MUNQSMUN '17

*"**Rise** above the **Rest**"*

United Nations Security Council
Background Guide

Letter from the Executive Board:

Greetings Delegates!

First of all, Congratulations for being selected to be a part of the Security Council at MUNQSMUN'17. Security Council in itself is renowned to be one of the most competitive committees for the simple reason that it encompasses intense discussions in small groups, from all arenas like (but not limited to) military, security, humanitarian, legal, ethical, economic, financial, political, social and all sorts of concerns that typically relate no matter what the agenda is; each statement made shapes the future of the council.

Participation in such a committee, needless to say, requires in-depth research and understanding of the technicalities of how international as well as domestic mechanisms function, and also relate to each other. You shall be expected to speak more often than you must have been in any other committees before, and are advised to research extensively in order to not lag behind or exhaust in any aspect of the agenda.

To provide a brief idea of what the agenda is all about, we've prepared this background guide, which by no means shall limit your research, but rather only serve you as an introductory document. Also, the topics covered in this document are purely from a neutral and general perspective; at all points new ideas, arguments, facts, incidences and other content can be introduced if at all the delegation relates it to our agenda in any manner possible. Do note that such an approach will be highly appreciated always, as long as it becomes too divergent.

While we would expect proper adherence to the rules of procedure at all times, we want to make this experience for every delegate a memorable one. With that being said, we will definitely have fun moments throughout, once we're sure the committee is going in the right direction. We're really excited about the agenda this year because of the wide scope of debate and arguments it has, and await to see you all this August to take the discussions to the next level!

Best Wishes,

Harshit Yadav
(President)

Aryaman Kashyap
(Vice President)

Pradyuman Singh
(Lobby Director)

Gaurav
(Rapporteur)

Special Rules of Procedure- Backroom Negotiations

The standard UNAUSA rules of procedures shall be followed at the Security Council, along with a procedure for backroom negotiations. This essentially allows a set of delegations to set aside from the open discussion infront of all members to a group of selected few, in order to discuss any issue they deem necessary.

To initiate a backroom negotiation, a request via a chit shall be made by the delegation willing to introduce the negotiation. The request shall include names of all countries (maximum 7, including host delegation), which shall accept the request or deny it. The request must also specify the time limit (no more than 10 minutes), and the reason/topic for the same. In case a simple majority succeeds through the request (three delegations other than the host, the lobby director shall then ask one delegate from all agreeing parties to step out to the backroom for an un-moderated discussion (observed by the lobby director himself); the other delegate shall continue with the committee proceedings.

This special procedure however shall foresee amendments (including a permanent ban if required) any time by the discretion of the executive board.

The procedure is intended to build substantial policy stances, and to let delegations collectively decide the course of actions while simultaneously negotiating in the council.

The extent and viability of the policy of non-interference in domestic jurisdiction with special emphasis on the UN Charter

OVERVIEW OF AGENDA

Our discussion lies in the legal and practical realms of determining the applicability of international law over domestic law, or vice-versa in a variety of situations. There are tons of questions and analysis to consider while defining what takes precedence, and if so what are the conditions and limitations.

What all has been leading to the conclusion a delegations wishes to draw, or what tangents define precedent jurisdictions; what is the extent beyond which domestic affairs go out of control/completely unrelated to international affairs, and perhaps what sparks the inherent right of a state to violate international agreements and obligatory norm; or what permits the international community to enforce principles and actions upon a state or a group of entities, titled or untitled to the former, are some of primary questions to even detailed notions and thoughts that are highly related to our agenda.

We hope the document below is able to present a brief idea about some of the above mentioned ideologies so that you're able to draw parallels and take forward the issues.

INTRODUCTION TO GUIDE

Today, states rarely think that domestic jurisdiction can provide a shield against UN jurisdiction in relation to any matter falling within its so-called reserve domain. Most of the views departing from the legal notion of domestic jurisdiction tend to move in a direction that is exactly the opposite of what the framers of the Charter wished while drafting Article 2(7).

These views seem to posit an objective interpretation of Article 2(7) to justify UN practice which has developed gradually since the early years of the organisation's existence. As often as not, in the early years of the UN there were manifold debates and discussion among diplomats, statesmen and scholars about the principle of domestic jurisdiction stated in the Article 2(7).

At times, states have resorted to the plea of domestic jurisdiction before the political organs of the United Nations quite frequently. But it has not proved to be an effective tool which can dissuade the UN from taking steps against offending states. In our opinion, the rapid development of the international legal regime of human rights and a significant change as to the way "threat to peace" is being defined by the Security Council have engendered new approaches about the role of the UN–which has not left untouched the meaning and application of the concept of domestic jurisdiction in the context of UN practices. About human rights it can be said that the increasing involvement of the UN in this area since the seventies shows an inclination of the UN to see that human rights are respected in every country.

Alongside human rights, the preconditions to constitute “threat to peace” have changed since the drafting ofthe UN Charter. It is evident that at the time of drafting of the UN Charter, what was considered to constitute threat to peace was military threat to international peace. But, throughout its practice, the Security Council has shown that it can define a situation emanating from within a country only as constituting a “threat to peace”. The practice of the Security Council seems to indicate that at present threat to peace is being defined in a much wider perspective, which was not presumably in the consideration of the drafters of the UN Charter. For instance, we will see that the Security Council has handled the issue of human rights violations both as a threat to peace and as grounds for enforcement action.

In this article, it will be shown that through the practices of the political organs of the UN that the combined effect of the gradual prioritisation of human rights in international law and the move away from the conventional way of defining threat to peace have culminated in the increase in the importance of the principle of domestic jurisdiction in the UN context.

In the first section, we discuss the historical background of domestic jurisdiction taken from state practice before the League of Nations, during the regime of the League of Nations and after the League of Nations.

The below mentioned facts and analysis will show that the concept of domestic jurisdiction did not grow overnight in international law, rather it was thought that the concept of domestic jurisdiction had greater utility in maintaining international peace and security. We then discuss the textual meaning and general applicability of the concept of domestic jurisdiction as enshrined in the Article 2(7) of the UN Charter. Finally, we try to sketch out how the concept has undergone changes and modification through the practices of the General Assembly, the Security Council and the Economic and Social Council in relation to human rights and the determination of “threat to peace”.

It will be interesting to note that the concept which was once thought to be important for maintaining international peace and stability has come to be regarded as a hindrance to maintaining international peace. This shows nothing but the ironical reality of how ever-shifting international relations among states are reflected in legal notions.

The Drafting History of Article 2(7)

The United Nations The provision of the Charter with respect to domestic jurisdiction differs in concept and expression from that contained in the League Covenant. The Dumbarton Oak’s Proposals offered the first official plan for a general post-war institution. Chapter VIII of the Proposal stipulated the procedure to

be followed by the Security Council and members of the organisation in resolving situations which might cause international friction. It was proposed that the Council be endowed with power to investigate a dispute causing or likely to cause international friction, and call upon parties to such dispute to settle by peaceful means.

But paragraph 7 stated that “the provisions of paragraphs 1 to 6 of Section A should not apply to situations or disputes arising out of matters which by international law are solely within the domestic jurisdiction of the state concerned”. Thus the domestic jurisdiction clause in Dumbarton Oaks Proposals was designed to limit the authority of the organisation in the pacific settlement of disputes.

At the San Francisco Conference of 1945, paragraph 7 of Section A encountered considerable censure. The delegations of Bolivia and Norway unsuccessfully proposed the deletion of paragraph 7. A series of proposals by the delegations of Brazil, Czechoslovakia, Ecuador, Greece, Mexico, Peru, Turkey and Venezuela unsuccessfully supported the view that controversies as to whether a matter fell within the domestic jurisdiction of a state should ultimately be decided by the International Court of Justice.

The United States also wanted changes to the text of the domestic jurisdiction reservation. After consultation, the Four Powers proposed the following draft: Nothing contained in this Charter shall authorize the Organization to interfere with matters which (by international law) are essentially within the domestic jurisdiction of the State or shall require the members to submit such matters to settlement under this Charter.

Should, however, a situation or dispute arising out of such a matter assume an international character and constitute threat to peace occur in consequence of such a situation or dispute, it shall be open to the Security Council, acting in accordance with Chapter VIII, Section B, to take such action as it may deem necessary.

ARTICLE 2(7) OF THE UN CHARTER

ATEXTUAL INTERPRETATION Article 2(7) embodies one of the basic principles of the UN and not a mere “technical and legalistic formula”. It applies to all organs of the United Nations in relation to their functions except the specialised agencies. In this part of the paper, we will discuss the textual meaning of Article 2(7) of the UN Charter in general. Article 2(7) of the UN Charter states: Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state 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.

The text of Article 2(7) as it appears above makes it clear that the task of interpreting Article 2(7) normally involves issues such as—What is meant by the

phrase “to intervene”? What is understood by a state’s “domestic affairs”? What is the scope of exception provision in the last sentence? Who decides whether objection to the competence of the organisation in a given case is valid or otherwise? A probe into these issues will help to shed light on the textual meaning of Article 2(7) of the UN Charter.

A. Nothing…Shall Authorise the United Nations to Intervene

In the context of the UN Charter, Article 2(7) has been regarded as embodying the principle of non-intervention. The relation between the concept of domestic jurisdiction and the non-intervention principle has been aptly described as: “Clearly, domestic jurisdiction refers to the right of each state to freely—independent of other states and international organisations—exercise its own legislative, executive and judicial jurisdiction. Its exercise is consequence of state sovereignty and the rights of the nations to self-determinations”.

It is believed that the principle of non-intervention had its beginnings as an abstract principle but with the advent of the League of Nations and the UN, the pressure for its precise articulation as a legal norm was felt. The practice of the League could bring one aspect of the principle into clear focus. That is, if States were obliged to refrain from non-intervention in the affairs of other states in the conduct of their foreign policies, it is equally sensible not to give international organisations the authority to intervene in the domestic affairs of member-states. The principle of non-intervention has subsequently, in the post-colonial era, become more dominant in the thinking of states. The controversy regarding the correct interpretation of the word “intervene” has existed since the beginning of the UN. The delegations at San Francisco indicated that they understood the term “intervene” to refer to any action by any organ of the United Nations concerning a matter which was within the domestic jurisdiction of particular states. This would mean that any discussion, recommendation, inquiry or study concerning the domestic affairs of a state would amount to intervention.

The intention of the drafters of the Charter was the formulation of a rule which would ensure that the organisation would not go beyond acceptable limits and enlarge its scope of function, especially in the economic, social and cultural fields. Over the years, the phrase “Nothing … shall authorize the United Nations to intervene” has been interpreted from various points of view. Yet throughout the history of the UN there has been controversy over the types of actions the UN has performed with reference to the domestic affairs of a state.

Some have argued that the term “intervention” has commonly been defined as “dictatorial interference” with imperative pressure as defined under classical international law. The followers of this view have heavily relied on the work of Sir Hersch Lauterpacht. Others have argued on the contrary that the meaning of “intervention” within Article 2(7) should be understood as “interference pure and simple”. But the early debate about intervention has lost much of its importance in the context of Article 2(7).

UN General Assembly Resolution 2131(XX) of December 21, 1965 contains the first detailed formulation of the principle of non-intervention. Both armed interference and interference by other means were declared illegal. One of the reasons is that the general concept of intervention has undergone change. The principle stated in UN General Assembly Resolution 2625 (XXV) of October 24, 1970 is as follows: No state or group of states has the right to intervene, intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of state or against its political, economic and cultural elements, are in violation of international law. The resolution goes on to encompass all state activities that may amount to coercion by economic, political and other means which may have the effect of subduing another state’s sovereignty within the meaning of intervention.The resolution does not confine intervention to military intervention.

A more detailed elaboration of the concept was adopted in 1981, as the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States. According to the Declaration, it is the duty of the state not to use its external economic assistance programme or to adopt any multilateral or unilateral economic reprisal or blockade, and to prevent the use of transnational and multinational corporations and control its political pressures as instruments of coercion against another state. The principle of non-intervention has also arisen in international litigation. The most notable contribution on this subject is the judgment in the Nicaragua Case. It is apparent from the text that Article 2(7) purports only to protect the member states against acts of the UN and not against the acts of a state against another state. During the discussion in the Security Council of the bombing in the Federal Republic of Yugoslavia by NATO, India argued that the bombing committed a violation of Article 2(7). Since the bombing was not authorised by the UN, it was not responsible for this. Nevertheless, Article 2(7) has been interpreted as an embodiment of the general principle of non-intervention

which can be inferred from Article 2(1) and 2(4) of the Charter as well as the principles of international law.

B. Matters Essentially Within the Domestic Jurisdiction

The organs of the UN have not been very consistent or clear as to what they regards as a matter essentially within the domestic jurisdiction of a state. However it appears that they have accepted in substance the opinion of the PCIJ in the Tunis-Morocco Nationality Case that whether a certain matter is characterised as domestic or otherwise is essentially relative and depends upon the development of international law.

This means that the concept of domestic jurisdiction does not denote specific areas which are clearly defined. The development of international law after the Second World War has led to the rules of international law governing or affecting many fields. It is the basis for the widespread assumption that the area of domestic jurisdiction is constantly being reduced. This observation is basically correct but does not solve the problem of how to ascertain when and how a matter is to be defined as falling within the domestic sphere of a state by the UN.

Some scholars, noting that the drafters of the Charter had deliberately refrained from giving a juridical meaning to the expression have pointed out that whether a matter falls within a state's domestic jurisdiction rests on moral and political judgment.

For example, the Spanish case showed that any domestic matter, once it becomes an international concern, no longer remains within the domestic jurisdiction of the state. the earlier traditional view has been that there is no restraint on a state with regard to its nature and form of government, treatment of citizens or use of its territory. But we will see in the following sections of this paper that the principle of domestic jurisdiction has constantly failed to provide shield to these reserve areas of state competence from intrusion of the UN on different occasions. Now let us turn to the word "essentially" of the Article 2(7).

It was proposed particularly against the word 'solely' which was used in the League Covenant. At San Francisco, John Foster Dulles of the United States defended the word "essentially" on the ground that if the term solely were retained, the whole effect on the limitation on the authority of the United Nations would be destroyed. His argument was that though in the modern world matters of domestic jurisdiction were always bound to have some international repercussion or international concern, this was no justification for saying that such matters should be regarded as outside domestic jurisdiction of states. Through the use of the term "essentially", the United States delegation hoped to make domestic jurisdiction clause apply to a much wider field of domestic matters.

C. But… Shall Not Prejudice the Application of Enforcement Measures

The second sentence of the Article 2(7) provides for an exception to the general rule of non-intervention by the organs of the UN into the domestic jurisdiction of the member states. Though it is the opinion of a distinguished scholar that Article 2(7) substantially limits the Council's power, the wording of the second sentence nevertheless ensures that the application of enforcement measures under chapter VII is not subject to the plea of domestic jurisdiction. Article 2(7) refers not only to the measures of military nature under Article 42, but also to the measures not involving the use of force contemplated by Article 41. At the San Francisco Conference, it was proposed that all chapter VII actions taken by the Security Council should be immune from the operation of the domestic jurisdiction clause.

However, after accepting an Australian amendment, the application of the exception clause of Article 2(7) was restricted to "enforcement measures". The main purpose of the Australian amendment was to avoid the possibility that the domestic jurisdiction clause could be dropped with regard to recommendations that the Security Council may issue under Article 39. These recommendations are not enforcement measures. Australia's concern was that if a stronger state threatened a weaker state with the aim of changing its domestic policies, the Security Council might issue recommendations to both the stronger and weaker states, instead of only acting against the peace-threatening stronger states.

This exception clause was to enable the Security Council to tackle the roots of a conflict before it reaches dimensions which are harder or impossible to manage. All enforcement decisions taken by the Security Council under Articles 41 and 42 are excluded from the ambit of the principle of non interference. It also follows logically that not only the enforcement measures but also those resolutions which are necessary or fundamental for an effective enforcement also falls outside Article 2(7).

But recommendations made with reference to Article 39 do not come within the exception contemplated in Article 2(7). Evidence of this can be given from the preparatory works since the reference in the last part of Article 2(7) to "enforcement measures" (rather than to the entire Chapter VII, as was first opposed) was wanted in order not to subject recommendations under Article 39 to the limit of domestic jurisdiction.

Further evidence can be adduced from a contextual approach that the recommendations under Article 39 are closely functional to those provided by chapter VI, particularly Articles 36 and 37—for which the domestic jurisdiction clause was especially conceived. Here it should be kept in mind that enforcement actions are not limited to military measures only. While the term

enforcement measures in Article 53 of the Charter is mostly understood to exclude non-military sanctions, it is agreed that the same term in Article 2(7) includes all binding decisions which the Security Council makes under chapter VII.

D. Who Decides the Competence of the Organisation

At San Francisco, the proposal made by a number of States that whether a matter fell within the domestic jurisdiction of a state should be decided by the ICJ did not succeed. However this does not mean that the state which raises the domestic jurisdiction plea is the judge of its own cause. Rather, it is assumed that the question of interpretation is not specific to the domestic jurisdiction clause only, but a general issue of the interpretation of the whole Charter.

It is by now accepted that the general rule of Charter interpretation applies to Article 2(7) too. The resultant effect is that each of the organs of the UN has the power to make a prima facie assessment of the applicability of a particular norm. The fact that political organs have taken responsibility for interpreting and applying the domestic jurisdiction principle in so far as their particular actions are concerned has had important consequences.

It is believed that it has resulted in a more liberal interpretation of power of United Nations. There is a tendency on the part of individual member states to play down the domestic jurisdiction principle in those instances where they wish for UN action and to stress its importance and inviolability where it is to their interest not to have the United Nations take any action. As a result, it is not unlikely that the tendency of UN organs on the application of the principle of domestic jurisdiction should be determined by block alignment and assessment of advantages. And whether this assessment is correct is to be seen in the following parts of this paper in the light of previous practice of the state parties and UN organs.

EXCEPTION TO ARTICLE 2(7): THREAT TO PEACE AND THE SECURITY COUNCIL (INCLUDING PROMINENT CASE STUDIES)

According to Article 2(7), the application of enforcement measures under Chapter VII was excepted from the prohibition of interference in domestic affairs. So is the determination of the existence of a “threat to peace” as such under Article 39, since it is by way of that article that enforcement measures are ultimately taken. The question then is whether a formal or a substitutive interpretation should apply to Article 2(7) and 39 respectively.

It follows that depending on how formal a view one adopts to the interpretation of "threat to peace" the issue of the relationship between Article 39 and Article 2(7) will either be one of strict law or one of legitimacy, to the extent that the two can be separated. If the formal view is applied, a determination of "threat to peace" and consequent enforcement will always be legal provided that certain fundamental rules of international law are observed.

On the other hand, if a less formal view of interpretation is applied to Article 39 in combination with Article 2(7), it can be argued that there must be some implicit substantive legal limitations to the freedom of judgment of the Security Council in determining a "threat to peace" and choosing enforcement measures. The point where the notion of threat to peace meets the prohibition of interference in the domestic jurisdiction of states is in the cases where the Security Council determines that what are arguably essentially domestic phenomena constitute a "threat to peace". Let us now take a look at the approach of the Security Council towards Article 2(7) and chapter VII of the UN Charter. Professor Thomas M. Franck has classified the Security Council's invocation of Chapter VII power into two categories, namely "the easy cases" and "the hard cases".

The easy cases are those which cannot be said to fall essentially within the domestic jurisdiction of a state—they are actually international military conflicts against which the Security Council has invoked Chapter VII power. The Arab-Israel conflict following the demise of Britain's mandate in Palestine and the attack on South Korea by North Korea are instances of "easy cases". As these incidents do not create any dispute as to the legitimacy of UN intervention, we will turn our attention to "hard cases" to ascertain the legality of UN intervention by the principle of the domestic jurisdiction. The earliest situation which we can cite as one of the "hard cases" is whether Franco's Fascist regime in Spain had led to international friction and endangered international peace and security. Poland brought the matter before the Security Council as a "situation of the nature referred to in Article 34" of the Charter. The case was included in the agenda of the Security Council and General Assembly.

In the Security Council, a debate took place among members as to the applicability of the principle of domestic jurisdiction to bar Security Council's action. During the course of the debate, several delegations expressed, for the first time, the opinion that a matter no longer falls within the domestic jurisdiction of a state if it has become an international concern. A sub-committee of five members was established by the Security Council to collect documents and testimonies about Franco's regime and report on it. In its report, the sub-committee reached the conclusion that while the Spanish regime did not constitute an existing threat to peace within the meaning of Article 39 of Chapter VII, it was a "potential menace to international peace" within the meaning of Article 34 of Chapter VI.

The sub-committee also asserted that the situation was of international concern and by no means a domestic concern of Spain. In the Spanish Case, Mr. Evatt's explained that whether a matter falls within the reserve domain of a state is a

question of fact and depends upon the circumstances of the particular state. We will next briefly discuss the South Africa Case. The case concerned the treatment of people of Indian origin in South Africa. The Indian statement was that these people had migrated to South Africa during 1860 to 1913 under an arrangement between two governments. The Indian government contended that as much as the Indians were then nationals of South Africa, the Union was under obligation to refrain from such treatment.

Though India first raised this issue before the General Assembly in 1946, it was brought before the Security Council in1960. In the course of dealing with the South African case, the General Assembly passed a resolution establishing a Special Committee to review the racial policies of the South African government and to report to the General Assembly and the Security Council.

The very same resolution also asked the member states to cut off diplomatic ties with South Africa and requested the Security Council to take appropriate measures. Before the Security Council, the South African Government raised the plea of domestic jurisdiction as it did before the General assembly. Notwithstanding the Security Council adopted a resolution which directed all states to stop selling equipment for the manufacture and maintenance of arms in South Africa. The Secretary General was assigned to establish a group of experts to keep the matter under review. When the group submitted its report, the South Africa contended that the report contained matters which are “essentially within the domestic jurisdiction of the Republic of South Africa”. But in Resolution 191 of 1964 the Security Council affirmed the conclusion of the Group of Experts.

The South African case has evidenced the change of demeanor of the UN organs in their task of interpreting Article 2(7). According to Trindade, “the position taken by the United Nations on the South African cases shows that Article 2(7) is seen as having no absolute meaning in itself. It should rather be interpreted in combination with other provisions of the UN Charter taken as a whole, including its purposes and principles”. It is also observed in the South African cases that the question of competence by the UN organs in the face of a plea of domestic jurisdiction is an unsolved issue wherein debates about competence always get mingled with substantive issues. More important is that a state’s treatment of its own nationals has lost its defense as an essentially domestic matter before international political organs. The peace-keeping operation of the UN in the Congo has from the beginning provoked a live controversy over the relevance of the principle of domestic jurisdiction in Article 2(7) of the UN Charter. The controversy began on 11 July 1960 when the province of Katanga proclaimed secession.

On 12 July, the President and the Prime Minister of the Congo asked the UN Secretary-General for military assistance to end a Belgian act of aggression. Consequently, the Security Council passed its first resolution authorising the Secretary General to take the necessary steps in consultation with the Government of the Republic of the Congo to provide such military assistance as may be necessary. On 9 August 1960, the Security Council authorised the entry of the UN

forces into Katanga with the condition that it will not be a party to or in any way intervene between the secessionists and the central authorities. Following the murder of the Prime Minister Patrice Lumumba, the Security Council acknowledged the situation as threat to international peace and security and authorised the deployment of 23, 000 UN soldiers with the mandate of “use of force, if necessary, in the last resort”. From 28 August, the UN troops started operation.

After the Secretary-General, Hammarskjold had died in a plane accident the Security Council passed a resolution stating the purpose of the Congo operation.In this resolution, the Security Council highlighted the reasons for rendering UN’s assistance to assist the central government to maintain national integrity. The secession of Katanga halted after extensive military campaign. In relation to the situation in the Congo, the question raised by the critics was whether the several Security Council resolutions conferred such authority on the peace-keeping mission to go beyond self-defence so as to “intervene” in domestic affairs. But it has been argued that the UN action in the Congo does not involve any discussion of Article 2(7) because, although the measure was taken under Article 39, it did not purport to be either enforcement action or intervention.It has been further argued that the military assistance was on behalf of and at the request of the government of a member state, not against it. Since the Congo incident, it has been confirmed that civil wars can make way for UN action under Chapter VII.

Another significant case in point to highlight the practice of the Security Council regarding domestic jurisdiction is the situation of Iraq after the Gulf war.The Security Council prescribed a cease-fire agreement with measures to the effect of limiting the domestic sovereignty of its government which would invite an Article 2(7) argument if not within the sphere of Chapter VII. The conditions of the cease-fire entailed destruction of Iraq’s chemical and biological weapons, renouncing its nuclear development programme,authorising the International Atomic Energy Agency to inspect suspected activities, permitting the International Commission to conduct searches by land and air to destroy prohibited weapons and establishing an observer force to monitor a demilitarised zone. Although Iraq agreed to these conditions they were in fact imposed under Chapter VII, without the explicit consent of Iraq.

The Security Council had continued its intervention in matters considered domestic affairs of a state even after the acts of aggression had ended because the Security Council wanted to make sure that the threat should not recur. According to Professor Thomas M. Franck, this “constitutes a significant interpretation of the scope of Article 2(7), 39 and 41, one with considerable implications in other situations where a ‘threat to the peace’ might also be deduced from collateral evidence of a Government’s ‘tendencies’ even in the absence of actual ongoing aggressive behaviour”. Another important instance of the Security Council’s response to threats to peace, human rights and domestic jurisdiction was that to the Kurdish crisis in post-war Iraq. In a resolution the Security Council stated, “the

repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, the consequences of which threaten international peace and security in this region".

In this resolution, in the absence of a Council decision to take collective measures, it is still noteworthy that a purely civil war and the repression of the civilian population by its own government were thought to be outside the domestic jurisdiction of Iraq and within the purview of the UN. The Security Council Resolution pointed out that "a massive flow of refugees" caused Iraq's repression of the Kurds to constitute a threat to peace and security in that region. Though it was pointed out that the resolution was not adopted under Chapter VII, the wording of the resolution located itself within the precinct of "threats to the peace". The Kurdish crisis surely gave an indication of the role the UN might perform in the future in regard to a situation of extremely civil oppression by a government of its own citizens.

Similar to the Kurdish crisis, the Kosovo situation presents a picture of emerging rules about the UN's role with regard to government oppression of civilians and human rights. In Kosovo, unrest escalated in February and March 1998 with repressive action by the Serb police.On 31 March 1998, the Security Council adopted Resolution 1160 (1998) in which the use of excessive force by the Serbian police and terrorist action by the Kosovo Liberation Army (KLA) was condemned, an armed embargo was imposed and support for a solution based on territorial integrity was expressed. On 23 September 1998, the Security Council adopted another resolution demanding the Federal Republic of Yugoslavia to take the following actions—(a) to enable effective monitoring by the EC Monitoring Mission; (b) to facilitate the return of refugees and displaced persons; and (c) to make rapid progress towards finding a political solution. Finally the Council decided to consider further action to maintain peace in that region if concrete measures were not taken. After the Federal Republic of Yugoslavia failed to cooperate and the situation continued to escalate, NATO commenced strikes on 24 March 1999. In an emergency situation, Russia, China, Belarus and India opposed the action as a violation of the Charter.

India took the position that since Kosovo was a recognised part of Yugoslavia, the UN had, under Article 2(7), no role to play in the settlement of the country's domestic political problems. The counter-argument was given by Slovenia that the situation in Kosovo constituted a threat to peace, and that is why it should no longer be regarded as falling within the domestic affairs of Yugoslavia. More to the point, it argued that even if the Security Council failed to determine the situation as constituting a threat to peace, the domestic jurisdiction prohibition would not apply due to massive violation of human rights. The situations in Liberia and Somalia reflect the current position of the principle of domestic jurisdiction in relation to peacekeeping operations and conflict prevention.

In Liberia the National Patriotic Front of Liberia (NPFL) headed by Charles Taylor launched an insurgency movement against Master-Sergeant Samuel Doe, the chief of a dictatorial military regime. The insurgency movement became bifurcated when Prince Johnson, a former commander of Charles Taylor, formed the Independent National Patriotic Front of Liberia (NPFL). In response to the deteriorating situation in Liberia, the Economic Community of West African States (ECOWAS) in August 1990 sent a cease-fire monitoring group (ECOMOG) which was welcomed by Doe and Johnson, but not by NPFL. Hostility ensued between ECOMOG and NPFL on several occasions and on an intermittent basis. In 1992, the Security Council determined the situation as constituting a threat to international security and recognised the need for increased humanitarian assistance in Liberia.

The Security Council also established the UN Observer Mission in Liberia (UNOMIL) to coordinate with ECOMOG without participating in the peacekeeping operations. The mandate of the UNOMIL was subsequently extended on various occasions. The Council's involvement in Liberia is twofold. First, it established a weapon embargo which did not produce desired effect. Second, it endorsed the regional peacekeeping mission present in Liberia since 1990. The novelty of the situation is that, strictly speaking, the UN peacekeeping mission in Liberia gradually assumed the characteristics of enforcement action. Similar to the Liberian situation, the involvement of the UN in Somalia initially commenced as peacekeeping and later evolved into a peace-enforcement mechanism. From the UN involvement in these situations, it has been generally accepted that even a situation which causes no physical repercussion abroad may nevertheless constitute a threat to peace.

From these facts it is evident that the domestic jurisdiction or sovereignty of a country may be limited by the power of the Security Council although the Special Committee of the General Assembly on Peacekeeping Operations regularly stresses that peacekeeping operations should strictly observe the principles and purposes embodied in the Charter, in particular, the respect for principles of sovereignty, territorial integrity, political independence and non-intervention in matters essentially within the domestic jurisdiction of any state. The Libya and Lockerbie incident has added a new dimension to the Security Council's exercise of power under Chapter VII. In 1992, the Security Council prompted the Libyan government to extradite its nationals who were allegedly responsible for the explosion of the Pan Am Flight. Libya refused to comply with the Security Council resolution on the ground of Montreal Convention 1973. The case is important because under the Montreal Convention 1973, Libya was obliged to either bring the accused to trial or to extradite the alleged offenders.

It was Libya's contention that by taking the initiative to bring the alleged offenders to trial; it had complied with the obligations assumed under the Montreal Convention. And as there was no extradition treaty between Libya and other requesting states, Libya was not bound by the Security Council's request for extradition. Libya also instituted proceedings in the ICJ and, in addition, requested for interim measures to prevent defendant states from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to

any jurisdiction outside Libya. What is important here is the determining by the Security Council that a state action constituted a threat to peace even though the action was warranted by a universal treaty.

SUMMARY

It is evident from the intention of those who drafted Article 2(7) that the Charter should contain articles affirming the promotion of human rights and fundamental freedom and consequently Articles 1(3) and 55(c) were included in the Charter. Further, nothing in Chapter IX and X of the Charter should be regarded as giving authority to the Organisation to intervene in the domestic affairs of states. The fact is that the UN was not conceived as an instrument for the enforcement of human rights. The mass internationalisation of human rights has contributed to the reshaping and rethinking of legal concepts, including the domestic jurisdiction of states, because it is quite obvious that matters which were once thought to be the internal affairs of states are no longer regarded as so in many respects. Accordingly, we have seen several instances in which the General Assembly, the Security Council and the Economic and Social Council have taken human rights situations to trigger action by the UN. Notable is also the tenuous sustainability of the domestic jurisdiction plea by oppressive regimes before political organs of the UN, including the Security Council. We have seen the UN organs have begun to identify human rights violations as constituting threats to peace and have demanded government action to rectify such situations.

Related to the issue of the growing importance of human rights is the issue of liberal democracy as a possibly existing or emerging rule of general international law. These developments have led to comments such as that the domestic jurisdiction exception has lost its political and legal weight to the extent that it is no more than an unsuitable residual value, Such statements are not wholly groundless in the sense that states have vastly reduced their sphere of unfettered decision-making by agreeing to a large number of human rights declaration and treaties. But such developments do not lead to the outright conclusion that Article 2(7) is wholly obsolete now. Statements regarding respect for a state's domestic jurisdiction and sovereignty are still regularly made in resolutions passed by the General Assembly and other UN organs. The mandate of the UN High Commissioner for Human Rights (UNHCR) contains a reference to the domestic jurisdiction clause. The UNHCR still referred to domestic jurisdiction clause when it defined the mandate of Human Rights Commission. The UN Secretary General has opined that Article 2(7) is still relevant as it was in 1945.

SCOPE AND EXPECTATIONS

Out agenda has a scope far beyond what could be covered in a three day conference, and with that being said, there is no point of exhaustion when it comes to content and sub-topic discussions.

Though it might be seen as a simple question just to define when and how international/domestic law takes precedence, there have be numerous instances when identical situations have had a different approach to the issues, both consisting of customary principles states have been arguing upon. Alongside, it would be one of the biggest mistakes to deem this agenda as the one that can be resolved after categorising conditions for invoking specific laws, it is way different.

It primarily lies in the core values that justify not just the conditions of the respective laws that take precedence, but also touches upon practicalities of situations when its very hard to define an alternative approach at a situations where the given law applies but cannot be practically resolved.

We don't want to get involved in detailed aspects of abstract ideas, and neither intend to get you confused with anything you could have not been able to comprehend in this document, for it cites some of the most debatable and philosophically confusing notions.

All we intend to provide you is a choice to select a few ideas out of the ocean above, and go in-depth with them during committee hours. We'll be open to any help and assistance pre-conference, if required any. Links for further research haven't been provided in order to not limit your research to anything referred herewith, but to support all tangents you may plan to present.

Best of luck with your research!

Warm Wishes,
Executive Board
UNSC-MUNQS'17