

TENTH COMMISSION
Present Problems of the Use of Force in International Law

Sub-group D – Authorization of the Use of Force by the United Nations

Rapporteur : M. Raúl Emilio Vinuesa

RESOLUTION

The *Institute of International Law*,

Recalling its Resolutions on “The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States” (Santiago de Compostela, 1989), and on “Self-Defence” and “Humanitarian Action” (Santiago de Chile, 2007);

Whereas the main purpose of 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;

Whereas in pursuit of that purpose all Member States 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;

Mindful that the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State shall not prejudice the application of enforcement measures under Chapter VII of the Charter of the United Nations;

Further acknowledging that, in order to ensure prompt and effective action by the United Nations, its Members conferred on the Security Council primary responsibility for the maintenance of international peace and security, and that in discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations;

Adopts the following Resolution:

Article 1

Under Chapters VII and VIII of the Charter of the United Nations, the Security Council, without prejudice to its power to undertake peacekeeping and peace enforcement operations of its own, has the power to authorize Member States or regional arrangements or agencies to take all necessary measures, including the use of force, to maintain or restore international peace and security.

Article 2

In authorizing the use of force, the Security Council should specify the objectives, scope and modes of control of any measure taken pursuant to that authorization.

Article 3

When the Security Council authorizes a State or a regional arrangement or agency to take measures set out in Article 1, it may subsequently change or terminate that authorization.

Article 4

The Security Council may only authorize the use of force by Member States or regional arrangements or agencies upon a determination by it of a threat to the peace, breach of the peace or act of aggression.

Article 5

Security Council determinations of a threat to the peace, a breach of the peace or an act of aggression must be performed in accordance with the Purposes and Principles of the United Nations.

Article 6

Any situation amounting to massive and grave violations of human rights and/or grave breaches of international humanitarian law should be considered by the Security Council as a threat to the peace with respect of which it should immediately take such measures as it deems appropriate in the circumstances, including the use of force.

Article 7

In circumstances in which the Security Council is unable to act in the exercise of its primary responsibility to maintain international peace and security due to the lack of unanimity of the permanent members, the General Assembly should exercise its competence under the “Uniting for Peace” Resolution to recommend such measures as it deems appropriate.

Article 8

In all circumstances, the use of force should only be authorized as a last resort.

Article 9

The objectives, scope and modes of control of each authorization should be strictly interpreted and implemented. When the use of force is authorized, it shall be conducted proportionately to the gravity of the situation and in full compliance with international humanitarian law.

Article 10

In no case may a previous authorization be invoked for any purpose beyond its specific objectives, time and scope.

Article 11

When the Security Council authorizes Member States or regional arrangements or agencies to enforce its decisions, the means chosen for such enforcement shall remain within the scope of the mandate.

Article 12

States not taking part in military operations duly authorized by the Security Council and conducted accordingly shall not interfere with such operations.

Article 13

The lack of a Security Council reaction to or condemnation of the use of force not previously authorized may not be interpreted as an implicit or *ex post facto* authorization. This is without prejudice to the power of the Security Council to review the situation and to authorize ongoing military operations.

Declaration of Mr Roucouas, President of the Institute

Following the Institute’s Resolution on “Humanitarian Action” adopted during the Santiago session of 2007, and in accordance with the Declaration of the President included in that Resolution, Sub-Group D on “Authorization of the Use of Force by the United Nations” of the Tenth Commission has duly studied and discussed the controversial issue of military actions which have not been authorized by the United Nations but which purport to have been taken to end genocide, crimes against humanity or large-scale war crimes.

During the current Rhodes session, that issue has also been debated in the plenary sessions.

Having regard to the very difficult problems raised by that issue and the differences of views among its members, the Institute considers that the topic deserves more consideration and study.

Therefore, the present Resolution on “Authorization of the Use of Force by the United Nations” does not address that issue and is without prejudice to further work of the Institute in that regard.
