



BONN INTERNATIONAL CENTER FOR CONVERSION

B · I · C · C

bulletin

No. 34

January 2005

The UN Charter and its limitations in the face of aggression

by Dr Hans Blix

The security system laid down by the victor nations of the Second World War in the UN Charter is not based on notions of pacifism. It shows a preference for the peaceful settlement of conflicts but accepts the use of force as a means of last resort. It is based on the idea that the Security Council may intervene—even with the force of arms—against threats to the peace, breaches of the peace, and acts of aggression.

During the many years of the Cold War it was on the whole inoperative. Any one of the five permanent members could prevent action by casting a veto. The Korean war in 1950 was an exception. Due to the absence of the Soviet Union from the Security Council a US-led armed action against the North Korean aggression was authorized by the Council. After the end of the Cold War and the collapse of Communism the security situation changed drastically. No veto prevented President Bush the elder in 1990 to receive an authorization from the Council for the broad alliance he had created to stop Iraq's naked aggression and liberate occupied Kuwait. Following the policy of containment he refrained in the Gulf War from pushing up to Baghdad to bring about a regime change. Saddam Hussein remained in power and President Bush could use the alliance he had created to launch new peace efforts in the Middle East—efforts which regrettably failed in the end. For some time the Gulf War in 1991 gave hope to the world that a new will among governments to cooperate would at long last enable the Security Council to function as envisaged in the Charter and to decide on effective action against any aggression.

While a great many peacekeeping operations were agreed upon in the Council during the 1990s, the

armed intervention in Iraq in 2003 shattered the hopes. A limited alliance of states, claiming that it was enforcing past resolutions of the Council, but acting against the express will of the majority of the Security Council, invaded Iraq to eliminate weapons of mass destruction—which proved not to exist. It is worth noting that the grave disagreements on Iraq between great powers were not about territory or ideology. It was about the best way to tackle a possible case of proliferation of weapons of mass destruction and about the defiance of binding Council resolutions. At the same time, and just as importantly, it was also about the central role of the Security Council. From the viewpoint of the security system of the Charter, the extent to which the United States claimed it was free to take armed action, not against a real “armed attack” as described in article 51 of the Charter but “preemptively”, i.e. in anticipation of an armed attack, is worrisome.

“... the right to decide on intervention belongs to the Security Council, not to individual states.”

The US has explained that in the era of weapons of mass destruction, long range missiles and terrorist groups, it feels free to take armed action in ‘anticipatory self-defense’ not only where it deems an attack “imminent” but even where it sees a “growing danger”. The presumed intentions of Saddam Hussein to revive programs of mass destruction if and when sanctions were be lifted, were regarded such a “growing danger”.

Considering the surprise terror attacks on the United States in 2001 all governments would probably maintain that they considered it their duty vis-à-vis their own populations to take action—if need be armed action—to seek to prevent a terror attack that they learnt was coming. There are, however, two crucial problems with the claim of a right to such preemptive action:

- Before a foreign attack takes place, the knowledge about it is likely to depend upon intelligence. The Iraq affair does not give much confidence that intelligence is a reliable basis. If it is not, then what is meant to be anticipatory self-defense may become a totally unjustified attack.

■ Although “imminence” may be a severe time requirement, “a growing threat” would be an unacceptably lax criterion and would not tally with the generally accepted position that force should only be used as a last resort.

It has been suggested that an effort should be made to reformulate article 51 of the Charter to give some room for preemptive action. It is unlikely that any agreed language could be found and more likely that an answer to the problem will slowly emerge through precedents. It is also important, as Kofi Annan has noted, that the Security Council actively consider and monitor the various threats posed by weapons of mass destruction, giving all members the feeling that they take the issue seriously.

Some have criticized the UN and the Security Council for not intervening militarily to stop the genocide in Rwanda and, more recently, in Sudan. The criticism is understandable. The inaction is hardly due to any insuperable and antiquated obstacle in the Charter. It is true that Article 27 of the UN Charter prohibits the organization from intervening in matters which are essentially within the domestic jurisdiction of states. This restriction does not apply, however, to the adoption of “enforcement measures” by the Security Council. If, in the future, there were to be a readiness in the Council for enforcement measures in some case similar to the genocides in Cambodia and Rwanda, the Council would probably characterize the situation as a “threat to the peace” or “breach of the peace” and decide upon or authorize action under Chapter 7. Inaction in such cases is more likely to be the result of unwillingness of states to spend the life of soldiers and economic resources in situations, which they do not believe affect some of their fundamental interests, e.g. access to oil. However, a growing sense of solidarity between peoples nourished by greater awareness, brought about by television and other media, could change this. If so, the world would do well to make clear that the right to decide on intervention belongs to the Security Council, not to individual states. Any right of individual states to humanitarian other intervention, as we know, can be misused.

A small UN military force at the disposal of the Security Council would be a useful innovation but has not yet attained sufficient support.

Dr Hans Blix is Chairman of the Weapons of Mass Destruction Commission (www.wmdcommission.org) in Stockholm.

Staff Spotlight:



Tobias Pietz

Tobias Pietz (Germany), joined BICC in February 2003 and is currently researching on the issues of Disarmament, Demobilization and Reintegration (DDR), Civil-Military Cooperation (CIMIC) in post-conflict settings, and gender & conflict. His regional focus has been the Western Balkans, especially Bosnia-Herzegovina and Serbia-Montenegro, where he conducted field research for BICC in 2003 and 2004.

He holds a Master’s Degree in Political Science and German Literature and Language from the University of Heidelberg where he studied until 2001. From 2001 to 2002, he worked for the Bureau for Gender Equality at the International Labour Organization in Geneva and conducted Gender Audits and workshops in Geneva, Beirut and Amman. Since then, he has been intrigued by gender issues which consequently have also become part of his work at BICC. However, knowing that gender should not be an ‘add-on’ or specialization but rather brought into the mainstream, he was keen on getting into the field of peace research instead of becoming a ‘gender specialist’. In 2002, Tobias went back to university to study at the Institute for Peace Research and Security Policy in Hamburg, Germany, and received a Master’s Degree in Peace and Security Studies in 2003 with a thesis on the demobilization and reintegration of ex-combatants in Bosnia.

Since 1998, when he took some photography classes at St. Mary’s College of Maryland, Tobias has enjoyed doing black-and-white photography. Whenever he travels, he carries along his camera looking for images to capture. And though he has recently bought a small digital camera he is contemplating about finally making his dream of a darkroom and buying an old-fashioned middle format camera come true because sitting in the darkroom and listening to good music while waiting for the image to appear in the chemical bath is quite something.

For further information please contact
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BICC staff wishes you all a happy 2005!!

TRESA online soon

In December 2004, the TRESA project successfully completed its first year of operation.

Several training courses on small arms control for NGO personnel in Germany were given, using some of the TRESA draft modules. In 2005, TRESA material is going to be tested in training courses in regions outside of Germany and Europe, in cooperation with partner organizations. The first training module on small arms field research is ready for testing, the other modules will soon be finished. They will all be freely available at the TRESA website at www.tresa-online.org, which will go online in early 2005. Apart from the modules, the website will host tools, forms, audiovisuals and links that will be useful for capacity-building efforts and training.

As a TRESA special, the preparations for a video workshop in Macedonia have started. This workshop aims at children and youths from war- or gun crime-affected places. The children, both of Albanian and Macedonian origin, will be taught to use video cameras to tell their stories about guns and armed violence and to express their views on weapons. The workshop will probably take place next spring, in cooperation with the British documentary film maker Sandhya Suri and CIVIL, a Macedonian NGO.

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Year of Partnership with the City of Bonn has ended

On the occasion of its 10th anniversary, BICC was chosen "Partner for Peace and Development" of the City of Bonn in 2004. In the course of that year BICC organized about 40 public events, discussions and conferences, most of them together with partner organizations or the City of Bonn. The International Conference and Festive Celebration in the "Haus der Geschichte" in April with former Federal President Johannes Rau as keynote speaker and the United Nations Day in the "Bundeskunst- und Ausstellungshalle" in October with Hans Blix lecturing about human security, disarmament and development were certainly the highlights of BICC's activities. Other very successful events were BICC's information exhibition "Small Arms—A global threat" in Bonn's city hall and its first Open Day where the public was invited to have a look behind the scenes of BICC's work. The Open Day will be repeated in 2005.

"The year 2004 gave us the unique opportunity to inform the citizens of Bonn of our work and to strengthen the network of scientific, development and peace research institutions cooperating in Bonn", Peter Croll assessed the overall success of the partnership-

year. The mayoress of Bonn, Bärbel Dieckmann, during the reception that concluded the partnership year, also underlined the fruitful cooperation and thanked BICC for its work.

For further information please contact
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Transboundary Water Management in Africa

Within its working area on environment and security issues BICC is currently contributing to the research project on "Transboundary Water Management in Africa" which is conducted by the German Development Institute (DIE) and funded by the Federal Ministry for Economic Cooperation and Development (BMZ).

BICC's part of the project is to research on the recent status and experiences in transboundary water management in selected international rivers and lakes in Africa, mainly in the sub-Saharan region. The overall question is to find out in how far international Basin Commissions and other relevant institutions are able to foster transboundary cooperation. To this aim BICC will critically examine present transnational water management institutions in basins of the Orange-Senqu river, the Limpopo, the Zambezi, the Lake Victoria and the Lake Chad.

The study will analyze and select as central themes bilateral and regional agreements and treaties, if and how these are implemented and which role is intended for international basin organizations, national and regional stakeholders in this context. It shall be assessed on which level (local, national, regional or international) there are deficits, and potentials which could be tapped for further development.

Finally BICC will examine the role that regional institutions play in transnational cooperation at the select basins and how the respective basin organizations are tied into their superordinated institutional frame.

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Bonn International Center for Conversion *bulletin* No. 34

BICC (Bonn International Center for Conversion) is an independent, non-profit organization dedicated to promoting peace and development through the efficient and effective transformation of military-related structures, assets, functions and processes.

This newsletter is published quarterly by
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BICC Publications

In addition to its annual *conversion survey*, the BICC/DCAF *security sector governance and conversion studies* and other books, BICC publishes *briefs, papers* and the quarterly newsletter *bulletin*. These series analyze international aspects of arms, peacebuilding and conflict, report on projects and experience gained, and offer scientific as well as practical know-how. Further details can be obtained at www.bicc.de/publications/

paper 38:

Michael Brzoska (responsible), Marc von Boemcken, Wolf-Christian Paes, Willem Jaspers (assistant), *Incorporation of Defense Expenditures into Public Expenditure Work*, November 2004

paper 39:

Sabrina Grosse-Kettler, *External Actors in Stateless Somalia. A War-Economy and its Promoters*, December 2004

paper 40:

Eugene Kogan, *European Union (EU) Enlargement and its Consequences for Europe's Defence Industries and Markets*, January 2005

BICC/DCAF security sector governance and conversion studies:

no. 10: Wilhelm N. Germann and Andrzej Karkoszka (eds.). 2004. *The Difficult Path Towards Success: National Experience in Security Sector Reform in Central and Eastern Europe. A Review of Case and Country Studies*. Nomos Verlagsgesellschaft, Baden-Baden

BICC Notes

The issue *De-escalation of Violent Conflicts after 1945—A Comparative History of Conflict Management* was tested on a well-attended annual conference of the Arbeitskreis Historische Friedensforschung (Peace History Society), at the Evangelische Akademie Loccum, from 10–12 December 2004. In a transdisciplinary and transatlantic approach scholars of contemporary history, political science, and international law discussed the effects of *détente* during the Cold War and compared these with lessons from conflict resolution in the 1990s such as in the Horn of Africa, the Israeli-Palestinian case, and in Northern Ireland. The conference successfully stimulated a debate on the concept of de-escalation as a topical paradigm in the field of international relations and conflict research.

For further information on the conference sponsored by BICC and others please contact
→ Corinna Hauswedell at ch@bicc.de

One of the familiar voices, faces and pens of BICC is moving on to a new position. After six years, **Sami Faltas has left BICC** for the position of executive director at CESS (Centre for European Security Studies) in Groningen, The Netherlands. During these six years he shaped BICC's program on small arms control, but was also an important support for BICC's

overall activities. When he came to BICC, he already had quite an international reputation as an arms trade expert, he left BICC as one of the world's leading experts on small arms control. BICC will work hard to keep up the high standards set by Sami.

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On 16 December 2004, Leonid Polyakov gave a public lecture at BICC with the title "**Ukraine after the elections. Foreign Policy and Security Implications**". The military expert Polyakov is Director of the section "Military Programmes" at the Ukrainian Centre for Economic and Political Studies (UCEPS) named after Olexander Razumkov. UCEPS is a non-profit public organization that carries out its studies in the following areas: domestic policy; social and economic development of Ukraine; energy policy; international economy; foreign policy; national security and defense; military reform; international and regional security; peacekeeping. For BICC, Leonid Polyakov wrote a study "Destruction of Surplus Weapons in Ukraine", which will soon be available at www.bicc.de.

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From 10–11 March 2005, BICC together with the German and the Dutch National Committees of the International Hydrological Programme (IHP) of UNESCO and the Hydrology and Water Resources Programme (HWRP) of WMO is organizing the **workshop "Value of Water—Different Approaches in Transboundary Water Management"** in Koblenz, Germany. The aim of the workshop is to encourage the exchange of knowledge, experiences and management approaches in transboundary catchments with different cultural backgrounds. Presentations will introduce the subject matter, but emphasis will be placed on the exchange of experiences and ideas in the subsequent discussions. Interdisciplinary procedures will be highlighted.

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The staff of BICC would like to welcome **Christine Beeck as a new member of the TRESA team**.

Christine came to BICC from Cambodia as an intern. While in the field, she was the author of an excellent report on SALW control training needs in Cambodia which helped shape TRESA's direction and scope. She has since become an invaluable member of the team, and has been hired as executive editor of the TRESA modules, bearing most of the burden of working directly with the authors.

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