diplomacy, International Spectator, November 1993, p. 647.
[29] C.A. Ottonu, Préserver la legitimité de l'action des Nations Unies, Politique étrangère, 3/1993, pp. 603-606.

existing law.

A view voiced by Duke should be cited at this moment, which, by the way, comes into an agreement with that of the author of these lines. Namely, Duke says: the general law to a humanitarian intervention was recognised by the end of the 19th century, but there were many disagreements among the theoreticians on its legal grounds. Multilateral agreements, such as the UN Charter and the basic documents of the Organisation of American States point to a questionable legality of that concept. Moreover, there is a doubt among the experts whether a humanitarian intervention, as a legal concept, exists at all. Having raised a question on how to "codify" the legal grounds for taking humanitarian intervention in the future, he, rightfully, says that the historical precedents are not encouraging: it is not that simple to establish what the real intentions and motives are, but opening the possibility to the powerful to exercise enforcement over the weak is more than obvious. In his further considerations, however, Duke deals with something that is at least controversial – and tries to establish assumptions upon which, perhaps, the right to a humanitarian intervention could be codified. Included in these assumptions are: (i) proved hard violation of human rights; (ii) violation to a great extent which threats a lots of lives lost; (iii) exhausted all possible ways below the intervention level; (iv) employment of proportional force; (v) time limits to employ that force; (vi) operations carried out within the frameworks of Chapter VII; (vii) endeavours, if in any way possible, to achieve any form of agreement of the subject state.[30]

An agreement on the aforementioned assumptions, without any doubt, would not be easy to achieve.

7. In conformance with the UN Charter, based in the concept of the collective security is, first and foremost, to resort to the pacific settlement (Chapter VI of the UN Charter), and should this fail, and threat to the peace, breach of the peace or partial aggression result, the Security Council may take enforcement measures in order to restore the international peace and security (Chapter VII of the UN Charter). Let us repeat (once more) that resorting to various ways of pacific settlement of disputes depends upon the agreement of the parties to the dispute, being understood that neither the Security Council (nor the General Assembly) cannot order the parties to resort to any of these ways. In contrast to that, the Security Council may order the member states of the United Nations to take part in the execution of the enforcement measures (or, on the other hand, to authorise them to do that).

That what at this moment should be pointed out is that the founders of the UN Charter have, without doubt, had in mind only international "disputes" and "situations". As for interventions in internal affairs, Article 2/7 of the Charter sets forth two things. First, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state", and second "this principle shall not prejudice the application of enforcement measures under Chapter VII". These formulations, on the one hand, really leave enough room for discussions on

[30] Duke, S, The State and Human Rights: Sovereignty versus Humanitarian Intervention, International relations, Vol. XII, 2/1994, pp. 30-31, 43-44.

what the expression "are essentially" means, and, on the other hand, how to apply them in situations when – such as in situations dealt with in this paper – pacific settlement of conflicts (application of Charter VI) is combined with the enforcement measures (resorting to Chapter VII) exactly in situations which are mostly connected with domestic disputes and conflicts.

Schachter, undoubtedly one of the best experts in legal and political systems of the United Nations, says: " ... in contrast to the juridical interpretation, the interpretation of the United Nations usually has not such character. The assignment encountered by the UN organs is political and instrumental – that is, they should adopt the action plan or recommend appropriate conduct for the purpose of achieving some objective ... The most frequent controversies referred to the questions of competence and authorizations of the Security Council and the General Assembly, particularly with reference to the internal affairs. Other discussions on interpretations referred to the obligations of states towards the Charter and the general international law in view of the employment of force, intervention, rights for self-determination and human rights." And goes on: "The end of the cold war caused the old controversies to be forgotten, but – when the Security Council became more active, particularly in situations referring to the internal conflicts and sanctions – there arose new discussions... The most disputable questions are usually directed to the abstract concepts and principles: sovereignty, independence, threat to peace, self-determination and equality".

And while the author of these lines can agree with the aforementioned, Schachter adds something which should be argued over: "The answers should not be searched for in the "usual meaning" of those expressions, nor in the dictionary. A selection among the frequently opposing principles should be made, when each of them is applicable to the concrete case, but point to different solutions ... The whole history of the United Nations supports the understanding that the United Nations organs interpretation is basically political, in that sense that the conflicts on the interpretation are most frequently settled in conformance with what the states want to achieve politically ... Flexibility of the Charter language permits choices which are relatively free from limitations".[31]

But, the problem becomes even more complex for lawyers when interests of states which take part in the decision-making processes of the United Nations (not only the Security Council) are taken into account. One of the undoubted experts, writing on the occasion of the 50th anniversary of the United Nations, will call into question the collective system of security at all. According to him, the assumptions for a worthy system of the collective security are as follow: (i) that the states will identify their independence with the existing worldwide order in such measure that they will be ready to defend that system also in situations which seem to be far from their national interests; (ii) that the states will be able and willing in each concrete situation to establish who the aggressor is; (iii) that the aggressor will be so weak that the superior international power will be able to resist it; (iv) that the states will be willing to punish their closest allies as opponents; (v) that the states will be ready to renounce their decision-making on employment of their armed forces regardless of the fact whether their national interests are involved or not; (vi) that

[31] Oscar Schashter, United Nations Law, American Journal of International Law, Vol. 88, 1/94, pp. 6-7.

the public debate on the international forums will prove itself to be a more effective technique than reaching agreement by traditional methods of secret diplomacy. None of these assumptions, concludes he, came true: (i) loyalties towards the national state have not been transferred to the world community; (ii) that what is aggression for some is self-defence and national liberation for others; (iii) small states have enough power to resist international forces; (iv) nations, like human beings, are not immune to the human nature do not react objectively; (v) statesmen will not renounce discretion rights on that important questions such as employment of their armed force; (vi) traditional diplomacy offers better conditions for reaching agreements than public diplomacy in the United Nations.[32]

Regardless of the fact that the author of the aforementioned words seems to have gone too far in asserting that the system of collective security as such cannot exist today – after all, the very existence of the subject provisions of the UN Charter has acted as a factor of dissuading at least to those who thought it inopportune to expose themselves to the effects of hardly predictable trends in the global international relations - there remains the fact that the states when it comes to the decision-making (a comment should be made here: not only in the United Nations but in the silent diplomacy as well, outside the UN forums, the alleged advantages of which are pointed to by the mentioned author), are, to a greater extent, guided by the national and to a lesser extent by the interests of the international community as a whole. Yet, the fact should not be neglected that the interest of preventing a conflict (and making impossible the already arisen one to expand) and of maintaining the peace. Of course, the conditions under which the peace is offered will be to a great extent connected with the national interests – and the intensity of offering, even that of imposing, these conditions will also depend upon the need of internal policy of the important states taking part in the decision-making processes. Also, care should be taken that the wider is the circle of the participants in the decision-making process the greater is the possibility of the national interests of many participants to mutually cancel each other and create the possibility of certain objectivization in estimating the international interest.

Having the above said in mind – and reminding of the fact that discussions are being held today in the United Nations and around it on that in which situations the interference of the Organization in internal disputes and conflicts is legitimate[33] - we wish to say that the process of negotiations (not only) in the United Nations is a political one, within which the states, according to a definition, try to protect and improve their own national interests, taking care, however, that in protecting and improving their own interests they must do required compromises for the purpose of preserving the international interest, that is, maintenance of the international peace and security. Under these conditions, the law of the United Nations – as well as, after all, the complete international law – may and should serve as an element which will, on the one hand, enable the widest circle of interested states to participate in the negotiation and decision-making process and, on the other hand, to more concretely define when, in which situations and in what way the United Nations may intervene.

It is just in order to lessen, in so far as it is possible, the impact of the political factor (also including here the factor of unequal power of the participants in the negotiation and

[32] Aba Eban, The UN Idea Revisited, Foreign Affairs, 5/1995, pp. 46-47.
[33] Unfortunately, this author has not succeeded so far in obtaining relevant documentation on these discussions.

decision-making process), consideration of problems connected with the adoption of decisions on intervention in internal conflicts under today's conditions should be, first of all, directed to (i) establishing the circumstances under which the United Nations may approach the operations of maintaining (imposing) the peace; (ii) making of rules that will contribute to both objectivisation of establishing factual state and establishing what the international interest is; (iii) defining the ways of conduct of the peace-keeping operations; and (iv) increasing the number of the UN organs participating in the decision-making.

This author is aware of the problems standing on the way of any more precise regulating the rules of conduct of the United Nations in resolving conflicts arising within the borders of (relatively) sovereign states. However, he is more than aware of the consequences, not only to the system of collective security of the United Nations, if introduction of operations of maintaining (and/or imposing) peace – or decision-making on what kinds of measures provided for under Chapter VII of the Charter should be employed – would depend only upon the instantaneously possible compromise on the UN organ gathering at the moment less than 10% members of the Organisation (the compromise that, no need to be particularly emphasised, may be made impossible because of the instantaneous interests of only one of the five permanent members, the interests that, of course, need not have much in common with the interest of the international community on the whole), but also upon the (previous or subsequent) estimation of the governments of states whether to take part in the predicted operations (mostly being guided by their own estimation whether carrying out of operations they are called to take part in are worth human and material victims which should be suffered for some higher ideals).

In simplified terms: whether the system of collective security of the United Nations should be made dependent upon (today's and future) *ad hoc* political agreements to be reached (or not) on the Security Council or, on the other hand, to try to regulate this matter at least more principally, in spite of the obvious difficulties. Sure that this author is for the latter option for obvious reasons (at least when internal legal systems of modern states are in question): the internal legal systems of states regulate the relations among those belonging to the given system, being desirous, among other things, to prevent possible incident situations and illegal conduct, but to establish the modes of action of those organs which should react to such conduct. That, of course, is valid for both international law and the United Nations law.

With reference to the problem dealt with in this paper, the following should be said: that the states should know how to proceed in case of internal conflicts and which measures are to be taken in such situations by the competent UN organs (first of all by the Security Council), the rules (in contrast to those contained in the Charter with reference to the international conflicts) not existing today should be, first of all, established, so as to avoid that the ways of proceeding of the United Nations – and the authorizations granted to the UN operations to maintain the peace – almost completely depend upon the instantaneously possible political compromises of a few states.

UN IZMEDJU MIRNOG REŠAVANJA SPOROVA I NAMETANJA MIRA

Obrad Račić

Danas, kada se u UN i oko njih vode pregovori o širenju prava na intervenciju u unutrašnje sporove i sukobe – dok je rasprava o tome u naučnoj literaturi već poodavno započeta – valja podsetiti na to da pribegavanje različitim načinima rešavanje sporova zavisi od saglasnosti strana u sporu dok, s druge strane, Savet bezbednosti može narediti da se prinudne mere sprovedu. To je važno, pre svega, zbog toga što operacije za očuvanje mira sve češće dobijaju jednu i drugu funkciju.

Upravo zbog toga da bi se, u onoj meri u kojoj je to moguće, ublažio uticaj političkoga faktora (uključujući tu i faktor nejedanke moći učesnika u procesima pregovaranja i odlučivanja), razmatranje ove problematike treba u prvom redu usmeriti na: utvrdjivanje okolnosti u kojima UN mogu da pridju operacijama očuvanja (pa i nametanja) mira; stvaranje pravila koja će doprineti kako utvrdjivanju činjeničnog stanja tako i iznalaženju šta predstavlja medjunarodni interes; definisanje postupanja tih operacija; i širenje broja organa UN koji u odlučivanju učestvuju.

Ključne reči: *Ujedinjene nacije, Savet bezbenosti, nametanje mira*