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The question of the use of force in the UN coordinates – before changes?

(This short note is the written English version of a lecture delivered at the conference of Hungarian international lawyers on November 17-18 2005 organized at the Szeged University to celebrate the 60th anniversary of the United Nations and the 50th anniversary of the Hungarian membership in the UN)

I.

As you will all remember, it was a common opinion in the 1990's was that the United Nations Organization is confronted with the danger of marginalization at the threshold of the second millennium. Critics were addressed against it for its incapacity and for being late in action. During decades, the UNO was hardly able to satisfy the high expectations reflected in the solemn words of the preamble of the Charter

„to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind” and „to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest”

It would be too long to enumerate all the armed conflicts broken out in the past six decades most of which was not even discussed in depth in the Security Council because of the well known lack of unanimity among permanent members. As a matter of fact, all of them have committed such armed interventions which could hardly be considered compatible with the letter and spirit of the Charter². Some of their special allies could also enjoy impunity under the umbrella opened by their powerful friends while due to media, very bloody conflicts were watched by people claiming desperately an intervention for the restoration of peace. Cold war and bipolar confrontation were considered as the main cause of this incapacity but the collapse

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² E.g. the attack by United Kingdom and France in 1956 at Suez, the US involvement in the vietnamese conflict or the attack and occupation of Irak in 2003, the Soviet intervention in Hungary (1956), Czechoslovakia (1968) and Afganistan (1979), China's attack against Vietnam (1979), etc.

of the Soviet system, the east-west understanding, the American-Russian honeymoon in the first years of the nineties did not bring any real improvement of the capacity of action of the United Nations.

However, to do justice to the UNO, it should be kept in mind that internal conflicts, local anarchies were finally recognized in the nineties as being covered by the famous Chapter VII of the Charter. This recognition was the most important result of a new way of thinking in the Potomac riverside building. It often happened however, that physical distance, lack of interest, electoral considerations or political sympathy prevented the Security Council from taking a decisive step. The memory of the failed intervention in Somalia postponed again and again a definite action for the restoration of peace in Bosnia-Herzegovina before the final assault provoked by the bloody bombardment of the market in Sarajevo. Even if the NATO was mandated by the Security Council, it became soon clear that no mandate could be expected to prevent the ethnic cleansing in Kosovo. We all know the outcome: in 1999, the NATO entered in a bombardment campaign without a UN authorization, violating in this way the Charter but certainly saving Kosovar Albanians.

Post 9/11 circumstances, the proclamation of the Bush-doctrine, global war against global terrorism and the American determination to attack Iraq, if possible with a UN authorization but if not, alone, all complicated and darkened the picture seen (or hoped) to be clearer at the beginning of the nineties. Debates reopened on the utility, reform and adaptability of the United Nations to the realities of a unipolar hegemony where only one power, the United States is able to launch military manoeuvres on eventual demand of the organization, wherever and with adequate strength. For different reasons shared by most American politicians although far less evident for international lawyers, the United States does not want to accept UN authority by giving a blank cheque: it is more and more evident that the American cooperation with the United Nations goes as far as the UN coordinates do not serve US interests.

II.

We can assume that many UN top functionaries were thinking a lot on these issues. In order to find an adequate answer to the greatest contemporary challenge, the Secretary General, Kofi Annan decided not only to celebrate the 60th anniversary, but to organize a working summit conference: according to the original idea, a very comprehensive reform project should have been adopted instead of pure and ritual enumeration of the aims and achievements in order to give an answer to those who are afraid of the marginalization of the organization and feel the growing danger in the field of the respect of universally accepted principles of international law and international peace and security. Let us highlight only one aspect of the project i.e. the question of the use of force: *infra*, you will find a short survey of the documents which were elaborated during the preparation of the summit: *i.* the in depth analysis of a committee of wise men, the so called High-level panel,³ appointed by the Secretary General, *ii.*

³ A more secure world: Our shared responsibility. Report of the Secretary General's High-level Panel on Threats, Challenges and Change, United Nations 2004

Kofi Annan's report⁴ submitted to the General Assembly, *iii.* the August draft⁵ of the expected final declaration and *iv.* the adopted outcome document⁶.

The proposals of the High Level Panel

This special *ad hoc* advisory committee was composed of well known personalities, appointed by the Secretary General: Gro Harlem Brundtland, WHO director general and former Norwegian prime minister, Brent Scowcroft former US national security advisor, former president of the French Constitutional Council, senator Robert Badinter, Yevgeny Primakov, former Russian minister for foreign affairs, etc. In its report, the "High-level Panel" did not propose⁷ the redrafting or reinterpretation of article 51 on self-defence. Nevertheless, it was relatively open to the preventive attack so much discussed on international fora. It made a distinction between *preemptive self-defence* and *anticipatory self-defence*. As to the first, citing no more than three authors⁸ as reference to scientific literature, the committee concluded that as far as preemptive self-defence was concerned "a threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate."⁹

Regarding anticipatory self-defence (i.e. when there is no imminent danger, e.g. in case of detecting only efforts aiming to build up a nuclear capacity), the High-level panel recognized that this can also cover a real threat, however in this case, no legally correct action can be taken without a prior mandate delivered by the Security Council. It is another issue how the Security Council will decide in the light of the circumstances whether it will opt for a military action or eventually other technics will be preferred.¹⁰

According to the High level panel, the Security Council has a large freedom to act under Chapter VII and in the qualification of a threat to international peace and security, it is not bound by the threshold of article 51 but it can go beyond: it is very important however to take into consideration the principles of *prudence* and *legitimacy*: no action can be launched without *credible evidence of the reality of the threat*.¹¹ The conclusion was probably shared by all the members of the tiny world community of international lawyers: „The task is not to find

⁴ In larger freedom: towards development, security and human rights for all (integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields, Follow-up to the outcome of the Millennium Summit, Fifty-ninth session A/59/2005

⁵ Revised draft outcome document of the High-level Plenary Meeting of the General Assembly of September 2005 submitted by the President of the General Assembly, 5 August 2005, Future document A/59/HLPM/CRP.1/Rev.2

⁶ 2005 World Summit Outcome, Draft resolution referred to the High-level Plenary Meeting of the General Assembly by the General Assembly at its fifty-ninth session, 15 September 2005, A/60/L.1 or Resolution adopted by the General Assembly [without reference to a Main Committee (A/60/L.1)] 60/1 2005 World Summit Outcome A/Res/60/1, 24 October 2005

⁷ A more secure world: Our shared responsibility § 192

⁸ They cite papers written by Oscar Schachter, Wolfgang Friedman és Louis Henkin, dating respectively from 1984, 1964 és 1979:

Oscar Schachter: the Right of States to Use Armed Force, Michigan Law Review 82: 1620, 1984, pp. 1633-65; Wolfgang Friedmann, The Changing Structure of International Law (New York: Columbia University Press, 1964), pp. 259-60; and Louis Henkin, How Nations behave, Second edition (New York, Columbia University Press, 1979), pp.143-145.

⁹ A more secure world: Our shared responsibility § 188

¹⁰ A more secure world: Our shared responsibility § 191

¹¹ A more secure world: Our shared responsibility § 195

alternatives to the Security Council as a source of authority but to make the Council work better than it has.”¹²

Remembering the practice as crystallized in the nineties i. e. the qualification of civil war, bloody internal conflicts as being covered by competences enjoyed under Chapter VII, the High-level panel stated that „the principle of non-intervention in internal affairs cannot be used to protect genocidal acts or large scale violations of international humanitarian law or large-scale ethnic cleansing.”¹³ Having conferred a higher value to the following principle than a simple „*in statu nascendi*” character, the body put that „We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military interventions as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”¹⁴

Just because former steps were often taken reluctantly and lacked consistency¹⁵, the High-level panel arrived to the conclusion that the UN should be equipped with a precise standard: “In particular, in deciding whether or not to authorize the use of force, the Council should adopt and systematically address a set of agreed guidelines, going directly not to whether force *can* be used but whether, as a matter of good conscience and good sense, it *should* be.”¹⁶ Although this standard cannot be considered as guaranteeing an automatism in action („will not produce agreed conclusions with push-button predictability”), it could be useful to reach a consensus in an easier way and to dissuade states from acting out of the control of the Security Council.¹⁷ The guidelines „should be embodied in declaratory resolutions of the Security Council and General Assembly”¹⁸) and on a surprising way, a ratificatory approval by states is also proposed: „We also believe it would be valuable if individual member states, whether or not they are members of the Security Council subscribed to them.”¹⁹ As to the eventual content of the guidelines, the High-level panel put that military intervention can be launched under the cumulative conditions of the seriousness of threat, the assumption that the world community has to act at the last resort the a priori definition of a proper purpose, the proportionality of means and the previous due balance of consequences.²⁰ The situation cannot be worse than it was before.

The High-level panel proposed the suppression of the Military Staff Committee but with a very short argumentation as „being no longer appropriate for the joint chiefs of staff of the five permanent members to play the role imagined for them in 1945. We have in paragraph 259 above addressed the need for the Security Council to have better military advice.”²¹ The referred article however – after having recognized that diplomats hold generally only a civilian formation which is insufficient for a comprehensive military planning – proposed the

¹² A more secure world: Our shared responsibility § 198

¹³ A more secure world: Our shared responsibility § 199

¹⁴ A more secure world: Our shared responsibility § 203

¹⁵ A more secure world: Our shared responsibility § 202

¹⁶ A more secure world: Our shared responsibility § 205

¹⁷ A more secure world: Our shared responsibility § 206

¹⁸ A more secure world: Our shared responsibility § 208

¹⁹ A more secure world: Our shared responsibility § 209

²⁰ A more secure world: Our shared responsibility § 207

²¹ A more secure world: Our shared responsibility § 300

enlargement of the competence of the office of the Secretary General. „We recommend therefore that the Secretary General’s Military Advisor and the members of his staff be available on demand by the Security Council to offer technical and professional advice on military options.”²²)

The High-level panel proposed also the suppression from two articles (namely 53 and 107) the references to the so called enemy states, as „being outdated”.²³

The Secretary General’ proposal

There is much correlation between Kofi Annan’s proposal and the work of the High-level panel. There is a *verbatim* identity in the interpretation of the right to self-defence, the issue of imminent threat and the alleged doctrinal approval of the preventive strike.²⁴ The Secretary General also put emphasis on the competences of the Security Council, in case of a latent threat and he also recognized in this context the legitimacy of a preventive strike: the examples enumerated are also nearly the same i.e. genocide, ethnic cleansing and other crimes against humanity.²⁵ It is worth noting however that this third one is embracing a larger field because it is not limited to the grave violations of international humanitarian law. The criteria of action are also very similar (seriousness of the threat, proper purpose, proportionality, chance of success)²⁶, but the proposal does not conceive the action to be launched only as a last resort. (Surprisingly, the importance of the chance of success comes back a second time.) The Secretary General seems to share the view that the „guidelines” should be incorporated in a resolution of the Security Council, but there is no more reference to an eventual incorporation in a recommendation of the General Assembly or to the ratification by member states.²⁷ Kofi Annan proposed also the suppression of the Military Staff Committee ”for similar reasons as in the previous paragraph.”²⁸ The paragraph in question is dealing however with the suppression of the Trusteeship Council, „its work is long since complete.”²⁹ One can hardly say, that the Military Staff Committee has performed all its duties with such efficacy that even the organ has become useless – as it actually happened in case of the Trusteeship Council....There is no more reference to any man or body in the UN organigramm who would perform or control a military action which the Security Council decided upon. According to the proposition of the High-level panel, the Secretary general has also envisaged the suppression of the enemy clauses from article 53 and 107.³⁰

²² A more secure world: Our shared responsibility § 259

²³ A more secure world: Our shared responsibility § 298

²⁴ In larger freedom: towards development, security and human rights for all § 124

²⁵ In larger freedom: towards development, security and human rights for all § 125

²⁶ In larger freedom: towards development, security and human rights for all § 126

²⁷ In larger freedom: towards development, security and human rights for all § 126

²⁸ In larger freedom: towards development, security and human rights for all § 219

²⁹ In larger freedom: towards development, security and human rights for all § 218

³⁰ In larger freedom: towards development, security and human rights for all § 217

The August draft of the outcome document

The accessible draft, prepared by professional diplomats working under pressure of time and contradictory mandate of their respective governments, was already very far from the ambitious aims proclaimed by the Secretary General.

Composed of five paragraphs, the introductory part of the chapter III, entitled *Peace and Collective Security* is nothing else than the compilation of usual, empty declarations and desiderata:

"We recognize that we are facing a whole range of threats that require our urgent, collective and more determined response."³¹

"We also recognize that, in accordance with the United Nations Charter, addressing these threats requires a comprehensive approach among all principal organs of the United Nations within their respective mandates."³²

"We acknowledge that we are living in an interdependent and global world and that today's threats recognize no national boundaries, are interlinked, and must be tackled at the global, regional and national levels."³³

"We therefore reaffirm our commitment to implement a security consensus based on the recognition that many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective, equitable and efficient collective security system, in accordance with Purposes and Principles of the United Nations Charter."³⁴

"We resolve to take concerted action, through such a system of collective security, based on the United Nations Charter and respect for international law, so as to prevent, mitigate and remove threats to international peace and security, respond effectively to natural disasters, ensure economic development and the full enjoyment of human rights for all States and peoples."³⁵

The subchapter *Use of Force under the UN Charter* is built up of three paragraphs. The statements are more or less those which were written also in the report of the High-level panel and the Secretary General' report without being clear enough as to the necessary consequences.

"We reiterate our obligation to refrain from the threat or use of force in any manner inconsistent with the purposes of the United Nations. We reaffirm that one of the Purposes and Principles guiding the United Nations is 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 about by peaceful means, and in conformity with the principles of justice and

³¹ Revised draft outcome document... § 45

³² Revised draft outcome document... § 46

³³ Revised draft outcome document... § 47

³⁴ Revised draft outcome document... § 48

³⁵ Revised draft outcome document... § 49

international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”³⁶

”We also reaffirm that the provisions of the Charter of the United Nations regarding the use of force are sufficient to address the full range of security threats and agree that the use of force should be considered as an instrument of last resort. We further reaffirm the authority of the Security Council to take action to maintain and restore international peace and security, in accordance with the provisions of the Charter.”³⁷

”We recognize the need to continue discussing principles for the use of force, including those identified by the Secretary General.”³⁸

In chapter IV, entitled ”*Human Rights and the Rule of Law*”, we can discover the same crimes which were pointed out by the High-level panel and the Secretary General but already without any precise reference to the legitimacy of a preventive strike after permission of the Security Council. Here, the wording is much more cautious: ”We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.”³⁹

In chapter V, entitled ”*Strengthening the United Nations*”, the drafters enshrined practically nothing else than article 24 of the Charter: ”We reaffirm that Member States have conferred on the Security Council primary responsibility for the maintenance of international peace and security, acting on their behalf, as provided by the Charter.”⁴⁰

As to the Military Staff Committee, the draft is much less categorical than the reports were: only a brain-storming is envisaged, but it is true with a proposal at the end: ”We request the Security Council to consider the composition, mandate and working methods of the Military Staff Committee and to submit a recommendation for further action to the General Assembly.”⁴¹

Like the previous documents, the draft is also in favour of the suppression of the enemy clauses from articles 53, 77 and 107.⁴² Obviously, the reference to article 77 is new. Even if at the first glance, this seems to be the correction of a failure, we cannot forget, that the whole Chapter XII – containing article 77 – was condemned to disappear from the Charter by the High-level panel and the Secretary General.

³⁶ Revised draft outcome document... § 54

³⁷ Revised draft outcome document... § 55

³⁸ Revised draft outcome document... § 56

³⁹ Revised draft outcome document... § 119

⁴⁰ Revised draft outcome document... § 133

⁴¹ Revised draft outcome document... § 158

⁴² Revised draft outcome document... § 157

The outcome document

The outcome document finally adopted at the summit is showing only a few differences vis-a-vis the draft of August. Chapter III devoted to *Peace and Collective Security* is composed only of four paragraphs and of course, it did not become more precise. (*Infra*, new wordings will be underlined and omitted parts will be shown in footnotes.)

"We recognize that we are facing a whole range of threats that require our urgent, collective and more determined response."⁴³

"We also recognize that, in accordance with the United Nations Charter, addressing these threats requires cooperation⁴⁴ among all principal organs of the United Nations within their respective mandates."⁴⁵

"We acknowledge that we are living in an interdependent and global world and that many of today's threats recognize no national boundaries, are interlinked, and must be tackled at the global, regional and national levels in accordance with the Charter and international law."⁴⁶

"We therefore reaffirm our commitment to work towards⁴⁷ a security consensus based on the recognition that many threats are interlinked, that development, peace, security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective, equitable and efficient collective security system, in accordance with Purposes and Principles of the United Nations Charter."⁴⁸

The subchapter entitled *Use of Force under the UN Charter* is composed of four paragraphs with tiny changes.

"We reiterate the⁴⁹ obligation of all Member States to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations. We reaffirm that one of the purposes and principles guiding the United Nations is to maintain international peace and security, to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace and to that end we are determined to take effective collective measures for the prevention and removal of threats to the peace⁵⁰ and to bring about about by peaceful means, and in conformity with the principles of justice and international law, the adjustment or settlement of international disputes or situations which⁵¹ might lead to a breach of the peace."⁵²

⁴³ 2005 World Summit Outcome § 69

⁴⁴ Here, the draft of August contained: „, a comprehensive approach”

⁴⁵ 2005 World Summit Outcome § 70

⁴⁶ 2005 World Summit Outcome § 71

⁴⁷ Here, the draft of August contained: "implement”

⁴⁸ 2005 World Summit Outcome § 72. Here, the draft of August contained also „We resolve to take concerted action, through such a system of collective security, based on the United Nations Charter and respect for international law, so as to prevent, mitigate and remove threats to international peace and security, respond effectively to natural disasters, ensure economic development and the full enjoyment of human rights for all States and peoples.”

⁴⁹ Here, the draft of August contained: „our”

⁵⁰ Here, the draft of August contained: „and for the suppression of acts of aggression or other breaches of the peace,”

⁵¹ Here, the draft of August contained: „that”

⁵² 2005 World Summit Outcome § 77

„We⁵³ reaffirm that the relevant provisions of the Charter of the United Nations⁵⁴ are sufficient to address the full range of security threats.⁵⁵ We further reaffirm the authority of the Security Council to⁵⁶ mandate coercive action to maintain and restore international peace and security. We stress the importance of acting in accordance with the⁵⁷ purposes and principles of the Charter.”⁵⁸

Two new sentences were added however here, even if in the draft of August contained them partially in an other chapter: „We also reaffirm that the Security Council has primary responsibility in the maintenance of international peace and security. We also note the role of the General Assembly relating to the maintenance of international peace and security in accordance with the relevant provisions of the Charter.”⁵⁹ Despite of this presence, the first sentence is repeated in chapter V.

In chapter IV entitled *„Human Rights and the Rule of Law”* we do not find any more the appeal for a self-constraint vis-a-vis the right of veto.⁶⁰ Instead, a very long paragraph is enshrined containing also a reference on military action:

„The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.”⁶¹

In chapter V on *„Strengthening the United Nations”*, more or less article 24 of the Charter is reiterated, as it happened also already in chapter III: „We reaffirm that Member States have

⁵³ Here, the draft of August contained: „also”

⁵⁴ Here, the draft of August contained: „regarding the use of force”

⁵⁵ Here, the draft of August contained: “and agree that the use of force should be considered as an instrument of last resort”

⁵⁶ Here, the draft of August contained: „take”

⁵⁷ Here, the draft of August contained: „provisions”

⁵⁸ 2005 World Summit Outcome § 79. Here, the draft of August contained: „We recognize the need to continue discussing principles for the use of force, including those identified by the Secretary General.”

⁵⁹ 2005 World Summit Outcome § 80

⁶⁰ Here, the draft of August contained: “We invite the permanent members of the Security Council to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity.”

⁶¹ 2005 World Summit Outcome § 139

conferred on the Security Council primary responsibility for the maintenance of international peace and security, acting on their behalf, as provided by the Charter.”⁶²

The future of the Military Staff Committee is less clear: only a brain storming is required without any precise output and without any reference to the General Assembly. „We request the Security Council to consider the composition, mandate and working methods of the Military Staff Committee.”⁶³ The document proposes the suppression of the enemy clauses from articles 53, 77 and 107 of the Charter.⁶⁴

III.

Impressions before a comprehensive evaluation

It was hardly astonishing that most of the ambitious, conceptual proposals were sent to sleep as fruit of ongoing negotiations. As Paul Tavernier sceptically put it some weeks prior to the summit “the sixtieth anniversary is the proper occasion to think thoroughly on the United Nations as this was also the case in 1995 and 1985, at the fiftieth and fortieth anniversaries.” Tavernier’s prediction – presumably shared by most of international lawyers – was justified: the reform is badly needed but its realization encounters enormous difficulties mostly due to political and not at all technical or legal reasons.⁶⁵

In Hungary, when evaluating the chances of the report of the Secretary General, László Valki’s prognosis coincided with Tavernier’s approach: “Kofi Annan is apparently aware of the fact that the functionality of the United Nations and especially of the Security Council depends not at all on the rules concerning the use of the veto but on the disponibility of greatest powers to multilateral cooperation.”⁶⁶ Viktor Masenko-Mavi, when he emphasized the accentuated approach of human rights in Kofi Annan’s report considering the eventual human oriented metamorphosis of the United Nations as a historical step⁶⁷, regarded the systematization of humanitarian intervention as dangerous for the system of international relations.⁶⁸

The Secretary General used a well known symbol for the evaluation: “A Glass At Least Half Full”.⁶⁹ „In March, when I proposed an agenda for the summit, I deliberately set the bar high, since in international negotiations you never get everything you ask.” The issue of the *responsibility to protect* was important and successful for him: „Perhaps most precious to me is the clear acceptance by all UN members that there is a collective responsibility to protect civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity, with a commitment to do so through the Security Council wherever local authorities are manifestly

⁶² 2005 World Summit Outcome § 152

⁶³ 2005 World Summit Outcome § 178: Here, the draft of August contained also: „, and to submit a recommendation for further action to the General Assembly.”

⁶⁴ 2005 World Summit Outcome § 177

⁶⁵ Tavernier: *op. cit* p.9

⁶⁶ Valki, László: ENSZ-reform, a hatvanéves fejtörő (The UN-reform, a sixty year old puzzle) (Népszabadság, 2005. április 13)

⁶⁷ Masenkó-Mavi Viktor: Quo vadis, Egyesült Nemzetek Szervezete? (Quo vadis, United Nations’ Organization?) Acta Humana 2005/3, p. 14, 16

⁶⁸ Masenkó-Mavi Viktor: *op. cit* p. 23-24

⁶⁹ Kofi Annan: A Glass At Least Half Full (Wall Street Journal, 19 September 2005)

failing. I first advocated this in 1998, as the inescapable lesson of our failures in Bosnia and Rwanda. I am glad to see it generally accepted at last – and hope it will be acted on when put to the test.”⁷⁰

Frederic L. Kirgis is very sceptic in one of the E-journals of the American Society of International Law: in the outcome document, „most of the document’s references to international law are quite general. For example, paragraph 2 reaffirms the world leaders’ “faith in the United Nations and our commitment to the purposes and principles of the [UN] Charter and international law, which are indispensable foundations of a more peaceful, prosperous, and just world, and [we] reiterate our determination to foster their strict respect.” That is a reaffirmation by world leaders of the importance of international law, but it would have very limited significance in resolving actual disputes and situations.”⁷¹

Moreover he adds thereto: „The leaders appear to be saying that no Charter amendments are needed in order to enable the UN to deal with threats to the peace, such as terrorism, that were not contemplated when the Charter was drawn up. Possibly, but not clearly, they were also saying that apart from uses of armed force expressly recognized in the Charter (Security Council authorization under Chapter VII or self-defense in case of an armed attack), coercive action to deal with a threat to the peace could not be justified under the Charter.”⁷² As to the principle of *responsibility to protect*, despite of the obscurity of the formulas Kirgis puts that „The Security Council’s authority to use force under Chapter VII remains somewhat controversial if the populations directly affected by acts of violence – even mass violence – are entirely within a single State. In paragraph 139, the world leaders did not limit themselves to responses to acts of violence that spill over into territory outside the primarily-affected State. Consequently, their assertion could be viewed as a legally-significant interpretation of the scope of Security Council authority in situations of mass violence within a single State.”⁷³

The former speaker of the US Congress, Newt Gingrich and George Mitchell consider important the acceptance of this principle – for the benefit of which they had made lobbying in Washington, that in this way „in certain circumstances, a government abnegation of its responsibilities to protect its own people is so severe that the failure of the Security Council to act must not be used as an excuse for the world to stand by as atrocities continue.”⁷⁴

Guy Gosselin also considers the adoption of the principle as an important step and Canada can rightly be proud of it, as the original initiator of the idea.⁷⁵ Despite of reservations, there is a sound basis to work on the precise details.⁷⁶

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⁷¹ Frederic L. Kirgis: International Law Aspects of the 2005 World Summit Document, ASIL Insight, October 4, 2005 p.1

⁷² Kirgis: op. cit p.2

⁷³ Kirgis: op. cit p.4

⁷⁴ Newt Gingrich – George Mitchell: Report Card from America: UN Reform (American Enterprise Institute for Public Policy Research), (International Herald Tribune, November 28, 2005)

⁷⁵ The conceptual doctrinal elaboration of the idea is attributed to Lloyd Axworthy, canadian minister for foreign affairs and the working party he coordinated. See e.g. The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty, IDRC, 2001, 110 pp.

<http://www.dfait-maeci.gc.ca/iciss-ciise/pdf/Commission-Report.pdf>

See also: Thomas Axworthy: Human Rights and Human Responsibilities: Overlapping Concerns, A transcript of remarks at the symposium on „Human Rights and Human Responsibility” held April 1, 2005, at Santa Clara University

We can conclude that the summit proclaimed just the principle and left generously for the future the elaboration of the precise material and procedural rules. Taking into account realities, we can say that probably not too much will be changed in the close future, but the approach born in the nineties will be stabilized: the international community can act against a country in case of the most serious breaches of law challenging the conscious of mankind, even if the conflict occurs only inside a country – under the condition that all the five permanent members are ready to launch the action.

Little will be changed – until the greatest powers do not want to see other coordinates: but who could reasonably expect anything else?

http://www.scu.edu/ethics/practicing/focusareas/global_ethics/laughlin-lectures/overlapping-concerns.html

⁷⁶ Guy Gosselin: Les 60 ans de l'ONU. Un anniversaire triste ou joyeux? (Notes pour une conférence de Guy Gosselin devant l'ACNU-Québec le 24 octobre 2005) p. 7-8 <http://agora.ulaval.ca/~maper150/Acnu/archive.htm>