VOLUME 3 ISSUE II IJSARD ISSN 2455 4049

PRINCIPLE OF NON-INTERVENTION AND NON-USE OF FORCE: CUSTOMARY NORM WITH CHANGING INTERPRETATIONS

Mrs. Ambrina Khan
Assistant Professor, Symbiosis Law School, Hyderabad
ambrinakhannls@gmail.com

In this paper it is argued that the UN Charter strictly prohibits the use of force and military intervention by one state to another under Article 2(4) and 2(7), however leaves substantial discretion for the Organization's intervention in a states' domestic affairs, and thus reflects the concern with the maintenance of the norm of non-intervention in state relations as the basis of international order. The paper examines the UN's doctrine of non-intervention by introducing the key provisions of the Charter and analyses the contentions regarding their interpretation. The paper attempts to establish the general acceptance of the principle of non-intervention and non-use of force, it first discusses jurisprudential aspects of the principle of non-intervention by elaborating on the principles of John Mill of non-intervention and then moves on to discuss evolution of this principle under international law. It is then attempted to establish the significance of these principles by bringing it under the Treaty law as well as customary International law and establishes that the UN Charter establishes strong prohibition on the use of force and intervention however, due to faulty interpretation various aspects are mislead and it is believed that it allows intervention in number of cases when in reality it is restrictive in this sense, however, it leaves enough scope for the interventionist measures for the UN Organization itself and this is usually abused by the big powers as the organization is composed mainly of governments who seek their self interest and the UN Charter lacks any specific criteria in this respect. It is concluded in this paper that though the UN Charter strongly affirms that the norm of non-intervention as the main governing rule of state relations, and demonstrates the international society's persisting conviction that the norm is the primary safeguard for the preservation of order and the peaceful coexistence among states, but by assigning huge power to the organization itself dilutes theses provisions and increases the scope of abuse and misuse.

INTRODUCTION

The doctrine of non-intervention in domestic affairs is the logical corollary of the principle of sovereignty. Currently, it is the UN Charter that establishes and oversees this fundamental norm of state relations. the UN Charter strongly affirms that the norm of non-intervention as the main governing rule of state relations, and thus demonstrates the international society's persisting conviction that the norm is the primary safeguard for the preservation of order and the peaceful coexistence among states. While the Charter framework is restrictive in the use of force and military intervention in state relations, it leaves a great deal of discretion to the Organisation for its actions of interference. In international relations, the doctrine of non-intervention has been considered as the most significant means to cope with the "logic of anarchy" that lies at the heart of international politics, and thus becomes the main governing rule of state relations. Presently and at the universal level, it is principally the United Nations (UN) documents (the Charter and declaratory resolutions of the Assembly) that affirm and govern this preferred pattern of conduct in international relations. Although the emphasis in the UN Charter and in various related UN documents can be taken to indicate that there exists a consensus about the significance of the principle; there are controversies with respect to its interpretation and disagreements regarding the scope of behaviour that is proscribed by implication.

1. MILL'S PRINCIPLES OF NON-INTERVENTION

John Stuart Mill developed the core of a modern understanding of human dignity and its implications for hard political choices. He saw humans as fundamentally equal, sentient beings capable of experiencing pleasure and pain. Our natural sympathy should thus lead us to choose acts and rules that maximize pleasure and minimize pain for the greatest number. Importantly, Mill wanted to constrain this *maximization of utility by the freedom to lead unrestricted lives that did not harm the freedom of others.**[1]*** Politically***, two principles[2]*** followed from his application of utilitarian ethics. The ***first*** was maximum equal liberty, allowing each adult to develop his or her own potentiality on the view that each individual was the best judge of what was and was not in his or her interest, so long however as no one interfered with the equal liberty of others. The ***second*** was representative government. To maximize the utility value of collective decisions it would be best to give decisive weight to the preferences of the majority, as represented by knowledgeable politicians.

Arguments against intervention have taken the form of both direct principles and indirect, or procedural, considerations. Like many liberals, Mill dismissed without much attention Realist arguments in favor of intervention to promote national power, prestige or profits.

DIRECT CONSIDERATIONS-

1. Non-intervention could enable citizens to determine their own way of life without outside interference. For Mill, intervention undermined the authenticity of domestic struggles for liberty.[3] A free government achieved by means of intervention would not be authentic or self-determining but determined by others and not one that local citizens had themselves defined through their own actions.[4]
2. Focusing on likely consequences he explained in his famous 1859 essay, *"Nonintervention,"* that it would be a great mistake to export freedom to a foreign people that was not in a position to win it on its own.[5] A people given freedom by a foreign intervention would not be able to hold on to it. It's only by winning and holding on to freedom through local effort that one acquired a true sense of its value. Moreover, it was only by winning freedom that one acquired the political capacities to defend it adequately against threats both at home and abroad. If the liberal government were to be introduced into a foreign society the local liberals placed in power would find themselves immediately in a difficult situation. Not having been able to win political power on their own, they would have few domestic supporters and many non-liberal domestic enemies. They then would wind up doing one of three different things[6]:
    1. Either begin to rule as did previous governments, that is the repress their opposition.
    2. Or simply collapse in an ensuing civil war
    3. Or the interveners would have continually to send in foreign support.

Rather than having set up a free government, one that reflected the participation of the citizens of the state, the intervention would have set up a puppet government, one that would reflect the wills and interests of the intervening, the truly sovereign state.

3. A third argument against intervention was difficulties of transparency.[7] For even if the state is unjust, it's their state, not ours. We have no standing to decide what their state should be. All the injustices, therefore, which do justify a domestic revolution, do not always justify a foreign intervention. Following Mill, Walzer says that domestic revolutions need to be left to domestic citizens. Foreign interventions to achieve a domestic revolution are likely over the long run to be ineffective and cause more harm than they eliminate.[8]
4. The necessary "dirty hands" of violent means often become "dangerous hands" in international interventions.[9] International history is rife with interventions justified by high sounding principles, ending the slave trade or suttee or introducing law and order and civilized behavior, turning into self-serving, imperialist "rescues" in which the intervener stays to profit and control.
5. Interventions can violate the principles of proportionality and last resort.

INDIRECT CONSIDERATIONS[10]-

Interventions foster militarism and expend resources needed for other national and international goals. But key among the indirect considerations are the rules of international law among sovereign civilized states prohibited intervention and the laws embodied the value of coordination and consensual legitimacy. Rules, any rules, have a value in themselves by helping to avoid unintended clashes and their consequences to human life. They serve as focal points for without some rule, unsought strife would ensue. International laws, moreover, were painstakingly achieved compromises among diverse moralities. The mere process of achieving consent made them legitimate. They were agreed upon and *pacta sunt servanda*.

1. **EVOLUTION OF THE PRINCIPLE OF NON-INTERVENTION & NON-USE OF FORCE-**

In international relations, the doctrine of non-intervention has been considered as the most significant means to cope with the "logic of anarchy" that lies at the heart of the international politics and thus becomes the main governing rule of state relations. While the concepts of sovereignty and sovereign equality came to be recognized as norms of traditional international law, the consensual recognition of the norms of the non-use of force and non-intervention has been a rather recent development. However, glimpse of such doctrine can be seen under the Positive school of international law.

The idea that states need not account for their actions is most forcefully expressed in ***Thomas Hobbes (1588-1679)*** who emphasized the immunity of the sovereign from temporal accountability in any legal sense.[11]

The first commentator to advocate an absolute proscription of intervention appears to have been the German philosopher ***Christian Wolff (1679-1754)[12]*** who argues that a punitive war is only legal if waged by a state that has itself received irreparable injury, and where satisfaction cannot otherwise be obtained, which means he also preached non-intervention, however allowed it in very limited cases.

Emmerich de Vattel (1714-1767)[13] also adopts the basic premise that the domestic jurisdiction is inviolable in the following words:

"*a duty of a nation towards itself are of purely national concern, and no foreign power has any right to interfere, to interfere in the domestic affairs of another Nation or to undertake to constrain its councils is to do it an injury."*

A similar principle is found in ***Kant's*** *Essay on Perpetual Peace*, in which the fifth of Kant's preliminary articles[14] states that *"no state shall forcibly interfere in the constitution and government of another state".**[15]***

Perhaps the clearest political enunciation of the principle of non-intervention is to be found in the **Jacobin Constitution of 1793.[16]**

The ***Drago Doctrine,*** which was anoounced in 1902 by Argentina Minister of Foreign Affairs Luis Maria Drago, represented the first assertion of the principle of the non-use of force, even if it was confined to addressing the question of redemption of contractual debts.[17] Extending the Monroe Doctrine it set forth the policy that no foreign power including United States could use force against an American Nation to collect debt, it was supplanted in 1904 by Roosevelt Corollary. Side by side arouse the Principle of peaceful settlement of disputes and both found their way into the normative framework of the League of Nations, and despite its dubious political origins, the Pact of Paris of 1928 for the first time gave full expression to these cardinal principles of modern international law which finally came to be enshrined in Article 2(3) and (4) of the UN Charter, since Charter was conceived and evolved as an international community response to the Second World War experiences, most of which shocked the conscience of mankind, therefore, through Article 1 and 2 it proffer's a normative code of state conduct, whereas the rest of the Charter provides for the institutional mechanism through which to strive for the attainment of this normative mechanism, the normative order being, a civilized behavior is expected of states by abjuring threat or use of force.[18]

- **NON-INTERVENTION RULE OF TREATY LAW**

"WE THE PEOPLE OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war..to practice tolerance and live together in peace with one another as good neighbours."

-Preface to the UN Charter

This was a time in history when the World emerged from the scourge of two deadly World Wars and the primary concern of the Charter was to avoid the 'untold sorrow' endured by people affected by bloody conflicts between states, accordingly there is a strong focus in the Charter on the requirement for member states to pursue non-violent, co-operative means to maintain international peace and security and a prohibition of the use of force against the territorial integrity or political independence of any state.[19]

The doctrine of non-intervention in domestic affairs is the logical corollary of the sovereignty. Although the Charter framework is restrictive in the use of force and military intervention in state relations, however it leaves a great deal of discretion to the Organization for its actions of interference.

The UN Charter does not explicitly spell out the principle of non-intervention as a rule governing relations between member states; it is rather implied in the statement of Principles of the United Nations (Article 2). For example, Article 2(1) roots the Organisation on the "*principle of the sovereign equality of all its Members."* and Article 2(3) calls for the peaceful settlement of international disputes, however, the two most relevant provisions are Article 2(4) and Article 2(7). While the former lays down the general prohibition of the use of force and in this respect can be said to govern the proscription military intervention by states, the latter establishes the UN jurisdiction in relation to the area of the discretion of sovereign states, and thus draws the boundaries for UN intervention itself.

The 1945 San Francisco Conference on International Organization understood the principle of sovereign equality to contain the following elements[20]:

1. That states are juridically equal.
2. That each state enjoys the rights inherent in full sovereignty.
3. That the personality of the state is respected, as well as its territorial integrity and political independence; and
4. That the state should, under international order, comply faithfully with its international duties and obligations.
    - **RELEVANT PROVISIONS OF THE UN CHARTER**

ARTICLE 2(4)-

This Article requires that states refrain in their international relations, from the threat or use of force. It represents the most explicit Charter provision against intervention with the use of force which reads as follows:

"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."

As such, Article 2(4) stipulates a general prohibition of the use of force. More precisely, it extends the prohibition of force beyond war to include other types of unilateral use and threat of force. It therefore endows the prohibition of force as a general and authoritative principle.' The substantial majority of legal scholars[21] attribute the norm contained in Article 2(4) a *jus cogens* character for the following reasons-

1. By providing for a collective security system, the Charter limits the permissible basis for acts of self-help.
2. The Charter also stipulates in Article 2(6) that the Organisation will ensure the observation of its principles by non-Members *"so far as may be necessary for the maintenance of international peace and security,"* implying that the UN may take measures against non-Members as well in response to their threat or use of force. Thus, the prohibition of the threat or use of force binds all states, members and non-members alike.
3. In Article 35(2), non-Members are allowed to *"bring to the attention of the Security Council or of the General Assembly any dispute"* to which they are parties.

Hence, the Charter is instrumental in providing a framework for prohibiting force and elevating it to a ***jus cogens*** status.[22] Notwithstanding the consensus on the prominence of the norm of the prohibition of the use of force and its customary International law status, Article 2(4) raises questions of interpretation due to an absence of definition for the various notions stipulated in the article.

4.1.1 THE NOTION OF 'FORCE'

The language of Article 2(4) neither defines nor qualifies the term force. The prevailing misconception is that the notion of 'force' in Article 2(4) does not extend to all kind of force, such as political and economic coercion, but signifies solely armed force, however on reading ***the Declaration on the Principles of International Law*** the prohibition of the use of indirect force[23] can also be included under the article which states, "Every state has the duty to refrain from-

1. organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state.
2. organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when these ***acts involve a threat or use of force."[24]***

Similarly the ICJ[25] in its Nicaragua judgment of 1986 reiterates the Declaration reaffirming that the above formulation of indirect force is within the scope of Article 2(4). As a result, the notion of "indirect force" is also included in the prohibition of the use or threat of force.

4.1.2 THE FRAME OF "INTERNATIONAL RELATIONS"

Article 2(4) prohibits the threat or use of force in international relations between states and hence does not include the domestic use of force however the question what arises here is whether a state's use of force and its intervention in a civil conflict in another state violates the general prohibition on the use of force or not.

The traditional legal doctrine permits third party interventions in a civil war only to assist the legitimate government, but prohibits giving support to the rebels, however since it lacks objective criteria regarding how outside governments recognize internal disturbances thus international law proves to be limited in determining the status of an internal strife.[26] Consequently, the fact that external states have a considerable amount of discretion has resulted in the portrayal of civil conflicts largely according to political convenience.

4.1.3. TERRITORIAL INTEGRITY AND POLITICAL INDEPENDENCE

On a combine reading of the GA Resolution no. 3314 of 1974[27], which puts forward a broad conception of prohibition of armed intervention and aggression, which includes not only invasions, but also attacks or military occupations; sending armed bands or mercenaries to carry out violent acts; shelling another state's territory; blocking its ports: and attacking the forces of another state, together with the Article 2(4), it can be inferred that the prohibition of force in Article 2(4) does not only refer to the use of force aimed at termination of a state's territorial existence or the status of its political independence, rather, it extends protection to the fundamental rights of states, which implies that the prohibited force in Article 2(4) includes any kind of trans-border use of armed force, regardless of the intention of depriving that state of part of its territory.

Similarly ***Paragraph 7 of the Charter's preamble*** further reinforces this conclusion, which states that *"armed force shall not be used, save in the common interest."*

Moreover, the judgment of the ICJ in the ***Corfu Channel case[28]***, which denied the British line of reasoning according to which British minesweeping operation in Albanian territorial waters did not violate Albanian sovereignty as it neither threatened its territorial integrity nor its political independence suggest that the prohibition of force laid down in Article 2(4) is all-embracing. It is therefore not restricted to the protection of territorial integrity or political independence in its strictest sense.

ARTICLE 2(7)

Article 2(7) directs the organs of the UN to respect domestic affairs of states and lays down a principle of non-intervention in the following words-

"Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter but this principle shall not prejudice the application of enforcement measures under Chapter VII."

Article 2(7) refers specifically to the Organization's intervention, rather than the intervention of one state in another's affairs, it represents ***"an interpretative guideline"*** for UN organs in *"dealing with matters that are essentially within the domestic jurisdiction of a state",* since no specific criteria for determining what is to be regarded as essentially domestic or what amounts to intervention, it has provided UN organs with a good deal of leeway in applying these terms to particular cases.

4.1.4. INTERVENTION ONLY IN MATTERS OF "INTERNATIONAL CONCERN"

Any matter that is regarded as a potential threat to the peace can be proclaimed to be of "international concern". It was in relation to the Spanish question[29] that, in 1946, the concept of "international concern" was first elaborated, which initiated the idea that *"matters prima facie of domestic jurisdiction"* may be of international concern in certain circumstances. The criterion of "international concern" remains highly vague due to the political nature of such a claim. The decisions of UN organs are political, in the conventional meaning of the term, simply by virtue of the composition of its members, which are governments.[30] Such decisions are most often the outcome of a coalition of national interests, mirroring considerations of benefits and costs of the proposed measures. Another problem in the interpretation of this Article is the meaning of "matters essentially within the domestic jurisdiction" and who has the competence to decide such questions.

4.2 PRESENT POSITION

Although the UN Charter does not explicitly lay down a principle of non-intervention applying to the relations between states, the principle is implicit in the general prohibition of the use of force in international relations and observable in the leading General Assembly declarations. Article 2(4) sets the illegality of any unilateral use of force not authorized by the UN. In this sense, it is the corner-stone of the rule of non-intervention between states. The norm it establishes has universal and imperative applicability in that it is consistently reaffirmed in a number of international documents as well as in the General Assembly declarations. While the UN Charter is restrictive with respect to the use of force by states, it is fairly open-ended with regards to the use of force and intervention by the Organization itself. By assigning broad powers, particularly to the Security Council, in matters of international peace and security, it leaves a great deal of room for political considerations and deliberations.

In sum, the UN Charter strongly affirms that the norm of non-intervention as the main governing rule of state relations, and thus demonstrates the international society's persisting conviction that the norm is the primary safeguard for the preservation of order and the peaceful coexistence among states.

1. **NON-INTERVENTION RULE OF CUSTOMARY LAW**

The jurisprudence of the non-intervention principle under customary international law is derived from the rule of *pacta sunt servanda*. This rule has been endorsed by the Vienna Convention under ***Article 26*** which states that '*every treaty in force is binding upon the parties to it and must be performed by them good faith',* which means that the state parties to a particular treaty are duty bound to fulfill their obligations as well as to respect other state parties of a similar treaty and therefore it places a limitation on one state to interfere with the internal affairs of another state.[31]

The binding force of customary rules can be established by reference to *State practice* and *opinio iuris,* which can be discussed as under:

- **PRACTICE OF STATES**

The ban on the use of force was binding as customary law before the entry into force of the Charter, the Charter

provisions therefore constitutes its codification. Such a view prevails also among writers, although they are not unanimous.

The principle of the non-use of force derives from the following instruments which reflect state practices are ***Briand-Kellogg Pact*, in *1928*** the U.S., Germany, and France signed the Kellogg-Briand Pact, a war-prevention effort that attempted to declare war illegal.[32] Sponsored by France and the United States, the Pact renounced the use of war, promoted peaceful settlement of disputes, and called for collective force to prevent aggression. The Pact was initially signed by fifteen nations that included France, the United States, and Germany. It was eventually signed by 62 nations and came into effect in July 1929.

The customary nature can be construed also from numerous un-ratified treaties and resolutions of different international organizations and groups of States, e.g. from the resolutions of the Council of the League of Nations of 1925 and 1927, and those of the Pan-American Conferences of 1928, 1933 and 1938.[33] The binding force of the customary principle of the renunciation of force was confirmed by the Military Tribunals of Nuremberg (1946) and Tokyo (1948).[34]

One contrary view with regard to state practice can be that there have been situations when force should not be used but is used in the past so here it can be stated expressly that practice as a constitutive element of the creation and validity of customary law does not need to be one of "rigorous conformity", in the view of Higgins[35], *"deviations from the principle can be regarded either as evidence of the lack of unanimous practice or as "repeated breaches of international law, symptomatic of the crisis in which international law finds itself today."* Similar is the case of inconsistent state practice in regard to non-intervention, it is more of a breach of international law than showing inconsistent state practice.

Moreover the principles contained in the Charter can also bind as customary rules, either as existing before the entry of the Charter into force or established during the period of the validity of the Charter. One can judge this phenomenon by considering the practice of third-i.e. nonmember- States, and in certain measure also the practice of UN organs, as to the former, it can be shown, for example, that both German States accepted the principles of the Charter before becoming members of the UN.[36]

- **OPINIO JURIS IN RELATION TO NON-USE OF FORCE AND NON-INTERVENTION**

Brose*[37]** states that an act of ratification of Treaty only constitutes evidence of a will to be bound by a treaty; on the other hand, lack of ratification does not mean that a State rejects customary rules corresponding with the respective treaty provisions; Resolutions can therefore confirm existing customary law or proclaim new rules *(de lege ferenda).* The principles adopted in 1945 by San Francisco Conference was further expanded by 1970 Friendly Relations Declaration whereby the assembly proclaimed sovereign equality, non-use of force and non-intervention along with four other principles of Charter to *"constitute basic principles of the international Law".* ***[38]

The Friendly Relations Declaration not only confirms the provisions of the Charter, but also constitutes evidence of acceptance of the existence of the rule or the set of rules declared by the resolution itself and codifies customary rules. Such an interpretation may be proved based on the attitudes of non-member States; ***Lee*[39]** has emphasized that the Declaration frequently uses expressions such as "all States", "every State", which suggest the intention of the General Assembly to enlarge the circle of addressees of the Declaration

The same view has been expressed by the ICJ in the ***Nicaragua case*[40]** in the following words-

*"this **opinion juris** may, though with all due caution, be deduced from, inter alia, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625…the effect of consent to the text of such resolution cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves."*

- **JUDICIAL RECOGNITION OF PROHIBITION OF USE OF FORCE AND NON-INTERVENTION UNDER INTERNATIONAL LAW**

The importance of the Principle of non-intervention and close linkages between the principle of sovereign equality, non-use of force and non-intervention have received international judicial recognition in the following landmark cases.

CORFU CHANNEL CASE, 1949

This case arose against the backdrop of rumblings of the Cold War, the ICJ, while indicting Great Britain for forcible use of minesweepers to clean up the Corfu channel, remarked rather significantly[41]-

"the court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in the International organization, find a place in the international Law. Intervention is perhaps less admissible in the particular form it would take here; for from the nature of things, it would be reserved for the most powerful States and might easily lead to preventing the administration of international justice."

CASE CONCERNING MILITARY AND PARA MILITARY ACTIVITIES IN AND AGAINST NICARAGUA, 1986

In Nicaragua case the ICJ confirmed the status of the prohibition of the use of force in Article 2(4) of the Charter, as a principle of customary international as evidenced by both state practice an *opinion juris* law and cited the view of the ILC that "*the law of the charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule of international law having the character of jus cogens'.* ***[42]***"

The court relied on the Friendly Relations Declaration as a proof of acceptance by states of the Principle of non-use of force and non-intervention and extended its application to the particular aspects of these principles. On ***non-intervention,*** the Court said-

"the principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against these principles are not infrequent, the court considers that it is part and parcel of customary international law……between independent states, respect for territorial sovereignty is an essential foundation of international relations and international law requires political integrity also to be respected." ***[43]***

It also stated that an intervention is wrongful when it uses methods of coercion in regard to such choices which must remain free ones such as political, economic, social and cultural choices. While answering the question as to when an humanitarian aid becomes 'intervention' the court laid down a criterian in the following words-

"…..an essential feature of truly humanitarian aid is that it is given "without discrimination" of any kind, to all in need in the aid-receiving state, not merely to a certain faction or group"

ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO, 2005[44]

DEMOCRATIC REPUBLIC OF THE CONGO

Vs.

UGANDA

In this case ICJ finds establishing the responsibility of Uganda against Congo held that that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention. The Court concludes-

"Uganda has violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted interference in the internal affairs of the DRC and in the civil war raging there. The unlawful military intervention by Uganda was of such magnitude and duration that the Court considers it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter."

Further stated *prohibition against the use of force is a cornerstone of the UN charter.*

1. **CHAPTER CONCLUSION**

Although the UN Charter does not explicitly lay down a principle of non-intervention applying to the relations between states, the principle is implicit in the general prohibition of the use of force in international relations and observable in the leading General Assembly declarations. The norm it establishes has universal and imperative applicability in that it is consistently reaffirmed in a number of international documents as well as in the General Assembly declarations. Although the content of the article remains debated, it is generally interpreted as pertaining to the threat or use of armed force, employed directly or indirectly against another state. By allowing for only one condition as an exception to the prohibition of the use of force, the Charter has considerably limited the scope of legitimate self-help measures. While the UN Charter is restrictive with respect to the use of force by states, it is fairly open-ended with regards to the use of force and intervention by the Organisation itself. By assigning broad powers, particularly to the Security Council, in matters of international peace and security, it leaves a great deal of room for political considerations and deliberations. Although the enforcement measures under Chapter VII are the only exception to the rule of Organisation's non-intervention in domestic affairs, the UN has developed

certain mechanisms for its interventions short of enforcement measures. In this regard, the essential steps the UN has assumed are a declaration of "international concern" on a given matter and 'consent' of the state at issue. It is firmly established in the chapter that the principle of non-use of force and non-intervention is both treaty law as well as Customary International law and is established so by various judicial pronouncements by the International Court of Justice, however, it may be concluded , though the UN Charter strongly affirms that the norm of non-intervention as the main governing rule of state relations, and demonstrates the international society's persisting conviction that the norm is the primary safeguard for the preservation of order and the peaceful coexistence among states, but by assigning huge power to the organization itself dilutes theses provisions and increases the scope of abuse and misuse.

As rightly pointed out by **Byers** [45] in the following words-

"The future shape of the international legal system will depend, above all, on how we interpret Security Council resolutions and treaties, on how we create and change rules of customary international law, and on how we understand the relationship between customary international law and treaties."

REFERENCES

Primary sources

- Draft Articles on the Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, Vol.II, Part 2.
- GA Resolutions
- IV Geneva Convention of 1949
- Rome Statute of the International Criminal Court
- Statute of the International Criminal Tribunal for former Yugoslavia
- Statute of the International Criminal Tribunal for Rwanda
- United Nations Charter, 1945
- Vienna convention on the Law of Treaties

Secondary Sources

Articles

- Byers, *"The Shifting Foundations of International Law: A Decade of Forceful Measures against Iraq"*,13, EJIL,(2002).
- Kathleen Hardie, "*Humanitarian Intervention, Human Rights and the Use of Force in International Law",* 2009, Available at http://researchrepository.murdoch.edu.au/2446/2/02Whole.pdf, Last visited on 10th April, 2017.
- T. Lee, *"The Law of the Sea Convention and Third States"*, V.77, A.J.I.L, (1983).
- Michael W. Doyle, "*Sovereignty and Humanitarian Military Intervention",* Available at http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session5_Doyle.pdf, Last visited on 10th April, 2017
- Muge Kinacioglu, "*The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate",* Perceptions, (2005).
- Sharizal Mohd Zin & Ashraf U. Sarah Kazi, *"An Analysis Of Customary International Law And The Importance Of Dispute Settlement: A Study Of Environmental Law Exceptions Under Article XX",*7(1), MqJICEL (2011).
- S. Mani, "*Humanitarian Intervention and International Law",* V.33(1-4), Indian Journal of International Law, 1-26, (1993).
- Wladyslaw Czapliński, "*Sources Of International Law In The Nicaragua Case"*, V.38(1), The International and Comparative Law Quarterly, (1989).

Books

- John Mill, *A Few Words on Nonintervention,* Essays on Politics and Culture, Gertrude Himmelfarb(ed.), (1973)
- Malcolm N. Shaw, *International Law*, Grotius Publications Limited, Cambridge, (1991)
- Higgins, *The Identity of International Law*, in International Law, Teaching and Practice (1982)
- Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law*, Oxford University Press, (2002)
- S. Mani, *Humanitarian Intervention Today*, V.313, Hague Academy of International Law, Martinus Nijhoff Publishers, Boston, (2005)

Legal Libraries

- westlaw.com
- jstor.org
- heinonline.org

Reports and Media

- ICJ Report 1949.
- ICJ Report 1986
- The Commentary of the Commission to Article 50 of its draft Article on the Law of Treaties, *ILC Yearbook*, 1966-II.
- UNCIO, Documents, Vol. VI

[1] Michael W. Doyle, "*Sovereignty and Humanitarian Military Intervention",* Available at http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session5_Doyle.pdf, Last visited on 8th April, 2017
[2] *Id.*
[3]John Mill, *"A Few Words on Nonintervention",* Essays on Politics and Culture, Gertrude Himmelfarb (ed.), 1973, pp.368-84
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Supra* n.1 at p.4 Michael W. Doyle, "*Sovereignty and Humanitarian Military Intervention",* Available at http://www.princeton.edu/~pcglobal/conferences/normative/papers/Session5_Doyle.pdf, Last visited on 8th April, 2017
[8] *Id.*

[9] *Id.* at p.5
[10] *Id.* at pp.5-6
[11] Simon Chesterman, *"Just War or Just Peace? Humanitarian Intervention and International Law",* 16, (2001)
[12] *Id.* at p.17
[13] *Id.*
[14] "*As long as this internal conflict is not critical, such interference of foreign powers would be a violation of the right of people dependent upon no other and only struggling with its internal illness, thus it would itself be a scandal given and would make the autonomy of all states insecure."*
[15] Richard B. Lillich, "*Kant and the Current Debate over Humanitarian Intervention",* V.6, Journal of Transnational Law and Policy, 397, (1997)
[16]*Supra* n.11 Simon Chesterman, *"Just War or Just Peace? Humanitarian Intervention and International Law",* 16, (2001)
[17] V.S. Mani, "*Humanitarian Intervention and International Law",* V.33(1-4), Indian Journal of International Law, 1-26, (1993), at p.3
[18] *Id.*
[19] Kathleen Hardie, "*Humanitarian Intervention, Human Rights and the Use of Force in International Law",* 2009, Available at http://researchrepository.murdoch.edu.au/2446/2/02Whole.pdf, Last visited on 10th April, 2017.
[20] UNCIO, Documents, Vol. VI, p.457. also see *Supra* n.17 at p.4
[21] Malcolm N. Shaw, "*International Law*", Cambridge, Grotius Publications Limited, (1991), p. 686: Antonio Cassese, "*International Law in a Divided World*", New York, Oxford University Press, (1994), p.141
[22] Muge Kinacioglu, "*The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate",* Perceptions, (2005), p.17
[23] Force other than one used in armed conflict
[24]*Supra* n.22 at p.18 Muge Kinacioglu, "*The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate",* Perceptions, (2005), p.17
[25] ICJ Reports (1986), para. 191
[26]*Supra* n.22 at p.21 Muge Kinacioglu, "*The Principle of Non-intervention at the United Nations: The Charter Framework and the Legal Debate",* Perceptions, (2005), p.17
[27] GA Res. 3314 (XXIX), 14 December 1974.
[28] ICJ Reports (1949), Corfu Channel Case, (Merits). p. 35
[29] SC Res. 7, 29 April 1946
[30] Schachter. *"The United Nations and Internal Conflict"*, p. 402
[31] Sharizal Mohd Zin & Ashraf U. Sarah Kazi, *"An Analysis Of Customary International Law And The Importance Of Dispute Settlement: A Study Of Environmental Law Exceptions Under Article XX",* Vol 7(1), MqJICEL (2011) at p.48
[32] Wladyslaw Czapliński, "*Sources Of International Law In The Nicaragua Case"*, V.38(1), The International and Comparative Law Quarterly, (1989), p.158
[33] *Id.*
[34] *Id.*
[35] R. Higgins, *"The Identity of International Law"*, in International Law, Teaching and Practice (1982), p.35.
[36] *Supra* n.32 at p.157 Wladyslaw Czapliński, "*Sources Of International Law In The Nicaragua Case"*, V.38(1), The International and Comparative Law Quarterly, (1989), p.158
[37] *Id.*
[38] *Supra* n.17 at p.4 V.S. Mani, "*Humanitarian Intervention and International Law",* V.33(1-4), Indian Journal of International Law, 1-26, (1993), at p.3
[39] L. T. Lee, *"The Law of the Sea Convention and Third States"*, V.77, A.J.I.L, (1983), p.550.
[40] ICJ Report 1986, p.19.
[41] ICJ Report 1949, p.35
[42] Para 1 of the Commentary of the Commission to Article 50 of its draft Article on the Law of Treaties, *ILC Yearbook*, 1966-II, p.247
[43] ICJ Report 1949, p.35, 107
[44] Available at http://www.icj-cij.org/docket/files/116/10521.pdf
[45] Byers, *"The Shifting Foundations of International Law: A Decade of Forceful Measures against Iraq",* V.13, EJIL,(2002) at 22–23