
Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States in 1965. Armed intervention in the internal or external affairs of other states and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are 'condemned'.

Under Article 2 of the Charter, the use or threat of 'force', which is forbidden, is to be interpreted as 'military force'. But under the 1965 Declaration, what is forbidden is much wider. *'No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.'* Non-interference encompasses forbidding any state from organising, assisting, financing, inviting or tolerating subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interference in civil strife in another state.

7.0 COLLECTIVE ARMED RESPONSE

For the first time in international relations, a body of limited composition is given the authority to take collective military action where there is a threat to the peace, breach of the peace or act of aggression. Under Chapter VII of the Charter, the Security Council can impose diplomatic, economic and other sanctions which bind all states when the trigger of Article 39 of Chapter VII has been pulled. The Charter anticipates that before the Council uses military force by land, sea or air, it must determine that the economic or other sanctions are inadequate or have proved to be inadequate.

The original idea was that the Security Council would organise, through the Military Committee, responsive action under its own control. but the outset of the cold war put an end to this collective approach. Instead, a particular member of the United Nations may be asked to act in pursuit of such a decision, as with the British Navy interdicting ships on the high seas illegally supplying oil to the Smith regime in 1966 or the joint coalition self-defence measures taken in January 1991 on behalf of Kuwait under the alleged authority of Security Council Resolution 678. But such collective action under the control of the Security Council may be more beneficial than 'licensing' individual big powers to act on behalf of the international community.

Peace-keeping operations, such as those in Cyprus, Lebanon and, this year, in Yugoslavia are of a different nature. Unlike Chapter VII action which takes place under mandatory provisions, peace-keeping or interdiction forces are placed with the consent of the local sovereign and have to be withdrawn when such consent is withdrawn, as occurred in the Suez Canal area in 1956 when Egypt ordered the United Nations to withdraw the peace-keeping force. These forces can act only in self-defence and their lack of offensive power is reflected in their very light armaments. Participation in such forces is voluntary on the part of states and all the expenses incurred by states are recouped from United Nations sources where the major powers make voluntary contributions.

Some states provides special training for their permanent force for such peace-keeping operations. Such 'Blue Beret' service is highly prized and consideration should be given for at least a brigade-size force to be trained for such service for deployment in similar situations as described above. However, there must be careful assessment as to the role of such a force in the specific situation from which a request to the Security Council emerges.

8.0 AGGRESSION AND INDIVIDUAL LIABILITY

The Nuremberg Tribunal of 1946 was the first modern example of leaders, entities and individuals being charged for war crimes, crimes against the peace and crimes against humanity. The judgment of the Tribunal, which assigned individual responsibility for heinous crimes and which, among other

findings, rejected the defence of superior orders, was adopted by the General Assembly and now forms part of customary international law.

It is important to emphasise that individual responsibility for these crimes attached to those who inspire, incite, organise or carry out acts which give rise to such offences. One important component is crimes against humanity which is constituted by the pursuit of policies of ill-treatment, persecution and killings of civilians. A number of countries have made this crime part of their domestic criminal code and it is proposed that such a course should be followed in South Africa also.

War crimes arise from serious breaches of what are today called the Geneva Principles, rules arising out of the four Geneva Conventions, together with the Hague Rules of 1899 and 1907. The principles of proportionality in the conduct of war, the separation of civilians from combatants, the principle of discrimination, respect for occupied territory, the recognition that certain methods of warfare are forbidden and the proper treatment of prisoners of war are part of this code. There is an obligation on all state parties to these conventions to provide satisfactory training and education to their armed forces about these rules and to sensitise combatants as to their application. South Africa has ratified the four Geneva Conventions

South Africa has not yet acceded to Protocols I and II of 1977 which supplement the Geneva Conventions. Protocol I concerns international conflicts and brings the law up to date because the vast developments concerning the technology of warfare. It forbids certain indiscriminate methods of warfare and the use of food as a weapon of war. It also expands the definition of prisoners of war by including combatants of movements combating colonialism, alien occupation and racist regimes. Protocol II is concerned with internal conflicts which reach a certain level of application and duration. It is very restrictive in its terms and application. However, if a liberal approach is taken by the government concerned, the provisions of Protocol I will do a great deal to humanise the most bitter of all conflicts, civil wars.

The accession to Protocols I and II by a post-settlement South Africa is a major priority.

There are international treaties which resolute if not forbid the use of biological and chemical weapons. There are no treaties concerning the use of nuclear weapons. But it is arguable - persuasively - that the use of biological, chemical and nuclear weapons will be in breach of certain basic rules of international law, particularly the rules of humanitarian international law as these weapons do not discriminate between civilians and combatants. They are indiscriminate and their use lacks proportionality. It is arguable, also, that their very possession is an act preparatory to the commission of an offence, which was a successful charge at Nuremberg.

The use of these weapons could also constitute the crime of genocide, proscribed under the Convention for the Suppression and Punishment of the Crime of Genocide. Although customary international law also forbids genocide and like the Convention imposes individual responsibility, South Africa must accede to the Convention as a declaration of our new intent.

South Africa must provide the proper leadership by denying the ownership of these weapons, by denying itself a capability for the use of such weapons and by taking the initiative to ensure that the continent of Africa is declared a nuclear-free zone.

The Military Disciplinary Code, adopted under the Defence Act of 1957 will need to be revised to take into account our international human rights obligations and must provide a clear statement about the responsibilities of an ordinary combatant faced by orders which are manifestly illegal.

9.0 PEACEFUL SETTLEMENT OF DISPUTES

The Charter of the United Nations imposes a basic obligation on states to settle all their disputes peacefully. Chapter VI of the Charter provides for the procedures which may be followed by a state. The Security Council has important powers of recommendation for the settlement of a dispute. In addition, conciliation, arbitration, investigation, good offices and regional arrangements may be used.

Of immediate importance to us is the utilisation of the International Court of Justice. This highest court of law in the world has no compulsory or automatic jurisdiction in inter-state disputes. States may have recourse to the Court in a number of ways. But the most important method is by making a declaration under Article 36 (6) of the Statute of the International Court of Justice. Such a declaration confers jurisdiction on the Court in relation to a state which has also made a declaration conferring compulsory jurisdiction on the Court.

Most international disputes are not settled by the Court, but by the parties themselves. However, there is an increasing tendency, especially in Africa, to have recourse to the Court because of its pre-eminent position as a permanent international tribunal and the wide impact of its decisions on clarifying and developing international law.

The early making of such a declaration by South Africa would signify our firm rejection of power politics and an even stronger commitment to the peaceful and judicial settlement of disputes.

10.0 CITIZENS AND HUMAN RIGHTS

South Africa will soon ratify over forty major human rights conventions and will become a party to the African Charter on Human and People's Rights. An affiliation to these important codes, especially to the International Bill of Rights reflected in the two Covenants in 1966, will have a serious impact on our domestic law and the rights and responsibilities of citizens. This benign and acceptable form of external intervention will ensure a self-induced supervision of our rights, enriching our patrimony and in sensitising the post-settlement government to new minimum standards of behaviour.

This is not a New World Order where language obscures the play of power and which codifies new forms of imperial might. It is the order of rights based on law which will allow us to play an open, creative and progressive role in diplomacy, politics and trade in Africa and in the world.

We must eschew a regional and continental role based on hegemony and control. Instead, based on the assumptions discussed here, we can forge a co-operative relationship with other states where legitimate self-interest and altruism, non-discrimination and equality, are the guiding factors providing the impetus for a non-racial and democratic South Africa as it emerges into its rightful place in the international community.

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Asmal - Role of armed forces in a new South Africa in the context of international law.

* Legal issues vs. policy considerations.

Constitution - backdrop for regulation of power relations.

→ Proposed adoption of universal declaration of human rights

Result of world wide struggle against apartheid

Concept of equality - underpins ~~the~~ understanding of UDHR.

II

Rule of law vs. rule by law.

Report of ~~international~~

Need for "int. law friendly" character of new constitution

Suggestion: except in the case of self-defence
no deployment of local forces outside national territory
— except with permission of national assembly

Distinction: customary international law (uniform, consistent & general) vs. rules arising from treaties

Constitution should provide that rules of customary international law should be binding & take precedence over existing ordinary rules.

⇒ implies that National Assembly should ratify those treaties.

International law:

- did not limit discretion of states to have recourse to war until the present century
- ~~resort to war - except in self defence - 1928.~~

Questions:

Instead states resorted "to force falling short of war"
1945 - regulation of use of force

① Prevented use of force - Article 2 of Charter

UN members obliged to resolve differences by peaceful means

② States prohibited from resorting to

Crime of aggression is most serious crime that can be committed in

~~the~~ international legal order.

- * Existing frontiers must be respected.
- * Forbids use of reprisals involving use of force
- * Prohibition of organising irregular forces for purposes of intervention in foreign countries
- *

Charter provides for a right of self-defence

- * if an armed attack occurs
 - object of self-defence is to put an end to armed attack.
- (no right to have recourse to self-defence to protect nationals abroad)

Intervention - often based on spurious invitations in practice.

- Where there is ~~intervention~~ invitation it is permitted on certain conditions.

Q1. Problem of enforcement of international law.

- does it reflect international hierarchy of power rather than vice versa.

Fouvie: Constitutional formulae: control of armed forces in SA.

Ambiguous concept - control of armed forces often refers to desire to control armed forces against another political group

Samuel Huntington:

* control of military necessarily implies civilian control

* There are still politicians unwilling to accept politically neutral officers corps - who wish to subordinate the military.

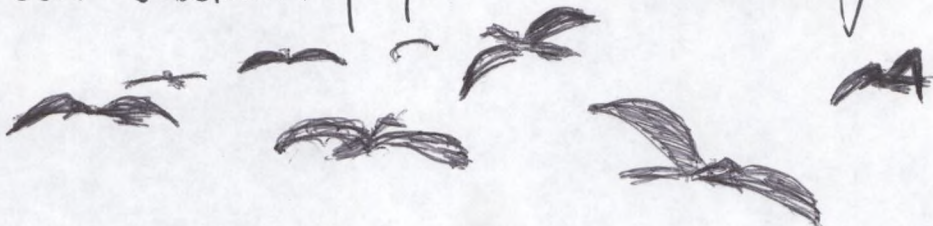
* Striking example of professionalisation - Switzerland.

Some forms of control of armed forces:

- direct parliamentary control - eg. UK, US
- select committees way
- = = =

* Standing army always represents a danger to the liberty of the people.

* Measures for control of the armed forces in SA - takes over substantial proportion of British Army Act



Bolton-Mertz: Moral & Legal Limitations on Military Obedience vs the demands of combat.

Perspective of officers:

- * Most prominent duty of soldiers
- * to protect the state & defend the constitution

Loyalty

— Oaths of obedience have never called for blind obedience.

H.M. the King has not appointed you, Sir, as a staff officer to merely execute orders, but to know when not to carry them out.

Field Marshall Prince Friedrich Karl (1864)

Concerned not just with the right of soldiers to disobey orders but with ~~how~~ how soldiers conduct themselves

- * In the field
- often have a shared interest in ~~overstepping~~ stepping the bounds of law

*

When is disobedience permissible

& orders not in line with service duties

Questions:

* orders which violate human dignity.

When is disobedience obligatory?

* when an order demands that a soldier commits a crime.

* national and international law.

Q: re: contradiction between values of existing army & those of a democratic order.

Bayart: Civil-military relations in post-independent Africa.

Q: Need for maintenance of "homogeneity & unity" between civil & military structures.
Breakdown of this heightens possibility of military intervention.



Notes:

Colo Abel: Armed forces in a democratic society
- Foundations and conditions for Training and Education of the ~~S~~ Citizen in Uniform.

* Legal framework:

No special system of military justice in peacetime

Mission:

- to protect German territory & citizens
- to perform sov.
- alliance commitments

* Integration of bundeswehr in society

NB: Credibility & trust of/in officers + civilian leaders.

Questions:

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