THE UNITED NATIONS SECURITY COUNCIL AND WAR

The Evolution of Thought and Practice since 1945

Edited by
Vaughan Lowe, Adam Roberts,
Jennifer Welsh, and Dominik Zaum

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V.L.; A.R.; J.W.; D.Z. January 2008

Jacket Illustration

The Security Council Chamber,
31 January 1992

At the Council's first summit-level meeting, the fifteen member states were represented by thirteen heads of state and government, plus two foreign ministers. This gathering, at a high point of optimism about the UN, issued a declaration on the central role of the Council in maintaining world peace and upholding the principle of collective security. The declaration also invited Secretary-General Boutros Boutros-Ghali to make recommendations on strengthening the UN's capacity in peacekeeping, peace-making, and preventive diplomacy. This led to the publication in June 1992 of *An Agenda for Peace*, with a set of ambitious proposals to enhance the capacity of the UN to respond to the challenges of the post-Cold War world.

The mural, by the Norwegian artist Per Krogh (1889–1965), encapsulates an earlier vision of a reformed world. It depicts a phoenix rising from its ashes, as a symbol of the world being rebuilt after the Second World War. Above the dark sinister colours at the bottom, different images in bright colours illustrate hopes for a better future. Equality is symbolized by a group of people weighing out grain for all to share (UN Photo/Milton Grant).

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APPENDICES

Acronyms

These acronyms are used in the text of the book. Certain other UN bodies, with their acronyms, appear in the appendices.

AFSOUTH	Allied Forces South Europe
AMIB	African Union Mission in Burundi
AMIS	African Union Mission in Sudan
APEC	Asia–Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASF	African Standby Force
AU	African Union
BELISI	Peace-Truce Monitoring Group in Bougainville
CAR	Central African Republic
CAS	Close Air Support
CENTO	Central Treaty Organization
CFA	French Community of Africa
CFI	Court of First Instance of the European Communities
CFL	Cease Fire Line
CFSP	Common Foreign and Security Policy
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
Civpol	Civilian Police
CNRT	National Council of Timorese Resistance
CSCE	Conference on Security and Cooperation in Europe
CTBT	Comprehensive Test Ban Treaty
CTC	Counter Terrorism Committee
CTED	Counter Terrorism Executive Directorate
DDR	Disarmament, Demobilization, and Reintegration
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
EC	European Commission
EC	European Community
ECMM	European Community Monitoring Mission

ECOMICI	ECOWAS Mission in Cote d'Ivoire
ECOMIL	ECOWAS Mission in Liberia
ECOMOG	ECOWAS Ceasefire Monitoring Group
ECOWAS	Economic Community of West African States
EO	Executive Outcomes
ETA	Euskadi Ta Askatasuna (Basque separatist terrorist group)
EU	European Union
EUFOR	European Union Force in Bosnia
FCO	Foreign and Commonwealth Office
F-FDTL	Timor Leste Defence Force
FNLA	National Liberation Front of Angola
FPI	Ivorian Patriotic Front
FRAPH	Front for the Advancement and Progress of Haiti
Fretilin	Revolutionary Front for an Independent East Timor
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
G7	Group of Seven
G-77	Group of Seventy-seven
G8	Group of Eight
GA	General Assembly
GIA	Governors Island Agreement
GRULAC	Group of Latin American and Caribbean Countries
HQ	Headquarters
IAEA	International Atomic Energy Agency
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICFY	International Conference on the former Yugoslavia
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDEA	International Institute for Democracy and Electoral Assistance
IEC	Independent Electoral Commission
IFIs	International financial institutions
IFOR	Implementation Force
IMF	International Monetary Fund
INTERFET	International Force in East Timor
IPA	International Peace Academy
IPTF	International Police Task Force
ISAF	International Security Assistance Force
J&K	Jammu & Kashmir

KFOR	Kosovo Force
KLA	Kosovo Liberation Army
LoC	Line of Control
LURD	Liberians United for Reconciliation and Democracy
MFO Sinai	Multinational Force and Observers Sinai
MICIVIH	International Civilian Mission in Haiti
MINUCI	United Nations Mission in Côte d'Ivoire
MINUGUA	United Nations Verification Mission in Guatemala
MINURCA	United Nations Mission in the Central African Republic
MINURSO	United Nations Mission for the Referendum in Western Sahara
MINUSTAH	United Nations Stabilization Mission in Haiti
MISAB	Mission Interafricaine de Surveillance des Accords de Bangui
MJP	Mouvement pour la Justice et la Paix
MLO	Military Liaison Officer
MNF	Multi-National Force
MODEL	Movement for Democracy in Liberia
MONUA	United Nations Observer Mission in Angola
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MOU	Memorandum of Understanding
MPIGO	Mouvement Populaire Ivorien du Grand Ouest
MPLA	Popular Movement for the Liberation of Angola
MPRI	Military Professional Resources Inc.
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organisation
NFZ	No-Fly Zone
NGO	Non-governmental organization
NPFL	National Patriotic Front of Liberia
NPT	Non-Proliferation Treaty
NWFP	North-West Frontier Province
OAS	Organization of American States
OAU	Organization of African Unity
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OFF	Oil-for-Food Programme
OIC	Organization of the Islamic Conferences
OLA	Office of Legal Affairs
OMV	Ongoing Monitoring and Verification
ONUB	United Nations Operation in Burundi
ONUC	United Nations Operation in the Congo
ONUCA	United Nations Observer Group in Central America
ONUMOZ	United Nations Operation in Mozambique

ONUSAL	United Nations Observer Mission to El Salvador
ONUVEN	United Nations Mission for the Verification of Elections in Nicaragua
OSCE	Organization for Security and Cooperation in Europe
P5	The five Permanent Members of the Security Council
PDCI	Democratic Party of Côte d'Ivoire
PDK	Democratic League of Kosovo
PLO	Palestine Liberation Organization
PMC	Permanent Mandates Commission
PMCA	Pre-Mandate Commitment Authority
PMCs	Private military companies
PRC	People's Republic of China
PRT	Provincial Reconstruction Team
PSCs	Private Security Companies
RAMSI	Regional Assistance Mission to the Solomon Islands
RDC	Research and Documentation Center
RDTL	Democratic Republic of Timor Leste
ROE	Rules of Engagement
ROK	Republic of Korea
RPF	Rwandan Patriotic Front
RPR	Rally of Republicans
RRF	Rapid Reaction Force
RUF	Revolutionary United Front
S-5	Switzerland, Costa Rica, Jordan, Lichtenstein, Singapore
SADF	South African Defence Force
SAM	Sanctions Assistance Mission
SAMCOMM	Sanctions Assistance Mission Communications Centre
SC	Security Council
SEATO	South-East Asia Treaty Organization
SFOR	Stabilization Force
SG	Secretary-General of the United Nations
SHIRBRIG	Standby High Readiness Brigade for UN Operations
SLA	South Lebanon Army
SLA	Sierra Leone Army
SOFA	Status of Forces Agreement
SPO	Serbian Renewal Movement
SRSG	Special Representative of the Secretary-General
SWAPO	South-West Africa People's Organization
TNI	Indonesian National Army
UDT	Timorese Democratic Union
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan

UNAMET	United Nations Assistance Mission in East Timor
UNAMI	United Nations Assistance Mission in Iraq
UNAMIR	United Nations Assistance Mission in Rwanda
UNAMIR II	Second United Nations Assistance Mission in Rwanda
UNAMSIL	United Nations Mission in Sierra Leone
UNASOG	United Nations Aouzou Strip Observer Group
UNAVEM I	United Nations Angola Verification Mission
UNC	United Nations Command
UNCC	United Nations Compensation Commission
UNCIP	United Nations Commission for India and Pakistan
UNCRO	United Nations Confidence Restoration Operation in Croatia
UNDOF	United Nations Disengagement Observer Force
UNEF	United Nations Emergency Force
UNEF I	United Nations Emergency Force to the Middle East
UNEF II	Second United Nations Emergency Force to the Middle East
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNGA	United Nations General Assembly
UNGCI	United Nations Guards Contingent in Iraq
UNGOMAP	United Nations Good Offices Mission in Afghanistan and Pakistan
UNGOMIP	United Nations Military Observer Group in India and Pakistan
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICOI	United Nations International Commission of Inquiry
UNIFIL	United Nations Interim Force in Lebanon
UNIIMOG	United Nations Iran-Iraq Military Observer Group
UNIOSIL	United Nations Integrated Office in Sierra Leone
UNIPOM	United Nations India-Pakistan Observer Mission
UNITA	National Union for the Total Independence of Angola
UNITAF	Unified Task Force
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in Sudan
UNMISET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNMOP	United Nations Mission of Observers in Prevlaka
UNMOT	United Nations Mission of Observers in Tajikistan

UNMOVIC	United Nations Monitoring, Verification, and Inspection Commission
UNOCA	United Nations Office for the Coordination of Humanitarian and Economic Assistance Programmes in Afghanistan
UNOCI	United Nations Operation in Côte d'Ivoire
UNODC	United Nations Office on Drugs and Crime
UNOGIL	United Nations Observer Group in Lebanon
UNOMIG	United Nations Observer Mission in Georgia
UNOMIL	United Nations Observer Mission in Liberia
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOMUR	United Nations Observer Mission Uganda-Rwanda
UNOSOM I	United Nations Operation in Somalia
UNOSOM II	Second United Nations Operation in Somalia
UNOTIL	United Nations Office in Timor Leste
UNOWA	United Nations Office for West Africa
UNPA	United Nations Protected Area
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force
UNRWA	United Nations Relief and Works Agency
UNSAS	United Nations Standby Arrangements System
UNSC	United Nations Security Council
UNSCO	United Nations Office of the Special Coordinator for the Occupied Territories
UNSCOM	United Nations Special Commission
UNSCOP	United Nations Special Committee on Palestine
UNSMA	United Nations Special Mission to Afghanistan
UNSMIH	United Nations Support Mission in Haiti
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Authority in Eastern Slavonia, Baranja, and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group
UNTEA	United Nations Temporary Executive Authority
UNTSO	United Nations Truce Supervision Organization
UTA	Union des Transports Aériens
WEU	Western European Union
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

Contributors

Adekeye Adebajo is Executive Director of the Centre for Conflict Resolution in Cape Town, South Africa. He is the author of *Building Peace in West Africa* (Lynne Rienner, 2002), and *Liberia's Civil War* (Lynne Rienner, 2002); and co-editor of *West Africa's Security Challenges* (Lynne Rienner, 2004), and *A Dialogue of the Deaf: Essays on Africa and the United Nations*, (Fanele, 2006). He served on UN missions in South Africa, Western Sahara, and Iraq.

Mats Berdal is Professor of Security and Development in the Department of War Studies, King's College London. He was formerly Director of Studies at the International Institute for Strategic Studies. He is co-editor with Spyros Economides of *United Nations Interventionism 1991–2004* (Cambridge University Press, 2007).

Jane Boulden holds a Canada Research Chair in International Relations and Security Studies at the Royal Military College of Canada. Previously, she was a MacArthur Research Fellow at the Centre for International Studies, University of Oxford. She is co-editor with Thomas Weiss of *Terrorism and the UN: Before and After September 11th* (Indiana University Press, 2004).

Richard Caplan is Professor of International Relations at Oxford University and a fellow of Linacre College. He is the author of *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford University Press, 2005) and *Europe and the Recognition of New States in Yugoslavia* (Cambridge University Press, 2005).

Peter Carey is Laithwaite Fellow in History at Trinity College, Oxford, specializing on the history and politics of South East Asia. He is the author (with G. Carter Bentley) of *East Timor at the Crossroads: The Forging of a Nation* (Honolulu: Hawaii University Press, 1995); and (with Steve Cox), *Generations of Resistance: East Timor* (London: Cassell, 1995). He has recently published a major biographical study of the Indonesian national hero, Prince Dipanagara, *The Power of Prophecy, Prince Dipanagara and the End of an Old Order in Java, 1785–1855* (Leiden: KITLV Press, 2007).

James Cockayne is an Associate at the International Peace Academy. An international lawyer who has worked in Sydney, Paris, Arusha, Freetown, and New York, James is Chair of the editorial committee of the *Journal of International Criminal Justice*, and former Director of the Transnational Crime Unit, Australian Attorney-General's Department.

David Cortright is President of the Fourth Freedom Forum and a research fellow at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame. His fifteen books include G*andhi and Beyond: Nonviolence for an Age of Terrorism* (Paradigm Press, 2006).

Gilles Dorronsoro is currently Professor of Political Science in the University of Panthéon-Sorbonne (Paris). He has recently published *Revolution Unending, Afghanistan: 1979 to Present* (Hurst and Columbia University Press, 2005), and is editor of *La Turquie conteste. Régime sécuritaire et mobilisations sociales*, (Editions du CNRS, 2005).

J. P. D. Dunbabin was from 1963 to 2004 Fellow and Tutor at St. Edmund Hall, Oxford, latterly also University Reader in International Relations. His publications include *International Relations since 1945*, i: *The Cold War* (rewritten edition, Pearson Longman, 2007), ii: *The Post-Imperial Age: The Great Powers and the Wider World* (Longman, 1994), and an article on the League of Nations.

Linda Gerber-Stellingwerf is Research Director of the Fourth Freedom Forum in Goshen, Indiana. She contributes to the work of the joint Fourth Freedom Forum/ Kroc Institute Sanctions and Security Project and the Center on Global Counter-Terrorism Cooperation.

Christine Gray is currently Professor of International Law at the University of Cambridge and a fellow of St John's College. She has been at Cambridge since 1997 and before that she was a lecturer at the University of Oxford from 1980.

Sir Jeremy Greenstock, GCMG, is the Director of the Ditchley Foundation. Between 1969 and 2004, he held numerous positions in the British diplomatic service, including Political Director of the FCO (1996–8), UK Permanent Representative at the United Nations in New York (1998–2003), and the UK Special Envoy for Iraq (September 2003–March 2004).

Bruce D. Jones is Co-director of New York University's Center on International Cooperation, where he leads research on multilateral security institutions and the UN and is series editor of the Annual Review of Global Peace Operations, and Consulting Professor at Stanford University. Previously, he was Senior Advisor in the Office of the Secretary-General, and Chief of Staff to the Special Coordinator for the Middle East Peace Process.

Nico Krisch is a lecturer in law at the London School of Economics and has been a research fellow at Merton College, Oxford, New York University Law School, and the Max Planck Institute for International Law in Heidelberg. He is the author of a monograph on Security Council powers and the right to self-defence (*Selbstverteidigung und kollektive Sicherheit* (Springer, 2001)) and of articles on the law on the use of force, on hegemony in international law, and on the legal framework of global governance.

George A. Lopez holds the Rev. Theodore M. Hesburgh, C.S.C. Chair in Peace Studies at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame. His research on United Nations economic sanctions includes the application of targeted sanctions against transnational terrorism. With David Cortright, he most recently published *Uniting Against Terror* (MIT Press, 2007).

Wm. Roger Louis is Kerr Professor of English History and Culture at the University of Texas at Austin and a past president of the American Historical Association. He is an honorary fellow of St. Antony's College, Oxford. His books include *Imperialism at Bay* (Clarendon Press, 1977) and *The British Empire in the Middle East* (Clarendon Press, 1984). His collected essays were published by I. B. Tauris in September 2006: *Ends of British Imperialism: The Scramble for Empire, Suez and Decolonization.*

Vaughan Lowe is Chichele Professor of Public International Law, and a fellow of All Souls College, in the University of Oxford. He also practices in the field of international law as a barrister from Essex Court Chambers, London, and has appeared in cases before English and International courts, and sits on international tribunals.

Edward C. Luck is Vice President and Director of Studies at the International Peace Academy, as well as Special Adviser to the UN Secretary-General on the Responsibility to Protect (designate). He is currently on public service leave from Columbia University, where he is Professor of Practice in International and Public Affairs and Director of the Center on International Organization of the School of International and Public Affairs. His most recent book is *The UN Security Council: Practice and Promise* (Routledge, 2006).

David M. Malone is Canada's High Commissioner to India and Ambassador to Nepal and Bhutan. A former Canadian ambassador to the UN, he oversaw Canada's multilateral and economic diplomacy with its Foreign Ministry, 2004–6. He was President of the International Peace Academy in New York, 1998–2004. His most recent book is *The International Struggle over Iraq: Politics in the UN Security Council, 1980–2005*(Oxford University Press, 2006).

Georg Nolte is Professor of Law at the University of Munich. In 2003/4 he was a visiting fellow at All Souls College, Oxford. He has published on many issues of public international law and comparative constitutional law. He is a member for Germany of the European Commission for Democracy through Law (the 'Venice Commission').

Sarah V. Percy is University Lecturer and Fellow in International Relations at Merton College, Oxford. She has written widely about mercenaries, private military, and private security companies, including, *The Regulation of the Private Security Industry* (Routledge and the IISS, 2006), an article in *International*

Organization entitled, 'Mercenaries: Strong Norm, Weak Law' (61, no. 2), and *Mercenaries: The History of a Norm in International Relations* (Oxford University Press, 2007). Sarah was awarded the CAMOS Dissertation Prize at the 2006 American Political Science Association Convention for her dissertation, upon which her book is based.

Sir Adam Roberts, KCMG, was Montague Burton Professor of International Relations at Oxford University, and a fellow of Balliol College, from 1986 to 2007. His books include (edited with Benedict Kingsbury), *United Nations, Divided World: The UN's Roles in International Relations*, 2nd edition (Oxford University Press, 1993) and (edited with Richard Guelff), *Documents on the Laws of War*, 3rd edition (Oxford University Press, 2000). He lives in Oxford.

Rahul Roy-Chaudhury is Senior Fellow for South Asia at the International Institute for Strategic Studies, London. He has served in the National Security Council Secretariat in the Prime Minister's Office in India. He has also been a senior research fellow at the International Policy Institute at King's College, London. He writes regularly on South Asian security issues for IISS publications.

Dan Sarooshi is Professor of Public International Law in the University of Oxford, and also practices as a barrister from Essex Court Chambers, London. His books have been awarded the 2006 Myres S. McDougal Prize by the American Society for the Policy Sciences, the 2001 and 2006 American Society of International Law Book Prizes, and the 1999 Guggenheim Prize by the Swiss Guggenheim Foundation.

David Scheffer is the Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University School of Law. He served as US Ambassador-at-Large for War Crimes Issues (1997–2001) and as Senior Counsel to the US Permanent Representative to the United Nations (1993–6).

General Sir Rupert Smith, KCB DSO OBE QGM, retired from the British Army in January 2002 after forty years' service in East and South Africa, Arabia, the Caribbean, Europe, and Malaysia. His last appointment was Deputy Supreme Commander Allied Powers Europe. Prior to that he was the General Officer Commanding in Northern Ireland; Commander UNPROFOR in Sarajevo; and General Officer Commanding 1 (UK) Armoured Division, in the Gulf War 1990–1.

William Stueck has written extensively about the Korean War, most notably in *The Korean War: An International History* (Princeton University Press, 1995) and *Rethinking the Korean War: A New Diplomatic and Strategic History* (Princeton University Press, 2002). Both emphasize the UN role, the first in greater detail. He is currently a distinguished research professor at the University of Georgia.

Charles Tripp is Professor of Politics with reference to the Middle East, at the School of Oriental and African Studies, University of London. His publications

include (with S. Chubin) *Iran and Iraq at War* (Tauris, 1989); *The Iraqi Aggression against Kuwait* (edited with W. Danspeckgruber) (Westview, 1996); *Islam and the Moral Economy: The Challenge of Capitalism* (Cambridge University Press, 2006); and *A History of Iraq*, 3rd edition (Cambridge University Press, 2007).

Pat Walsh has worked with the UN in East Timor since 2000 and is currently Advisor on Transitional Justice to President Jose Ramos-Horta. From 2001 to 2005 he was seconded by the UN as Special Advisor to the Timor-Leste Commission for Reception, Truth and Reconciliation (CVAR). Prior to going to East Timor, he was Director of Human Rights for the Australian Council for Overseas Aid, and represented the Council at many UN sessions and meetings on human rights and the question of East Timor.

Jennifer M. Welsh is Professor in International Relations at the University of Oxford and a fellow of Somerville College. She is the author, most recently, of *At Home in the World: Canada's Global Vision for the 21st Century* (HarperCollins, 2004) and editor of *Humanitarian Intervention and International Relations* (Oxford University Press, 2004). She was recently named a Trudeau Fellow, and is currently on a Leverhulme research grant working on a project on 'sovereignty as responsibility'.

Susan L. Woodward is Professor of Political Science at the Graduate Center of the City University of New York. She was a senior fellow at the Brookings Institution (1990–99) and at King's College, London (1999–2000); and Head of the Analysis and Assessment Unit for UNPROFOR in 1994. Her writings include *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Brookings Press, 1995), and *Socialist Unemployment: The Political Economy of Yugoslavia, 1945–1990* (Princeton University Press, 1995).

Dominik Zaum is Lecturer in International Relations at the University of Reading, and author of, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (Oxford University Press, 2007). He has previously been a research fellow at Lady Margaret Hall, Oxford.

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CHAPTER 1

INTRODUCTION

THE EDITORS

The Central Theme

Under the United Nations (UN) Charter, the Security Council has a theoretically impressive range of powers and duties. Most significant is its primary responsibility for the maintenance of international peace and security. Unlike the General Assembly it can in principle take decisions that are binding on all members of the UN. The Council meets throughout the year, mainly to consider armed conflicts and other situations or disputes where international peace and security are threatened. It is empowered to order mandatory sanctions, call for ceasefires, and authorize military action on behalf of the UN. The Council also has a role, with the General Assembly, in the admission of new members to the UN, the appointment of the Secretary-General, and the election of judges to the International Court of Justice (ICJ). It has also assumed certain other roles not specifically laid down in the Charter, such as the self-conferred role of choosing judges and prosecutors for ad hoc war crimes tribunals.

This book describes and evaluates the UN Security Council's part in addressing – and sometimes failing to address – the problem of war, both civil and international, in the years since 1945. The central theme is obvious, simple, and sobering.[1] While the Council is a pivotal body which has played a key part in many wars and crises, it

[1] This central theme in respect of the Council is similar to that in respect to the UN more generally as evidenced by many of the contributors to Thomas G. Weiss and Sam Daws (eds.), *The Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2007). Weiss and Daws accept (p. 4) that 'state sovereignty remains the core of international relations' and they seek to contribute to 'greater analytical precision and historical reflection about the balance between change and continuity within the United Nations'.

is not in practice a complete solution to the problem of war, nor has it been at the centre of a comprehensive system of collective security. It never could have been. The UN's founders, despite their idealistic language, did not see it in such terms; and in practice, both during the Cold War and subsequently, the Council's roles have been limited and selective.

This central theme is not so much a conclusion as a starting point. It puts into focus a series of key questions, addressed in each of the sections: What have been the actual roles of the Security Council, and have they changed over time? Has the Council, despite the many blemishes on its record, contributed overall to the maintenance of international order through its response to particular threats and crises? Why has the Council fallen short of some of the expectations held out for it? Are particular countries to blame for such failures? Has it reacted constructively to the changes in the character of war – including the prevalence of non-international armed conflicts and the rise of terrorism – and to broader transformations in international society, such as the rise of post-colonial states and the increase in the number of powers with nuclear weapons? Is the Council simply a meeting place of sovereign states, or does it put in place certain limits on the unfettered sovereignty of at least some states?

In this book we have sought the services of historians, lawyers, diplomats, and international relations specialists to explore the Security Council's actual and potential roles. The book seeks to present an accurate picture of what the Council has achieved, and not achieved, in regard to the continuing phenomenon of war. It analyses the extent to which the UN Charter system, as it has evolved, replaces older systems of power politics and justifications for the use of force. It also considers how the functions and responsibilities of the Council have shifted since the creation of the UN in the concluding months of the Second World War. Among the many conclusions reached on the basis of this study, three stand out: that the Council was not created to be and has not in practice been a pure collective security system; that the constant interplay between the Charter's provisions and the actual practice of states (both within and outside the Council) has produced not only some disasters, but also some creative variations on the Council's roles and responsibilities; and that when compared with other international institutions, the Council has a unique status both in terms of its authoritativeness and accountability vis-à-vis member states.

The Charter Scheme

This book is based on the proposition that the actual practice of the Security Council is richer, more complex, and more paradoxical than can be captured by any single prescriptive document or theory. Yet an assessment of the Council's roles necessarily

involves reference to the basic rules by which it operates. The United Nations Charter, concluded at San Francisco in June 1945, is a remarkable amalgam of realism and idealism. It appears, at least at first sight, to be the harbinger of a radical transformation of the international system – especially in its handling of the problem of war. The first lines of the preamble set the target high:

WE THE PEOPLES
OF THE UNITED NATIONS
DETERMINED
to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . .

The Preamble goes on to outline the UN's purposes, and in so doing proclaims what appears to be a highly collective approach to the use of armed force:

to unite our strength to maintain international peace and security, and
to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest . . .

The Charter establishes six 'principal organs of the United Nations'. These are: 'a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat'.[2] The Security Council is thus just one part of this architecture for international order, but it has always been seen as having a central role in the Charter scheme.

The general principles of the UN and the detailed provisions governing the structure of the Security Council (SC) and its management of international security are laid down in five chapters (Chapters I and V–VIII) of the Charter.

Chapter I: Purposes and Principles

Chapter I, which consists of just two articles, sets the framework for the later provisions, including those for the Security Council. Article 1 is a ringing statement of purposes:

The Purposes of the United Nations are:
1. 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, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co operation in solving international problems of an eco nomic, social, cultural, or humanitarian character, and in promoting and encouraging

[2] UN Charter, Art. 7.

respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2, on Principles, is mainly concerned with questions of international peace and security. Its provisions have been cited frequently in debates about the powers of the Security Council.

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. 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.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. 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.

Chapter V: The Security Council

Chapter V (Articles 23–32) sets out the Security Council's composition, functions, powers, voting, and procedure. The Council's composition is specified in Article 23 (as amended in 1965) as follows:

1. The Security Council shall consist of *fifteen* Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect *ten* other Members of the United Nations to be non permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non permanent members of the Security Council shall be elected for a term of two years. In the first election of the non permanent members *after the increase of the member ship of the Security Council from eleven to fifteen, two of the four additional members* shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re election.

3. Each member of the Security Council shall have one representative.[3]

In the Charter scheme, the Security Council has primary, but not exclusive, responsibility for the maintenance of international peace and security.[4] The Council is tasked with determining whether particular events or activities constitute a threat to international peace and security, and for authorizing the use of sanctions and force in a wide range of situations. As Article 24(1) puts it:

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Remarkably, Article 25 of the Charter, like some articles in Chapter VII, specifies that UN members accept an obligation to do the Security Council's bidding. Its full text is:

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

The subject of disarmament is addressed in much more cautious terms in the UN Charter than it had been in the League Covenant.[5] Article 26 specifies the Security Council's responsibilities regarding the regulation of armaments thus:

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Article 27, on voting, requires decisions of the Security Council to be made by an affirmative vote of nine members – in other words, by a three-fifths majority. (This rule has the interesting implication that the Non-permanent Members have in effect a 'sixth veto': a capacity to deny a resolution the nine affirmative votes needed

[3] UN Charter, Art. 23. Text in italics consists of amendments that came into force on 31 Aug. 1965. Before that date the Security Council consisted of eleven members, of whom six were elected by the General Assembly. The second sentence of Art. 23(2) originally read: 'In the first election of non permanent members, however, three shall be chosen for a term of one year.'

[4] As the International Court of Justice stated in its discussion of the Security Council's powers in its Advisory Opinion of 20 Jul. 1962 on *Certain Expenses of the United Nations*: 'The responsibility conferred is "primary", not exclusive.' *ICJ Reports 1962*, 163. This case, which confirmed that the Security Council is within its powers in initiating peacekeeping operations and requiring member states to pay for them, is mentioned further in notes 8 and 33 below.

[5] The word 'disarmament' is mentioned only in Art. 11(1), which is in Chapter IV, on the General Assembly; and in Art. 47(1), which is in Chapter VII, on the Security Council.

to pass.) Its best-known provision is that it gives each of the five Permanent Members (P5) a veto power. As it delicately puts it, Council decisions on matters that are not procedural 'shall be made by an affirmative vote of *nine* members including the concurring votes of the permanent members'.[6] The veto power of the P5 has been a subject of controversy throughout the history of the UN. Even when the veto is not actually used, it casts a shadow. This significant departure from pure ideas of collective security is discussed further at various points below.

The provisions for the Council's procedure, laid down in Articles 28–32, are notably flexible. The Council is required to be able to function continuously, whether at UN headquarters or elsewhere (Article 28). It is free to establish subsidiary organs, and to adopt its own rules of procedure (Articles 29 and 30).[7] Under these rules, the Council's presidency rotates among the members for one-month periods in alphabetical order. The Charter specifies two circumstances in which states that are not members of the Council may participate (always without vote) in its deliberations: if the Council considers that the state's interests are specially affected by the issue under discussion (Article 31); and if a state is a party to a dispute under consideration by the Council (Article 32).

Chapter VI: Pacific Settlement of Disputes

Chapter VI (Articles 33–8) comprises an ambitious scheme for settling disputes of a kind that might endanger international peace and security. The Security Council is assigned a major role. Whereas the General Assembly is mentioned only in Article 35, the Security Council is mentioned in all six articles of this chapter. It can call upon parties to settle their disputes peacefully (Article 33), investigate any dispute or situation (Article 34), have disputes referred to it by states (Article 35), recommend appropriate procedures or methods of adjustment (Article 36), and recommend the terms of a settlement or make other recommendations to the parties (Articles 37 and 38).

The considerable powers vested in the Security Council under these terms of Chapter VI have provided one basis for its many and varied involvements in

[6] UN Charter, Art. 27. Text in italics consists of an amendment that came into force on 31 Aug. 1965. Before that date the requirement was for an affirmative vote of seven members (out of a total Council membership of eleven).

[7] In June 1946 the Security Council adopted Provisional Rules of Procedure. Although there have been only minor subsequent changes, the last of which was on 21 Dec. 1982, the rules remain provisional. On their negotiation and content, and also the evolving role of custom, see Sydney D. Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd edn. (Oxford: Oxford University Press, 1998), 9 18, and 441 54 for the rules themselves. The rules can also be found at www.un.org/Docs/sc/scrules.htm. In addition, a valuable guide to procedure and practice is *The Repertoire of the Practice of the Security Council*, issued at regular intervals by the Secretary General at the request of the General Assembly, all volumes of which are available at www.un.org/Depts/dpa/repertoire

numerous situations of incipient or actual conflict. Sometimes seen as simply the non-forceful part of the UN Council's tool-kit, Chapter VI has in fact provided a basis for its actions both in seeking to prevent war and in getting involved in conflict situations – whether through peacekeeping forces or other kinds of missions.

Although the UN Charter makes no explicit reference to peacekeeping forces, Chapter VI has also been seen as a principal Charter basis for most UN peacekeeping operations. However, in cases where such operations' mandates include authorization to use armed force (e.g. to prevent widespread atrocities, or to stop violations of a ceasefire) there is reference to Chapter VII in the relevant mandating resolutions. Because peacekeeping operations were not envisaged in the Charter, and often involve an overlap of powers under Chapters VI and VII, they have sometimes been called 'Chapter 6½' operations. However, if this term implies that there is a gap in the Charter or a degree of confusion over the basis of authorization of such forces, it can be misleading: the Security Council's establishment of such operations and its authorizations to them to use force are now generally understood as being within the broad terms of reference of Chapters VI and VII.[8]

Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Chapter VII (Articles 39–51) deals with the crucial matter of action in face of a variety of threats to international peace and security. In contrast to the ambiguous language of the League Covenant, the Charter seeks to identify a single agent – namely the Council – as having the power to interpret the implications of conflicts and crises, and to determine for international society as a whole whether a breach of the peace has occurred. Article 39 states (in full):

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40 empowers the Council to 'call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable'. Then Article 41 provides for the Council to impose 'measures not involving the use of armed force', including economic sanctions and the severance of diplomatic relations. Article 42 provides, in part: 'Should the Security Council consider that measures provided for

[8] The Security Council's powers to establish peacekeeping operations were the key point of contention that led to the International Court of Justice's Advisory Opinion of 20 Jul. 1962 in the *Certain Expenses of the United Nations* case. *ICJ Reports 1962*, 163, & 175 7.

in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.' Thus there is no necessity for the Council to try sanctions before resorting to force.

Articles 43–5 provide for armed forces to be available to the Security Council. These are among the most remarkable of the Charter articles (the others include Articles 25 and 49) that appear to give the Council a substantial degree of authority over the member states. In reality, however, the provisions of Articles 43–5 have never been implemented – mainly because states have been reluctant to hand over to the Council a blank cheque on how their forces should be used. In Article 43 all member states 'undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security'. These agreements were supposed to be concluded 'as soon as possible on the initiative of the Security Council'. Article 44 provides that when the Council has decided to use force, states asked to provide armed forces for such operations may participate in the decisions of the Council concerning how their armed forces are to be employed. Article 45, written before the analyses of strategic bombing in the Second World War aroused serious doubts about the efficacy of air power, conjures up a vision of the UN's military role that has never come into effect:

> In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air force contingents for combined international enforce ment action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Articles 46–7 provide for the Military Staff Committee, consisting of the senior military representatives of the Permanent Members of the Council. This committee was intended to 'be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council'. This provision confirms the special role of the P5 in the Charter conception, but beyond that it has had little importance. The major military powers have not used the Military Staff Committee to make joint plans for the application of armed force. The Committee's role could possibly have grown as Council practices developed, especially as common arrangements for UN or UN-authorized forces are far from self-evident. However, this has not happened.

Articles 48–50 outline the involvement of states in carrying out the measures decided upon by the Security Council. Article 48(1), by specifying that some actions may be taken by groups of states rather than the membership as a whole, provides a basis for the Council's later practice. 'The action required to carry out

the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.'

In Article 51 the Charter makes it clear that states have an already existing right of self-defence, which is simply recognized (and not conferred) by the Charter. 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.' It also establishes the Council as the body to which uses of force in self-defence must be reported; and it recognizes the right of the Council to take action in such cases.

Chapter VIII: Regional Arrangements

Chapter VIII (Articles 52–4) addresses the key issue of how global and regional security arrangements might coexist and even reinforce each other. This had been discussed extensively in negotiations during the Second World War, partly because of a realistic recognition that not every international security problem could be tackled at the global level. A balance had therefore to be found between UN-based and regional arrangements. Article 52(1) states:

> Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

Article 53 addresses the delicate question of how the Security Council and regional arrangements or agencies are supposed to relate to each other. In similar fashion to Article 48 noted above, it envisages something akin to the eventual pattern of the Council acting through regional bodies when it states that the Council 'shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority'. It continues: 'But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state.'[9] It is asking a lot of states, and of the Council, to expect this precept to be followed in all cases, but if the Charter had failed to require such Council authorization it would have undermined the primacy of the Council even before it came into existence. In

[9] The term 'enemy state' referred to the Axis powers which had fought in the Second World War. Naturally the provisions of the Charter directed against them (i.e. those in Articles 53, 77, & 107) came to be seen as out of date. The General Assembly's 2005 World Summit Outcome document contained a commitment to delete the references to 'enemy states' in the UN Charter. See '2005 World Summit Outcome' of 16 Sep. 2005, UN doc. A/Res/60/1 of 24 Oct. 2005, para. 177. The 'enemy state' provisions of the Charter had not been amended by the end of 2007.

practice the requirement that the enforcement actions of regional bodies must be authorized by the Security Council was of limited relevance in the Cold War, but since 1991 many Council resolutions have referred to the military actions of regional organizations.[10]

Article 54 states: 'The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.' While this has not happened in every case, there has been much reporting to the Council on this basis.

It was hardly to be expected that the Charter could resolve all the complex issues involved in the UN's division of security responsibilities with regional organizations. What it did do was to establish the key principle that the UN could not tackle all problems, and would act in conjunction with such bodies. In practice, the relations between the UN and regional bodies have been even more varied and complex than envisaged in 1945, involving for example some regional bodies acting with Council approval outside their own region, and some Council resolutions giving retrospective approval to certain actions of regional bodies.

Comparison with the League of Nations System

To understand certain strengths of the UN arrangements for international security, it is instructive to compare them with those of the League of Nations, established at the Paris Peace Conference in 1919. While the League had represented a groundbreaking advance in international organization, it also had many weaknesses that the founders of the UN sought to overcome. For example, the League Covenant provided for a Council which can in some ways be seen as a precursor to the UN Security Council; but the arrangements for it proved to be ineffectual.

As regards the League Council's membership there were three main problems. First, the Council never contained all the major powers of the time: the US never belonged to the League at all, Germany was a member only from 1926 to 1933, Japan also left in 1933, and Italy left in 1937. Secondly, Britain and France, the two powers that were consistently members of the League Council, were colonial powers – a fact which contributed to suspicion of the League on the part of states and peoples that were critical of European colonialism. And thirdly, each member of the League Council,

[10] Christine Gray, *International Law and the Use of Force*, 2nd edn. (Oxford: Oxford University Press, 2004), 282 327.

whether permanent or non-permanent, had a veto. In the 1930s the Council membership progressively increased, and with it the number of vetoes.[11]

In addition, the arrangements for the League Council's management of international security were vague on paper and ineffective in practice. The Covenant, while reflecting certain collective security ideas, was notably weak in its delineation of threats to international security, in its procedures for determining such threats, and in its provisions for enforcement. The Covenant generally, and Article 10 in particular, was preoccupied above all with confronting 'aggression': not only is 'aggression' notoriously difficult to define, but in reality certain international problems, such as systematic violations of treaty regimes in a wide range of matters, can pose major threats to the peace without being classifiable as aggression. Article 10 was also weak in what it said about the League's response to threats. The deeply flawed text of Article 10, which starts strongly and ends weakly, stated (in full):

> The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Other articles confirmed that the provisions for the League Council to decide upon action against a violator, and to ensure that states took such action, were notably weak. For example, Article 11(1) stated:

> Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

If a state resorted to war in defiance of the Covenant, the League was committed only to economic sanctions, and there was much less clarity about military action, which could be merely recommended, but was not made mandatory. As Article 16(2) stated:

> It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

A further weakness of the Covenant is that it involved the Council in an apparently strong but actually ineffective commitment to disarmament. This was mainly in Article 8, the first paragraph of which stated:

[11] As established in 1920, the League Council had four permanent members (France, Italy, Japan, and UK) plus four non permanent ones, each elected for a three year period. In the subsequent two decades the numbers of both the permanent and the non permanent members changed. The number of non permanent members was progressively increased. In the last such increase, by revision of 2 Oct. 1936, the Council raised the non permanent membership from ten to eleven.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforce ment by common action of international obligations.

Article 8 went on to require the Council to formulate plans for such reduction. When states failed to achieve disarmament, especially after the ignominious end of the League's great set-piece Conference for the Reduction and Limitation of Armaments (1932–4), the League was perceived as having set an impossibly high target and then as having failed.

Having learned from the problems of the years 1919–39, the authors of the UN Charter devised a scheme that differed from that of the League in many respects. The key ones are easily summarized. The Charter as a whole was drawn up with the central aim of ensuring that the major powers would be willing to join, and remain in, the organization. At the same time, the Charter's emphasis on equal rights and self-determination of peoples ensured that the UN was compatible with the cause of decolonization. The provisions for the UN Security Council were different from those for the League Council: by restricting the veto to Permanent Members, the Security Council had fewer vetoes than its ill-fated predecessor; it was empowered to address a broader range of security problems than the case of 'aggression' that was supposed to be the focus of the League Council's concerns; the Security Council was entitled to use force without in every case attempting economic sanctions first; and the Security Council was envisaged as taking military measures in its own right, rather than merely advising or recommending action to states. It was even envisaged as having armed forces continuously available to it, so that it would be in a position to use force to maintain international peace and security. The UN security system was more explicitly envisaged as being paralleled by regional security arrangements. Disarmament was addressed more cautiously in the UN Charter than it had been in the League Covenant. In all of these respects, whatever its defects, the UN Charter represented a deliberate, and major, advance on the flawed terms of the League Covenant.

The UN Charter: Neither Pure Collective Security nor World Government

The UN Charter system provides a much more robust framework for collective action than any previous attempt at global order. It differs hugely from all its predecessors, including the Concert of Europe in the nineteenth century and the

League of Nations in the interwar years. As a result, it has often been asserted that the Charter represents a scheme for collective security.[12] However, we question whether the Charter, even in theory, provides the basis for a general system of collective security, at least if defined in the classical sense. Still less does it provide a basis for world government. These two issues are explored further below.

Departures from collective security

The term 'collective security', in its classical sense, refers to *a system, regional or global, in which each state in the system accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace.*[13] This is the meaning followed here, with emphasis on collective security being a *system.* The assumption is that the threats to be addressed may arise from one or more states within the system. Collective security as defined here is distinct from, and more ambitious than, systems of alliance security or collective defence, in which groups of states ally with each other, principally against possible external threats.

There is a long history of the armed forces of many different states being used in a common cause. There is also a distinguished pedigree of leaders who have sought to establish a system of collective security, viewing it as superior to the balance of power as a basis for international order. Cardinal Richelieu of France proposed such a scheme in 1629, and his ideas were partially reflected in the 1648 Peace of Westphalia.[14] Sadly, the history of proposals for collective security is a long record of failure.[15]

There have been some elements of collective security arrangements in the two principal international organizations established in the twentieth century – the League of Nations and the UN. Yet neither was set up as, still less operated as, a full collective security system. The UN Charter, which does not refer to the term 'collective security', includes the following main departures from such a system:

- The veto power as laid down in Article 27 ensures that the P5 cannot have action mandated by the UN Security Council used against them, or indeed against a close ally. The veto system is much criticized, but it may have saved the UN from wasting time and political capital in contemplating hazardous actions against

[12] Much emphasis has been placed on collective security in works published in different periods of the UN's history. See e.g. Fernand van Langenhove, *La Crise du système de sécurité collective des Nations Unies 1946 57* (The Hague: Nijhoff, 1958); Jean Pierre Cot and Alain Pellet (eds.), *La Charte des Nations Unies: Commentaire Article par Article* (Paris: Economica, 1985), 7 & 75; and Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edn. (Oxford: Oxford University Press, 2002), 42, 760, & 770.

[13] This is a slight adaptation of the definition offered in Martin Wight, *Systems of States* (Leicester: Leicester University Press, 1977), 149.

[14] Andreas Osiander, *The States System of Europe 1640 1990* (Oxford: Oxford University Press, 1994), 40 3.

[15] Wight, *Systems of States*, 62 & 149 50.

major powers and their close allies; and it is actually less of an obstacle to action than was the more general veto system in the League of Nations Council.

- Article 39 (which is in Chapter VII), assigning to the Security Council the duty of determining whether a situation constitutes a threat to international peace and security, grants it a substantial degree of discretion regarding both the types of situation with which it deals and the nature of the measures to be taken.
- Article 51 (still in Chapter VII) states, in part: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.' While the Security Council retains the right to take measures in such circumstances, this Article recognizes that states retain a right of self-defence, and do not have to put all their eggs in the basket of collective security.
- Article 52 (which is in Chapter VIII, on Regional Arrangements), by providing for the coexistence of a UN-based security system with regional arrangements and agencies, implicitly accepts that the Security Council itself may not be able to address all threats to international peace and security. In theory, any gaps in the UN security system might be filled on a regional basis: regional organizations have the advantage of greater knowledge of local societies, but they also suffer from the disadvantage of fear of local hegemonic powers. Some regional security organizations have certain elements of a collective security system as part of their institutional framework, but in no case have these elements been followed consistently in practice.
- Articles 53 and 107 left each of the wartime allies a free hand to handle their relations with enemy states in the Second World War outside the Charter framework. These articles were a significant concession to unilateralism in the conduct of the post-war occupations, but they have been a dead letter for many years, and since the World Summit of September 2005 they face oblivion.[16]

Thus the Charter is not a blueprint for a general system of collective security – at least if defined in the classical way mentioned above. Nonetheless, there has been a tendency to invest in the UN Security Council hopes for collective security that exceed what can be prudently based on the Charter and on the Council's record. For example, this happened in 1992, following the first UN Security Council summit, and again in 2000 and 2004–5, in connection with two major UN summit meetings.

Hopes for a UN-based security system were particularly high in 1992. When on 31 January 1992 the Council's first-ever summit was held – at which the member states were represented by heads of state and government – they met to consider 'the responsibility of the Security Council in the maintenance of international peace and security'. The fifteen leaders who had assembled in the Council chamber

[16] On the proposal in the 2005 World Summit Outcome document to delete the references to 'enemy states' in the UN Charter, see above, n. 9.

in New York issued a statement strongly reaffirming 'their commitment to the collective security system of the Charter'.[17] They also invited Secretary-General Boutros Boutros-Ghali to make recommendations on strengthening the UN's capacity in peacekeeping, peace-making, and preventive diplomacy. This led to the publication in June 1992 of *An Agenda for Peace*, with its set of ambitious proposals to enhance the capacity of the UN to respond to the challenges of the post-Cold War world. It referred to 'the concept of collective security as contained in the Charter' and 'a universal system for collective security'.[18] However, although it usefully defined many terms, it did not define collective security, nor did it address the long-standing and difficult problems that confront the idea.[19] When, in January 1995, Boutros-Ghali issued the 'Supplement to an Agenda for Peace', its tone was much more cautious, as it was bound to be after the difficulties and failures of international action in Somalia, the former Yugoslavia, and Rwanda.[20]

Despite the setbacks of the 1990s, the view of the UN Security Council as the core of a system of collective security did not disappear. When the second Security Council summit was held – on 7 September 2000, at the time of the Millennium summit of the General Assembly (GA) – it issued a 'declaration on ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa', which made a brief reference to 'the collective security system established by the UN Charter'.[21]

In 2004 the UN High-level Panel Report on Threats, Challenges and Change placed heavy emphasis on the proposition that what the UN must aim to establish is a 'collective security system':

> The central challenge for the twenty first century is to fashion a new and broader under standing, bringing together all these strands, of what collective security means and of all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient and equitable.[22]

[17] UN doc. S/23500 of 31 Jan. 1992, p. 3. The meeting was attended by thirteen heads of state and government and two foreign ministers.

[18] Boutros Boutros Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace keeping, Report of the Secretary General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992* (New York: Jun. 1992), paras. 42 & 63. Originally issued as UN doc. A/47/277 S/24111 of 17 Jun. 1992. This report, like the other reports mentioned here, is available on the UN website, www.un.org/english

[19] For a contemporary critique, see Adam Roberts, 'The United Nations and International Secur ity', *Survival* 35 (1993), 3 30.

[20] 'Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations', UN doc. A/50/60 of 3 Jan. 1995.

[21] SC Res. 1318 of 7 Sep. 2000.

[22] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change* (New York: United Nations, 2004), UN doc. A/59/565 of 2 Dec. 2004, synopsis.

The High-level Panel Report used the term 'collective security system' in an innovative way, to refer to a UN-centred system of international security that addresses a notably wide range of threats. This use of the term 'collective security' suggested continuity between the original purposes of the Charter and the proposed reforms. More specifically it raised the possibility of developing, within a UN framework, a broad view of security policy as addressing the problems of terrorism, nuclear proliferation, and state breakdown as well as more conventional security threats; and it indicated the possibility of building, on this basis, a common international approach to security issues. However, this approach had weaknesses. Although the term 'collective security' was used about eighty times, it was not defined. Partially echoing this emphasis, the 2005 World Summit Outcome – the document issued by a meeting of the UN General Assembly at the level of heads of state and government to celebrate the organization's sixtieth anniversary – also referred to the UN as being at the heart of a system of collective security.[23] Meanwhile the third Security Council summit, held at the time of this sixtieth anniversary summit of the General Assembly, passed two resolutions, on terrorism and conflict prevention in Africa, neither of which mentioned collective security.[24]

The idea of the Charter as a recipe for a system of collective security is potentially damaging to the organization. First, it inevitably brings to mind memories of unhappy episodes (including in the years 1919–39) in which attempts were made to create systems of collective security – attempts which proved to be a failure. In the wake of this bitter experience, the fact that the term was not used in the UN Charter was not an accident, and its revival is problematic. Secondly, the emphasis on the idea of 'collective security' means that the UN comes to be seen as hopelessly optimistic: as purporting to set up a general security system although in reality the UN, while it can perform a large number of useful security functions, cannot hope to constitute anything as ambitious as that. Thirdly, the emphasis on 'collective security' tends to distract attention from some of the Council's important innovations in addressing conflicts, and likewise to obscure some notable elements of realism in and around the organization, including (in the 2004 High-level Panel Report) a frank recognition of the continuing role of states as 'front-line actors in dealing with all the threats we face, new and old'.[25] Finally, the emphasis on the idea encourages a line of argument which sees the Charter framework as a completely valid collective security scheme that would have been effective but for the faults and failures of particular states. This line has corrosive political consequences as blame is attached to a few states and individuals for weaknesses in the UN system that are in fact the result of deep and enduring problems of world politics.

[23] 'World Summit Outcome' of 16 Sep. 2005 (above, n. 9), paras. 7, 9, 16, 69, & 72.
[24] SC Res. 1624 & 1625, both of 14 Sep. 2005.
[25] High level Panel, *A More Secure World*, synopsis, p. 11.

Some have suggested that a looser definition of collective security, or adoption of a different term, might do more to reflect the realities and possibilities of the UN. For example, in the 1990s James Goodby, with experience of working in the US government, suggested that the classical definitions have been 'too narrowly constructed to be a practical guide to policy analysis, especially when considering the use of military force'. He therefore proposed a definition of collective security as 'a policy that commits governments to develop and enforce broadly accepted international rules and to seek to do so through collective action legitimized by representative international organizations'.[26] This less stringent conception of collective security better captures the record of how some states responded to war and other threats to the peace and security in the post-1945 period not only through the Security Council, but also through other bodies including NATO. Whether it adds up to a *system*, and whether the term 'collective security' is really appropriate to describe such cooperative approaches not always tied to a single organization, may be doubted.

Not a prototype of world government

Similarly, the idea that the UN, and more particularly the Security Council, should be seen as a prototype of world government does violence to the complex role of the organization. Many writers have been attracted by the idea that the UN is, or should be, a world government in the making.[27] This view is sometimes tinged with what might be called the domestic analogy fallacy – the assumption that world order must necessarily assume a form similar to that of the government within a sovereign state, and therefore involves a general transfer of authority from states to the UN.[28] The 'domestic analogy' obscures rather than clarifies the uniqueness of the Council's role. The Council consists of sovereign states and exists in a world of sovereign states. It has helped to shape and promote the principle and practice of sovereignty, especially through its support of decolonization. If it challenges the sovereignty of states, it is in very particular and limited ways, which are related to the Council's unique and constantly developing roles in regard to armed conflicts and international security issues in all their many forms.

[26] James Goodby, 'Can Collective Security Work? Reflections on the European Case', in Chester Crocker and Fen Osler Hampson (eds.), *Managing Global Chaos: Sources of and Responses to International Conflict* (Washington, DC, US Institute of Peace Press, 1996), 237. Goodby had been special representative of the President for nuclear security and disarmament during the Clinton administration.

[27] See e.g. Paul Kennedy, *The Parliament of Man: The United Nations and Quest for World Government* (London: Allen Lane, 2006).

[28] See Hidemi Suganami, *The Domestic Analogy and World Order Proposals* (Cambridge: Cambridge University Press, 1989).

How Practice since 1945 Has Differed from the Charter Scheme

This book reflects an approach in which the actual practice of states and international bodies is seen as at least as important as prescription or theory; and in which variations on such constitutional arrangements as those of the UN Charter are seen as potentially creative as well as potentially destructive. Indeed, the constant interplay between law and practice that has characterized the UN era can help to yield a realistic and multi-dimensional picture of the organization and its capabilities. This interplay also may be part of the explanation of its successive adaptations in response to changed international situations.

Management of international order beyond the UN framework

While the UN Charter does not claim a monopoly for the organization in managing international order, it does contain a vision of an international system in which the UN has a central role. Yet in practice the UN system has coexisted with other institutions and other means of addressing key international order issues.

One example is disarmament and arms control – a field in which both the Security Council and the General Assembly have responsibilities under the Charter. Both bodies have passed numerous resolutions on armaments and disarmament: indeed, the first resolution passed by either body was a General Assembly resolution on control of atomic weapons.[29] Several important agencies concerned with disarmament, including the International Atomic Energy Agency which was established in 1957, have a close association with the UN. The UN has a long record of organizing conferences on disarmament, and these have contributed to significant agreements on this subject, including the 1968 Treaty on the Non-Proliferation of Nuclear Weapons and the 1993 Chemical Weapons Convention. Yet many UN conferences in this area have been notably unproductive. At the same time, many arms control and disarmament agreements have been concluded largely outside a UN framework. Examples include the 1963 Partial Nuclear Test Ban Treaty, the 1972 US–Soviet Strategic Arms Limitation Accords, and the 1987 US–Soviet Agreement on the Elimination of Intermediate-range Missiles. In these cases, the reasons for negotiating outside a UN framework included the view of the United States and the Soviet Union that the rest of the world did not

[29] GA Res. 1(I) of 24 Jan. 1946, on 'Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy'. Although it was the General Assembly that established the Commission, the resolution specified that the new body was to report to the Security Council.

have any *locus standi* to co-determine how the two superpowers should agree between themselves to manage their arsenals. There was also concern about the tendency of large multilateral conferences to be stronger on rhetoric, and sticking to well-established principles and policies, than on getting down to deals.

Similarly, some effective negotiations on regional problems have been outside a UN framework. For example, on the Arab–Israel issue, and on southern Africa in the apartheid years, negotiations under UN auspices were encumbered by the fact that they tended to involve so many countries, and were based on clear stances about the problems of these regions that had been expressed in resolutions of the UN General Assembly – especially those condemning the Israeli occupation of neighbouring territories, and the continuation of white minority rule. In both cases, certain key negotiations took place outside a UN framework, often with the US rather than the UN as a key player. A defining characteristic of many such negotiations has been the mixture of UN and extra-UN activity, with the UN regularly laying down the guiding principles, helping keep the parties to them, and then acting as the rallying-point in gathering political support for the end result.

In general, the era since 1945 has witnessed – alongside the new institution of the United Nations and the multilateral diplomacy that it embodies – the continuation of all the classical institutions of the international system: great powers, alliances, spheres of interest, balances of power, and bilateral diplomacy.[30] Even those most questionable of international institutions, war and threats of war, continue to have some place in the relations of states.

UN practice involving variations from the Charter

The Security Council itself has been deeply affected by the survival of the older institutions of international order. As regards the organization and direction of armed force, the Council has operated in a manner which has differed from certain aspects of the scheme as envisaged in the UN Charter. This tendency began during the Cold War years (up to about 1989) and has continued subsequently.

Some of these variations are largely uncontroversial. For example, Article 27(3) of the Charter, which provides for the veto on the part of the five Permanent Members, states that a Security Council resolution requires 'the concurring votes of the permanent members'. In practice this provision has been interpreted to mean that a Permanent Member has to vote against a resolution in order to veto it: abstention or absence is not enough. Since this practice is arguably based on an interpretation of the Charter rather than a variation on it, and since it manifestly assists the conduct of business, it has been widely accepted.

[30] See also John Dunbabin's exploration of this in Chapter 22.

Certain other variations on some parts of the Charter scheme are neither minor nor, in some cases, uncontroversial. Five in particular stand out.

First, the practice of the Council of authorizing the use of force by coalitions led by an individual state differs from the main Charter vision of military action being under UN direction and control. On numerous occasions the Council has authorized coalitions of states to take forceful action, with one country taking a lead role. The US, UK, France, Italy, and Australia have all, in different crises, been clothed with such a role.

Secondly, the Council has become deeply involved in establishing and managing peacekeeping operations – a form of action that is not mentioned in the Charter, but has become one of the UN's principal forms of action, and even a symbol of the organization itself.

Thirdly, while many states have concluded standby agreements with the UN, they have never made forces permanently available to the UN in the manner envisaged in Articles 43 and 45 of the Charter. In all such agreements, states have retained discretion about when and how their forces are used.

Fourthly, the Military Staff Committee has never had anything like the role in advising on, assisting, and planning the application of armed force as set out in Articles 45–7. Although there have been more than a thousand meetings, they have generally been perfunctory. The fact that they have been held is a symptom of reluctance to abandon the Charter vision of a transformed world.[31]

Fifthly, under the 'Uniting for Peace' procedure the General Assembly has a potential involvement in certain crises and wars beyond that already provided for under Articles 10–12 of the Charter. Under this procedure the Assembly has passed a number of important resolutions, for example calling for ceasefires and troop withdrawals in regional conflicts.[32]

The fact that a practice has differed from the Charter scheme does not make it illegal under the Charter. As noted, the broad terms of the Charter give the Council considerable latitude. For example, the establishment of peacekeeping forces, even if not envisaged in the Charter, is within the Council's powers under Chapters VI and VII.[33] Similarly, the use of authorized military forces and coalitions, rather than forces under direct UN control, is consistent with the Council's powers, and in particular with the terms of Articles 48 and 53 which envisage action being taken by some UN members or regional arrangements.

[31] On the activities of the Military Staff Committee, see Bailey and Daws, *Procedure of the UN Security Council*, 274 81.

[32] The 'Uniting for Peace' procedure, whereby the General Assembly could act when the Security Council was blocked by the veto, was laid down in GA Res. 377(V) of 3 Nov. 1950. For its operation in practice, see Dominik Zaum, 'The Security Council, the General Assembly, and War: The Uniting for Peace Resolution', Chapter 6.

[33] As the International Court of Justice stated in its Advisory Opinion of 20 Jul. 1962 on *Certain Expenses of the United Nations* a case in which the issue at stake was the lawfulness under the Charter of UN requirements that member states pay for peacekeeping operations in Congo and the Middle East 'it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a State.' The Court thus viewed it as a question of *implied* powers. *ICJ Reports 1962*, 167.

In short, the UN Security Council, like most intergovernmental bodies, has undergone a process of change through practice. The reasons for the emergence of practices different from the main ones laid down in the Charter scheme are deep-seated. They include:

- A multinational body such as the Security Council may not be the most effective wielder of military force. This is because many very different perspectives on the world are represented on it; because the UN's member states have not paid much regard to the requirement in Article 23 of the Charter that the contribution of states to the maintenance of international peace and security is a criterion for Council membership; and because not all Council members necessarily have the same degree of commitment to action in a particular crisis. It is largely because of such factors that the Council has tended to authorize a lead state to manage military operations at the head of a coalition, not to manage the use of force itself.
- The UN lacks an intelligence system – something that is normally seen as an essential prerequisite for the effective conduct of military operations.
- All states remain cautious about the circumstances in which their armed forces might be used, and are unwilling to write a blank cheque to the UN. In planning the use of armed forces – whether for enforcement or peacekeeping – the Council has never been able to assume that all states were waiting to do its bidding. It has constantly had to adjust its policies to what the member states, and particularly the troop-contributing states, would tolerate.
- Finally, the types of war since 1945 have been different from the classic case of armed aggression by one state against another: most armed conflicts since 1945 have had the character of civil wars, generally in post-colonial or post-communist states whose frontiers, constitutions, and types of political system may not have become accepted as legitimate either internally or externally. Such wars frequently have an international dimension, as outside powers get involved on different sides for a wide variety of reasons. In wars of these types, it may be difficult or impossible to determine which party is the 'aggressor', and the response that is needed may be very different from collective military action against a presumed aggressor. Rather, the response of the international community tends to be to assist a negotiated settlement and to provide peacekeeping forces to observe and assist its implementation. This is a principal reason why peacekeeping, rather than the use of force against offending states, has been the main mode of UN action.

Three Main Types of UN Forces and Missions with a Security Function

The creation, mandate-setting, and winding-up of United Nations forces and missions of various types, including the authorization of action by coalitions of

states, is a major responsibility of the Security Council. The terms 'UN forces' and 'UN missions' are often used loosely. They can encompass many different types of military forces and missions. In actual practice forces and missions under the Council have been used in three broad types of operation, though there is some overlap between the categories.

UN peacekeeping operations

This type of operation, listed in Appendix 1, consists of forces under UN command and control whose presence is by consent of the territorial state and whose purpose is to observe and facilitate implementation of a ceasefire or peace agreement. Almost all UN peacekeeping operations have been set up and managed by the Security Council: only in a few exceptional cases has the General Assembly taken on this role. The military component of a peacekeeping operation normally consists of a number of national contingents deployed in a force under UN command. Generally such forces are lightly armed. While they do not have combat functions, they have a right to use force in self-defence and, depending on their mandate, for certain other specified purposes.

The distinction between peacekeeping and enforcement, although clear in principle, has sometimes been less clear in practice. There are three main ways in which UN peacekeeping forces may become involved in, or associated with, enforcement:

1. **Dual role of certain UN peacekeeping forces.** Several peacekeeping operations have had prominent enforcement as well as peacekeeping roles. The mandates of such forces have recognized the need for coercive action in various ways, sometimes by adding new mandates to earlier ones that had been based on more consensual assumptions. Examples of UN peacekeeping forces that had the authorization to engage in extensive coercive activities and did so in at least some phases of their operations include the UN Operation in the Congo (ONUC) in 1960–4, the UN Protection Force (UNPROFOR) in the former Yugoslavia in 1992–5, the UN Operation in Somalia II (UNOSOM II) in 1993–5, and the UN Mission in Sierra Leone (UNAMSIL) in 1999–2005. On paper all of these peacekeeping forces except ONUC had a strong mandate to use force making explicit mention of Chapter VII of the Charter, but all experienced major problems in carrying out the combination of peacekeeping and use of force.

2. **Operation of UN peacekeepers in conjunction with UN-authorized forces.** In some cases, as in Bosnia from 1992–5, Somalia from 1992–3, and Rwanda in 1994, UN peacekeeping forces have operated in conjunction with other UN-authorized forces which have enforcement functions and are under the command and control of a state or alliance (in these cases, NATO, the US, and France respectively).

3. **Operation of UN peacekeepers in conjunction with a national force**. In a few cases there has been a degree of cooperation between a UN peacekeeping force

and a national force which, without formal Security Council backing, has assisted the peacekeeping force in carrying out some of the Council's objectives. Two possible examples are (a) in Namibia in 1989, UN representatives, by tolerating a South African use of force to stop the infiltration of members of the South West Africa People's Organization into Namibia in violation of ceasefire terms, assisted the work of a peacekeeping force, the UN Transition Assistance Group (UNTAG); and (b) in Sierra Leone in May 2000 there was effective cooperation between UNAMSIL and the UK Joint Task Force.[34]

UN institutions, missions, and forces not classified as peacekeeping operations

Apart from peacekeeping forces, many other types of UN, and UN-authorized, bodies have operated in the field, tackling a range of issues relating to war. These bodies, which may be authorized by a variety of UN organs including the Security Council, the General Assembly, and the Secretary-General, can assume a wide variety of forms. A full but not exhaustive list of examples is in Appendix 2.

If there were a UN enforcement operation that was firmly under UN control and was not classified as a peacekeeping operation, it would come into this category. This type of operation, explicitly envisaged in the Charter, would consist of forces under direct UN command and control which are authorized to engage in enforcement. A variant of this approach is the proposal for a standing UN military force to have certain powers which might go beyond peacekeeping as traditionally conceived.[35]

UN institutions, missions, and forces that have been established by Security Council resolutions, and have not been classified as peacekeeping operations, have included the following types:

- Criminal tribunals established for particular conflicts or countries – e.g. the international criminal tribunals for the former Yugoslavia, set up in 1993, and for Rwanda, set up in 1994.
- Missions concerned primarily with monitoring disarmament – e.g. the UN Special Commission (UNSCOM) in Iraq in 1991–8; and its successor the UN Monitoring, Verification, and Inspection Commission (UNMOVIC) which operated in Iraq in 2002–3 and then operated outside Iraq until 2007.
- Missions to facilitate the implementation of the terms of peace agreements – e.g. the UN Assistance Mission in East Timor (UNAMET), set up in June 1999; and the UN Mission in Côte d'Ivoire (MINUCI), set up in May 2003.

[34] The UN's and UNAMSIL's objectives in Sierra Leone had been set out in SC Res. 1289 of 7 Feb. 2000, which made reference to Chapter VII. UNAMSIL had proved ineffective in carrying out key parts of its mission.

[35] See Chapter 4, Adam Roberts, 'Proposals for UN Standing Forces: A Critical History'.

- Missions concerned with humanitarian assistance and post-conflict reconstruction functions following the defeat of an incumbent government – e.g. the UN Assistance Mission in Afghanistan (UNAMA), set up in March 2002; and the UN Assistance Mission in Iraq (UNAMI), established by a Security Council resolution of 14 August 2003, but whose activities were curtailed as a result of the Baghdad UN headquarters bombing of 19 August 2003.
- Investigatory panels and missions, such as the one appointed by the Security Council in April 2005 to investigate the assassination of the former Prime Minister of Lebanon, Rafiq Hariri.

In addition, there have been many UN forces and missions, with significant roles in the security field, that were set up and managed by bodies other than the Security Council. Cases include:

- Good offices missions set up by the Secretary-General, typically by the appointment of a special envoy or Special Representative of the Secretary-General to mediate in a conflict or perform other functions.
- Investigation of allegations of employment of particular weapons whose use is prohibited. In February 1984 the UN Secretary-General established the Mission to Investigate Allegations of the Use of Chemical Weapons in the Iran–Iraq Conflict, which operated in 1984–8.
- Election monitoring and civilian support missions in which there was no peacekeeping element. This happened, for example, following civil wars, as in the case of the UN Mission for the Verification of Elections in Nicaragua (ONUVEN) in 1989–90. This was set up by the Secretary-General and merely noted by the Security Council.
- Deployment of UN guards. In May 1991 the Secretary-General set up the UN Guards Contingent in Iraq (UNGCI), following the establishment of 'safe havens' in northern Iraq to enable Kurdish refugees to return home.
- Certain missions concerned primarily with human rights and related issues – e.g. United Nations Verification Mission in Guatemala (MINUGUA), established by the General Assembly in 1994, in the phases before and after its peacekeeping functions in January–May 1997.[36]

UN-authorized military operations

This type of operation, cases of which are listed in Appendix 3, consists of forces under a specific mandate from the UN involving authority to use force for purposes that may go beyond self-defence, and which are under national or alliance

[36] Following the repatriation of the MINUGUA military observers in 1997, MINUGUA continued its other verification and institution building activities in support of the peace process in Guatemala, and its mandate was regularly renewed by the General Assembly.

(as distinct from UN) command and control. They are generally referred to as 'UN-authorized forces' rather than 'UN forces', and they wear national uniforms and not blue berets/helmets. The functions of such forces may include

- coercion in support of international measures such as sanctions (for example the naval forces in support of sanctions against Iraq in 1990–2003, and against the Federal Republic of Yugoslavia in 1992–5);
- combat activities against an adversary (for example the US-led actions against North Korea from 1950–3 and against Iraq in 1991, in both of which cases the lawfulness of the military action was largely based on specific Security Council authorization, but also had some of its roots, especially in the immediate aftermath of the adversary's attack, in the right of individual or collective self-defence under Article 51 of the Charter);
- forceful intervention within a state (for example the US-led Unified Task Force in Somalia from 1992–3, the French-led *Opération Turquoise* in Rwanda in 1994, and the US-led Multinational Force in Haiti from 1994–5);
- implementation, involving enforcement, of a peace settlement (for example, the NATO-led Implementation Force (IFOR) and Stabilization Force (SFOR) Bosnia in 1995–2004, EUFOR in Bosnia since 2004, and Kosovo Force (KFOR) in Kosovo from 1999).

Resolutions authorizing enforcement operations make specific reference to Chapter VII of the UN Charter. As a result, these are often called 'Chapter VII operations'. However, this term can be misleading because resolutions concerning certain other types of operation, especially sanctions but also sometimes peacekeeping, have also been adopted under Chapter VII.

In general, the power to authorize military measures has been interpreted broadly by the Council, and has encompassed the use of force in humanitarian crises, in support of peacekeeping operations of various types, and in action against international terrorism. Because the Council's role in authorizing force has been so broad, some of its authorizations overlap with other types of UN force and mission.

A particular problem of authorizations to a coalition to use force can arise if differences emerge between members of the Security Council and the state leading the coalition about the continuation and interpretation of an earlier mandate to use force. This problem arose in the Korean War in 1950–3, and was also at the centre of a major controversy in respect of Iraq in the first three months of 2003. The US claimed that earlier Council resolutions provided a basis for a continuing US right to use force to implement the 1991 ceasefire terms against Iraq, while other states viewed it as essential to go to the Council again to seek specific authorization before undertaking the major step of invading Iraq and deposing its government. The UK equivocated between these two positions. The tension between the body doing the authorizing, and the states working at the sharp end, is an unresolved problem at the heart of the now-familiar UN practice of using authorized coalitions to enforce resolutions.

The Council's Legitimacy as a Decision-Maker

The issues surrounding authorization to use force raise the more general question of what kind of legitimacy or authority the Security Council wields in international society. This question has numerous dimensions, two principal ones being its role as a collective legitimizer for the deployment and use of armed force, and whether changes in its membership could add to its legitimacy. These are considered in turn.

The Council as 'collective legitimizer' for the use of armed force

One of the major functions of the Security Council in international society is its role as a 'collective legitimizer' for the use of force by member states.[37] While this collective legitimization is not the exclusive preserve of the UN – other intergovernmental organizations (particularly regional ones) can also play this role – the UN has been the main focus of states' multilateral efforts to win approval for their policies. In some cases the Council's endorsement can make a direct material difference, by enabling those leading a military action to obtain troops and financial support from other members of international society. More commonly, however, the UN 'stamp' of approval has a more intangible benefit, by enhancing both the lawfulness and the political acceptability of the proposed military campaign. The so-called Just War tradition, which outlines a series of precautionary principles that help to determine the justifiability of any use of force, gives a prominent place to the notion of 'proper authority'.[38] In the present era, the UN Security Council is widely seen as constituting that 'proper authority'.[39] As a result, states have invested significant diplomatic capital in garnering Council authorization. Indeed, as the astute UN observer Inis Claude had argued, 'the value of acts of legitimization by the United Nations has been established by the intense demand for them.'[40] Several of the cases examined in this book illustrate this trend.

[37] Inis L. Claude, Jr., 'Collective Legitimization as a Political Function of the United Nations', *International Organization* 20, no. 3 (Summer 1966), 367–79.

[38] What has been referred to as the 'Just War tradition' dates back at least to St Augustine. A modern treatment can be found in Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd edn. (New York: Basic Books, 2000). The other principles usually associated with the tradition are just cause, right intention, last resort, reasonable prospects of success, and proportionality.

[39] Legitimate authority, including that of the UN Security Council, to authorize the use of force is discussed in some of the contributions to Charles Reed and David Ryall (eds.), *The Price of Peace: Just War in the Twenty First Century* (Cambridge: Cambridge University Press, 2007), esp. Frank Berman (162–9), Michael Quinlan (292–3), and Richard Harries (305–6).

[40] Claude, 'Collective Legitimization', 374.

The Council's status as 'proper authority' has not gone unchallenged. There are two main types of criticism. The first accuses the Council of exceeding its authority. For example, in the eyes of some, the UN's wider interpretation of what constitutes a threat to peace and security since the end of the Cold War – involving it in operations to address intra-state conflict, the possession of weapons of mass destruction, and humanitarian crises – has encouraged excessive interventionism.[41] Others are critical of what they see as the Council's attempts to act as a legislator, initially through its creation of ad hoc war crimes tribunals in the 1990s and subsequently with its resolutions on counter-terrorism.[42] A second strand of argument suggests that the Council's authority is being eroded because it is doing too little. The failure of the UN to mount a sufficient presence to deter genocide in Rwanda, and its inability to prevent massacre of civilians in the 'safe area' of Srebrenica in Bosnia, have led critics to investigate alternative mechanisms and institutions for ensuring peace and security.[43] According to this view, even in those situations of humanitarian crisis where the Council *has* authorized interventions, its role has been too limited. It is often powerful individual states that ultimately establish the parameters of the mission and control events on the ground.[44]

This criticism of the Council as reflecting the interests of certain major powers overlaps with the widespread criticism of the nuclear non-proliferation regime. The set of arrangements centred on the 1968 Non-Proliferation Treaty (NPT) of Nuclear Weapons is not itself a creation of the Security Council, having been negotiated by states. However, it has close associations with the Council, which has a number of roles in assisting its implementation. The view has gained currency that the NPT involved a commitment by the existing nuclear powers as recognized in the treaty (i.e. the P5) to complete nuclear disarmament – a position which has the predictable political consequence that the regime loses legitimacy if this part of the supposed deal is not fulfilled. Joachim Krause has strongly criticized this particular interpretation of the nature of the NPT deal, suggesting that it is historically questionable and disastrous in its

[41] See Sean D. Murphy, 'The Security Council, Legitimacy, and the Concept of Collective Security after the Cold War', *Columbia Journal of Transnational Law* 32 (1994), 201–88.

[42] See Jane Boulden's discussion of terrorism, Chapter 27. In addition, see C. H. Powell, 'The Legal Authority of the United Nations Security Council', in Benjamin Goold and Liora Lazarus, *Security and Human Rights* (Oxford: Hart Publishing, 2007); P. Szasz, 'The Security Council Starts Legislating', *American Journal of International Law* 96, no. 4 (2002), 901–2; J. Alvarez, 'Hegemonic International Law Revisited', *American Journal of International Law*, 97, no. 4 (2003), 874 and 875 n. 9; R. Lavalle, 'A Novel, if Awkward, Exercise in International Law making: Security Council Resolution 1540 (2004)', *Netherlands International Law Review* (2004), 411. For an analysis of the arguments against a legislative role for the Council, see Stefan Talmon, 'The Security Council as World Legislature', *American Journal of International Law* 99, no. 1 (2005), 179.

[43] Two commonly cited alternatives are addressed by later chapters in this volume: the UN General Assembly, acting under the 'Uniting for Peace' procedure, and regional security organizations, such as NATO or the African Union.

[44] Simon Chesterman, 'Legality Versus Legitimacy: Humanitarian Intervention, the Security Council, and the Rule of Law', *Security Dialogue* 33, no. 3 (Sep. 2002), 293–307.

consequences. He concludes: 'One might even argue that international order – defined as the rule of non-use of force – is possible only when a small number of responsible states possess nuclear weapons. The issue is, however, how to keep problematic actors from getting control of nuclear weapons. There is no golden key available to solve this dilemma, but the 1968 NPT was at least a very successful instrument in striking such a deal.'[45] As he notes, the fact that certain other states beyond the P5 have developed nuclear weapons raises many questions about the legitimacy and adequacy of the non-proliferation regime. The regime has many achievements to its credit: many states have stepped back from acquisition of nuclear weapons. It is not irredeemably lost, but its legitimacy and efficacy are under serious challenge.

The various criticisms of the Council's role as a proper authority for managing the possession and use of armed force reflect the awkward fact that powerful states, if they are willing to act on behalf of international order, need some recognized latitude in which to do so. This was a problem in earlier eras, when what was at issue was the rights and duties of 'the great powers'. It continues in the UN era. To a limited extent the UN Charter and the international order that has evolved since 1945 recognize that certain states have a special degree of latitude. Yet at numerous points – over authorizations to major powers to act on the UN's behalf, the inevitable discretion used in decisions about whether and how to intervene, the maintenance of a nuclear weapons status while denying it to others, and the need to involve more powers than the current P5 in the management of international order – the legitimacy of the present order is continuously in question.

A further challenge to the idea of the Council as legitimizer has arisen repeatedly in the post-Cold War period. Particularly in wars involving insurgents or non-state parties, some belligerents have shown no regard for the UN in general or Security Council actions in particular: UN forces and personnel have been attacked or kidnapped with alarming frequency. The hope that the Council's international legitimacy, and the strength of the powers represented on it, would translate into near-automatic compliance has evaporated. A consequence is that UN operations in internal conflicts have to pay at least as much attention to local sources of legitimacy as they do to that more distant source of legitimacy, the Council.

The problem of lack of legitimacy of certain Council-authorized actions is particularly clear in the case of international administrations, which by their nature involve a challenge to another fundamental norm – that power comes from below, with the people of a territory as the final arbiters of the political order. Even if their aim is to promote a democratic order within a state, international administrations such as those the UN Security Council has established or assisted in several post-conflict societies from Bosnia to East Timor lack basic elements of democratic

[45] Joachim Krause, 'Enlightenment and Nuclear Order', *International Affairs* 83, no. 3 (May 2007), 498. This is a special issue on the NPT and the concept of nuclear enlightenment.

accountability. As David Harland has put it, 'all international administration, however benign, is to some extent illegitimate.'[46]

Despite these challenges, it is clear that for many policy-makers the role of the Council remains pivotal. The International Commission on Intervention and State Sovereignty, which released its findings in December 2001, is illustrative of this position: 'There is no better or more appropriate body than the United Nations Security Council to authorise military intervention for human protection purposes. The task is not to define alternatives to the Security Council as a source of authority, but to make the Council work better than it has.'[47] This view was echoed by both the High-level Panel in 2004, and by the Secretary-General's reform proposals of 2005. All of these statements reflect a desire to maintain the Council's status within international society, and to avoid any further erosion of the 'social capital' it draws upon to encourage the cooperation of UN member states.[48]

Various theories of international relations offer different perspectives as to why states would attach such significance to the Council and its role in legitimizing armed force. One possibility is a functional argument. Though the Council is clearly imperfect, it is still (along with regional organizations) an important mechanism for avoiding unilateralism and the pursuit of naked self-interest: without such organizations, each state would simply define for itself what is just and unjust. States therefore invest in this 'security management institution' to coordinate their responses to security threats and capture the benefits of cooperation.[49] A second explanation, offered by Ian Hurd, is more ideational: states believe that a regulated and more predictable international system is preferable to one dominated by lawlessness. In short, multilateralism is a 'valued good' in international society. Thus, even when states use the Council's legitimacy for their own purposes, they in fact reaffirm its stature and add to its power.[50] A third possibility, drawing on Realist theory, would explain the search for Security Council authorization using material or power-based factors. Powerful Western states simply coerce other members of international society to support action through the Council. Alternatively, those seeking to enhance their power (such as developing countries, which have traditionally had less weight in

[46] David Harland, 'Legitimacy and Effectiveness in International Administration', *Global Governance*, 10, no. 1 (Jan. Mar. 2004), 15. This is a special issue on the politics of international administration. See also Richard Caplan, 'Who Guards the Guardians? International Accountability in Bosnia', *International Peacekeeping* 12, no. 3 (Autumn 2005), 463 76.

[47] Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Council, 2001), xii.

[48] Ian Hurd, 'Legitimacy, Power, and the Symbolic Life of the UN Security Council', *Global Governance* 8, (2002), 35.

[49] This is the term used by Wallander and Keohane to refer to the Council. See 'Risk, Threat, and Security Institutions', in Robert O. Keohane, *Power and Governance in a Partially Globalized World* (New York: Routledge, 2002), 93.

[50] Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton: Princeton University Press, 2007).

international society, or countries whose influence may be declining) insist on working through the UN in order to constrain the actions of more powerful states.

These varying explanations suggest that the nature of the Council's status in international society requires further elaboration. Three notions from political theory assist this task: political legitimacy, political authority, and authoritativeness. A body has political legitimacy when its decisions are justified by moral and other socially embedded beliefs about the end to which it exercises power, and about the processes through which its power is exercised.[51] For an entity to have political authority, however, it must have more than legitimacy; it must also have 'the right to be obeyed by those who are within the scope of its rules'.[52] An entity is authoritative 'if and only if the fact that it issues a rule can in itself constitute a compelling reason to comply with that rule'.[53] Political authority therefore entails political legitimacy, but not vice versa. Authority involves a hierarchical relationship where both the one who commands and the one who obeys recognize, in Hannah Arendt's words, 'their predetermined stable place'.[54]

When these notions are applied to the Security Council, it is clear that the Council is not a political authority in the sense described by political theorists, but rather a body that is at best authoritative with respect to the specific issue of international peace and security. As International Relations theorists such as John Ruggie have shown, international regimes and institutions do not conform easily to a hierarchical model of superordinates and subordinates.[55] The Council does not in practice command the automatic obedience of states, and is continuously engaged in a process of considering what measures the UN member states will be prepared to support. The Council remains a forum for interstate bargaining, where agreement is reached by national representatives directed by their governments.[56] Moreover, although the Council does pass binding resolutions, it is often difficult in practice to generate a consensus among the five Permanent Members about the precise action to be taken. This results in ambiguous language, which in turn leaves room for varying interpretations by those affected by the resolutions. Without a centralized body to offer a definitive interpretation, it is often left to the UN Secretariat to endeavour to secure compliance with resolutions, without any further guidance from the Council for the implementation of a given mandate.

[51] Dominik Zaum, 'The Authority of International Administrations in International Society', *Review of International Studies* 32, no. 3 (Jul. 2006), 457.

[52] Allen Buchanan, 'Political Legitimacy and Democracy', *Ethics* 112 (Jul. 2002), 691. This definition suggests that the phrase 'legitimate authority', which is so often used in discussions about the Security Council, is a pleonasm.

[53] Ibid., 692.

[54] Hannah Arendt, 'What is Authority?', in Hannah Arendt (ed.), *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1954), 93.

[55] John G. Ruggie, 'International Authority', *Constructing the World Polity: Essays on International Institutionalization* (London: Routledge, 1998).

[56] Robert O. Keohane, Andrew Moravcsik, and Anne Marie Slaughter, 'Legalized Dispute Resolution: Interstate and Transnational', in Keohane, *Power and Governance,* 155.

Although the Council might not exert political authority, it does possess legitimacy. In other words, member states of the UN often have other compelling reasons to comply with the Council's resolutions. The first source of its legitimacy derives from the ends to which it exercises power, namely, to maintain peace and security and 'save succeeding generations from the scourge of war'.[57] While this can be a powerful source of compliance, it has been under strain given the security challenges of the post-Cold War period. Though the Security Council has enjoyed some success in addressing, and reducing the incidence of, interstate war, several chapters in this volume show that it has a more mixed record in providing security for individuals experiencing civil war or repression inside states.

A second source of legitimacy is more procedural: the notion that a body 'has come into being and operates in accordance with generally accepted principles of right process'.[58] In the case of the Council, those states which traditionally support multilateralism emphasize its operating principles of consent, participation, and collaboration, and argue that only the UN can produce policies that are in the collective interest, as opposed to the narrow interests of the most powerful. These procedural aspects of the Council's legitimacy have been particularly important in situations which are morally contested, and which involve the clash between long-established international norms – for example, the principle of non-intervention and the commitment to address gross violations of human rights.[59] Here, too, however, a number of factors have created a tension between the Council's authoritative role as laid out in the Charter, and its legitimacy in the eyes of the members of international society: the slowness of Council decision-making; the under-representation of key regions on the Council; the fact that the P5 are shielded from intervention in their own states; the increased use of informal consultation by Council members;[60] and the political nature of P5 vetoes.[61] These issues have led to a variety of proposals for Security Council reform.

[57] Preamble to the Charter of the United Nations.

[58] Thomas Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990), 19.

[59] See Chapter 24 for an illustration of this clash in the cases of Kosovo and Darfur.

[60] These consultations, which can include either all fifteen Council members or ad hoc smaller groupings, usually precede official decisions and are not formally documented. For their impact on the governance of the Council, see Bailey and Daws, *Procedure of the UN Security Council*, 3rd edn., 18, 21 2 & 60 8; and David D. Caron, 'The Legitimacy of the Collective Authority of the Security Council', *American Journal of International Law* 87 (1993), 552 88. Some commentators suggested that even if a 'second resolution' on Iraq had been approved by a majority of Council members in 2003, the bargaining and political coercion necessary to achieve such a result would have damaged its legitim acy. See John Ruggie, 'Measuring the Legitimacy of UN Vote', *Financial Times*, 14 Mar. 2003.

[61] Examples of this politicized behaviour are the use of the veto by China on extensions of peacekeeping missions in Guatemala in 1997 and Macedonia in 1999 (due to China's objections to the decisions of the latter two countries to establish diplomatic relations with Taiwan), and the US veto of a resolution extending the mandates of UN and multinational peacekeeping missions in Bosnia in 2002 (due to US concerns about subjecting American peacekeepers to the jurisdiction of the International Criminal Court).

Proposals for Council reform

Reform of the composition and procedures of the Security Council has long been seen as one possible route to enhancing its role and legitimacy. This recurring topic involves three core issues: the appropriate number of Permanent and Non-permanent Members; the existence and scope of the veto power; and the number of votes required to pass resolutions. The main attempt at reform was in 2005. Before that there were two other major attempts at change: the negotiations in 1963–5 which led to changes in the number of Non-permanent Members; and the negotiations in 1993–7 which, while failing to achieve any substantial amendments to the composition of the Council to address the under-representation of the developing world,[62] did bring about important changes in Council procedures.[63]

In March 2005, these debates culminated in the recommendations of Secretary-General Kofi Annan to the member states in advance of the 60th anniversary meeting of the UN General Assembly in September.[64] Following the lines of the High-level Panel Report of December 2004, Annan presented member states with two reform options, under both of which the Security Council would increase in size from fifteen to twenty-four members. Neither option involved any change in the number of veto-wielding powers. *Model A* envisaged six new Permanent Members: two from Asia (where the leading candidates were India and Japan); two from Africa (where the main contending states were Nigeria, South Africa, and Egypt); one from Europe (Germany); and one from the Americas (where Brazil was considered a prime candidate). In addition there would be three new Non-permanent Members on a non-renewable two-year term. *Model B* envisaged no new Permanent Members, but instead a new category of eight Semi-permanent Members elected on a regional basis for a renewable four-year term; and one new Non-permanent Member on a non-renewable two-year term. Model B was fiercely opposed by those countries that had been lobbying for a number of years for a permanent seat (particularly Japan and Germany). In the end, the negotiations over both models broke down, and the Outcome Document of the 2005 World Summit said little on Council reform.[65]

[62] In 1993, the General Assembly established the Open Ended Working Group on the Question of Equitable Representation of and an Increase in the Membership of the Security Council. Its work culminated in a report by the GA president, Razali Ismail of Malaysia, which has continued to serve as a basis for reform discussions. For a further discussion of the pre 2005 reform negotiations, see Mark Zacher, 'The Conundrums of International Power Sharing: The Politics of Security Council Reform', in Richard Price and Mark Zacher (eds.), *The United Nations and Global Security* (New York: Palgrave, 2004), 211 25.

[63] These so called Cluster II issues relate to the transparency of Council deliberations and the nature of its communications with non Council members. Since the end of the Cold War, non members (both states and NGOs) have been invited to participate in Council meetings, and the current P5 frequently consult with other large powers (such as Germany and Japan) over UN authorized missions. In addition, the Council now regularly circulates its agenda, and its President briefs both non members and the international media.

[64] See Kofi Annan, *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General,* UN doc. A/59/2005 of 21 Mar. 2005, paras. 165 83.

[65] 'World Summit Outcome' of 16 Sep. 2005 (above, n. 9), paras. 152 4.

No Charter reform, and therefore no change in the Council's composition, can happen without the consent of each of the P5. As a result, a certain structural immobility is built into the very fabric of the UN, especially the Security Council. Although the failure of reform proposals over the decades has been often blamed on the P5 and their unwillingness to give up or share power, differences among regional groups of states and the broader UN membership have been no less important. This was particularly the case in 2005. However, it is also questionable whether the two proposed solutions were the right ones for the UN in the current context of global politics. Both models took a narrow view in their diagnosis of the problem, and their prescription for addressing it.

First, the reform proposals assumed that the weaknesses of the Council were due to the structure and composition of the Council, rather than to the complexity of the problems faced and inherent limitations of its members in tackling them. The Council's record over the past three decades, however, does not necessarily support this assumption. As this volume shows, since the end of the Cold War, the Council has been much more active in its management role and the veto has been employed much less frequently. The breakdown of consensus over Iraq in 2002–3 was regrettable, but it is not clear that a larger Council would have been any more likely to agree on a particular course to address the crisis.

Secondly, the reform efforts of 2005 largely made representativeness (in the form of more seats for the developing world) a proxy for legitimacy. But, as many observers have noted, the desire for inclusiveness needs to be balanced against the objective that preoccupied the UN's founders: to avoid replicating the mistakes of the League of Nations. While the General Assembly was to represent the views of the entire membership of international society, when it came to the design of Security Council (the body primarily responsible for managing threats to peace and security), equal representation and consensus decision-making had to be balanced by the desire for responsiveness and effectiveness.[66]

Thirdly, the proposed mechanism for enhanced representation – regional groupings – raises a key question: would the new members actually represent their regions (and if so, through what mechanism), or would they simply be from those regions? These are two very different propositions, and divisions within regions remain significant. It is noteworthy that some of the loudest opposition to aspiring candidates in 2005 was voiced by their own regional colleagues (for example, Pakistan in the case of India's candidacy and China in the case of Japan's). Moreover, without explicit means for consulting with other member states or non-governmental organizations, the addition of new members will not automatically enhance representativeness. If the broader goal is greater legitimacy, then it could be argued that less attention needs to be paid to questions of size, and more to enhancing the accountability and transparency of the Council (a topic discussed further below).

[66] Edward C. Luck, 'The UN Security Council: Reform or Enlarge?', in Paul Heinbecker and Patricia Goff (eds.), *Irrelevant or Indispensable? The United Nations in the 21st Century* (Waterloo, Ont.: Wilfred Laurier University Press, 2005), 143 52.

Finally, the reforms tabled in 2005 claimed that the Council needed better to reflect 'the realities of power in today's world'. But it is not clear why these realities would translate into more Permanent Members. While other states are clearly growing in terms of material resources and influence, in one key respect the distribution of power in military terms has become much more uneven than it was twenty years ago – in favour of the US. As Edward Luck has argued, the real issue is not so much the Council's size, but rather the strained relationship that exists between the UN and the US. Any proposed changes must take this reality into account as well.[67]

The Council as Subject, Implementer, and Developer of International Law

The Security Council is not a court; it is not a legislature; it is neither a police force nor even a police committee. It is a pragmatic forum in which states that are individually powerful or that, though weak, represent the members of the UN, decide how best to address serious threats to international peace and security. In short, it is a unique entity, with its own unique legal character and role.[68]

Much criticism of the Council arises from a misunderstanding of its role. That role is widely seen as having three different aspects. The Council is perceived as having the primary responsibility under the Charter for the maintenance of international peace and security; as an instrument for upholding international law; and finally as an instrument for upholding the rule of law in international society. In fact, only the first of those functions is explicitly given to the Council, under Article 24(1) of the Charter. The other two have been wished upon it, giving it a role as the main guarantor of legitimacy in situations where some part of the international community wishes to impose its will upon what it considers a recalcitrant state.

The three aspects do not sit comfortably with one another. For example, in certain crises there can be tension between the maintenance of international order on the one hand, and strict adherence to particular rules of international law on the other. Such problems can create what may appear to be a profound ambivalence in the relationship between the Council and international law.

[67] Edward C. Luck, 'The UN Security Council: Reform or Enlarge?', in Paul Heinbecker and Patricia Goff (eds.), *Irrelevant or Indispensable? The United Nations in the 21st Century* (Waterloo, Ont.: Wilfred Laurier University Press, 2005), 151 2.

[68] For discussions of international legal aspects of the role of the Security Council see José E. Alvarez, *International Organizations as Law makers* (Oxford: Oxford University Press, 2005), and Dan Sarooshi, *International Organizations and their Exercise of Sovereign Powers* (Oxford: Oxford University Press, 2005).

Maintainer of international peace and security

In its role as maintainer of international peace and security, the Council is empowered by Article 39 of the Charter to 'determine the existence of any threat to the peace, breach of the peace, or act of aggression' and to 'make recommendations, or decide what measures shall be taken . . . , to maintain or restore international peace and security'. The Charter sets no limits on the discretion of the Council to make a determination under Article 39. Proposals during the drafting of the Charter to include detailed definitions of threats to international peace and security, in order to constrain the Council, were defeated. It is not tied to any particular legal notion, such as aggression, in making its determination. Indeed, the Council may determine that even events internal to a single state threaten international peace and security, and it has done so with increased frequency since the end of the Cold War.[69] While the Council has until recent years made most of its determinations in relation to international crises in specific places, it can also do so in relation to general threats, as it has since 2001 in resolutions on terrorist acts and on nuclear non-proliferation.[70] However, not all general threats are necessarily the preserve of the Council: it has not had a central role in addressing global environmental issues including climate change, but it has addressed certain specific environmental issues such as Iraq's acts of despoliation in the 1991 Gulf War.

The breadth of the Council's discretion in making the determination that triggers its powers under Chapters VI and VII is mirrored by the breadth of those powers themselves. Unlike that of member states, the Council's right to use force is not limited to situations of self-defence. If it wished to initiate preventive military action in order to avert a threat to international peace and security, it could do so. Article 24(1) of the Charter stipulates that when it carries out its duties regarding the maintenance of international peace and security, the member states agree that the Council 'acts on their behalf'. Such a relationship with member states might suggest that the Council could have no wider powers than those of the states themselves; but this is not the accepted view. The general view is that the Council is an organ of the UN, whose powers derive from the Charter and not from a delegation by member states: the reference to the Council acting on behalf of member states is not so much a legal as a political statement.

That is not to say that the Security Council is entirely above the law. Its relationship with international law is, however, subtle. Article 24(2) of the Charter

[69] See Chapter 24 by Jennifer Welsh. A prominent example of involvement in the internal affairs of a state is the Council's deliberations with respect to Haiti in SC Res. 841 of 16 Jun. 1993. This was followed by a resolution authorizing the use of force in Haiti SC Res. 940 of 31 Jul. 1994. The fact that there had been large numbers of refugees fleeing from Haiti contributed to the situation being viewed as a threat to international peace and security.

[70] SC Res. 1373 of 28 Sep. 2001 and 1566 of 8 Oct. 2004, on threats to international peace and security caused by terrorist acts; and SC Res. 1540 of 28 Apr. 2004 on nuclear non proliferation.

obliges the Council to 'act in accordance with the Purposes and Principles of the United Nations': but adherence to international law is not among the Purposes and Principles set out in the Charter. What is stipulated, in Article 1, is the 'Purpose' of bringing about the adjustment or settlement of international disputes 'in conformity with the principles of justice and international law'. That is a looser formulation: a just peace settlement may not uphold all the legal rights and duties of the parties, but it would be consistent with international law if the settlement were accepted voluntarily, no matter how reluctantly.[71] In that sense, it is plainly not the Council's role to uphold the application of international law. There will be many occasions on which ignoring a violation or non-application of the law will be a prudent step towards the maintenance of international peace and security. The Council is by no means indifferent to international law. In a Presidential statement in June 2006 the Council reaffirmed 'its commitment to the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world'.[72] But a wise peace-maker is not strapped so tightly to the law that he cannot move except in complete conformity with it.

That raises a further point. It is well understood that no body and no organization can enforce all of the rules all of the time. They should not even try to do so: law enforcement is expensive, and one has only to contemplate the means and effects of enforcing total compliance with speeding laws to realize that in all cases a balance has to be struck between tolerable economic and social costs of law-enforcement on the one hand and a tolerable degree of law-breaking on the other. The Security Council is no exception to this rule, and it is not useful to criticize it because of its inability to intervene in every situation that arises – although one can, of course, reasonably say that the balance between the costs and benefits of law-enforcement has not been struck in the right place. But there is another, related argument that has more force. It is that the Security Council should have a consistent, or at least a rational and defensible, policy on the circumstances in which it will and will not act.

The need for such a policy goes to the question of the Council's role in the maintenance of the rule of law. The question is asked, why is action taken against one state but not another? Why are Israel and Iran and North Korea treated so differently from each other in the context of nuclear non-proliferation, for instance? On the view of justice as the treating of like cases alike, and of the rule of law as the impartial administration of justice, the selectivity of the Council's response may seem to deprive it of credibility as the guarantor of the rule of law in international society.

The short answer to this point is that the Council was not intended to maintain the rule of law: it was intended to maintain international peace and security. That is a very different, and more limited, role. The Security Council is not a 'world

[71] This interpretation is given added weight by the terms of Art. 2(3) of the Charter: 'All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.'

[72] UN doc. S/PRST/2006/28 of 22 Jun. 2006.

policeman': it is an institutionalized process for managing international crises. If lawyers were marshalled in great enough numbers in the courts to enforce obligations in statutes, by-laws, contracts and leases to keep drains in good working order, drains might never block up. But we have better things than lawyers on which to spend time and money; and we have emergency drain services to help when things get out of hand. The Security Council is the emergency drain service of the international political stage: it is not its job to keep the entire international system working smoothly and lawfully. Indeed, there is no reason why any given dispute must be approached by the Council in legal terms. There is, for example, a contrast between the Council's treatment of Iraq's 1990 invasion of Kuwait as a case of a flagrant violation of international law, and its treatment of the Palestine question not as a legal but as a political matter, demanding a political solution. Some may think that the Council does not always choose wisely between legal and political approaches to crises: but its right to make that choice cannot be doubted.

Can the Council override international law?

Article 25 of the Charter obliges member states to 'accept and carry out the decisions of the Security Council'. Article 103 of the Charter stipulates that:

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

The obvious conclusion is that Security Council resolutions can override international law; and they do. In the *Lockerbie* cases, for instance, the International Court of Justice considered, prima facie, that Security Council resolutions prevailed over the treaty obligations of the states parties to that dispute.[73] The fact that its resolutions trump ordinary legal obligations gives the Council the power to create binding *obligations* to deal with specific matters; and in theory that power might be used by the Council to create new general *laws*, prevailing over existing laws. There is, however, no sign of the Council wishing to exercise its powers so as to revise existing international laws generally, rather than for the much narrower purpose of adopting specific measures addressed to specific threats to international peace and security. Even Security Council resolutions 1373 of 28 September 2001 and 1540 of 28 April 2004, with their extensive requirements on states to take action respectively against terrorist acts and the proliferation of weapons of mass destruction, have a specific focus.

[73] The question in the *Lockerbie* cases arose in a hearing on an application for provisional measures, and was neither argued nor considered at the length that would have been possible at a hearing on the merits. *ICJ Reports 1992*, p. 3, at paras. 37 43. The cases, brought by Libya against the UK and US, were formally discontinued in 2003. The treaty obligations in question in this case were under the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

There is a perennial debate as to whether international courts can review the lawfulness of the Council's decisions.[74] The status and powers of the ICJ in this regard are reviewed below; here it is useful to examine the practice of other courts and tribunals. For example, the Appeals Chamber (but not the Trial Chamber) of the International Criminal Tribunal for the Former Yugoslavia declared itself competent to review a Security Council decision for the specific purpose of deciding that the Tribunal had been validly established.[75] The Court of First Instance of the European Communities (CFI) has been faced with challenges to the EU measures implementing the asset freeze on Taliban funds that was imposed by Security Council Resolution 1267.[76] While upholding the laws and the general primacy of resolutions under Article 103 of the UN Charter the CFI also held that it had the right

> to check, indirectly, the lawfulness of the resolutions of the Security Council in question with regard to *jus cogens*, understood as a body of higher rules of public international law binding on all subjects of international law, including the bodies of the United Nations, and from which no derogation is possible.[77]

The European Court of Human Rights indicated strong reluctance to involve itself in areas within the Security Council's sphere of action when it decided to strike out applications against certain NATO governments made by three Kosovar Albanians who had claims concerning certain alleged KFOR and UNMIK acts of omission and commission in Kosovo.[78]

One widely held view is that Security Council resolutions might be challenged and set aside if they violate rules of *jus cogens*, but not if they are inconsistent with other rules of international law. Were the matter to come before the ICJ, it could well take that view. However, there are potential problems in such reviewability of Council decisions, as the following exploration of accountability indicates.

[74] For a useful survey taking into account recent developments, see Karl Zemanek, 'Is the Security Council the Sole Judge of its Own Legality? A Re Examination', in August Reinisch and Ursula Kriebaum (eds.), *The Law of International Relations — Liber Amicorum Hanspeter Neuhold* (Utrecht: Eleven International Publishing, 2007), 483–505. His conclusion is clear: 'Yes, under present circumstances and presumably for some time to come, the Security Council is in fact the sole judge of its own legality. Even though it shouldn't be.' (p. 505.)

[75] ICTY Appeals Chamber, *Prosecutor* v. *Duško Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 Oct. 1995, *International Legal Materials* 35 (1996), 38–41.

[76] SC Res. 1267 of 15 Oct. 1999, on the situation in Afghanistan.

[77] Case T 306/01 *Ahmed Ali Yusuf and Al Barakaat International Foundation* v. *Council and Commission* (2005) paras. 270–82, and Case T 315/01 *Yassin Abdullah Kadi* v. *Council and Commission* (2005) paras. 219–31. See also Case T 253/02 *Chafiq Ayadi* v. *Council*, and Case T 49/04 *Faraj Hassan* v. *Council and Commission*. All of these cases are currently the subject of appeals at the Court of Justice of the European Communities. In addition, see the UK case of *Al Jedda* v. *Secretary of State for Defence*, [2007] UKHL 58, in the House of Lords in 2007 where arguments concerning Art. 103 arose.

[78] European Court of Human Rights, Grand Chamber, Decision on the Admissibility of *Behrami* v. *France* and *Saramati* v. *France, Germany and Norway*, 2 May 2007. Available at www.echr.coe.int/echr

Accountability of the Council

The power of the Security Council gives rise to the question of its accountability. Accountability is an elusive concept, especially when applied to international organizations, where it has no generally recognized meaning, content, or consequences.[79] In practice, as discussed at the end of this section, accountability often boils down to the fact that governments and indeed people keep an eye on the UN generally and the Council in particular, and will clip the UN's wings in one way or another if they do not agree with its policies.

More formal conceptions of 'accountability' comprehend two notions: the duty to give an account (*of* one's conduct), and the liability to be held to account (*for* one's conduct). The particular difficulties inherent in applying these notions to international organizations derive largely from the difficulty of separating out (except at an abstract legal level) the organization itself from the states that compose it, and are compounded when the concept is applied not to the international organization as such but to an *organ* of the organization.

The first notion (the duty to give an account of oneself) attaches relatively easily to a 'subordinate' organ, but this is not so for a 'primary' (or in Charter terms 'principal') organ: a subordinate organ reports up to its parent organ, but to whom does a primary organ naturally report? The Charter requirement for the Security Council to submit an annual report to the General Assembly looks, on examination, to have more to it of gesture than of substance, as there is nothing in practice that the plenary organ can do with the report once received except debate it.[80] The greater value in the reporting requirement might therefore be its secondary effect, in requiring that the Council at regular intervals draw up an account of what it has

[79] For a discussion of accountability and the Security Council, see Ruth W. Grant and Robert O. Keohane, 'Accountability and Abuses of Power in World Politics', IILJ Working Paper 2004/7, Global Administrative Law Series, available at www.iilj.org/papers/2004/2004.7.htm These authors suggest two models for accountability: the power wielder can be held accountable either to the persons affected by the exercise of power (the participation model) or to those who delegate power to the body that wields it (the delegation model). They explore the delegation model further, and reject the participation model, given the lack of a clear global 'demos'. The international law literature on the accountability of international organizations is thin, the only comprehensive study being the one done by the International Law Association in 2004. See International Law Association, *Report of the Seventy first Conference* (London: ILA, 2004), 164 234. The report brings out in some detail that, even while it is not possible to offer an ecumenical definition of the term 'accountability' and its consequences, it is possible to isolate a number of characteristic elements, give and take the consid erable degree of variation that would have to be admitted when fitting them to the circumstances of particular international organizations. Available at www.ila hq.org/html/layout committee.htm then following in turn the links for list of committees; former committees which have completed their work; and accountability of international organizations.

[80] Analogous problems arise out of the annual report of that other autonomous organ, the International Court of Justice, though there at least the Assembly is directly responsible for providing the Court's budgetary resources.

been doing. But even that effect is diminished if the Assembly has no power to lay down what the report has to cover.

As to the second notion (the liability to be held to account), one might make some practical sense of it in the case, say, of a body composed of individuals or of experts; but even in the case of a subordinate organ, what sense can one make of it when the organ is composed of states? The question is especially pertinent in view of the fact that the Security Council is a primary organ; and given the nature of the powers conferred on it by the UN Charter.

The question is better approached by analysing the institutional relationships expressed or implied in the structure and terms of the Charter, in the light of the two basic notions referred to above. The Charter's drafting history suggests strongly that, even while the composition of the Council and its voting rules were being focused upon, no conscious attention was devoted to 'accountability' in any of the senses here discussed. The concept of the 'Four Policemen' that dominated US/UK and Soviet thinking was inimical to accountability, based as it was on a wholly different axiom: that the victorious Great Powers carried with them an inherent endowment of authority for the maintenance of the peace, which they were graciously disposed to exercise thenceforth through the mechanisms of the new world organization.

Paragraphs 2 and 3 of Article 24 of the Charter state:

> 2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
>
> 3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

There is thus an inner tension between, on the one hand, conferment of (or recognition of) 'sovereign' prerogatives in the Council under the relevant Chapters, and on the other hand the bow in the direction of the Purposes and Principles of the Charter and the reporting requirement to the General Assembly. This is a tension which the Charter itself does nothing to resolve. Article 24 does however at least identify the two directions in which 'accountability' might be made manifest: internally towards the General Assembly as the plenary organ of the organization, and/or externally towards the member states, viewed as the parties to the Charter, which is a binding treaty.

Another form of 'liability to be held to account' might be thought to lie, literally, in accounting – in the General Assembly's power, under Charter Article 17, to 'consider and approve the budget of the Organization'. However, when the Security Council embarks on a costly new initiative such as setting up a peacekeeping operation, the costs are borne through special budgets over which the General Assembly has much less control than it has over the regular budget. In respect of both the regular and special budgets, member states are obliged under the Charter to pay compulsory assessed contributions on percentage scales agreed by the General Assembly. None of this adds up to a direct system of Security Council accountability at the hands of the General Assembly as a whole. Indeed, the General

Assembly has much less direct financial control over the Security Council than it does over the International Court of Justice. However, when certain states withhold parts of their dues, as has happened frequently in UN history, they may be seeking to exercise pressure either against the General Assembly (e.g. for its particular apportionment of dues) or against the Security Council (e.g. for involving the UN in a peacekeeping operation with which the withholding state disagrees). Such withholding of dues is a violation of Articles 17 and 19 of the Charter.[81]

The third possibility, hinted at above, is review before the International Court of Justice. However, this is separate only in form: in substance it could arise only as either a request for an Advisory Opinion at the instance of the General Assembly (a form of internal accountability towards the plenary organ), or in a contentious case (an attenuated form of external accountability towards a member state as treaty party). The reviewability of Security Council decisions before the International Court of Justice has dazzled many jurists, drawing largely on analogies from domestic constitutions. While judicial review of the Council was plainly not part of the founders' original intention, that may not be the end of the matter. More important than the abstract question of whether the ICJ might, in a suitable set of circumstances, pronounce itself competent to enquire into the 'legality' of a Council decision, is whether the means would be available to make it a practical reality. As to that, the practitioner's view would be heavily preoccupied with questions such as: Who would be entitled to bring review proceedings, and against whom would they be directed (given that the Council as such, like the UN organization as a whole, is not capable of being party to a case before the Court)? Who would defend the proceedings, and on what authority? What remedies could the ICJ be asked to give, and against whom? And above all – given the Charter mandate for the Council to be able to act at any time as a matter of urgency – could the procedures of the Court itself manage the speed of response that would be needed? All that, taken together, suggests that the domestic constitutional analogy has little validity: the normal domestic model is in reality *ex post facto* review leading potentially to the invalidation of governmental decisions after the event: the implications of that for Security Council decisions that had already taken effect under Chapter VII might be little short of revolutionary.

In the absence of any clear Charter base for 'accountability' as such, the materials are sparse and disparate. 'Review' by the ICJ is a wholly hypothetical idea, devoid of political reality or any workable legal framework. Conversely, external responsibilities towards the member states might occasionally generate a specific liability of the UN organization as a whole towards an individual state, but hardly in such a way (and let alone with such a frequency) as to form a nucleus for a system of

[81] For a useful discussion of how the provisions of Art. 17 have been implemented in practice, and how the development of peacekeeping has been accommodated, see Simma (ed.), *Charter of the United Nations*, vol. I, 343–9.

regular accountability. The accountability of the Security Council becomes therefore largely if not exclusively an internal matter, one about the relationships between the separate principal organs of the organization, in which these relationships merge with their relationships to the member states singly or collectively. If these relationships are not wholly about politics and power, such legal elements as are present are nevertheless subject to politics and power for their effect.

The idea of Security Council accountability faces two additional difficulties, both of which can be serious within states and are even more problematic when an international body is involved. First, in light of the very extensive powers granted to the Council to take action necessary for the maintenance of international peace and security, accountability is particularly hard to pin down. Experience from domestic legal systems suggests that these are precisely the sort of areas where the Courts defer to the Executive, and decline to substitute their assessment of a situation, or what the situation demands, for those of the constitutional branch charged with those responsibilities. A second problem, suggested earlier in our discussion of 'proper authority', is that complaints about the Security Council are as likely to be about omissions as about actions (i.e. failure to act at all; or failure to act in this situation by contrast with others). Long practical experience within states, and some international experience, suggests how difficult it is for a judicial process to cope with omissions, and to construct a workable mandamus remedy against public authorities.

This negative assessment of certain formal ideas of accountability should not imply any dismissal in principle of the core notion that an organ such as the Security Council is accountable for its omissions as well as its actions, or that this accountability expresses itself in various observable ways. It serves only to point to the conclusion that in this case accountability is essentially political, and therefore unpredictable. Moreover, such accountability becomes in practice hard to separate from the numerous constraints that operate on the Council. While the various elements of such accountability and constraint are hard to systematize, they can include the following:

- The control exercised by the General Assembly in making elections to the Council. In many cases this is too tenuous and long-range to amount to much: however, support from their like-minded groups which candidates depend upon in order to get elected carries with it some expectations of future behaviour that might imply a form of control, though whether it would be beneficial is another question entirely.
- The fact that the Council is nowadays called upon to manage and confront crises on a rolling basis, with decision following decision as events develop (i.e. quite different from the Cold War pattern according to which the Council would make an occasional foray, leave behind a resolution, and then retreat). The scope, therefore, is greater for the political reaction to earlier decisions to shape the detail and even direction of later ones. But for that to happen the

Council's processes have to open themselves to that sort of influence, and its resolutions have to be seen more as policy instruments than tablets of stone.
- The capacity for states to undermine Council resolutions through shoddy compliance and spurious implementation, and through their decisions on the provision or otherwise of contingents for peacekeeping or other forces or bodies. They have also at times illegally withheld payments due to the UN.

Even though the operation of such means of pressure may be chaotic and disruptive, these are critically important constraints on the Council. In formal terms they are not part of a system of accountability, but Council decisions are powerfully influenced by them.

Influence on the development of international law

The Security Council has a real, but not great, influence on the development of international law.[82] Its reactions to uses of armed force in situations such as the Middle East wars give it the opportunity to make plain its view of the legality of specific actions and thus to refine the meaning and understanding of concepts such as self-defence. Among the clearest instances were its affirmations in resolutions in September 2001 that it regards 'any act of international terrorism, as a threat to international peace and security', and that 'the inherent right of individual or collective self defence' exists in relation to terrorist attacks.[83] However, such instances are not the general rule. The Council shows no great enthusiasm for a role as authoritative interpreter of the law, and prefers to concentrate on attempts to agree upon practical steps to address the crisis rather than on pursuit of the delights of debates over doctrine and taxonomy.

Much more significant is the Council's role in establishing international criminal tribunals, on a variety of models, to deal with allegations of serious crimes committed during the conflicts in the former Yugoslavia, Rwanda, Cambodia, Sierra Leone, and Lebanon.[84] The tribunals do not all have the same form. The Yugoslav and Rwanda tribunals are true international criminal tribunals established by the Council using its Chapter VII powers. No state can refuse to recognize these tribunals, and the use of the Council powers gives them as much legitimacy as the international legal system can muster. The other tribunals, in contrast, were not set up by Security Council fiat but by means of agreement negotiated between the UN and the parties.[85] These tribunals, which are hybrid national–international tribunals, may apply

[82] The classic study is Rosalyn Higgins, *The Development of International Law Through the Political Organs of the United Nations* (London: Oxford University Press, 1963).

[83] SC Res. 1368 of 12 Sep. 2001 and SC Res. 1373 of 28 Sep. 2001.

[84] See Cesare P. R. Romano, André Nollkaemper, and Jann K. Kleffner, *Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004).

[85] See, for example, the UN paper describing the genesis of the Lebanon tribunal: UN doc. S/2006/893 of 15 Nov. 2006.

equally high standards of justice, and be equally effective, though they appear to have faced greater challenges to their legitimacy. The move towards the 'negotiated' model may signal a desire on the part of the Council to distance itself from the details of conflict management, leaving it with a role focused more on strategy and on support for efforts made by states directly involved.

Changes in the Incidence of War since 1945

There have been significant changes in the incidence and character of armed conflict in the UN era, as compared with earlier periods. Arguably, these changes have been influenced by the role of the Security Council; certainly, they have affected its work and even changed its role. In brief summary, four propositions can be advanced about a possible reduction in the incidence and toll of war since 1945:

1. In the period since 1945, and especially since the mid-1970s, the incidence of interstate wars has declined as compared with earlier periods.
2. The death toll from interstate wars is also less than in earlier periods.
3. Colonial wars, as fought by European countries in their overseas possessions, declined dramatically following the demise of the European empires in the period from 1945 to the 1970s.
4. Since 1945, and especially since the 1970s, a principal form of armed conflict has been civil wars and other conflicts in which at least one of the parties is not, or not yet, a state. In cases where outside powers become directly involved in such wars, they can be described as 'internationalized civil wars'.

The decline of international war: Facts and figures

The statistical study of war, on which such propositions depend, is fraught with difficulty. Five problems stand out. First is the notorious difficulty of determining what constitutes a war: whether to include certain forms of political violence that assume a character that is different from interstate war, and whether to view certain distinct campaigns or periods as part of a single war or as separate entities. The second problem is that it is artificial to count each war (however defined) as simply one unit, when wars vary greatly in severity: casualty figures may be a better guide than the mere fact of war. Third is the difficulty of getting accurate information about the number of casualties in a particular conflict. Fourth is the selection of time periods for evaluation:

comparisons between different periods can be misleading. Fifthly, extrapolation from present trends into the future is dangerous. For these and other reasons, various statistical studies of war have come up with some different figures and different conclusions about the incidence, causes, and changing character of war.

However, an impressive number of statistical studies of the incidence of armed conflict support the four propositions that were outlined above. Figures 1.1 and 1.2, based in part on databases maintained by the Oslo Peace Research Institute and the Uppsala Conflict Data Program, illustrate the decline in the incidence of international wars.

Figure 1.1, based on statistics indicating that between 1816 and 2002 there were 199 international wars (including wars of colonial conquest and liberation), shows a considerable decline in such wars, which is particularly marked for the period since around 1980.

Figure 1.2 shows a decline within the period since 1945 in more detail. It shows four types of armed conflict, as follows:

1. *Extra-systemic armed conflict.* Colonial war between an external army and an indigenous force.
2. *Interstate armed conflict.* War between sovereign states.
3. *Internationalized internal armed conflict.* Civil war in which one side or both receive external support, including the participation of foreign troops.
4. *Internal armed conflict.* Civil war within a state.

As the two figures show, any diminution of war that there has been is far from amounting to its elimination. It may or may not continue: there have been periods before of relatively low levels of interstate war. In any case, there have still been numerous wars since 1945, including many with an international dimension. Nonetheless, as regards the category of interstate armed conflict since the mid-1970s, the diminution appears to be enough of a reality for its causes to be worth investigation. This diminution is especially noteworthy as the number of states has been at an unusually high level in this very period – as indicated by the increase in UN membership from 51 in October 1945 to 192 at the end of 2006.

Causes of the decline in international armed conflict

What are the possible explanations for this claimed decline? The *Human Security Report* for 2005 sets out a series of factors that may account for the diminution in the incidence of war since the 1980s:

- A dramatic increase in the number of democracies. In 1946, there were 20 democracies in the world; in 2005, there were 88. Many scholars argue that this trend has reduced the likelihood of international war because democratic states almost never fight each other.

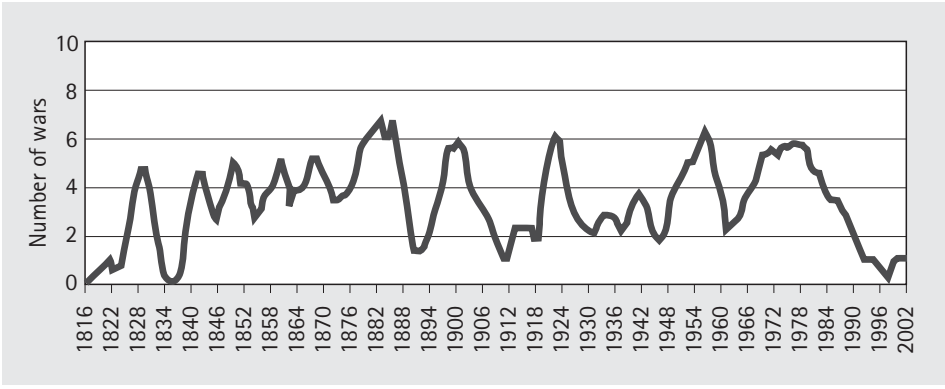

Fig.1.1 Incidence of international wars 1816–2002 (expressed as a five-year moving average)

Source: Data in Kristian Skrede Gleditsch, 'A Revised List of Wars Between and Within Independent States, 1816 2002', *International Interactions* 30 (2004), 231 62. This version is based on the table as published in the annual publication of the Human Security Centre of the University of British Columbia, *Human Security Report: War and Peace in the 21st Century* (New York: Oxford University Press, 2005), 148.

- An increase in economic interdependence. Greater global economic interdependence has increased the costs of cross-border aggression while significantly reducing its benefits.
- A decline in the economic utility of war. The most effective path to prosperity in modern economies is through increasing productivity and international trade, not through seizing land and raw materials. In addition, the existence of an open global trading regime means it is nearly always cheaper to buy resources from overseas than to use force to acquire them.

Only the very end of the extract mentions the growth in international institutions as a possible explanation for the declining trend: 'The greatly increased involvement by governments in international institutions can help reduce the incidence of conflict. Such institutions play an important direct role in building global norms that encourage the peaceful settlement of disputes. They can also benefit security indirectly by helping promote democratisation and interdependence.'[86]

In addition to the explanations for the decline in interstate war considered by the *Human Security Report*, there are other important possibilities:

- **Nuclear weapons.** The UN era has coincided with the nuclear age. On 16 July 1945, just three weeks after the signing of the UN Charter, the first test of an atomic bomb took place, at Alamogordo, New Mexico. In 1949 the Soviet Union followed suit. While it involved terrible risks, the incorporation of nuclear weapons into their armouries undoubtedly induced an element of caution in relations between major powers – and also in the policies of some of their allies.

[86] *Human Security Report 2005*, 148 9.

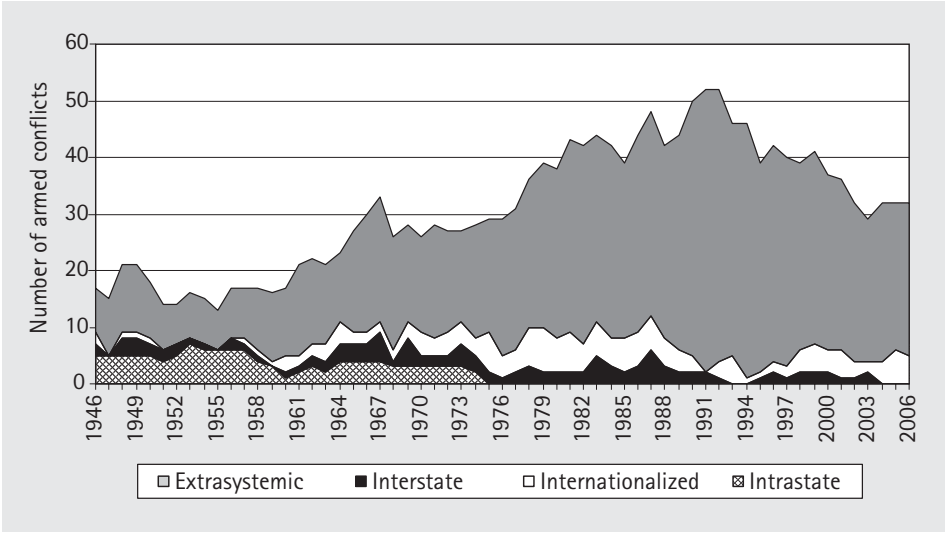

Fig.1.2 Incidence of four types of armed conflicts 1945–2006

Source: data assembled jointly by the International Peace Research Institute in Oslo and the Uppsala Conflict Database. Obtainable at www.pcr.uu.se/database/index.php. This graph was published in Lotta Harbom and Peter Wallensteen, 'Armed Conflict, 1989 2006', *Journal of Peace Research*, 44, no. 5 (Sep. 2007), 623 34.

This critically important development overlapped with the role of the UN Security Council – not least because, from 1971 onwards, the five recognized nuclear powers were also the five Permanent Members of the Council. Subsequently, the development of nuclear weapons by Israel, India, Pakistan, North Korea, and others indicated that the vision of the Security Council Permanent Members as forming the club of nuclear responsibles and maintaining a system of nuclear non-proliferation was not working. It appeared that a number of states outside the P5 had little confidence in the UN security system, and preferred to rely on their own means of deterrence.[87]

- **Claimed advantages of bipolar/unipolar structure of international relations.** In some writings on international relations it is claimed that multipolar international systems are more war-prone than other types; and also that the international system since 1945 can be properly described as bipolar up to the end of the Cold War and unipolar thereafter. While both parts of this claim are open to contestation, it merits consideration as one possible level of explanation.[88]
- **A widespread reaction to the excesses of two world wars.** In this view, the same factors that led to the creation of the UN also, independently of the organization,

[87] For a classic short exposition of this argument, see Kenneth N. Waltz, *The Spread of Nuclear Weapons: More May Be Better,* Adelphi Paper no. 171 (London: International Institute for Strategic Studies, 1981).

[88] See Kenneth Waltz, 'The Stability of a Bipolar World', *Daedalus* 93, no. 9 (1964), 881 909.

contributed to a determination not to repeat mistakes of the past. This determination led, for example, to the development of regional international organizations – including the European Union, whose explicit purpose was to make another war in Europe unthinkable.[89]

- **Change through non-violent methods.** A great deal of political change in the post-1945 period, and especially from the 1980s onwards, has been achieved through non-violent methods, as distinct from war and civil war. Such methods are not confined to purely constitutional change. In particular, there has been a noteworthy increase in the phenomenon of civil (i.e. non-violent) resistance against authoritarian regimes and empires. Cases include the resistance to the Marcos regime in the Philippines in 1986, the eastern European movements leading to change in 1989, the action against the coup in the Soviet Union in August 1991, and the revolutions in Serbia, Georgia, and Ukraine in the years after 2000.[90]

Granted the variety of possible explanations of the reduction of interstate war, it would be unwise to rush to make ambitious claims for the effectiveness of international institutions in general, the UN in particular, or the Security Council in even more particular. Even though the UN deserves some credit, much of it may be due to other parts of the system as distinct from the Council.

The UN Charter and the organization it created are based on a multi-pronged approach to the elimination of war between states, with the emphasis on equal rights and self-determination of peoples, and on the importance of tackling economic, social, cultural, and humanitarian problems. Against this background, the particular tasks assigned to the Security Council can be likened to those of accident and emergency services, which are one part of the public health systems of states, but are far from being the only, or even the most important, determinants of public health.

Yet it is possible that the Council deserves some credit for the reduction in the incidence and human costs of international war – a task that it was designed to address, on which it has been taking action of various kinds for over six decades, and in respect of which significant results can be shown. The decline of colonial wars may also owe something to the role of the UN in assisting the process of decolonization and providing a framework of rules and institutions in which post-colonial states can operate effectively.

[89] See John E. Mueller, *Retreat from Doomsday: The Obsolescence of Major War* (New York: Basic Books, 1990).

[90] See Adam Roberts, *Civil Resistance in the East European and Soviet Revolutions,* Einstein Institution Monograph Series no. 4 (Cambridge, Mass.: The Albert Einstein Institution, 1991); and Adam Roberts, Timothy Garton Ash, and Thomas Davies (eds.), *Civil Resistance and Power Politics* (Oxford: Oxford University Press, forthcoming).

The problem of civil wars and other forms of conflict

While a reduction of interstate war may be a cause for cautious celebration, the problems of civil wars, and the growth of terrorism since the late 1960s, have persisted. In many cases these phenomena can be viewed as consequences of European decolonization – leaving in its wake, all too often, a transition that was perceived as only half-complete, and new states that lacked legitimate institutions and borders. Then after 1989 the collapse of the two communist federations of Yugoslavia and the Soviet Union left similar problems. Throughout the entire period since 1945, civil wars have been a principal preoccupation of the Council.

In many cases the problem of civil wars was compounded by the involvement of outside powers, often on both sides, creating the new and little-recognized category of 'internationalized civil war'. For example, successive wars in Afghanistan and Bosnia had this character, as did the war in Vietnam in the 1960s and early 1970s.

Civil wars, whether or not internationalized, present particularly difficult problems for international bodies. In such wars, violence and terrorism can easily become endemic in society. Not only is there seldom a clear case of 'aggression', but also it is not obvious what is the status quo ante to be restored. Civil wars often have a 'winner takes all' character, making mediation and conciliation particularly difficult. There are inherent hazards in treating governments and insurgents as equal parties in a negotiation, yet refusal to do so may lead to the collapse of diplomatic efforts. As if these problems were not enough, outside powers typically see particular civil wars in very different ways, and therefore have great difficulty in agreeing on a strong course of action. All these problems, and more, have been experienced by the UN Security Council throughout its existence.

Weaknesses and Strengths of the Security Council's Record

The performance of the Council is the subject of sharply differing interpretations. Some have seen it as a failure – and there is no denying that it has fallen short of the goals set for it in the Charter. Others have seen it as a partial success – for example because of the diminution in interstate war, and the value attached to great power collaboration, however limited and flawed it may be. It should be possible to make a more fine-grained and evidence-based judgement than this classic 'glass half-empty' versus 'glass half-full' debate would suggest.

Our summary of the weaknesses and strengths of the Council's record is necessarily imperfect. The Council's record is not always easily separable from

that of other UN agencies, particularly the General Assembly. Moreover, aspects of the record of both these bodies can be deeply ambiguous, and therefore hard to categorize as either strength or weakness. For example, there is ample evidence from wars in the UN era – especially those between Israel and its Arab neighbours, and between India and Pakistan – that concern about impending UN Security Council and General Assembly ceasefire resolutions has led armed forces and governments to rush to achieve their objectives quickly, before the pressure for a ceasefire (especially if supported by the US) becomes irresistible.[91]

Weaknesses in the Council's record

The Council has faced substantial criticism concerning both its legitimacy and effectiveness in addressing the problem of war, and in authorizing the use of force. It has been criticized when it has acted, and also when it has failed to act. Major controversies about the Council's role have revolved round the following ten issues:

- **Inaction**. This has been a persistent theme throughout the Council's history. Its relevance in addressing international crises is called into question by the fact that there have been numerous occasions on which it has been unable to reach decisions about particular wars and threats of war, whether because of lack of interest of major powers, resistance of those involved in a conflict, or a threat or use of the veto. The inaction of the Council or of forces operating under it has been notable not only in crises connected to the Cold War, but also in relation to such events as the Iran–Iraq War (1980–8) and the mass killings in Rwanda (1994).
- **Intelligence**. In many conflicts and crises it has been painfully evident that the UN has lacked its own reliable intelligence, with the results that it was at risk of being misled by a member state, and lacked an independent capacity to respond quickly to fast-moving events. While it may not be feasible for the UN to develop an independent capacity to collect secret intelligence, it does need to develop an effective system for sharing and evaluating intelligence in certain particular issue areas.[92]
- **Weak assessment of situations**. Operating as it does with imperfect information, the Council has occasionally either characterized conflicts in questionable ways (e.g. by maintaining neutrality towards belligerents when circumstances had cast doubt on such a stance), or shown unnecessary haste in rushing to judgment (e.g. with its resolution in March 2004 blaming the Madrid bombing on ETA).[93]

[91] Such governmental concern about the effect of the General Assembly's ceasefire resolution was evident in the Suez crisis in Oct. Nov. 1956. See e.g., on Israeli attitudes, Maj. Gen. Moshe Dayan, *Diary of the Sinai Campaign* (London: Weidenfeld & Nicolson, 1966), 127 9; and on Anglo French attitudes, Anthony Nutting, *No End of a Lesson: The Story of Suez* (London: Constable, 1967), 131 5.

[92] See Simon Chesterman, *Shared Secrets: Intelligence and Collective Security*, Lowy Institute Paper 10 (Sydney: Lowy Institute for International Policy, 2006).

[93] On the day of the Madrid bombing, the Council passed SC Res. 1530 of 11 Mar. 2004, stating that it '*Condemns* in the strongest terms the bomb attacks in Madrid, Spain, perpetrated by the terrorist

- **Difficulty in agreeing on military action.** The Council is generally better at agreeing on ends than on means. It has often had great difficulty in deciding on follow-up action, including the use of force, even when the policies it advocated had been openly challenged. In particular cases such disagreement on the Council may be positive. However, two serious consequences can flow from failures to agree on specific military action. First, to the extent that it becomes a pattern it risks creating a perception of the Council as a body whose bark is worse than its bite, or which stands by while terrible crimes are committed. Secondly, in cases where there has been an initial authorization to use force but then there is disagreement on how this should be followed up, the net effect may be that uncontrollable leeway is left in the hands of the authorizee. This was part of the problem over Iraq in 2003, when a key question raised was the extent to which pre-existing authorizations to states or coalitions continued when the Council was unable to agree on new ones.
- **Lowest common denominator.** There has been a tendency to pursue 'lowest common denominator' policies – that is, those on which agreement is easy to reach. Such policies often relate to short-term and immediate problems, but do not tackle the underlying issues at stake in a conflict. Thus in many crises the Council has justifiably called for immediate ceasefires, arms embargoes, and for urgent humanitarian action, but it has been less effective in agreeing policies and actions that would bring about a resolution of the issues that gave rise to the resort to arms.
- **Uneasy relations with the US.** The relationship of the Council with its most powerful member, the US, has proved perennially difficult. On the one hand, at least since the time of the Korean War (1950–3) there has been a tendency to view the Council as essentially under US dominance, and therefore a mere instrument of power politics rather than a cure. This view, which is so corrosive of the UN's legitimacy, has had a revival in the post-Cold War era because of the significance of the US role in the Council and in its interventions around the world. On the other hand, within the US political system there have been repeated criticisms of the UN, including expressions of frustration that the UN framework entangles the US in a complex and unsatisfactory decision-making system, and places disproportionate burdens on the US. Since 1945 the US has tended to see itself, rightly or wrongly, as a major provider of security outside a UN framework, for example through its network of alliances: against this background, the additional obligations arising from Council membership are sometimes presented as unnecessary additions to an already heavy burden.

group ETA on 11 March 2004'. On this occasion the member states were not acting with sufficient judiciousness. There was no need to attribute the bombing to any particular group at that stage. It was obvious at the time, and confirmed later, that a likely source of the bombing was an Islamic extremist group, and not the Basque organization ETA.

- **Violations of the Council's resolutions by its members.** In some cases Council members, including members of the P5, have violated the terms of a resolution for which they had voted previously on the Council, possibly because they had come to see its provisions as ineffective or damaging. One case in point is the arms embargo in the former Yugoslavia in 1991–5: there was connivance by the US and others in the acquisition of weapons from outside by several of the governments involved, including those of Bosnia and Croatia. Other examples, arguably more damaging in their effects, were the various breaches of the sanctions against Iraq in 1991–2003: these included trading with Iraq, and also toleration of large-scale smuggling activities between Iraq and neighbouring states. Some of these developments helped to precipitate the Iraq crisis of 2003.
- **Poor management of force.** The Council, and the UN more generally, has sometimes proved ineffective at actually managing the use of force. Because the Council has not been involved in managing force directly, this is primarily a question of the poor quality of certain mandates. For example, during UNPROFOR's involvement in the former Yugoslavia there was strong criticism that the UN had set over-elaborate procedures, and over-precise rules, for the use of military force for protection of the 'safe areas', so that, for example, force could only be used on a 'dual-key' arrangement, and even then only against 'smoking guns' responsible for violations, and not more generally against the forces that had instigated such violations.
- **Corruption and weak control of operations.** Actions initiated by the Council have in some instances been marred by corruption scandals – including in connection with the oil-for-food programme which operated from 1995 to 2003 as part of the Council's sanctions regime against Iraq.[94] There have also been instances of corruption in connection with contracts for supplying certain UN peacekeeping operations;[95] and of unethical sexual conduct by UN peacekeeping personnel.[96] These cases have raised the question of whether the Council's

[94] See Paul Volcker, *The Management of the United Nations Oil for Food Programme* (New York: 7 Sep. 2005). One of a series of five major reports of the Independent Inquiry into the UN Oil for Food Programme chaired by Volcker, it stated (at pp. 2 5) that the UN needed stronger executive leadership and also major administrative reform; but also stated that the members of the Security Council must shoulder their share of the blame for uneven and wavering direction of the programme.

[95] One reported case of corruption in connection with supplies for UN peacekeepers concerned Compass, a major catering enterprise, which announced in Oct. 2006 that it had agreed to pay up to £40 million to settle two lawsuits brought against it by rival food companies for allegedly bribing a Russian UN official with hundreds of thousands of dollars to win contracts worth millions of pounds to supply UN peacekeepers. Hans Kundnani, 'Compass Settles Claims of Bribery in UN Contracts', *The Guardian* (London), 17 Oct. 2006, 27. In the course of 2006 an array of new measures were introduced at the UN to make the organization more transparent, accountable, and ethical. In November 2006 Chris Burnham, retiring as UN Under Secretary General for Management, summar ized these measures. *UN News Service*, 15 Nov. 2006, available at www.un.org/apps/news

[96] The problem of sexual abuse and exploitation by blue helmets surfaced in 2004. In 2005 a UN report found that a 'shockingly large number' of peacekeepers had engaged in such practices in the Democratic Republic of Congo (DRC), with payments for sex sometimes ranging from two eggs to

members have involved themselves sufficiently in the framing and implementation of its policies.

- **Role of dustbin/punchbag.** The UN in general, and the Security Council in particular, has continued to have the role as a convenient dustbin into which states can throw issues on which they do not have the will or capacity to act; or as a punchbag to hit when other possible targets of their wrath are more difficult to criticize. This role reinforces the other weaknesses listed here.

Some of these weaknesses help to explain why the Council's handling of a number of crises discussed in this book – including Arab–Israel problems since 1947, Iraq's invasion of Iran in 1980, the killings in Rwanda in 1994, and those in Darfur since 2003 – has been deplorable. The fact that the Council's record suffers from some or all of these defects is widely accepted. In many countries and traditions of thought there are strong criticisms of the UN's performance in the security field: the idea that there is a monopoly of such criticism in the US is wide of the mark.

Yet even if there is truth in all these criticisms, the Council is not necessarily a failure. When people assert that the Council has failed, it is worth enquiring by what standard are they judging it, and what exactly does their judgement mean? If the Council's performance is judged against a high standard – for example, as a means of replacing force with law, as a presumed alternative to national defence efforts, or as a provider of the ambitious collective security scheme that the UN Charter is widely perceived as representing – then it is obviously a failure. If, alternatively, it is judged according to the benchmark of whether it has contributed to a modest degree of stability and progress in international relations in at least some of the crises with which it has been confronted, then it is at least a partial success.

Strengths in the Council's record

A large array of claims can be made for the effectiveness of the Security Council. The eight most important are:

- **Assisting the reduction in the incidence of international war.** While it does not amount to the removal of the scourge of war at which the Charter aimed, the reduction in the number and human cost of interstate wars in the period since 1945 is significant. Many other factors, institutions, and processes have contributed to this outcome, but the role of the Council in it is not negligible.
- **Opposing major invasions aimed at taking over states.** A classic issue that any international organization in the security field must face is a major attack by one

$5 per encounter. The victims included many abandoned orphans who were often illiterate. The UN responded with policy decisions and disciplinary action. By the end of Nov. 2006, 319 peacekeeping personnel in all missions had been investigated. These probes resulted in the summary dismissal of 18 civilians and the repatriation on disciplinary grounds of 17 police and 144 military personnel information from peacekeeping pages of UN website, including www.un.org/Depts/dpko/dpko accessed 5 Jan. 2007.

state upon another. The Council's prompt responses to certain attacks (Korea 1950, Kuwait 1990) have reinforced the message, which also has other origins, that aggression does not pay. The fact that the Council has failed to respond to certain other major attacks (such as Iraq's invasion of Iran in 1980) weakens this message but does not invalidate it.

- **Peacekeeping forces.** Between 1945 and 2006 the UN, mainly through the Council, set up sixty-one bodies classified as peacekeeping operations. Thirteen of them were established between 1948 and 1978 – the remaining forty-eight in the period from 1988 to 2006. These operations have been used in both international and internal conflicts. In a number of these cases UN peacekeepers have helped to stabilize a volatile situation; and in particular have prevented local conflicts from becoming battlegrounds for great power confrontation.
- **Providing a framework for assisting major changes in international relations.** Arguably, the two most important changes in the structure of international relations in the UN era have been the process of decolonization, and the end of the Cold War. While both of these developments have multiple causes, the framework provided by the UN in general, and the Security Council in particular, can be seen as having assisted them, and also as having provided a framework within which post-colonial and post-Soviet states could assert their independence and develop relations with other states.
- **Adapting to new developments.** The Council's activities in the sphere of international peace and security have expanded to take account of new developments, particularly in international humanitarian law, international criminal law, international efforts to assist the emergence and consolidation of democratic practices in states, and international efforts to combat nuclear weapons proliferation and global terrorism.
- **Assisting the diffusion of norms.** The Council has played a key role in the articulation and diffusion of norms, both new and existing. One long-standing example is the principle of self-determination, which both Permanent and Non-permanent Members have pressured the Council to promote in its resolutions. More recently, The Council's statements and actions have contributed to the development of the ideas of human security, and also the Responsibility to Protect.
- **Governance in war-torn and failed states.** The Council has gradually developed a capacity for assisting the re-establishment of the functions of government, including democratic processes, in states that have undergone civil war or external domination. Four leading cases are Cambodia (1992–3), Kosovo (1999–), East Timor (1999–), and Afghanistan (2001–). In all these cases large numbers of refugees returned: in Afghanistan there were more than four million returnees in the period 2002–6.
- **Great power cooperation.** The Council, involving continuous interaction and negotiation, has assisted in maintaining a degree of understanding and cooper-

ation between great powers both during and after the Cold War, including in securing agreement on basic norms and helping to settle certain regional conflicts. Even when such agreement has been elusive, the Council has provided a forum for major powers to signal their intentions and the 'red-lines' beyond which they should not be pressed.

Many other claims have been, or could be, made for the Council.[97] Some involve undramatic but important actions, such as sending missions to establish facts on particular conflicts and to work out the basis for peace agreements.[98] Arguably, the Council has learned something from the ineffectiveness and shocking side-effects of some past cases of sanctions, and is moving towards using better-targeted measures. As for the future, in an era when it is sometimes argued that there is a need for preventive use of force to ward off future threats to international peace and security, the UN Security Council is the one body in the world that has the explicit and undisputed legal right to take preventive action against such threats.

Plan of the Book

To examine these issues, the book is divided into four parts. Part I (Chapters 2 to 4) lays the groundwork by describing the establishment of the Security Council, and exploring the meaning of the UN Charter provisions regarding the Council and the use of force. Chapter 2, examining the creation of the Council, argues that the privileges of the five Permanent Members, in particular their veto power, were aimed at creating a great power oligarchy to secure peace after the Second World War rather than a general system of collective security. Furthermore, it highlights the flexibility of the system established at Dumbarton Oaks and San Francisco, a theme that also runs through the other two chapters in this section, on the Charter limitations on the use of force (Chapter 3), and the proposals for a standing UN force, foreseen in the Charter but never realized in practice (Chapter 4).

Part II (Chapters 5 to 10) is thematic, examining the Council's different roles. Chapters 5 and 6 assess the relationship between the Council and key member states and with the General Assembly, and discuss its decision-making processes, in particular with regard to war. Chapter 5, analysing the relationship between the great powers and the Council, describes this relationship as Janus-faced: while

[97] For a well informed and positive view of the UN's roles by a distinguished US legal expert, see Michael J. Matheson, *Council Unbound: The Growth of UN Decision Making on Conflict and Post conflict Issues after the Cold War* (Washington, DC: US Institute of Peace Press, 2006).

[98] Reports of many Security Council missions may be found at www.un.org/Docs/sc/missionreports.html

the Council is a tool of the great powers, it also constrains them, as great powers have to accept its rules to maintain the legitimacy of the institution. Chapters 7 to 9 discuss some of the key instruments available to the Council to address the challenges of war: peacekeeping (Chapter 7), economic sanctions (Chapter 8), and the authorization of regional organizations to use force to implement its resolutions (Chapter 9). They show how the practice of the Council has evolved in particular since the end of the Cold War in response to the changing nature of conflict; with peacekeeping missions growing in complexity, including developmental and reconstruction tasks in addition to the traditional separation and monitoring of conflict parties; and a move to 'smarter' and more targeted sanctions, aiming to limit their detrimental humanitarian impact. Chapter 10, examining the Council's position in the post-Cold War world, highlights how the Council is constrained by the national interests of the most powerful states, and its reliance on their willingness to implement its decisions. In general, the chapters in this thematic part show that despite the many changes since the end of the Cold War, the success of measures enacted by the Council is still largely subject to the political and structural constraints that have characterized the UN since 1945.

Part III (Chapters 11 to 22) contains case studies, in roughly chronological order, examining the nature and scope of the Council's role in conflicts during and after the Cold War. The case studies are not a complete record of the Council's efforts to address the challenges of war since 1945, but highlight different kinds of Council involvement – political, military, and economic – in wars; the different degrees of Council involvement, ranging from virtual absence to deep commitment; and the varying degrees of success. The case studies underline the political character of the Council's role, with the nature and the degree of involvement more often than not determined by the political and strategic priorities of the five Permanent Members, rather than the local requirements for peace. This assessment also strongly emerges from the analysis in Chapter 22, where the reasons for non-involvement of the Council are examined. The case studies in this part seek to address such questions as:

- Did the existence and actions of the Council significantly affect events in the conflict?
- What were the main views and theories with regard to the role of the Council in the conflict?
- How did the role of the Council change over the time of the conflict?
- What were the attitudes of the main actors towards the Council?
- How should the Council's role be evaluated?
- What might the Council usefully have done that it did not do?

Part IV (Chapters 23 to 28) discusses some of the Council's responses to the changing character of war, looking mainly at developments in warfare in the post-Cold War period, and the ways in which the Council has both shaped them and responded to them. Three main themes are explored – all of them reflecting

extraordinary changes in the tasks faced by the Council since it was formed in 1945. The first theme is the role of the Council in promoting and responding to an emerging 'solidarist consensus', with a greater role for humanitarian concerns. While Chapter 23 discusses the Council's involvement in the application and development of humanitarian law, Chapter 24 examines how the Council has responded to humanitarian crises within states by widening its definition of what constitutes a threat to international peace and security. Both chapters show how humanitarian issues have played a significant and frequently problematic part in the Council's activities. The second theme explored in Part IV is the Council's role in post-conflict governance, either through international transitional administrations (Chapter 25), or in providing a framework for a military occupation as in Iraq after 2003 (Chapter 26). Finally, this part addresses the Council's response to the emergence of new, non-state actors involved in conflicts: international terrorist networks (Chapter 27), and private security companies (Chapter 28). The Council's responses to these challenges are noteworthy for their flexibility – as reflected in the Council's expanded understanding of 'threats to international peace and security', which now encompasses not only humanitarian emergencies inside countries, but also the problems of state failure and terrorism. This expansion of its framework of action has led the Council to concern itself with the development of new institutions such as transitional administrations with comprehensive governance mandates, and the establishment of Security Council committees to monitor and support states' counterterrorism efforts.

In addition to these four parts, the book has seven appendices. They provide a comprehensive overview of the major areas of Security Council action: UN peacekeeping operations, UN forces and missions not classified as peacekeeping operations, UN-authorized military operations, UN-authorized sanctions, vetoed Council resolutions, and the uses of the 'Uniting for Peace' resolution. The final appendix lists major wars and conflicts since 1945.

While this book explores the different roles the Council has played in addressing the challenges of war since 1945, and its effectiveness or otherwise in them, it cannot be a complete record. Certain prominent peacekeeping operations, such as UNFICYP in Cyprus, UNTAC in Cambodia, or UNTAG in Namibia, are not examined on their own as specific case studies, but they are considered elsewhere in the book, mainly in the thematic chapters. Similarly, the Council's role in application of major force (whether by certain peacekeeping forces, or by authorized forces) does not have a separate chapter, but is raised in the context of UN standing forces (Chapter 4), peacekeeping (Chapter 7), the role of regional organizations (Chapter 9), and several of the conflicts examined, in particular the Korean War (Chapter 11) and the 1991 Gulf War (Chapter 17). The Council's many failures, including over Rwanda and Darfur, are not discussed separately, but are mentioned in several places, including Chapter 4, on UN forces, Chapter 22, on the non-involvement of the Council in certain wars, and Chapter 24, on humanitarian intervention. Certain regions are

under-represented here, particularly Latin America. We take full responsibility for these omissions. All we can say in mitigation is that, like the Security Council itself, this book has been at constant risk of being over-extended by the range of problems with which it might be expected to cope.

We have included a wide range of opinions. We invited contributors on account of their expertise, not because we agreed with them. While the contributors broadly share our view that the practice of the Security Council is richer, more complex, and more subtle than any prescriptive theory, not all of them would necessarily subscribe to all the assessments of the Council's role advanced in this Introduction. Here, too, this book reflects the realities of the Security Council itself, where different worldviews, different interests, and different understandings of the UN's roles all come together in a continuous process in which, at least sometimes, the end product may be more than the sum of the parts.

PART I

THE FRAMEWORK

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CHAPTER 2

A COUNCIL FOR ALL SEASONS: THE CREATION OF THE SECURITY COUNCIL AND ITS RELEVANCE TODAY

EDWARD C. LUCK

It is commonplace to observe that the range of threats to international peace and security being addressed by the UN Security Council today is far broader than that envisioned by the founders of the world body at Dumbarton Oaks, Yalta, and San Francisco more than six decades ago. For instance, according to the International Commission on Intervention and State Sovereignty, 'the issues and preoccupations of the 21st century present new and fundamentally different types of challenges from those that faced the world in 1945, when the United Nations was founded.'[1] Likewise, the High-level Panel on Threats, Challenges and Change convened by Secretary-General Kofi Annan contended that 'the preoccupation of the United Nations founders was with State security. When they spoke of creating a new system of collective

[1] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), 3.

security they meant it in the traditional military sense: a system in which States join together and pledge that aggression against one is aggression against all.'[2] Noting that 'our Organization, as an organization, was built for a different era', Secretary-General Kofi Annan called for an urgent, even radical, overhaul of the Security Council and other intergovernmental bodies.[3]

Fair enough, most of the matters on which the Council spends its time these days – peacekeeping, peace-building, genocide, terrorism, and weapons of mass destruction – were not even mentioned in the Charter. Undoubtedly the founders were determined, first and foremost, to devise an international instrument that could help prevent the outbreak of a third interstate war of global proportions in the twentieth century. But did they have a narrow, rigid, or singular view of the nature of war and the security challenges most likely to confront the Council in the post-war years? And, more to the point, did they therefore tailor the Council and its tools in such a way as to be best suited to prevent a third world war (such that it was hence ill-equipped to address contemporary challenges)? This chapter answers both queries in the negative, while advancing three related propositions:

- First, while the founders were united in their determination to defeat the Axis powers and to build a more effective collective security apparatus than the League of Nations proved to be, they also recognized the danger of planning for a single contingency. They were determined as well, therefore, to avoid erecting a static defence, an institutional Maginot Line, based on a narrow and rigid conception of the direction and nature of future threats.
- Secondly, they strove – successfully – to reserve for the Security Council the maximum possible decision-making flexibility as a political body, unencumbered

[2] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, synopsis, para. 11. The Panel goes on to note, however, that the founders 'also understood well, long before the idea of human security gained currency, the indivisibility of security, economic development and human freedom'. This was certainly true of the American, Chinese, and, to a lesser extent, British planners, but the Soviets were initially reluctant to dilute what they hoped would be a single minded focus on military security in the new body. See, for example, the account of then Secretary of State Edward R. Stettinius, Jr, who claimed that at Dumbarton Oaks 'the Soviet Union, and to a lesser extent Churchill, did not seem to understand the American concern for an organization that was broader than just a security organization.' *Roosevelt and the Russians: The Yalta Conference* (Garden City, NY: Doubleday and Company, 1949), 17. One of the leading British architects of the UN, the historian Charles K. Webster, credits US leadership with the creation of the economic, social, and functional organs of the UN system. 'The Making of the Charter of the United Nations', *History*, 32, no. 115 (Mar. 1947), 20.

[3] *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 2 Mar. 2005, para. 154. See also 'Address to the General Assembly', UN doc. SG/SM/8891 GA/10157 of 23 September 2003. Yet a few years before, in September 1999, he had a very different message for the General Assembly: 'In response to this turbulent era of crises and interventions, there are those who have suggested that the Charter itself with its roots in the aftermath of global inter State war is ill suited to guide us in a world of ethnic wars and intra State violence. I believe they are wrong': UN doc. SG/SM/7136 of 20 Sep. 1999.

by too many predetermined rules and guidelines. As the self-appointed Permanent Members of the Council, the four convening powers plus France ensured at San Francisco that, when they could agree, the Council would be in a position to respond to a theoretically unlimited range of possible threats at a time and in a manner of its choosing. This rather open-ended conception of the Council's mandate was widely accepted by the other founding members as well. At the same time, of course, the Permanent Members did not want to be obligated to act on security problems of lesser interest to them. This gap in the initial conception naturally caused considerable consternation among the smaller and more vulnerable countries represented at San Francisco.

- Thirdly, while the inequities built into the Security Council's voting and decision-making rules, particularly the veto power for the five Permanent Members, proved highly controversial at the founding conference in San Francisco, the convening powers would not bend on these core elements of their vision. Agreed upon at Dumbarton Oaks and Yalta beforehand, the veto and permanent membership were designed to transform a wartime alliance into a big power oligarchy to secure the hard-won peace that would follow. The convening powers offered concessions on numerous other points in the draft Charter in order to persuade other prospective member states to go along with this one-sided bargain, but would not budge at all on these core arrangements (or on keeping the bar high for efforts to amend them in the future).

The founders, in short, as pragmatic diplomats and policy-makers in the midst of a world war, wanted a Security Council for all contingencies. They were much less interested in conceptions of warfare than in who would make the critical decisions. Moreover, on the issue of decision-making, their priorities were performance, unity, and control, not equity. The concluding section of the Chapter addresses, rather briefly and superficially, the current debates over Security Council reform in the context of these three propositions. It contends that today's polarized struggles largely echo those played out in San Francisco more than six decades ago. It argues that, however asymmetrical and inequitable these arrangements may have appeared then (or now), they have, on balance, given the Council a weight, sustainability, and flexibility that has served the UN (and, to a less certain extent, peace and security) reasonably well over the past six decades. Facing conditions and threats unimaginable by the founders, the Council remains as relevant to the contemporary security environment as it did in 1945, even as a variety of regional, sub-regional, and ad hoc arrangements have emerged to help carry the burden.[4]

[4] For an elaboration of this thesis, see Edward C. Luck, *The UN Security Council: Practice and Promise* (London: Routledge, 2006).

Multiple Threats

From its earliest conception, the United Nations was to be an all-purpose peace and security mechanism. Neither the planners in the great powers of the day nor the negotiators at Dumbarton Oaks, the wartime conferences, or San Francisco displayed any doubts on this score. The 'Tentative Proposals for a General International Organization' presented by the US State Department on 18 July 1944, for instance, stated that the 'executive council should be empowered to determine the existence of any threat to the peace or breach of the peace, and to decide upon the action to be recommended or taken to maintain or restore peace'.[5]

This broad-based approach to the determination of both threats and international responses reflected the initial thinking of US President Franklin Delano Roosevelt and British Prime Minister Winston Churchill, as they floated public trial balloons in early 1943. In February 1943, Churchill shared with Roosevelt his famous 'Morning Thoughts: A Note on Postwar Security', which featured his notion of a global organization backed by a series of regional arrangements. He foresaw the establishment by the wartime allies of 'a world organization for the preservation of peace', coupled with British and American efforts 'to organize a coalition resistance to any act of aggression committed by any Power' and to do 'the good work of preventing such tendencies to aggression before they break into open war'.[6] Though Gladwyn Jebb, then a Counsellor in the British Foreign Office, complained bitterly that the Prime Minister's remarks on regionalism had not been squared with the policy planning underway in the Foreign Office, with its own Four Power Plan, he did comment that 'the only hopeful feature was that where the PM's proposals were vague they were, like the Atlantic Charter, capable of being adapted to almost any scheme for a world system that might eventually be approved by Cabinet.'[7]

Roosevelt, in contrast, made a public virtue of an open security architecture in terms both of threats and responses. In an April 1943 newspaper article based on a series of interviews with the President, Forrest Davis noted Roosevelt's 'doubts that a group of finite statesmen can imprison the future in a rigid world system'.[8] Instead, the President preferred the sort of 'simple, flexible and workable body of arrangements under which the American republics manage their collective affairs'.[9] While he '[did] not rule out the employment of this country's power in the interest

[5] US Department of State, *Postwar Foreign Policy Preparations, 1939 1945* (Washington, DC: US Government Printing Office, 1949), 600 1.

[6] Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States 1940 1945* (Washington, DC: Brookings Institution, 1958), 104.

[7] Gladwyn Jebb, *The Memoirs of Lord Gladwyn* (New York: Weybright and Talley, 1972), 122.

[8] Forrest Davis, 'Roosevelt's World Blueprint', *The Saturday Evening Post*, 10 Apr. 1943, 21.

[9] Ibid., 110.

of collective security for limited objectives and in specific instances', the President 'oppose[d] blanket commitments in advance, even one so diluted as Article X of the League Covenant'.[10] No doubt Roosevelt wanted to avoid the kind of Senate opposition that had been fed by the open-ended commitment implied by Article X's pledge to 'undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League'. For the United States, domestic politics, as well as strategic considerations, dictated a loose conception not only of security but also of America's responsibilities for its preservation. As the leading military power of the day, the US had strong reasons for avoiding specific or binding commitments in any case.

Moscow and London generally shared this perspective though, given their troubled neighbourhoods, both tended to emphasize the goal of preventing future German militarism more than did Washington, with its more global strategy. This, of course, was a prime reason for Churchill's early attraction to a mixed regional and global approach to security. For Churchill, post-war organization needed to accomplish three major tasks: retaining London's balancing influence on the European continent, maintaining, to the extent possible, the British empire, and ensuring US engagement with global security.[11] As Foreign Secretary Anthony Eden (Earl of Avon) wrote in 1944, 'only by encouraging the formation of some World Organization are we likely to induce the Americans, and this means the American Senate, to agree to accept any European commitments designed to range America, in case of need, against a hostile Germany or against any European breaker of the peace.'[12] Though accounts vary markedly on the degree of Stalin's enthusiasm for the emerging post-war organization, there is no doubt about the high priority he attached to any potential it might have for preventing another round of German aggression.[13] If there was going to be a post-war order, he surely

[10] Ibid.

[11] For accounts of British post war planning during the Second World War, see Adam Roberts, 'Britain and the Creation of the United Nations', in Roger Louis (ed.), *Still More Adventures With Britannia: Personalities, Politics and Culture in Britain* (London: I. B. Tauris, 2003), 229 47; E. J. Hughes, 'Winston Churchill and the Formation of the United Nations Organization', *Journal of Contemporary History* 9, no. 4 (Oct. 1974), 177 94; Geoffrey L. Goodwin, *Britain and the United Nations* (New York: Manhattan Publishing Company, 1957), 3 48; Anthony Eden, *The Reckoning* (Boston: Houghton Mifflin Company, 1965); and Gladwyn Jebb, *Memoirs*.

[12] Eden, *The Reckoning*, 517.

[13] For Soviet interest in preventing a re emergence of a German threat, see C. Dale Fuller, 'Soviet Policy in the United Nations', *Annals of the American Academy of Political and Social Science*, 263 (May 1949), 141 4 and Robert C. Hilderbrand, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (Chapel Hill, NC: University of North Carolina Press, 1990), 45. Hilder brand argues that Stalin took the creation of post war organization quite seriously (see pp. 44 7), while Fuller contends that 'Marshal Stalin during World War II evidenced little ardor for the proposed United Nations organization' (p. 142). Though Rupert Emerson and Inis L. Claude, Jr ascribe rather narrow motivations to Soviet participation in the UN, they point out that, because of the amount of 'international business' transacted there, 'as a great power, as an expanding power, and as a threatened power, the USSR could not afford to be absent from it': 'The Soviet Union and the United Nations: An

did not want to leave it entirely in the hands of the capitalist powers. With only a transitional government, France did not participate in the early planning, Dumbarton Oaks, or the wartime conferences.[14] Its reaction to the Dumbarton Oaks proposals, as well as its performance in San Francisco, however, suggest an understandable concern with the organization's capacity for and will to undertake a rapid and forceful response to aggression. In its view, 'nothing, in fact, would be more dangerous than a system which would have more or less the appearance of guaranteeing the peace and security of everyone without having the capacity to do so. For such a system would lead to a relaxation of vigilance which would encourage aggression.'[15]

China, another victim of naked aggression, initially took a more legalistic and less flexible approach to security definitions and commitments under the Charter. Neither British nor Soviet leaders were enthusiastic about including China among the great powers, something Roosevelt strongly advocated, and Stalin refused to have direct dealings with the Chiang Kai-shek regime.[16] This left the Chinese out of the critical October–November 1943 Foreign Ministers' Conference in Moscow and relegated them to a truncated second round of the Dumbarton Oaks deliberations in the late summer and early autumn of 1944 (the first phase included the Soviet Union, the UK, and the US, while the latter two joined China for the shorter second phase). US State Department reviews of the Chinese proposals for discussion at

Essay in Interpretation', *International Organization* 6, no. 1 (Feb. 1952), 25. Adam B. Ulam and Alexander Dallin, two prominent Sovietologists, provided decidedly cynical readings of Soviet attitudes toward the world body: see *Expansion and Coexistence: The History of Soviet Foreign Policy, 1917 67* (New York: Frederick A. Praeger, 1968), 372 4 and 380 81, and *The Soviet Union at the United Nations: An Inquiry into Soviet Motives and Objectives* (New York: Frederick A. Praeger, 1962), 22 5, respectively. To add to the confusion, two high level American officials at Yalta, Secretary of State Edward R. Stettinius, Jr, and his successor, James F. Byrnes, had dramatically opposed interpretations of the degree of Stalin's preparations for discussing Security Council voting formulas at Yalta. Byrnes is dismissive (*Speaking Frankly* (New York: Harper and Brothers, 1947), 37 8), while Stettinius gives Stalin the benefit of the doubt (*Roosevelt and the Russians*, 148 9).

[14] While Churchill and Roosevelt consistently advocated a place for France among the Council's Permanent Members, Stalin had his doubts. As late as the Yalta Conference in February 1945, Stalin reportedly told Roosevelt that 'it was unrealistic . . . for De Gaulle to insist upon full rights with the Big Three, in view of the fact that France had not done much fighting in the war': Stettinius, *Roosevelt and the Russians*, 100.

[15] *Memorandum of the French Government on International Organization and Text of Proposed French Amendments to the Dumbarton Oaks Proposals* (1945), 3. For a forceful exposition of a similar argument from a leading American commentator, see Walter Lippmann, *U.S. Foreign Policy: Shield of the Republic* (Boston, MA: Little, Brown, 1943).

[16] For Churchill's doubts about China, see Evan Luard, *A History of the United Nations*, vol. 1: *The Years of Western Domination, 1945 1955* (London: Macmillan Press, 1982), 19; and for Eden's, see *Reckoning*, 424. Then US Secretary of State Cordell Hull provides an account of the extent of American efforts to persuade the Soviets to accept a Chinese signature on the Four Nation Declaration, agreed at the Moscow conference, that committed them to the establishment of a post war organization. This step, in essence, allowed China to be one of the four sponsoring powers for the San Francisco conference. *The Memoirs of Cordell Hull*, vol. II (New York: The Macmillan Company, 1948), 1256 7, 1265, 1281 3, 1299, 1301, and 1306 7.

Dumbarton Oaks found them to be overly idealistic and too focused on international law and on economic and social issues.[17] At Dumbarton Oaks, the Chinese delegation, as the Soviets had at the earlier round, called for a definition of aggression, perhaps through 'an illustrative list' of acts to be proscribed.[18] China saw this as both a way to boost public confidence in the new security organization and as a deterrent to would-be aggressors. In addition, the Chinese advocated the inclusion in the Charter of a provision guaranteeing respect for the political independence and territorial integrity of member states.[19] These ideas, however, were firmly rebuffed by the American and British delegations, as in the first phase with the Soviets.

At both Dumbarton Oaks and San Francisco, the insistence by Washington and London on keeping the Security Council free of too many principles, guidelines, and definitions that might inhibit its range of choice and responses won the day. At the founding conference, Australia and New Zealand pressed vigorously the case for the addition of firm guidelines for Security Council action.[20] The New Zealand delegation, for example, noted the dilemma between the need to intervene in cases of atrocities committed against domestic minorities, as in Nazi Germany, and the 'extreme difficulty in finding a form of words that would allow sufficient latitude for the Organization to act in such matters and at the same time to make it plain that the sovereign rights of all members were not to be attacked'.[21] During the decisive debate over the veto, the Soviet Union cautioned that 'the Charter should not be looked upon as a code but as a summary of main principles governing the activities of the future organization.'[22] Warning against 'formulating precise answers to every question that might arise', a delegate from the United Kingdom contended that 'the probable consequence would be that commitments would be made on questions which in practice might never arise.'[23] As a Chinese delegate put it:

> Just as the framers of the Constitution of the United States, by not attempting to write out all possible interpretations beforehand, had provided the basis for the emergence of a great world power, so, it would be wiser for the framers of this Charter to leave some questions to the future. In this way, the Security Council and the Assembly would be able to respond to the needs of future times.[24]

[17] Hilderbrand, *Dumbarton Oaks*, 231.

[18] China Institute of International Affairs, *China and the United Nations* (New York: The Manhat tan Publishing Company, 1959), 32.

[19] Hilderbrand, *Dumbarton Oaks*, 238 9 and China Institute of International Affairs, *China and the United Nations*, 31.

[20] Herbert Vere Evatt, *The United Nations* (Cambridge, MA: Harvard University Press, 1948), 36; and New Zealand Delegation to the United Nations Conference on International Organization, San Francisco, *Report on the Conference* (Wellington: Department of External Affairs, 1945).

[21] New Zealand Delegation, *Report*, ibid., 28. In their view, the ultimate language on Article 2(7) left sufficient leeway for the Council to act when necessary to respond to such atrocities with Chapter VII enforcement measures.

[22] *Documents of the United Nations Conference on International Organization*, vol. XI (New York: United Nations, 1945), 474.

[23] Ibid., 475 6.

[24] Ibid., 458.

From Dumbarton Oaks to San Francisco, the Chinese position had clearly shifted decisively to the flexibility–adaptability side of the debate. Though unenthusiastic about the veto, Canada favoured allowing the common law to develop over time through Council practice over trying to impose strict guidelines at San Francisco.[25]

As the historian Charles K. Webster, one of the leading British planners, put it, at San Francisco, 'the smaller states pressed for detailed definition of all the occasions on which Great Power concurrence would be necessary', but 'when forced to define future actions, states, like individuals, try to safeguard themselves against unforeseen contingencies.'[26] The British government, noted Adam Roberts, 'wanted a strong Security Council, free to act in a variety of situations'.[27] According to Grayson Kirk, a political scientist from Columbia University who served in San Francisco as the Executive Officer of Commission III on the Security Council, the founding conference agreed that 'the Council has full discretion in deciding when a situation is a genuine "threat".'[28] In his view, 'the final decision on this point [definitions] completely rejected the notion, advanced by many jurists over a period of decades, that it is feasible to set up a satisfactory definition of aggression. The sense of the decision was that, in the broadest sense of the term, enforcement action was a political as well as a juridical act.'[29] In including the phrase 'threat to the peace' in Article 39 of the Charter, Kirk points out, the founders determined that 'it is not necessary . . . for the Council to wait until an actual breach of the peace has occurred before it invokes the use of its own coercive measures.'[30] The Charter places no restriction on the Council's right to make such a determination, other than the generic rule in Article 24(2) that the Council 'shall act in accordance with the Purposes and Principles of the United Nations'.

Given the hyperactivity of the Security Council in recent years, it would be easy to assume that the debate in San Francisco was between great powers seeking freedom to intervene at will and smaller powers trying to curb such tendencies. Actually, both sides of the argument were much more nuanced than that. As John Foster Dulles, a member of the US delegation at San Francisco, assured the US

[25] *Documents of the United Nations Conference on International Organization*, vol. XI (New York: United Nations, 1945), 459.

[26] Webster, 'Making of the Charter', 35.

[27] Roberts, 'Britain and the Creation of the United Nations', 235.

[28] Grayson Kirk, 'The Enforcement of Security', *Yale Law Journal* 55, no. 5 (Aug. 1946), 1088.

[29] Not every delegation at San Francisco, of course, was satisfied with the Council deciding what was a political or legal matter. Some felt that such questions would be better left to the International Court of Justice (ICJ). See, for example, statements by Peru and Uruguay: *Documents of the United Nations Conference on International Organization*, vol. XII (New York: United Nations, 1945), 75 and 82 4, respectively. Belgium suggested that in some cases it would be 'desirable to strengthen the juridical basis of the decisions of the Security Council' by first seeking an advisory opinion of the ICJ: ibid., 48 50. This proposal was soundly rebuffed, however, by the argument of the United Kingdom, South Africa, and Byelorussia, among others, that such a procedure would cause delays and play into the hands of the aggressor: ibid., 65 6.

[30] Kirk, 'The Enforcement of Security', 1089.

Senate, the weaker countries were more concerned that the Council would not act than that it would.[31] Having suffered so much over the course of the war, many smaller states were looking for security assurances, if not guarantees, by urging definitions and guidelines that would push the major powers to act when their smaller neighbours were threatened.[32] The French rapporteur on enforcement arrangements, Joseph Paul-Boncour, tried to reassure smaller delegations that they should not 'imagine that the very great latitude thus left to the Council would retard its action or diminish its effectiveness'.[33]

Supporters of a Bolivian amendment to define aggression nevertheless contended that 'the Organization must bind itself to oppose lawless force by lawful forces in certain cases where action should be obligatory.'[34] The group of large and small countries opposing the Bolivian motion, on the other hand, argued as follows:

> Any attempt to make Council action automatic would be dangerous for it might force premature application of sanctions. The safest course would be to give the Council discretion to decide when an act of aggression had been performed. The six nonpermanent members of the Council could veto action in such circumstances.[35]

Wary of the Senate's allergy to binding commitments, American delegates were particularly keen for the Council to retain maximum flexibility.[36] In reference to Article 39, Secretary of State Edward Stettinius reported to the US President that 'if any single provision of the Charter has more substance than the others, it is surely this one sentence, in which are concentrated the most important powers of the Security Council. It leaves wide latitude to the discretion of the Security Council.'[37] By his count, 'an overwhelming majority of the participating governments were of the opinion that the circumstances in which threats to the peace or aggression might occur are so varied that the provision should be left as broad and as flexible as possible.'

The US was hardly alone in celebrating the Council's relative freedom of choice in determining the nature of a conflict and the appropriate response. M. Paul-Boncour reported that his committee had rejected all amendments that 'might endanger the Council's freedom of judgment',[38] while affirming the proposal from Dumbarton

[31] US Senate Committee on Foreign Relations, *The Charter of the United Nations*, Hearings, Jul. 9 13, 1945, 79th Cong., 1st Sess. (Washington, DC: Government Printing Office, 1945), 642 3.

[32] See, for example, statements by Ethiopia, Australia, Iran, Bolivia, and the Philippines, *Documents of the United Nations Conference on International Organization*, vol. XII, 31 3, 66 7, 341, and 348.

[33] Ibid., 450.

[34] Ibid., 342. The Bolivian motion was defeated 22 to 12 (349).

[35] Ibid., 342.

[36] For example, the US was quick to remind the delegates at San Francisco that a Council finding of a threat to the peace would not necessarily compel any enforcement action by the Council: *Documents of the United Nations Conference on International Organization*, vol. XII, 66. For a more detailed discussion of this point, see Edward C. Luck, 'Article 2(4) on the Non Use of Force: What Were We Thinking?', in David Forsythe, Patrice C. McMahon, and Andrew Wedeman (eds.), *American Foreign Policy in a Globalized World* (London: Routledge, 2006), 74 5.

[37] Edward R. Stettinius, Jr, *Report to the President on the Results of the San Francisco Conference* (Washington, DC: Department of State, Jun. 26, 1945), 90 91.

[38] *Documents of the United Nations Conference on International Organization*, vol. XII, 447, 449, and 504 5.

Oaks 'to leave to the Council the entire decision as to what constitutes a threat to the peace, a breach of the peace, or an act of aggression'.[39] With little discussion and unanimous judgement, the Subcommittee on Drafting interpreted 'broadly' the Dumbarton Oaks suggestion that the Council be empowered to 'investigate any dispute whatever, or any situation "which may lead to international friction or give rise to a dispute" '.[40] Charles Webster claimed that the British delegation deserved credit for amending the Dumbarton Oaks proposals in a manner that 'increased the power of the Security Council to pronounce the merits of a dispute'.[41] Likewise, the Chinese applauded the addition of the 'provisional measures clause' (now Article 40) at San Francisco to bolster the Council's flexibility.[42]

Though the Security Council had been decided upon prior to the first use of an atomic weapon, the founders did not see this as a disabling liability in dealing with this new threat. Webster, for example, asserted that those who claimed atomic energy had made the UN out of date were wrong, as the UN's machinery – especially that of the Security Council – 'provides a centre, a method and a body of principles by which all of these problems can be resolved'.[43] Leland M. Goodrich and Edvard Hambro, two veterans of San Francisco from the US and Norway respectively, commented that the somewhat vague provisions of the Charter had permitted 'a more liberal exercise of the right of self-defense' in the face of Cold War divisions and the advent of atomic weapons.[44] Likewise, the founders did not see the Council as the exclusive international instrument for addressing the myriad of security threats likely to emerge over time. According to Leo Pasvolsky, the US State Department's point man throughout the planning and deliberations, the existence of the International Court of Justice (ICJ) and regional arrangements could help 'to keep the Security Council from being snowed under by all sorts of disputes and difficulties which can and should be handled without reference to it'.[45] In this, as in many things, he was prescient.

Flexible Response

From the beginning of the planning process, the assumption of Security Council flexibility in deciding when to act was echoed by a similar preference for leeway in

[39] *Documents of the United Nations Conference on International Organization*, vol. XII, 448 and 505.
[40] Ibid., 117.
[41] Webster, 'Making of the Charter', 35.
[42] China Institute of International Affairs, *China and the United Nations*, 50 1.
[43] Webster, 'Making of the Charter', 38.
[44] Leland M. Goodrich and Edvard Hambro, *Charter of the United Nations: Commentary and Documents*, 2nd edn. (Boston, MA: World Peace Foundation, 1949), 107.
[45] Pasvolsky, 'Dumbarton Oaks Proposals', Address to the United Nations Institute on Post War Security (Washington, DC: Government Printing Office, 1944), 8 9.

how it might choose to respond. As mentioned previously, the US State Department's 'Tentative Proposals for a General International Organization of July 1944', for instance, asserted that the 'executive council should be empowered to determine the existence of any threat to the peace or breach of the peace, and to decide upon the action to be recommended or taken to maintain or restore peace'.[46] Much of this proposed language, of course, survived scrutiny at both Dumbarton Oaks and San Francisco to become part of the Charter. According to Leo Pasvolsky, the Big Four at Dumbarton Oaks sought to create 'flexible machinery' given the varied contingencies the Council was likely to face.[47] The Council was to 'have full authority to take whatever measures are necessary to maintain or restore peace'.[48] As Grayson Kirk put it, in commenting on the enforcement provisions of the Charter, 'freedom to decide when to apply coercive measures is matched by an equal discretion as to what measures may be taken.'[49]

At San Francisco, the convening powers were hardly alone in their determination to allow the Council to choose from a variety of tools for dealing with threats to the peace. There was little dissent on this score. Recognizing that the use of collective force might be necessary 'in a few hours or a few days', the Norwegian Chair of Commission III on the Security Council, Ambassador Wilhelm M. Morgenstierne, declared that the Charter's enforcement provisions 'go to the very heart of our aspirations for a world of peace and security'.[50] It was, in the words of French rapporteur Paul-Boncour, 'the progress of the technique of modern warfare' that demanded such a flexible response.[51] Similarly, the French government's commentary on the Dumbarton Oaks proposals observed that the nations of the world were attempting 'to elaborate the chart of a new international organization in a period when progress gives to means of aggression a character of decisive efficacy and speed'.[52] When Uruguay suggested adding more specific details about the Council's Military Staff Committee, 'the wisdom was questioned of attempting to write into the Charter such specific details', and the proposal was subsequently withdrawn.[53]

The most consequential step at San Francisco toward codifying the Council's freedom of choice, however, was based on a Canadian initiative. In order to confirm and clarify the general consensus that the Council should be free to determine the sequence in which it utilized its Charter-based tools, N. A. Robertson of the Canadian delegation proposed amending the language of what was to become Article 42 on the use of armed force to maintain or restore international peace and security. The Canadian language clarified that the Council could decide to take military action

[46] US Department of State, *Postwar Foreign Policy Preparations*, 600 1.
[47] Leo Pasvolsky, 'Dumbarton Oaks Proposals', 11.
[48] Ibid., 9.
[49] Kirk, 'The Enforcement of Security', 1089.
[50] Lawrence E. Davies, 'Commission Votes Enforcement Plan', *New York Times*, 13 Jun. 1945.
[51] *Documents of the United Nations Conference on International Organization*, vol. XII, 505.
[52] *Memorandum of the French Government on International Organization*, 3.
[53] *Documents of the United Nations Conference on International Organization*, vol. XII, 361 2.

either if it considered other measures to 'have proved to be inadequate' or if it considered that lesser steps 'would be inadequate'.[54] In discussing this addition, the Chairman of the Coordination Committee, Leo Pasvolsky, asserted that 'the Security Council was empowered to take any measures deemed necessary in any sequence.'[55] This interpretation was confirmed by the Secretary of Committee III/3, which had addressed this provision.[56] By adding the phrase 'would be inadequate' at San Francisco, the founders, in Grayson Kirk's view, insured that the Council's 'discretion, thus, is virtually absolute in choosing the type of coercion which it considers best adapted to meet the situation at hand'.[57] While in recent years high-level UN officials have frequently proclaimed that the employment of force should be a last resort, clearly that is not what the founders had in mind.[58]

The leeway given the Council, however, was not confined to the order of coercive measures to be employed. It also extended to the choice of coercive or non-coercive instruments. Kirk reports that a central question before the delegates was: 'would the Council be required to exhaust all the means of pacific settlement at its disposal before it could apply military measures?'[59] In his words,

> The general principle adopted, and the one which runs consistently throughout the Charter, was that the Council should have the greatest possible flexibility in handling a situation which menaced the peace of the world. A companion principle was that respon sibility for all action should be lodged exclusively with the Council. These two conceptions formed the basis for all the decisions taken. Both conceptions were adopted in light of League experience. As matters now stand, there is no fixed point which must be reached before the Council can resort to means of coercion.[60]

Secretary Stettinius confirmed this interpretation in his report to US President Harry S. Truman on the results of the San Francisco conference. 'The sequence of Articles 41 and 42 does not mean that the Council must in all cases resort to non-military measures in the first instance', he reported. 'While ordinarily this would be the case, since crises generally take a long time to develop, in a case of sudden aggression the Security Council may resort at once to military action without proceeding through an intermediary step, and the language of Article 42 has been refined to make this clear.'[61]

One of the more consistent themes invoked at San Francisco by delegations from throughout the world was the need for prompt and decisive action by the Security

[54] *Documents of the United Nations Conference on International Organization*, vol. XII, 74.

[55] Ibid.

[56] Ibid. The Secretary was another political scientist from Columbia University, William T. R. Fox.

[57] Kirk, 'The Enforcement of Security', 1089.

[58] See, for example, 'Secretary General Proposes Strategy for UN Reform to General Assembly', UN doc. SG/SM/9770 of 21 Mar. 2005 and High level Panel, *A More Secure World: Our Shared Responsi bility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, para. 207(c).

[59] Kirk, 'The Enforcement of Security', 1088.

[60] Ibid.

[61] Stettinius, *Report to the President on the Results of the San Francisco Conference*, 93.

Council. As Secretary Stettinius related to the US President, the Council 'is to be in continuous session in order to assure that at all times it feels the pulse of the world and is prepared to take appropriate remedial measures when the earliest symptoms of irregularity become apparent'.[62] In his view, 'enforcement measures, in order to be effective, must above all be swift.'[63] Therefore, efforts either to enlarge the Council or to give the General Assembly some voice in its decisions 'were eventually discarded in the interest of greater speed and certainty of enforcement action, but only after a vigorous discussion in which certain of the smaller nations, especially some which had experienced occupation by the enemy, gave strong support to the position of the great powers'.[64] Likewise, US Senator Warren R. Austin sought, and received, reassurance at the Senate hearings on the Charter that Article 37 on the peaceful settlement of disputes would not 'delay the application of armed force to the situation while [the Council] considers the merits of the issue'.[65] In responding, Leo Pasvolsky underlined that 'the Council does not have to wait until there is a determination of who is right and who is wrong. The problem is to stop the fighting or to remove the threat to the peace as soon as possible.'[66]

According to the *New York Times*, Article 43 on standby arrangements for the mobilization of member state forces for use by the Security Council 'was viewed generally by delegates as "the most important single paragraph" in the whole United Nations Charter'.[67] Some countries, such as France, would have preferred to have had established a full-time standing international force. As Maurice Dejean, the Director-General of the French Foreign Ministry, put it, France still favoured 'an international force of all arms, always at the disposal of the Council', though the Article 43 arrangements were 'the maximum we could hope to achieve here at this time'.[68] Whatever the method of mobilizing international forces, the bottom line was unmistakable to Ambassador Morgenstierne of Norway. On the Council's capacity to take quick and effective enforcement action, he told a June 1945 public audience at the San Francisco Opera House, 'may well depend in the future the very existence of the freedom and justice-loving nations of the world'.[69]

Big Power Oligarchy

On one point the Big Three (the US, the UK, and the Soviet Union) never wavered: their unity was the key to world peace. Therefore, they had to be permanently

[62] Ibid., 67. [63] Ibid., 93. [64] Ibid.
[65] US Senate Committee on Foreign Relations, *The Charter of the United Nations*, Hearings, 281.
[66] Ibid., 282.
[67] Davies, 'Commission Votes Enforcement Plan'.
[68] Ibid. [69] Ibid.

represented on the Security Council, and decisions on matters of war and peace had to be subject to unanimity among them. The US State Department, in commentaries accompanying its August 1943 draft Charter, noted that the first difference between that draft and the League's Covenant was that the new formulation 'gives the great powers exceptional and immediate responsibility for security, and for this purpose gives them a permanent preponderance in the membership and vote control of the Council'.[70] The 1943 draft specified the US, the UK, China, and the Soviet Union as the four Permanent Members (hereafter, the Big Four).[71] In his cover memo transmitting the Department's ideas for a post-war international organization to President Roosevelt on 29 December 1943, Secretary of State Cordell Hull underlined that 'the entire plan is based on two central assumptions', as follows:

> First, that the four major powers will pledge themselves and will consider themselves morally bound not to go to war against each other or against any other nation, and to cooperate with each other and with other peace loving states in maintaining the peace; and Second, that each of them will maintain adequate forces and will be willing to use such forces as circumstances require to prevent or suppress all cases of aggression.[72]

The prospects for an effective international organization, in essence, would depend on the way the Big Four would use their military assets: showing restraint in their interactions, while displaying the will to act collectively in the common good when needed.

In conveying these ideas to President Roosevelt, the State Department was – not surprisingly – preaching to the converted. The Department was largely engaged in the task of elaborating concepts already articulated by the President. In the April 1943 *Saturday Evening Post* article mentioned previously based on a series of interviews with Roosevelt, Forrest Davis related that 'the President holds that a genuine association of interest on the part of the great powers must precede the transformation of the United Nations' military alliance into a political society of nations. The problem of security rests with the powers who have the military force to uphold it.'[73] In his 1943 Christmas Eve address, a week before receiving Hull's memo, the President pointed out that:

> Britain, Russia, China and the United States and their allies represent more than three quarters of the total population of the earth. As long as these four nations with great power stick together in determination to keep the peace there will be no possibility of an aggressor nation arising to start another world war.[74]

[70] US Department of State, *Postwar Foreign Policy Preparations*, 533. Rather than the unit veto system that the Council was to observe under the League's Covenant, under the Charter there was to be 'less than complete unanimity': ibid.

[71] Ibid., 527.

[72] US Department of State, *Foreign Relations of the United States, Diplomatic Papers, 1944*, vol. 1 (General), (Washington, DC: US Government Printing Office, 1966), 615.

[73] Forrest Davis, 'Roosevelt's World Blueprint', *Saturday Evening Post*, 10 Apr. 1943, 110.

[74] President's Address Dealing with Conferences Abroad, *New York Times*, 25 Dec. 1943. See also John H. Crider, 'To Keep It By Arms', *New York Times*, 25 Dec. 1943.

The evolution of the President's notion of the Four Policemen has been traced to early musings in 1941, to the decision to have the Big Four as the first signatories of the 1 January 1942 Declaration by United Nations, and to Sumner Welles' State Department planning group in the Spring of 1942.[75]

The President's early and persistent advocacy of the Four Policemen strategy left little room for public dissent by American officials, though some nuances were voiced publicly and some reservations privately. Sumner Welles, the articulate and creative Under Secretary of State, preached a mix of a global and regional approach to post-war organization until his resignation in August 1943.[76] In his subsequent book, *The Time for Decision*, published in 1944, Welles acknowledged that 'of the United Nations, the four major powers primarily responsible for winning the war and for preventing renewed outbreaks after the armistice must necessarily assume the basic responsibility for making and carrying out all military decisions.'[77] Under his plan, each would have a veto over any action by the 'Executive Council'.[78] However, in his view, other UN members 'will never reconcile themselves to being dominated for an indefinite period by a dictatorship composed of the four great powers'.[79] Therefore, he proposed regional cooperation as the foundation for the organization as a whole.[80] A number of realists were concerned about the prospects for cooperation with the Soviet Union in the new enterprise. In a private memo in May 1945, for example, Acting Secretary of State Joseph C. Grew cautioned that, given the veto, the new organization's 'power to prevent a future world war will be but a pipe dream', because 'the organization will be rendered powerless to act against the one certain future enemy, Soviet Russia.'[81] Welles, on the other hand, argued that the way relations were handled in the post-war transition period would determine whether the Russian people would become 'the greatest destructive force in the world of the future, or whether they will become one of the most powerful constructive forces'.[82]

Post-war planners in London generally found the Four Policemen concept to be quite compatible with their own thinking.[83] Indeed, in a July 1945 memo to the UK

[75] See Hilderbrand, *Dumbarton Oaks*, 15 16; Russell, *A History of the United Nations Charter*, 43 and 96; and Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the U.N.* (New Haven: Yale University Press, 1997), 46 and 50.

[76] See, for example, an account of his Jan. 1943 meeting with the President in Hoopes and Brinkley, *FDR and the Creation of the U.N.*, 68 9.

[77] Sumner Welles, *The Time for Decision* (New York: Harper and Brothers Publishers, 1944), 372.

[78] Ibid., 377.

[79] Ibid., 373.

[80] Ibid.

[81] Joseph C. Grew, *Turbulent Era: A Diplomatic Record of Forty Years, 1904 1945*, vol. II (Boston, MA: Houghton Mifflin Company, 1952), 1446.

[82] Welles, *Time for Decision*, 406.

[83] According to Evan Luard, 'both Churchill and Roosevelt at first favoured the idea of a post war system in which power would be wielded mainly, or exclusively, by the great powers, and in which part of the responsibility would be accorded to regional bodies': *A History of the United Nations*, 21. Roosevelt, however, soon relegated regional arrangements to a secondary status in his thinking.

Foreign Office, Gladwyn Jebb claimed that 'the very basis of the scheme, namely, continued co-operation between the Great Powers, and notably between the Soviet Union, the United States and the United Kingdom, had its origin in this country and was imparted by devious means to our two great Allies.'[84] This claim of ownership, however, seems rather stretched and unsupported by the recollection of other British statesmen or even by Jebb's memoirs. Lord Halifax, who had served as the UK's Ambassador in Washington DC during the war, Chair of the British delegation at Dumbarton Oaks, and Acting Chair at San Francisco, credited President Roosevelt for conceiving of the 'grand design' for the 'coequal collaboration' of the Big Three 'with the object of defeating the enemy and creating a United Nations Organisation for the maintenance of world peace'.[85] Former Foreign Secretary Eden, like Jebb, contends that London let Washington take the lead in San Francisco for the sake of bolstering public and Senate support for the new body in the US.[86] Eden, however, does not question the origins of the Four Powers concept. He provides, instead, a telling account of Roosevelt's presentation to him in March 1943 of the concept and of US plans for 'the structure of the United Nations organization after the war'.[87] Once again, the President sought to persuade his British allies of the need to include China among the major powers. According to Eden, a year later, in May 1944, Churchill was still pushing for the adoption of his regional concept.[88] During the planning process, according to Webster, the US showed much greater interest in post-war organization and had a more 'elaborate' planning effort, larger delegations, and the idea for a permanent council.[89] In his *Memoirs*, Jebb is candid about how even the earliest British papers were 'considerably influenced by what we believed to be the working of the American official mind. . . . The first conception was that favoured by the US administration who seemed to favour a world organization after the war based on the United Nations as a whole and directed by a small "policy committee" – probably the four Powers only.'[90]

Whoever deserves credit for the initial conception of the Security Council and its cardinal principle of great power unanimity, both the convergence in American and British perspectives and the leading role played by the US in putting the pieces together were essential to the establishment of the world body. No one wanted to

[84] *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print: Part III, Series L, World War II and General*, vol. 5 (General Affairs), Jan. 1945 Dec. 1945 (Bethesda, MD: University Publications of America, 1998), 318.

[85] Gladwyn Jebb, 'Memo to the Foreign Office of 9 August 1945', *British Documents on Foreign Affairs*, 326.

[86] Eden, *The Reckoning*, 619; and Jebb, memo, *British Documents on Foreign Affairs*, 318.

[87] Eden, *The Reckoning*, 436 7.

[88] Ibid., 514. Eden expressed concern about undue American enthusiasm for the UN (pp. 590 and 614), noted Churchill's initial opposition to holding the founding conference during wartime (p. 598), and was later 'despondent' about the UN's future (p. 620).

[89] Webster, 'Making of the Charter', 23, 25, & 28.

[90] Jebb, *Memoirs*, 112. He goes on to describe the thinking that led to the UK Foreign Office's own Four Power Plan (pp. 112 17), the ensuing debates about it and competing conceptions within the British government, including from the Prime Minister (pp. 118 24).

chance a second experiment in world order without the US firmly embedded in its structure and operations. As a French delegate argued in San Francisco, reflecting on the League's failings, 'it had not been the rule of unanimity which had prevented its action, but the absence, from the start, of one great power and the later withdrawal of others.'[91] All the multilateral wartime conferences on post-war organization – at Bretton Woods, Dumbarton Oaks, and San Francisco – took place on US soil, both because it was unscathed by the ravages of the war and because of the political symbolism of planting the seeds of the next generation of international organization firmly in the American heartland.[92] Stettinius, on the basis of conversations with British and Soviet diplomats in London in April 1944, concluded 'that the United States would have to assume the initiative on the question of world organization. I am convinced that if the United States had not continually pushed the plans there would have been no United Nations by the end of the war.'[93]

Even before Pearl Harbor, President Roosevelt considered the possibility of a joint policing of the post-war world by the US and the United Kingdom.[94] From the beginning, moreover, Churchill and Roosevelt shared the key assumption that, given the League's inadequacies, 'if the UN was to succeed there must be a dominant place within it for the great powers', as Evan Luard phrased it.[95] Though the two leaders had differences over China, the place of regional bodies, and whether to wait until after the war to convene the founding conference, there was much more that united them. Beyond their cultural and normative affinities, their armed forces had fought side by side in Europe, North Africa, and the Pacific. While the Red Army had carried an enormous burden on the eastern front, it had had to do so largely alone. Neither Roosevelt nor Churchill were sanguine about the challenge of working with the Soviets in the post-war order, though the latter was more open and pointed in his concerns. Such was the case in a note to Eden in October 1942: 'I must admit that my thoughts rest primarily in Europe – the revival of the glory of Europe, the parent continent of the modern nations and of civilization', wrote Churchill, and it would be a 'measureless disaster if Russian barbarism overlaid the culture and independence' of these states.[96]

Though they took care to avoid the appearance of an Anglo-American conglomerate, both London and Washington found it easier to face Moscow together than alone on some key questions relating to the values, principles, and purposes of the new body. As Roosevelt put it in his January 1945 State of the Union address,

[91] *Documents of the United Nations Conference on International Organization*, vol. XII, 457.

[92] For an account of efforts to 'Americanize' the San Francisco conference, see Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Boulder, CO: Westview Press, 2003), 111 26.

[93] Stettinius, *Roosevelt and the Russians*, 16.

[94] Russell, *A History of the United Nations Charter*, 96.

[95] Luard, *A History of the United Nations*, 18 19.

[96] Hoopes and Brinkley, *FDR and the Creation of the UN*, 69.

'the nearer we come to vanquishing our enemies the more we inevitably become conscious of differences among the victors.'[97] That is why, James Byrnes noted, the President 'was so insistent that the United Nations should be established while the war was still in progress'.[98] Yet the task of building broad international support for the Four Policemen conception of the new body had to proceed through a series of deliberate steps: (1) frequent bilateral consultations between American and British experts over the course of 1942 and 1943, including a bilateral summit in Quebec; (2) President Roosevelt's approach to Stalin at the Teheran summit conference in November 1943 (following the foreign ministers meeting in Moscow); (3) Dumbarton Oaks to bring in the Chinese and agree on a draft charter; (4) Yalta to iron out unsettled issues from Dumbarton Oaks, including the scope of the veto and the number of Soviet places at the table; (5) San Francisco to multilateralize and legitimize the process; and (6) ratification by the capitals. As the circle widened, of course, the views of a growing number of players had to be taken into account.

For Stalin, the notion of great power cooperation presented no problem as long as the unanimity rule was preserved. Preoccupied, as the French were, with keeping Germany from re-emerging as a security threat, Stalin saw the extension of the alliance as the best way to achieve this.[99] Stalin, moreover, had little enthusiasm for giving much, if any, role to smaller powers. For one thing, he questioned whether they would accept the domination of the organization by the major powers.[100] For another, he saw them as potential spoilers. In relenting to American pressure on not insisting that the veto cover even putting items on the Security Council's agenda, Stalin reportedly cautioned his American interlocutors 'against what he termed a tendency on the part of small nations to create and exploit differences among the great powers in order to gain the backing of one or more of them for their own ends'. He commented that 'a nation need not be innocent just because it is small.'[101] Not surprisingly, Stettinius noted that 'it was clear in the discussions at Yalta that Marshal Stalin was primarily interested in an alliance of Great Britain, the United States, and the Soviet Union.'[102]

China, though it played only a modest role in the framing of the Dumbarton Oaks proposals and was not represented at Yalta, consistently supported the notion that a small group of major powers should be in charge of maintaining global security. No doubt, the fact that China was to be included in the inner circle partly accounted for this positive attitude. But its painful experience with aggression and foreign occupation appears to have been the key factor. According to the China Institute of International Affairs, 'the informed Chinese public was much impressed by the fact

[97] Franklin D. Roosevelt, 'State of the Union Address', 6 Jan. 1945, www.presidency.ucsb.edu/ws/index.php?pid=16595

[98] Byrnes, *Speaking Frankly*, 60.

[99] Russell, *A History of the United Nations Charter*, 156.

[100] Luard, *A History of the United Nations*, 24; and Russell, *A History of the United Nations Charter*, 155.

[101] Byrnes, *Speaking Frankly*, 64 5.

[102] Stettinius, *Roosevelt and the Russians*, 296.

that the principal authority to keep peace would now rest with the Council. This would ensure promptness in action which was deemed to be essential to the suppression of acts of aggression.'[103] Like many delegates at the opening plenary session at San Francisco, Dr T. V. Soong of China focused on why the new organization would be a marked improvement over the League. 'The United States and the Soviet Union are now among the chief artisans of the new international order', he observed, 'and their overwhelming strength will be joined with that of the other powers to back it. Its authority will be upheld by all the powerful nations of our day.'[104] During the bitter debate over the veto, China defended 'the rule of unanimity as essential for its [the Council's] strength and effectiveness. The alternative was a voting system, which, though it might be more perfect, might in a given moment weaken the Security Council in its efforts to act promptly and effectively.'[105] Even Mao Tse-tung declared his support for the results of the Dumbarton Oaks and Yalta conferences and sent a representative of the Chinese Communist Party to San Francisco.[106]

Tactically, of course, the unity of the four convening powers and France at San Francisco on permanent membership and the veto was essential to winning over (or, in some cases, running over) the opposition. It had the perversely positive effect of demonstrating that the five could work together effectively, at least when their common interests were perceived to be at stake. As Webster pointed out, 'there was a Great Power Conference inside of the larger Conference, just as there was at Paris in 1919.'[107] In his words, 'so long as the Sponsoring Powers remained united, the smaller states were bound to acquiesce in their decision, if they wished for an international organisation at all.'[108] During the veto debate, a British delegate warned that any structure not resting on great power unanimity 'would be built on shifting sands, of no more value than the paper upon which it was written'.[109] Even more graphic was US Senator Tom Connally's gesture of tearing the draft Charter to shreds before the committee debating the veto to show what would happen if the opponents prevailed.[110] To Dr Herbert Vere Evatt, the Australian delegate who led the assault on the special prerogatives granted to the big powers under the Dumbarton Oaks draft, these tactics worked all too well, as 'any Charter proposals which could ever be represented as endangering Great Power solidarity or unanimity were very difficult of acceptance.'[111] The 'ambiguous text'

[103] China Institute of International Affairs, *China and the United Nations*, 34 5.

[104] Ibid., 43.

[105] *Documents of the United Nations Conference on International Organization*, vol. XII, 458.

[106] Samuel S. Kim, *China, the United Nations, and World Order* (Princeton, NJ: Princeton University Press, 1979), 100.

[107] Webster, 'Making of the Charter', 34.

[108] Ibid., 33.

[109] *Documents of the United Nations Conference on International Organization*, vol. XI, 475.

[110] Tom Connally, *My Name is Tom Connally* (New York: Thomas Y. Crowell Company, 1954), 283.

[111] Evatt, *The United Nations*, 3.

on the veto, he complained, 'was regarded as sacrosanct! It had been approved by three heads of States, and doubts regarding its meaning or adequacy appeared to some treasonable, indeed almost blasphemous.'[112]

As noted earlier, however, the sponsoring powers were not alone in defending the veto and permanent membership as, at least, a necessary evil. In reporting on its experience in San Francisco, the New Zealand delegation complained that one of its key proposals 'was opposed throughout by the Great Powers and by those other delegations whose policy it was invariably to support the Great Powers'.[113] Perhaps those delegations should have also been credited with a realistic appreciation of where their national interests and security lay. Egypt, for instance, asserted 'that all peoples recognized that the war had been won and that the peace would be assured through the unity of the four great powers'.[114] To Denmark, 'a spirit of understanding and collaboration among the nations was something more important than the clauses of the Charter.' After all, 'the liberation of Denmark had been possible by their collaboration. Her fate in the future is dependent upon it.'[115] 'Speaking for the smallest country represented at the Conference', one that had been invaded by Germany twice in twenty-five years, the delegate of Luxembourg emphasized 'that the unity of the four sponsoring governments and France was the cornerstone of the Organization'.[116]

In 1945, a strong case could be – and was – made that, as a delegate from the United Kingdom put it during the veto debate, 'the unanimity of the great powers was a hard fact but an inescapable one.'[117] Speaking of the convening powers, Leo Pasvolsky observed that, 'because of their size and strength, these four countries can make or break any system of general security that might be established.'[118] Which it would be, however, was less obvious. Webster sounded, as always, optimistic: 'the union of the three Great Powers was the pivot of all action and the centre of all hopes for the future, and those who had the direction of affairs were very much aware both of their responsibility and of their opportunity.'[119] But, as noted above, Churchill, Roosevelt, and Truman were very aware of the looming shadow of a possible downturn in relations with Moscow should it prove impossible to find mutually acceptable terms for shaping the geopolitical dimensions of the post-war order. The unanimity rule was essential not because the great powers

[112] Evatt, *The United Nations*, 24.

[113] New Zealand Delegation, *Report on the Conference*, 23

[114] *Documents of the United Nations Conference on International Organization*, vol. XI, 434.

[115] Ibid., 488.

[116] Ibid., 489. Stettinius echoed these words in his post San Francisco report to President Truman: 'the cornerstone of world security is the unity of those nations which formed the core of the grand alliance against the Axis.' Stettinius, *Report to the President on the Results of the San Francisco Conference*, 68.

[117] *Documents of the United Nations Conference on International Organization*, vol. XI, 475.

[118] Pasvolsky, *Dumbarton Oaks Proposals*, 2.

[119] Webster, 'Making of the Charter', 19.

were bound to see eye to eye on all future security challenges, but because they suspected that often they would not. The principle of unanimity would be superfluous when their views converged. When they did not, however, it served both to preserve the institution and to insure that it could not be turned against one of its principal founders. As such, permanent membership and the veto power would not guarantee an active and uniformly effective security organization, only a durable and sustainable one.

Reinventing the Security Council?

The three preceding propositions, and the contentions that shaped them, may sound familiar to a contemporary audience. In several critical respects, the struggles of the first half of the 1940s over establishing the UN Security Council were remarkably similar to the debates today over reforming and enlarging it. Then, as now, the contentions revolved around its composition and voting rules much more than its powers or approach to issues of war and peace. The debate pitted a handful of determined world powers, backed by smaller states facing acute security threats, against the demands from many member states for a larger, more representative, and more accountable Council. However, the core proposition – that the Council should be permitted great flexibility in determining what constituted a threat to international peace and security and how and when to respond to it – was hardly challenged in 1945. It was, in fact, the absence of substantive strictures on Council decision-making that reinforced the priority that countries on both sides of the debate placed on who would sit around the Council table and how they would make decisions. The wider the Council's writ to interpret what constitutes security, the more non-members worry about perceived inequities in membership and decision-making rules. If such decisions are to be considered political more than legal matters, then the composition of the Council becomes of paramount importance. Thus, it hardly seems surprising either that the current tug of war over the future shape of the Council has coincided with the most active and assertive era in its history, or that the differences of view have remained unresolved over more than a dozen years of deliberation among the member states.[120]

[120] The General Assembly's Open Ended Working Group on the Question of Equitable Represen tation on and Increase in the Membership of the Security Council began its work in 1993, a year in which Council activity reached unprecedented levels. For the Council's record in 1993, see Edward C. Luck, 'Rediscovering the Security Council: The High level Panel and Beyond', in Ernesto Zedillo (ed.), *Reforming the United Nations for Peace and Security* (New Haven, CT: Yale Center for the Study of Globalization, 2005), 138. For the Working Group's Mandate, see UN doc. A/RES/48/26 of 3 Dec. 1993.

At the date of writing, despite Secretary-General Kofi Annan's repeated call for an urgent and radical overhaul of the Council, reform efforts have, once again, reached a stalemate.[121] The member states are deeply divided on the most basic elements of what a future Security Council should look like, with few prospects for convergence anytime soon. Though most have advocated a second enlargement in light of the organization's growing membership – the Council was expanded from eleven to fifteen in 1965 – there is nothing close to a consensus on how large the increment should be or on whether it should include both permanent and non-permanent seats. For all the talk of making the Council more 'representative', a term studiously avoided in the crafting of the Charter, there are deep divisions in each region about which or even whether any of the local countries should be granted permanent status. No criteria have been established for such a selection, as all the candidates to date have nominated themselves (as the Big Three did in 1945). Though the Permanent Members rarely use their vetoes publicly these days and the Council usually acts by consensus, the unanimity rule remains almost as controversial today as it was in San Francisco.

None of this would surprise the core founders, who expected recurring challenges to the seating and voting arrangements that they were able to cajole and compel the other delegations to accept in San Francisco. That is why they insisted on having a veto over any amendments to the Charter. In return, of course, they were to work together as purposely as possible to maintain international peace and security. It is a historically unprecedented accomplishment that such a politically and geographically diverse oligarchy of major powers has managed to pursue such a dialogue and preserve such an institution for so many decades. Their record in maintaining international peace and security, however, is more mixed and more controversial. There is no historic or contemporary comparator. As a unique institution, the Council has set its own standard, leaving others to assess its results from their own subjective perspectives. Obviously the current Permanent Members have often fallen short of public expectations, but can there be confidence that some other or larger group of Permanent Members would do better? The League's Council had doubled its membership by 1934, as the global conflagration it was

[121] In Jun. 2006, for example, the Secretary General complained that 'a lot of members feel that our governance structure is anachronistic and we cannot continue to have a situation where the power base is perceived to be controlled by a limited number of five Member States' and that 'the desire for power on the part of the powerful is insatiable': Transcript of Press Conference by Secretary General Kofi Annan at the Palais des Nations, Geneva, UN doc. SG/SM/10532 of 22 Jun. 2006. For assessments of why recent efforts to reform the Council have yielded so little, see Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible*, Occasional Paper No. 14, (Berlin: Friedrich Ebert Stiftung, 2005); Mats Berdal, 'The United Nations at 60: A New San Francisco Moment?', *Survival* 47, no. 3 (Autumn 2005), 7 31; Edward C. Luck, 'The UN Security Council: Reform or Enlarge?', in Paul Heinbecker and Patricia Goff (eds.), *Irrelevant or Indispensable? The United Nations in the 21st Century* (Waterloo, Ontario: Wilfred Laurier University Press, 2005), 143 52; and Edward C. Luck, 'How Not to Reform the United Nations', *Global Governance* 11, no. 4 (Oct. Dec. 2005), 407 14.

designed to prevent was on the horizon. Neither multi-polarity nor multilateral decision-making did the job then.

For all its faults, few would call the current Council lazy. Without a doubt, the Council has been more active – whether measured in terms of meetings, operational and thematic resolutions, peacekeeping and peace-building missions, or enforcement actions – since the end of the Cold War than ever before.[122] The global levels of interstate and intra-state conflict, casualties, and refugees have fallen as Council activity has risen.[123] Whether a rigorous correlation can be drawn between these two developments is doubtful and well beyond the scope of this Chapter in any case, and it is not certain that either trend can be sustained indefinitely. These developments do suggest, however, that the advocates of radical reform need to make a strong case for why a major transformation of the Council is needed at this point. So far, they have had remarkably little to say about the Council's performance, what ails it, and how the proposed reforms would cure it.

Some of the reforms that Secretary-General Kofi Annan and a portion of the member states have advocated most vigorously would bend or upend key planks of the arrangements negotiated so painstakingly at San Francisco. All three propositions addressed in this chapter are under challenge. As discussed above, the founders, including both large and small countries, recognized the considerable virtue in not constricting the Council's freedom of action through lists of rules and guidelines. This has allowed it to be a remarkably adaptable institution, evolving its tools and working methods as conditions have changed in unpredictable ways. Nevertheless, Kofi Annan and his High-level Panel have enunciated a series of conditions or principles to guide Council decision-making on the collective use of force. His 2005 *In Larger Freedom* report, reflecting the conclusions of the High-level Panel, declared that:

> When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success. By undertaking to make the case for military action in this way, the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion. I therefore recommend that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force.[124]

[122] Luck, *The UN Security Council: Practice and Promise*, 8, 17 19, 37 8, 59 62, and 175 6.

[123] *Human Security Report 2005: War and Peace in the 21st Century* (Oxford: Oxford University Press, 2005). According to the *Human Security Report Brief 2006*, these encouraging trends are continuing (The University of British Columbia, CA: Human Security Centre, 2006), www.humansecuritybrief.info/ The full 2006 report will be published at the end of 2007.

[124] *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 2 Mar. 2005, para. 126.

These principles no doubt echo the concerns of those member states and individuals concerned about how far the heightened Security Council activism and interventionism might go. But they hardly reflect the founders' intentions. Moreover, as noted above, the common refrain around the UN, repeated by Kofi Annan and his High-level Panel, that the Council should consider the use of force to be a last resort was specifically refuted at San Francisco in the Canadian amendment adopted on the draft language of Article 42. The flat declaration by the last two Secretaries-General, Boutros Boutros-Ghali as well as Kofi Annan, that the UN is no longer in a position to organize or oversee the collective use of force for enforcement purposes represents a denial of what was widely believed in 1945 to be the organization's central responsibility.[125] Taken together, these doctrinal proposals and declarations reflect a shrinking view of what the Council should do and of its scope for decision-making – a considerable irony when tied to calls for enlarging its membership. They represent, as well, a stinging rebuke to the spirit and letter of the Charter as it was crafted more than six decades ago.

Times change, of course, as do the perceptions, values, and needs of the member states. In launching the ambitious and ill-fated reform exercise that was to dominate his last three years in office, Kofi Annan improbably told the member states in 2003 that 'we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded.'[126] Two years later, he wrote of 'a new San Francisco moment'.[127] Hyperbole aside, the Secretary-General's efforts to invoke the spirit of the founding conference raise a provocative question: if the member states were to reconvene today to redraft the Charter, would they provide the Council with such a range of tools for maintaining international peace and security or permit it such wide discretion in when and how they are employed? Would they want a more active or tamer Council? Would they entrust any group of member states with the kinds of powers, responsibilities, and flexibility granted to the Big Five in San Francisco? Recent events suggest not. Even an alliance in wartime, with strong and determined leadership, almost denied this leap of faith in 1945. Today, the international system lacks coherence and definition. Mistrust among the member states abounds. Leadership is neither given nor accepted gracefully or gratefully.

In 1999, Kofi Annan had it right when he spoke of the Charter as 'a living document, whose high principles still define the aspirations of people everywhere for lives of peace, dignity and development'.[128] It is a living document, as well,

[125] Boutros Boutros Ghali, 'Supplement to an Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations', UN doc. A/50/60 of 3 Jan. 1995), 18 19, paras. 77 8; and Kofi Annan, 'Renewing the United Nations: A Programme for Reform', UN doc. A/51/950 of 14 Jul. 1997, para. 107.

[126] 'Address by the Secretary General to the General Assembly', UN doc. SG/SM/8891 of 23 Sep. 2003.

[127] Kofi Annan, 'In Larger Freedom: Decision Time at the UN', *Foreign Affairs* 84, no. 3 (May/Jun. 2005), 65.

[128] 'Secretary General Presents His Annual Report to the General Assembly', UN doc. SG/SM/7136 of 20 Sep. 1999.

because it gave the Security Council room to adapt to changing circumstances. Like each of the UN's other principal organs, the Security Council has been slow – very slow – to embrace formal structural change in its composition and decision-making rules. But it has adopted, over the past dozen years, some substantial modifications in its working methods, scope of work, and instruments of persuasion and coercion.[129] Though its more sensitive deliberations remain closed to public observation, it has become far more open to a wide range of inputs, whether from member states, the Secretariat, agencies, non-governmental organizations (NGOs), or independent experts. Non-members often participate in its work and that of its twenty-eight subsidiary bodies, including on some of the most sensitive matters on its agenda, such as terrorism, non-proliferation, and humanitarian emergencies, as well as a variety of regional and local issues around the world.[130] It frequently undertakes missions to areas of tension and conflict to interact with local actors and to get a better feel for current developments. To many smaller member states, the benefits of further steps toward transparency, accountability, and inclusiveness in the Council's working methods are far more apparent than those that might be associated with widening the circle of big states on the Council.[131]

The Council remains, as it was in 1945, undependable, unaccountable, and unrepresentative. None of the reforms proposed over the past sixty years, however, offer any real prospects of fixing any of these core liabilities. Unfortunately, these liabilities come with the territory: a world of sovereign nation states that sometimes summon the will to find common ground and, more rarely still, act on it. But on those rare occasions, as well as on those in which communication among potential adversaries is facilitated, the Council remains a place of hope, a place to do some serious business, and a place few member states would do without, reform or no reform.

[129] See Edward C. Luck, 'Principal Organs', in Thomas Weiss and Sam Daws (eds.), *Oxford Handbook on the United Nations* (Oxford: Oxford University Press, 2007).

[130] For current and authoritative information on the Council's ongoing and upcoming activities and deliberations see www.securitycouncilreport.org an independent website, associated with the Center on International Organization of Columbia University, devoted to increasing the transparency of the Council's work.

[131] See, for example, the so called S 5 (Switzerland, Costa Rica, Jordan, Lichtenstein, and Singapore) 'Draft Resolution on Working Methods'. This took the form of an annex to a letter of 3 Nov. 2005 signed by the five Permanent Representatives, www.reformtheun.org/index.php/government statements/c466?theme=alt2

CHAPTER 3

THE CHARTER LIMITATIONS ON THE USE OF FORCE: THEORY AND PRACTICE

CHRISTINE GRAY

The UN Security System

The founders of the UN created an elaborate scheme, a treaty-based system which required states both to impose limits on their own right to resort to force and to depend on a collective response for protection. The aim was, first, to prohibit the unilateral use of force by states other than in self-defence. Article 2(4) expressed this prohibition in wide terms, outlawing the 'use of force' rather than 'war'.[1] Secondly, the system aimed to centralize the use of force under the control of the Security Council. Under Chapter VII of the UN Charter the Security Council was to act in case of a threat to the peace, breach of the peace, or act of aggression (Article 39). It could take provisional measures (Article 40), measures not involving

[1] 'War' is argued by some to be a narrower technical term; it had been employed in the Covenant of the League of Nations. See Christopher Greenwood, 'The Concept of War in Modern International Law', *International and Comparative Law Quarterly*, 36 (1987), 283 306.

the use of force (Article 41), and measures involving the use of force (Article 42). The Security Council was to have its own standing army (under Article 43 agreements with member states) and a Military Staff Committee was to advise and assist in military planning (Article 45–7).[2]

States retained their right of self-defence, but here too the Security Council was to have a role. Under Article 51: 'Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.' The aim was to ensure that the Council was informed about the use of force by states, and that it could then take action where necessary.[3] Also, a state's right to self-defence is only a temporary right 'until the Security Council has taken measures necessary to maintain international peace and security'.

However, the Charter collective security scheme did not operate as planned. Not surprisingly, the prohibition on the use of force did not stop states from resorting to force; there have been over 100 major conflicts since 1945.[4] Nevertheless, there was general agreement among states and commentators that the prohibition on the use of force in Article 2(4) represented customary international law; the fact that there were breaches did not destroy the normative status of the prohibition.[5] But the Security Council proved unable to respond effectively to the use of force by states during the Cold War; the veto (and the threat of the veto) by the five Permanent Members obstructed action by the Security Council. The use of force in Czechoslovakia, Hungary, Afghanistan, and Vietnam could not even be put on its agenda. The Security Council was not able to condemn illegal use of force; it was not able to implement Chapter VII in the way planned. A standing UN army, that could carry out forcible measures to maintain or restore international peace and security in the case of threats to the peace, breach of the peace, or act of aggression, was never established.

Moreover, the threats to international peace and security which materialized after the foundation of the UN were mostly different in nature from those expressly provided for in the Charter in response to the experience of the Second World War. There were relatively few interstate wars of the type envisaged by Article 2(4) which prohibited the threat or use of force 'in international relations'. The conflicts in Iran–Iraq, Iraq–Kuwait, the Falklands, between Israel and its neighbours, and

[2] See also Adam Roberts's discussion of proposals for a UN standing force in Chapter 4.

[3] See the discussion by the International Court of Justice in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v USA*, (hereafter the *Nicaragua case*), *ICJ Reports*, 1986, 14 at para. 235. The Court said that failure to report by a state indicated a lack of belief that it was really using force in self defence.

[4] See also Appendix 7.

[5] *Nicaragua case*, paras. 186 90.

between Eritrea and Ethiopia were exceptional rather than typical. In several cases the characterization of the conflict as international or internal proved problematic, as in Korea, Vietnam, and the former Yugoslavia. In many cases the conflict was complex in nature; in Africa many conflicts such as those in Angola and Mozambique during the Cold War and, more recently, those in Sierra Leone and the Democratic Republic of Congo (DRC) involved a mixture of civil war and international conflict. New threats to international peace and security came from civil wars and from civil wars with outside intervention. The decolonization process also brought divisions between states as to whether national liberation movements had the right to use force in their struggle for self-determination.[6]

However, the UN system proved sufficiently flexible to allow the Security Council to take forcible measures not expressly provided for in the Charter. Although the Security Council was not able to order the use of force by its own standing army (as provided under Articles 42 and 43), it could 'authorize' or 'call on' member states to use force. During the Cold War, it did so in the cases of the Korean war and Rhodesia.[7] It said that North Korea had made an armed attack on South Korea and that this constituted a breach of the peace. It accordingly recommended member states to furnish assistance to South Korea to repel the armed attack and restore international peace and security.[8] In the case of Rhodesia the Security Council authorized the UK to use force to intercept ships on the high seas in order to stop the import of oil by the illegal regime in Southern Rhodesia. In these resolutions the Security Council did not expressly refer to specific articles of the UN Charter, but it did use the language of Article 39. This established the pattern for the future. The precise legal basis for these two early authorizations of force was not specified and there has been much academic speculation on the subject.[9]

Also, although the Security Council was generally unable to act against aggressor states, it did take other action in the maintenance of international peace and security. The UN created the institution of peacekeeping, even though there was no express basis for peacekeeping operations in the Charter scheme.[10] Such UN peacekeeping operations were to be conducted with the consent of the host state, to be impartial in nature, and were not to involve the use of force other than in self-defence. However, these limitations on peacekeeping have been challenged, as in the Congo (1960–4), and later in Bosnia–Herzegovina and Somalia. Since the end of the Cold War the Security Council has been much more active in peacekeeping;

[6] See Heather Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press, 1988).

[7] In the case of Korea the Security Council was able to take action because the USSR was boycotting its meetings in protest at the representation of the People's Republic of China by the government of Taiwan.

[8] See William Stueck's discussion of the Korean war in Chapter 11.

[9] See, for example, Dan Sarooshi, *The United Nations and the Development of Collective Security* (Oxford: Clarendon Press, 1999); Thomas Franck, *Recourse to Force: State Action against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002), 24.

[10] See also Mats Berdal's discussion of peacekeeping in Chapter 7.

it has often used Chapter VII of the UN Charter in creating peacekeeping forces or to authorize them to take robust action. There is an ongoing debate about the proper nature of peacekeeping, but it is fair to say that the main problems facing the UN in this sphere have been in securing adequate resources.

The end of the Cold War meant that the Security Council became more active, not only in peacekeeping, but also in authorizing member state action under Chapter VII of the Charter. The Security Council asserted extensive powers to intervene in conflicts by taking a wide interpretation of Article 39; it may act if it determines that there is a threat to the peace, breach of the peace, or act of aggression.[11] As during the Cold War, such determinations are often made without express reference to Article 39. Similarly the Security Council has never referred to Article 42, and only occasionally made express reference to Article 41. The Security Council has rarely found an act of aggression, and on the few occasions where it has done so – in the cases of Israel's attacks on Tunisia, apartheid South Africa, and white minority-rule Southern Rhodesia (now Zimbabwe)[12] – it has used the term without express reference to Chapter VII. It has determined the existence of a 'breach of the peace' in the cases of interstate conflicts: Korea, the Falklands (Malvinas), Iran–Iraq, and the Iraqi invasion of Kuwait. Findings of 'threat to the peace' have been much more common, and this has been widely interpreted. The wide use of Article 39 has been crucial in the development of the Security Council's role, especially after the end of the Cold War. Thus it has found the power to intervene on the basis of a threat to international peace and security where there was a purely civil war, as in Somalia; an overthrow of democracy, as in Haiti; and a collapse of law and order, as in Albania.

Following the precedents of its actions with regard to Korea and Southern Rhodesia, the Security Council has made use of Chapter VII to authorize a whole range of forcible actions by member states – acting in 'coalitions of the willing', ranging from limited short-term operations to massive long-term interventions.[13] The catalyst in this process, seen at the time as heralding a 'New World Order', was Security Council Resolution 678 of 29 November 1990. This condemned Iraq for its 1990 invasion of Kuwait; it used the language of Article 39 in finding a breach of the peace, and 'authorized member states cooperating with the government of Kuwait to use all necessary means' to secure the withdrawal of Iraq from Kuwait and to restore international peace and security in the area. The US-led Operation Desert Storm drove Iraqi forces from Kuwait, and Iraq was then subjected to an elaborate ceasefire regime under Resolution 687.[14] Subsequently many further operations

[11] Article 2(7) prohibits UN intervention in matters which are essentially within domestic jurisdiction, but it does not apply to action taken under Chapter VII.

[12] SC Res. 387 of 31 Mar. 1976; SC Res. 455 of 23 Nov. 1979; SC Res. 567 of 20 Jun. 1985; SC Res. 568 of 21 Jun. 1985; SC Res. 571 of 20 Sep. 1985; SC Res. 573 of 4 Oct. 1985; SC Res. 574 of 7 Oct. 1985; SC Res. 577 of 6 Dec. 1985; and SC Res. 611 of 25 Apr. 1988.

[13] See Christine Gray, *International Law and the Use of Force*, 2nd edn. (Oxford: Oxford University Press, 2004), 252.

[14] SC Res. 687 of 3 Apr. 1991.

involving the use of 'all necessary means' – now the routine formula for the use of force – have been authorized by the Security Council. It has become clear that such authorizations were not limited to action in collective self-defence as had initially been argued by some commentators with regard to Operation Desert Storm.

A new concern has since emerged, that the Security Council has become *too* active. In contrast to the expression of regret over its inaction during the Cold War, some states and commentators now saw a danger that the Security Council would act illegitimately or even that it would exceed its legal powers. There has been much discussion of possible limitations on the Security Council and of the need to ensure principled decision-making. But a suggestion that the Security Council should adopt five criteria of legitimacy to govern its decision-making on the use of force proved unacceptable to states. The High-level Panel set up by the UN Secretary-General to consider the future of the collective security system recommended that force should be used only if there is a serious threat, for a proper purpose, as a last resort, involving proportional means, and when military force is likely to have better results than inaction.[15] But this attempt to increase the objectivity of Security Council decision-making – probably an illusory goal – failed when states at the UN World Summit in 2005 were not willing to adopt the five criteria. Recent attempts to increase the legitimacy of the Security Council by enlarging its membership have also failed.

However, there are also some conflicting concerns that the Security Council is being sidelined by its inability to take enforcement action through its own forces and by its reliance on 'coalitions of the willing'. After Operation Desert Storm (when there was little Security Council control over the operation after the initial authorization) there have been stronger attempts to secure adequate Security Council control over action by 'coalitions of the willing'. Security Council resolutions authorizing force by member states have called for regular reports, and set time limits on the operations.[16]

Questions have also been raised over the constitutional relationship between the Security Council and regional organizations under Chapter VIII of the Charter, and in particular as to the proper scope of enforcement action by regional organizations under Article 53. The hope has often been expressed that regional and sub-regional organizations such as the African Union and ECOWAS and the Organization of American States will be able to intervene to supplement the work of the UN, when its resources are overstretched.[17] The legal implications of this are controversial.[18]

[15] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004.

[16] The mandate for the NATO led Implementation Force (IFOR) in Bosnia, for example, was limited to one year. See SC Res. 1031 of 15 Dec. 1995.

[17] See also Dan Sarooshi's discussion of the relationship between the Security Council and NATO in Chapter 9; and Adekeye Adebajo's discussion of the relationship between the Council and ECOWAS in Chapter 21.

[18] See, for example, Erika De Wet, *The Chapter VII Powers of the UN Security Council* (Oxford: Hart, 2004), 290; Franck, *Recourse to Force*, 155, Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edn. (Oxford: Oxford University Press, 2002), 863.

In some cases such as the Kosovo war in 1999, express authorization of the use of force was not possible because of the opposition of some members of the Security Council. Nevertheless, certain states tried to claim Security Council authority for their use of force: they argued that material breach of previous resolutions could justify the use of force by states to implement the will of the international community, even without an express Security Council authorization.[19] This argument has proved extremely controversial. In the case of Iraq those states supporting Operation Iraqi Freedom in 2003 claimed that no new authorization of force by the Security Council was necessary: the original authorization of force against Iraq in Resolution 678 was still in force ten years later and was revived by Iraq's material violations of the obligations imposed on it under the ceasefire regime of Resolution 687, and under Resolution 1441 of 8 November 2002. This argument was rejected not only by Russia and China, but also by NATO states such as France and Germany.[20]

Therefore, over the last sixty years the Charter scheme has never been implemented in the manner that a literal reading of the text might suggest. Since the end of the Cold War we have seen the reinvigoration of the Charter scheme, but not as originally planned. In 2005, sixty years after its foundation, the UN Charter system was subjected to a fundamental re-examination; the UN World Summit provided an opportunity to reform the UN to meet the challenges of the twenty-first century. As part of this process, the Charter provisions on collective security and the use of force were reassessed. Deep divisions inside and outside the Security Council over the legality of the war against Iraq in 2003 had provoked talk of a crisis for the UN and questions about the future of collective security. After the invasion, the UN Secretary-General famously spoke of a 'fork in the road' for the UN: what was to be the future of the collective security system?[21] Could the UN meet the new threats facing the world or did it risk irrelevance as President Bush had threatened?

The Secretary-General accordingly set up a High-level Panel on Threats, Challenges and Change in December 2003 to consider new challenges to international peace and security, to identify the contribution to be made by collective action in response to those challenges, and to recommend changes in the UN system necessary to ensure effective action.[22] He subsequently produced his own report, *In Larger Freedom*, in response to the High-level Panel, making proposals for the heads of state and government due to meet at the 2005 World Summit.[23]

The UN World Summit came to the very striking conclusion that no reform of the Charter provisions on collective security was needed: 'the relevant provisions of

[19] Thus in the case of Kosovo, NATO states relied on SC Res. 1160 of 31 Mar. 1998; SC Res. 1199 of 23 Sep. 1998; and SC Res. 1203 of 24 Oct. 1998.

[20] See also the Special Agora 'Implications of the Iraq Conflict', *American Journal of International Law* 97, no.3 (2003), 553 642.

[21] Secretary General's Address to the General Assembly, 23 Sep. 2003.

[22] High level Panel, *A More Secure World.*

[23] Kofi Annan, *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 21 Mar. 2005.

the Charter are sufficient to address the full range of threats to international peace and security.'[24] Despite all the talk of the need for transformation of the collective security system in the face of new threats, there was broad agreement between the High-level Panel, the Secretary-General, and the World Summit that the UN Charter provisions on collective security should not be amended: states should make the existing system work rather than seek a change in the rules. The legal framework of the system has proved flexible enough to survive the transformation of the international scene over the last sixty years.

The Prohibition on the Use of Force in Article 2(4)

The basic prohibition on the use of force is set out in Article 2(4) of the UN Charter, but the Security Council only rarely refers to this provision expressly in its resolutions. It does not make express determinations of violations; instead it very occasionally 'recalls' Article 2(4) in the preambles to its resolutions.[25] The conclusions to be drawn from Security Council resolutions on the interpretation of Article 2(4) are therefore indirect, a matter of inference. If the Security Council condemns a particular use of force, or calls for the withdrawal of troops by a particular state, then it may be inferred in some cases that there has been a breach of Article 2(4). However, such condemnations are comparatively unusual. It is more common for the Security Council to call in general terms for an end to the fighting, the withdrawal of troops by both sides, and for peaceful settlement of a dispute, or for observance of a ceasefire.

In part this is because the Security Council is a political body. It has the primary responsibility for 'the maintenance of international peace and security' under Article 24 of the Charter, and thus generally prefers not to condemn, but rather to try to secure a settlement without assigning blame or legal responsibility under Article 2(4). Also the diversity of the language of the Charter helps to explain why the Security Council has not made greater express reference to Article 2(4). The Security Council's functions with regard to enforcement action are set out in Chapter VII. The terminology in this Chapter is different from that used in Articles 2(4) (prohibition of use of force) and 51 (self-defence if an armed attack occurs). The Security Council's focus is accordingly not primarily on the limitations on the use of force in Article 2(4).

[24] '2005 World Summit Outcome' of 16 Sep. 2005, UN doc. A/Res/60/1 of 24 Oct. 2005, para 79.
[25] For example, SC Res. 573 of 4 Oct. 1985 and SC Res. 611 of 25 Apr. 1988.

Also, the imposition of measures under Article 41 by the Security Council cannot necessarily be taken as evidence of a violation of Article 2(4). Although the term 'sanctions' has often been used to describe Article 41 measures, this can be misleading. Article 41 provides for 'measures not involving the use of armed force to give effect to [the Security Council's] decisions'. These are not necessarily punishment for a breach of the law; their aim may be to secure compliance with Security Council requirements. During the Cold War such measures were taken only in the cases of South Africa and Southern Rhodesia; subsequently there has been a significant increase.[26] Some are clearly not sanctions, but are designed to stop the escalation of a civil war and are imposed on all parties. Others are taken in response to non-cooperation with UN peace efforts. Thus arms embargoes were imposed on one side in conflicts in Rwanda, Sierra Leone, and Liberia. Some are directed against non-state actors such as UNITA, the Bosnian Serbs, and the Taliban regime in Afghanistan for its failure to surrender Osama Bin Laden. However, measures were ordered against Iraq for its invasion of Kuwait, Libya for its sponsorship of terrorism, and Liberia for its unlawful intervention in Sierra Leone. These may indeed be seen as sanctions for a breach of international law, but no express reference to Article 2(4) is made.

During the Cold War there were unresolved doctrinal disagreements between developed and developing states on Article 2(4), as to whether the prohibition applied only to armed force or whether it also covered economic coercion, and also as to whether force could be used by anti-colonial movements to achieve self-determination. Attempts at law-making on these issues by the General Assembly failed because of fundamental disagreements between states. In the Security Council also no authoritative position on the law could be adopted; its debates reveal the opposing positions of states on this issue.

There were also disagreements about the application of Article 2(4) to intervention in civil wars. There was general agreement on the law, but political differences between states made the application of the legal rules problematic. It was generally agreed that intervention in a conflict serious enough to be characterized as a civil war was legally prohibited, even at the invitation of the government, unless there had been prior outside intervention. But states typically divided over the following questions: Is there a civil war? Which is the true government? Did it invite outside assistance? Was there outside intervention? These divisions meant that the Security Council was not able to pronounce on the legality of, for example, the US invasion of Grenada or the USSR invasion of Afghanistan. Since the end of the Cold War the Security Council has been more willing to pronounce on such issues and often, though not always, to uphold the rights of democratically elected governments.

[26] See also the discussion of sanctions by David Cortright, George Lopez, and Linda Gerber Stellingwerf, in Chapter 8; and the list of UN authorized sanctions in Appendix 4.

The Right of Self-Defence in Article 51

Just as the Security Council does not commonly pronounce on the interpretation or application of Article 2(4), so, similarly, its resolutions do not make express determinations under Article 51. During the Cold War the Security Council was not in practice able to step in to take over the responsibility of self-defence from an injured state, except in the controversial case of Korea. Moreover, some states failed to report their actions in individual or collective self-defence to the Security Council, as they were required to do by Article 51.[27] References to self-defence or to Article 51 in resolutions and statements of the Security Council are rare; they are to be found in regard to the rights of neighbouring states against apartheid-era South Africa, of Kuwait against Iraq, and of the Democratic Republic of Congo against Uganda and Rwanda.

The debates of the Security Council and state practice show agreement on the core right of self-defence against an armed attack, and on the requirements that self-defence be necessary and proportionate,[28] but from the time of the foundation of the UN there have been doctrinal divisions between states on the scope of the legal right of self-defence under the Charter, with certain developed states generally taking a wider view and Eastern bloc and developing states arguing for a restrictive interpretation of Article 51. Was the right to self-defence a narrow right, limited to cases where an armed attack had occurred or was there a wider customary law right, preserved by the reference to 'inherent right' in Article 51? At first these divisions centred on whether the right to self-defence includes anticipatory action against an imminent attack and the right to use force to protect nationals abroad. Later questions also arose as to whether national liberation movements have a right to use force in self-defence against colonial occupation on the basis that colonialism was aggression. The divisions were apparent in UN debates and in the attempts to legislate on the use of force in General Assembly resolutions.

Divisions on the Interpretation of the Law of the Charter

During the Cold War some academic writers argued for the reinterpretation of Article 2(4) on the basis that the Charter collective security system was not

[27] See above, n. 3. Since the decision in the *Nicaragua case* in 1986 states have generally been scrupulous in reporting to the Security Council.

[28] On the requirements of necessity and proportionality, see the *Nicaragua case*, paras. 194, 237; see also the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, ICJ Reports*, 1996, para. 226; and *Oil Platforms (Islamic Republic of Iran* v. *United States of America*), *ICJ Reports*, 2003, para. 43.

working. Article 2(4) should therefore be interpreted to allow the use of force to further the aims of the UN. An invasion by one state of another state to rescue nationals or to prevent a humanitarian catastrophe should not be seen as harming the territorial integrity or political independence of a state, nor as contrary to the purposes of the UN. Pro-democratic invasions could be legal under Article 2(4). This restrictive interpretation of the prohibition of the use of force was put forward by the Yale school in the US. However, this doctrine was rarely used by states and met little acceptance in practice.

A similar argument was also made on Article 51: given the non-functioning of the Security Council, states should be allowed to exercise a wide right of self-defence.[29] Logically the opposite position is just as persuasive: that exactly because the Charter system was not working it was even more important for states not to resort to force. States remained divided on self-defence; the majority took a narrow view; a few militarily powerful states such as the USA and Israel took a wide view.

But there has been little practice in support of this wide view; states did not often invoke anticipatory self-defence.[30] The International Court of Justice has repeatedly avoided a decision on this question.[31] Security Council and General Assembly debates showed the divisions between states. And the condemnations of such use of force by the Security Council were agreed on by member states for a variety of reasons. Thus Israel's pre-emptive attack on Iraq's nuclear reactor in 1981 was unanimously condemned in the Security Council, but for varying reasons. Some states said that Israel had not exhausted peaceful means; others said that there was no threat; others said that there was no right of pre-emptive self-defence.[32] This is typical of the practice of the Security Council and helps to show how the assessment of the legal significance of its resolutions is a complex process.

There have also been divisions on the right to use force to secure self-determination; developing and Eastern bloc states defended this right. Generally the legal basis for this was not specified, but arguments were occasionally made that such use of force was not prohibited by Article 2(4), as that provision applied only to states, or that Article 51 allowed a people with the right of self-determination to use force in self-defence against colonial occupation. The legal division was never resolved; resolutions masked the disagreements; the only agreement possible was that the use of force *against* a people with the right of self-determination was unlawful. This issue is still problematic in the context of the definition of terrorism, with many developing states arguing for a distinction between freedom fighters and terrorists.

[29] See, for example, Judge Jennings' Dissenting Opinion in the *Nicaragua case*, at p. 543.

[30] See Gray, *International Law and the Use of Force*, 129.

[31] It deliberately avoided a decision on this issue in the *Nicaragua case*, at para. 194; it was not called on to decide this question in the Case Concerning *Oil Platforms*; and, most recently, in *Democratic Republic of Congo v Uganda, ICJ Reports*, 2005, it again expressly avoided a pronouncement at para. 143.

[32] *Yearbook of the United Nations*, 1981, 275.

New Challenges

The use of force by NATO in Kosovo (1999), the terrorist attacks of 11 September 2001 and their aftermath, the US and UK invasion of Iraq (2003): all these pose fundamental questions about the law on the use of force and the role of the Security Council.

First, is there now, after the Kosovo action, a right or even a duty of humanitarian intervention? It is well established that the Security Council has the power under Chapter VII of the Charter to authorize action to avert humanitarian catastrophe, and it has done so in the cases of Somalia and Haiti. However, it has sometimes proved difficult to secure agreement in the Security Council, as with regard to Kosovo. Therefore the question has arisen whether states may intervene unilaterally when the Security Council fails to act. The UK was the first state to argue for the emergence of such a legal right to intervene in the event of 'humanitarian catastrophe', originally with regard to the protection of the Kurds and Shiites in the no-fly zones of Iraq. However, its attempt to persuade the Security Council to adopt a legal framework for this emerging doctrine was not successful. Some states remained distinctly sceptical of any such unilateral right, arguing that it would be a tool for powerful states to claim the moral high ground while pursuing their own political agenda. The Security Council was divided on the authorization of military action against Serbia and Montenegro for its harsh treatment of the ethnic Albanians in Kosovo; China and Russia opposed any military intervention. NATO proceeded unilaterally, but its members were divided as to the exact legal basis for their action. The precise conditions for humanitarian intervention remained unclear. The High-level Panel and the Secretary-General did recommend the adoption by states of a 'responsibility to protect' in cases of humanitarian disaster – rather more attractive language than that of humanitarian intervention – and this was accepted by the World Summit in its Outcome Document.[33] But divisions remained as to whether the right to use force could only be authorized by the Security Council or whether states could use force unilaterally. The 116-member Non-Aligned Movement has made a point since Kosovo, and subsequently in response to the High-level Panel Report, of registering its opposition to any unilateral right. Moreover, the slow and inadequate response to events in Darfur in Sudan since 2003 (as earlier in the case of Rwanda) has demonstrated yet again that the main problem in this area is not with the law, but with the political willingness of states to act.[34]

Another important question on the use of force which has come to the fore since the end of the Cold War, and especially since 9/11, is whether the world is facing new threats which justify a wider right for states to use force. The proclamation of a

[33] GA Res. 60/1 of 24 Oct. 2005, paras. 138 9.

[34] The government of Sudan consented to the deployment of an African Union mission in Darfur, but this ran into difficulties as it was not given adequate resources; and until 2007 it objected to the deployment of a UN peacekeeping operation in Darfur.

'global war on terror' has led some to call for a reappraisal of international law on the use of force. Many Western states accept the view of the USA that there is now a danger, not only of attack from global terrorists, but also that rogue states will acquire weapons of mass destruction and will assist global terrorists. The question is whether this requires a shift in the law on self-defence. States were divided before 9/11, with the USA and Israel claiming a wide right of self-defence against terrorist attacks on their nationals abroad, and a right to take deterrent and anticipatory or pre-emptive action. But there was no general agreement that this was consistent with Article 51.

After the terrorist attacks of 9/11 on the World Trade Centre and the Pentagon the Security Council in Resolutions 1368 and 1373 reaffirmed strongly that terrorism was a threat to international peace and security.[35] It also affirmed a right of self-defence, but the exact scope of that right in the context of terrorist attacks is still problematic. Interpretation of Resolutions 1368 and 1373 is not straightforward; they refer to self-defence in their preambles, in itself a rare event, but much is left unclear. Is the concept of armed attack in Article 51 now wide enough to cover attack by non-state actor? What degree of state involvement, if any, is required to justify a forcible response against terrorists present in that state's territory,[36] and what is an appropriate response? Is forcible pre-emptive or preventive action permitted and, if so, when? The right of the US to use force in self-defence in Operation Enduring Freedom in Afghanistan in response to the attacks of 9/11 was generally accepted, and NATO for the first time invoked Article 5 of its constituent treaty asserting a right of collective self-defence.[37]

The High-level Panel Report and, more surprisingly, the Secretary-General's report, *In Larger Freedom*, took a radical and controversial view of the right of self-defence, in line with that of certain developed states rather than that of the rest of the world.[38] They asserted that it was well-established that Article 51 allowed pre-emptive forcible action in the face of an imminent threat. However, this was attacked by many states, including the Non-Aligned Movement and the statement was not included in World Summit Outcome Document.

[35] SC Res. 1368 of 12 Sep. 2001; SC Res. 1373 of 28 Sep. 2001.

[36] The Court avoided addressing this question of self defence against non state actors in the absence of state involvement in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports*, 2004, where it dealt very briefly with the law on self defence in para. 139. In *DRC* v. *Uganda*, para. 147, the Court expressly said that it did not need to consider this issue.

[37] The International Court of Justice in the *Nicaragua case*, para. 195, set out the customary international law on collective self defence. As with individual self defence, the use of force should be necessary and proportionate. Also there should normally be a declaration by the victim state that it had been subject to an armed attack and a request for help by that state. Although there was much criticism of this position, in fact it was an accurate representation of state practice.

[38] High level Panel, *A More Secure World*, para. 190; Annan, *In Larger Freedom*, para. 125.

The US has gone even further than claiming a right to anticipatory self-defence against an imminent attack; it has asserted a very wide right of purely preventive self-defence. In its National Security Strategy (September 2002) it said that new threats meant that it was necessary to re-examine the concept of imminence.[39] But there has been little support by states for such a wide doctrine of preventive force. Even the UK has not been willing to go so far. Both the High-level Panel and the Secretary-General took the clear view that if there was no imminent threat then a state wanting to use force should go to the Security Council. The use of force against Iraq in 2003 proved extremely divisive and there was no general acceptance of any right to purely preventive action in the absence of express Security Council authorization.[40]

To recap, the High-level Panel and the Secretary-General in his report, *In Larger Freedom,* did not recommend formal amendment of the basic provisions on the unilateral use of force by states, Article 2(4) on the prohibition of the use of force and Article 51 on the right of self-defence. They did make controversial proposals on the interpretation of the basic provisions on self-defence and on humanitarian intervention. The former proved unacceptable to the vast majority of states and were not included in the World Summit Outcome Document. The latter question of humanitarian intervention also proved controversial. The debates between states on the reports and at the 2005 World Summit made it clear that there are still major disagreements between states on the basic limitations on the use of force, as there had been since the founding of the UN. Thus the World Summit produced a mixed result as regards collective security and the use of force. On the one hand, there was a positive reaffirmation of the Charter scheme; on the other, it was clear that there could be no new agreement on general rules on the use of force because of continuing differences between states.

[39] There was initially some doubt as to whether the relevant section of the National Security Strategy was setting out a statement on the law, but the US has since reasserted the right to pre emptive action in its 2005 National Defense Strategy, see *American Journal of International Law* 99, no. 3 (2005), 693; and in its 2006 National Security strategy.

[40] Those states supporting Operation Iraqi Freedom did so on the basis of Security Council authorization and the revival of the authorization to use force given in SC Res. 678 of 29 Nov. 1990; see also above, n. 20.

CHAPTER 4

PROPOSALS FOR UN STANDING FORCES: A CRITICAL HISTORY

ADAM ROBERTS

Since the formation of the United Nations the creation of a standing UN military force has been proposed repeatedly. Such a force has been seen as a means of improving the organization's response to urgent problems of war, civil war, and mass killings; as a way of expediting the provision of peacekeeping forces to back up ceasefire and peace agreements; and as a basis for preventive deployments to ward off imminent dangers. The Security Council has generally been envisaged as having a key role in the creation and direction of such a force.

This chapter reviews proposals for standing forces of various kinds, including those for individually recruited UN forces and for a UN rapid-reaction capability drawing on national contingents. It seeks particularly to identify the different practical tasks that such forces have been envisaged as serving. It touches on regional as well as global forces. It considers the implications of the 1994 Rwanda crisis, which strengthened calls for standing forces, and of the Darfur crisis since 2003. It explores what happened to the various proposals, and why the idea entered a period of decline. Finally, it enumerates some of the problems regarding the creation and operation of such forces; and offers conclusions about the long-standing question of improving the UN's response capability.

Although, as this chapter indicates, there are grounds for scepticism about proposals for UN standing forces, the crises which such forces are intended to address are both serious and urgent. By almost universal consent, improvement in the international community's rapid-response capability is needed. The nub of the issue is: what is realistically achievable in a world where the demand for UN rapid-response forces is likely to be huge, the interest of states in responding to that demand is not unlimited, and the capacity of the Security Council to manage crises effectively is often questioned? And what can be learned from the history reviewed here?

Consideration of Standing Forces in the Cold War Years

In Chapter VII of the UN Charter, Articles 43 to 48 envisaged forces being at the disposal of the Security Council exclusively in the context of enforcement operations. These provisions have never been implemented. Since the earliest years the Security Council has not in fact had armed forces at its disposal in the manner envisaged in the Charter.

In March 1946, in the speech at Fulton, Missouri, in which he observed that an iron curtain had descended across Europe, Winston Churchill said of the United Nations Organization: 'We must make sure that its work is fruitful, that it is a reality and not a sham, that it is a force for action, and not merely a frothing of words.' He proposed, as a first step to strengthen the UN, the creation of an international air force, with each state providing a number of squadrons. He went on to warn: 'It would nevertheless be wrong and imprudent to entrust the secret knowledge or experience of the atomic bomb, which the United States, Great Britain, and Canada now share, to the world organisation, while it is still in its infancy.'[1] This reflected the provision in Charter Article 45 that 'Members shall hold immediately available national air-force contingents for combined international enforcement action.' On this matter, no action followed Churchill's words.

In 1946–7, when the UN's Military Staff Committee was set up, it was asked to examine the question of contributions of armed forces to the Security Council. It duly published a report in which the five powers agreed, at least in theory, on the desirability of establishing forces available to the Security Council. However, the report reflected significant disagreements among the Permanent Five about the size, composition, and basing arrangements of national contributions. The whole

[1] Winston Churchill, speech at Fulton, Missouri, 5 Mar. 1946. Martin Gilbert, *'Never Despair': Winston S. Churchill, 1945 1965* (London: Heinemann, 1988), 199.

enterprise was abandoned.[2] This was part of a broader failure to implement the ambitious provisions of Chapter VII specifying a framework for the maintenance and application of armed force under Security Council auspices.

Trygve Lie's 'trial balloons', 1948–52

Trygve Lie, the first Secretary-General of the UN, was anxious to salvage something from this failure. He dealt daily with difficult situations, such as Palestine, in which, in his judgement, the UN needed greater capacity to impose its will. These were among the reasons why he made a number of proposals for standing forces – albeit with modest capacities and objectives. As he wrote in his memoirs:

> During the spring of 1948, when it was already evident that there would be no possibility of implementing Article 43 in the foreseeable future, I cast about with my advisers for a new approach that might provide the Security Council with some sort of armed force. The outbreak of hostilities in Palestine gave urgency to such thinking, and after much consid eration I decided on at least floating a trial balloon for the idea of a small internationally recruited force which could be placed by the Secretary General at the disposal of the Security Council.[3]

The 'trial balloon' was launched on 10 June 1948 in a speech at Harvard University. Lie noted that Senator Vandenberg had introduced a resolution into the US Senate calling for 'maximum efforts to obtain agreements to provide the United Nations with armed forces as provided by the Charter'. He urged the conclusion of military agreements under Article 43 of the Charter, and called for 'the establishment of a comparatively small guard force, as distinct from a striking force'.[4] There was very little detail.

A month later, in his Annual Report, Lie repeated his call for a Guard Force:

> I have under study proposals for the creation of a small United Nations Guard Force which could be recruited by the Secretary General and placed at the disposal of the Security Council and the General Assembly. Such a force would not be used as a substitute for the forces contemplated in Articles 42 and 43. It would not be a striking force, but purely a guard force. It could be used for guard duty with United Nations missions, in the conduct of plebiscites under the supervision of the United Nations and in the administration of truce terms. It could be used as a constabulary under the Security Council or the Trustee ship Council in cities like Jerusalem and Trieste during the establishment of international

[2] 'General Principles Governing the Organization of the Armed Forces Made Available to the Security Council by Member Nations of the United Nations: Report of the Military Staff Committee', UN doc. S/336 of 30 Apr. 1947. For an account based on British archives of the UN discussions in 1946 8, see Eric Grove, 'UN Armed Forces and the Military Staff Committee', *International Security* 17, no. 4 (Spring 1993), 172 82.

[3] Trygve Lie, *In the Cause of Peace: Seven Years with the United Nations* (New York: Macmillan, 1954), 98.

[4] *Public Papers of the Secretaries General of the United Nations*, vol. I, *Trygve Lie 1946 1953*, ed. Andrew W. Cordier and Wilder Foote (New York: Columbia University Press, 1969), 134.

regimes. It might also be called upon by the Security Council under Article 40 of the Charter, which provides for provisional measures to prevent the aggravation of a situation threatening the peace.

There are many uses for such a force. If it had existed during the past year it would, I believe, have greatly increased the effectiveness of the work of the Security Council, and have saved many lives, particularly in Indonesia and Palestine. It should not be a large force

from one thousand to five thousand men would be sufficient because it would have behind it all the authority of the United Nations.[5]

This bold proposal for a 'UN Guard Force' had to be modified. Already by September 1948 it was watered down in name, functions, and size to an 800-man 'UN Guard', which, although uniformed and armed with light defensive weapons, would be 'entirely non-military in character'.[6] In due course this modified proposal led to the creation of a committee to consider the matter.[7] When, on 24 June 1949, Trygve Lie gave the committee a version of his proposal, it was in yet further truncated form. As the committee's report stated:

At the 1st meeting of the Special Committee, the Secretary General presented a revision of his original proposal recommending the creation of a Field Service and a Field Reserve Panel . . . The first, comprising a maximum of 300 regularly employed men, would provide technical services and ensure the security of missions. The second would be a reserve of individuals to be called upon for observation functions in connexion with truce enforce ment, plebiscites, etc. The Secretary General withdrew his original proposal, and the revised proposal became the only one before the Committee.[8]

Lie should not be blamed for his successive retreats from his bold original idea. Many states – including not only the Soviet Union and its allies, but also others including the US, the UK, and France – had been nervous about the UN Guard proposal. The US had stated: 'We are inclined to think that the original proposal was somewhat too ambitious, and that it did encroach somewhat on the military theme.'[9] Even nominal supporters of the UN force idea had reservations, some arguing that they would have preferred a directly recruited force to one consisting of personnel supplied by member states.

Following closely Lie's twice-truncated proposal, the committee's report, issued in October 1949, noted that two new bodies, which were additional to the existing

[5] Trygve Lie, Introduction (dated 5 Jul. 1948) to *Annual Report of the Secretary General on the Work of the Organization, 1 July 1947 30 June 1948*, UN doc. A/565 (Lake Success, New York: United Nations, 1948), xvii xviii.

[6] 'A United Nations Guard: Report of the Secretary General to the General Assembly', UN doc. A/656 of 28 Sep. 1948, appendix B, para. 1.

[7] GA Res. 270 (III) of 29 Apr. 1949 set up a special committee to study the Secretary General's proposal for the establishment of a UN Guard. The committee consisted of representatives of the P5 plus Australia, Brazil, Colombia, Czechoslovakia, Greece, Haiti, Pakistan, Poland, and Sweden.

[8] 'United Nations Field Service: Report of the Special Committee on a United Nations Guard', GAOR, 4th session, Supplement 13, 1949, para. 6. (The published version carries the date 10 Oct. 1949.)

[9] *Public Papers of the Secretaries General of the United Nations*, vol. I, *Trygve Lie*, 186.

Headquarters Guard Force, were to be established: the UN Field Service, and the UN Panel of Field Observers – the latter term being seen as a more accurate description of Lie's proposed 'Field Reserve Panel'. The functions of both elements were defined in extremely modest terms. The UN General Assembly approved this conclusion.[10] In nomenclature, in size, and in functions, this was a tiny mouse to have emerged after Lie's much more ambitious proposals made in 1948.

The outbreak of the Korean War in June 1950, and the UN authorization of a US-led force to repel North Korea's armed attack on South Korea, brought the focus back to collective uses of force. The General Assembly's famous 'Uniting for Peace' resolution of November 1950 included a call for member states to keep forces trained, organized, and equipped for UN service – an early version of the standby concept. The same resolution also established a Collective Measures Committee, which started work in 1951.[11] Shortly thereafter, Lie proposed a 'UN Legion', to be composed largely of over 50,000 volunteers for military service under the UN. Once again, the title of a proposed force had to be changed, this time to the more anodyne 'UN Volunteer Reserve'. Lie admitted that it 'was administratively, financially and militarily impractical at the present time'.[12] No action was taken. The final death-knell of the UN Legion idea came in 1954 when Dag Hammarskjöld, who had succeeded Trygve Lie, indicated that 'the Secretary-General did not wish for the time being to proceed with the proposals.'[13]

Lie said in his memoirs that in the early Cold War years 'the time was not ripe for attracting the necessary governmental support.' While recognizing all the factors that had preoccupied governments, he concluded wanly: 'I continue to feel that this was one of those lost opportunities which, if seized, might have contributed substantially to building up the influence of the United Nations for the maintenance of peace.'[14]

After 1956: From 'UN peace force' to standby arrangements

Peacekeeping forces developed, especially from 1956 onwards, along different lines: they were composed of national contingents which were made available for particular UN operations through specific agreements with the troop-providing

[10] GA Res. 297 (IV) of 22 Nov. 1949. Part A stated it that it was within the Secretary General's authority to establish the Field Service, and simply noted his intention to establish it. Part B requested the Secretary General to establish and maintain the list to be known as the UN Panel of Field Observers.

[11] GA Res. 377 (V) of 3 Nov. 1950, paras. 7 11.

[12] Second report of the Collective Measures Committee, GAOR, 7th session, Supplement 17, Oct. 1952, 12. See also GA Res. 703 of 17 Mar. 1953, which accepted the report but made no mention of the Legion or Volunteer Reserve proposals.

[13] Third and final report of the Collective Measures Committee, GAOR, 9th session, Annexes, Agenda item 19.

[14] Lie, *In the Cause of Peace*, 99.

governments. This ad hoc method of cobbling together a UN force was, quite naturally, seen as cumbersome. With many asking 'Why not make such machinery permanent?', the idea of a standing UN force was revived.

This revival was most marked in the US. In 1957 the major US foreign policy think-tank, the Carnegie Endowment for International Peace, produced a book advocating the creation of a UN force.[15] In the following year two leading American international lawyers produced an ambitious scheme for a 'UN peace force', to consist of individual volunteers formed into a Standing Force of between 200,000 and 600,000 persons, plus a Peace Force Reserve of between 600,000 and 1.2 million: so far as the projected size of a UN standing force is concerned, this is the high-water-mark.[16]

More modest proposals were discussed extensively at the UN in the late 1950s, including in the General Assembly. The focus was less on standing forces than on standby arrangements, which many saw as the most practicable means of making a quick response possible. US Secretary of State John Foster Dulles's letter to Dag Hammarskjöld of 18 November 1958 is an early example of the enthusiasm of states for standby forces: 'As you know, the United States . . . has a strong interest in the early establishment of standby arrangements for a United Nations Peace Force.' He went on to mention the need for consultations,

> with a view to determining the terms and circumstances under which Member States would make available personnel or materiel for UN field missions. I understand further that it is your hope that such consultations will lead to indications by governments on the provisions they might wish to make within their own armed forces so that it would be possible to place units in UN service on short notice. Moreover, I am informed that you intend to maintain a group within the Secretariat to carry forward advance planning and to carry on consulta tions with governments.
>
> I hope that you will be able in the near future to make significant progress in this direction. I want to assure you that the United States is prepared to assist you in every feasible manner in strengthening the capacity of the United Nations to discharge its responsibility for the maintenance of international peace and security, a task to which you have already contributed so much.[17]

[15] William R. Frye, *A United Nations Peace Force* (New York: Oceana, 1957). See also the appendix by Stephen Schwebel on Trygve Lie's proposals for a UN Guard and UN Legion.

[16] Grenville Clark and Louis B. Sohn, *World Peace Through World Law* (Cambridge, Mass.: Harvard University Press, 1958), 300. The proposed force size was not changed in subsequent editions. See e.g. 3rd edn. (1966), 314.

[17] Letter from John Foster Dulles to UN Secretary General Dag Hammarskjöld, 18 Nov. 1958. I am grateful to Brian Urquhart for making a copy of the letter available to me, and for having drawn attention to it in his article 'UN Peacekeeping Was and Will Remain Invaluable', *International Herald Tribune*, Paris, 17 Feb. 1995, p. 6. On US attitudes see also the section of 'Standby Arrangements for a United Nations Peace Force' in Circular Instructions from the Department of State to Certain Diplo matic Missions, Washington, 7 Aug. 1959, reprinted in *Foreign Relations of the United States, 1958 1960*, vol. II, *United Nations and General International Matters* (Washington, DC: GPO, 1991), 162 3.

In subsequent decades, virtually all developments in the UN were about relying on, and periodically attempting to improve, standby arrangements for UN peacekeeping forces. The UN Special Committee on Peacekeeping frequently discussed the issue with a view to improving the UN's rapid-reaction capability. In the Cold War, even in its periods of détente, this was probably the best that could be hoped for.

The more ambitious idea of standing forces still attracted interest, especially from academic international lawyers. In 1964, a fine British study of UN forces looked not only at the many peacekeeping and other forces that had actually been created by then, but also considered the various proposals for a permanent UN force, the methods by which it might be raised, and its possible command structure. This study reflected the contemporary view, shaped by the Cold War divide – that the General Assembly was at least as likely as the Security Council to provide the framework within which such a force might be created:

> Nothing in the Charter specifically precludes the establishment of a permanent Force, and, as we have seen, both the Assembly and the Security Council have powers wide enough to enable them to establish a permanent Force as a subsidiary organ for purposes necessary to the maintenance of international peace and security.[18]

Despite their development by scholars, proposals for a permanent UN force seemed unrealistic in a period of rivalry between the two superpowers. In addition, they were to lack urgency in periods when – as in the years 1979–87 – no new peacekeeping operations were initiated.

Proposals and Developments, 1992–5

In the period 1992–5 there were more proposals and developments relating to standing forces under UN control than at any time before or since. These were partly, like *An Agenda for Peace*, the products of the optimism of 1992. The ending of the Cold War in the years 1986–91, the active role of the UN in addressing regional conflicts at that time, and the decline in the use of the Security Council veto, all led to heightened expectations of what the UN could achieve. However, the new focus on standing forces was also the product of sober appreciation of the limitations of the UN in addressing certain crises of the period, especially in Rwanda. This section looks in turn at the successive proposals, the crises that gave rise to them, and the development of standby arrangements that occurred in this period.

[18] D. W. Bowett, *United Nations Forces: A Legal Study of United Nations Practice* (London: Stevens, 1964), 327. See generally the discussion of a permanent UN force at 316 27, 334 7, and 347 60.

Proposals in *An Agenda for Peace*, 1992

In *An Agenda for Peace*, published in June 1992, Secretary-General Boutros Boutros-Ghali responded to the new situation in which the UN Security Council had vastly increased potential for reaching decisions about action; increased obligations; and a perceived need to act faster, or more forcefully, than had sometimes been possible in the Cold War years. This report contained three distinct proposals touching on the question of standing forces:

1. The idea of *Article 43 agreements* for making armed forces available to the Security Council was revived. This was in a brief two-paragraph discussion of 'Use of Military Force', which sought to resuscitate what was termed 'the concept of collective security as contained in the Charter'. The report proposed 'bringing into being, through negotiations, the special agreements foreseen in Article 43 of the Charter', the aim being to ensure 'ready availability of armed forces on call'. Such forces 'may perhaps never be sufficiently large or well enough equipped to deal with a threat from a major army equipped with sophisticated weapons. They would be useful, however, in meeting any threat posed by a military force of a lesser order.'[19] Their purpose would be 'to respond to outright aggression, imminent or actual'; but Boutros-Ghali conceded: 'Such forces are not likely to be available for some time to come.'[20]
2. *Peace-enforcement units* were proposed, mainly or exclusively to buttress peacekeeping forces by providing a capacity to respond to ceasefire violations. The principal task of such units, to restore and maintain a ceasefire, was one which 'can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors'. The report proposed the use of such units 'in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available on call and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces.'[21]
3. Regarding the provision of contingents for peacekeeping forces, the report highlighted the importance of *standby arrangements* whereby member states would specify 'the kind and number of skilled personnel they will be prepared to offer the United Nations as the needs of new operations arise'.[22]

Although they pointed in the same general direction, none of these proposals was for a permanent UN standing force. However, in 1992 some proposals for such a

[19] Boutros Boutros Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace keeping*, Report of the Secretary General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 Jan. 1992 (New York: June 1992), paras. 42 and 43.

[20] Ibid., para. 44.

[21] Ibid.

[22] Ibid., para. 51.

force were made, mainly in the USA. For example, Timothy Stanley and others proposed a UN Legion of some five thousand troops, supplemented by a Quick Reaction Force of troops earmarked by members of the Security Council and a second lower-readiness backup force.[23] A similar proposal was made by the United Nations Association of the United States.[24]

Voluntary individually recruited UN force: The 1993 Urquhart proposal

The idea of a standing UN Volunteer Military Force comprised of professionals recruited on an individual basis was advanced in June 1993 by Sir Brian Urquhart. The central issue to be addressed was the increasing difficulties faced by UN peacekeeping operations. Two aspects of this were weakness in face of violent harassment (as in Cambodia and Angola); and delays in getting states to contribute forces to an urgent UN mission (as in Mozambique and Somalia). Former Yugoslavia exemplified both aspects:

> Above all, the tragedy of Bosnia has shown that international organizations are not able to deal effectively, and when necessary forcefully, with violent and single minded factions in a civil war. The reluctance of governments to commit their troops to combat in a quagmire is understandable. Yet the Bosnian Muslims, among others, have paid a terrible price, and the credibility and relevance of international organizations are dangerously diminished.[25]

What was the exact nature and function of the proposed force? He indicated that he was thinking in terms of 'a five-thousand-strong light infantry force' that might cost in the region of $US380 million a year to maintain and equip. As Urquhart succinctly wrote elsewhere at that time:

> Recent UN experiences provide a good argument for at least considering the establishment of an immediately available élite UN force directly recruited from volunteers worldwide. Hitherto the Security Council has lacked the capacity to deploy a convincing military presence at the outset of a crisis before the situation has disintegrated and become uncontrollable. In fact, the first Secretary General, Trygve Lie, suggested such a force for precisely this purpose in 1948, in the early stages of the first Arab Israeli war.
>
> There are numerous possible objections to such a force. However, there is one over whelming argument for it. It might give the Security Council (and the Secretary General) the capacity to display strength and determination at a point where larger disasters could be avoided. If the Security Council is to retain its credibility and relevance in the kind of

[23] Timothy Stanley, John M. Lee, and Robert von Pagenhardt, *To Unite our Strength: Enhancing the United Nations Peace and Security System* (Lanham, Md.: University Press of America, 1992), ch. 2.

[24] *Partners for Peace: Strengthening Collective Security for the 21st Century* (New York: United Nations Association of the United States, 1992).

[25] Brian Urquhart, 'For a UN Volunteer Military Force', *New York Review of Books*, 10 Jun. 1993, 3. See also the comments in subsequent issues.

low level conflicts in which it is now widely involved, it urgently needs a capacity for immediate 'peace enforcement' action.[26]

This proposal, like some others (including the 1995 'Netherlands Non-paper'), was not limited to peacekeeping as traditionally understood; nor was it limited to the role of a quick-reaction force, to be replaced by regular peacekeepers as soon as possible. A standing force along these lines was seen as giving the Security Council (and, more debatably, the Secretary-General) a capacity for a fast military response in certain crises: for example, in assisting a state threatened by external attack, or in enforcing a ceasefire in an incipient international or civil war. Such a deployment might be without the consent of at least one of the parties to a conflict, and it might be carried out before there was a ceasefire agreement.

Lessons from the Rwanda mass killings in 1994

The disaster of war, genocide, and vast refugee flows in Rwanda in 1994 did more than any other crisis to generate support for proposals for a standing UN force. Between 6 April and about 19 July 1994 a huge number of Rwandans were murdered – estimates are in the region of 800,000 to one million.[27] Already in January, Major-General Roméo Dallaire, the UN Force Commander in charge of the UN peacekeeping force (UNAMIR) in Rwanda at the time, had given a detailed warning of the danger of mass exterminations of Tutsis.[28] Then and subsequently, he felt that the UN's failure to respond facilitated the mass killings. As he put it in 1995:

> In Rwanda, the international community's inaction was, in fact, an action which contrib uted to the Hutu extremists' belief that they could carry out their genocide.
>
> . . . UNAMIR could have saved the lives of hundreds of thousands of people. As evidence, with the 450 men under my command during this interim, we saved and directly protected over 25,000 people and moved tens of thousands between the contact lines. What could a force of 5,000 personnel have prevented? Perhaps the most obvious answer is that they would have prevented the massacres in the southern and western parts of the country because they didn't start until early May nearly a month after the war had started.[29]

[26] Brian Urquhart, 'The UN and International Security after the Cold War', in Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World: The UN's Roles in International Relations*, 2nd edn. (Oxford: Oxford University Press, 1993), 102.

[27] 'Approximately 800,000 people were killed during the 1994 genocide in Rwanda.' First sentence of the 'Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda', UN doc. S/1999/1257 of 16 Dec. 1999, 3.

[28] General Roméo Dallaire, cable to Maj. Gen. Maurice Baril, Military Adviser to the Secretary General, UN HQ, 11 Jan. 1994. Copy on file with the author.

[29] General Roméo Dallaire, speech at Hague Symposium, 23 Mar. 1995, written text, 3 and 14. See also Dallaire with Brent Beardsley, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto: Random House Canada, 2003).

Many other observers have argued similarly that when the large-scale killings of Tutsis by the Interahamwe militias began in April 1994, a quite modest-sized international military force could have stopped the slaughter. This is a serious argument, which was to play a significant part in the development of the various proposals for UN forces made in 1995 by Boutros-Ghali and by the Dutch and Canadian governments.

That the UN Security Council has the legal capacity to initiate military action to stop acts of genocide is indicated by its Charter-based powers to take action against threats to the peace, and also by the 1948 Genocide Convention, Article VIII, which specifies that any contracting state 'may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide'.

In briefest outline, the background to the UN's authorization of forces over the Rwanda crisis was that in 1993 there was increased fighting in Rwanda, mainly between the predominantly Hutu government and its opponents in the Rwanda Patriotic Front (RPF). The RPF was supported principally by the Tutsi minority, many of whom were in exile, and was operating mainly from Uganda. Attempts to organize a political settlement centred on the Arusha accords, signed on 4 August 1993 after long negotiations under UN auspices between representatives of the Rwanda government and the RPF. These accords sought to achieve an end to the war between these two parties, and to establish a broad-based transitional government. There were repeated difficulties in implementing the accords. The deaths of the Presidents of Rwanda and Burundi in a suspicious air disaster at the capital, Kigali, on 6 April 1994 became the trigger for systematic killings of Tutsis in Rwanda, which began immediately afterwards. During April a huge number of Tutsis fled, mainly to Tanzania.

A peculiarly grisly feature of the crisis is that Rwanda was a member of the UN Security Council from 1 January 1994. Thus the government that was instigating or tolerating mass killings also had a voice in the international response to them. However, the Security Council's shortcomings in this crisis were not due to the presence of Rwanda. The Permanent Representative of Rwanda was ignored, and Rwanda did not hold the presidency of the Council as it would have done under the normal country-alphabetical rotation of that post.[30]

In 1993–4, in connection with the events in Rwanda and to support attempts to reach a political settlement, the UN Security Council established three forces in Rwanda. The first two were UN peacekeeping forces, while the third was a UN-authorized force under French command.

1. The first UN force to be established was the United Nations Observer Mission Uganda–Rwanda (UNOMUR), a small military observer group which operated

[30] Eventually, in Dec. 1994, Rwanda held the presidency. By this time there was a new Permanent Representative of Rwanda, representing the new RPF government.

on the Ugandan side of the Uganda–Rwanda border for almost exactly one year from August 1993 to verify that no military assistance was reaching Rwanda. Its authorized strength was 81. It was established on the basis of Security Council resolution 846 of 22 June 1993. It took into account the Arusha accords, eventually signed on 4 August 1993.

2. The second UN force, United Nations Assistance Mission for Rwanda (UNAMIR), was set up in November 1993, on the basis of Security Council resolution 872 of 5 October 1993. Originally, its authorized military strength was 2,548 military personnel. It operated within Rwanda, a principal purpose being to facilitate the implementation of the 1993 Arusha accords. It had 2,539 military personnel at 31 March 1994. On 21 April 1994, following the murder of ten Belgian peacekeepers and the outbreak of mass killings of Tutsis, the Security Council decided, controversially, to reduce UNAMIR's strength to 270 personnel.[31] By 13 May it had in fact been reduced to 444.[32] The Council persisted for too long in seeing the problem in the more familiar terms of implementing a ceasefire. Only at the end of April did the Secretary-General call on the Council to deal with the massacres of civilians.[33] In mid-May, in response to revelations of the full horror of events, the Council belatedly expanded UNAMIR's mandate to enable it to contribute to the security and protection of refugees and civilians at risk, and its authorized strength was increased to 5,500 troops.[34] This increase remained notional, because not one of the nineteen governments that had undertaken to have troops on standby for UN peacekeeping agreed to contribute to this force under these arrangements.[35] The extended mandate was repeated and reaffirmed in a resolution in early June, which referred to 'reports indicating that acts of genocide have occurred in Rwanda', and underscored that 'the internal displacement of some 1.5 million Rwandans facing starvation and disease and the massive exodus of refugees to neighbouring countries constitute a humanitarian crisis of enormous proportions.'[36] Failing to secure new contingents, and to take action in Rwanda, UNAMIR was ill-supported and ineffective. However, in subsequent months, especially after the RPF victories in June and July, the number of UNAMIR personnel was belatedly increased, reaching 5,522 by 31 December 1994.
3. Following the failures surrounding UNAMIR, on 22 June 1994 the Security Council accepted an offer from France and other member states to establish a temporary operation inside Rwanda under French command and control. This

[31] SC Res. 912 of 21 Apr. 1994.

[32] Figures from UN, *United Nations Peace keeping Information Notes: Update May 1994* (New York: UN, 1994), 164 6.

[33] UN doc. S/1994/518 of 29 Apr. 1994.

[34] SC Res. 918 of 17 May 1994.

[35] As Boutros Ghali ruefully observed in 'Supplement to An Agenda for Peace', para. 43.

[36] SC Res. 925 of 8 Jun. 1994.

became the French-led *Opération Turquoise* in western Rwanda in summer 1994. The Council stated that in accepting the French offer it was acting under Chapter VII of the Charter, and it authorized France to use 'all necessary means to achieve the humanitarian objectives' set out in earlier Security Council resolutions.[37] The deployment of the French under UN auspices actually exacerbated some of UNAMIR's problems, as the French role was seen (rightly or wrongly) as favouring the government (largely Hutu) forces, and preventing the RPF from achieving total victory throughout the country.

The conditions within which these three forces operated changed after 4 July 1994, when the RPF captured Kigali. The killings of Tutsis gradually ceased, but now there was a new flood of refugees, this time Hutus seeking to avoid the anticipated retribution of the country's new masters. While many of these refugees went to camps inside Rwanda, over one million of them fled the country, mainly to camps established just inside Zaire (in 1997 renamed Democratic Republic of Congo), at Goma and Bukavu. In 1994 the US sent troops to help run these camps. The UN continued to encounter severe problems in getting states to provide contingents for peacekeeping forces in these refugee camps on the borders. Boutros-Ghali sent out appeals to sixty governments for troops and equipment for a peacekeeping force to protect 1.2 million Rwanda refugees in camps in Zaire, and did not get a single positive response: a repeat of the frustration of May 1994.[38]

Particular reasons why the Rwanda experience was seen as pointing in the direction of some kind of UN standing or quick-reaction forces include the following:

- The Interahamwe, the main group carrying out the killings in 1994, did not constitute an impressive military force. Its Tutsi victims might well, therefore, have been saved by a modest-sized external military force.
- The weakness of existing UN standby arrangements for peacekeeping forces was demonstrated in Rwanda. As in Somalia in December 1992, so in Rwanda in May 1994, the UN failed to secure national contingents for a UN force in any reasonable time frame, and then had to authorize a single country to act in respect of an urgent humanitarian crisis. Such a system of authorization involves an implied reproach to international organization, yet in the absence of some kind of UN rapid-deployment force it may be the only way of addressing certain endemic conflicts and failures of government.

After 1994, a broad consensus emerged that action should have been taken to stop the genocide. In retrospect, states and individuals accepted a responsibility to do what they had not been willing to do at the time. However, a few voices suggested that the UN's abysmal performance had been unavoidable. As Michael Barnett wrote in his inside account of US and UN decision-making over Rwanda, the UN's

[37] SC Res. 929 of 22 Jun. 1994.

[38] Julia Preston, 'UN Drops Effort for Rwanda Refugees', *International Herald Tribune*, Paris, 25 Jan. 1995.

failure to respond forcefully was 'the *only* available choice given the reality on the ground, what member states were willing to do, the rules of peacekeeping, and the all-too-clear limits of the UN. Rwanda was beyond those limits.'[39]

There are some grounds for doubt as to whether the principal lesson of the Rwanda disaster is that the UN needs a standing military force.

(a) The UN did already have some forces (UNOMUR and UNAMIR) in the area. The problems were that it was fearful of the risks to them, conscious that their original mandates were of declining relevance, uncertain how to use them in a rapidly deteriorating situation, and only able to achieve very limited results with them.

(b) Large forces – more than a brigade – might in fact have been required to stop the widespread and systematic genocide.

(c) It is hard to be confident that in the first half of 1994 the whole of any UN standing force would have been available for immediate service in Rwanda: in all probability it would have been already fully occupied in several crises elsewhere at that time.

(d) Even if a UN standing force had been sent to Rwanda, it might have been there at the 'wrong' time. Such a force might have got involved in Rwanda during the crises there in 1993; and might then have had to leave later that year under proposed arrangements that it should have a purely vanguard role, preparing the way for more regular UN peacekeeping forces. Thus it might have left before the genocide began.

(e) It is not immediately clear what exactly the mandate for a larger UN force in Rwanda should have been. Should it have established safe areas for Tutsis, and if so could it have prevented them from becoming involved in the war on the side of the RPF? Or should it simply have supported the RPF forces, as some advocated?

(f) A particular problem with the appeal for reinforcements for UNAMIR in May 1994 may have been that it was not coupled with a clear indication of what particular forces were needed for what particular actions. It is possible that had there been a clearer request, geared to a clear central purpose (e.g. to establish safe areas for Tutsis), the outcome might have been different.

(g) Some actions to stop the genocide that were advocated but not undertaken, such as jamming the inflammatory government radio stations, did not themselves need a large number of troops. (However, they might have exposed the UN peacekeeping forces in the area to reprisals, and thereby increased the need for armed protection.)

(h) A principal UN weakness, exposed by the Rwanda problem, was the lack of a flexible range of options between the peacekeeping mode (with its emphasis

[39] Michael N. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca, New York: Cornell University Press, 2002), p. x. The author, an academic, was on a year's secondment as a political officer of the US Mission to the UN, starting in late summer 1993.

on impartiality and consent) on the one hand, and enforcement against aggression on the other: this needed attention as much as the question of standing forces.

(i) A further UN weakness exposed by the Rwanda crisis is the way in which some governments vote for a resolution on the Security Council, but are then unwilling to take even the minimum of action to put their money where their mouth is.

Behind all these particular problems lies the larger and more terrible one that there was simply a lack of solid interest and definite will to do much about Rwanda. Afterwards, there was widespread agreement that international military action should have been taken in 1994. Bill Clinton, Kofi Annan, and others went to Rwanda and said so. However, it is much easier to be brave retrospectively than at the time. In 1994, actual and potential troop-contributing states were reluctant to take risks with their troops' lives in what was perceived as an uncertain cause. There was a sense of hopelessness at the UN and in national capitals as to whether the Tutsis could be saved from genocide, and whether any approximation of a stable political order could emerge in Rwanda. The bitter experience of intervention in Somalia, from which the US and other powers were in the process of extricating themselves at the very time the Rwanda crisis erupted in 1994, added to the mood of caution. Finally, the international community's inaction in this crisis owed something to the unfortunate fact that it erupted at the very time when governments and international bodies were becoming increasingly cautious about overcommitting themselves in the many post-Cold War crises. For example, both the US and Canadian governments and the UN Security Council were attempting to devise guidelines for the circumstances in which peacekeeping operations should or should not be established. The criteria laid down in these documents put much emphasis on preconditions, such as a stable ceasefire between belligerents, that were not present in Rwanda in 1994.[40]

The concern about the inadequacy of UN peacekeeping forces in a volatile situation was not confined to the single year of 1994. On 22 April 1995, the killings of large numbers of internally displaced Hutus at Kibeho camp inside Rwanda by forces of the Rwanda Patriotic Army, in the presence of UNAMIR troops, cast yet further doubt on UN responses in situations of extreme communal violence. On this occasion, as before, the problem was not so much the availability of forces, but their lack of authorization (and willingness) to act forcefully in a dangerous situation. Similar concerns became acute in Bosnia 1994–5, when UN forces failed to provide protection for threatened people in the 'safe areas'.

For the UN, the lessons of the Rwanda catastrophe were complex. They included consideration, not only of the question of standing forces, but also of other related

[40] On these documents, see below nn. 44, 45, and 46.

matters: the quality of decision-making by the Security Council; the need to advance beyond the ad hoc approach which marked all the UN's decisions over the crisis; the legitimacy of humanitarian intervention, and also of UN peacekeepers responding robustly to attacks on civilians; the question of whether the UN should sometimes simply take sides in a civil war; and the importance of strengthening the role of regional international bodies, so that the UN is not asked to bear a huge range of burdens alone. All these issues arising from the Rwanda tragedy played a part in the debates in subsequent years about the role of the Security Council and of the forces operating under it.

UN Standby Arrangements System (UNSAS)

In 1994 a process began whereby existing UN standby arrangements for peacekeeping forces were gradually formalized into what became known as the UN Standby Arrangements System (UNSAS). Because states were still anxious to retain control over the uses to which their forces were put, these revised UN standby arrangements for peacekeeping retained national control over the availability of national units.[41] By April 2005 eighty-three states had made conditional commitments to UNSAS. However, the system was, and remains, limited in scope. It is explicitly based on 'conditional commitments by Member States of specified resources within the agreed response times for UN peacekeeping operations. These resources can be military formations, specialized personnel (civilian and military), services as well as material and equipment.'[42] A standby arrangement is not a standing force.

UN rapid-reaction force: Boutros-Ghali proposal, January 1995

Meanwhile, in the course of 1993 and early 1994, before the disaster in Rwanda, the debate about standing forces had continued, but with distinctly limited results. For example, of the three proposals in *Agenda for Peace*, there had been no progress on the first two – namely Article 43 agreements, and peace enforcement units. Only the last – standby arrangements for peacekeeping forces – had seen the modest

[41] 'Stand by Arrangements for Peace keeping: Report of the Secretary General', UN doc. S/1994/777 of 30 Jun. 1994, para. 2. This short document (2 pages plus 2 pages of bar charts) failed to mention the May 1994 debacle over the raising of troops for UNAMIR; but the document none the less conveyed an air of scepticism about the adequacy of such standby arrangements. It was discussed at a meeting of the Security Council on 27 Jul. 1994, when a presidential statement (UN doc. S/PRST/1994/36) summarizing the discussion was issued.

[42] Information on UNSAS from www.un.org/Depts/dpko/milad/fgs2/unsas files/sba.htm accessed 18 Apr. 2007. Remarkably, this web page carried this out of date notice: 'The Secretariat would be grateful if the Member States could reconfirm their pledges to the System by 15 June 2005.'

progress outlined above. Moreover, by May 1994, in the wake of disasters in Somalia and elsewhere, the Security Council was becoming more cautious than before about embarking on new peacekeeping missions.[43] At the same time, many states were devising restrictive criteria about the circumstances in which they would be prepared to commit forces to UN operations. In May 1994, with the adoption of Presidential Decision Directive 25, the US Government set firm limits regarding the situations in which the US would support the creation of, or be willing to participate in, UN peacekeeping forces.[44] Even the Canadian Government proclaimed a degree of caution in this regard.[45]

Thus, if there was any progress in 1993–4 on standby arrangements and on developing more ambitious ideas for providing forces for UN operations, it was counterbalanced by increasing nervousness about the extent of military involvement that active support of the UN might entail. While the standby arrangements helped in finding forces for many peacekeeping missions, they did not work in the more difficult cases such as Rwanda. This failure led directly to a series of major proposals for standing forces being made in 1995, marking a high-water mark of interest in the subject.

The first was that of Boutros-Ghali, in his January 1995 'Supplement to An Agenda for Peace', which included the suggestion that a rapid-reaction force was needed. Whereas many other proposals envisaged a broader range of tasks, going well beyond peacekeeping, Boutros-Ghali's proposal was located firmly in the context of the problems of availability of troops and equipment for peacekeeping forces. His proposal immediately followed a reference to the failure of standby arrangements over Rwanda in May 1994:

> In these circumstances, I have come to the conclusion that the United Nations does need to give serious thought to the idea of a rapid reaction force. Such a force would be the Security Council's strategic reserve for deployment when there was an emergency need for peace keeping troops. It might comprise battalion sized units from a number of countries. These units would be trained to the same standards, use the same operating procedures, be equipped with integrated communications equipment and take part in joint exercises at regular intervals. They would be stationed in their home countries but maintained at a high state of readiness. The value of this arrangement would of course depend on how far the Security Council could be sure that the force would actually be available in an emergency. This will be a complicated and expensive arrangement, but I believe that the time has come to undertake it.[46]

[43] See Statement by the President of the UN Security Council, UN doc. S/PRST/1994/22 of 3 May 1994, discussing the Secretary General's report 'Improving the Capacity of the United Nations for Peace keeping', UN doc. S/26450 of 14 Mar. 1994.

[44] *The Clinton Administration's Policy on Reforming Multilateral Peace Operations* (Washington, DC: US Department of State Publication 10161, May 1994), 15 pp. This US document, issued on 5 May 1994, is virtually the text of Presidential Decision Directive 25, less some appendices.

[45] Department of National Defence, *1994 Defence White Paper* (Ottawa: Government of Canada, 1994), 27 39.

[46] 'Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations', UN doc. A/50/60 of 3 Jan. 1995, para. 44.

At the same time, Boutros-Ghali was clear that a UN standing capacity for enforcement actions, as distinct from peacekeeping, was simply not on the cards:

> neither the Security Council nor the Secretary General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale. I believe that it is desirable in the long term that the United Nations develop such a capacity, but it would be folly to attempt to do so at the present time when the Organization is resource starved and hard pressed to handle the less demanding peacemaking and peace keeping responsibilities entrusted to it.[47]

The Security Council's response to 'Supplement to An Agenda for Peace' suggested that there was no significant support there for the rapid-reaction force proposed by Boutros-Ghali. In its section on peacekeeping it rejected the idea, albeit in diplomatic language:

> The Security Council shares the Secretary General's concern regarding the availability of troops and equipment for peace keeping operations. It . . . reiterates the importance of improving the capacity of the United Nations for rapid deployment and reinforcement of operations. To that end, it encourages the Secretary General to continue his study of options aimed at improving the capacity for such rapid deployment and reinforcement. The Council believes that the first priority in improving the capacity for rapid deployment should be the further enhancement of the existing stand by arrangements, covering the full spectrum of resources.[48]

Rapid-reaction force within UNPROFOR, 1995

A 'rapid-reaction force' was actually created under UN auspices in 1995, but it was an ad hoc body very different from what had been envisaged in general proposals for standing forces. In Bosnia in summer 1995, on an Anglo-French initiative, a force comprising troops from France, the Netherlands, and UK, equipped with heavy artillery, was established within the UN Protection Force (UNPROFOR), and was deployed close to the besieged capital city, Sarajevo. The decision to create it was taken amid much controversy in June, at a time when UNPROFOR personnel in Bosnia were being attacked, detained, and generally frustrated in their mission.[49] The decision to create it thus preceded the catastrophic event – the massacre of some 8,000 Bosnian Muslims at Srebrenica in July 1995 – that proved beyond all doubt the weaknesses of the existing pattern of UN peacekeeping in the

[47] 'Supplement to An Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations', UN doc. A/50/60 of 3 Jan. 1995, para. 77.

[48] UN doc. S/PRST/1995/9 of 22 Feb. 1995, 2. France reportedly wanted a more positive response to the Secretary General's ideas on a rapid reaction force, but failed to get sufficient support.

[49] This rapid reaction capability for UNPROFOR was authorized in SC Res. 998 of 16 Jun. 1995. For an account of controversies surrounding its creation, and of its subsequent use in the operations that ended the siege of Sarajevo, see 'Report of the Secretary General pursuant to General Assembly resolution 53/35: The Fall of Srebrenica', UN doc. A/54/549 of 15 Nov. 1999, paras. 213 20 and 442 50.

midst of this war. As eventually deployed and used in August–September 1995, this 'rapid-reaction force' provided much stronger physical protection for the capital than had been available up to that time, and was a serious threat to the Serb forces besieging the city. On 30 August, at the beginning of NATO's Operation Deliberate Force, the rapid reaction force launched a 600-round barrage from its heavy guns.[50] The rapid-reaction force's role outside Sarajevo was a significant factor in ending the siege, and in the events leading to the end of the Bosnian war later that year. Curiously, the achievements of this force were mentioned very little in the ongoing debate about standing forces.

Netherlands Non-paper for a UN Rapid Deployment Brigade, 1995

Meanwhile, influenced mainly by Rwanda, various proposals for standing UN forces gathered momentum in 1995. Already in September 1994 both the Canadian and Dutch foreign ministers had made speeches at the UN General Assembly in which they reported the view, widely held in the UN system, that the presence of a brigade of UN forces in the Rwandan capital, Kigali, in May 1994 might have saved up to half a million lives. In his speech, Hans van Mierlo, the Dutch Foreign Minister, envisaged the establishment of a small international all-volunteer force to enable the UN to save lives in situations such as Rwanda:

> If the deployment of a brigade could have prevented the indiscriminate slaughter of many hundreds of thousands, what then prevented us from doing so? Let us face it: the reason for our inaction was neither lack of means nor time. The reason was that under the circum stances no government was prepared to risk the lives of its citizens. The physical danger was considered too high.[51]

This idea was subsequently developed into a more definite proposal in the April 1995 'Netherlands Non-paper', for a UN Rapid Deployment Brigade. This was along similar lines to the 1993 Urquhart proposal, but in several key respects was more fully developed. The Netherlands document explored 'the possibilities for creating a permanent, rapidly deployable brigade at the service of the Security Council', with 'an immediately deployable strength of between 2,000 and 5,000 men'. It envisaged that the personnel should be recruited on an individual basis, and that its annual running costs might be in the region of US $300 million – or perhaps US $250 million if member states procured equipment, basing, housing, and so on. Its starting point, like Urquhart's, was a void in the UN peacekeeping system: the time lag between a Security Council decision to deploy peacekeeping forces and their arrival in the area of operations.

[50] UN, 'Report of the Secretary General on Srebrenica', para. 442.
[51] Hans van Mierlo at UN General Assembly, 49th session, 27 Sep. 1994.

The proposed UN Rapid Deployment Brigade, like the force proposed by Urquhart in 1993, was assigned a wide variety of possible tasks, some of which went beyond even an expanded definition of peacekeeping and encompassed forceful intervention. In the final version of the Dutch document, the tasks of the Brigade were envisaged as including preventive deployment on the territory of a party which felt threatened; intervention in some internal conflicts, possibly without the formal consent of the de facto rulers, especially to prevent or stop crimes against humanity, mass murders, and genocide; and acting as an advance party for agencies providing humanitarian relief, or providing them with military protection. Further, the 'Non-paper' did not rule out the possibility that the Brigade could be deployed within the wider framework of a multinational enforcement operation, as over Kuwait in 1990–1.[52]

A critical feature of the UN Rapid Deployment Brigade as proposed in the Dutch document was the limited duration of each operation in which it was engaged:

> Deployment of the Brigade will always have to take place at very short notice and be of limited duration. When deployed in a UN peacekeeping operation, the Brigade will have to be the first one in and the first one out of the area of operations. Deployment of the Brigade will therefore always have to be accompanied by simultaneous decision making and preparations for its replacement by Stand by Units, an international peacekeeping force composed of national troop contributions, or an integrated multidisciplinary mission, including civil administration, monitoring of elections and human rights observance, police support, humanitarian expertise, political negotiation and mediation, etc.[53]

Canadian study on rapid-reaction capability, 1995

The 1995 Canadian Study on 'Improving the UN's Rapid Reaction Capability' had been announced in the speech of Foreign Minister André Ouellet to the UN General Assembly in September 1994.[54] It started from the same problem as other proposals, namely the slow UN response to urgent crises. This Canadian study was not wedded to a single organizational military form (volunteer force v. national contingents), nor was it exclusively tied to a peacekeeping framework. Rather, as a preliminary document stated in early 1995, the study sought to 'elaborate the component elements of a rapid reaction capability in a generic sense', of which one important element was 'the nature of standing forces, options

[52] The Netherlands Non paper, 'A UN Rapid Deployment Brigade: A Preliminary Study', The Hague, revised version, Apr. 1995, section I.5. Available as annex II in Dick A. Leurdijk (ed.), *A UN Rapid Deployment Brigade: Strengthening the Capacity for Quick Response* (The Hague: Netherlands Institute of International Relations Clingendael, 1995), 73 85. In connection with the Dutch project I participated in a symposium at The Hague on 22 3 Mar. 1995, and a version of my paper there is in the above mentioned book.

[53] The Netherlands Non paper, rev. version, Apr. 1995, section I.5.

[54] André Ouellet at UN General Assembly, 49th session, 29 Sep. 1994.

for their development and a discussion of their potential utility'.[55] By its nature, therefore, it involved looking at a wide range of options, including not only a standing UN force of whatever kind, but also the strengthening of UN decision-making and logistic capabilities, trying to make the standby arrangements for peacekeeping forces work better, and examining the role of regional arrangements and individual countries. Much work was done on these matters. A key document produced by the project's Core Group recognized the limitations of what was being proposed: 'The chance of immediately initiating a UN standing capability is now seen to be quite remote.' It envisaged, instead, a cumulative development, and it explored in detail 'the requirement for a designated UN base; the organization of a static operational headquarters and two mobile mission headquarters; the composition of deployable military and civilian elements; and the modernization of appropriate doctrine and training'.[56] The main outcome of the Canadian study, a substantial report presented to the UN in September 1995, was notably cautious in its recommendations. While it did not propose a standing UN military force, it made no less than twenty-six recommendations. All were aimed at strengthening the UN's preparedness for peace operations, including radical improvements of the Standby Arrangements System.[57]

Danish SHIRBRIG initiative, 1995

In January 1995, the Danish government announced that it was approaching a number of countries for support in establishing a working group to develop a multinational rapid-deployment brigade. The plan, outlined in reports issued in August 1995 and September 1996, was for support for UN peacekeeping missions that are based on Chapter VI of the Charter.[58] It was also predicated on the assumption that each

[55] 'Improving the UN's Rapid Reaction Capability: A Canadian Study', a 6 page preliminary document issued by the Government of Canada in early 1995.

[56] Peter Langille, Maxime Faille, Carlton Hughes, and James Hammond, 'A Preliminary Blueprint of Long Term Options for Enhancing a UN Rapid Reaction Capability', in David Cox and Albert Legault (eds.), *UN Rapid Reaction Capabilities: Requirements and Prospects* (Lester B. Pearson Canadian International Peacekeeping Training Centre, Clementsport, Nova Scotia: Canadian Peacekeeping Press, 1995), 181 and 197. In connection with the Canadian project I participated in a conference at Montebello on 7–8 Apr. 1995, and a version of my paper there is in the above-mentioned book.

[57] *Towards a Rapid Reaction Capability for the United Nations: Report of the Government of Canada* (Ottawa: Government of Canada, September 1995), 67–71. This bilingual report of the project, the English text of which is 78 pp., was tabled at the UN, New York, on 26 Sep. 1995.

[58] Denmark, Chief of Defence, 'Report by the Working Group on a Multinational UN Standby Forces High Readiness Brigade', 15 Aug. 1995; and Denmark, Ministry of Foreign Affairs, 'Background Paper about Establishing a Multinational UN Standby Forces Brigade at High Readiness' (SHIRBRIG), Meeting of Foreign Affairs Ministers in the 'Friends of Rapid Deployment' Group, New York, 26 Sep. 1996. These papers and other sources on SHIRBRIG are mentioned in H. Peter Langille, *Bridging the Commitment Capacity Gap: Existing Arrangements and Options for Enhancing UN Rapid Deployment* (Centre for UN Reform Education, Nov. 2002), 11–12, 44–51, 119, and 124. The Langille paper is available at the Center for UN Reform website: www.globalpolicy.org/security/peacekpg/reform/standby.htm

country would retain the right to decide whether or not to participate on a case-by-case basis, so this was not a proposal for standing forces in the normal sense. The Multinational Standby High Readiness Brigade for UN Operations (SHIRBRIG) was established on 15 December 1996, and gradually became a reality in 1996–2000 with maximum overall troop numbers of about 5,000. From November 2000 it was the basis of several deployments, including as part of the UNMEE peacekeeping operation in Ethiopia and Eritrea. By early 2007 SHIRBRIG had sixteen states as members of the scheme, plus seven as observers.[59] Thus, unlike certain other proposals made in 1995, SHIRBRIG was actually implemented, but was notably modest in its size, purposes, and deployments. It was nothing like the UN standing force with an enforcement capacity that many had wanted to see: rather, it was a distinct part of the UN's existing peacekeeping standby arrangements.

Decline of the Standing Force Idea since 1995

By late 1995 the idea of a UN standing force to tackle major emergencies had entered serious decline. It ceased to be a major focus of discussion, being replaced by more modest ideas and organizational changes aimed at incremental improvement, including through certain regional initiatives. The nature of the decline was evident in successive reports, and in the weak response of member states and the UN Security Council to the crisis in Darfur from 2003 onwards.

UN reports, late 1995 to 2006

Proposals for a UN rapid reaction force received only brief coverage in a November 1995 report of the UN's Joint Inspection Unit on the military component of UN peacekeeping operations. True, this report recommended further examination of 'a more effective and reliable system of response by the United Nations to emergencies, building on the best aspects of two basic approaches: standby arrangements system and rapid reaction force'. Yet the report's brief examination of the rapid-reaction force idea was sober. After a summary of past proposals for such a force, including the recent Dutch development of the concept, it laid out a litany of difficulties:

Although Member States have considered the idea of a rapid reaction force they recognize that a number of questions are outstanding including: financing, size, functions, training,

[59] On the development of SHIRBRIG, see its website: www.shirbrig.dk/ accessed 17 Apr. 2007.

command and control, location of the force, transportation, and the geographical distri bution of soldiers.[60]

After 1995 there was some continued development and advocacy of the UN standing force concept, mainly in the US.[61] The idea continued to have some support from states, but also provoked opposition, and ceased to be a main focus of discussion within and beyond the UN.[62] An informal group called 'Friends of Rapid Deployment', that had been initiated at the UN in 1995, did not meet at all in 1998 and 1999. Already in December 1996 the decline of the idea was evident from Kofi Annan's statement on the eve of taking up the post of Secretary-General:

I don't think we can have a standing United Nations army. The membership is not ready for that. There are financial questions and great legal issues as to which laws would apply and where it would be stationed. But short of having a standing United Nations army, we have taken initiatives that will perhaps help us achieve what we were hoping to get out of a standing army. The real problem has been rapidity of deployment. We are now encouraging governments to set up rapidly deployable brigades and battalions that could be moved into a theater very quickly, should the governments decide to participate in peacekeeping operations.[63]

Despite progress on UNSAS and related projects in the late 1990s, the UN remained chronically unable to deploy forces quickly in operations that might be complex or contested. This was one of many considerations that led to the establishment in 2000 of a Panel on UN Peace Operations, chaired by the highly respected former Algerian foreign minister Lakhdar Brahimi. In its hard-hitting report the Panel stated that 'few of the building blocks are in place for the United Nations to rapidly acquire and deploy the human and material resources required to mount any complex peace operations in the future.' It concluded its discussion of 'rapid and effective deployment':

Many Member States have argued against the establishment of a standing United Nations army or police force, resisted entering into reliable standby arrangements, cautioned against the incursion of financial expenses for building a reserve of equipment or discouraged the Secretariat from undertaking planning for potential operations prior to the Secretary General having been granted specific, crisis driven legislative authority to do so. Under these circumstances, the United Nations cannot deploy operations 'rapidly and effectively'

[60] 'Military Component of United Nations Peace Keeping Operations' (JIU/REP/95/11), UN doc. A/50/576 of 14 Nov. 1995, Recommendation 4 (p. vii) and para. 32 (p. 9).

[61] See e.g. the advocacy of an all volunteer UN force with a total strength of 15,000, to be assisted by backup forces organized and deployed regionally: Carl Kaysen and George W. Rathjens, 'Send in the Troops: A UN Foreign Legion', *The Washington Quarterly* 20, no. 1 (Winter 1997), 207 28.

[62] For a factual survey of developments regarding the rapid deployment concept by a member of the 1995 Canadian study, see Peter Langille, 'Conflict Prevention: Options for Rapid Deployment and UN Standing Forces', *International Peacekeeping* 7, no. 1 (Spring 2000), 219 53. This group of studies also appeared as Oliver Ramsbotham and Tom Woodhouse (eds.), *Peacekeeping and Conflict Reso lution* (London: Frank Cass, 2000).

[63] Secretary General elect Kofi Annan, press conference, UN Headquarters, New York, 18 Dec. 1996.

within the timelines suggested. The analysis that follows argues that at least some of these circumstances must change to make rapid and effective deployment possible.

Summary of key recommendation on determining deployment timelines: the United Nations should define 'rapid and effective deployment capacities' as the ability, from an operational perspective, to fully deploy traditional peacekeeping operations within 30 days after the adoption of a Security Council resolution, and within 90 days in the case of complex peacekeeping operations.[64]

The follow-up to the Brahimi Report was respectful but, on the matter of UN forces, disappointingly unspecific.[65] The subject of forces permanently under UN control was not a focus of discussion. The International Commission on Intervention and State Sovereignty, whose report in December 2001 advanced the idea of responsibility to protect populations at risk, was silent on the subject of a standing UN force.[66] The UN High-level Panel report of December 2004 – while it duly noted a European Union decision to establish standby high-readiness battalions that could reinforce UN missions, and also made favourable reference to some similar moves by the African Union – did not discuss the idea of rapid-reaction forces as such, nor did it mention Charter Article 43. This report relied more on the idea of standby arrangements. Its conclusion on these matters was hortatory in tone but lacked political traction: 'States with advanced military capacities should establish standby high readiness, self-sufficient battalions at up to brigade level that can reinforce United Nations missions, and should place them at the disposal of the United Nations.'[67]

When, a few months later, the UN Secretary-General issued a report taking forward the High-level Panel's various proposals, its treatment of future arrangements for UN forces was centred, not on any of the proposals for a UN rapid reaction force, but rather on the existing UN Standby Arrangements System, and on 'the establishment of an interlocking system of peacekeeping capacities that will enable the United Nations to work with relevant regional organizations in predictable and

[64] 'Report of the Panel on United Nations Peace Operations', UN doc. A/55/305 and S/2000/809 of 21 Aug. 2000, paras. 85, 90, and 91. As Kofi Annan stated in his covering letter, the Panel, chaired by Mr. Lakhdar Brahimi, was convened 'to undertake a thorough review of the United Nations peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities better in the future'.

[65] The Millennium Declaration, issued by Heads of State and Government in Sept. 2000, contained only a brief and anodyne reference to the Brahimi Report which had been issued less than three weeks earlier. GA Res. 55/2 of 8 Sep. 2000, para. 9. There was an equally brief treatment of 'reforming peace operations' in a follow up from the Millennium Assembly, 'Strengthening of the United Nations: An Agenda for Further Change: Report of the Secretary General', UN doc. A/57/387 of 9 Sep. 2002, para. 9.

[66] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the ICISS*, 2 vols. report and supplementary volume (Ottawa: International Development Research Centre, Dec. 2001). Available at the commission's website www.iciss.gc.ca

[67] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, Recommendation 60. See also para. 219. Kofi Annan had first announced his intention to create the Panel in Sept. 2003, and it was actually established on 4 Nov. 2003.

reliable partnerships'.[68] The General Assembly's World Summit Outcome document of September 2005, while embracing the concept of 'responsibility to protect', was not willing to provide any new means whereby that responsibility might be exercised: standby arrangements, and liaison with regional organizations, were where the main aspirational focus lay.[69]

In 2006 there was no sign of change from this position. The idea of a UN standing force was not dead, but it was in suspended animation. Meanwhile, the modest substitute for it, standby arrangements including high-readiness brigades, had not significantly changed for the better the UN's capacity to act quickly in tragic situations.

Regional rapid-reaction capabilities since 2000

Two key developments regarding multinational standby and rapid-reaction force arrangements in the years after 2000 were regional in character (in Europe and Africa), and were not tied exclusively to support for UN-managed or UN-authorized operations. There is considerable logic in this approach. (1) It does not always make sense to restrict well-trained rapid-deployment forces to acting only in cases on which the UN Security Council can agree. (2) If a standby force with intervention capability is to be maintained in a high state of readiness, it is likely to require training and logistical arrangements which are best managed regionally.

In Europe, an initiative at the European Union summit meeting at Helsinki in 1999 resulted in the concept of EU Battlegroups – a combined-arms battalion-sized force package with various forms of combat support. The viability of the general concept was confirmed by the EU's deployment of a French-led EU force in *Opération Artemis* – a UN-authorized action in the Democratic Republic of Congo in 2003. As from 1 January 2007 the EU announced that it had two battlegroups, and the capacity to run 'two concurrent single Battlegroup-size response operations'. An EU battlegroup is composed of approximately 1,500 troops, and has been officially defined as 'the minimum militarily effective, credible, rapidly deployable, coherent force package capable of stand-alone operations, or for the initial phase of larger operations'.[70] The EU indicated that such a force would be intended to address 'the whole spectrum of crisis management operations'. It was seen as strengthening the EU's ability to respond to UN requests, but

[68] *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 2 Mar. 2005, para. 112. See also paras. 213 14 and, in the Annex 'For decision by Heads of State and Government', paras. 6(j) and 8(j).

[69] '2005 World Summit Outcome' (16 Sep. 2005), UN doc. A/Res./60/1 of 24 Oct. 2005, paras. 138 9 and 177.

[70] EU Council Secretariat Factsheet, 'EU Battlegroups', Nov. 2006, cited in Gustav Lindstrom, *Enter the EU Battlegroups* (Paris: EU Institute for Security Studies, Chaillot Paper no. 97, 2007), 13 15.

(unlike SHIRBRIG, mentioned earlier) was not confined to UN-approved operations. The force's flexible character was emphasized:

> The ability for the EU to deploy force packages at high readiness as a response to a crisis either as a stand alone force or as part of a larger operation enabling follow on phases, is a key element of the 2010 Headline Goal. These minimum force packages must be militarily effective, credible and coherent and should be broadly based on the Battlegroups concept.[71]

In Africa in July 2002, the African Union established a Peace and Security Council, one of the aims of which is the establishment of an African Standby Force (ASF) capable of rapid deployment anywhere in the continent for a wide variety of possible AU missions.[72] As implementation of the plans for this proposed force began in 2003, it was hailed as 'an African solution for African problems', and as a means of responding to the UN's problem of overload. Progress on the ASF has been slow. Difficulties have included the lack of a strategic airlift capability, and the lack of funds in light of the fact that there was barely enough money to support the African Union mission that operated in Darfur from 2004 onwards.

Darfur from 2003

In the many-sided armed conflict in the Darfur region in western Sudan from 2003 onwards, involving insurgency and repression, there were mass killings and expulsions of inhabitants by predominantly Arabic-speaking *Janjaweed* armed groups with Sudan government complicity. In 2004 the African Union set up its mission in Darfur (AMIS), endorsed by the UN Security Council.[73] Although progressively enlarged, and receiving some assistance from the US and NATO, this African peacekeeping mission was plainly inadequate for the difficult task of protecting the inhabitants. At the same time, the UN's capacity to raise forces to address this long-running major humanitarian crisis also proved inadequate. In August 2006 a Security Council resolution called for additional capabilities for the UN Mission in Sudan (UNMIS), a peacekeeping force originally set up in March 2005 and operating mainly in the separate situation in southern Sudan. UNMIS was now to have over 17,000 more troops, and its mandate was to include deployment to Darfur and presence in camps for displaced people so as to prevent attacks on them. It was envisaged as taking over from AMIS, and was given Chapter VII powers. The Sudan government's consent to this deployment was only 'invited', not formally required.[74]

[71] 'Headline Goal 2010', endorsed by the European Council, 17 18 June 2004, paras. 2 and 4. Text in Lindstrom, *Enter the EU Battlegroups*, 80 and 81.

[72] Protocol Relating to the Establishment of the Peace and Security Council of the African Union, concluded at Durban, 9 Jul. 2002.

[73] SC Res. 1556 of 30 Jul. 2004.

[74] SC Res. 1706 of 31 Aug. 2006. China, Russia, and Qatar abstained.

This was the first country-specific resolution to refer to the previous resolution on the protection of civilians in armed conflict.[75] It was not followed by prompt UN action to protect the inhabitants of Darfur. Troop-contributing countries were unwilling to take part in any UN deployment to which Khartoum did not agree.[76] In December 2007, with Sudanese consent, the AU/UN Hybrid Operation in Darfur (UNAMID) was established. This peacekeeping force was hampered by administrative obstacles, ongoing conflict, and lack of resources. In the first five years of the killings and expulsions, the international community had provided little protection. The size of the area and the complexity of the problem made it appear improbable that a UN standing force could have stopped this disaster: something larger was needed.

Criticisms and Conclusions

Ten lines of criticism

The many lines of criticism of the various proposals for standing UN forces can be summarized under the following ten headings:

1. The *practical tasks* envisaged for UN standing forces have been so numerous and varied – and in some cases, so large-scale – that any force would have difficulty in preparing and training for them, and coping with them. The tasks have included: preventive deployments in threatened countries or regions; entering situations of incipient crisis to prevent, for example, the outbreak of civil war or genocide; reinforcing harassed peacekeeping forces and providing them with enhanced enforcement capability; protecting threatened civilians; and protecting humanitarian relief efforts. If these tasks remained on the agenda of a standing force, it would be likely to be required for more crises than it could manage. This problem is not only quantitative, but also qualitative: the variety of types of military expertise, equipment, and force structure required would be beyond a single specially constituted UN force on anything like the scale that has been envisaged for it.
2. Proposals for a small quick-reaction force have perennially involved an *underestimation of the size of forces required for certain urgent tasks.* Trygve Lie's 1947 suggestion that 'from one thousand to five thousand men would be sufficient – because it [the proposed force] would have behind it all the

[75] The earlier resolution was SC Res. 1674 of 28 Apr. 2006, on protection of civilians in armed conflict. Its para. 4 had mentioned 'the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.

[76] International Crisis Group Policy Briefing, 'Getting the UN into Darfur' (Nairobi/Brussels: ICG, 12 Oct. 2006).

authority of the United Nations' is a clear example of such underestimation. In Somalia and Bosnia doubt was cast on the capabilities of even quite large professional forces to carry out the difficult tasks envisaged for them. In such situations of ongoing conflict, any standing force acting in a vanguard role would require a strong backup capacity. Sooner or later such a force would appeal for help, and something would have to be available. This reinforces the worries that the existence of a standing force would encourage the Security Council to intervene more frequently, thus potentially increasing the already serious problem of the UN's overcommitment.[77]

3. The common factors in most of the crises in Africa and elsewhere which have stimulated proposals are the inherently difficult problems of *civil war and the failed state*. These are especially complex problems, and the early injection of a military force into such crises may not necessarily avert tragedy. The history of UN involvements in certain crises in 1991–4, including in Somalia and Bosnia, suggests caution in this regard. Civil wars and failed states present three main difficulties so far as quick international military action is concerned. (a) Such problems are not generally susceptible to a quick in-and-out military action, and indeed may require a longer commitment than UN member states have seemed willing to envisage. (b) There may be a need for outside bodies to take on heavy administrative responsibilities on a long-term basis, possibly in a trustee-like role. (c) In many situations of these kinds the impulse to intervene may be primarily humanitarian, or reflect a legal obligation under the Charter, rather than engaging the material or security interests of outside states: it can therefore be difficult to secure and maintain a high level of outside military involvement over a long period.
4. If, as is sometimes proposed, a UN standing force were to have the role of *pioneer/pathfinder for subsequent peacekeeping forces contributed by states in the normal way*, and were scheduled to withdraw after, say, 4–6 months, it is far from certain that the standing force would still be on the spot when its services were most urgently needed.
5. The *problems of UN uses or threats of force in connection with ongoing peacekeeping or humanitarian operations* remain serious. They include risks to the UN's reputation for impartiality, and dangers of UN or related personnel on the ground being taken hostage. There is some risk of the UN and the office of Secretary-General being seen as primarily military in function, when some of the organization's greatest achievements, whether in the field of good offices or of peacekeeping, have been based on negotiations and consent of the parties; or, as with some enforcement and other actions, on force being authorized by the UN but handled by states. Many events of recent years suggest that too direct an association with military force, which inevitably involves tragedies and failures

[77] Brian Urquhart, 'Prospects for a UN Rapid Response Capability', paper presented at Vienna Seminar of International Peace Academy, 2 4 Mar. 1995, 4.

of many kinds, could seriously undermine the UN's, and more especially Secretary-General's, reputation and capabilities.[78]

6. While there is often a strong case for the use of force in connection with UN peacekeeping operations, and there remains a need for coherent doctrine on this matter, *force may be better managed by states or regional alliances* than by the UN. When force has to be used, experience suggests that it may need to be under the command and control of a single country or alliance rather than the UN as such. For example, when in summer 1995, after the extreme provocation of the massacre of Bosnian Muslims at Srebrenica, the UN was finally able to mobilize an effective use of force against the Bosnian Serbs, it did so not only through its own rapid-reaction force (established as part of UNPROFOR), but also through an outside body, NATO, with its own long-established and extensive military expertise and infrastructure. It was NATO that conducted the Operation Deliberate Force air campaign against Bosnian Serb military targets in August and September 1995. Similarly in Sierra Leone in 2000, when force had to be used for a variety of purposes (including the freeing of hostages and support for the aims of the large UN peacekeeping operation in the country), it was small UK forces operating separately from the UN that performed the necessary military tasks. While there are hazards in any contracting out of responsibility to use force in connection with peacekeeping operations, the pattern has arisen sufficiently often to suggest that it serves a need.
7. There are two main *doubts about the suitability of the Security Council* as a military decision-making body. Firstly, its structure – including both its composition and the existence of the veto power – is not suited to running fast-moving military operations. It lacks resources in certain spheres, including intelligence. In certain crises its members have different interests and views, making rapid agreement on action hard to secure. Secondly, its judgement and possible bias have been very heavily criticized not only in the USA, but also by some Group of 77 members in the UN General Assembly.[79] There is a fear that a quick reaction capacity would mean in practice the North intervening in the South – and doing so on a selective basis reflecting particular interests. As a result of these concerns, any placing of military power more directly in the hands of the Security Council (or the Secretary-General) is likely to be resisted. The tension between the General Assembly and the Security Council is a real problem in the UN, and the fears that the Security Council may acquire powers which the General Assembly views as belonging in its sphere have been evident over several issues. Both these reasons may reinforce the arguments for maintaining standing forces on a regional rather than global basis, with a capacity to be used on regional as well as UN authorization.

[78] See especially Giandomenico Picco, 'The U.N. and the Use of Force: Leave the Secretary General Out of It', *Foreign Affairs* 73, no. 5 (Sep./Oct. 1994), 14 18.

[79] See e.g. the record of the UN General Assembly's debate on the Report of the Security Council (A/49/2), starting on 31 Oct. 1994, UN doc. A/49/PV.48, pp. 1 29.

8. Although it is possible that a UN volunteer force could, as its proponents have argued, be *more prepared to sustain casualties* than national contingents, many of which have been extremely nervous about any losses in UN peacekeeping service, it is not self-evident that this would be so: soldiers might still be reluctant to take considerable risks in conflicts far from home, and in causes that are debatable; and those in charge of such a force might be similarly cautious.
9. The *financing* of a standing UN force, whether volunteer or composed of national contingents, would be difficult. Some states have ruled out the standing force option on basically financial grounds. As France put it in 1993: 'Since it is clear that the Organization cannot today afford to maintain a standing force, it is indispensable for the Member States to establish forces which can be mobilized rapidly.'[80] It is indeed not obvious that governments, which have denied the UN any general right to draw on parts of their armed forces, and have in many cases kept the UN (and especially its peacekeeping operations) on a ludicrously short financial leash, would be willing to pay the large sums involved.
10. There are multiple pressures for a wide range of problems to be tackled on a *regional rather than global* basis – an approach that accords with the provisions on regional arrangements in Chapter VIII of the Charter. A UN rapid-reaction capability might tilt the balance too far away from regional responsibility, thereby overloading the UN and undermining efforts to build up standing force capabilities on a regional basis.

Conclusions

For all the excellent reasons that have always informed its advocacy, the idea of a UN standing force continues to have considerable appeal. A new version of the idea in 2006 was for an individually recruited UN Emergency Peace Service.[81] Yet the ten criticisms outlined above suggest that building up standing military forces directly under the Security Council may not be the best way to approach the difficult problem of maintaining respect for the UN, or even of enhancing rapid-reaction capabilities. The inherent difficulties of multilateral raising and management of military force, and the dangers of creating false expectations in that regard, need to be recognized.[82]

[80] Statement of France, 28 Jul. 1993, in response to *An Agenda for Peace*, in 'Improving the Capacity of the United Nations for Peace keeping: Report of the Secretary General Addendum', UN doc. A/48/403/Add.1/Corr.1 of 2 Nov. 1993, p. 6, para. 11.

[81] See e.g. the booklet edited by Robert C. Johansen, *A United Nations Emergency Peace Service: To Prevent Genocide and Crimes against Humanity* (New York: World Federalist Movement Institute for Global Policy, 2006); and the draft resolution for a UN Emergency Peace Service that was submitted in the US House of Representatives in March 2007, available at www.govtrack.us/congress/billtext.xpd?bill=hr110 213

[82] A challenging attack on the capacity of international institutions to provide a collective security system in the post Cold War world, and a warning of the pernicious effects of excessive reliance on

The history of international organization is full of episodes in which high ambition has led to disappointment and adverse political reaction. This is true of the debate about the specific issue of standing UN forces – witness the way in which *An Agenda for Peace* (1992) was followed by the cautious US document PDD-25 (1994) and the almost equally cautious *Supplement to an Agenda for Peace* (1995).

The fundamental question has to be addressed: Why have the provisions in the UN Charter, and the various attempts to establish standing, or even standby, forces yielded such slim results? In the early years of the UN, the most obvious reason for the failure to implement the Charter provisions for forces directly under Security Council control was the inability of the Permanent Members of the Council to reach agreement across the Cold War divide. However, this may be a superficial explanation. There appears also to be an underlying reluctance on the part of all states to see a major transfer to the UN of their power to use military force, especially if this commits their forces in advance to participate in what might prove to be distant, controversial, and risky military operations without their state's express consent and ongoing command. States continue to be jealous of their powers, and to act in accord with what they perceive as national interest. In short, the record suggests that there is a general resistance among almost all governments to the idea of endowing the UN with an independent military capacity.

At the same time, actual practice has produced a rich variety of partial solutions to the problem of having forces available to implement certain aims of the UN Security Council. In light of this fact, the failure to implement the many proposals for standing UN forces should not be seen as a complete abandonment of efforts to develop collective uses of armed force. On the contrary, as noted in the Introduction to this volume, the UN era has seen many variations on the collective security theme, including UN authorizations of the use of force under the leadership of a single state or alliance; the establishment of international peacekeeping forces, under both UN and regional auspices; and standby arrangements, whether regional or global, regarding the availability of national forces for a variety of operations, including UN ones. As in the 1950s, so in the years after 1992, it has been the development of peacekeeping that has led to the strongest pressure for strengthened standby arrangements, and also for the establishment of standing UN forces.

Several crises since 1995 have confirmed that the problem of how to organize prompt and effective action, whether in peacekeeping or coercive mode, remains important. However, any progress that has been made has not been on a standing UN military force as such. The measures on which some progress has been achieved and more might be possible include:

- Recognizing the advantages of the type of arrangement whereby certain military operations, authorized by the Security Council, are under national or alliance

institutional approaches, is John J. Mearsheimer, 'The False Promise of International Institutions', *International Security* 19, no. 3 (Winter 1994/95), 5 49.

control as distinct from under direct UN control. Such advantages may apply not only to enforcement operations, such as those reversing the results of aggression against a state, but also to certain peacekeeping operations requiring a willingness to use force. Military operations devolved in this way benefit from the fact that states and alliances are by nature better than the UN at reacting rapidly to fast-moving situations. Such actions have often provided valuable support for the UN's purposes and, in certain cases, for its peacekeeping operations.

- Enhancing the existing UN standby arrangements. The system of standby arrangements has survived for six decades because, while it has some glaring defects, it also has solid merits. It has enabled states to retain control over their armed forces and the uses to which they are put; and it has reflected the UN's need to have substantial reserves potentially available, even if not all are required at a given time. It could be further developed by maintaining a dialogue with governments about willingness to supply forces, and about the timescale of political decisions; by encouraging joint training and exercises by the standby forces of different countries; and by building on the system whereby states which deploy troops rapidly can be assured of their release in a given time – generally under six months.
- Assisting regional standby arrangements, whose functions are not limited to UN operations, with a view to developing a system for more rapid reaction not just within the regions from which the forces come, but also elsewhere.
- Improving the quality of military advice available to the Security Council and the Secretary-General; and strengthening the staffing of the Department of Peacekeeping Operations at UN Headquarters in New York by maintaining a permanent planning unit, from whose numbers the senior military and civilian staff of any individual operation can be taken promptly once it is decided to set up an operation.
- Developing the UN's capacity for post-conflict peacebuilding, for example by improving its capacity to provide police and administrative services. To this end, the UN Peacebuilding Commission was established in December 2005.[83]
- Developing a logistic capability for peacekeeping and other forces acting under a UN mandate.
- Working out a concept for those UN operations which are distinct from both peacekeeping and enforcement against aggression, or encompass elements of both approaches.

Such measures are critically important to a system which, while undoubtedly imperfect, does actually exist. It is more diverse and complex than the idea of a UN standing force. It might well fail the Darfur test. Yet the story of advocacy of a UN standing force over six decades leads to the conclusion that such measures represent the most likely, and perhaps also the best, way forward.

[83] SC Res. 1645 and GA Res. 60/180, both of 20 Dec. 2005.

PART II

THE ROLES OF THE SECURITY COUNCIL

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CHAPTER 5

THE SECURITY COUNCIL AND THE GREAT POWERS

NICO KRISCH*

International institutions and great powers often coexist in an ambivalent relationship. From the perspective of powerful states, institutions tend to appear as unwelcome constraints, as a 'strategy of the weak' intended to tie them down.[1] For weak states, international institutions often represent precisely the opposite: tools of the powerful that are intended to conceal or even legitimate dominance. In a different form, these two perspectives are replicated in international relations scholarship, with realists (and Marxists) regarding institutions as mere reflections of the distribution of material power,[2] and idealists (and to some extent constructivists) seeing in them civilizing forces in and through which fairness and justice can flourish.[3]

* I am grateful to Andrew Hurrell, Jennifer Welsh, Dominik Zaum, and participants in a coloquium at Oxford University's Department of Politics and International Relations for comments on an earlier draft.

[1] See, for example, US Department of Defense, *National Defense Strategy 2005*, available at www.defenselink.mil/news/Mar2005/d20050318nds1.pdf p. 5 ('Our strength as a nation state will continue to be challenged by those who employ a strategy of the weak using international fora, judicial processes, and terrorism').

[2] See John J. Mearsheimer, 'The False Promise of International Institutions', *International Security* 19, no. 3 (1994 95), 13; B.S. Chimni, 'International Institutions Today: An Imperial Global State in the Making', *European Journal of International Law* 15, no. 1 (2004), 1 37.

[3] See, for example, Inis L. Claude, *Swords into Plowshares: The Problems and Process of International Organization*, 3rd edn. (New York: Random House, 1964), 12 14; Christian Reus Smit, 'The Politics of International Law', in Reus Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004), 30 1.

This sharp contrast is, of course, overdrawn. In most cases, both perspectives contain part of the truth, and recent writing has rightly emphasized the particular benefits for powerful states that derive from the restraining and legitimating effect of international institutions.[4] In the case of the Security Council, though, this more balanced picture might appear forced, given the far-reaching privileges of its Permanent Members which, already in 1949, led Hans Morgenthau to interpret the Council as the 'international government of the Great Powers'.[5] For the Great Powers acting in concert, constraints seem largely absent; and for any single Great Power, the only real constraint is that it needs to ensure the consent (or acquiescence) of the other Permanent Members. Even if this consent is not forthcoming, the Security Council does not truly operate as a constraint: given it cannot act against a Great Power, the Council merely fails to be a useful instrument. Thus, for the Great Powers, the Council seems to be at best a good tool, at worst irrelevant, just as one would expect from a Great Power concert.

Yet such a picture is hardly accurate. Even though depictions of the Council as a 'lofty legalist shrine'[6] or a site where 'the power of the better argument'[7] counts are certainly exaggerated, the practice in and around the Council provides evidence of significant constraints on the Great Powers. In this chapter, I try to shed light on both the privileges and constraints that come with Council membership, and in particular on how both are connected: how using the Council as a tool requires accepting significant (and perhaps increasing) constraints, and over time also leads to limits on acting outside the Council framework. I will begin by sketching how the exceptionally dominant institutional position of the Great Powers in the Council has been established, defended, and informally even extended over the last decades. I then turn to the limits on the capacity of the Great Powers to take advantage of the Council, observable from Council practice. In a third section, I ask why the Great Powers are willing to accept these constraints and outline the benefits Great Powers derive from using the Council, as compared with acting outside the Council framework. Finally, I inquire into how these dynamics have changed over time.

[4] See G. John Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars* (Princeton: Princeton University Press, 2001); Ngaire Woods, 'The United States and the International Financial Institutions: Power and Influence Within the World Bank and the IMF', in Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno (eds.), *US Hegemony and International Organizations* (Oxford: Oxford University Press, 2003), 92 114. Liberal institutionalists, though generally taking a more subtle approach, often neglect problems of power: see Andrew Hurrell, 'Power, Institutions, and the Production of Inequality', in Michael Barnett and Raymond Duvall (eds.), *Power in Global Governance* (Cambridge: Cambridge University Press, 2005), 34 42.

[5] Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York: Knopf, 1949), 381.

[6] Michael J. Glennon, 'The UN Security Council in a Unipolar World', *Virginia Journal of International Law* 44 (2003), 107.

[7] Ian Johnstone, 'Security Council Deliberations: The Power of the Better Argument', *European Journal of International Law* 14 no. 3 (2003), 437 80.

Institutionalized Privilege

The extent to which Great Power privilege is institutionalized in the UN Charter is exceptional in the landscape of international organizations. Elsewhere, attempts to formalize dominant power have always been highly contested and have often had only limited success. While institutionalized privilege characterizes important organizations such as the World Bank or the International Monetary Fund, most other formal international organizations operate on the basis of sovereign equality, and this often makes them unsatisfactory in the view of powerful states.[8]

When the UN Charter was negotiated, precedents for a deviation from sovereign equality were even scarcer.[9] The Concert of Europe in the nineteenth century operated largely outside formal structures, and still at the beginning of the twentieth century, many states rejected attempts at formalizing dominance, thus provoking the failure of efforts to establish a permanent international court in 1907. This sentiment shifted, however, after the First World War, when the need for strong institutions became so great as to make many states compromise on issues of sovereign equality. As a result, the Covenant of the League of Nations embodied privileges for the Great Powers, even though it often led to an uneasy balance with aspirations of formal equality.

In the negotiation of the UN Charter, the Great Powers exploited this precedent in their favour.[10] At Dumbarton Oaks, the US, the UK, the Soviet Union, and China reached agreement on the general shape of the Security Council, and Yalta made possible a compromise on the voting issue that had proved intractable before. Precisely because negotiations over voting arrangements, especially over the extent of the veto, had been so long and difficult, none of the Great Powers was willing to accept changes later on, and they signalled this very clearly to the participants in the San Francisco Conference. Still, many smaller states made proposals to limit the veto, to limit the role of the Permanent Members in the Council, or to limit the powers of the Council as such – hardly any of them were successful. On the veto, only Australia's proposal to exclude the veto from all arrangements relating to the peaceful settlement of disputes was put to a vote, but it failed to attract enough support. Other, more far-reaching attacks on the veto had no chance of success, and there was no attempt to call into question the

[8] Informal regimes and networks can accommodate power more flexibly: see Nico Krisch, 'More Equal than the Rest? Hierarchy, Equality and U.S. Predominance in International Law', in Michael Byers and Georg Nolte (eds.), *United States Hegemony and the Foundations of International Law* (Cambridge: Cambridge University Press, 2003), 158 9.

[9] See on the following Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004), chs. 4 6.

[10] See Ruth B. Russell, *A History of the United Nations Charter* (Washington, DC: The Brookings Institution, 1958); Simpson, *Great Powers and Outlaw States*, ch. 6.

privileged position of the Great Powers as such.[11] Given that this position was presented as a *sine qua non* by the sponsoring powers, the smaller states understood that they had to choose between an organization with Great Power privilege, or no organization at all.[12]

The Great Power privilege in the Security Council has withstood attacks ever since. The reform of the Council in 1965 only resulted in an increase in Non-permanent Members,[13] and in the 1990s, attempts to abolish the veto soon gave way to greater realism.[14] Even if numerical expansions of the institution complicate the exercise of Great Power dominance to some extent, at least in formal terms they hardly reduce the voting power of the Permanent Members as long as no new veto rights are created.[15] Over time, with the rise in power of other states, such as India or Brazil, this might result in a widening gap between actual Great Power 'status' and formal privilege; but at least for the time being, full Permanent Membership also confirms the Great Power status of the current holders of privilege – in some cases, such as that of France, the symbolic force of Permanent Membership might even create Great Power status.[16]

During most of the Cold War, when the Council was largely blocked by superpower opposition, these formal privileges did not matter much (except of course to bring the blockage about). Yet this has changed radically since 1990. The greater unity of the Permanent Members allows them to make effective use of their privileges, and it has also given them space to strengthen their dominant role further. They have done so in part by extending the scope of Security Council powers – an issue to which I will return below – but also through new and informal procedural mechanisms. Thus, starting with the discussions on the Iran–Iraq war in 1986, the US and the Soviet Union increasingly conducted informal negotiations prior to Council meetings; more and more often, other Permanent Members were included only in later stages of negotiations; and in the 1990s, most decisions of the Council were prepared in meetings of the P5 prior to any debate in the Council as such.[17] The more the Permanent Members were able to agree on a common position beforehand, the

[11] See Russell, *A History of the UN Charter*, 713–49; Simpson, *Great Powers and Outlaw States*, 174, 180–91.

[12] See the statement by the representative of New Zealand: '[I]t was a question of . . . a new world organization or no world organization . . . And that organization . . . is more important than any condition,' quoted in Russell, *A History of the UN Charter*, 742.

[13] See Patrick A. McCarthy, *Hierarchy and Flexibility in World Politics: Adaptation to Shifting Power Distributions in the United Nations Security Council and the International Monetary Fund* (Aldershot: Ashgate, 1998), ch. 6.

[14] See Bardo Fassbender, 'All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council', *Max Planck Yearbook of United Nations Law* 7 (2003), 210–15.

[15] Barry O'Neill, 'Power and Satisfaction in the United Nations Security Council', *Journal of Conflict Resolution* 40 (1996), 219–37.

[16] On the symbolic force of Security Council membership, see Ian Hurd, 'Legitimacy, Power, and the Symbolic Life of the UN Security Council', *Global Governance* 8 (2002), 41–4.

[17] See Sidney D. Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd edn. (Oxford: Oxford University Press, 1998), 69.

smaller the chances for Non-permanent Members to influence the decision. Likewise, the role of non-members of the Council has become increasingly weaker. As most of the actual work of the Council now takes place in informal consultations behind closed doors, and public meetings are often held only for a formal vote,[18] non-members frequently have little information about Council discussions and no opportunity to express their views in the Council. At the same time, Permanent Members are under less pressure to defend and justify their views publicly. Thus, while the formal use of the veto has decreased radically since the end of the Cold War, its use in informal consultations seems to remain common.[19] A move in a similar direction is the increasingly central role of 'Groups of Friends' with respect to issues before the Security Council. Composed of states with a particular interest or special influence in a conflict, these groups often coordinate operations and also draft Council resolutions. Most Non-permanent Members are usually not part of those groups, and their role in actual decision-making is thus often reduced to rubber-stamping decisions.[20] All these shifts may help make the Council more efficient, but they also allow the Great Powers to extend their control over the institution further.[21]

Limits to Privilege

These shifts in favour of the Great Powers are, however, only one side of the story. The counter-movements are just as interesting, and indicate some limits to the utilization of the Council by the Great Powers, even when they act in unison.

Limits for the Great Powers acting in concert

Non-members of the Council in particular have made sustained criticism of the move away from open Council meetings to informal fora, and since the mid-1990s,

[18] Ibid., 60 6. Figures on the frequency of informal consultations can be found in Theodor Schweisfurth, 'Article 28', in Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edn. (Oxford: Oxford University Press, 2002), 523 38, 529 30. On the rise of informal meetings since the mid 1970s, see Jochen Prantl, 'Informal Groups of States and the UN Security Council', *International Organization*, 59 (2005), 571 2.

[19] Kishore Mahbubani, 'The Permanent and Elected Council Members', in David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, London: Lynne Rienner Publishers, 2004), 259.

[20] See Teresa Whitfield, 'Groups of Friends', in Malone, *UN Security Council*, 320.

[21] Prantl sees Groups of Friends as more representative, though his discussion of their role in 'balancing P 5 preponderance' and in 'disguising U.S. hegemony' is somewhat contradictory: Prantl, 'Informal Groups of States'.

the Council has seen it necessary to respond with efforts at greater transparency and inclusion. For example, the use of informal consultations has been reduced; draft resolutions and presidential statements debated in them are now circulated among non-members, and they are followed by open briefings by the Council presidency; a growing number of public and private meetings are held to allow non-member states to express their views on specific issues and to allow Council members to present their positions to a broader audience; periodical 'wrap-up sessions' have been introduced as a means to discuss the Council's work with the broader UN membership; and the Council now also reaches out to a broader audience by holding regular meetings with non-governmental organizations.[22] Likewise, while welcoming the role of Groups of Friends, the Council has emphasized that 'the drafting of resolutions . . . should be carried out in a manner that will allow adequate participation of all members of the Council'.[23] These measures might not lead to actual equal participation of members or to fully effective communication with non-members, but they help to remedy some imbalance.[24] And they represent the success of an effort by weaker states to mobilize norms to counter Great Power attempts at strengthening procedural dominance – a success reflected in the General Assembly's insistence in 2005 that the Security Council 'enhance its accountability' and 'increase the transparency of its work'.[25]

The mobilization of norms has proven to be a limit to utilization of the Council by the Great Powers in yet other cases. For example, Libya drew upon normative resources in its struggle against sanctions throughout the 1990s, in part by invoking norms of procedural justice that the US and UK had relied upon in justifying the sanctions initially,[26] but also by appealing to broader principles that made the Organization of African Unity (OAU) eventually declare the sanctions 'unjust' and biased against developing countries.[27] Sanctions in general became vulnerable to normative challenge in the mid-1990s when the humanitarian consequences of the Iraqi sanctions regime became more and more apparent and the UN Secretary-General came to call sanctions a 'blunt instrument', prompting the Council to shift

[22] See Bailey and Daws, *Procedure of UN Security Council*, 66 75; Susan C. Hulton, 'Council Working Methods and Procedure', in Malone, *UN Security Council*, 237 51. See also the summary of Council efforts in UN doc. S/2006/78 of 7 Feb. 2006, and the standards set out in UN doc. S/2006/507 of 19 Jul. 2006.

[23] UN doc. S/1999/165 of 17 Feb. 1999; S/2006/507 of 19 Jul. 2006, para. 41; see also Whitfield, 'Groups of Friends', 320 21.

[24] See also Ian Hurd, 'Security Council Reform: Informal Membership and Practice', in Bruce Russett (ed.), *The Once and Future Security Council* (Basingstoke: Macmillan, 1997), 141 7.

[25] GA Res. 60/1 of 24 Oct. 2005, para. 154, following similar recommendations in the report of the High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, para. 258.

[26] Ian Hurd, 'The Strategic Use of Liberal Internationalism: Libya and the UN Sanctions, 1992 2003', *International Organization* 59 (2005), 495 526.

[27] See the decisions by the OAU's Council of Ministers, CM/Dec.416 (LXVIII), Jun. 1998; and the OAU's General Assembly, AHG/Dec.127 (XXXIV), Jun. 1998, threatening non compliance.

to more limited and targeted measures.[28] Soon, however, these too became the object of criticism because they were occasionally directed against innocent individuals. In response, the 1267 Sanctions Committee introduced a procedure for lifting sanctions against wrongly targeted individuals after countries like Sweden successfully invoked transparency and rule of law concerns against potentially arbitrary decision-making in the Council.[29]

Much of the weight of such normative claims stems from the fact that, in order to give Council decisions effect, the Permanent Members need to ensure acceptance among a broader range of states. The positive votes of nine Council members on a resolution, though legally sufficient, are usually not enough to secure sufficient compliance. Most Council decisions are therefore adopted unanimously and great efforts are made to achieve this unified stance, which helps make the Council appear as the voice of the 'international community' as a whole.[30] For example, in the case of Libya, the US and the UK were so keen on unanimity that they delayed their proposal for a resolution until after the Council membership of two likely no-voters, Cuba and Yemen, had expired.[31] In other cases, regional support for Council action is crucial. For the intervention in Haiti, the US and the Group of Friends of the Secretary-General on Haiti sought to secure backing from the group of Latin American and Caribbean states, and they were particularly intent on dissuading Brazilian resistance, which would have undermined the enterprise in much of Latin America. As a result, Brazil was able to moderate the interventionist stance and to water down various provisions in the resolution that authorized a multinational force.[32] Thus, even if according to formal calculations the voting power of elected members is small,[33] in reality it often carries significant weight.

In still other ways, normative resources limit the capacity for the Great Powers to dominate the Council, exhibited, for instance, by the impact of the human rights arguments against targeted sanctions mentioned above. Unlike informal settings, a formal institution such as the Security Council provides a focus and a site for argument, which can push states towards positions they can justify on a basis that is not purely arbitrary or self-regarding. Merely dismissing human rights concerns, for example, becomes more difficult in such a context.[34] Moreover, because the

[28] Boutros Boutros Ghali, *Supplement to an Agenda for Peace*, UN doc. A/50/60 of 3 Jan. 1995, para. 70. See also David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, London: Lynne Rienner Publishers, 2000), 23 6, 208 13.

[29] See the revised guidelines of the Committee at www.un.org/Docs/sc/committees/1267/1267 guidelines.pdf On the background, see Per Cramér, 'Recent Swedish Experiences with Targeted UN Sanctions: The Erosion of Trust in the Security Council', in Erika de Wet and André Nollkaemper (eds.), *Review of the Security Council by Member States* (Antwerp, New York: Intersentia, 2003), 91 5.

[30] See Hulton, 'Council Working Methods and Procedure', 237 8.

[31] Hurd, 'The Strategic Use of Liberal Internationalism', 506.

[32] David M. Malone, *Decision Making in the UN Security Council: The Case of Haiti, 1990 1997* (Oxford: Clarendon Press, 1998), 168.

[33] O'Neill, 'Power and Satisfaction in the UN Security Council'.

[34] See Johnstone, 'Security Council Deliberations'; and see generally, Thomas Risse, '"Let's Argue!": Communicative Action in World Politics', *International Organization*, 54 (2000), 1 39.

Security Council is a formal institution that much resembles a government (especially in its exercise of enforcement powers), it creates normative expectations in a similar way that a government would. Human rights concerns are therefore more powerful than they would be vis-à-vis informal or unilateral action, if only because states want to see their domestic normative commitments honoured when they transfer governmental functions to the international level.[35] Likewise, selectivity of action becomes a more serious problem for an institution that, if regarded as public power, raises expectations that it will grant equal treatment to all its subjects.

Limits for divided Great Powers

Thus far, I have identified notable (though modest) constraints on the use of the Security Council by the Great Powers when they act in unison. However, by presupposing commonality among the Permanent Members, this has left out the most important check on the Great Powers in the Council: the requirement of the 'concurrent votes' of all Permanent Members for any substantive decision.[36] The practical impact of this check obviously depends on the actual extent of disagreement among them. During the Cold War, the differences among the Permanent Members not only made it impossible for the Council to act, but also opened up substantial opportunities for other states to influence negotiation outcomes by playing the Great Powers off against each other. The Non-Aligned Movement in particular was able to exploit this situation and, given its numerical strength among elected members, its support was often crucial to reaching the necessary number of nine positive votes.[37]

This influence has waned with the advent of greater unity among the Permanent Members since the end of the Cold War. When the P5 adopt a common position, it becomes very difficult to stop them, especially given the informal means of pressure they have at their disposal.[38] While such common positions are increasingly the norm, they often do not reflect an actual unity of views on a given issue, but are rather the result of the coordination efforts that the P5 now usually undertake before moving an issue into the Council as a whole. This coordination allows compromises to be struck between the Permanent Members and insulates the result of their negotiations from later challenges by other Council members. Whether or not a common position can be reached depends, however, on the extent of diverging interests. In some cases, it

[35] This extends also to international human rights standards for governmental action: see the judgment of the European Court of Human Rights of 18 Feb. 1999, *Waite and Kennedy* v. *Germany*, available at cmiskp.echr.coe.int

[36] Even if this requirement is interpreted as requiring only the absence of a veto: see Bruno Simma, Stefan Brunner, and Hans Peter Kaul, 'Article 27', in Simma, *Charter of the UN*, 493 9.

[37] See David M. Malone, 'Introduction', in Malone, *The UN Security Council*, 7.

[38] On the early example of non aligned resistance to authorizing force against Iraq in 1990, see David M. Malone, *The International Struggle Over Iraq: Politics in the UN Security Council 1980 2005* (Oxford, New York: Oxford University Press, 2006), 65 70.

will require substantial side-deals, as presumably when the US gave up resistance to World Bank loans to China, and generally relaxed its policy towards the country after the Chinese government agreed not to block the Council's authorization of military action against Iraq in 1990.[39] Likewise, it is likely that, in return for Russian and French support in the case of Haiti in 1994, the US gave up opposition to Council authorization of peacekeeping by the Commonwealth of Independent States in Georgia and French-led intervention in Rwanda.[40] In other cases, compromise has resulted in language vague enough to allow diverging interpretations by different sides, as for example when the Council authorized a maritime blockade against Iraq in August 1990 but thanks to the open wording allowed China to interpret the resolution in a face-saving way as not implying the use of force.[41] 'Agreeing to disagree' has become a common strategy for overcoming difference, often resulting in declarations on the meaning of a resolution after the vote, but sometimes, as with Kosovo in 1998 and Iraq in 2002, only postponing open clashes.[42]

As is clear from these examples, P5 agreement on Security Council action has often been reached despite the fact that it ran counter to the interests of particular Permanent Members, and this has happened even in the absence of immediate compensation.[43] The US, the UK, and France have been dominant in shaping Council policy since the end of the Cold War, despite Russia's and China's veto power and their often diverging interests. This has been explained as a result of the existence of outside options: because dominant powers can credibly threaten to act outside an institution, they can shift negotiating results in their favour if their opponents have an interest in keeping them within the institution (for example, because this allows them greater influence on the shape of the action).[44] This probably explains, for example, why Russia went a long way towards accommodating NATO states in the run-up to the Kosovo intervention, and why it afterwards allowed the Security Council to establish a transitional administration based on NATO presence in the territory.[45] However, in most cases, Russian and Chinese accommodation of Western interests is more likely to be due to a general desire not to weaken the Council as an institution and also to maintain a positive

[39] Nigel Thalakada, 'China's Voting Pattern in the Security Council, 1990 1995', in Russett, *The Once and Future Security Council*, 104.

[40] See Malone, *Decision Making*, 107, 117.

[41] See Nico Krisch, *Selbstverteidigung und kollektive Sicherheit* (Berlin, Heidelberg: Springer, 2001), 104 5.

[42] See Michael Byers, 'Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity', *Global Governance*, 10 (2004), 165 186; and on Chinese interpretative declarations, see Thalakada, 'China's Voting Pattern', 88 95.

[43] See e.g. on Chinese acceptance of sanctions against Libya despite early resistance, ibid., 104.

[44] Erik Voeten, 'Outside Options and the Logic of Security Council Action', *American Political Science Review*, 95 (2001), 845 58; see also Lloyd Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions* (Princeton: Princeton University Press, 2000), ch. 3.

[45] For Voeten, US failure to gain Russian support for a Council authorization of the Kosovo intervention was due to a lack of credibility of the NATO threat of unilateral force: Voeten, 'Outside Options', 855 6. It is doubtful, though, that this was still true in early 1999 it is more likely that the proposed compromise was simply too far from Russia's negotiation goals.

relationship with the dominant powers.[46] Yet even despite these dynamics, gaining Council support often requires dominant powers to make serious concessions.

Gaining support for a desired action might be difficult, but sometimes it is even more difficult to redirect Council action later. In the case of Bosnia, for example, the US initially supported the general arms embargo but after realizing its biased effects on the conflict, reversed its course and wanted the embargo lifted. Yet it could not muster enough support for its position, and the embargo remained in force.[47] Difficulties are even more obvious with respect to the 'reverse veto': if only one of the Permanent Members objects to ending a measure, it continues to apply.[48] This problem became particularly acute with the Iraq sanctions from the mid-1990s on, and even though it is increasingly mitigated by sunset clauses, the risk of being trapped in a decision that is later difficult to reverse continues to exist.[49] Initiating action through the Council can thus put considerable limits on later freedom of action.

The Benefits of the Security Council for the Great Powers

Working through the Security Council comes, as we have seen, with considerable costs for the Great Powers: achieving unity among the Permanent Members is often difficult and requires compromises and side-payments. Even once unity is established, the need to gain broader acceptance in the international community imposes further (though certainly more limited) constraints. Yet Great Powers do choose to incur these costs regularly today:[50] the diplomatic effort expended and compromises generated by US and UK efforts to gain Security Council approval of their intervention in Iraq in 2002/2003 are telling.[51] Yet why is Council approval important enough to Great Powers to justify such costs?

[46] On China, see Thalakada, 'China's Voting Pattern', 103–7; Sally Morphet, 'China as a Permanent Member of the Security Council: October 1971–December 1999', *Security Dialogue* 31 (2000), 165.

[47] See Krisch, *Selbstverteidigung*, 118–33.

[48] David D. Caron, 'The Legitimacy of the Collective Authority of the Security Council', *American Journal of International Law* 87, no. 4 (1993), 578–88.

[49] See Jochen A. Frowein and Nico Krisch, 'Introduction to Chapter VII and Articles 39 to 43', in Simma, *Charter of the UN*, 714.

[50] See also Erik Voeten, 'The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force', *International Organization* 59 (2005), 527–8.

[51] See Malone, *The International Struggle Over Iraq*, 190–200.

Practical benefits

Rational institutionalists usually see the main advantages of international institutions in their information and enforcement functions: by detecting and punishing violators, they are able to enhance the stability of a common regime.[52] In the case of the Security Council, little of this applies. The Council is not set up as a law-enforcement agency but deliberately as a political organ; and it is not surprising that the Council has so far hardly ever branded a state an aggressor or apportioned blame for the use of force at all.[53] It has been established largely as a policeman, not as a jury, and it operates in an essentially political fashion.

Certainly more important is the Council's establishment of the terms of cooperation: in situations in which the interests of the Great Powers are not diametrically opposed, they can expect benefits from collaborating. Yet how precisely to cooperate will often not be clear; the Permanent Members might all gain in a number of scenarios, but the gains will be distributed differently depending on which terms of cooperation are chosen. In this situation, the institutional setting of the Council will help to single out one approach.[54] This is most obvious in the adoption of uniform multilateral sanctions instead of a multitude of unilateral measures, all dealing in widely diverging ways with a commonly perceived threat. Setting the terms of cooperation in the Council is facilitated by the concentration of the decision in a single act, around which states can create issue linkages and exchange side-payments. All elements of a bargain then come together at the same time, and once a decision is taken it is difficult to repudiate – in part because of the reputational costs of breaking promises, but also because the collective interest in continuing collaboration would be endangered in cases of defection.[55] Such collaboration among the Great Powers is also useful with respect to other states as it sets a focal point for the latter, thus providing the Great Powers with a significant first-mover advantage in shaping issue-specific sub-regimes.[56]

If this seems plausible when the Great Powers are relatively equal, it is not obvious in situations of significant power disparities. In the latter case, the weaker

[52] See the observation in Helen Milner, 'International Theories of Cooperation among Nations: Strengths and Weaknesses', *World Politics* 44 (1992), 475.

[53] See Frowein and Krisch, 'Introduction to Chapter VII', 705 6, 722; Christine Gray, *International Law and the Use of Force*, 2nd edn. (Oxford: Oxford University Press, 2004), 197; but see the emphasis on the Council's jury function in Thomas M. Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002).

[54] See Steven D. Krasner, 'Global Communications and National Power: Life on the Pareto Frontier', *World Politics* 43 (1991), 362 4; Gruber, *Ruling the World*, 112 13.

[55] See also Kenneth W. Abbott and Duncan Snidal, 'Why States Act through Formal International Organizations', *Journal of Conflict Resolution* 42 (1998), 10; Voeten, 'Political Origins', 548. On issue linkage and iteration in institutions, see Robert Axelrod and Robert O. Keohane, 'Achieving Cooper ation under Anarchy: Strategies and Institutions', *World Politics* 38 (1985), 226 54; Charles Lipson, 'International Cooperation in Economic and Security Affairs', *World Politics* 37 (1984), 1 23.

[56] See generally Krasner, 'Global Communications'.

Permanent Members will have a strong incentive to work through the Council, not only because of general collaboration gains, but also because it allows them disproportionate influence on decision-making. But for a dominant member, the situation looks different, especially when unilateral alternatives exist. As we have seen above, a dominant state might be able to shift a decision in its favour, thanks in part to such outside options, but it will still have to accept compromises and make side-payments, both of which might seem unacceptable. The current tension between the US and the Security Council testifies to this problem.[57]

However, even a dominant power gains significantly from working through the Council. Such collaboration creates, for example, opportunities for risk- and burden-sharing, particularly when action is taken through UN peacekeeping operations with assessed contributions. Similarly, in multinational coalitions, the willingness of states to contribute is generally higher than in situations without Council authorization.[58] Even greater gains will lie in pacification: because of the commitment of the other Permanent Members to the decision, later resistance by them becomes more unlikely and associated costs decrease. Reaching agreement in the Council removes the most powerful challengers, and it also performs signalling functions as to the expected costs of an action. All these gains are stronger in the Council than they would be in more informal or ad hoc situations, precisely because of the interest of other members in maintaining an institution that is favourable to them, which will lead them to make wider concessions and will prevent them from defecting later. The resulting reduction in risks and costs also makes it easier for a dominant power to gain domestic support for an operation:[59] in general, military action has stronger domestic approval rates if authorized by the Council.[60]

Another very particular benefit from using the Security Council is that it provides a particularly advantageous mechanism for law-making and regulation. Normally, international law-making proceeds through the cumbersome methods of treaties and customary law, fraught with the principle of sovereign equality. But thanks to the Chapter VII powers in the UN Charter, the Security Council allows the Great Powers to make law quickly and with very limited participation by other states; and to make rules that apply only to others, not to themselves.[61] Until recently, this was possible only in narrow circumstances, limited to particular

[57] For different assessments, see Thomas M. Franck, 'What Happens Now? The United Nations after Iraq', *American Journal of International Law* 97, no. 3 (2003), 607 20; Ian Johnstone, 'US UN Relations after Iraq: The End of the World (Order) As We Know It?', *European Journal of International Law* 15, no. 4 (2004), 813 38. Glennon sees the Security Council as necessarily inoperative under conditions of unipolarity: Glennon, 'UN Security Council in a Unipolar World'.

[58] See the examples in Voeten, 'Political Origins', 532.

[59] Ibid., 543 4.

[60] On the US, see Richard C. Eichenberg, 'Victory Has Many Friends: U.S. Public Opinion and the Use of Military Force, 1981 2005', *International Security* 30 (2005), 159 61.

[61] See Krisch, 'More Equal', 156 7.

conflict situations. After the terrorist attacks of 2001, however, the Council has taken a much broader (though still contested) view of its powers and started to engage in genuine legislation and more intense regulation, thus opening up opportunities for further Great Power control of the international legal order.[62]

Acceptance by the international community

The argument so far has focused mostly on interaction among Council members, and in particular among its Permanent Members. However, probably the greatest gains, both for the Great Powers together and for a single dominant power, can be expected from the Council's role in garnering acceptance among other states.[63] The resistance of other states might be costly, and often their cooperation will be important for the success of an action. The practice of states, in particular around the Kosovo intervention in 1999 and the Iraq war of 2003, shows that a Council decision is important to garner support for military action, and the same holds for public opinion in many countries.[64] The Security Council has indeed become the source of 'collective legitimization' that Inis Claude had already identified in the UN in the 1960s.[65] This provides considerable benefits for the Great Powers as it facilitates their exercise of dominance and, as institutional privilege is somewhat insulated from shifts in material power, it also stabilizes their continuing dominance into the future.[66]

In order to understand why this is so, we should distinguish between two aspects of states' attitudes towards the Security Council: their readiness to accept (and not

[62] See José E. Alvarez, 'Hegemonic International Law Revisited', *American Journal of International Law* 97, no. 4 (2003), 874 8; Nico Krisch, 'The Rise and Fall of Collective Security: Terrorism, US Hegemony, and the Plight of the Security Council', in Christian Walter et al. (eds.), *Terrorism as a Challenge for National and International Law: Security vs. Liberty?* (Berlin, Heidelberg: Springer, 2004), 881 93. On the critique by states, see Roberto Lavalle, 'A Novel, if Awkward Exercise in International Law Making: Security Council Resolution 1540 (2004)', *Netherlands International Law Review* 51 (2004), 425 8.

[63] See also Abbott and Snidal, 'Why States Act', 27 9, on the Council's 'laundering' function.

[64] In a Jan. 2003 poll of public opinion in 41 countries, approval rates for military action against Iraq were significantly higher with UN authorization than without, in all but three countries: see Gallup International Association, 'Iraq Poll 2003', available at www.gallup international.com See also Alexander Thompson, 'Coercion Through IOs: The Security Council and the Logic of Information Transmission', *International Organization* 60 (2006), 21 6, on the 1990/1991 Gulf War. As discussed below, and in line with Thompson's observations, this result need not reflect a principled belief that UN authorization is necessary; it might be based on more consequentialist considerations.

[65] Inis L. Claude, 'Collective Legitimization as a Political Function of the United Nations', *Inter national Organization* 20 (1966), 367 79 (though with an emphasis on the General Assembly).

[66] On the stabilizing effects of international institutions for Great Power status, see Ikenberry, *After Victory*; also Nico Krisch, 'International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order', *European Journal of International Law* 16, no. 3 (2005), 373 5.

resist) Security Council decisions, and their rejection of military action outside the Council. Both are obviously linked, but they pose somewhat distinct problems.[67]

Why are states generally (though within limits)[68] ready to accept and follow Security Council decisions? Several explanations are possible. One would be that a Council decision provides a focal point for other states: if the general aims of a certain action are not contested, states might go along with the Council's determination of the particular means by which to achieve those aims, merely because the coordination of an alternative is too difficult.[69] Also, if the provision of a public good is at issue, and only its precise definition and the means to provide it are contested, many states might prefer the provision of the good despite some remaining discontent.

This would, however, still not explain why states follow a Security Council decision more readily than an informal agreement among the Great Powers, or even the unilateral decision of a dominant power: both would also provide powerful focal points.[70] Yet from the perspective of other states, following a Council decision is clearly preferable to those alternatives, simply because their influence on the decision, and the constraints on the powerful, are greater in the context of the Security Council. Not only is the circle of decision-makers in the Council wider, which provides for greater restraint, but the elected members of the Council are also accountable to the states that elected them, at least to some extent.[71] The level of representation and opportunities for influence on the Council are, of course, far from ideal, but delegitimizing the Council is only likely to shift decisions into other, even less desirable, fora. As long as no better alternative is available and most states are interested in some kind of enforcement mechanism in the area of security, they generally choose to follow the Council.

Given the rather mixed views about the United Nations in different parts of the world,[72] this following is unlikely to be generally based on a deeper conviction that it is 'the duty of a good international citizen'.[73] We have also seen above that the Great Powers have to undertake constant efforts to bolster acceptance of Council

[67] Voeten's interpretation of the Council as an elite pact fails to account for the different dynamics in those aspects: Voeten, 'Political Origins'.

[68] See Cortright and Lopez, *The Sanctions Decade*, 209, on the limits to compliance with UN sanctions.

[69] As it would be vis à vis a focal point set by a powerful state: see Lisa L. Martin, 'Interests, Power, and Multilateralism', *International Organization*, 46 (1992), 777.

[70] See ibid., 768 77.

[71] Thompson ('Coercion through IOs') focuses solely on the restraint element and its utility in signalling benign intentions to other governments, but this downplays the opportunities of influence and participation the Council offers these governments even when they are not Council members.

[72] See Pew Research Center for the People and the Press, *The Pew Global Attitudes Project: Views of a Changing World*, 3 June 2003, available at pewglobal.org/reports/pdf/185.pdf, 27; *The Pew Global Attitudes Project: A Year After Iraq War*, 16 March 2004, available at pewglobal.org/reports/pdf/206.pdf, 10.

[73] Ian Hurd, 'Legitimacy and Authority in International Politics', *International Organization*, 53 (1999), 379 408.

decisions by trying to reach unanimity among all members, and by responding to procedural critiques and other normative demands. Implementing Council decisions is still not a routine matter; the Council's authority is far from internalized.[74] The fact that Council decisions are legally binding might explain a general inclination to follow them, especially since most states have an interest in maintaining the international legal order in general,[75] but this alone might not be enough to ground stronger political acceptance in situations in which the stakes are high. The foundations on which Council authority rests are shaky, and it is always vulnerable to challenges.

The costs of the outside option

Yet while acceptance of action through the Council may be somewhat unstable, its alternative – the use of force outside the Council – is more clearly regarded as unacceptable. The Non-Aligned Movement (NAM), for example, regularly emphasizes the Council's indispensable role in authorizing the use of force.[76] The only potential exception that enjoys some sympathy in different parts of the world is humanitarian intervention.[77]

Support for a norm that sees Council authorization as a necessary (if not sufficient) condition for the use of force is sometimes explained on the basis of 'legitimacy'.[78] However, insofar as legitimacy can ground genuine normative beliefs, its explanatory value in this case is not obvious.[79] Legitimacy in this sense would require an

[74] However, in a number of countries, participation in Council authorized military action is both legally and institutionally easier than unilateral action: see Voeten, 'Political Origins', 532. Security Council sanctions also often enjoy a privileged status in domestic law: see Vera Gowland Debbas, 'Concluding Remarks', in Gowland Debbas (ed.), *National Implementation of United Nations Sanctions: A Comparative Study* (The Hague, Leiden: Martinus Nijhoff, 2004), 644–5.

[75] See Andrew Hurrell, 'International Society and the Study of Regimes', in Volker Rittberger (ed.), *Regime Theory and International Relations* (Oxford: Clarendon Press, 1993), 59.

[76] See the NAM statements in UN doc. S/1999/451 of 21 Apr. 1999 (on Kosovo) and A/58/68–S/2003/357 of 21 Mar. 2003 (on Iraq).

[77] See Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000). On African positions, see James Mayall, 'Humanitarian Intervention and International Society: Lessons from Africa', in Jennifer Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford, New York: Oxford University Press, 2004), 120–41; Evarist Baimu and Kathryn Sturman, 'Amendment to the African Union's Right to Intervene', *African Security Review* 12, no. 2 (2003), 37–45.

[78] See Ian Hurd, 'Of Words and Wars: The Security Council's Hard Life Among the Great Powers', *Seton Hall Journal of Diplomacy and International Relations* 5, no. 1 (2004), 72; Ian Hurd, 'The Great Powers and the UN Security Council: The Futile Search for Collective Security in the Charter and on Iraq', in Harvey Starr (ed.), *Approaches, Levels, and Methods of Analysis in International Politics: Crossing Boundaries* (Basingstoke: Palgrave Macmillan, 2006).

[79] See also Voeten, 'Political Origins', 533–41; Thompson, 'Coercion through IOs', 26–9. However, on the importance of legitimacy in international relations, see Hurd, 'Legitimacy and Authority'; Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005).

internalization of norms in states and their decision-makers that either takes certain actions entirely off the table, or at least shifts considerations in such a way as to place a particular argumentative burden on norm violators. Such an internalization is easier with respect to routine action in relation to which habits are formed and strategic choices are not made in every instance, yet one can also observe it with respect to non-habitual, high policy decisions such as the use of particular weapons in war.[80] In the case of the use of force, too, we can observe indications of such an internalization, in particular in European discussions over the Kosovo and Iraq interventions. In public and parliamentary debates in Europe, Security Council authorization was very much at the centre of attention, and without it, public opinion was far more reluctant to endorse military action.[81]

However, while this might be true for Europe, it is not clear that it holds in a similar way for other parts of the world. US public opinion usually favours Security Council authorization, but does not prefer it much to other ways of building multinational coalitions. Public opinion is likely to be based on an assessment of consequences rather than normative beliefs.[82] For other parts of the world, we lack conclusive data, but if opinion polls are any measure, they evidence European idiosyncrasy more than anything else. In Russia and several Muslim countries, for example, the belief that the use of force requires UN authorization is about as weak as in the US and significantly lower than in Europe.[83] These data are limited, but they are in line with anecdotal evidence and suggest that belief in that norm is indeed concentrated in Europe.

Yet we do not need to resort to a strong concept of legitimacy in order to understand the position of governments here. From a strategic perspective, most states are well-advised to defend the inadmissibility of force outside the Council. For small states, the risk of being invaded has always been greater than the potential benefits from using force – an institutional restraint on the use of force is therefore

[80] See Richard Price, 'A Genealogy of the Chemical Weapons Taboo', *International Organization* 49 (1995), 73 103; Nina Tannenwald, 'Stigmatizing the Bomb: Origins of the Nuclear Taboo', *International Security* 29 (2005), 5 49.

[81] On debates on Kosovo, see Nico Krisch, 'Unilateral Enforcement of the Collective Will: Kosovo, Iraq, and the Security Council', *Max Planck Yearbook of United Nations Law* 3 (1999), 97 8. On public opinion on Iraq 2003, see William Horsley, 'Polls find Europeans oppose Iraq war', *BBC News*, 11 Feb. 2003, available at news.bbc.co.uk/1/hi/world/europe/2747175.stm YouGov, *A Possible War in Iraq*, Mar. 2003, available at www.yougov.com/archives/pdf/dim030101001 1.pdf Thompson dismisses these facts as indicators of normative beliefs because they were not accompanied by a willingness to participate in the respective wars: Thompson, 'Coercion through IOs', 28. This overlooks that recognizing somebody else's right to act in no ways implies an own obligation to join in the action.

[82] See Eichenberg, 'Victory Has Many Friends', 159 61, 175.

[83] In a 2004 survey, between 60% and 80% of people polled in European countries said their government needed UN approval before dealing with an international threat. The figures in the US and Russia were 41% and 37% respectively not very different from those in the other countries polled: in Turkey, Pakistan, Jordan, and Morocco, between 38% and 45% responded favourably. See Pew Research Center, 2004 report, above n. 72, p. 146.

generally desirable for them. For more powerful states, the position might not always be so clear, but in a unipolar order with a one-sided distribution of capacities for intervention, it will certainly hold for most. And for states like China and Russia, though they might not face much risk of being attacked, the benefits derived from influencing US military action in the Council probably outweigh the additional costs for their own potential military endeavours. The situation is less clear for European states. Europe is disproportionately well represented on the Security Council and should thus have an interest in upholding Council authority. However, in the current world order, European states are much more likely to intervene than be the object of intervention: their stance on Kosovo and certain European states' position on Iraq in 2003 reflects this ambiguity. Nevertheless, except perhaps for the issue of humanitarian intervention, we can observe a convergence of interests of most states around upholding, as a minimum, a strong anti-interventionist norm with the Security Council at its centre. Given this convergence, there are few coordination problems in defending this norm against revisionist powers, and its relative strength is thus not surprising.

Changes in the Council's Role

The relatively strong defence of the norm prohibiting intervention without Security Council authorization represents a significant shift in the parameters of the use of force since the Cold War. While the legal norms have essentially stayed the same, the readiness of states to defend them seems to have grown considerably.[84] Also before 1990, there was widespread opposition to and condemnation of interventions, and large parts of the developing world, in particular, mobilized against uses of force.[85] Yet there were hardly any claims about a need for Security Council authorization; the debate focused instead on the substantive grounds for the use of force.

This was certainly in part due to the futility of any hope for a Council role as long as the superpowers were opposed. It was clear that, when the superpowers intended to use force, the Security Council would be automatically barred from censoring or authorizing them. The only exception – Korea in 1950 – resulted from Soviet absence, and the Council's ability to act was short-lived. Apart from that, since there was no practical possibility for Council involvement, the focal point of a

[84] See also Voeten, 'Political Origins', 531 3; Hurd, 'The Great Powers'.

[85] See generally Gray, *International Law and the Use of Force*, 25 6; and on African positions, Mayall, 'Humanitarian Intervention', 121 6. But see also Thomas M. Franck, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States', *American Journal of International Law* 64, no. 4 (1970), 809 37.

convergence of interests as described above was simply missing. With the end of the Cold War, and particularly with superpower agreement in the Gulf War in 1990/1991, this object appeared, and it remained in place for long enough to allow that convergence of interests to consolidate and embed the norm in international discourse. Initially, this also seems to have been beneficial to the US: reaching agreement in the Council did not seem to pose excessive obstacles, and focusing on Council authorization was a way to displace the more restrictive anti-interventionist positions that developing countries had defended before. Thus, when the first serious challenge to the norm arose with the Kosovo crisis, the norm was sufficiently stable to resist attempts at displacing it. It is telling that NATO states engaged in Kosovo, like the US and the UK in the Iraq war in 2003, primarily relied on Security Council resolutions rather than rights of unilateral action.[86] Given their prior support for the restrictive norm, Western states have problems changing track (if they actually want normative change).[87] Even the US, which had made strong statements for extended rights of pre-emptive self-defence in 2002, later did not rely on it as a justification for the war against Iraq.[88] The states that used the Council in the 1990s might now be 'entrapped' by the norm requiring Council authorization for the use of force[89] – whether because other states now believe in the norm's legitimacy and defend it; because inconsistency in argument incurs reputational costs; or because it provides a ready focus for the coordination of other states' resistance.

Yet the relatively sudden change in states' support for the Council as a gatekeeper for the use of force might not only be due to the new possibility for agreement in the post-Cold War world; it might also reflect a change in the structure of state interests in the new unipolar world. In the bipolar setting of the Cold War, many developing states had a great interest in restrictive rules on the use of force. However, within both blocs, there were many more states that sympathized with the notion of intervention to uphold (or spread) their own political system. In this situation, it might have been desirable to restrain the other side from intervening, but it was hardly in the interest of states to tie their own side to the need for Security Council approval that would be blocked by the other.[90] After the end of the Cold War, this situation has shifted and, as pointed out before, the capacity to intervene is much more concentrated, so most states see themselves as potential

[86] On Kosovo, see Krisch, 'Unilateral Enforcement', 81 3; on Iraq, Adam Roberts, 'Law and the Use of Force After Iraq', *Survival* 45, no. 2 (2003), 39 41; Gray, *International Law and the Use of Force*, 273 5.

[87] On the different possible strategies behind Western action, see Michael Byers, 'Preemptive Self defense: Hegemony, Equality and Strategies of Legal Change', *Journal of Political Philosophy* 11 (2003), 171 90.

[88] UN doc. S/2003/351 of 21 Mar. 2003; see also William H. Taft and Todd F. Buchwald, 'Preemption, Iraq, and International Law', *American Journal of International Law* 97, no. 3 (2003), 557 63.

[89] On argumentative 'self entrapment' in general, see Risse, '"Let's Argue!"', 32 3. See also Abbott and Snidal, 'Why States Act', 25, on changes in the environment of states brought about by international institutions.

[90] See Franck, 'Who Killed Article 2(4)?', 832 5.

objects rather than subjects of intervention, and thus have a greater interest in restraining intervening powers. Even US allies will often have an interest in imposing institutional restraints on the US, simply because this allows them more influence on the shape of the action – knowing that when the West is united, it will usually have the means to bring about Security Council approval.

Change can be observed not only in the rejection of force outside the Council, but also in the measure of acceptance of the Council's own action. In this respect, shifts might not be spectacular: even during the Cold War, Council action seems to have enjoyed relative acceptance in the rare cases it came about. Perhaps states had even stronger grounds to follow it because of the greater inclusiveness that stemmed from the institutionalized agreement of the two main blocs. In this respect, not much has changed. As we have seen, the Council is still exposed to serious challenges to its legitimacy and constantly has to regain it. However, change is apparent in the acceptance of the breadth of the Council's powers. Such change had occurred before, as with the acceptance of the Council's power to establish UN peacekeeping missions since the 1950s,[91] but it accelerated after the Cold War. When, in 1990, the Council eschewed the Charter's non-functioning provisions providing for the establishment of a UN force and turned to authorizing action by member states, some states voiced principled criticism. However, over the years, as the practice became more common, such objections faded away.[92] Likewise, in the early 1990s, there was significant debate over whether the Council could intervene in internal conflicts or for merely humanitarian purposes; and in its first decisions, it still emphasized the exceptional character of the situation. Later on, reservations about this practice largely disappeared.[93]

This expansion of the Council's powers is remarkable, and it reflects a process of incremental normalization of practice. In most of the cases mentioned, some states initially questioned the powers of the Council in principle, but because they shared the Council's aims, they did not object much to their use in the cases concerned. When such instances were repeated, the principled argument broke down under the weight of precedent, and the practice was (even legally) consolidated.[94] One might interpret this as a shift in states' normative beliefs, or merely as the breakdown of focal points of resistance. On either interpretation, it amounts to considerable change.

[91] See Gray, *International Law and the Use of Force*, 201 4.

[92] See Danesh Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (Oxford: Oxford University Press, 1999), ch. 5, also on the limited precedents of Korea and Southern Rhodesia.

[93] See Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 127 60; Martin Lailach, *Die Bedrohung des Weltfriedens und der internationalen Sicherheit als Aufgabe des Sicherheitsrates der Vereinten Nationen* (Berlin: Duncker and Humblot, 1998). On China's reservations, see Morphet, 'China', 161 4.

[94] On the legal aspects, see Frowein and Krisch, 'Introduction to Chapter VII'.

Conclusion

The relationship between the Security Council and the Great Powers is hardly stable. In the scope of this short chapter, I have not been able to explore that relationship thoroughly, but I have tried to highlight some of the ways in which the Great Powers have constantly tried to expand their (already unprecedented) privileges through changes in the informal operation of the Council. I have also described how they have faced resistance by other states, and have had to give in to these demands to a significant extent. The authority of the Council, precious to the Great Powers as it facilitates stable cooperation and limits resistance, is vulnerable and has to be gained and regained at a considerable cost. As a result, the Council appears janus-faced: it remains a tool of the Great Powers, but it is also an instrument for constraining them.

This janus-faced character confirms the ambivalent status of international institutions under conditions of power asymmetry. Institutions are useful for the powerful because they help ensure acceptance of their policies, but this acceptance depends on the institution's legitimacy, or at least a sense by other states that they play a stronger role in the institution than they would otherwise. Therefore, institutions need to be somewhat shielded from the direct influence of power; they need to enjoy some independence.[95] Yet this independence in itself can often cause problems for powerful states, and increase their temptation to act outside institutional channels. In order to support an institution, all sides need to benefit, and this leaves the institution in a precarious balance, constantly subject to readjustment to its environment.[96] This instability might disappear once an institution is normalized to the extent that its role and legitimacy is internalized by states. It is not clear that this has happened with the Security Council so far, but overall the Council promises sufficient collective gains to be relatively stable, even in the absence of such strong foundations.

The strength of the Council derives in part from recent changes in its normative environment, which have resulted in a relatively strong convention among states that non-defensive uses of force are unacceptable without Security Council authorization. This convention increases the cost of unilateral options and thus pushes powerful states back into the institutional framework. However one explains these changes – whether as a shift in beliefs, a tightening of discursive constraints, or strategic convergence – they seem to have been triggered by the

[95] See Abbott and Snidal, 'Why States Act', 16 23; Woods, 'US and International Financial Institu tions', 93 5; Thompson, 'Coercion through IOs'. On international law, see Krisch, 'International Law in Times of Hegemony'.

[96] On such readjustment in the Security Council, see Hurd, 'Security Council Reform'; also Prantl, 'Informal Groups of States'.

increasing normality of Security Council action in crises throughout the 1990s and the resulting consolidation of expectations around it. What might have seemed convenient at the time has shifted the parameters of the later choice of tools significantly. The Council helps the Great Powers to establish 'world government', but sometimes, it must also appear to them as a trap.

CHAPTER 6

THE SECURITY COUNCIL, THE GENERAL ASSEMBLY, AND WAR: THE UNITING FOR PEACE RESOLUTION

DOMINIK ZAUM*

When the first United Nations (UN) peacekeeping force, the United Nations Emergency Force (UNEF), was established on 5 November 1956, to supervise the cessation of fighting in the Suez war between Egypt and troops from Israel, France, and the United Kingdom,[1] it was not the Security Council, with its primary responsibility for international peace and security, that authorized the mission. Instead, this groundbreaking initiative for the UN had been requested by the General Assembly, to which the Council, paralysed by the French and British

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[1] GA Res. 1000 (ES I) of 5 Nov. 1956.

vetoes over the Suez crisis, had passed on the issue under the 'Uniting for Peace' procedure.

The 1950 Uniting for Peace resolution has been one of the most important attempts by the US and its allies to change the institutional balance of power between the Security Council and the General Assembly at a time when the Council was deadlocked because of regular Soviet vetoes, and the Assembly could command a safe pro-Western majority. While the Suez crisis has been the most prominent instance of 'Uniting for Peace', it has not been the only one. Depending on how one counts, the procedure has been invoked eleven or twelve times to refer questions of international peace and security to regular or emergency special sessions of the General Assembly since November 1950,[2] when the original Uniting for Peace resolution was passed by the General Assembly to break the deadlock caused by the Soviet veto in Security Council debates on Korea.[3] The latest emergency special session of the General Assembly – the tenth – convened in April 1997 to address the situation in East Jerusalem and the occupied territories. At its last meeting in January 2007, it only temporarily adjourned and therefore could be called again on the request of member states – almost ten years after it was initially established.[4]

The Uniting for Peace resolution was envisaged as the main pathway for the General Assembly to address issues of war and conflict. However, the way in which the resolution has been used has changed dramatically over the years. What started as an early case of UN 'reform', as a US-led attempt to shift the balance of power between two principal organs of the United Nations to break the stifling effect that the Soviet veto had on the UN in its first decade, turned increasingly into an instrument used to raise issues of political importance to the Non-Aligned Movement in the General Assembly, and more specifically into a tool used by Arab states to criticize Israel's policy in the occupied territories and the American support for Israel.

This chapter examines the role of the Uniting for Peace procedure from its inception in 1950 until its most recent use in 2006/2007. It addresses two questions: first, what has been the contribution of the Uniting for Peace resolution to the United Nations' efforts to promote international peace and security; and secondly, what does the use of the resolution suggest about the relationship between the Security Council and the General Assembly? As the chapter shows, the use of the procedure has changed over the years from a mechanism to enable the UN to address conflicts despite the veto of a Permanent Member of the Security Council, to a way for some states in the General Assembly to promote political concerns important to them, in particular decolonization and the Palestinian question.

[2] The difference arises from the question whether one considers the 1951 referral of the war in Korea from the Security Council to the General Assembly as a use of the Uniting for Peace procedure. The issue is discussed in more detail below.

[3] GA Res. 377 (V) of 3 Nov. 1950.

[4] GA Res. ES 10/17 of 27 Jan. 2007.

While the Uniting for Peace procedure provided an opening for the General Assembly to get involved more actively in addressing threats to international peace and security, the record shows that it failed to do so effectively. The resolution has thus contributed little to strengthening the UN's capacity for collective security. Instead, the way the Uniting for Peace resolution has been used reflects the growing marginalization of the General Assembly by the Security Council with regard to addressing conflicts. This marginalization has been the result of the increased unity of the Security Council since the end of the Cold War, which has reinforced the body's primacy over security issues. Similarly, the growing number of developing and non-aligned countries in the General Assembly as a consequence of decolonization in the 1950s and 1960s, contributed to the marginalization of the General Assembly, in particular by the US and Western states, who could no longer rely on the support of the majority of states in the Assembly. While the Uniting for Peace resolution has been highlighted as a possible instrument to authorize the use of force in the case of a veto as recently as 2001 in the International Commission on Intervention and State Sovereignty's report on the *Responsibility to Protect*,[5] the increasing divisions between Assembly and Council, visible in particular during the debate about UN reform in 2004–5, make it unlikely that the Council would currently be inclined to use the procedure.

The Uniting for Peace resolution has, however, shaped the development of the core principles of an important UN practice: peacekeeping. In the General Assembly debates on peacekeeping in Suez and the Congo in particular, central principles such as host consent, the financing of peacekeeping missions, and impartiality were formulated, which would have been less salient had it not been for the General Assembly's involvement in authorizing these peacekeeping missions.

The Uniting for Peace Resolution

On 1 August 1950, the Soviet Union, which had all but paralysed the Security Council by vetoing forty-five draft resolutions since the creation of the UN, returned to the Council after an eight-month boycott over the refusal to give China's seat at the Security Council to the communist People's Republic, rather than Chiang Kai-shek's pro-American Republic of China. In the Soviet Union's absence, the Council had authorized a US-led military coalition to assist South Korea in repelling the North Korean attack.[6] Realizing that its boycott had failed to paralyse the UN, the Soviet Union returned in August 1950 to take up the

[5] ICISS, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), xii.
[6] SC Res. 83 of 27 Jun. 1950; and SC Res. 84 of 7 Jul. 1950.

Presidency of the Security Council, preventing any further discussion of the Korean question through manipulating the Council's agenda,[7] and vetoing several proposed resolutions on the conflict.[8]

In anticipation of the Soviet return to the Council, the US had been looking for alternative ways to enable the UN to take decisions legitimizing US-led military action in Korea.[9] When the General Assembly convened for its regular session in September, US Secretary of State Dean Acheson outlined his proposal to turn to the General Assembly to respond to aggression and threats to international peace and security, if the Security Council was prevented from fulfilling its obligations because of a veto. Under the UN Charter, the General Assembly may normally not make recommendations with regard to any issues on the agenda of the Security Council.[10] To increase the UN's effectiveness to respond to conflicts in the light of the paralysis of the Security Council, Acheson suggested among other things that the Assembly should be able to call emergency sessions if the Council was prevented from acting, to establish a 'security patrol' to monitor and report on possible conflicts, and that member states should designate units in their armed forces available for service in the name of the UN.[11]

When the General Assembly passed Resolution 377, entitled 'Uniting for Peace', after extensive debate on 3 November 1950, it closely followed Acheson's original suggestions. It stated that

> If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or acts of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time the General Assembly may meet in emergency special session within twenty four hours of the request thereof. Such emergency special session may be called if requested by the Security Council on the vote of any seven members, or by a majority of the United Nations.[12]

[7] See William Stueck's discussion of this issue in Chapter 11.

[8] The USSR vetoed two draft resolutions on 6 and 12 Sep. 1950 (UN docs. S/1653 and S/1752), which among other things called on states to desist from supporting North Korea.

[9] See Dean Acheson, *Present at the Creation: My Years in the State Department* (London: Hamish Hamilton, 1970), 449 50.

[10] Charter of the United Nations, Art.12(1).

[11] Acheson, *Present at the Creation*, 450. The British government was originally sceptical about the American proposals, favouring instead a 'more subtle' approach to get around the veto problem. In discussions with US diplomats, the FCO suggested to amend the rules of procedure of the General Assembly to allow in the event of a crisis for the convening of the Assembly within 24 hours on request of any member state supported by the majority of members. 'Friendly' Security Council members could prevent the crisis from reaching the Council's agenda. British diplomats admitted, however, that they might face problems in mobilizing the necessary international support quickly enough in the event of a crisis. See *Telegram from the Ambassador in the UK (Douglas) to the Secretary of State*, London, 16 Aug. 1950, FRUS 1950, Vol.II, 320.

[12] GA Res. 377 (V).

The resolution contained five proposals: (1) that the Assembly should consider any aggression, threat to the peace, or breach of the peace, if the Security Council fails to exercise its responsibility with regard to international peace and security because of a lack of unanimity between its five Permanent Members (P5), and if necessary call a special emergency session to that end; (2) that states should designate units in their armed forces that could be made available to the United Nations on request of the Security Council or the General Assembly; (3) that a panel of military experts be created to provide technical advice to these units; (4) that a peace observation committee be established; and (5) that states should create a Collective Measures Committee, to write a report on measures to strengthen international peace and security.[13] Importantly, the resolution only allowed the General Assembly to 'make recommendations to Members for collective measures', in accordance with Article 10 of the Charter.[14] Thus, even under Uniting for Peace, the Assembly does not have the power to authorize the use of force against a member state.[15] This remains the prerogative of the Security Council. The extent to which the Assembly could step in and take the Security Council's place if the latter was paralysed by the veto was therefore limited from the beginning by the provisions of the Charter.

The Uniting for Peace resolution was drafted in the context of the Korean war and the perennial threat of the Soviet veto, but was also part of a wider effort by the United States in the early years of the UN to strengthen the General Assembly's role vis-à-vis the Security Council.[16] Already in 1947, the Assembly had established the Interim Committee to make considerations and recommendations between its regular sessions.[17] It also involved itself in the domain of the Security Council when advising members to withdraw their ambassadors from Franco's Spain in 1947, denouncing it as a fascist regime,[18] and when taking on the questions of Greece and Palestine from the Security Council after the latter's failure to come to any agreement.[19] Thus, the Uniting for Peace resolution was part of a broader US-led effort to increase the scope and effectiveness of the General Assembly, a development at the time supported, though with reservations, by the UK and

[13] GA Res. 377 (V).

[14] Charter of the United Nations, Art. 10: 'The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.'

[15] Michael Matheson, *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War* (Washington, DC: USIP, 2006), 104.

[16] Keith S. Petersen, 'The Uses of the Uniting for Peace Resolution since 1950', *International Organization* 13, no. 2 (Spring 1959), 219.

[17] GA Res. 111 (II) of 13 Nov. 1947.

[18] GA Res. 39 (I) of 12 Dec. 1946.

[19] GA Res. 109 (II) of 21 Oct. 1947, and GA Res. 181 (II) of 29 Nov. 1947. See also Dimitris Bourantonis and Konstantinos Magliveras, 'Anglo American Differences over the UN during the Cold War: The Uniting for Peace Resolution', *Contemporary British History* 16, no.2 (2002), 62.

France.[20] Crucially, to work as intended by the US and its allies, it relied on the existence of a supportive majority of pro-Western states in the General Assembly, and in 1950, Latin American and European states constituted a majority of the then sixty member states that could generally be relied upon.

While the Uniting for Peace procedure was not formally used with regard to the war in Korea, the principle was invoked when six Council members, following another Soviet veto on Korea on 30 November 1950,[21] requested that the General Assembly take up the matter.[22] While the Soviet Union voted against the proposal, it could not veto it, as the transfer of an issue from the Council to the General Assembly is considered a procedural issue, and therefore not subject to a veto by a Permanent Member.[23] The Council removed the item from its agenda before the General Assembly passed a resolution on Korea on 1 February 1951, thus allowing the General Assembly to discuss it without the need for any transfer under the procedure foreseen by the Uniting for Peace resolution.[24] The resolution passed that day makes clear reference to 'Uniting for Peace',

> Noting that the Security Council, because of lack of unanimity of the permanent members, has failed to exercise its primary responsibility for the maintenance of international peace and security with regard to Chinese communist intervention in Korea.[25]

The General Assembly confirmed the mandate of the US-led forces in Korea, perpetuating the legality of military action, and asked the Collective Measures Committee to consider additional measures to meet the North Korean and Chinese attacks. The resolution did not authorize any further actions beyond the already ongoing military activities, which had been authorized earlier by the Security Council. However, it kept the UN involved in the diplomatic efforts to end the war in Korea. Since then, both the Security Council and the General Assembly have made use of their prerogative to call for an emergency special session eleven times, to transfer consideration of an issue from the Security Council to the General Assembly (Appendix 6). Most of the other provisions in the Uniting for Peace resolution, however, were never implemented, or quickly fell dormant, victims of the politics of the Cold War.[26]

[20] Bourantonis and Magliveras, 'Anglo American Differences over the UN during the Cold War'.

[21] UN doc. S/1894 of 30 Nov. 1950.

[22] UN doc. A/1618 of 4 Dec. 1950. In this telegram, the representatives of Cuba, Ecuador, France, Norway, the United Kingdom, and the United States request the inclusion of the item 'Intervention of the Central People's Government of the People's Republic of China in Korea' in the agenda of the General Assembly session.

[23] Sidney D. Bailey and Sam Daws, *Procedure of the Security Council*, 3rd edn. (Oxford: Oxford University Press, 1998), 225 6.

[24] Petersen, 'The Uses of the Uniting for Peace Resolution', 224.

[25] GA Res. 498 (V) of 1 Feb. 1951.

[26] For a more detailed discussion, see Petersen, 'The Uses of the Uniting for Peace Resolution', 220 3.

Uses of the Uniting for Peace Procedure since 1950

The Security Council and the Uniting for Peace resolution

Since the Korean war, the Uniting for Peace procedure has been used eleven times, seven times by the Security Council in resolutions transferring an issue to the General Assembly, and four times by the General Assembly itself after a majority of member states requested an emergency special session. Almost six years after the resolution was passed, the Security Council called for an emergency special session when France and the UK vetoed a resolution demanding the withdrawal of Israeli forces which, in collaboration with the French and British governments, had attacked Egypt to end Gamal Abdel Nasser's control over the Suez Canal.[27] Only a few days later the Council called for another emergency special session when the Soviet Union vetoed a resolution requesting the withdrawal of its troops from Hungary, and the admission of observers appointed by the UN Secretary-General, to assess the need for humanitarian aid.[28] In 1958 the Council, in disagreement over the presence of British and American troops in Jordan and the Lebanon respectively, agreed to refer the matter to another emergency special session of the General Assembly.[29]

In the Congo crisis in 1960, disagreement over the relationship between the United Nations Operation in the Congo (ONUC) and the Congolese government resulted in a Soviet veto and saw the issue handed to the General Assembly.[30] While the Soviet Union wanted ONUC explicitly to support the Congolese government of Patrice Lumumba, the Western powers and the UN Secretary-General wanted the mission to maintain neutrality between the different sides.[31] The US claimed that the Soviet Union had unilaterally asserted the right to introduce troops into the Congo, and asked the General Assembly to clarify and confirm ONUC's mandate as the only legitimate international presence in the Congo, which it duly did.[32]

The final three times the Security Council requested the General Assembly to take on an issue because it was deadlocked by a veto were in 1971 over the conflict between India and Pakistan over East Pakistan (Bangladesh),[33] in 1980 following Soviet intervention in Afghanistan,[34] and in 1982 over the Israeli annexation of the Golan Heights.[35] As the General Assembly was in its regular session at the time of the India–Pakistan conflict, no emergency special session was called in that instance.

[27] SC Res. 119 of 31 Oct. 1956.
[28] SC Res. 120 of 4 Nov. 1956.
[29] SC Res. 129 of 7 Aug. 1958.
[30] SC Res. 157 of 17 Sep. 1960.
[31] *Yearbook of the United Nations*, 1960, 59 64.
[32] GA Res. 1474 of 16 Sep. 1960.
[33] SC Res. 303 of 6 Dec. 1971. The USSR had previously vetoed two draft resolutions (UN. Doc. S/10416 of 4 Dec. 1971, and UN doc. S/10423 of 5 Dec. 1971).
[34] SC Res. 462 of 9 Jan. 1980.
[35] SC Res. 500 of 28 Jan. 1982.

The General Assembly and the Uniting for Peace resolution

In addition to the Security Council, individual member states can request an emergency special session of the General Assembly under the Uniting for Peace resolution, if a majority of General Assembly members supports it.[36] In 1967, the General Assembly called for an emergency special session for the first time, at the request of the Soviet Union, to address the six-day war in the Middle East.[37] This case stands out as the Soviet Union did not make the request because the Security Council was blocked by a veto (it was not, as a majority of the Security Council's members had voted against the Soviet draft resolution), but – as it argued – because Israel had failed to obey the Security Council's demands for a ceasefire.[38] While the US objected that this was an improper use of the Uniting for Peace procedure, the General Assembly voted overwhelmingly to convene an emergency session, with ninty-eight countries in favour and three against (US, Israel, and Botswana), with three abstentions. Despite this strong support for an emergency session, the Soviet Union's draft resolution explicitly condemning Israel in the General Assembly was overwhelmingly rejected – just as it had been in the Security Council.[39]

In 1980, the General Assembly again called an emergency special session, following a request by Senegal, then chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People. The US had vetoed a Tunisian draft resolution in the Security Council on 30 April 1980, which called on Israel to withdraw from the occupied territories, and emphasized the Palestinian right to a state and right to return.[40] The emergency special session, which was adjourned several times and continued until September 1982 (raising questions about its 'emergency' character), was used by Arab states as a tool to denounce Israel's policy in the occupied territories, and brand Israel as an aggressor and 'not a peace-loving member state',[41] thereby implicitly questioning Israel's right to be a member of the United Nations.[42]

[36] GA Res. 377 (V), para. 1: Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations.

[37] UN doc. A/6717 of 13 Jun. 1967.

[38] The Council called for a ceasefire in SC Res. 233 of 6 Jun. 1967, SC Res. 234 of 7 Jun. 1967, and in SC Res. 236 of 11 Jun. 1967.

[39] See *Yearbook of the United Nations*, 1967, 209. Each individual part of the draft resolution was rejected by the General Assembly in separate votes, and consequently the Assembly never voted on the whole resolution. See also Andrew Boyd, *Fifteen Men on a Powder Keg: A History of the UN Security Council* (London: Methuen, 1971), 215 17.

[40] UN doc. S/13911 of 28 Apr. 1980.

[41] GA Res. ES 7/4 of 28 Apr. 1982.

[42] Art. 4 of the Charter of the United Nations states that UN membership 'is open to all . . . peace loving states which accept the obligations contained in the present Charter'. By denying that Israel is 'peace loving', GA Res. ES 7/4 seems to suggest that Israel does not fulfil the criteria for UN membership. For a critical discussion of this emergency special session, see also Yehuda Z. Blum, 'The Seventh Emergency Special Session of the UN General Assembly: An Exercise in Procedural Abuse', *American Journal of International Law* 80, no. 3 (1986), 587 600.

In September 1981 an emergency special session on Namibia was called at the request of Zimbabwe, following vetoes in April 1981 by France, the UK, and the US of resolutions calling for wider sanctions on South Africa.[43] The issue, one of decolonization rather than peace and security, and the fact that the emergency session was called almost five months after the vetoes, raises questions about the emergency character of the session, which called for the end of the South African occupation of Namibia, military financial support for SWAPO, and sanctions on South Africa.[44]

The final emergency special session was called in 1997 on request of Qatar, then leader of the Arab Group in the UN, on the question of East Jerusalem and the occupied territories, following two US vetoes of resolutions condemning Israel's settlement policy in Jerusalem.[45] Israel denounced the session as polarizing, and argued that the settlement issue did not constitute an issue of international peace and security.[46] The session was adjourned several times and met last in January 2007, again raising the question whether the states calling for the session saw it as a tool to denounce Israel rather than an instrument to address an emergency threat, in particular as some of the emergency special session's meetings coincided with regular Assembly sessions in which the issue could have been discussed. The use of the emergency special session thus merely served to raise the profile of the issue. An important consequence of the 10th emergency special session, though, was that it allowed the General Assembly to request an advisory opinion from the International Court of Justice on the legality of the construction of a wall by Israel in the occupied Palestinian territory.[47] In its opinion, the court found the construction of the wall to be contrary to international law.[48] While the emergency special sessions might have helped to keep the issue of Palestine on the UN's agenda and in the public eye, the polarizing anti-Israeli rhetoric in these emergency special sessions, reflected in the notorious 1975 'Zionism is Racism' General Assembly resolution,[49] undoubtedly also confirmed the Israeli perception that the UN (and the General Assembly in particular) could not be trusted, and limited the role of the UN in the Middle East peace process until the late 1990s.[50]

[43] UN doc. S/14459 of 27 Apr. 1981; UN doc. S/14460/Rev.1 of 29 Apr. 1981; and UN doc. S/ 14461 of 27 Apr. 1981.

[44] GA Res. ES 8/2 of 14 Sep. 1981.

[45] UN doc. S/1997/199 of 7 Mar. 1997; and UN doc. S/1997/241 of 21 Mar. 1997.

[46] Indeed, the two draft resolutions vetoed by the US did not make any reference to threats to international peace and security.

[47] GA Res. 10/14 of 8 Dec. 2003.

[48] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 Jul. 2004.

[49] GA Res. 3379 (XXX), of 10 Nov. 1975.

[50] See also Bruce Jones's discussion of Israeli perceptions of the UN in Chapter 13.

The Changing Use of Uniting for Peace

The discussion above shows how the Uniting for Peace procedure has been used in a range of different contexts, and for a range of different purposes. It has been employed to request the creation of a peacekeeping mission (Suez), and to confirm or strengthen the mandate of UN missions (Korea, Congo). It has been used to condemn armed interventions (Suez, Hungary, Lebanon and Jordan, Afghanistan, and the Golan Heights), and to call for ceasefires (Suez and India–Pakistan). It has been used, by both the Security Council and the General Assembly, to condemn some of Israel's policies in the occupied territories, and finally, has been invoked to promote decolonization in Namibia. Three trends can be identified from this brief examination of the use of the Uniting for Peace procedure: a changing initiator of the Uniting for Peace procedure, changing issues leading to the use of the resolution, and changing measures taken in response.

Changing initiator

First, the initiative for using the process has increasingly moved from the Security Council to the General Assembly. Three of the last four sessions were called by the Assembly at the request of member states, and the two sessions on the question of Palestine in the 1980s and 1990s have been recalled several times and have lasted several years, unlike any of the generally brief sessions called by the Council.

Three factors help to explain the decreasing use of the Uniting for Peace procedure by the Security Council. First, there have been relatively few vetoes in the post-Cold War era, which could have triggered a call for the General Assembly to take on an issue. From January 1990 until October 2006, there have only been nineteen vetoes, twelve of which have been connected to the situation in the Middle East, on which an emergency session called by the General Assembly has been in place since 1997. None of these vetoed resolutions mentioned threats to international peace and security; the vetoes, all by the US, were the result of language condemning Israel.[51] Only two of the resolutions vetoed after 1989 made references to Chapter VII or to threats to international peace and security, and could therefore have legitimized the use of the Uniting for Peace procedure. Both resolutions addressed the issue of Bosnia and Herzegovina,[52] an issue where the Security

[51] While the resolutions mostly addressed the situation in the occupied Palestinian territories, which certainly has implications for international peace and security, none of the resolutions explicitly referred to threats to the peace, breaches of the peace, or to aggression, which are the instances under which the Uniting for Peace resolution calls on the General Assembly to meet for an emergency special session. Several of the resolutions call for an end of Israeli settlement activities and expropriation of land. See for example UN doc. S/1995/394 of 17 May 1995; and UN doc. S/1997/199 of 7 Mar. 1997.

[52] UN doc. S/1994/1358 of 2 Dec. 1994; and UN doc. S/2002/712 of 30 June 2002.

Council at the time of the vetoed resolutions (1994 and 2002) was deeply involved,[53] and clearly not paralysed by the veto.

Alongside the reduction in the number of vetoes, the Permanent Members increased their use of informal negotiations before official Council meetings, in particular in the early 1990s.[54] Such negotiations marginalized not only the Non-permanent Members of the Council, but also the wider UN membership. As the French ambassador to the UN observed in December 1994,

> The result of this situation is strong frustration and a lack of information. There is frustration among nonmembers of the Council; and members of the Council have inad equate information because there are too few opportunities for debate for them to understand the general feelings of those interested in items on the Council's agenda.[55]

As Nico Krisch argues elsewhere in this volume, the prevalence of informal negotiations has meant that non-members rarely have the information to challenge decisions or to express their views in Council debates.[56] This has further enhanced the primacy of the Security Council in matters of international peace and security, and has made it less likely that Council members (in particular the P5) would be willing to pass controversial issues to the General Assembly under the Uniting for Peace procedure.

Secondly, during the Cold War the spheres of influence of the great powers limited the debate by the Security Council in particular about interventions by the P5 in their respective spheres of influence. This limited the possibility for vetoes, and consequently for using the Uniting for Peace procedure. American covert or semi-covert interventions in Latin America were rarely addressed by the Council, nor were Soviet actions in Eastern Europe. The Soviet intervention in Hungary at first glance appears to be an exception to this. However, Hungary was discussed predominantly because the British and French governments pushed in the Council for a referral of the Hungary question to the General Assembly to take the heat off them at the height of the Suez crisis. Similarly, the Soviet Union had decided to use the opportunity of Suez for its second intervention in Hungary, calculating that the US and the world public would be preoccupied with the crisis in the Middle East.[57]

[53] In 1994, a UN peacekeeping mission, UNPROFOR, which was authorized by the Security Council, was deployed in Bosnia and Herzegovina. In 1994 alone, the Security Council passed eleven resolutions on Bosnia and Herzegovina and UNPROFOR. Eight years later, the pattern was repeated. The US vetoed a draft resolution on Bosnia on 30 Jun. 2002 because of the issue of immunity for its peacekeepers from prosecution by the International Criminal Court, and voted in favour of a resolution extending the mandate of the UN Mission in Bosnia and Herzegovina two weeks later, after it gained immunity for its soldiers. See SC Res. 1422 of 12 Jul. 2002, and SC Res. 1423 of 12 Jul. 2002.

[54] See Jochen Prantl and Jean Krasno, 'Informal Groups of Member States', in Jean Krasno (ed.), *The United Nations: Confronting the Challenges of Global Security* (Boulder: Lynne Rienner, 2004), 333.

[55] UN doc. S/PV.3482 of 16 Dec. 1994, 2.

[56] See Nico Krisch's discussion of the issue in Chapter 5.

[57] Csaba Békés, 'New Findings on the 1956 Hungarian Revolution', *Cold War International History Project Bulletin*, Issue 2 (1992), 3.

The US government was keen throughout the Hungary crisis to communicate to the USSR that it would not intervene in the conflict, and lobbied intensely at the UN against any action with regard to Hungary.[58] It had clearly no interest in interfering in the sphere of influence of the other superpower.[59]

Finally, Security Council members, in particular the P5, also seem to have been increasingly reluctant to use the Uniting for Peace procedure. It is easy to see why this would be the case. First, its use undermines their most important formal privilege: the veto. Had it been used more regularly, the procedure could have undermined the usefulness of the veto in protecting the interests of the P5. Secondly, decolonization and the resulting increase of the General Assembly's membership has made it an increasingly unpredictable body, less likely to follow the lead of the great powers in the Security Council. While in the 1950s the US could generally rely on the support of the Latin American and European states in the General Assembly when it argued strongly for the Uniting for Peace resolution, the composition of the GA, and the politics of its members, changed rapidly in the 1960s. As a result, the US subsequently found itself more often than not at odds with the majority of developing countries. The British Foreign Office had been sceptical about the Uniting for Peace proposal in 1950 for exactly that reason, fearing that it might cause problems if in the future the majority of UN members might no longer be supportive of the Western powers.[60]

During the Kosovo crisis in spring 1999, Canada briefly toyed with the idea to push for the use of the Uniting for Peace procedure to gain an explicit authorization for NATO action from the General Assembly, when it became clear that Russia would veto any such resolution in the Security Council. However, it abandoned the plan as it suspected that there was still residual support for Yugoslavia among the Non-Aligned Movement, which might lead to the rejection of such a resolution.[61]

[58] Brian McCauley, 'Hungary and Suez, 1956: The Limits of Soviet and American Power', *Journal of Contemporary History* 16, no. 4 (1981), 790. In the debates on Hungary on 3 and 4 Nov. 1956, the US abstained from a motion to extend the Security Council debate, and voted against a motion to resume the discussion of the issue the following day. See ibid., 794.

[59] This sentiment was not shared by everybody in the State Department. The US ambassador to France, Douglas Dillon, pleaded in a telegram to President Eisenhower, 'Mr. President, Franco British action on Suez is a small wound to their prestige but American inaction about Hungary could be a fatal wound to ours.' He also suggested that the President might address the General Assembly in person on this issue, and that the US might consider to threaten to discontinue diplomatic relations with Moscow. See FRUS 1955 57, Vol. XXV, 390.

[60] Acheson, *Present at the Creation*, 450. See also Bourantonis and Magliveras, 'Anglo American Differences over the UN During the Cold War', 69.

[61] Paul Heinbecker, 'Kosovo', in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004), 543. The possibility of using a Uniting for Peace resolution to authorize the use of force in the Kosovo conflict was also raised by some international lawyers. See for example Ian Brownlie and C.J. Apperley, 'Kosovo Crisis Inquiry: Memorandum on the International Law Aspects', *International Comparative Law Quarterly* 49, no. 4 (2000), 904. For the argument that the Uniting for Peace resolution could not have been rightfully used in the context of the Kosovo war, see Masahiko Asada, 'Democratic Control of Humanitarian Intervention? The

The British government also considered seeking a Uniting for Peace resolution on Kosovo, but rejected it not only because it feared that such a resolution could not command a convincing majority in the Assembly, but also because it doubted that a Uniting for Peace resolution from the General Assembly, unlike a resolution from the Security Council under Chapter VII, could have provided a legal basis for a military intervention without consent from the host state.[62]

Not only Western states have found the General Assembly highly unpredictable. When the Soviet Union requested an emergency special session over Israel's failure to heed the Security Council's calls for a ceasefire in the six-day war in 1967, it hoped to push for a resolution in the General Assembly singling out Israel as the aggressor and calling for an unconditional withdrawal of its troops, which it previously failed to get adopted in the Council. However, in the Assembly such a resolution was also defeated, with a majority of states voting against each individual provision of the Soviet draft. It only passed two much more limited resolutions – dealing specifically with the protection of civilians in the occupied territories, and the status of East Jerusalem.[63]

All these factors have contributed to an increased emphasis by the Security Council on its primacy in issues of international peace and security since the 1960s, and to marginalizing the General Assembly's role in that field. However, it seems that because it has been so marginalized by the Security Council, and because it has been increasingly resentful of the Council's failure to address issues of importance in particular to its G-77 membership, the General Assembly has increasingly come to use the tool of Uniting for Peace resolutions and emergency special sessions to raise such issues, trying to increase the pressure on the Security Council and relevant member states to act. Engaging in 'symbolic politics',[64] these states use their majority in the General Assembly to have their voice heard in political debates where they otherwise yield little formal influence and which in the view of some powerful states are outside the remit of the General Assembly. In light of the increasingly salient divide between the G-77 and Western states (in particular the US) reflected in the acrimonious arguments over the war in Iraq, UN reform, and the UN budget, it seems highly unlikely that in the near future Council members will consider using the Uniting for Peace procedure and increase General Assembly involvement in issues of international peace and security.

"Uniting for Peace" Resolution Revisited', in Chi Carmody, Yuhi Iwasawa, and Sylvia Rhodes (eds.), *Trilateral Perspectives on International Legal Issues: Conflict and Coherence* (Baltimore: American Society of International Law, 2003), 217 41.

[62] *Statement by Mr. Emyr Jones Parry,* House of Commons Select Committee on Foreign Affairs, 18 Nov. 1999, 63 4. See also House of Commons, *4th Report of the Select Committee on Foreign Affairs*, 23 May 2000, para.128. Interestingly, the Committee concluded in its report that a Uniting for Peace resolution could possibly have provided a legal basis for intervention.

[63] GA Res. 2252 of 4 Jul. 1967; and GA Res. 2253 of 4 Jul. 1967.

[64] M. J. Peterson, *The UN General Assembly* (Abingdon: Routledge, 2006), 107.

Changing issues

Alongside an evolution in the initiator of the United for Peace procedure, the issues addressed by it have changed with its increased use by the Assembly. The Security Council has used Uniting for Peace resolutions predominantly in the context of major conflicts, both international (Korea, Suez, Hungary, Afghanistan, and the annexation of the Golan Heights), and civil (as in the Congo). The General Assembly, on the other hand, has mostly used the resolution to address issues other than major conflicts (with the exception of the Soviet request for an emergency special session on the six-day war in 1967), raising instead major political concerns of its developing world membership, in particular decolonization and the Palestinian question.

Changing measures

In addition to the issues addressed, the content of the measures taken by the General Assembly has changed significantly since 1951. When addressing the Korea and the Congo conflicts, the Assembly upheld or even strengthened the Security Council mandates of the UN troops,[65] and in the Suez crisis the General Assembly requested the establishment of the UN's first armed peacekeeping force. In its second emergency special session, the General Assembly requested the Secretary-General to send an observation commission to Hungary, 'to investigate the situation caused by foreign intervention in Hungary'.[66] While the Secretary-General named members of the commission, the Soviet Union and the Hungarian government never granted them access to the country, but the commission produced a report on the basis of over 100 interviews mostly with Hungarians who had fled the country.[67] The emergency session on the Congo was the last time the General Assembly called for any specific measures. Henceforth it mainly articulated moral condemnation of attacks, and called for ceasefires and the withdrawal of troops.

An exception to this trend was the request by the 10th emergency special session in December 2003 for an advisory opinion by the International Court of Justice on the legality of the wall constructed by Israel in the occupied territory.[68] While Israel challenged the request and argued that the General Assembly had acted ultra vires, the Court noted that as the US veto had prevented the Council from exercising its

[65] GA Res. 498; GA Res. 1474.

[66] GA Res. 1004 of 4 Nov. 1956.

[67] *Yearbook of the United Nations*, 1956, 77 83. Secretary General Hammarskjöld also offered to meet the Hungarian government in Budapest in person, to discuss the humanitarian needs of Hungary following the Soviet intervention, but the government refused such a meeting. The report of the Committee was submitted to the General Assembly on 12 Jul. 1957 (UN doc. A/3592).

[68] GA Res. ES 10/14.

responsibility of maintaining international peace and security, and as the Council had not discussed the issue of the wall in its meetings preceding the Assembly's request, the Assembly had acted within its authority.[69] It is highly ironic that the use of the American veto to protect Israel from international censure only made the court's involvement, and the finding that Israel is acting illegally, possible. While the advisory opinion focused attention for a time on the legal issues in the conflict, it had little effect on the ground.

In some cases, the resolutions of the General Assembly's emergency special sessions have asked the Security Council to take actions, highlighting the primacy of the Council regarding issues of international peace and security as the only institution able to take decisions binding for states. At its 8th emergency special session in 1981 on Namibia, for example, the Assembly asked the Council to impose sanctions on South Africa,[70] which earlier had been vetoed by France, the United Kingdom, and the United States.[71] The Council never acted on this request. Most of the time, therefore, the General Assembly's emergency special sessions have served the purpose of expressing the international community's moral indignation, rather than strengthening the UN's capacity for collective security, underlying further the diminished role of the General Assembly.[72]

Peacekeeping

As the preceding discussion has shown, the Uniting for Peace procedure did little to strengthen the capacity of the UN to address problems of conflict. However, through its involvement in two of the earliest UN missions, UNEF in the Middle East and ONUC in the Congo, the General Assembly, under the Uniting for Peace procedure, helped to frame the original conception of a key UN practice: peacekeeping. As Marrack Goulding, the former Under-Secretary-General for Peacekeeping, has argued, peacekeeping has traditionally been based on five main principles: peacekeeping operations are United Nations operations, that is they are financed, authorized, and run by the UN; they are established with the consent of the host government; they are impartial, not advancing the interests of one of the conflict parties over that of

[69] International Court of Justice, *Legal Consequences of the Construction of a Wall*, 14 17.

[70] GA Res. ES 8/2 of 14 Sep. 1981.

[71] UN doc. S/PV. 2277 of 30 Apr. 1981.

[72] The failure of the Council to act in response to the Assembly's requests raises questions about the International Commission on Intervention and State Sovereignty's (ICISS) belief that 'the mere possibility that this action [the use of the Uniting for Peace procedure] might be taken will be an important additional form of leverage on the Security Council to encourage it to act decisively and appropriately.' See ICISS, *The Responsibility to Protect*, 53.

another; they use force only in self-defence; and they are comprised of troops provided by member states.[73] While the practice of peacekeeping has evolved significantly since 1956, these principles are still relevant today. The development of three of them in particular has been shaped by the debates in the General Assembly about the establishment, control, and financing of UNEF and ONUC: the financing of peacekeeping operations, consent by the host government, and the impartiality of peacekeepers.

Financing of peacekeeping operations

Peacekeeping operations have predominantly been United Nations operations – established by the Council or the General Assembly, managed by the Secretariat, and financed collectively by the member states.[74] The General Assembly's involvement through the Uniting for Peace resolutions led in particular to controversies over the financing of UNEF and ONUC, with the Soviet Union rejecting the notion that the expenses should be born by UN members collectively. The dispute was partly rooted in the Soviet rejection of the General Assembly's authority to authorize UN missions or to extend their mandate to restore or maintain international peace and security, and consequently in its unwillingness to pay for missions it regarded as illegal.[75] While the Secretary-General and Western states argued that UNEF was established by an organ of the UN (the General Assembly) and should therefore be financed collectively by all members,[76] the USSR and its allies argued that the expenses should be born by the 'aggressors' responsible for the need to have the mission in the first place.[77] The former view prevailed, and in December 1956 the General Assembly decided that expenses should be apportioned between members.[78]

The arguments over the financing of peacekeeping operations were rekindled over the operation in the Congo. This time it was not only the Soviet Union, but also France – which wanted to keep security issues in the hands of the Security Council where it enjoyed a veto – who questioned the General Assembly's authority to authorize peacekeeping missions and impose the cost on member states.[79] The refusal of the Soviet Union and its allies to contribute to the costs of ONUC,

[73] Marrack Goulding, 'The Evolution of United Nations Peacekeeping', *International Affairs* 69, no. 3 (1993), 453 5.

[74] Ibid., 453 4.

[75] Rosalyn Higgins, *United Nations Peacekeeping 1946 1967 Documents and Commentary*, Vol. I (Middle East) (Oxford: Oxford University Press, 1969), 262; Jeffrey Laurenti, 'Financing the United Nations', in Krasno (ed.), *The United Nations*, 278.

[76] Higgins, *United Nations Peacekeeping*, Vol. I, 430.

[77] Ibid., 426.

[78] GA Res. 1089 (XI) of 21 Dec. 1956.

[79] Laurenti, 'Financing the United Nations', 278.

despite an advisory opinion of the International Court of Justice that confirmed that peacekeeping missions should be financed collectively by all members, and who were therefore legally bound to pay,[80] caused the first major financial crisis of the UN. It also resulted in a political crisis, as the arrears of the Soviet Union and its allies reached a level that would disqualify them from voting in the General Assembly in 1964.[81] When the issue of financing peacekeeping operations was resolved in a compromise in 1965 (after a year without any votes in the General Assembly, and all decisions only taken with consensus), the principle that such missions are financed collectively but in accordance with a different scale to the regular budget, which is still the basis for peacekeeping appropriations today, became firmly established.[82]

The principle that peacekeeping operations are UN operations has weakened since the end of the Cold War. Rather than running operations itself, the Security Council has authorized regional organizations to implement a range of peacekeeping missions, such IFOR/SFOR in Bosnia,[83] KFOR in Kosovo,[84] or ISAF in Afghanistan.[85] These operations eschew the traditional UN control, as national contingents remain under the ultimate command of their capitals, rather than a UN-appointed force commander. However, even if the importance of missions authorized by the Council, but run by regional organizations, has increased, it has been accompanied by a growing number of peacekeeping operations run by the UN, with record numbers of UN peacekeepers deployed in 2006.[86]

Consent

Peacekeeping missions are generally established with the consent of the host country.[87] While there are strong pragmatic reasons for consent, such as reducing the risk of local attacks on peacekeepers, host state consent was one of the central issues in the debate about the constitutional basis of UNEF in the General Assembly, reflecting that it is one of the foundational principles of the UN system. The requirement of consent for such peace operations was widely emphasized by member states in the General Assembly debates. In particular the Soviet Union and its Eastern European satellites denied that a Uniting for Peace resolution could provide the legal basis for UN military action, as under Article 10 of the Charter

[80] *Certain Expenses of the Unites Nations: Advisory Opinion, ICJ Reports*, 1962.
[81] Charter of the United Nations, Art. 19.
[82] Laurenti, 'Financing the United Nations', 279.
[83] SC Res. 1031 of 15 Dec. 1995; and SC Res. 1088 of 12 Dec. 1996.
[84] SC Res. 1244 of 10 Jun. 1999.
[85] SC Res. 1386 of 20 Dec. 2001.
[86] In Jun. 2007, the UN ran 15 peacekeeping operations, deploying more than 80,000 soldiers, military observers, and policemen. See www.un.org/Depts/dpko/dpko/bnote.htm
[87] Goulding, 'Evolution of United Nations Peacekeeping', 454.

and the terms of the Uniting for Peace resolution the Assembly can only recommend that members take collective measures. It was only because Egypt consented to the deployment of UNEF on its territory that the Soviet Union abstained, rather than voting against its establishment.[88]

These limits of the General Assembly's authority with regard to authorizing the use of force are reflected in the Secretary General's report on the creation of UNEF. Thus, the report stresses that '[w]hile the General Assembly is enabled to *establish* the Force with the consent of those parties which contribute units to the Force, it could not request the Force to be *stationed* or *operate* on the territory of a given country without the consent of the Government of that country.'[89] While peacekeeping missions have increasingly been established under a Chapter VII mandate since the end of the Cold War, making government consent formally unnecessary, consent has continued to be sought in the vast majority of UN operations, for pragmatic and principled reasons.[90] However, former UN Secretary-General Kofi Annan's statement in 2005 that Eritrea's demand to withdraw UN peacekeepers was 'unacceptable' indicates that the importance of consent, so central to the deployment of UNEF to Egypt in 1956, is no longer unquestioned.[91] As Jennifer Welsh argues elsewhere in this volume, while consent remains critical for the support for UN operations by key member states, it has increasingly been coerced through economic and political pressure in particular in conflicts involving major humanitarian emergencies, such as in Haiti, Kosovo, or East Timor.[92]

Impartiality

Traditionally peacekeepers have maintained impartiality between the parties, without prejudice to the claims and positions of the conflicting parties,[93] in contrast to enforcement operations such as Korea in 1950. UNEF did not take sides in the conflict between Egypt and Israel, the UK, and France, and was not established to remove foreign troops forcefully from Egyptian territory. Instead, it provided France and the UK with a face-saving escape route from their intervention.[94] The

[88] Higgins, *United Nations Peacekeeping*, Vol. I, 262.

[89] UN doc. A/3302 of 6 Nov. 1956. Emphasis in the original.

[90] Thus, China abstained and did not oppose the establishment of UNMIK in Kosovo because the Yugoslav government had consented to the establishment of an international presence. See UN Doc. S/PV.4011 of 10 Jun. 1999, 9.

[91] 'Secretary General Condemns Eritrea's Decision to Expel Peacekeepers', UN doc. SG/SM/10250/AFR/1298 of 7 Dec. 2005.

[92] See Jennifer Welsh's discussion of the role of consent in Chapter 24.

[93] Goulding, 'Evolution of United Nations Peacekeeping', 454.

[94] Sir Anthony Parsons, 'The UN and the National Interest of States', in Adam Roberts and Benedict Kingsbury (eds.), *United Nations, Divided World: The UN's Roles in International Relations*, 2nd edn. (Oxford: Clarendon Press, 1993), 106.

emphasis on impartiality was underlined by the rules governing the use of force by UN troops: UNEF could only use force in self-defence, and would not get involved in the internal affairs of Egypt.

In 1960, the impartiality of ONUC was at the heart of the disputes in the Security Council that led to the referral of the Congo question to the General Assembly under a Uniting for Peace resolution. In particular the direct military support of the Soviet Union for the Lumumba government, and the closure of the airports and radio station in Congo by ONUC (the latter at the time in the hands of Lumumba's supporters), led to increased divisions in the Security Council over ONUC,[95] with both the USSR and the US effectively accusing the other of abandoning impartiality.[96] Resolution 1474 (ES-IV), passed by the General Assembly after the issue had been referred to it by the deadlocked Security Council, called upon all states to refrain from bilateral military support for any party in the Congo, except on request of the UN,[97] which the Secretary-General interpreted as making illegal not just Soviet assistance to Lumumba, but also Belgian assistance to secessionist forces, in particular in Katanga.[98] As in the case of UNEF, the importance of impartiality was underlined by the rules of engagement governing the use of force by ONUC troops. In a report to the Security Council, Secretary-General Hammarskjöld emphasized that the soldiers 'may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms'.[99] As Jane Boulden has shown, this interpretation of the rules governing the use of force by ONUC was maintained even as the mandate of the mission expanded,[100] and only clearly changed when the Security Council authorized the use of force to apprehend mercenaries in Katanga fighting against the central government.[101]

Since the end of the Cold War, the notion that peacekeepers are impartial has been increasingly undermined, as peacekeeping operations have been deployed in civil conflicts in support of the government and against rebel forces to end a civil conflict, as in the case of the RUF rebels in Sierra Leone, for example. In Bosnia, the establishment of 'safe havens' and the extension of UNPROFOR's mandate to protect them strongly compromised the mission's impartiality, but failed to give

[95] Georges Abi Saab, *The United Nations Operation in the Congo 1960 1964* (Oxford: Oxford University Press, 1978), 55 69.

[96] The Soviet Union also accused the UN Secretary General Dag Hammarskjöld of partiality, and wanted a resolution effectively censuring him for having 'failed to display the minimum of imparti ality required from him in this situation', UN doc. S/4497 of 9 Sep. 1960.

[97] GA Res. 1474 (ES IV) of 20 Sep. 1960, para.6.

[98] Rosalyn Higgins, *United Nations Peacekeeping 1946 1967 Documents and Commentary*, Vol. II (Africa) (Oxford: Oxford University Press, 1980), 24.

[99] UN doc. S/4389 of 18 Jul. 1960, 5.

[100] Jane Boulden, *Peace Enforcement: The United Nations Experience in Congo, Somalia and Bosnia* (Westport: Praeger, 2001), 31 3.

[101] SC Res. 169 of 24 Nov. 1961.

UNPROFOR the means and the authority to protect the areas effectively, leading to the massacre of almost 7,000 Bosniac men and boys.[102]

While UN peacekeeping has evolved significantly since the days of UNEF and ONUC, and the principles of consent, collective financing, and impartiality have increasingly been challenged, they have remained central to the majority of peacekeeping operations. The debates initiated by the Uniting for Peace resolutions have significantly shaped the development of these principles, and thereby the evolution of a key practice of the United Nations.

Conclusion

In the 1950s, the Uniting for Peace resolution raised the hope of a more effective United Nations, able to maintain peace unencumbered by the Soviet veto. This account of the use of the resolution highlights that it has failed to strengthen the UN as an instrument of collective security. This, however, does not mean that one should necessarily consider the failure to use the Uniting for Peace procedure more effectively and consistently as a missed opportunity for UN reform. The preceding analysis of the General Assembly's role does not suggest that greater involvement of the Assembly in issues of international peace and security would be desirable. In light of the deep and acrimonious divisions between the G-77 and Western countries that emerged in the wake of the Iraq war and the 2005 world summit, and the penchant of some of its members for symbolic politics with little consideration for the impact of such politics on the reputation of the UN as a whole, greater involvement by the Assembly would reduce the effectiveness and credibility of the UN rather than strengthen it.

In 2001, the ICISS report identified the Uniting for Peace resolution as one possible important instrument if the Council fails to act to address major human rights violations or humanitarian emergencies.[103] While the report acknowledges that the General Assembly cannot authorize the use of force under the Uniting for Peace procedure, it suggests that a General Assembly resolution in favour of intervention would offer a large degree of legitimacy to the use of force by member states.[104] The report recognizes the challenge of attaining the necessary two-thirds majority in the Assembly for such a resolution, but believes that the possibility of such action might help to encourage the Security Council to act more forcefully.

[102] The Sarajevo based Research and Documentation Center (RDC) has confirmed a death toll of 6,882 (Jul. 2007). See also Susan Woodward's discussion of the events in Srebrenica in Chapter 18.

[103] ICISS, *Responsibility to Protect*, 53.

[104] Ibid.

Leaving aside the question whether a General Assembly resolution would offer sufficient legitimacy for the use of force (a claim about which the British government had important doubts during the Kosovo crisis),[105] the preceding analysis suggests that the report's trust in the persuasive power of the General Assembly and the Uniting for Peace resolution is probably misplaced.

Reviewing the use of Uniting for Peace offers a different perspective on some important developments at the United Nations over the last decades. It shows that while the Uniting for Peace resolution failed to strengthen the UN's collective security role, it helped to frame the original conception of peacekeeping, much of which remains relevant today, even if peacekeeping practice has significantly evolved since the end of the Cold War. This discussion of the Uniting for Peace resolution also offers a different perspective on the declining importance of one of the principal organs of the UN, the General Assembly. The increased use of the resolution by the Assembly, especially with regard to the Israeli-Palestinian conflict, can be understood as an attempt to take a stand against the increasing dominance of the UN by the Security Council, in particular the Permanent Members and the major financial contributors, mostly Western states. What started as an attempt to shift power from the Council to the Assembly has turned into a symbol of the powerlessness of the latter.

[105] See *Statement by Mr. Emyr Perry Jones*, above n. 62.

CHAPTER 7

THE SECURITY COUNCIL AND PEACEKEEPING

MATS BERDAL

The habit of dividing history into distinct periods, neatly delineated by dates and supposed 'turning points', should always be weighed against the risks inherent in imposing order retrospectively on complex and continuous processes. In particular, assumptions of radical discontinuity between historical epochs can easily lead to a neglect of sources of continuity both in the behaviour of actors and in the workings of the international system. These are truisms that apply to the study of the United Nations and its activities in the security field as much as they do to any other subject of historical enquiry. Yet, they need to be restated, not least as a proviso to much of the writings on UN field operations after the Cold War; writings that, especially in the early and heady days of post-Cold War optimism, tended to ignore or quickly pass over the experience of earlier UN operations and the academic work to which these had given rise. It was a tendency that flowed naturally from the view that the absence of great power unity throughout the Cold War had defined UN experiences to such a degree that those very experiences were now largely irrelevant to an understanding of the 'post-Cold War' challenges facing the organization. Closely linked to this was the conviction that the removal of Cold War tensions would *necessarily* result in the restoration of great power unity and, with it, in a revitalized Security Council capable of developing the long-established practices and functions of UN peacekeeping in new and far more ambitious directions.

To question, at the outset, the validity of the assumptions on which the optimism of the late 1980s and early 1990s rested should not be misunderstood: the argument here is *not* that little has changed in the history of UN field operations or, by implication, in the attitudes and interests of the Council towards peacekeeping as an instrument at its disposal. Indeed, what originated in the 1950s as a limited, non-coercive form of third-party involvement in conflict, reliant on host-state consent and geared towards defusing and containing violence, has been profoundly affected by changes in political context and member states' ambition over time. Since the late 1980s in particular, changes in the political landscape and normative climate of international relations have contributed to a dramatic increase in the scale and scope of UN field operations; a development reflected in a more direct and continuous pattern of Council involvement in the authorization and management of operations. None of this, however, invalidates the need to place the Council's engagement in peacekeeping within a wider historical context. There are, as this chapter makes clear, at least two reasons for this.

In the first instance, the emergence of peacekeeping during the Cold War is closely related to the central theme of this book: the Security Council and war. UN peacekeeping evolved, in part, as a device to reduce the likelihood of war between Council members that were locked in a global struggle for political and ideological influence but were nonetheless anxious to avoid direct confrontation. As such, while peacekeeping forces were themselves directly engaged in the mitigation of local violence, their deployment also served as a great power instrument for managing relations and preventing war of a far more catastrophic kind. When, in the latter half of the 1980s and early 1990s, superpower tensions eased and the fear of major war receded, the Council made use of the accumulated experience and established practices of UN peacekeeping to help bring long-running wars to an end: in the Middle East (Iran–Iraq), Central America (El Salvador, Guatemala, and Nicaragua), and parts of Asia (Afghanistan and Cambodia).

The second reason addresses more directly the subject of continuity and discontinuity raised above. The history of UN field operations during the Cold War was richer and saw more variety than the notion of 'traditional' or 'classical' peacekeeping sometimes suggests. Moreover, important chapters in that history – specifically the UN's operation in Congo from 1960 to 1964 – raised wider questions about the *inherent* limitations of peacekeeping as a distinctive form of third-party involvement in circumstances that would later be termed 'state failure' or 'state collapse'. These would resurface again in the 1990s to confront the Council with some deeply divisive and difficult choices. Three such questions, all closely connected, stand out and provide also an underlying focus for this chapter:

- What is the appropriate, prudent, and permissible use of force for peacekeepers?
- What is the precise meaning of 'host-state consent' to the deployment of UN forces and of 'impartiality' as the determinant of operational activity in civil-war

like conditions, where ambient levels of violence are high and the operational environment less than benign?
- How do the political aspirations contained in a formal Security Council mandate translate into realizable military objectives for UN forces on the ground?

The Council's response to these questions has varied depending on geopolitical context, local circumstances, the interests of the Permanent Five (P5) and of troop-contributing nations. One theme, though it became more acute and proved more fateful as the number and complexity of UN peacekeeping operations exploded in the 1990s, has nonetheless remained constant. It was highlighted by Herbert Nicholas as he sought, writing in 1963, to assess ongoing UN operations in the Middle East and Africa. 'Nothing in the experience of Suez and the Congo', he concluded then, 'suggests that an international force is exempt from the workings of the inexorable rule that he who wills the end must will the means'.[1] It is a theme that runs through the entire history of the Council's engagement in UN peacekeeping.

Phases in the History of UN Field Operations

For the purpose of analysis, the chapter identifies three phases in the history of UN field operations. Whilst the element of artificiality involved has been kept in mind, the division is designed to bring out the elements of *continuity* and *break* in the use and attitudes of the Council towards peacekeeping, both as an instrument to address individual conflicts but also as a mechanism for regulating and managing relations among its members.

The first of these phases, the Cold War period from the first UN operations in the Middle East through to the mid-1980s, saw the crystallization of peacekeeping as a distinct form of third-party intervention designed to control violence by means other than enforcement. In writings about the UN, it is a period usually associated with the terms 'traditional' or 'classical' peacekeeping, with the activities of UN forces governed by the principles of host-state consent, minimum use of force except in self-defence, and impartiality.

The second period, from 1987 through to late 1991, marks a transitional period during which the Council sought and partly succeeded in making more active and constructive use of UN peacekeeping in its efforts to facilitate the settlement of long-standing regional conflicts. It was also a period of notable achievements in the

[1] Herbert Nicholas, 'UN Peace Forces and the Changing Globe: The Lesson of Suez and Congo', *International Organization* 17, no.2 (1963), 335.

field. These in turn helped generate new expectations about the future role of the organization, encouraging the view that the instrument of peacekeeping could now – in absence of Cold War competition among the Permanent Members (P5) – be expanded and developed in new, more ambitious ways.

The third period, from 1992 through to the present, saw an explosion in the number of UN field operations, more direct involvement by the Council in individual operations, but also major setbacks and failures, most notably in Angola, Somalia, Rwanda, and former Yugoslavia. Against the backdrop of these experiences, the 'Report of the Panel on UN Peace Operations' released in 2000, offered not just recommendations for the future but also an analytical stocktaking of UN peacekeeping since the end of the Cold War, and merits therefore special attention in the context of this chapter.[2] The events of '9/11' and their aftermath, including the wars in Afghanistan and Iraq, have placed the debate and the practice of UN field operations in a new context. Yet, surprising to some, there has been no drop in demand for UN peacekeeping. If anything, the reverse has happened with the number of UN personnel on mission worldwide soaring to an all-time high by late 2006.[3]

While the chapter is concerned with the totality of the UN's peacekeeping experience, special attention is devoted to three UN operations, one within each of the three phases outlined above: the UN mission to Congo from 1960 to 1964, the UN operation in Namibia from 1988 to 1989, and the operation in Bosnia–Herzegovina between 1992 and 1995. Although sharply different in geographical setting, political context, and historical background, each case presented the Council – in distinct but related ways – with key questions regarding the use of force and the meaning of consent and impartiality; another way of saying that they presented the Council with fundamental issues of war and peace.

The Cold War, 1948–87

The evolution of 'classical' peacekeeping

The onset of the Cold War in the late 1940s ensured that the post-war role envisaged for the UN by wartime planners would not be realized. For more than

[2] The report was the outcome of the work of a panel chaired by Lakhdar Brahimi, former foreign minister of Algeria. 'Report of the Panel on UN Peace Operations', UN doc. A/55/305 S/2000/809 of 21 Aug. 2000 (henceforth 'Brahimi Report').

[3] Press Conference, Jean Marie Guéhenno, DPKO, 4 Oct. 2006. Available at www.un.org/Depts/dpko/dpko/articles/pr JMG.pdf

forty years, the workings of the UN in the field of international peace and security would continue to be shaped by ideological hostility and the global competition for influence between the Soviet Union and Western powers. Even so, the early collapse of great power unity did not usher in a complete paralysis of the organization in the security field. Starting in 1948 with small-scale deployments to Palestine and Kashmir but only conceptualized as a distinctive contribution to international order in the late 1950s, the UN soon identified a role for itself in the mitigation and containment of conflicts which, it was feared, would otherwise bring the superpowers into more direct confrontation. That role involved the use of lightly equipped military and civilian personnel, deployed to zones of conflict with the consent of the parties to the dispute, in a practice that came to be known as peacekeeping. In his Annual Report for the 15th General Assembly (1960), the then Secretary-General, Dag Hammarskjöld, provided a concise rationale for the emerging practice. Describing peacekeeping as a form of 'preventive diplomacy', Hammarskjöld was convinced that the UN's principal contribution to international peace and security – given the stark geopolitical realities of the day – lay in 'keeping newly arising conflicts outside the sphere of bloc differences'.[4] This function of peacekeeping – to anticipate or pre-empt the rival engagement of major powers into areas of local conflict – was given added urgency in the 1950s and 1960s by the gathering pace of decolonization and the often abrupt retreat from empire by the major European powers.[5]

The deployment of the first UN Emergency Force to the Middle East (UNEF I) in 1956 is commonly viewed as 'the first peacekeeping force *per se*'[6] and Hammarskjöld's reflections in the Annual Report of 1960 were strongly influenced by it. The lessons derived from that operation were also distilled in a separate *Summary Study* issued by Hammarskjöld in October 1958.[7] In it, he spelled out, in systematic and prescriptive fashion, the 'basic principles and rules' of what would later be termed 'classical' peacekeeping. Set up to supervise the cessation of hostilities and defuse tensions following the Suez crisis, UNEF I was authorized by a special session of the General Assembly, *not* the Security Council. In this respect, however, it differed from all but one of the other thirteen operations launched by the UN

[4] Annual Report of the UN Secretary General, 1960, quoted in Brian Urquhart, *Hammarskjold* (London: Bodley Head, 1973), 256. For an excellent discussion of the process of conceptualization of peacekeeping in the late 1950s, see Neil Briscoe, *Britain and UN Peacekeeping 1948 67* (Basingstoke: Palgrave Macmillan, 2003), 4.

[5] The first two field operations by the UN both of them still running followed in the wake of Britain's retreat from Empire in the Middle East and in India: the United Nations Truce Supervision Organization (UNTSO) was established to supervise the truce in Palestine in 1948, and the UN Military Observer Group in India and Pakistan (UNGOMIP) was created in 1949 to oversee the ceasefire that had been reached between India and Pakistan in the state of Jammu and Kashmir.

[6] Sydney Bailey and Sam Daws, *The Procedure of the Security Council*, 3rd edn. (Oxford: Clarendon Press, 1998), 356.

[7] 'Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary General', UN doc. A/3943 of 9 Oct. 1958 (henceforth, *Summary Study*).

between 1948 and 1987.[8] In authorizing these missions the Council did not invoke Chapter VI of the UN Charter, nor could peacekeeping easily be accommodated within Chapter VII. Instead, as Hammarskjöld put it, peacekeeping belonged to an imaginary 'Chapter 6½' category, that is, somewhere between the non-coercive measures ranging from negotiation to judicial settlement and set out in Chapter VI, and the enforcement provisions spelt out in Chapter VII.[9] Peacekeeping, then, did not arise out of a specific Charter mandate but represented instead a functional adjustment by the organization to an international political system shaped by deep-seated rivalry and overshadowed by the threat of wider war.

As an innovation in UN practice, the guidelines issued in 1973 by Secretary-General Kurt Waldheim for the Second UN Emergency Force to the Middle East (UNEF II) – set up to supervise the redeployment of Israeli and Egyptian forces following the Yom Kippur War – came closest to a formal codification of UN peacekeeping's essential features. Echoing Hammarskjöld's *Summary Study* before the Congo debacle of the early 1960s, these were adherence to the principles of consent; the non-use of force except in self-defence; continuous support from the Council as the mandating authority; and the commitment of member states to provide military personnel as well as financial and logistical support for operations.[10] A further customary rule governing UN peacekeeping throughout the Cold War years, reflecting its origins in the desire to insulate local conflicts from great power rivalry, was the exclusion of the P5 members from participating with troops on the ground.[11] In the field, these principles translated into light military commitments, consisting mainly of infantry units possessing limited defensive capabilities, lacking in mobility, and with only a first line of logistics support. In short, as a military force, peacekeepers were exposed and vulnerable. This, however, was partly the intention. As with the self-denying ordinance that kept P5 members away from direct involvement in operations and the 'prohibition against any *initiative* in the use of armed force',[12] the effect was to reinforce the neutral, confidence-building, and non-coercive character of UN deployments. When the strategic interests of permanent Council members permitted, it was a posture that enabled peacekeepers to undertake a variety of tasks, mostly involving their

[8] In the years 1948 87 the only other UN force which, like UNEF I, was authorised by the General Assembly was the UN Security Force in West New Guinea (West Irian) in 1962, created to assist in the temporary administration of the territory of West New Guinea in preparation for its transfer from Netherlands to Indonesia. Bailey and Daws, *The Procedure of the Security Council*, 356.

[9] For background and discussion of this 'fictive' category, see Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2002), 39 40.

[10] UN doc. 42/22.10.73 of 26 Oct. 1973, para. 3.

[11] There are, as always, exceptions to a rule. Britain, France, and the USSR all provided personnel to UNTSO in 1948. France also contributed troops to the UN Interim Force in Lebanon in 1978 (UNIFIL) and Britain has been a long time contributor of troops to the UN Peacekeeping Force in Cyprus (UNFICYP). In some cases, notably in the Congo in 1960, Britain, the US, and the Soviet Union offered transport support for the initial deployment to theatre.

[12] *Summary Study*, para. 167.

interposition between adversaries *following* a period of hostilities. Chief among these were the monitoring of ceasefire agreements, the supervision of the disengagement of forces from the battlefield, and the creation and active patrolling of buffer zones.

The requirement of consent ensured that UN troops were, in most cases, inserted into stable and 'permissive' operational environments, though there was greater variation among Cold War operations than is often supposed. Still, the *essence* of UN peacekeeping as a class of operations remained its dependence 'in respect of both its origin and its success, on the wishes and policies of others'.[13] The claims and ambitions of peacekeeping were therefore both modest and limited. This did not necessarily prevent innovation and experimentation from taking place as even during the Cold War, UN peacekeepers – albeit then only as an ancillary function to the main tasks of interposition – engaged in fact-finding, local mediation, and humanitarian relief and assistance activities.[14] Faced with a determined effort to withdraw consent and the prospect of renewed war, however, the UN's room for manoeuvre would always be severely limited. When Egypt formally requested the withdrawal of UNEF from the Sinai in May 1967, U Thant had little choice but to comply, though he was heavily criticized for doing so at the time.[15] The Secretary-General, it was argued by critics of the decision, could at the very least have done more to persuade President Nasser to change his mind about the withdrawal of UNEF and thus help slow down the momentum towards war. Bringing effective pressure to bear on Egypt, however, would, for one, have required a unity of purpose in the Security Council which was manifestly lacking at the time.

But there are also important exceptions to this pattern of UN Cold War operations. The most significant of these – the United Nations Operation in the Congo (ONUC) from July 1960 until June 1964 – was also by far the largest UN operation during the Cold War, peaking in strength in mid-1961 when some 20,000 troops, drawn from nearly 30 countries, were deployed in the field.[16] It was also, as Norrie Macqueen has observed, an operation in which the UN 'confronted a fragile central

[13] Alan James, *Peacekeeping in International Politics* (London: Macmillan/IISS, 1990), 1.

[14] For some of these roles in Cold War operations, see Katarina Månsson, 'The Forgotten Agenda: Human Rights Protection and Promotion in Cold War Peacekeeping', *Journal Conflict and Security Law*, 10, no. 3 (2005).

[15] U Thant deals with the events surrounding the withdrawal of UNEF in some detail in his memoirs, *View from the UN* (London: David & Charles, 1978), 212 52. For a concise overview of the issues involved in the withdrawal of UNEF, see also James, *Peacekeeping in International Politics*, 220 23.

[16] As for other exceptions, mention has already been made of the UN Security Force in West New Guinea (West Irian) in 1962 a precursor of sorts to similar but much larger 'trusteeship' operations in the 1990s. UNIFIL in Lebanon, especially the first phase of its deployment from 1978 to 1982, is another instance where the requirements of peacekeeping as elaborated by Hammarskjöld and, later, Waldheim, were often striking by their absence.

state beset by internal division, ethnic tensions and secessionist pressures'; aspects that would also prove to be the 'defining circumstances of later interventions'.[17]

The Congo operation, 1960–4

ONUC was authorized by the Council on 16 July 1960 and initially deployed to ensure the smooth withdrawal of Belgian troops from the Congo. These had been reinserted in the resource-rich province of Katanga without the consent of the Congolese government, ostensibly in response to a rapid deterioration of public security in the days and weeks following the declaration of independence on 30 June 1960.[18] To deal with the crisis, UN forces were sent – in large numbers and with impressive speed by the standards of many later operations – to assist in the 'maintenance of law and order' and in the 'provision of essential public services'.[19] The situation on the ground, however, remained fluid and uncertain, the result in part of the decisions, first, in Katanga and, later, in South Kasai, by local leaders backed by external actors to declare their independence from Congo. In February 1961 the Council, citing the 'danger of widespread civil war and bloodshed', authorized ONUC to take 'all appropriate measures to prevent the occurrence of civil war in the Congo, including . . . the use of force, if necessary, in the last resort'.[20] Later, in November 1961, the authority of the Secretary-General was widened still further to include 'vigorous action, including the use of the requisite measure of force, if necessary'.[21] The effect of this steady expansion in ONUC's mandate was to ensure that the UN force became, and would remain for the duration of its deployment, a factor in the domestic politics and internal power struggles of the newly independent territory.

At the time and in the early years following ONUC's withdrawal in 1964, the UN's Congo experience generated, not surprisingly, a substantial literature on peacekeeping.[22] From the late 1980s onwards, as the organization was slowly

[17] Norrie Macqueen, *United Nations Peacekeeping in Africa since 1960* (London: Pearson Education/Longman, 2002), 59.

[18] There are numerous accounts of the UN's travails in Congo, many of them coming to the subject from a distinctive angle or perspective. A useful and detailed overview is provided by Macqueen, ibid., 34–60. See also Georges Abi Saab, *The United Nations Operation in the Congo 1960–1964* (Oxford: Oxford University Press, 1978).

[19] SC Res. 143 of 14 Jul. 1960.

[20] SC Res. 161 of 21 Feb. 1961.

[21] SC Res. 169 of 24 Nov. 1961.

[22] See, for example, the writings of D. K. Bowett, Rosalyn Higgins, Inis Claude, Jr., and Alan James. D. K. Bowett, *UN Forces – A Legal Study* (London: Stevens & Sons, 1964); Rosalyn Higgins, *UN peacekeeping, 1946–67: Documents and Commentary* (London: Oxford University Press, 1969); Inis Claude, Jr., 'The United Nations and the Use of Force', *International Conciliation*, no. 532 (Mar. 1961); and special issue of *International Organization* 17, no. 2 (1963); *The Oslo Papers* (Oslo: The Norwegian Institute for International Affairs, 1964).

being liberated from its Cold War constraints, the continuing relevance and the generally high quality of the Congo literature was largely overlooked in much of the new writings on peacekeeping. While the UN's involvement in the Congo clearly cannot be divorced from its Cold War context, the 1990s were to show that the Congo experience was not devoid of lessons and warnings as the UN again became involved in situations where governmental authority *within* a specific territory was violently contested. There are two related aspects to this. The first concerns the effects of Security Council decision-making on the workings of the UN force on the ground. The second, more profound, has to do with the inherent difficulties of inserting and operating, in a third-party capacity, a military force in the midst of an ongoing civil war.

In assessing the effects of Council decision-making on ONUC's performance as a peacekeeping force, there are several striking parallels to the post-Cold War experience. These may be summarized under seven, necessarily overlapping, categories: tensions created by the steady expansion of and resulting ambiguity of ONUC's mandate in response to changing circumstances on the ground; operational problems in managing UN forces arising from uneven and patchy levels of local consent throughout the area of operations; difficulties generated by complex and cumbersome command and control arrangements; tensions between the civilian and military sides of the mission; enormous logistical challenges; problems associated by the provision of humanitarian relief in the midst of ongoing violence and, crucially, key questions regarding the use and utility of force.

As for the wider question of ONUC's involvement in what soon developed into a civil war, it is clear that while the principles of consent, minimum use of force, and strict impartiality – as in the former Yugoslavia some thirty years later – provided the *initial* basis for UN engagement, ONUC was inexorably drawn into the conflict, however much it sought to maintain a posture of impartiality, through its efforts to pacify domestic violence and restore law and order.[23] For ONUC, the context of civil war meant that 'in almost all the actual power contests of Congo politics the United Nations could not avoid taking decisions which favour[ed] one side or the other.'[24] In this sense, Congo pointed to an uncomfortable 'logic' of civil wars for those wishing to intervene effectively from the outside; intervene that is, in order to bring fighting to an end and lay the ground for a political settlement of some sort. That logic might be expressed as a tendency towards two extreme options: on the one hand, 'giving war a chance' by siding with one or more parties to the conflict, or, on the other, imposing order through the assumption of comprehensive trusteeship responsibilities over the disputed territory. In recent times, as will be

[23] Initially, Hammarskjöld had stressed that 'the UN force could not become a party to an internal conflict and that its presence in Katanga would not be used to settle the constitutional issue.' Quoted in Conor Cruise O'Brien, *Memoir: My Life and Themes* (London: Profile Books, 1998), 204.

[24] Nicholas, 'UN Peace Forces and the Changing Globe', 331.

seen later,[25] the former has usually been followed by the latter, though both, for their own reasons, remain unpalatable options to most member states. Because of this, these options have been hedged with restrictions and self-imposed limitations, and have also been presented as something different from what they really are.[26] In Congo, for reasons of Cold War politics and the context of decolonization, neither option could openly and realistically be entertained. They have been embraced only with reluctance since, and then partly as an acknowledgement of the limitations and failures of 'classical' peacekeeping. The larger point here is precisely that 'classical' peacekeeping of the kind outlined by Hammarskjöld in the late 1950s and discussed above is a tool of questionable utility in situations of violent and ongoing internal conflict. That was the lesson drawn by the UN immediately after Congo, though it would have to be re-learnt in the post-Cold War era.

From Cold War to *An Agenda for Peace*, 1987–92

The resurgence of peacekeeping under Pérez de Cuéllar

As a diplomatic forum for the management of relations between the major powers, the Security Council was among the first beneficiaries of the thaw in East–West relations, with its initial focus of activity geared specifically towards assisting in the termination of war. Starting with informal diplomatic consultations in late 1986 to bring an early end to the Iran–Iraq war, a pattern of substantive consultations among the P5 was soon extended to cover ways in which other regional and long-standing disputes – from Southern Africa to Central America and Asia – might be decoupled from the debilitating effects of Cold War rivalry and assisted towards settlement.[27] In this, the tried and tested practices of UN peacekeeping and observer activity were found by the Council, as well as by the local and external parties to the conflict at hand, to be a particularly useful tool. From 1987 to 1992, ten UN operations were launched and all but one of them were small scale affairs, often involving the deployment of fewer than 100 observers to the field.[28]

[25] See also Richard Caplan's discussion in Chapter 25.

[26] As when taking sides and accepting the logic of war has been presented as a form of 'impartial peace enforcement'. See below for further discussion of this in the context of the UN's involvement in Bosnia.

[27] David Malone, 'The UN Security Council in the Post Cold War World: 1987 97', *Security Dialogue* 28, no. 4 (Dec. 1997). See also G. R. Berridge, *Return to the UN: UN Diplomacy in Regional Conflicts* (London: Macmillan, 1991).

[28] The important exception to this is the UN Transition Assistance Group in Namibia whose total personnel strength reached nearly 8,000 (see below for further discussion of this operation).

The UN Iran–Iraq Military Observer Group, (UNIIMOG), created in August 1988 and terminated in early 1991, oversaw and verified the withdrawal of Iranian and Iraqi forces to internationally recognized boundaries, following one of the bloodiest wars of modern times.[29] From mid-1988 to early 1990, the UN Good Offices Mission in Afghanistan and Pakistan (UNGOMAP), never exceeding more than 50 military observers, assisted in monitoring the implementation of the Geneva Accords for Afghanistan, providing, in effect, a 'face-saving' mechanism that allowed the Soviet Union to withdraw 'with honour' from its costly adventure in the country. The UN Angola Verification Mission (UNAVEM I), established in late 1988 and withdrawn in May 1991 following the successful completion of its mission, verified the departure of Cuban troops from Angola. In Central America, the United Nations Observer Group (ONUCA), a more complex mission deployed over the territory of five countries, was established in 1989 to verify compliance with commitments undertaken by Central American leaders in the Esquipulas II Agreement of August 1987, specifically an undertaking to end all support for irregular forces and to ensure that territory would not be used for attacks on neighbouring states.[30] The subsequent expansion in April 1990 of ONUCA's mandate to include tasks relating to the demobilization of *irregular* forces (specifically the 'Nicaraguan Resistance') pointed to ways in which the instrumentality of peacekeeping could, under new geopolitical circumstances, be expanded by the Council.[31]

Even so, all of the activities between 1987 and 1991 remained firmly predicated on the principles of consent, minimum use of force, and impartiality as the determinant of operational activity. As such they differed sharply, in terms of context, scope, and complexity of mandate, both from the UN's earlier engagement in Congo and from the large-scale operations that were to be launched in the first half of the 1990s. They were also conflicts in which (with the exception of the Iran–Iraq war) superpower rivalry had been a particularly obvious obstacle to settlement. The removal of that obstacle greatly increased the prospect for a settlement and gave the UN a constructive role to play in the process. Finally, though again with some exceptions, the contribution of UN peacekeepers was most unequivocally positive in those cases where the Council was dealing with interstate conflict.

UNTAG and the use of force in Namibia

An important exception to the pattern of small-scale operations that characterized the period was the UN Transition Assistance Group (UNTAG) in Namibia from

[29] For a thorough study of the UN's role in bringing the war to an end, see David Malone, *The International Struggle over Iraq: Politics in the UN Security Council 1980 2005* (New York: Oxford University Press, 2006), 22 53.

[30] SC Res. 644 of 7 Nov. 1989.

[31] SC Res. 653 of 20 Apr. 1990.

April 1989 to March 1990. With a total personnel strength of nearly 8,000, the mission was designed to ensure, through UN 'supervision and control' of elections, the smooth transfer from South African rule to full independence in Namibia.[32] The size and mandate of the operation were both more ambitious and complex than previous UN operations, giving an early indication of the strains under which the Secretariat and its management structure in support of field operations would soon be placed. But more importantly in terms of the focus and interests of this chapter are the challenges which the initial phase of the operation presented for the Security Council with respect to the question of the use of force.

While the Namibia operation is generally and justifiably viewed as a success, it came close to collapse at the very outset following the intrusion into northern Namibia from Angola of forces from the South West African People's Organization (SWAPO). This clear-cut violation of the original ceasefire agreement occurred at a time when UN forces had not been fully deployed. The ensuing violence and the prospect of a further deterioration on the ground created an immediate crisis for the nascent UNTAG mission. That crisis was only resolved after the politically controversial proposal by the UN Special Representative, Martti Ahtisaari, approved 'albeit with misgivings'[33] by the Secretary-General, to release South African Defence Forces from restrictions imposed under ceasefire agreement, and to allow them to redeploy to the border area. The use of force in this instance, not by UNTAG which was ill-configured for it, helped to avoid the collapse of the mission. Marrack Goulding, in charge of UN peacekeeping in the Secretariat at the time, noted later that 'if the process was to be saved, he [the Secretary-General] had no choice but to authorise suspension of the SADF's confinement. To his credit he took that choice.'[34] These events, still controversial, did not in the end place a damper on the independence celebrations that accompanied the end of the mission the following year, removing from the Security Council agenda one of its longest-standing items. More problematic was the tendency to assume, evident in writings at the time, that the operation merely confirmed the *possibilities* for expanding the UN's traditional peacekeeping role, when, plainly, it also pointed to its limitations in circumstances when consent breaks down.[35]

Peacekeeping in *An Agenda for Peace*

The overall experience of UN peacekeeping in numerous armed conflicts between 1987 and 1991 was to encourage the view – easily gleaned from Council discussions

[32] SC Res. 632 of 16 Feb. 1989. This was in accordance with the UN plan set out in SC Res. 435 of 29 Sep. 1978, the 'only internationally accepted basis for the peaceful resolution of the Namibian question'.

[33] Javier Pérez de Cuéllar, *Pilgrimage for Peace: A Secretary General's Memoir* (London: Macmillan, 1997), 311.

[34] Marrack Goulding, *Peacemonger* (London: John Murray, 2002), 154.

[35] For an analysis and background to the Namibia question at the UN and the UNTAG operation, see Cedric Thornberry, 'Namibia', in David Malone (ed.), *The UN Security Council: From Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 407 22.

and actions over this period – that operations under UN auspices would become a more prominent feature of the international landscape.[36] The innovative aspects of UN missions in Central America and Namibia – including human rights monitoring, electoral support, and disarmament, demobilization, and reintegration (DDR) activities – added to this view a belief in the possibilities of developing existing practices. Not recognized in Council deliberations until later was the fact the armed conflicts, though fuelled by the Cold War, also reflected local causes and regional dimensions and could not simply be reduced to violent arenas of Cold War; the most intense and murderous phase of Angola's drawn-out civil war was still ahead. When at all extant, such considerations tended to be overshadowed by what was perceived as the overwhelmingly positive fallout of the end of the Cold War for the UN.[37] That perception was powerfully aided, not by a successful peacekeeping operation, but by a large-scale enforcement operation under Chapter VII, Operation Desert Storm, launched to evict Iraqi forces from Kuwait. The unity of purpose demonstrated in response to Saddam Hussein's invasion of Kuwait in August 1990 – in Charter terms, a clear-cut and unambiguous threat to international peace and security – led the Council, according to David Malone, to conclude that 'because enforcement of its decisions against Iraq had been successfully carried out, the constraints on and limitations of peacekeeping had fallen away.'[38]

Given the history of the Council's role in UN peacekeeping activity since, this may seem as an extraordinary conclusion to have arrived at. Still, it is not an inaccurate reading of *An Agenda for Peace*, the influential, though flawed and overly sanguine attempt by the then Secretary-General, Boutros Boutros Ghali, to explore the implications of the passing of the Cold War for the UN. Commissioned by the Council at its first ever meeting at the level of heads of state and government in January 1992 and endorsed by it in June 1992, the report argued that 'an opportunity [had] been regained to achieve the great objectives of the Charter' and that the organization 'must never again be crippled as it was in the era that has now passed'.[39] To fulfil that vision, as the rest of *An Agenda for Peace* went on to suggest, peacekeeping might have to expand and develop in qualitatively new ways and, in a telling phrase seized on at the time, the document spoke of UN peacekeeping as an activity undertaken 'hitherto with the consent of all the parties concerned'.[40] As a piece of analysis, the major weakness of the document stemmed from its profoundly apolitical and ahistorical treatment of the UN as an institution, and its

[36] Contributing to that was also the 'good offices' and preparatory work undertaken by the UN for what would soon be the largest and most complex field operation to date, the UN Mission to Cambodia between 1992 and 1993.

[37] Paul Lewis, 'World Leaders, at the UN, pledge to expand its role to achieve a lasting peace', *New York Times*, 1 Feb. 1992.

[38] David Malone, *Decision Making in the UN Security Council: The Case of Haiti, 1990 97* (Oxford: Clarendon Press, 1998), 9.

[39] 'An Agenda for Peace', UN doc. A/47/277 S/24111 of 17 Jun. 1992, para. 3.

[40] Ibid., para. 20.

implicit failure to recognize the admixture of motives that drive member states' involvement with the organization. Most striking, as Adam Roberts perceptively noted in a contemporary assessment of the document, was that it said 'virtually nothing about state interest as an explanation of state behaviour'.[41] Even as it was published, that omission was glaring, though it would become still more obvious over the next three years.

The Security Council and post-Cold War UN Peacekeeping

Intra-state conflict and the 'humanitarian impulse'

The period following the January 1992 summit saw a dramatic expansion of UN peacekeeping activities, not merely in terms of numbers but also, more crucially, in terms of the scope and complexity of individual missions. By early 1994, the number of troops, civilian staff, and military observers deployed on UN peacekeeping duties around the world reached nearly 80,000, spread over 17 missions and with a budget of close to US $4 billion.[42] Between February 1992 and July 2000, 31 new missions were authorized by the Security Council. These impressive statistics provide only part of the story, however. Behind them lie two further developments that marked a clear shift, historically speaking, in the Council's use of UN peacekeeping as an instrument at its disposal.

The first is an overwhelming concentration of UN operations deployed in intra-state or internal conflicts. The only clear-cut exception to this pattern has been the UN mission to monitor the ceasefire between Ethiopia and Eritrea, established in July 2000 following a brief but murderous war.[43] In all other cases, the Council has engaged UN forces in conditions of latent or actual civil war, that is, in disputes involving contests over the proper location and identity of governmental authority within a given territory – or, as Richard Betts put it more plainly in late 1994, disputes in which 'the root issue is . . . who rules when the fighting stops?'[44] These

[41] Adam Roberts, 'The United Nations and International Security', *Survival* 35, no. 2 (Summer 1993), 13.

[42] www.un.org/Depts/dpko/dpko/ For budgetary information, see 'Peacekeeping Operations Ex penditures: 1947 2005', *Global Policy Forum*, www.globalpolicy.org/finance/tables/pko/expend.htm

[43] The UN Aouzou Strip Observer Group (UNASOG) in 1994 could also be added to the list of peacekeeping operations dealing with interstate matters, as it oversaw the withdrawal of Libyan forces from a strip of land awarded to Chad through international arbitration. UNASOG consisted of nine observers. See www.un.org/Depts/dpko/dpko/co mission/unasog.htm

[44] Richard K. Betts, 'The Delusion of Impartial Intervention', *Foreign Affairs* 73, no. 6 (1994), 20.

contests, moreover, have often been marked by the violent clash of communal, ethnic, and religious 'identities' – identities which themselves have crystallized against the backdrop of economic decline, authoritarian rule and, frequently, an earlier history of violence and counter-violence. From the point of view of UN peacekeepers, the *Supplement to An Agenda for Peace* – issued by the Secretary-General in 1995 and, in effect, a corrective to the optimism that had badly distorted analysis in *An Agenda for Peace* – spelt out some of the implications. 'The new breed of intra-state conflicts', it noted, possess

> certain characteristics that present UN peacekeepers with challenges not encountered since the Congo operations of the early 1960s. They are usually fought not only by regular armies but also by militias and armed civilians with little discipline and with ill defined chains of command. They are often guerrilla wars without clear front lines. Civilians are the main victims and often the main targets, Humanitarian emergencies are commonplace and the combatant authorities, in so far as they can be called authorities, lack the capacity to cope with them . . . Another feature of such conflicts is the collapse of state institutions, especially the police and judiciary, with resulting paralysis of governance, a breakdown of law and order, and general banditry and chaos.[45]

The second trend, and also, a key driver of Council action, is of a normative kind. While nearly all of the operations launched between 1987 and 1992 dealt with conflicts that had arisen in, and been affected by, the dynamics of the Cold War, an increasingly important source of UN involvement since has been a growing readiness on the part of the Council to address matters previously deemed to fall within the domestic jurisdiction of member states. The growing emphasis in international fora on good governance, the promotion and protection of human rights, and democratization all reflect this trend; as does the way in which the use of military force has increasingly come to be justified on humanitarian grounds.[46] As such, the trend may be seen as a historically significant shift in the balance of attention and priorities given by the Council to the *justice*-related provisions and spirit of the Charter, as distinct from those concerned with maintenance of order within the international system. This is not to suggest that the 'humanitarian impulse' has in any way overridden calculations of national interest by Council members when contemplating whether to authorize UN involvement, and the form of such involvement, in individual conflicts.[47] Indeed, a charge regularly

[45] UN doc. A/50/60 S/1995/1 of 3 Jan. 1995, paras. 12 13.

[46] On humanitarian issues providing part or whole of the justification for external military involvement in conflict after the Cold War, see Adam Roberts, 'Humanitarian Issues and Agencies as Triggers for International Military Action', in Simon Chesterman (ed.), *Civilians in War* (Boulder, CO: Lynne Rienner, 2001), 177 96.

[47] For a discussion of the 'humanitarian impulse' as a driver of Security Council action after the Cold War, see Thomas Weiss, 'The Humanitarian Impulse', in Malone (ed.), *From Cold War to the 21st Century*, 37 54. For the continuing importance of state interest in explaining interventionist behav iour, see Neil MacFarlane, *Intervention in Contemporary World Politics*, Adelphi Papers, no. 305 (Oxford: Oxford University Press/IISS, 2002).

levelled at the Council since the early 1990s has been its selectivity in responding to humanitarian emergencies, with the case of Rwanda offering the weightiest counter-claim to the argument that a 'solidarist consensus' has emerged in international relations.[48] For all this, the explosion of peacekeeping and the nature of the tasks authorized by the Council to UN missions after the Cold War cannot be explained without reference to this shift in normative boundaries. Since the UN Observer Mission to El Salvador (ONUSAL) was established with its own Human Rights Division in 1991 – the first time in the history of the organization that a 'human rights operation was deployed throughout the territory of a country for a lengthy period [with] such intrusive powers'[49] – every new UN peacekeeping mission has been given some responsibility in relation to the monitoring and promotion of human rights in the mission area and/or an explicit humanitarian function by the Security Council. The mandate of UN Transitional Authority in Cambodia (UNTAC), for example, included an entire section dealing with human rights, and authorized the mission to develop and implement a programme of human-rights education, provide general human-rights oversight during the transitional period, and investigate human-rights complaints.[50] The mandate of the UN Operation in Mozambique (ONUMOZ) in 1992–4 included the coordination and monitoring of 'humanitarian assistance operations, in particular those relating to refugees, internally displaced persons, demobilized military personnel and the affected local population'.[51] In Liberia, the UN Observer Mission (UNOMIL) was tasked in 1995 with investigating and reporting to 'the Secretary-General on violations of human rights and to assist local human rights groups'.[52] Of the missions in the 1994–2000 period, human-rights or humanitarian-related provisions were also explicit in the mandates of UNAVEM III (Angola), UNPREDEP (former Yugoslavia), UNAMIR (Rwanda), UNMIBH (Bosnia), UNTAES (Eastern Slavonia), MONUA (Angola), and UNOMSIL (Sierra Leone).

It is against the background of these changes in operational (focus on intra-state conflict) and normative context (emphasis on 'humanitarian' issues broadly conceived) that the expanding scope of UN operations – reflected in a wider range of tasks given by the Council to peacekeepers, often within one and the same mission – must be understood. By the late 1990s, UN peacekeeping operations – by then usually prefaced by terms such as 'hybrid', 'complex', or 'multi-dimensional' – had

[48] On a discussion of a possible 'solidarist consensus', see Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2003). On the Security Council's response to Rwanda see Mats Berdal, 'The United Nations, Peacebuilding and the Genocide in Rwanda', *Global Governance* 11, no. 1 (2005).

[49] Blanca Antonini, 'El Salvador', in Malone (ed.), *From Cold War to the 21st Century*, 431.

[50] See Annex 1 'UNTAC Mandate' to the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict. Copy available at www.usip.org/library/pa/cambodia/agree comppol 10231991 toc.html

[51] Mozambique ONUMOZ, 31 Aug. 1996, www.un.org/Depts/DPKO/Missions/onumoz p.htm

[52] SC Res. 1020 of 10 Nov. 1995, para. 2(f).

or were undertaking commitments of a qualitatively different kind from that with which it had historically been preoccupied. The expanded range of tasks authorized by the Council included

- support for the organization and the holding of elections, ranging in the degree of involvement from limited to fully fledged responsibility for the electoral process (UNTAC, Cambodia; ONUVEN, Nicaragua; ONUMOZ, Mozambique; MINURCA, Central African Republic; MINURSO, Western Sahara; UNOMIL, Liberia; MONUC, the DRC);
- the repatriation of refugees and displaced persons (UNTAC, Cambodia; UNOSOM II, Somalia; UNAMIR, Rwanda; UNPROFOR, former Yugoslavia; UNTAES, Eastern Slavonia; MONUC, the DRC);
- the monitoring, not only of ceasefire agreements and buffer zones, but also of compliance with human-rights obligations (ONUSAL, El Salvador; UNTAC, Cambodia; UNMIH, Haiti);
- the preventive deployments of UN troops (UNPROFOR and UNPREDEP, former Yugoslav Republic of Macedonia);
- the separation of military forces, including irregular formation, their demobilization and associated weapons control measures (UNPROFOR, former Yugoslavia; ONUMOZ, Mozambique; UNOSOM II, Somalia; UNOMIG, Georgia; UNOMIL, Liberia; UNAMIR, Rwanda; UNMOT, Tajikistan; UNAVEM III, Angola; UNTAES, Eastern Slavonia; MINUGUA, Guatemala; MONUA, Angola; MINURCA, Central African Republic, UNOMSIL, Sierra Leone; UNMIK, Kosovo; UNAMSIL, Sierra Leone; MONUC, the DRC);
- the creation of 'secure' conditions for the delivery of humanitarian relief (UNPROFOR, former Yugoslavia; UNOSOM I & II, Somalia; UNAMIR, Rwanda; UNAMSIL, Sierra Leone; MONUC, the DRC).[53]

The Council and UN peacekeeping in the 1990s: Assessing the record

This large increase in the volume and quality of UN activities meant that UN field operations came (as they still do) to dominate the day-to-day business of the Council in a manner unprecedented in the Cold War years of the organization. The sheer number of operations and the multi-tasking of UN forces have also created severe strains on the organization's limited capacity for mounting, managing, and sustaining operations, and revealed major bottlenecks (seemingly resistant to reform) especially in the areas of logistics organization and in the planning for large-scale operations. The fundamental nature of these problems is strikingly

[53] I discuss these, partly overlapping, categories more fully in *Whither UN Peacekeeping?* Adelphi Papers no. 281 (London: Brasseys/IISS, 1993), 12 25.

similar to those laid bare by the earlier UN operations in the Middle East and, especially, the Congo.[54] While this has enormously complicated missions, it would be wrong to assess the comparative success or failure of operations since 1992 simply by reference to these deficiencies. More important in the balance of considerations has been the role of the Council as measured by the clarity of its mandate, by its readiness to support – often at critical moments in the history of an operation – heads of mission, force commanders, and peacekeepers on the ground, and, finally, by the relative absence of tensions and conflict among its members, especially the P5. These factors have varied greatly and help explain both the course and outcome of operations.

In those cases where the political settlement that UN peacekeepers had been deployed to implement was sufficiently robust and, crucially, where Council support for that settlement did not fracture or waver, operational difficulties could be weathered and eventually overcome. The two clearest examples in this respect are UNTAC in Cambodia and ONUMOZ in Mozambique, with supporting evidence provided by Council action in relation to East Timor and Sierra Leone. Both UNTAC and ONUMOZ required improvization and creative interpretation of the original mandate by local heads of mission and force commanders, and neither operation was problem-free. Indeed, in the case of Cambodia, a more violent rejection of the UNTAC operation by the Khmer Rouge and/or of Hun Sen and his Cambodian People's Party would have placed UNTAC in an extraordinarily difficult position, ill-configured as it was for any kind of war-fighting activity. Security Council support, however, remained strong and unanimous throughout and proved an essential ingredient in the comparative success of the mission.[55] In the case of ONUMOZ, the assessment of the head of the mission, Aldo Ajello, is even more unequivocal, describing the 'disposition and unity of purpose of Security Council members France, Britain and the United States', as being of 'vital importance' to the success of the mission.[56] This, because as Special Representative of the Secretary-General he was able, as he himself put it, 'to make the Council responsive to his priorities and needs, calling on it a number of times for reinforcement, and knew that it was available in reserve if he needed to invoke

[54] See Edward H. Bowman and James Fanning, 'The Logistics Problems of a UN Military Force', *International Organization* 17, no.2 (Spring 1963), 368 76. An excellent, if deeply depressing, account of similar kinds of problems in the modern era are provided by Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Toronto: Random House Canada, 2003), 59, 106 7, 176.

[55] This point is forcefully made by the UNTAC force commander, Lieut. Gen. John M. Sanderson, 'The Lesson Learnt from UNTAC: The Military Component View', in Ramesh Thakur (ed.), *The United Nations and Fifty: Retrospect and Prospect* (Dunedin, NZ: University of Otago Press, 1996), 162 3. See also Mats Berdal and Michael Leifer, 'Cambodia', in James Mayall (ed.), *The New Interventionism, 1991 1994: United Nations Experience in Cambodia, Former Yugoslavia and Somalia* (Cambridge: Cam bridge University Press, 1996), 25 59.

[56] Aldo Ajello and Patrick Wittmann, 'Mozambique', in Malone (ed.), *From Cold War to the 21st Century*, 449.

its added weight'.[57] Similarly, the necessary, if not sufficient, importance of Council unanimity to the initial achievements of the UN in East Timor have been highlighted by Ian Martin, head of the UN operation there in 1999. Commending 'the speed with which the Council reached unanimity in inducing Indonesia's acquiescence and mandating military intervention', Martin noted how, 'in contrast to Kosovo or Iraq, that unanimity laid a solid foundation for subsequent international cooperation in supporting the transition to a self-governing, independent Timor Leste.'[58] Funmi Olonisakin, in a comprehensive and authoritative assessment of one of the UN's more recent and complex missions, in Sierra Leone from October 1999 to December 2005, reaches a similar conclusion with respect to the Council's enabling role: 'the fact that the Security Council was not divided in its support of UNAMSIL was a key factor in UNAMSIL's success.'[59] It would be wrong to see the success of these missions *merely* as a function of Council unity and steadfastness in the face of local opposition; luck, personalities (e.g. Ahtissari, Ajello, and Sanderson), and the degree to which each conflict can be said to have been 'ripe for resolution' all played a role.[60] They do nonetheless contrast sharply with another set of cases in which the Council response was more divided, hesitant, and inconsistent. These fell broadly into two categories: ones were political settlements collapsed into violence (as in the Bicesse Accords for Angola 1992 and the Arusha Accords for Rwanda 1993), and ones where political settlement proved elusive in the first place and conditions of civil war persisted (as in Bosnia–Herzegovina from 1992 to 1995). The inability of the Council to agree on effective action in these instances not only complicated the role of UN personnel on the ground but also confronted the Council with deeper questions about the inherent limitations of UN peacekeeping. The Council's handling of the war in Bosnia between 1992 and the summer of 1995 offers a particularly instructive example of the tensions that arose.

Security Council, UNPROFOR, and the war in Bosnia–Herzegovina

Until August of 1995, Council agreement about the role of UN peacekeepers in Bosnia–Herzegovina was framed by the three overarching objectives that defined

[57] Ibid., 448. On the role the of Council in Mozambique, see also the interesting and thoughtful 'inside' account of the ONUMOZ operation by Dirk Salomons who worked closely with Ajello. Dirk Salomons, 'Probing the Successful Application of Leverage in Support of Mozambique's Quest for Peace', in Jean Krasno, Bradd C. Hayes and Donald C.F. Daniel (eds.), *Leveraging for Success in United Nations Peace Operations* (Westport, CT: Praeger, 2004), 81 117.

[58] Ian Martin, 'A Field Perspective', in Malone (ed.), *From Cold War to the 21st Century*, 567.

[59] Funmi Olonisakin, *Peacekeeping in Sierra Leone: The Story of UNAMSIL* (Boulder, CO: Lynne Rienner, 2008), 93 5.

[60] For the notion of 'ripeness', see I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa* (Oxford: Oxford University Press, 1989).

the international response to the wars of Yugoslav succession as a whole: to relieve the human suffering caused by the fighting; to localize the conflict as far as possible, preventing its spread within and beyond the territory of former Yugoslavia; and, finally, to facilitate negotiations among the warring parties with a view to settling their political grievances. These core objectives – relief, containment, and negotiations – provided the limited basis for Security Council consensus and remained unchanged until August 1995.

In September 1992, UNPROFOR was deployed to Bosnia–Herzegovina specifically in support of the humanitarian relief efforts of the UNHCR.[61] This involved, initially, assuming control of Sarajevo airport and providing protection for land convoys throughout the ethnically divided and economically weak former Yugoslav republic. In terms of force composition, military resources, and rules of engagement, UNPROFOR was firmly premised on core traditional peacekeeping principles with respect to consent, the use of force, and impartiality. In the course of its deployment, the Council expanded UNPROFOR's existing mandate, in particular by adding to it in 1993 the creation and 'protection' of six so-called 'safe areas' throughout Bosnia. In all, more than 140 Security Council resolutions and Presidential Statements relating to the former Yugoslavia were passed between 1991 and 1995, and the majority of these dealt with the situation in Bosnia.[62] While almost all of these resolutions were adopted under Chapter VII, and although UNPROFOR eventually numbered nearly 40,000 troops, as a force it remained configured for peacekeeping: lightly equipped, widely dispersed, its logistics support vulnerable, with troop contributors manifestly unwilling to let their contingents be drawn into fighting. As such, use of Chapter VII resolutions may be seen, at least in part, as more of a procedural or diplomatic device – as opposed to a substantive hurdle under Article 39 of the Charter – intended to signal resolve by an otherwise divided 'international community'. An early settlement might have justified this; for three years, however, a political settlement proved elusive. In the summer of 1994, Sergio Vieira de Mello, Head of Civil Affairs for UNPROFOR in 1993 and 1994, pointed to the mounting tension: UNPROFOR in Bosnia–Herzegovina, he observed, was 'the first "peace-keeping" force to be given an exclusively humanitarian mandate in the context of an all-out and merciless war. Greater contradiction in terms and, indeed, on the ground would have been difficult to achieve.'[63]

The consequences of the 'contradiction' came up for formal Council debate soon after de Mello's comments. They did so in the context of the decisions that had to

[61] SC Res. 776 of 14 Sep. 1992. The UN presence on the ground in Bosnia is referred to as UNPROFOR for the purpose of this chapter, even though, until Mar. 1995, this name was not confined to the Bosnia mission.

[62] A brief summary of Security Council resolutions until Jan. 1995 can be found in B. G. Ramcharan (ed.), *The International Conference on the Former Yugoslavia: Official Papers, Vol. I* (The Hague: Kluwer Law International, 1997).

[63] Quoted in Umesh Palwankar (ed.), *ICRC Symposium on Humanitarian Action and Peace keeping Operations*, Geneva 22 4 Jun. 1994, (ICRC: Geneva, 1994), 20.

be made – as was the case every six months – about the extension of UNPROFOR's mandate. On these occasions, a detailed report by the Secretary-General on the state of mission, including when appropriate a list of 'options' for the Council to consider, provide the formal basis for the Council's deliberations.[64] The discussions *within* the Secretariat over the preparation of this report in the latter half of 1994 provide a particularly instructive insight into the effects of Council action and division on the workings of the peacekeeping force. Because they also highlight some of the wider issues raised by this chapter regarding the Council engagement in peacekeeping, they merit special mention.

In August 1994, Shashi Tharoor, combining the job of Special Assistant to the Under-Secretary-General for Peace-Keeping (then Kofi Annan) with the role of leader of the team responsible for the UN operation in former Yugoslavia, offered his thoughts on mandate renewal to Annan 'in the spirit of devil's advocacy'.[65] Under 'available options', Tharoor suggested, first, repeating 'the same arguments as last time (UNPROFOR withdrawal would lead to war, international community has no better alternative, something is better than nothing etc.)'. 'This', he noted, 'will seem the most statesmanlike, conservative option available' and will 'be easier for the Security Council to accept than other options'. Against this, he argued, was the fact that 'business as usual isn't working'. A second option, scaling down the UN presence in Croatia and regrouping in Bosnia–Herzegovina 'faces up to current realities and limitations' but risks being a 'half-way house that ends up satisfying no one; UNPROFOR will still be everywhere, but even less able to implement difficult Security Council resolutions'. The third option, Tharoor proposed, was to 'admit frankly that the strategy chosen by the international community – alleviating the consequences of the conflict, working with all sides, facilitating the peace process – has failed.' That option would face 'up to the central dilemma confronting UNPROFOR and places the Security Council before its responsibilities'. It would also, however, 'horrify' members of the Council for, as he rightly stressed at this stage of the war, 'most West European states see no alternative to the indefinite continuation of UNPROFOR, which in their view at least contains, and limits the effects of, the conflict.'[66] In a further note, also submitted in the 'spirit of devil's advocacy' some three months later, when the situation on the ground appeared still more precarious, Tharoor offered yet another option: 'the assertive delivery of supplies to UNPROFOR and to civilians in the safe areas'.[67] 'This', he added, 'seems to be the only option available that is compatible with

[64] The first draft of that report was produced by UNPROFOR in the field and sent to DPKO in New York. The subsequent back and forth, the modifications and adjustments made to account for what the 'political traffic' might bear, generated an interesting exchange that provides, among other things, a window into the evolution of the mission.

[65] 'Note to Mr Annan, UNPROFOR Mandate Renewal: Issues to Consider', 31 Aug. 1994.

[66] Ibid., 3.

[67] 'Note to Mr Annan, Future of UNPROFOR Issues to Consider', 6 Dec. 1994.

UNPROFOR's self-respect', but there was a risk: 'the Serbs could call our bluff and either obstruct us or shoot at the NATO planes; if we are bluffing, we are humiliated; if we are not, we could find ourselves at war, reaching the very point we have so long sought to avoid – becoming a party to the conflict.'[68] Tharoor nonetheless concluded that while this option carried 'greatest risk of disaster', it was also, in his view, 'the only one that . . . carries the slightest hope of breaking out of the present stalemate'.[69] The Council was plainly not, at this stage, prepared to contemplate that option. What eventually changed the position of the Council with respect to the war was the Bosnian Serb attack on the 'safe areas' of Srebrenica and Zepa, and in particular the evidence that soon began to filter out about the massacres that had accompanied the Bosnian Serb capture of Srebrenica. A series of developments – some of them initiated before the attack on the enclaves in July – prepared the ground for the *decisive* use of military force, a course of action which until then had been ruled out by the Council and troop-contributing countries and by many within the UN hierarchy. The steps enabling this shift included first, and crucially, the weakening of the strategic position of the Bosnian Serbs following the successes of Croatia's military offensives, first in Western Slavonia in May 1995, and later in the Krajina in August – successes that owed much to overt and covert support by the US. Secondly, efforts were made to reduce the exposure and vulnerability of UN personnel to hostage taking (itself a function of UNPROFOR's configuration as a peacekeeping force). These efforts included both a concentration and a reinforcement of UN forces in Bosnia, with UN forces around Sarajevo receiving vital artillery support (provided by the arrival, initially for the purpose of covering hostile withdrawal, of a UK–Dutch Rapid Reaction Force). Finally, a change in command and control arrangements for the use of NATO air power in support of UN forces set the stage for Operation Deliberate Force; an action which in the first half of September 1995 decisively shifted the balance of power on the ground and forced the parties to the negotiating table.[70]

To both French and British doctrine writers – seeking to draw wider lessons in the aftermath of the operation – the events represented a form of 'impartial enforcement', that is, a decision to respond forcefully to violations of UN mandates irrespective of who was violating or undermining it. This is not of course what happened. Instead, the Council – with the US in the lead – decided to take sides in the conflict. The steps that this involved unquestionably cleared the way for a speedier end to the war and were followed by a political settlement and a ceasefire that has proved more durable than many dared to hope at the time. There was

[68] 'Note to Mr Annan, Future of UNPROFOR Issues to Consider', 6 Dec. 1994, 2.

[69] Ibid. 4. It should be added that the forceful option added by Tharoor in his December memo met with great scepticism within the UN at the time, including from the field.

[70] For further details of these events, see Mats Berdal, 'Lessons Not Learned: The Use of Force in "Peace Operations" in 1990s', *International Peacekeeping* 7, no. 4 (Winter 2000); and HQ UNPA, 'Force Commander's End of Mission Report', 31 Jan. 1996.

nothing impartial, however, about the role played by external actors in securing this outcome, nor did it represent an option that had 'always' been available to UN forces.

The wider lesson here, as the aforementioned case of Namibia also showed, is that the use of force may be necessary to prevent a more catastrophic development from occurring; it may also assist in bringing protracted fighting to an end and is likely to involve politically controversial and often morally complex choices. In the end, Croatia's military success in August 1995 was crucially dependent on the support of one of the permanent Council members, the US, and the tacit acquiescence of others; by that time, Council members had also agreed to address the vulnerabilities and most obvious weaknesses of UNPROFOR. The moral calculations involved in that decision, or indeed of the perceived alternative of 'muddling through' another season of fighting, are rarely as uncomplicated as they were portrayed at the time and since by advocates of either option.[71]

There is a final consideration arising out of the Bosnia case. Divisions within the Council reflected deeper disagreements about the origins and principal cause of the war. Was it simply a case of power-hungry and unscrupulous elites manipulating fears brought about by the collapse of the federation? Or was the war better understood as the outcome of 'ancient hatreds' and primordial animosities between ethnic groups, previously suppressed under the enlightened despotism of Tito? Did the recognition of former federal units of Yugoslavia in any event turn the war into a simple case of interstate aggression? On these questions the interests and perspectives of Council members differed, at times sharply, and this made discussions about the use of force – difficult at the best of times – especially divisive.[72]

Still, the experience in Bosnia showed very clearly that continued insistence on adherence to the core principles of classical peacekeeping in the midst of an ongoing war is deeply problematic, especially if the effect of such an insistence is – whether intentional or not – to preclude other more forceful options from being considered. That lesson appears to have been reinforced by the early experience of the UN mission in Sierra Leone when, in May 2000, RUF attacks and mass

[71] According to Carl Bildt, European Union Co Chairman of ICFY at the time, the Croatian attack against the Krajina Serbs was 'an operation of ethnic cleansing, equally ruthless and more effective than what the Serbs had achieved inside Bosnia in 1992'. Carl Bildt, *Peace Journey: The Struggle for Peace in Bosnia* (London: Weidenfeld & Nicolson, 1998), 383. In Operation Storm, Maj. Gen. Ante Gotovina, Commander of the Split Military District from 1993 to 1996, was given the key task of capturing Knin, the capital of the self styled Krajina Serb Republic. In May 2001, Gotovina was indicted by the ICTY charged with crimes against humanity as well as violations of the laws of war. For details of the indictment, see www.un.org/icty/indictment/english/got ii010608e.htm

[72] When they are divided, the default position of the Council as a whole and the Secretariat is usually to 'urge restraint' and call for a ceasefire. In Rwanda in 1994, the Council responded to mounting and incontrovertible evidence of genocide by urging a ceasefire, in part because it was unprepared to take any other action. And yet it is clear that what brought the genocide to an end in Rwanda was the military victory of the Rwanda Patriotic Front; a ceasefire as called for by the Council would (in the admittedly unlikely event of it having been agreed) only have given the genocidiers more time to complete their grizzly task.

kidnappings of UN personnel threatened its complete collapse.[73] In response to these events, the UK despatched a battalion of combat troops to the country. Deployed, in the first instance, to assist in the evacuation of British nationals, these troops also provided an effective deterrent against another rebel assault on Freetown (the RUF attack on the capital in January 1999 had resulted in thousands of deaths) and, generally, helped shore up the faltering UN mission. These actions, as was acknowledged by the Secretary-General at the time, played a critical role in avoiding the collapse of the UN operation and the return to full-scale war.

The Brahimi Report and the surge in UN peace operations after 2003

By the mid-1990s, the experiences of UN peacekeepers in former Yugoslavia and Rwanda had decisively punctured the optimism so much in evidence at the Council Summit in January 1992. What followed was a period of operational retrenchment and consolidation, greater wariness on the part of Council with respect to non-consensual operations, and, finally, an effort by the Secretariat to draw lessons from recent activities. Two other developments also appeared to imply an acceptance of the limits of the UN 'peacekeeping' model. The first of these has been the growing involvement of the organization in the administration of war-torn territories – that is, in the temporary assumption of governance functions over territory (as seen, most notably, in Bosnia, East Timor, and Kosovo).[74] The second is the increased involvement of regional organizations in 'peace operations' and the simultaneous move away from UN peacekeeping duties by traditional troop contributors and, in particular, by the two permanent Council members – UK and France – who had, breaking with the historical pattern, provided substantial numbers of UN peacekeepers in the first half of the 1990s.[75]

[73] For background to events see UN doc. S/2000/455 of 19 May 2000; and Olonisakin, *The Story of UNAMSIL*, 53 73.

[74] See also Richard Caplan's discussion in Chapter 25.

[75] Examples of non UN multilateral peace support operations include various NATO led missions to the Balkans since 1995; the Italian led operation in Albania in 1997 (Operation Alba); the 1997 Mission Interafricaine de Surveillance des Accords de Bangui (MISAB) in the Central Africa Republic; the ECOWAS Monitoring Group (ECOMOG) in Sierra Leone from 1998 to 2000; the International Force in East Timor (INTERFET) between 1999 and 2000; the Peace Truce Monitoring Group in Bougainville (BELISI) from 1998 to 2003; the European Union Mission in the FYROM (Operation Concordia) in 2003; the EU Mission in the Democratic Republic of Congo (Operation Artemis) in 2003; the African Mission in Burundi (AMIB) in 2003; and the (US , South African , and Moroccan led) ECOWAS mission to Liberia in 2003. In late 1993, out of a total of just under 70,000 troops, France contributed more than 6,000 and the UK nearly 3,000 to UN peacekeeping operations. See Davis B. Bobrow and Mark A. Boyer, 'Maintaining System Stability: Contributions to Peacekeeping Oper ations', *The Journal of Conflict Resolution* 41, no. 6 (Dec. 1997), 735.

The most systematic effort to draw lessons was undertaken by the aforementioned Brahimi Panel. Its report, released in October 2000, followed on from other studies that had examined individual missions, the most thorough and important of which was the investigation into the fall of the 'safe area' of Srebrenica in July 1995.[76] The Brahimi report – which continues to provide the main frame of reference for discussion and reform of peacekeeping capacities within the UN – was concerned both with the 'means' and 'ends' dimension of UN operations in the 1990s. With respect to the 'means' side of the equation – that is, how to improve the resources and managerial capacity of the UN to mount and sustain complex field operations – it identified a series of recommendations addressing, inter alia, the need to speed up the deployment of troops; improve pre-deployment, inter-departmental, and contingency planning (i.e. in advance of Council authorization of a mission); ensure a more efficient organization of field headquarters; and internalize and systemize lessons from previous operations. A surprising number of the ideas and mechanisms proposed by the panel – including the pre-positioning of stocks of equipment, the use of 'Rapid Deployment Teams' and a so-called 'pre-mandate commitment authority (PMCA)' to reduce financial constraints in the critical, early phase of a mission – have been acted upon.[77]

In the context of this chapter, however, the more fundamental questions raised by Brahimi and his fellow panellists were those addressed under the headings of 'peacekeeping doctrine and strategy' and 'clear, credible and achievable mandates'. These sections of the report engaged most directly with the deeper causes of the peacekeeping failures in the 1990s. Specifically, they drew attention to risks inherent in Council decision-making becoming increasingly, as the mission wore on, divorced from realities on the ground, making the resulting mandates incapable of translation into realizable military objectives for UN peacekeepers. To avoid this, the panel called for Security Council mandates to be 'clear, credible and achievable'.[78] If these conditions did not obtain, the Secretariat would have to learn to say 'no' (or to be more precise, it would have to 'tell the Security Council what it need[ed] to know, not what it want[ed] to hear').[79] In the event of a deployment, the panel insisted that UN peacekeepers had to be 'able to carry out their mandates professionally and

[76] *Report of the Secretary General Pursuant to General Assembly Resolution 53/35 The Fall of Srebrenica*, UN doc. A/54/549 of 15 Nov. 1999. December 1999 also saw the release of an inquiry into the Rwandan genocide. See *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, New York: United Nations, 15 Dec. 1999.

[77] For an initial assessment of the implementation of the report see William Durch, Victoria Holt, Caroline Earle, and Moria Shanahan, *The Brahimi Report and the Future of UN Peace Operations* (Washington, DC: The Henry L. Stimson Center, 2003). Some of the new missions since 2000, notably the mission to Liberia in 2003, have benefited from some reforms proposed by the Brahimi panel. See 'Lessons Learned Study on the Start Up Phase of the UN Mission to Liberia', www.peacekeepingbest practices.unlb.org/pbpu/library/Liberia%20Lessons%20Learned%20(Final).pdf

[78] 'Brahimi Report', para. 64.

[79] Ibid., para. 64(d)

successfully and be capable of defending themselves, other mission components and the mission's mandates with robust rules of engagement'.[80]

In view of the aversion which the Secretariat has historically evinced in relation to the use of force – to the point of making the very vulnerability of UN personnel a *virtue* because it was seen to reinforce the non-threatening character of its activities – the emphasis on the need for more robust forces, able to respond to events on the ground and defend themselves, was an obvious lesson from the 1990s. The aforementioned note on UNPROFOR's predicament in late 1994 by Shashi Tharoor, obviously not intended for public consumption, depicted precisely the kind of situation that the panel's calls for a more 'robust' UN presence would seek to avoid. UNPROFOR, Tharoor noted, was 'in many areas, unable to supply itself, unable to protect the delivery of humanitarian aid, unable to deter attacks, unable to fight for itself and unable to withdraw'.[81] That said, the Bosnia operation also showed that 'defending mission mandates', while it sounds straightforward enough, can become deeply problematic when these have multiplied and in the process also become increasingly contradictory. And this goes to the heart of the Security Council's role in the drawing up of mandates, a key concern of the panel. The conclusions reached in this respect are neither surprising nor new – a fact that does not diminish their importance or make them any less true. They echo the conclusions reached by writers after the Congo experiences of the early 1960s and similar calls that were made as UN involvement in civil wars deepened in the early 1990s. As one report of the Foreign Affairs Committee of the House of Commons concluded in June 1993, success depended on 'a practicable mandate and the support of the Security Council' and peacekeepers should not be deployed 'unless there is a reasonable chance of success'.[82] Indeed, the report added, 'it may be necessary for the Council to resist demands, demonstrate that conditions are not propitious, and insist that some method other than peacekeeping should be used.'

In Namibia, Cambodia, Mozambique, and Central America, unity of purpose among Council members did not guarantee success but was a 'propitious condition' that helps explain the relative success of those missions. The real difficulty in other cases has arisen when divisions among key member states about how best to respond requires awkward political compromises to be made for mandates to be agreed on at all. In such situations, Saadie Touval's comments on the *inherent* difficulties for the UN in assuming a mediation role apply equally to the back-and-forth of mandate formulation. 'Intergovernmental organisations', as Touval perceptively argues, 'adopt only those measures on which consensus is possible'.[83]

[80] 'Brahimi Report', para. 55

[81] 'Note to Mr Annan, Future of UNPROFOR Issues to Consider', 6 Dec. 1994.

[82] Foreign Affairs Committee, 3rd Report, *The Expanding Role of the UN and its Implications for UK Policy*, Vol. 1, (London: HMSO, Jun. 1993), xxvi.

[83] Saadia Touval, 'Why the UN Fails', *Foreign Affairs* 73, no. 5 (1994), 53.

Issues and measures on which unanimity cannot be achieved are usually excluded. Even those decisions that are adopted are likely to be hedged and balanced. They are often ambiguous, reflecting a compromise based on the lowest common denominator.[84]

As for learning to say 'no', this has, unsurprisingly, proved easier said than done. Since the publication of the Brahimi Report, the only mission where the UN Secretariat has successfully argued for a more modest role than that envisaged for it by some Council members was the UN mission to Afghanistan following the (temporary) rout of the Taliban in 2001. In making the case for a limited UN role, Brahimi, fresh from his assignment as panel chairman, played an important role. Appointed special envoy to Afghanistan in October 2001, Brahimi resisted calls for a large and complex peacekeeping force to be sent to Afghanistan, arguing that the Council should 'not "rush" into Afghanistan with a peacekeeping force that lacks the political and financial support required to succeed', and expressing the hope that this much at least had been learned from 'ten years of experience between the Balkans and now'.[85] Formally briefing the Council, he recommended against 'an armed peacekeeping force', noting that 'UN peacekeepers have proven most successful when deployed to implement an existing political settlement among willing parties – not to serve as a substitute for one.'[86] As the demand for UN operations has again surged, the Security Council has proved less rigorous in applying Brahimi's criteria of mandate clarity and adequate resource commitment by member states.

Conclusion

While the actions of the Security Council in relation to Iraq in 1990 did much to nourish optimism about the possibilities of a revitalized UN after the Cold War, the prospect of another war in Iraq some twelve years later had precisely the opposite effect. The acrimonious divisions that emerged in late 2002 and early 2003 among the P5 members over the handling of relations with the regime of Saddam Hussein encouraged the view that a period of deadlock in the Council, reminiscent of the Cold War era, would again be the order of the day. Events have turned out very differently. In terms of operational tempo and, more significantly, in terms of the post-Cold War trend towards more complex 'multidimensional' missions deployed

[84] Ibid.

[85] Quoted in Thierry Tardy, 'UN Peace Operations in Light of the Events of 11 September 2001', in Thierry Tardy (ed.), *Peace Operations after 11 September 2001* (London: Frank Cass, 2004), 20.

[86] 'Briefing to the Security Council by Lakhdar Brahimi', 13 Nov. 2001, available at www.un.org/news/dh/latest/afghan/brahimi sc nriefing.htm (accessed 21 Nov. 2006). There were in the end, it should perhaps be added, also other reasons that weighed against a UN force to Afghanistan.

in intra-state settings, events in Iraq have, plainly, not had the kind of paralysing effect on the workings of the Council that was widely predicted.[87] Since 2003, six new missions have been authorized by the Council, while two existing operations – MONUC in the DRC, and UNIFIL in Lebanon – have been substantially expanded.[88] In October 2006, the Secretariat indicated that recent Council activity meant that some 140,000 military and civilian personnel may soon be deployed on UN peacekeeping duties. While these developments have not been accompanied by the kind of euphoria that characterized the early post-Cold War years, they indicate that UN peacekeeping, whether in its more 'traditional' or 'complex' form, continues to be treated by Council members as a potentially useful instrument at its disposal. In terms of the underlying concerns of this chapter, there are two important aspects to the growth of UN peacekeeping since 2003 that merit attention, as they bring us back to the theme of continuity and break that was posed at the outset.

On the one hand, the Security Council's involvement in peacekeeping – as evidenced by the mandate(s) given and the resources allocated to a mission – continues to be shaped, for better and worse, by the strategic calculations of the P5 and, depending on the mission, key troops contributors. The reasons for turning to the UN are many, and considerations of power, prestige, and national interest are invariably among them. This reality cannot be wished away and explains why the motives and actions of the P5 in relation to any given operation are rarely straightforward and frequently involve considerations *extraneous* to the conflict which the operation is ostensibly intended to address. The result is often a disconnect, at times glaring, between means made available to UN forces and the proclaimed ends of Security Council involvement.

If this speaks to the theme of continuity in that it points to the 'underlying political character' of all peacekeeping, the surge in operations since 2003 also makes it clear that the Council has not retreated from the more ambitious kind of tasks with which UN peacekeepers became associated in the 1990s.[89] Human rights monitoring, training and protection, the organization of national elections, and the implementation of large-scale demobilization and reintegration programmes

[87] The tensions between France and the US over Iraq, for example, have done nothing to prevent them from cooperating amicably in the establishment of new peace operations in Eastern Congo, Côte d'Ivoire, and Haiti.

[88] New missions since 2003 include the UN Stabilization Mission to Haiti, MINUSTAH (SC Res. 1542 of 30 Apr. 2004), the UN Mission to Liberia, UNMIL (SC Res. 1506 of 19 Sep. 2004), the UN Operations in Côte d'Ivoire, UNOCI (SC Res. 1528 of 27 Feb. 2004); the UN Operation in Burundi, ONUB (SC Res. 1545 of 21 May 2004); and the UN Mission in Sudan, UNMIS(SC Res. 1590 of 24 Mar. 2005). For the expansion of MONUC, see SC Res. 1493 of 28 Jul. 2003; and for the expansion of UNIFIL, see SC Res. 1701 of 11 Aug. 2006.

[89] On the 'underlying political character' of peacekeeping and it implications, see Alan James, 'The Dual Nature of UN Peacekeeping', in D.Bourantonis and M. Evriviades (eds.), *A United Nations for the 21st Century* (The Hague: Kluwer Law International, 1996), 171 86.

of former combatants, are all tasks, singly or in combination, that have been entrusted also to the missions established since 2003. This implies an acceptance by the Council that it cannot avoid complex operations in civil war-like conditions. They also show that normative pressures and influences on Council action have not disappeared, even though the 'solidarist consensus' is at best weak and limited.[90]

The chief lesson from the history of the Council's involvement in peacekeeping after the Cold War – acknowledged as such by the Brahimi report and emphasized since by the Secretariat – is that the UN is politically and structurally ill-equipped for war-fighting or large-scale enforcement action.[91] The history of UN peacekeeping, both during and after the Cold War, also attests to the impotence and weakness of UN forces when these have been confronted with large-scale, offensive military actions. This was evident in the case of UNEF in 1967, but was also the experience of UN forces in Cyprus when Turkey invaded the island in July 1974, of UNIFIL in South Lebanon during Israel's invasion in June 1982, and of UNPROFOR in Croatia when it was faced with a full-scale assault on the Krajina in August 1995.

It is against this reality that the implications of developments since 2003 must be considered. On the one hand, it would be wrong to conclude that the UN, even if it wanted to, can return to an era when distinctions appeared more clear-cut or better understood, be they 'classical peacekeeping' versus 'enforcement' or 'intra-state' versus 'interstate' conflict. For one, the observation made by Nicholson in 1963, that 'future Congos cannot be ignored simply because they were not dreamed of in the philosophy of San Francisco', appears to be more widely accepted now than it was then.[92] The scope of UN peacekeeping has broadened and the UN's continuing involvement in intra-State conflicts means that questions of consent, impartiality, and use of force will always involve difficult judgements on the part of Council, requiring member states to weigh the benefits of deployment against the possible consequences of inaction. As John Sanderson put it in the wake of UNTAC's mission in Cambodia, 'peacekeeping operations have become a finely balanced affair.'[93] On the other hand, the historical record and the logic of war also point to real and inherent limitations of the UN and, especially, of consent-based peacekeeping in contexts of ongoing civil war. In 1994, Michael Rose, then UN Force Commander in Bosnia, presented the issues and choices involved in terms of a clear-cut and simple analogy to events in Somalia the previous year. In so far as his notion of a 'Mogadishu Line' implied that there is always a simple choice between 'classical peacekeeping' and 'war', it is a crude and unhelpful portrayal of the

[90] The continuing importance of normative influence is evident in the declaratory commitment of member states at the World Summit of September 2005 to the notion of a 'responsibility to protect'.

[91] In the press conference announcing the record level of deployment reached by the UN, the head of peacekeeping also noted that 'we can't have peacekeeping in the midst of a shooting war'. See above, n. 3.

[92] Nicholas, 'UN Peace Forces and the Changing Globe', 335.

[93] Sanderson, 'The Lesson Learnt from UNTAC', 186.

complexity of the issues involved. More charitably, this analogy may also be interpreted as an attempt to bring home the basic truth that UN peacekeeping cannot, nor *should* it when circumstances require otherwise, be a substitute for war. If this is indeed what he meant, it bears repeating as it holds true for UN peacekeeping in all its varieies.

CHAPTER 8

THE SANCTIONS ERA: THEMES AND TRENDS IN UN SECURITY COUNCIL SANCTIONS SINCE 1990

DAVID CORTRIGHT
GEORGE A. LOPEZ
LINDA GERBER-STELLINGWERF

Since 1990, United Nations sanctions have become an essential instrument of multilateral action. With the imposition of trade sanctions on Iraq in Resolution 661,[1] the Security Council opened a new era in the use of collective coercive economic measures as a means of responding to violations of international norms. In the previous forty-five years of UN experience, the Security Council

[1] SC Res. 661 of 6 Aug. 1990.

employed sanctions only twice, in the cases of Southern Rhodesia (1966) and South Africa (1977).[2] The next fifteen years witnessed an active phase of Security Council decision-making, with dozens of sanctions resolutions levied against eighteen distinct targets, including such non-governmental entities as al-Qaida and the Taliban, the National Union for the Total Independence of Angola (UNITA), and militias in eastern Congo. Sanctions were imposed to serve a range of objectives: to reverse aggression, restore democratically elected governments, protect human rights, end international and civil wars bring suspected terrorists to justice, and more recently to counter the threat of international terrorism.

The legal authority for the imposition of UN sanctions rests in Chapter VII of the UN Charter, which provides in Article 41 that the Council may call upon states to impose non-military measures such as the interruption of economic and diplomatic relations to protect international peace and security.[3] The political logic of sanctions lies in the desire of policy-makers to have options other than war for applying pressure on targeted states, entities, and individuals accused of violating international norms. Sanctions offer a middle course 'between words and war'.[4] They avoid the costs of military action, yet they provide policy options more forceful than diplomatic remonstrance. When employed effectively they can exert significant pressure on those targeted. When designed and applied astutely, sanctions can serve as the basis for a bargaining dynamic in which the promise of lifting sanctions becomes an incentive to encourage political concessions and cooperation.[5]

Sanctions emerged as a preferred form of action by the Council for a number of reasons. First, the application of Chapter VII sanctions was an acceptable form of Council action which permitted great power cooperation as the UN entered the post-Cold War era. The fact that sanctions were being imposed mostly against states which were not critical allies of the former superpowers made this cooperation feasible. Secondly, unlike earlier times in which the dynamics of international trade provided benefits – at least in the short term – to states subverting embargoes, the post-Cold War era of rapidly expanding global trade brought rewards to nations that joined and supported international economic coalitions. The economic benefits

[2] See SC Res. 221 of 9 Apr. 1966; and SC Res. 418 of 4 Nov. 1977 respectively.

[3] While some observers viewed the more active use of Security Council sanctions as a fulfilment of the peacekeeping function envisioned by the founding members of the UN, scepticism regarding the legal basis of comprehensive UN sanctions and controversies regarding the reach of Chapter VII authorization have been a concern to a number of analysts. See Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990 1994* (Ardsley, NY: Transnational Publishers, 2000); and Vera Gowland Debbas, (ed.), *United Nations Sanctions and International Law* (The Hague: Kluwer Law International, 2001).

[4] Peter Wallensteen and Carina Staibano (eds.), *International Sanctions: Between Words and Wars in the Global System* (New York: Frank Cass, 2005).

[5] Our past research confirms this mix of coercion and the promise of its release as a bargaining tool that increases the likelihood of sanctions success. See David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Security Council Sanctions in the 1990s* (Boulder, CO: Lynne Rienner, 2000). See especially ch. 2, 'How to Think About the Success and Impact of Sanctions', 13 35.

accruing to nations within the European Union, and the sanction of possible exclusion from that community, have been important factors encouraging political cooperation among member states. Finally, in a world where vocal domestic concerns and transnational advocacy networks push governments and the United Nations 'to do something' about war and human rights abuses, sanctions served as a public indicator that the Security Council was prepared to take action.[6]

The record of Security Council sanctions since 1990 is one of striking contrasts, if not contradictions. As the Council moved forcefully to use sanctions as a means for advancing the UN mandate to preserve peace and security, most particularly in Iraq, it found that the outcomes of these measures were undermining other dimensions of the UN agenda, especially the goal of improving the human condition. While sanctions provided the major powers with a powerful tool for collective action within the Council, the wide-ranging social impacts of these measures resulted in a declining consensus on the Iraq sanctions regime and disagreements on sanctions reform. By 1994, the Council had learned numerous lessons from these detrimental sanctions episodes, adapting its measures to mitigate unanticipated consequences and exploring prospects for improved sanctions implementation. UN practice experienced a sea change that significantly advanced the sophistication of the sanctions instrument. An era of sanctions reform ensued as the Council shifted its focus from comprehensive to more selective measures. Aided by a series of international processes sponsored by individual states – Switzerland, Germany, and Sweden – the Council abandoned the use of general trade sanctions and relied instead on targeted measures: financial assets freezes, travel bans, aviation sanctions, commodity boycotts, and arms embargoes.[7] As the UN counter-terrorism programme developed after September 2001, the Council mandated the application of these targeted tools to disable terrorist networks.

Iraq: The Most Contested Case

The UN sanctions against Iraq were the longest, most comprehensive, and most controversial in the history of the world body. Although the sanctions were

[6] See David Cortright and George A. Lopez, 'Economic Sanctions in Contemporary Global Relations', in Cortright and Lopez (eds.), *Economic Sanctions: Peacemaking or Panacea in a Post Cold War World* (Boulder, CO: Westview Press, 1995), 3 16.

[7] For an overview of these targeted sanctions see David Cortright and George A. Lopez (eds.), *Smart Sanctions: Targeting Economic Statecraft* (Lanham, Md.: Rowman & Littlefield, 2002); Wallens teen and Staibano (eds.), *International Sanctions.*

justifiably criticized for their harmful humanitarian impacts,[8] they were largely successful in achieving Iraq's disarmament by pressuring the regime to accept (however grudgingly) the UN weapons monitoring mandate.[9] Sanctions also helped to extract concessions from Iraq on the border dispute with Kuwait and cemented the military containment of Iraq. The embargo on oil exports drastically reduced the revenues available to the Baghdad regime, prevented the rebuilding of Iraqi defences after the Gulf War, and blocked the import of vital materials and technologies for producing weapons of mass destruction.[10]

Sanctions were less successful in encouraging greater Iraqi cooperation with the international community. In part, this was due to the truculent nature of the Iraqi regime, but it also resulted from the unwillingness of the US government to consider any lifting of UN sanctions in exchange for Iraqi concessions. As early as May 1991, President George H. W. Bush stated, 'my view is we don't want to lift these sanctions as long as Saddam Hussein is in power.'[11] This policy continued under President Bill Clinton, who remarked in November 1997 that 'sanctions will be there until the end of time, or as long as he [Hussein] lasts.'[12] This position was contrary to Resolution 687, passed at the end of the 1991 Gulf War,[13] which stated that sanctions were to be lifted when Iraq complied with UN disarmament obligations. This moving of the 'political goalposts' became an obstacle in diplomatic relations between Iraq and the UN.

According to the head of the UN Monitoring, Verification and Inspection Commission, Rolf Ekéus, sanctions were crucial to the success of UN weapons inspection and dismantlement efforts in Iraq.[14] Sanctions supplied the pressure for Iraqi officials to accept UN weapons inspections, and they kept pressure on the regime once the disarmament process was under way. On several occasions, UN officials used the leverage of sanctions, and the hope that the embargo might be lifted, to persuade the Baghdad government to cooperate. According to Ekéus:

[8] The most articulate analyst of humanitarian impact is Joy Gordon, 'A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions', *Ethics and International Affairs*, 13 (1999), 123–42; and 'Cool War: Economic Sanctions as a Weapon of Mass Destruction', *Harper's Magazine*, Nov. 2002, 43–52. For a comparative analysis of the humanitarian impact of sanctions on Iraq, see Thomas G. Weiss et al. (eds.), *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham, MD: Rowman & Littlefield, 1997).

[9] See George A. Lopez and David Cortright, 'Containing Iraq: Sanctions Worked', *Foreign Affairs*, 83, no. 4 (Jul./Aug. 2004), 1–14.

[10] Barton Gellman, 'Iraq's Arsenal Was Only on Paper; Since Gulf War, Nonconventional Weapons Never Got Past the Planning Stage', *Washington Post*, 7 Jan. 2004, A01.

[11] George H. W. Bush, 'The President's News Conference with Chancellor Helmut Kohl of Germany' (Transcript, Washington, DC, 20 May 1991), available at www.presidency.ucsb.edu/ws/index.php?pid=19601

[12] As quoted in Barbara Crossette, 'For Iraq: A Dog House with Many Rooms', *New York Times*, 23 Nov. 1997, 4.

[13] SC Res. 687 of 3 Apr. 1991.

[14] Rolf Ekéus, 'Speech to the Carnegie Endowment for International Peace, Conference on Nuclear Non Proliferation and the Millennium: Prospects and Initiatives', Washington, DC, 13 Feb. 1996.

Sanctions were the way to convince Iraq to cooperate with inspectors . . . In this case it was a combined carrot and stick approach. Keeping the sanctions was the stick, and the carrot was that if Iraq cooperated with the elimination of its weapons of mass destruction, the Security Council would lift the sanctions. Sanctions were the backing for the inspections, and they were what sustained my operation almost for the whole time.[15]

Beyond helping to drive the disarmament process, sanctions undermined Iraqi military capabilities by cutting off the regime's financial lifeblood. Sanctions kept the revenues from Iraq's vast oil wealth out of the hands of Saddam Hussein. Estimates of the total amount of oil revenue denied to the Iraqi government range as high as US $250 billion.[16] For the first six years of sanctions, Iraq sold no oil whatsoever, except for small allowances to Jordan and Turkey. After the oil-for-food programme began in 1996, oil sales were permitted and eventually generated a total of US $64.2 billion in revenue.[17] The proceeds were deposited in a UN escrow account, not the Central Bank of Iraq. While the Iraqi government used smuggling and kickback schemes to siphon hard currency out of the oil-for-food programme, these funds were only a fraction of the total oil revenues being generated. The Independent Inquiry Committee into the United Nations Oil-for-Food Programme (Volcker Commission), investigating corruption in the oil-for-food programme reported Iraqi earnings from oil smuggling outside the sanctions regime for the period 1991 to 2003 at about US $11 billion. Total illicit income within the oil-for-food programme from illegal surcharges and fees was approximately US $1.8 billion.[18] These were enormous sums, but they represented less than 20 per cent of total oil revenues generated through the UN programme.

By denying financial resources to the Iraqi government, the sanctions prevented the regime from rebuilding its military capabilities. US government figures showed a precipitous drop in Iraqi military spending and arms imports after 1990. Iraqi military expenditures dropped from over US $15 billion in 1989 to an average of approximately US $1.4 billion per year through the 1990s.[19] Estimated Iraqi arms imports showed a similar steep decline, dropping from more than US $3.5 billion in 1989 to minimal levels through the 1990s.[20] The realization of military containment

[15] Rolf Ekéus, 'Shifting Priorities: UNMOVIC And the Future of Inspections in Iraq: An Interview with Ambassador Rolf Ekéus', *Arms Control Today* 30, no. 2 (Mar. 2000), 6.

[16] The estimate comes from Meghan O'Sullivan, *Shrewd Sanctions: Statecraft and State Sponsors of Terrorism* (Washington, DC: Brookings Institution Press, 2003), 139.

[17] UN export figures are available from the United Nations Office of the Iraq Programme, 'Oil Exports (By Phase)', updated 21 Mar. 2003, available at www.un.org/Depts/oip/background/basicfigures.html

[18] See Independent Inquiry Committee into the United Nations Oil for Food Programme, *The Management of the United Nations Oil for Food Programme*, 7 Sep. 2005, vol. 1, 95; Independent Inquiry Committee into the United Nations Oil for Food Programme, *Manipulation of the Oil for Food Programme by the Iraqi Regime*, 27 Oct. 2005, 1, available at www.iic offp.org/

[19] US State Department estimates provided by Meghan O'Sullivan, *Shrewd Sanctions*, 139.

[20] US Department of State, Bureau of Verification and Compliance, *World Military Expenditures and Arms Transfers 1999 2000* (Washington, DC: US Government Printing Office, Jun. 2002), 77, 129.

goals did not produce changes in Iraqi political behaviour, however, as Saddam Hussein continued to undermine the inspection process.[21]

In the late 1990s, political support for continued sanctions against Iraq began to erode. In response, the Security Council sought to reform the sanctions system by easing restrictions on civilian imports, while tightening pressure on weapons and military-related goods. The strategy became known as 'smart sanctions', and built on the sanctions reform processes noted above. It was intended to enable the rehabilitation of Iraq's civilian economy while maintaining restrictions on military goods and dual-use imports.[22] The Security Council came close to approving this approach a number of times in 2000 and 2001, and finally adopted the smart sanctions package unanimously in Resolution 1409 of 14 May 2002. The new plan restored political consensus on the sanctions regime in the Security Council and created an effective and sustainable arms-denial system.

The US government was unwilling to settle for a revived military containment system, however. A year later, Washington rejected the renewed weapons monitoring programme and launched its ill-fated invasion. As analysts weigh the costs and consequences of the Iraq war, it will be important to remember that viable alternative means were available, and were functioning effectively, to contain the threat from Saddam Hussein without the use of military force.

UN Sanctions: An Overview

The Iraq saga was only one of eighteen distinct cases of Security Council sanctions imposed between 1990 and 2006. Of the eighteen post-Cold War cases under review, most involved targeted or selective measures. In only three cases – Iraq, Haiti, and Yugoslavia (1992–5) – were comprehensive trade sanctions applied. In one other case, Angola, the combination of selective UN sanctions imposed over the years (arms and oil in 1993, travel and diplomatic in 1997, and diamonds in 1998) amounted to a nearly comprehensive trade embargo on territory controlled by the National Union for the Total Independence of Angola (UNITA). In all other cases, sanctions were partial and

In an earlier version of the same document, released by the Clinton administration, the amount given for the identical dataset is much higher. In it, Iraq's military expenditures for 1989 equal US $25.5 billion, a difference of US $10.4 billion from the 2002 version. See US Department of State, Bureau of Verification and Compliance, *World Military Expenditures and Arms Transfers 1998* (Washington, DC: US Government Printing Office, Apr. 2000), 87.

[21] George A. Lopez and David Cortright, 'Trouble in the Gulf: Pain and Promise', *The Bulletin of the Atomic Scientists* 54, no. 3 (May/Jun. 1998), 39 43.

[22] Human Rights Watch developed early proposals along these lines. See Hanny Megally, Executive Director of Human Rights Watch, 'Letter to United Nations Security Council', 4 Jan. 2000, available at www.hrw.org/press/2000/01/iraq ltr.htm

selective in nature: nine examples of financial restrictions (always in combination with other measures); six cases of commodity boycotts (most involving petroleum products,[23] three involving diamonds, and one on lumber products), ten uses of travel sanctions (also in combination with other measures), and fifteen cases of arms embargoes.[24] Diplomatic sanctions or restrictions on international participation were also employed in several instances. Appendix 4 summarizes the cases and types of sanctions employed and assesses general impact.

Sanctions did not produce immediate and full compliance in any of the cases examined. But in a number of cases they resulted in partial compliance and/or generated bargaining pressure. In Yugoslavia (1991–5), sanctions exerted leverage on the Belgrade regime that led to the Dayton Accords. In Libya, sanctions were a central factor in the negotiations that eventually brought suspected terrorists to trial and convinced the regime to reduce its support of international terrorism. In Angola, sanctions that were initially ineffective became stronger over the years and combined with military and diplomatic pressures to weaken the UNITA rebel movement. In Liberia, sanctions denied legitimacy to the Charles Taylor regime. In most of these cases UN member states made at least some attempt to comply with Security Council sanctions. In the cases where the Council imposed only stand-alone arms embargoes – Sudan, Liberia (until 2001), Rwanda, Yugoslavia (after 1998), and Ethiopia–Eritrea – sanctions had little or no impact. The limited measures imposed in Afghanistan prior to 2001 also had no discernible effect on the Taliban regime. In the cases of the Democratic Republic of Congo (DRC) and Côte d'Ivoire, arms embargoes were not well enforced. In approximately one-third of the cases examined, therefore, Security Council sanctions had some impact. In these cases the pressure of sanctions was sufficient to produce at least partial progress in achieving Security Council objectives.[25]

Adjusting to Humanitarian Impacts

Much of the debate about sanctions has centred on their humanitarian impacts. In the case of Iraq, sanctions contributed to severe humanitarian suffering among innocent and vulnerable populations. For the first six years of sanctions in Iraq, comprehensive sanctions cut off all trade and shut down oil exports, which

[23] An oil embargo on Yugoslavia was not specified in the Security Council resolutions imposing sanctions, but was implicit in the general ban on exports and imports.

[24] The five stand alone arms embargoes were Somalia, Rwanda, Yugoslavia (1998), Ethiopia Eritrea, and Liberia. In 2001 the Security Council adopted Resolution 1343 imposing diamond and travel sanctions on Liberia and reauthorizing the arms embargo originally established in 1992.

[25] For a detailed assessment of these cases, see David Cortright and George A. Lopez, *Sanctions and the Search for Security: Challenges to UN Action* (Boulder, CO.: Lynne Rienner, 2002).

shattered the country's economy. The combination of sanctions and Gulf War bombing damage caused a severe humanitarian crisis, resulting in hundreds of thousands of preventable deaths among children.[26] Infant and child mortality rates in south/central Iraq more than doubled, according to a study from the London School of Hygiene and Tropical Medicine published in *The Lancet*.[27] Relief from the humanitarian crisis did not come until after the oil-for-food programme took effect. Although the relief programme was plagued by corruption, substantial deliveries of civilian goods began to arrive in the late 1990s, gradually easing some of the hardships suffered by Iraqi civilians.

The desire to avoid humanitarian suffering caused by the imposition of economic sanctions became a dominant feature of Security Council policy-making during the 1990s. The ambassadors of the five Permanent Members of the Security Council wrote to the President of the Council in 1995 that 'further collective actions in the Security Council within the context of any future sanctions regimes should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.'[28] In 1995, the UN Department of Humanitarian Affairs commissioned a report on the impact of sanctions on humanitarian assistance efforts.[29] Efforts to assess and mitigate the humanitarian impacts of sanctions became a priority concern.

In 1997, the Department of Humanitarian Affairs developed a methodology and series of specific indicators for assessing humanitarian impacts.[30] Many of the recommendations in this study became the basis for an ongoing humanitarian assessment methodology developed by its successor agency, the UN Office for the Coordination of Humanitarian Affairs (OCHA). Efforts to assess the humanitarian impact of particular sanctions cases became a regular feature of UN sanctions policy. In 2003, OCHA updated its indicators and methodology in light of recent cases and based on the success of the earlier venture.[31] Assessment reports and missions to examine the impact of sanctions are now a routine feature of sanctions

[26] Richard Garfield, *Morbidity and Mortality Among Iraqi Children from 1990 to 1998: Assessing the Impact of Economic Sanctions*, Occasional Paper Series 16:OP:3, Mar. 1999, available at www.fourthfreedom.org/Applications/cms.php?page id=7

[27] Mohamed M. Ali and Iqbal H. Shah, 'Sanctions and Childhood Mortality in Iraq', *The Lancet*, 355 (May 2000), 1837 57.

[28] UN doc. S/1995/300 of 13 Apr. 1995.

[29] Claudia von Brunmühl and Manfred Kulessa, *The Impact of UN Sanctions on Humanitarian Assistance Activities*, Report commissioned by the United Nations Department of Humanitarian Affairs (Berlin, Dec. 1995).

[30] Larry Minear et al., *Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System*, Occasional Paper 31 (Providence, RI: Thomas J. Watson, Jr. Institute for International Studies, Brown University, 1998). This report is the published version of a study of the same title produced for the Inter Agency Standing Committee of the UN Department of Humanitarian Affairs.

[31] Manuel Bessler, Richard Garfield, and Gerard McHugh, *Sanctions Assessment Handbook: Assessing the Humanitarian Implications of Sanctions* (New York: United Nations Inter Agency Standing Committee, 2004).

cases. They provide the Security Council with an opportunity to anticipate and prevent potential humanitarian problems and respond to adverse impacts in a timely manner.

Learning and Innovation

The Security Council responded to the controversies surrounding the humanitarian impact of sanctions by altering the design of sanctions. General trade embargoes were abandoned in favour of more targeted sanctions. After the imposition of comprehensive sanctions on Haiti in 1994, all subsequent sanctions involved targeted measures, and in each of the categories of targeted sanctions – finance, travel, arms, and commodities – the Security Council introduced important innovations. Targeted sanctions apply coercive pressure on specific decision-making elites and the companies or entities they control, thereby avoiding unintended humanitarian consequences. They also deny access to specific products or activities that are necessary for repression and war. By imposing costs specifically on those responsible for violations of international law, rather than on innocent bystanders, the Security Council thus seeks to serve its primary mission of enhancing peace and security without jeopardizing its parallel mission of enhancing the human condition.

Financial sanctions and travel bans

As the Council shifted toward imposing targeted sanctions in cooperation with member states, it developed the capacity to develop and publish lists of designated sanctions targets. The entities and individuals on these designation lists were subjected to asset freezes and travel bans. The Security Council was empowered to impose financial sanctions and visa bans on lists of designated targets in the cases of Angola, Sierra Leone, Afghanistan, Liberia, DRC, Sudan, and Côte d'Ivoire. This practice would later prove significant in the UN Security Council's approach to handling terrorism.

In the earlier cases of Iraq, Libya, and Yugoslavia, financial sanctions were imposed only on government assets. Beginning in 1994, all financial sanctions were targeted against designated individuals and entities. This pattern continued through the Angola and Afghanistan cases in the latter part of the decade. In the cases of the DRC and Côte d'Ivoire, the Council was authorized to apply targeted

measures against designated individuals. The counter-terrorism financial sanctions mandated in Resolution 1373 were also directed against entities and individuals.[32]

Arms embargoes

The Security Council also attempted to make improvements in the design and implementation of arms embargoes. Measures to halt the flow of weapons and military-related goods are the most frequently employed form of economic sanctions. The Security Council imposed arms embargoes in all but two of the sanctions cases established after 1990.[33] In theory, arms embargoes are an ideal form of targeted sanction. They deny aggressors or human rights abusers the tools of war and repression, while avoiding harm to vulnerable and innocent populations. However, although frequently employed, arms embargoes have been the least effective form of sanction. In the four instances where arms embargoes were imposed as a stand-alone measure – Somalia, Rwanda, Ethiopia–Eritrea, and Yugoslavia (1998–2001) – the impact of these measures was minimal. Only in the case of Iraq, where the US and other countries made a major commitment to enforcement, did restrictions on the supply of arms and dual-use technologies have a significant military-political impact.[34]

To overcome the problems resulting from inadequate implementation of arms embargoes, the Security Council adopted a number of policy innovations. The language and technical terms employed in the Council's arms embargo resolutions became more precise. Arms embargo resolutions included prohibitions, not only against the supply of arms and ammunition, but also against training, military cooperation, and various support services, including air transportation.[35] This refinement of terms and broadening of covered items helped to close loopholes and reduced the ambiguities that previously impeded enforcement. More vigorous efforts also were made to monitor compliance with arms embargoes. Member states were encouraged to criminalize violations of UN arms embargoes and to strengthen export control laws and regulations. These initiatives helped to create a firmer foundation in the domestic law of member states for penalizing companies and individuals convicted of violating UN arms embargoes. In 2004, the Council directed UN peacekeeping forces in the DRC and Côte d'Ivoire to assist with the

[32] SC Res. 1373 of 28 Sep. 2001.

[33] The exceptions were the sanctions imposed on Sudan in 1996, and against designated individuals in Syria in 2005.

[34] For more detailed analysis of arms embargoes, see Andy Knight, *The United Nations and Arms Embargoes Verification* (Lewiston, NY: Edwin Mellen Press, 1998).

[35] See for example SC Res. 1333 of 19 Dec. 2000, in which the Security Council decided that states should not sell, supply, or transfer arms and related materiel, but should also prevent their nationals from giving advice and assistance to the Taliban regime.

monitoring of arms embargoes in these countries.[36] This added significant new responsibilities to the mission of UN peacekeepers in these countries.

Sanctions on commodity exports

Commodity-specific boycotts have also been imposed more frequently. Oil embargoes were imposed as part of the sanctions against Iraq, Yugoslavia, Haiti, UNITA in Angola, and the military junta in Sierra Leone.[37] An embargo on the export of logs was imposed against the government of Liberia. Following the documentation by NGOs and human rights groups of the role of diamond smuggling in financing the armed rebellions in Angola and Sierra Leone, a diamond embargo was imposed by the Council for the first time against UNITA rebels in Angola in 1998, followed in 2000 by an embargo on the sale of 'blood diamonds' from Sierra Leone, and Charles Taylor's government in Liberia. As a means of enforcing these measures, the United Nations worked with diamond exporting countries, the diamond industry, and NGOs to establish the Kimberley Process, an international agreement among dozens of countries to combat the trade in conflict-related diamonds. Through the Kimberley Process, governments created certificate-of-origin systems designed to protect the legitimate diamond trade by screening out blood diamonds. Targeted diamond sanctions became a tool used by the Security Council to shrink the financial base sustaining armed conflict in Africa, and they became a model for commodity-focused embargoes of the future.[38]

Regional Sanctions Assistance Missions: The Case of Former Yugoslavia

One of the most important lessons learned from the sanctions cases of the early 1990s was the need for more effective international monitoring and enforcement of member state compliance. This was evident from the success of multinational

[36] SC Res. 1565 of 10 Oct. 2004, and SC Res. 1572 of 15 Nov. 2004.

[37] As noted above (n. 23), the oil embargo on Yugoslavia was implicit in the general ban on exports and imports.

[38] David Cortright, George A. Lopez, and Linda Gerber, 'The Viability of Commodity Sanctions: The Case of Diamonds', in David Cortright and George A. Lopez, *Sanctions and the Search for Security*, 181 200.

efforts during the 1991–5 Security Council sanctions imposed on the Belgrade government. A network of sanctions assistance missions (SAMs) were organized by the Conference on Security and Cooperation in Europe (CSCE) (predecessor of the Organization for Security and Cooperation in Europe (OSCE)) and the European Community. The SAMs system represented a significant innovation in the implementation of UN Security Council sanctions.

Soon after sanctions were imposed, the CSCE and the European Commission (EC) formed a Sanctions Liaison Group to provide technical assistance for sanctions implementation, concentrating on the states immediately surrounding Yugoslavia. In October 1992, customs officials were dispatched to Bulgaria, Hungary, and Romania to form the first SAMs. SAMs were also established in Albania, Croatia, the Former Yugoslav Republic of Macedonia (FYROM), and Ukraine. The EC established a Sanctions Assistance Mission Communications Centre (SAMCOMM) at its headquarters in Brussels and created the post of Sanctions Coordinator. By March 1995, the SAMCOMM staff had grown to twenty-six people.[39] SAMCOMM developed a computerized satellite communications system linking its headquarters in Brussels with the UN Sanctions Committee in New York. This system, made available and maintained by the US, enabled customs officers in the field to verify shipping documents and prevent the use of forged or falsified documents.[40] These measures established a substantial institutional capacity for monitoring and enforcing sanctions. It was the first time that major regional organizations stepped in to assist the United Nations in providing staff and financial resources for the implementation of UN sanctions.

Other European institutions also contributed to the enforcement of sanctions. In April 1993, the Western European Union (WEU) established a Danube Patrol Mission of eight patrol boats staffed with customs and police officers to inspect riparian traffic. The North Atlantic Treaty Organization (NATO) also joined the effort, teaming with WEU in June 1993 to establish a combined naval task force in the Adriatic Sea. Fourteen nations provided ships, crews, and resources to the task force's 'Sharp Guard' operation, which was responsible for checking all vessels entering or leaving the Adriatic and diverting ships to Italian harbours when necessary to inspect cargoes and documents.[41] According to a US State Department report, the task force 'prevented large merchant vessels from calling at Bar – Serbia's only significant port' and had a significant impact on trade.[42] According to the official UN report on the SAMs system, 'this unique and unprecedented formula of coordinated inter-institutional co-operation at the regional level . . . was identified as the main reason for the effectiveness of the sanctions in the case of the

[39] UN doc. S/1996/776 of 24 Sep. 1996, paras. 33 and 34.

[40] UN doc. S/1996/946 of 15 Nov. 1996, para. 14.

[41] UN doc. S/1996/776 of 24 Sep. 1996, paras. 48 and 49.

[42] US Department of State, 'UN Sanctions against Belgrade: Lessons Learned for Future Regimes', Paper presented by the Inter agency Task Force on Serbian Sanctions, Washington, DC, Jun. 1996, 11.

former Yugoslavia.'[43] The US State Department report concluded, 'the presence of monitors bolsters frontline state enforcement by exerting pressure on the host government and its police, customs, and military to minimalize the violations.'[44] The main lesson of the Yugoslavia experience, according to the UN report, was that 'adequate arrangements for international co-operation and assistance can enhance sanctions effectiveness.'[45] It also illustrated that porous borders can be controlled even after a history of undermining sanctions by actors in frontline states.

Countering Terrorism

Libya

The UN Security Council entered the fight against international terrorism nearly a decade before September 2001 when it imposed sanctions against Libya in March 1992. This was the first use of Security Council sanctions to combat international terrorism.[46] The Council demanded that suspects wanted for the bombing of Pan Am flight 103 over Lockerbie, Scotland, and Union des Transports Aériens (UTA) flight 772 over Niger be handed over for trial. The Council also demanded that the Libyan regime end its support for and harbouring of international terrorist organizations. To back up its demand, the Council banned all flights to and from Libya. In November 1993, in the face of Libyan defiance of UN demands, the Council broadened UN sanctions to include a ban on imports of oil equipment and all aviation-related services.[47]

The sanctions against Libya did not lock down its entire economy. Selective measures were imposed to isolate Libya from the rest of the world community, reduce its ability to support terrorism, and impose modest but targeted economic hardships on the country. The aviation sanctions were effective in halting nearly all international flights to the country. The sanctions caused some economic losses, but their primary impact was diplomatic and symbolic, isolating Libya from the global community and branding it an international pariah.

The sting of the sanctions proved more painful to Libya than some would have estimated. When sanctions were initially imposed, the Qaddafi regime offered to

[43] UN doc. S/1996/776 of 24 Sep. 1996, para. 78.

[44] United States, Department of State, *UN Sanctions against Belgrade*, 11.

[45] UN doc. S/1996/776 of 24 Sep. 1996, para. 78.

[46] This account draws from David Cortright, George A. Lopez, Jaleh Dashti Gibson and Richard W. Conroy, 'Taming Terrorism: Sanctions Against Libya, Sudan, and Afghanistan', in Cortright and Lopez, *The Sanctions Decade*, 107 21.

[47] SC Res. 883 of 11 Nov. 1993.

turn over the terrorist suspects to an international tribunal, but this offer was unacceptable to the Security Council and was rejected. A diplomatic stalemate ensued, which was not broken until August 1998, when the US and the UK responded to demands from Arab and African states to negotiate a compromise settlement. Washington and London agreed to hold the trial of the two Libyan suspects under Scottish law in a court in the Netherlands. Libya accepted the deal, although it took months of additional diplomatic wrangling before the suspects were finally delivered to The Hague for trial in April 1999. The Security Council subsequently suspended the sanctions against Libya.[48] When asked if the Libya sanctions had been effective, Secretary-General Kofi Annan replied:

> I prefer to think it played a role. . . . No country likes to be treated as an outcast and outside the society of nations. . . . I think Libya wanted to get back to the international community. Libya wanted to get on with its economic and social development. And Libya wanted to be able to deal freely with its neighbours and with the rest of the world.[49]

Although the sanctions had only limited economic impact, they provided bargaining leverage that eventually led to a settlement.

The UN sanctions also had a positive effect in restraining Libyan government support for international terrorism. In the years preceding the imposition of sanctions in 1992, the government of Libya was implicated in attacks against Pan Am flight 103 and UTA flight 772. After sanctions were imposed, Libya ceased its terrorist attacks against international aviation. The US State Department's 1996 report on global terrorism stated flatly, 'Terrorism by Libya has been sharply reduced by UN sanctions.'[50] This assessment was reaffirmed in 1999 in interviews at the Central Intelligence Agency and the State Department.

The Taliban and al-Qaida

The Security Council also imposed counter-terrorism sanctions against the Taliban regime, and later against al-Qaida – although with less apparent success than in the case of Libya. On the basis of its support for terrorism, the UN Security Council imposed aviation and financial sanctions against the Taliban regime in 1999, demanding that the Taliban cease using its territory to harbour international terrorists, and that it turn over Osama bin Laden to 'proper authorities' for his role in the bombing of US embassies in Africa in August 1998.[51] An arms embargo

[48] SC Res. 1192 of 27 Aug. 1998; UN doc. S/PRST/10 of 8 Apr. 1999.

[49] UN doc. SG/SM/6944 of 4 Apr. 1999, 3 4.

[50] US Department of State, *Patterns of Global Terrorism 1996*, Publication 10535 (Washington, DC: US Government Printing Office, 1996).

[51] SC Res. 1267 of 15 Oct. 1999, para. 2.

and other measures were added in 2000.[52] The sanctions were designed to end Taliban support for international terrorism.

After the overthrow of the Taliban regime, the Security Council restructured the sanctions. It lifted the aviation sanctions in January 2002, but continued the financial sanctions and travel ban on targeted Taliban and al-Qaida leaders.[53] The Al-Qaida and Taliban Sanctions Committee developed a list of hundreds of designated individuals and entities subject to targeted sanctions. Among the measures imposed against those on the consolidated designation list were a freeze on financial assets, a ban on travel or transit, and a prohibition on the supply of arms and related military goods and services. The measures imposed in Resolution 1390 were similar to and adopted some of the language of the sweeping counter-terrorism provisions contained in Resolution 1373, passed shortly after the attacks of 9/11.[54] The Council also created an Analytical Support and Sanctions Monitoring Team (the Monitoring Team) to report on member state compliance and make recommendations for improved implementation.

Member state enforcement of the sanctions imposed on al-Qaida and the Taliban has been uneven. In December 2004, the Monitoring Team reported, '[w]hile many States reported action taken against Al Qaida, few offered specific details or referred directly to the names on the consolidated list.' The Monitoring Team noted that the sanctions regime had only limited impact, mostly due to the constantly evolving structure of the al-Qaida network and the slowness of the list designation process to keep up with those changes.[55] As of January 2006, 145 member states had reported to the Al-Qaida and Taliban Sanctions Committee on their implementation efforts, although most of those reports dated from 2003 and 2004.[56] Forty-six member states had not completed reports as of July 2005.[57] Compliance with the financial measures against al-Qaida and the Taliban was the most significant. The Committee reported in 2004:

> Information from States suggests that financial sanctions are having an effect. The desig nation of non profit organizations that had previously provided funds to Al Qaida, and more rigorous scrutiny of transactions in the formal banking system, may have forced Al Qaida cells to rely more heavily on local criminal activity to finance their operations, rather than on money from elsewhere within the organization. Large sums, while not critical to the success of an attack, are now less likely to be available.[58]

Compliance with the travel ban against al-Qaida and the Taliban was less satisfactory, mostly because states lacked detail about the individuals on the designation list.[59] The effectiveness of the arms embargo against al-Qaida and the Taliban was also uncertain.[60]

[52] SC Res. 1333 of 19 Dec. 2000. [53] SC Res. 1390 of 28 Jan. 2002.
[54] SC Res. 1373 of 28 Sep. 2001. [55] UN doc. S/2004/1039 of 31 Dec. 2004, para. 24.
[56] Ibid., para. 5; UN doc. S/2006/22 of 17 Jan. 2006, para. 9. [57] Ibid.
[58] UN doc. S/2004/1039 of 31 Dec. 2004, para. 18. [59] Ibid., para. 28.
[60] Ibid., para. 29.

The Committee reported, '[a]lthough the majority of States reported that they have legal measures regulating the traffic, acquisition, storage, and trade in arms, in general States have not provided sufficient detail to establish whether they have actually taken all necessary measures to implement the arms embargo.'[61]

Improving Sanctions Monitoring and Implementation

Beginning in the late 1990s, the Security Council developed a number of additional mechanisms for making sanctions more effective against law-violating regimes. As the situations in which sanctions were imposed – such as long-standing civil wars, or in failed economies characterized by extensive criminalization – increased in complexity, the Council recognized the need both for an expert view of the prospects for sanctions compliance in any particular case, and for more precision in fashioning the sanctions process. The creation of special investigative and expert panels dealt with the former challenge, while specially convened and nationally sponsored 'processes' contributed to the latter.

Monitoring mechanisms: The Special Investigative Panels

To overcome the lack of monitoring capacity within the UN system, the Security Council began to appoint independent expert panels and monitoring mechanisms to provide support for sanctions implementation. The first panel was established in conjunction with the arms embargo against Rwandan Hutu rebels.[62] The panel, known as the United Nations International Commission of Inquiry (UNICOI), issued six reports from 1996 through to 1998 documenting the illegal supply of arms to the rebel groups in eastern Zaire. UNICOI reports provided voluminous evidence of wholesale violations of the arms embargo and contained numerous recommendations for cracking down on arms smuggling in the region. A breakthrough toward more effective monitoring came in the case of Angola. In 1999, the Angola Sanctions Committee became more active in monitoring sanctions violations and encouraging greater implementation efforts. The Security Council also appointed a Panel of Experts and a subsequent monitoring mechanism to improve compliance with the Angola sanctions.[63] The Panel of Experts and monitoring

[61] UN doc. S/2004/1039 of 31 Dec. 2004, para. 31.
[62] SC Res. 1013 of 7 Sep. 1995.
[63] SC Res. 1237 of 7 May 1999.

mechanism issued a series of reports that focused continuing attention on sanctions implementation efforts.[64]

The Angola Panel of Experts and the monitoring mechanism were followed by similar investigative panels for Sierra Leone, Afghanistan, and Liberia. The Security Council created a monitoring group for the Afghanistan sanctions in July 2001,[65] and later transformed this into the Analytical Support and Sanctions Monitoring Team to provide support for the restructured financial, travel, and arms sanctions on former Taliban leaders and members of al-Qaida. An investigative panel was also created to examine the exploitation of mineral wealth and natural resources in the DRC, and to monitor compliance with sanctions after 2003.[66] Panel reports were also commissioned in 2004 in the cases of Sudan and Côte d'Ivoire. In each of these settings, the investigative panels produced detailed reports on sanctions violations and smuggling activities. The Sierra Leone Panel of Experts focused on the link between arms trafficking and diamond smuggling and found a pattern of widespread violations of UN sanctions. The Panel issued numerous policy recommendations, the most important of which was that sanctions be imposed on the government of Liberia for its role in undermining sanctions implementation and providing support for the rebels in Sierra Leone.[67] Sanctions on the Charles Taylor regime soon followed.[68] The Liberia Panel of Experts report confirmed allegations of the Monrovia government's extensive involvement with and support for the armed rebellion of the Revolutionary United Front in Sierra Leone. The Panel recommended a series of measures for strengthening the enforcement of the arms embargo, diamond embargo, and travel sanctions against Liberia.[69]

Improving sanctions implementation

In parallel with the emergence of the monitoring mechanisms and their many recommendations for improved implementation were a series of reform initiatives by individual member states to improve Security Council sanctions policy-making. The governments of Switzerland, Germany, and Sweden sponsored working group meetings and a series of research studies to increase the effectiveness of Security Council sanctions and strengthen the prospects for member state implementation and target state compliance. The first of these policy initiatives was the so-called

[64] UN doc. S/2000/203 of 10 Mar. 2000; UN doc. S/2000/1026 of 25 Oct. 2000; UN doc. S/2000/1225 of 21 Dec. 2000; UN doc. S/2001/363 of 11 Apr. 2001; UN doc. S/2001/966 of 12 Oct. 2001; UN doc. S/2002/486 of 26 Apr. 2002; and UN doc. S/2002/1119 of 16 Oct. 2002.

[65] SC Res. 1363 of 30 Jul. 2001.

[66] See UN doc. S/PRST/2000/20 of 2 Jun. 2000. The Panel's mandate was extended to contribute effectively to the monitoring of sanctions in SC Res. 1457 of 24 Jan. 2003.

[67] UN doc. S/2000/1195 of 20 Dec. 2000.

[68] SC Res. 1343 of 7 Mar. 2001.

[69] UN doc. S/2001/1015 of 26 Oct. 2001.

Interlaken Process in 1998–9 sponsored by the government of Switzerland. The focus of the Swiss initiative was to enhance the effectiveness of targeted financial sanctions. The Interlaken Process attempted to apply the methods utilized in combating money laundering to the challenge of implementing targeted financial sanctions. As a part of the Swiss initiative, the Watson Institute for International Studies at Brown University developed model legislation for governments to strengthen their capacity to implement targeted financial sanctions. The Watson Institute also produced a handbook on the implementation of targeted financial sanctions that was subsequently distributed to member states through the UN Secretariat.[70]

Building on the Interlaken Process, the German Ministry of Foreign Affairs initiated a parallel effort to refine the implementation of travel bans and arms embargoes in 1999 and 2000. The so-called Bonn–Berlin Process considered ways of improving travel bans and arms embargoes. In the area of arms embargoes, it recommended the use of standardized lists of dual-use items drawn from the Wassenaar Arrangement, to assure common definitions of military-related technologies subject to restrictions. The recommendations emanating from the German initiative helped to advance the capacity of the Security Council to implement travel bans and arms embargoes.[71]

In 2001, the government of Sweden launched a further initiative to improve sanctions policy-making at the United Nations. The Swedish programme brought together the world's leading sanctions scholars, UN policy-makers, and international legal experts for a series of meetings in Uppsala and Stockholm to develop recommendations for strengthening the monitoring and enforcement of Security Council sanctions. Known as the Stockholm Process on the Implementation of Targeted Sanctions, the Swedish initiative added to the work already achieved by the Swiss and German governments and helped to advance international understanding of the requirements for effectively implementing targeted sanctions.[72]

The International Peace Academy (IPA) in New York played an important role in documenting the evolution of sanctions policy and highlighting the most significant sanctions reform issues. IPA hosted a number of luncheon seminars over the years, at which Security Council ambassadors and UN officials heard briefings from sanctions researchers and engaged in off-the-record discussions of the most pressing sanctions

[70] Swiss Confederation, United Nations Secretariat, and Watson Institute for International Studies at Brown University, *Targeted Financial Sanctions: A Manual for Design and Implementation Contributions from the Interlaken Process* (Providence, RI: Thomas J. Watson Jr. Institute for International Studies, 2001).

[71] Michael Brzoska (ed.), *Design and Implementation of the Arms Embargoes and Travel and Aviation Related Sanctions: Results of the 'Bonn Berlin Process'* (Bonn: Bonn International Centre for Conversion, 2001).

[72] Peter Wallensteen, Carina Staibano, and Mikael Eriksson (eds.), *Making Targeted Sanctions Effective: Guidelines for the Implementation of UN Policy Options* (Uppsala, Sweden: Uppsala University Department of Peace and Conflict Research, 2003).

policy issues. In February 2003, IPA hosted a briefing for the Stockholm Process at which Swedish officials presented their final report and discussed the findings and recommendations of their study with senior UN officials.

Reforming the Targeting Process

The effectiveness of targeted sanctions depends on the accuracy and legitimacy of the target designation process. As the Security Council moved toward the adoption of targeted financial sanctions and travel bans against specifically designated individuals and entities, the process of developing the lists of designees became increasingly important. It also became controversial, as concerns developed about the accuracy and reliability of the lists, and also about the legal and human rights of those designated. The designation lists utilized by the sanctions committees were neither comprehensive nor fully accurate. Monitoring reports for the Al-Qaida and Taliban Sanctions Committee documented instances of misspelled and improperly identified names and found that some countries were unwilling or unable to utilize the designation lists. As a result, the implementation efforts in certain countries were meagre or ineffective.[73] A few of the individuals placed on the al-Qaida and Taliban designation list complained that they were wrongfully listed and that their civil and human rights had been violated. In a few instances, designated individuals took legal action to seek removal from the Security Council list.

The designation list of the Al-Qaida and Taliban Sanctions Committee was the most extensive Security Council list, with nearly 500 individuals and entities designated as at 2006.[74] The global fight against terrorism was a major consideration driving the listing process. Designation lists were also created for the sanctions in Liberia, Côte d'Ivoire, the DRC, and Sudan. By 2006, the total number of individuals and entities on UN sanctions committee lists was over 900.[75] This was a relatively small number, but concerns about the political and legal procedures involved in the listing process loomed large within the United Nations. More than fifty UN member states expressed concerns about the lack of due process and the absence of transparency involved in the listing process.[76] The December

[73] UN doc. S/2003/1070 of 2 Dec. 2003. See especially 'Appendix VI, Analysis of reports submitted by Member States', paras. 28 43.

[74] United Nations Security Council, *The New Consolidated List of Individuals and Entities Belonging to or Associated with the Taliban and Al Qaida Organisation as Established and Maintained by the 1267 Committee*, available at www.un.org/Docs/sc/committees/1267/1267ListEng.htm

[75] Targeted Sanctions Project, 'Strengthening Targeted Sanctions Through Fair and Clear Proced ures', White Paper, Watson Institute for International Studies, Brown University, 30 Mar. 2006, 6, available at watsoninstitute.org/pub/Strengthening Targeted Sanctions.pdf

[76] Ibid.

2004 report of the Secretary-General's High-level Panel on Threats, Challenges and Change observed that '[t]he way entities or individuals are added to the terrorist list maintained by the Council and the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions.'[77] The September 2005 World Summit Outcome document from the General Assembly urged the Security Council 'to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions'.[78]

These concerns posed challenges to the legitimacy and effectiveness of Security Council targeted sanctions and the larger struggle to counter terrorism. They reflected different perspectives among UN member states about the relationship between the enforcement of Security Council mandates and the protection of civil and human rights. Some states emphasized the need to respond forcefully and swiftly to terrorist threats and objected to elaborate legal protections that might impede the sanctions process and provide loopholes through which terrorist supporters could escape pressure. Other countries emphasized the necessity of maintaining and strengthening legal and human rights protections as part of the fight against terrorism, arguing that security and justice are mutually reinforcing, not contradictory, and that strengthening legal and human rights protections enhances the global effort to counter terrorism.

UN declarations and resolutions have been unequivocal in urging strict adherence to human rights standards. Secretary-General Kofi Annan stated in September 2003:

> There is no trade off to be made between human rights and terrorism. Upholding human rights is not at odds with battling terrorism: on the contrary, the moral vision of human rights the deep respect for the dignity of each person is among our most powerful weapons against it. To compromise on the protection of human rights would hand terrorists a victory they could not achieve on their own. The promotion and protection of human rights . . . should therefore be at the center of anti terrorism strategies.[79]

At its ministerial meeting in January 2003, the Security Council adopted Resolution 1456 urging greater international compliance with UN counter-terrorism mandates but also reminding states of their duty to comply with international legal obligations, 'in particular international human rights, refugee and humanitarian law'.[80]

In 2005, the three governments that had led previous sanctions reform processes – Switzerland, Germany, and Sweden – initiated a new process in cooperation with the Watson Institute for International Studies at Brown University to examine the legal

[77] *A More Secure World: Our Shared Responsibility, Report of the High Level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, para. 152.

[78] GA Res. 60/1 of 24 Oct. 2005, para. 109.

[79] Kofi Annan, 'Conference Report' Keynote Address, Conference on 'Fighting Terrorism for Humanity,' International Peace Academy, New York, 22 Sep. 2003, 10.

[80] SC Res. 1456 of 20 Jan. 2003, para. 6.

and procedural issues involved in the Security Council list designation process. They developed a series of recommendations for enhancing legal protections and upholding human rights principles in the development of targeted sanctions and counter-terrorism measures. The goal of the exercise was to develop recommendations for the Security Council. The three countries sought to maintain political support for targeted sanctions by assuring that the list designation process is conducted within a legal framework that is respectful of civil liberties and human rights. They did so by funding the Watson Institute process and providing a diplomatic venue for consideration of the subsequent findings and recommendations.

Conclusions

UN sanctions policy matured significantly between 1990 and 2006, as UN diplomats, expert investigators, academic scholars, non-governmental analysts, and many others contributed to a process of learning, adaptation, and reform. The result was a substantial transformation of sanctions policy-making. The poorly monitored, often blunt measures imposed in the early 1990s gave way to more targeted, selective sanctions supported by humanitarian assessment missions and expert panel reports. Many problems remained in the implementation of Security Council sanctions, but substantial progress has been made. Some of the obstacles to effective sanctions policy, such as power rivalries among the Permanent Members, are endemic to the international system, and were evident when sanctions episodes continued over time.[81] But other challenges, such as the development of greater member state capacity for sanctions implementation, were addressed through specific forms of assistance and policy improvements, as members of the Security Council sought to mould the sanctions instrument into a more effective tool for preserving peace and security.

[81] See Lisa Martin, *Coercive Co operation: Explaining Multilateral Economic Sanctions* (Princeton: Princeton University Press, 1992).

CHAPTER 9

THE SECURITY COUNCIL'S AUTHORIZATION OF REGIONAL ARRANGEMENTS TO USE FORCE: THE CASE OF NATO

DAN SAROOSHI*

Agreements between political entities within defined geographical areas – whether between city states in antiquity or modern states today – have long been used as a way to try and avoid or minimize conflict between neighbours.[1] It was only with the development of 'universal' systems of conflict avoidance that these arrangements

* This article draws on Dan Sarooshi, 'The UN System for Maintaining International Peace: What Role For Regional Organizations Such as NATO?', *Current Legal Problems,* 52 (1999).

[1] David Bederman, *International Law in Antiquity* (Cambridge: Cambridge University Press, 2001); and, more generally, Rosalyn Higgins and Dan Sarooshi, 'Institutional Modes of Conflict Manage ment', in John Norton Moore and Robert Turner (eds.), *National Security Law* (Durham, NC: Carolina Academic Press, 2005), ch. 5.

came to be regarded as 'regional'.[2] This in turn led to the question of compatibility between universal and regional arrangements and the particularly difficult issue of at what level – the universal or the regional – should final decisions relating to peace and security be taken.[3] The latter issue became a source of controversy in negotiations leading to the establishment of the League of Nations[4] and was one of the more controversial issues at San Francisco in 1945.[5] In the case of the UN, the question was resolved at least in formal terms by the UN Charter which stipulates in Article 24(1) that the Security Council has primary responsibility in the international system for matters of peace and security,[6] and, moreover, in Article 53(1) that '[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council.'

This chapter cannot address the multiplicity of types of issue relating to the use of force (including peacekeeping and diplomacy) raised by the relationship between the Security Council and regional arrangements.[7] Nor can it cover all of even the most important regional arrangements, such as the Organization of American States (OAS), the African Union (AU), the Economic Community of West African States (ECOWAS), and the League of Arab States.[8]

The focus of this chapter is to consider certain aspects of the relationship between the UN and NATO. This relationship is particularly interesting since it involves the UN interacting with the most sophisticated military regional arrangement in existence, and led to NATO (in Bosnia in 1995 and Kosovo in 1999)

[2] Bruno Simma, *The Charter of the United Nations: A Commentary*, 2nd edn. (Oxford: Oxford University Press, 2002), 813.

[3] Ibid.

[4] Ibid.

[5] Ibid., 813 15.

[6] Art. 24(1) of the Charter provides: 'In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.'

[7] There have been a number of instances where regional arrangements (e.g. the North Atlantic Treaty Organization, the Organization of American States, and the Economic Community of West African States) have used force both with and without Security Council authorization. For a number of these cases, see, for example, Higgins and Sarooshi, 'Institutional Modes of Conflict Management'; Simma, *The Charter of the United Nations*, 807 95; C. Gray, *International Law and the Use of Force*, 2nd edn. (Oxford: Oxford University Press, 2000), 200 37; Rosalyn Higgins, 'Peace and Security. Achievements and Failures', *European Journal of International Law* 6, no. 3 (1995), 445 60; Dan Sarooshi, *The United Nations and the Development of Collective Security* (Oxford: Oxford University Press, 1999), ch. 6; Kofi Kufuor, 'The Legality of the Intervention in the Liberian Civil War by the Economic Community of West African States', *African Journal of International & Comparative Law* 5 (1993), 525 60; and Christoph Schreuer, 'Regionalism v. Universalism', *European Journal of International Law* 6, no. 3 (1995), 477 99.

[8] See also references above, n. 7. For a discussion of the relationship between the Security Council and ECOWAS, see also Adekeye Adebajo's discussion in Chapter 21.

deciding to act for the first time outside its geographical area of operation. Several aspects of this relationship will be explored. The first relates to the relationship between the two entities when the Security Council, pursuant to Article 53 of the Charter, authorizes NATO to take military enforcement action. I will focus here on a case study of the authorization by the Security Council of NATO to protect UN-declared 'safe areas' in Bosnia to illustrate the issues that arise in such cases. The second aspect relates to the issues that arose when NATO decided to take military action without Security Council authorization in the case of Kosovo. Finally, this chapter makes some brief observations on the appropriateness of a regional arrangement such as NATO having the final decision on the question of whether force should be used in a particular case. Other issues, such as NATO's UN-authorized peacekeeping operations in Bosnia in 1995–2004, and its involvement in the UN-authorized International Security Assistance Force in Afghanistan since 2001, are not considered here in detail.

Before discussing the two aspects of the UN–NATO relationship outlined above, it is necessary to consider the legal basis (competence) of the Security Council to authorize regional arrangements to carry out military enforcement action on its behalf. This competence relies on the Security Council being able to delegate its Chapter VII enforcement powers to regional arrangements such as NATO.

The Competence of the Security Council to Delegate its Chapter VII Powers to Regional Arrangements

The 'authorization' by the Security Council of military enforcement action by a regional arrangement under Chapter VIII represents in substance the delegation by the Council of its Chapter VII powers. Chapter VIII of the Charter does not provide the Council with any substantive powers of enforcement to maintain peace in addition to the powers the Council already possesses under Chapter VII. Article 53(1) only gives the Council a specific competence to delegate Chapter VII powers to regional arrangements. Accordingly, the provision in Article 53(1) for the Council to utilize regional arrangements to carry out military enforcement action does not change the position that the powers which the Council is delegating to these arrangements, by virtue of its competence under this Article, are Chapter VII powers. The delegation of Chapter VII powers to a regional arrangement thus takes place by the Council using its specific competence so to delegate under Chapter VIII.

Article 53(1) provides that regional arrangements are not empowered to take enforcement action without prior Council authorization, that is without a delegation by the Council of its Chapter VII powers.[9] Accordingly, in this way the position of UN member states acting individually or through a regional arrangement is the same. In both cases, with the exception of military action taken in self-defence, a delegation of powers by the Council is necessary for any military action to be lawful. This position derives from the general prohibition on the use of force by states contained in Article 2(4) of the Charter, and relies on the position that there are no additional rights to use force which states derive by virtue of their membership in a regional arrangement even if that arrangement possesses independent legal personality. Just as there are no such additional rights which states have when acting through a regional arrangement, there are in general terms no additional obligations on states vis-à-vis the Security Council when they exercise delegated Chapter VII powers through the framework of a regional arrangement. As a result, the Security Council cannot require a regional arrangement, composed of UN member states, to carry out military enforcement action under Chapter VIII of the Charter. The reason for this is that the non-conclusion of the Article 43 agreements between states and the Security Council means that the Council cannot require states to carry out military enforcement action, and as such there can be no obligation on a regional arrangement, which is composed of these states, to have to take up a delegation of Chapter VII powers.

In addition to the prior authorization of the Security Council being necessary for military enforcement action by a regional arrangement, the Council must be able to exercise overall authority and control over the use of its delegated powers. The fact that these powers are being exercised through the mechanisms of a regional arrangement does not alter the legal position that the Council must ensure that it can exercise its authority and control over the action. This position is recognized by Article 53(1) of the Charter which stipulates that a condition of a delegation of Chapter VII powers to a regional arrangement is that the operation remains under the 'authority of the Council'.

The Security Council by delegating Chapter VII powers to a regional arrangement may be authorizing, depending on the specific terms of the delegated mandate, the use of military enforcement action against a state that is not a member of the regional arrangement. This is consistent with the purpose of a delegation of Chapter VII

[9] See, for example, Dan Sarooshi, 'Humanitarian Intervention and Humanitarian Assistance: Law and Practice', *Wilton Park Paper 86*, (1994). Compare the case of military enforcement action by the Economic Community of West African States (ECOWAS) in Liberia, as explained in Chapter 21; and Christine Gray, 'Regional Arrangements and the United Nations Collective Security System', in Hazel Fox (ed.), *The Changing Constitution of the United Nations* (London: BIICL, 1997), 91, 107. But there is, nonetheless, an argument made by some academics as to whether a prior delegation of powers or authorization is required for regional arrangements to use force, see, for example, Jean Allain, 'The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union', *Max Planck Yearbook of United Nations Law*, 8 (2004).

powers – to maintain or restore *international* peace by achieving the Council's stipulated objectives – and the provisions of Chapter VIII of the Charter. Article 52(1) of the Charter provides that regional arrangements can deal with 'such matters relating to the maintenance of international peace and security as are appropriate for regional action'. It is in this context that Article 53(1) goes on to state that the Council 'shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority'. The power of deciding whether it is 'appropriate' for a particular regional arrangement to carry out enforcement action in a specific case is left to the Security Council: this is part of the Council's primary responsibility for the maintenance of international peace and security.[10] This competence of the Council to use regional arrangements with an external focus is an important feature of the delegation of powers to such arrangements. This is also of significance to the use of collective self-defence arrangements such as NATO for the carrying out of military enforcement action under the auspices of the Council.

NATO has not until now been regarded as a regional arrangement for the purposes of Chapter VIII of the Charter: it has been seen as a collective self-defence pact.[11] A major reason why NATO sought to characterize itself as a collective self-defence alliance was to avoid the obligation in Article 53(1) to seek prior permission from the Security Council before it could act in a particular case.[12] It would also have created the situation that the former Soviet Union could have vetoed in the Security Council any NATO action, even in defence against a Soviet attack. The recent combination, however, of the Council delegating tasks in the area of peace and security to NATO and the self-redefinition by NATO to enable it to carry out tasks which are in addition to its original mandate under the NATO Charter,[13] allow it to fit within the rubric of a Chapter VIII regional arrangement. It is this approach that was adopted by the German Constitutional Court – the Bundesverfassungsgericht – in its decision that NATO can be classified as a type of collective

[10] See Hans Kelsen, *The Law of the United Nations* (London: Stevens & Sons, 1950), 327. For the opposing view that a regional arrangement should only be concerned with the keeping of peace within the arrangement and cannot as such be utilized to take measures outside the regional community, see Pierre Vellas, *Le Régionalisme International et l'Organisation des Nations Unies* (Paris: A. Pedone, 1948), 206.

[11] See, for example, Hans Kelsen, 'Is the North Atlantic Treaty a Regional Arrangement', *American Journal of International Law* 45, no. 1 (1952), 162 6.

[12] A possible additional reason for such a legal characterization was to avoid the more onerous reporting obligation of a regional arrangement under Article 54 of the Charter. The obligation on a regional arrangement to report to the Security Council is broader than the reporting obligation on States exercising self defence under Article 51 of the Charter. Article 54 requires a regional arrange ment to inform the Council not only of measures already undertaken, but also those being contem plated: an *ex ante* obligation to inform. While the reporting obligation in Article 51 is less stringent, since it only requires states to report to the Council those self defence measures already taken: it is an *ex post* obligation to inform.

[13] The NATO decisions which allowed the arrangement to carry out operations outside its traditional area of operation are discussed in the following section.

security system, and thus that German troops could participate in NATO actions that were directed at the implementation of Security Council resolutions.[14] In any case, it is clear that since the end of the Cold War the Security Council has treated NATO as a Chapter VIII regional arrangement.[15] However, this analysis is solely from the viewpoint of the UN. It is now opportune to discuss the issue from the viewpoint of the regional arrangement. In particular, the problems for regional arrangements of the limits of their constituent treaties and how this affects their competence to carry out a delegated mandate. Put differently: can a regional arrangement carry out Security Council authorized enforcement action that is not per se provided for in its constituent treaty?

It may not always be legally possible for a regional arrangement under its constituent treaty to take up a delegation of Chapter VII powers. In such a case a delegation of powers to a regional arrangement does not mean that the organs of an arrangement can exceed the powers that they have been given by their constituent treaty. The delegation of Chapter VII powers to a regional arrangement gives the arrangement – and thus its organs – the right to exercise those powers but not in disregard of its constituent treaty. This does not of course preclude the relevant organs of a regional arrangement from deciding, according to the relevant provisions of its constituent treaty, to take up a delegation of Chapter VII powers. This is from the perspective of the constituent treaty of a regional arrangement. From the perspective of the UN Charter, however, the internal constraints on a regional arrangement being able to exercise delegated Chapter VII powers do not affect the lawfulness of the delegation or the exercise of delegated powers by the arrangement.

In any case, the internal structure and competence of a regional arrangement binds only the organs of the arrangement and not necessarily the member states acting in another capacity. Thus if the Security Council has used its general competence to delegate its Chapter VII powers to UN member states, then the issue of the internal constraints of a regional arrangement becomes almost irrelevant. Member states have the competence to exercise the delegated powers whether or not the regional arrangement has the competence to do so, and, where states are members of both organizations, they are not precluded from exercising delegated Chapter VII powers acting collectively or on an individual basis because of their membership in the regional arrangement. However, the issue of using the organs of a regional arrangement to assist in carrying out military enforcement action does remain problematic.

Possibly because of these internal constraints, the practice of the Security Council has not been to delegate its Chapter VII powers to regional organizations in specific terms, but to delegate these powers more generally to UN member states

[14] *Adria , AWACS und Somalia Einsaetze der Bundeswehr, Entscheidungen des Bundesverfassungs gerichts*, (1994) 90 *BVerfGE* 286. Cf. Markus Zökler, 'Germany in Collective Security Systems Anything Goes?', *European Journal of International Law* 6, no. 2 (1995), 279.

[15] See Gray, 'Regional Arrangements', 113, 115 16.

with provision for the exercise of these powers through regional arrangements. In 1993, for example, the Security Council delegated its Chapter VII powers in such a manner in an attempt to protect UN-declared 'safe areas' in Bosnia.

NATO and the Attempt to Protect Security Council Declared 'Safe Areas' in Bosnia

The Security Council in Resolution 836 delegated to UN member states, acting individually or through a regional arrangement, the power to take military action to protect the six UN-declared safe areas in Bosnia.[16] Acting under Chapter VII, the Security Council decided that 'Member States, acting nationally or through regional arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR [the UN peacekeeping force in the former Yugoslavia], all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.'[17] Moreover, the Council in operative paragraph 11 requested 'the Member States concerned, the Secretary-General and UNPROFOR to coordinate closely on the measures they are taking to implement paragraph 10 above and to report to the Council through the Secretary-General'. There were two objectives specified in Resolution 836 which would enable member states to use force by their air capability: the defence of UN peacekeepers and the deterrence of attacks on the safe areas.[18]

What is not so clear, however, from the terms of the resolution is who should decide when force should be used and for what purpose. The Secretary-General took this decision upon himself as, in effect, the representative of the UN. After noting that NATO had confirmed its willingness to offer 'protective air power in

[16] Srebrenica was designated a 'safe area' in SC Res. 819 or 16 Apr. 1993. Sarajevo, Bihac, Gorazde, Tuzla, and Zepa were designated 'safe areas' in SC Res. 824 of 6 May 1993.

[17] SC Res. 836 of 4 Jun. 1993.

[18] It is clear from the statements by states such as France, Hungary, and Spain in the Security Council that SC Res. 836 envisaged the use of force to achieve these objectives. See UN doc. S/PV.3228 of 4 Jun. 1993, 13, 52 3, and 59. SC Res. 836, moreover, expanded the mandate of UNPROFOR to enable it to deter attacks on the safe areas by, inter alia, authorizing UNPROFOR, acting in self defence, to take measures necessary, including the use of force, to respond to bombardments or armed incursions into the safe areas. See also Marc Weller, 'Peace keeping and Peace Enforcement in the Republic of Bosnia and Herzegovina', *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht* 56 (1996), 108. However, UNPROFOR, as a lightly armed peacekeeping force, did not have the capability to carry out such action in an effective manner.

the case of attack against UNPROFOR in the performance of its overall mandate, if it so requests',[19] the Secretary-General further noted '[i]t is of course understood that the first decision to initiate the use of air resources in this context will be taken by the Secretary-General in consultation with the members of the Security Council.'[20] This report, and thus the Secretary-General's interpretation, was expressly adopted by the Council in resolution 844.[21] This follows from the position that the adoption by the Security Council of a report by the Secretary-General where a specific interpretation is made of his delegated mandate represents an affirmation of that interpretation. In any case, the consent of the Secretary-General is required by the law governing the delegation of powers in this area. The fact that the Secretary-General is the Commander-in-Chief of UN peacekeeping forces means that any use of force by peacekeepers in self-defence would require either his consent or that of his Special Representative or Force Commander who may have been delegated this power of decision-making. The practice of the UN and NATO in the former Yugoslavia has been in accordance with this legal position. The use of 'close air support' required a request by those on the ground who were the subject of an attack. The request then went to the UNPROFOR Force Commander and to the Secretary-General's Special Representative for the former Yugoslavia (who was the overall head of UNPROFOR) for the final decision as to whether close air support should be requested from NATO.[22]

The use of force in defence of UN peacekeepers under resolution 836 is termed 'close air support'. This is to be distinguished from 'air strikes'. The Secretary-General in a letter dated 28 January 1994 to the Security Council has explained this distinction in the following terms:

> Should UNPROFOR be attacked in the implementation of the plans, I would not hesitate to initiate the use of close air support without delay. To this end arrangements have been made with NATO, which has already authorized its forces to provide close air support to UNPROFOR in cases of self defence. It is important in this context to make clear that a distinction exists between close air support, which involves the use of air power for purposes of self defence, and air strikes, which involves the use of air power for pre emptive or punitive purposes. Whereas the North Atlantic Council has already authorized close air support, I have been informed by the Secretary General of NATO that NATO forces are not

[19] UN doc. S/25939 of 14 Jun. 1993, 2.

[20] Ibid., 4.

[21] Moreover, in resolution 844 the Council in operative para. 4 stated that it '[r]eaffirms its decision in paragraph 10 of resolution 836 (1993) on the use of air power, in and around the safe areas, to support UNPROFOR in the performance of its mandate, and encourages Member States, acting nationally or through regional organizations or arrangements, to coordinate closely with the Secre tary General in this regard'.

[22] To ensure a quick NATO response to such a request by the UN, NATO liaison officers were stationed at UNPROFOR Headquarters in Zagreb and in Sarajevo (Dick Leurdijk, *The United Nations and NATO in the Former Yugoslavia: Partners in International Cooperation*, (The Hague: Netherlands Atlantic Commission, 1994), 16.)

authorized to launch air strikes, which would require a further decision of the North Atlantic Council.[23]

Thus close air support is only to be used in defence of UN peace-keepers. Air strikes, which involve military enforcement action, are discussed further below.

In the case of the former Yugoslavia, the Secretary-General decided to delegate the competence to request, or agree to, the use of close air support to his Special Representative, Mr Yasushi Akashi.[24] There was no express request from the Security Council to the Secretary-General to sub-delegate this power of command and control to his Special Representative. Thus for the Secretary-General to sub-delegate these powers to his Special Representative he must possess an implied competence to do so. The main condition for the existence of such a competence to delegate powers is that the power to delegate must be necessary or essential to the performance of the duties and functions of the Secretary-General or of his representative. The determination of whether this is the case is made by the Secretary-General. In the case of the former Yugoslavia, the Secretary-General stated the following reason for the delegation of power to his Special Representative:

> This is necessitated not only by his responsibility for the security of the personnel, including unarmed civilians, under his control, but also out of regard for the integrity of the humanitarian and other mandates entrusted to UNPROFOR by the Security Council.[25]

This approach received the express support of a few States.[26] There was, however, concern expressed about the cumbersome nature of these procedures, which, it was argued, compromised the speed of reaction to an emergency and thus the effectiveness of the use of air power as protection for UNPROFOR and the safe areas.[27] Moreover, the practice of the UNPROFOR Force Commander and the Special Representative was to refuse to request such support from NATO if the attack had already ceased.[28] This approach was also the subject of criticism.[29] These criticisms

[23] UN doc. S/1994/94 of 28 Jan. 1994, 2.

[24] See the report of the Secretary General, UN doc. S/1994/300 of 16 Mar. 1994, 15.

[25] Ibid.

[26] The Spanish representative, for example, stated: 'It is clear that to achieve these objectives it is crucial that NATO guarantee the security of the personnel of UNPROFOR, of the Office of the High Commissioner for Refugees (UNHCR) and of the other international agencies. . . . We therefore deem it appropriate for the SG to have delegated to his Special Representative the authority needed to approve any request which may be made in that respect by the UNPROFOR Commander, a delegation of authority which extends to operations of immediate air support in defence of United Nations personnel in any area of Bosnia and Herzegovina.' (UN doc. S/PV.3336 of 14 Feb. 1994, 29.) See also the statement by the representative of Bangladesh: UN doc. S/PV.3336 (Resumption 3), 217 18.

[27] A NATO official is quoted as saying: 'We are going to make a very strong recommendation to the United Nations that it should delegate to theatre level.' (*International Herald Tribune*, 26 Jul. 1995, 6.)

[28] Higgins states that this is a reason why 'it may be thought [the decision making procedures are] weighted in favour of inaction.' (Higgins, 'Achievements and Failures', 455.)

[29] The Secretary General in a report to the Security Council dated 30 May 1995 stated that incidents around and in Sarajevo in May 1995 caused the Secretary General's Special Representative to consider using air power. He notes that 'the decision not to do so was criticized by some Member States.' (UN doc. S/1995/444, 2.)

became much more widespread and serious after the fall of Srebrenica and the mass killings of inhabitants of this 'safe area' in July 1995[30] by Bosnian Serb forces led by General Ratko Mladić despite the presence of the Dutch Battalion ('Dutchbat') of UNPROFOR which was stationed in Srebrenica.

The Bosnian Serb army attack on one of Duchbat's observation posts on 6 July 1995 was the start of the broader direct attack against Srebrenica. The Dutchbat Commander requested the use of close air support in response to this first attack – and a number of subsequent attacks on other observation posts – but all of these were consistently refused by those higher up the UN chain of command with the consequence that the UN-declared safe area of Srebrenica was easily overrun.[31] In response to the criticism that followed this failure, the Secretary-General's Special Representative delegated the power to order the use of air power to the Force Commander who had the express authority to delegate it to the UNPROFOR Commander in Bosnia. The Secretary-General summarized the position in a letter to the President of the Security Council of 27 July 1995 where he stated the following:

> In order to streamline decision making within the United Nations chain of command . . . [a]s regards close air support to defend United Nations peace keepers, my Special Repre sentative has today delegated the necessary authority to the Force Commander, who is authorized to delegate it further to the Commander of the United Nations Protection Force (UNPROFOR) when operational circumstances so require. . . . I should like to stress that the above measures are all being taken with a view to implementing existing Security Council resolutions, in particular resolution 836 (1993), and are consistent with that resolution.[32]

[30] An official UN Report states: 'The tragedy that occurred after the fall of Srebrenica is shock ing. . . . It is shocking, first and foremost, for the magnitude of the crimes committed. Not since the horrors of the Second World War had Europe witnessed massacres on this scale. The mortal remains of close to 2,500 men and boys have been found on the surface, in mass graves and in secondary burial sites. Several thousand more men are still missing, and there is every reason to believe that additional burial sites, many of which have been probed but not exhumed, will reveal the bodies of thousands more men and boys. The great majority of those who were killed were not killed in combat: the exhumed bodies of the victims show that large numbers had their hands bound, or were blindfolded, or were shot in the back or the back of the head. Numerous eyewitness accounts, now well corroborated by forensic evidence, attest to scenes of mass slaughter of unarmed victims.' (Report of the Secretary General pursuant to General Assembly Resolution 53/35, 'The fall of Srebrenica', UN doc. A/54/549 of 15 Nov. 1999, para. 467.)

[31] The failure by the UN chain of command in the case of Srebrenica led to GA Res. 53/35 of 30 Nov. 1998 requesting the establishment of a comprehensive report on the events that took place in Srebrenica after it had been declared a 'safe area' by the Security Council on 16 Apr. 1993. For the facts on the fall of Srebrenica and the failure by the UN chain of command to call in close air support despite repeated requests for such support by the Dutchbat Commander in Srebrenica, see UN doc. A/54/549 of 15 Nov. 1999, paras. 239 317.

[32] UN doc. S/1995/623 of 1 Aug. 1995, 2 3. The UNPROFOR Commander mentioned in this letter is the Commander of UNPROFOR in Bosnia. With effect from Apr. 1995 the Croatian and Macedonian segments of UNPROFOR had been renamed, so from then on 'UNPROFOR' referred exclusively to the force in Bosnia. The overall Force Commander, with headquarters in Zagreb, continued to have responsibility for what were now three distinct UN peacekeeping forces in the former Yugoslavia in Croatia, Bosnia, and Macedonia.

This change in the command arrangements reflected the extreme dissatisfaction with the 'dual-key' arrangements and its failings as shown in the case of Srebrenica, and in effect led to the transfer of command of military force away from the UN (specifically the Secretary-General and his Special Representative for the former Yugoslavia) and towards NATO.

There was some concern expressed that there was as a result of such a delegation no UN civilian involved in the chain of UN decision-making to ask NATO for close air support, and that this was not a desirable situation. However, such a contention does not take into account two important considerations. First, that the principle of unity of command in military operations is crucial.[33] Secondly, that the Force Commander (including any officer under him with delegated powers) is under the authority and control of the Secretary-General, and as such the Secretary-General can stipulate at any time the principles which the Force Commander should take into account when making a decision to call in military support to defend UN peacekeepers.[34]

In the specific case of 'air strikes' mandated by Resolution 836, the delegation of power here was taken up by certain member states who chose to act through a regional arrangement, NATO, of which they were all members. There was also, interestingly, a degree of Russian participation in the NATO planning for military action in connection with the UN-declared 'safe areas' in Bosnia: a Russian representative was stationed in NATO headquarters and was in constant contact and consultation with the NATO chain of command.

In a NATO Council meeting of 9 February 1994 it was decided to authorize air strikes if Bosnian Serb forces and the Bosnian government did not, within ten days, withdraw or regroup and place under the control of UNPROFOR all heavy weapons located in an exclusion zone, described as 'an area within 20 kilometres of the centre of Sarajevo'.[35] To ensure the implementation of these measures, NATO members decided that heavy weapons remaining within the operational area at the end of the stated time and not under the control of UNPROFOR would be subject to air strikes carried out in close coordination with the UN Secretary-General. This became known as the 'Sarajevo ultimatum'.[36] NATO members also agreed to the UN Secretary-General's request to authorize the Commander-in-Chief of Allied Forces in Southern Europe to launch air strikes against artillery positions from which attacks on civilian targets in Sarajevo originated.[37] Subsequently, the

[33] See Derek Bowett, *United Nations Forces* (London: Stevens, 1964), 342.

[34] In fact this is precisely what the Secretary General did in the case of the former Yugoslavia, when he later specified the basis upon which such a decision should be taken: see UN doc. S/1995/444 of 30 May 1995, 16 17.

[35] 'Decisions taken at the meeting of the North Atlantic Council on 9th February 1994(1)', NATO Press Release (94) 15, 9 Feb. 1994.

[36] Leurdijk, *The United Nations and NATO in Former Yugoslavia*, 51.

[37] Ibid.

Bosnian government suggested that a meeting of the Security Council should be called to discuss NATO action. This suggestion was taken up, and the Council subsequently held a meeting on 14 February 1994. The discussion in the Council focused on, inter alia, NATO's ultimatum to the Serbian forces which were besieging Sarajevo. There was overwhelming support by states for the position that the NATO ultimatum was mandated by Council Resolution 836.[38] Similarly, the UN Secretary-General welcomed the NATO ultimatum in respect of Sarajevo, and later relating to Gorazde, as being in accordance with the resolution.[39]

Was the imposition of the ultimatum within the scope of the delegated powers? It would seem that the decision to impose the ultimatum is a reasonable interpretation by member states, acting through NATO, of their mandate under Resolution 836 and the later Resolution 844[40] to protect the safe areas. In this way, the NATO ultimatum can be conceived of as an exercise of Chapter VII powers on behalf of the international community.[41]

The involvement of the UN Secretary-General was of particular importance for many states, since they considered it as a way for the Council to be able to exercise its overall authority and control over the action. As the Norwegian government stated in the Council debates: '[i]t is ultimately the responsibility of the Secretary-General to decide on the steps that may be taken, as the overall political authority rests with the United Nations.'[42] In accordance with this approach, the UN

[38] See, for example, the statement in the Security Council by the representative of the US government: 'Weapons not under United Nations control may be subject to air strikes. During the 10 days the North Atlantic Treaty Organization (NATO) will also respond, in coordination with the United Nations, to the artillery or mortar fire that has wreaked such havoc in Sarajevo. These decisions are consistent with resolutions approved by the Council. They do not require further Council action. We need to remind ourselves that the decision to initiate air strikes rests in the hands of the Secretary General, and it was the Council that put it there.' (UN doc. S/PV.3336 of 14 Feb. 1994, 19.) See also the statements by the representatives of France, the Netherlands, Egypt, Belgium, Norway, Turkey, Afghanistan, Nigeria, and Malaysia (ibid.). Compare, however, the position of the Russian government which stated that the ultimatum was made by an organ which 'has no authority to take decisions on the substance of a settlement in Bosnia. . . . A decision on such a request [to use force] must be taken by the Secretary General after consultation with the members of the Security Council.' (Letter dated 10 Feb. 1994 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, UN doc. S/1994/152; see also UN doc. S/PV.3336, 39.)

[39] UN doc. S/1994/444 of 14 Apr. 1994, para. 49.

[40] SC Res. 844 of 18 Jun. 1993. The Council in operative paragraph 4 of Resolution 844 stated that it '*[r]eaffirms* its decision in paragraph 10 of resolution 836 (1993) on the use of air power, in and around the safe areas, to support UNPROFOR in the performance of its mandate, and *encourages* Member States, acting nationally or through regional organizations or arrangements, to coordinate closely with the Secretary General in this regard'.

[41] Several states supported this approach: for example, the representative of Tunisia in a statement in the Security Council seemed to adopt the NATO ultimatum as that of the international community. He observed: 'Today, after the warning issued by NATO, the international community is demonstrating a firm will to put an end to the massacres and to find the ways and means to do so.' (UN doc. S/PV.3336 (Resumption 2), 161.)

[42] UN doc. S/PV.3336 (Resumption 1), 94. See also the statements by the representatives of Canada (UN doc. S/PV.3336 (Resumption 1), 137); and Tunisia (Un doc. S/PV.3336 (Resumption 2), 161).

Secretary-General noted in respect of air strikes by NATO, '[i]t is of course understood that the first decision to initiate the use of air resources in this context will be taken by the Secretary-General in consultation with the members of the Security Council.'[43] This report – and thus the approach – of the Secretary-General was adopted by the Council in resolution 844. Similarly, in a report dated 2 August 1993, the UN Secretary-General stated that,

> the purpose of the use of air power . . . is to promote the fulfilment of objectives approved by the Security Council. . . . For this as well as pragmatic reasons, I have consistently taken the position that the first use of air power in the theatre should be initiated by the Secretary General . . . In approving the report of the Secretary General of 14 June 1993 in its Resolution 844, the Security Council has endorsed this approach . . . It is therefore my understanding that the decision to use air power in Bosnia and Herzegovina pursuant to UN resolutions must continue to rest with the Secretary General . . . You may recall that action by NATO to enforce the no fly zone was subject to specific authorization by the Force Commander of UNPROFOR.[44]

The modus operandi for the use of air strikes became known as the 'dual-key' approach: whereby both the UN Secretary-General and NATO could initiate a call for air strikes, but the other side must agree for the use of force to go ahead, each side having a power to veto the decision to use force. This authority and control by the UN Secretary-General, being exercised on behalf of the Council, over the use of such military force is an important factor that militates in favour of the lawfulness of the delegation of powers in Resolution 836.

[43] Un doc. S/25939 of 14 Jun. 1993, 4. Similarly, in a NATO Council meeting of 4 Aug. 1993, Canada (together with the UK, Belgium, and France) in particular stressed the need for UN control over events while the US seemed prepared to concede such a UN role only in cases where aircraft were called upon to protect UNPROFOR but not with regard to other uses against Serb targets. (Helmut Freudenschuß, 'Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council', *European Journal of International Law*, 5/4 (1994), 511.) Freudenschuß states that, '[i]n the course of the next few days, the US under strong pressure from its allies first conceded that the choice of targets for air strikes must be approved by both NATO and the UN and ultimately agreed that the first such attack required approval by the Secretary General.' Leurdijk states that in respect of the NATO 'ultimatum' there are the following three possible answers to the question of who would give the order to launch an air operation: '1) in the event of an attack or threat of attack against UNPROFOR, the UN Secretary General had already delegated this power to his representative in former Yugoslavia, who could also ask for close air support from NATO's CINCSOUTH [Commander in Chief of NATO's Southern Command]; 2) in the event of further artillery or mortar attacks against the civilian population of Sarajevo, CINCSOUTH had received authority from the NAC on 9 Feb. to act at the request of the UN, so that the UN special representative and the UNPROFOR commander could ask him for air strikes; 3) NATO, in coordination with UN Secretary General Boutros Ghali, would take decisions regarding the control of heavy weapons after the expiry of the "ultimatum"'. (Leurdijk, *The UN and NATO in Former Yugoslavia*, 55.)

[44] Moreover, the North Atlantic Council subsequently affirmed in express terms the position that the first use of air power must receive the authorization of the UN Secretary General: 'Decisions Taken at the Meeting of the North Atlantic Council on 9th August 1993', Press Release (93) 52, *Atlantic News*, No. 2547, 26 Aug. 1993.

The Members of the Security Council who affirmed the legal basis for the NATO ultimatum were clear also in affirming that the Secretary-General and NATO had the power to decide whether the use of force was required and that no further recourse to the Security Council was necessary.[45] In other words, the UN Secretary-General and member states who were acting through NATO had been delegated a power to issue decisions which bind UN member states, a power of decision which they could back up with the use of military enforcement action, namely air strikes, in the face of non-compliance. The Security Council possesses the power under Article 25 and Chapter VII of the Charter to make decisions that impose binding legal obligations on UN member states. The imposition of the NATO ultimatum was in effect an exercise of this power of the Security Council, but through the mechanism of delegation.[46] However, as indicated above, the lawfulness of such delegations of power depend on the Council being able to exercise a sufficient degree of authority and control over the exercise of the delegated powers such that it could decide to change at any time the way in which those powers were being exercised. In this case, we find that the NATO ultimatum is lawful, since the Council exercises this degree of authority and control, through the UN Secretary-General, over the enforcement of the decision.

Moreover, further agreement was sought by the UN Secretary-General from NATO for the carrying out of air strikes for the protection of the other five 'safe areas' in Bosnia.[47] However, an additional NATO ultimatum to besieging Serb forces was only issued in respect of Gorazde.[48] The legal considerations relating to

[45] See, however, the earlier position of the Russian government that the UN Secretary General should consult with the Security Council before deciding to authorize the use of force under Resolution 836: Letter from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary General, UN doc. S/1994/138 of 8 Feb. 1994.

[46] The Security Council has also delegated this power to issue decisions that bind Member States to UN subsidiary organs, see, for example, in the case of the UN War Crimes Tribunals: Dan Sarooshi, 'The Powers of the United Nations International Criminal Tribunals', *Max Planck Yearbook of United Nations Law* 2 (1998), 147–50.

[47] The UN Secretary General in a letter to the Secretary General of NATO dated 18 Apr. 1994 stated: 'The tragic events which are currently taking place in Gorazde demonstrate the need for the North Atlantic Council to take a similar decision with respect to the five other safe areas declared by the Security Council, namely the towns of Tuzla, Zepa, Gorazde, Bihac and Srebrenica and their surrounding areas. I should accordingly be grateful if you could take action to obtain, at the earliest possible date, a decision by the North Atlantic Council to authorize the Commander in Chief of NATO's Southern Command to launch air strikes, at the request of the United Nations, against artillery, mortar positions or tanks in or around the above mentioned safe areas which are determined by UNPROFOR to be responsible for attacks against civilian targets within those areas. The arrangements for the coordination of such air strikes would be elaborated through direct contacts between UNPROFOR Headquarters and NATO's Southern Command, as has already been done in the case of close air support for the self defence of United Nations personnel in Bosnia and Herzegovina and air strikes in and around Sarajevo.' (UN doc. S/1994/466 of 19 Apr. 1994, 2–3.)

[48] On 22 Apr. 1994 the North Atlantic Council imposed two 'ultimatums' in respect of Gorazde. For the details of the first ultimatum, requiring Serb forces to cease fighting in Gorazde, withdraw troops, and allow access for humanitarian aid to the city, see UN doc. S/1994/495 of 22 Apr. 1994, 2–3. Details of the second ultimatum, establishing a military exclusion zone around the city, and threatening action if there were Bosnian Serb troop concentrations or if safe areas would be attacked by heavy weapons are reproduced in UN doc. S/1994/498 of 22 Apr. 1994, 2–3.

the Sarajevo ultimatum apply equally to the imposition by NATO of its ultimatum relating to Gorazde.[49] While the Sarajevo ultimatum was at least successful in securing a partial withdrawal of Serbian heavy weaponry from around Sarajevo by the expiry of the deadline, the Gorazde ultimatum was not so effective with disastrous consequences to civilians in terms of loss of life.[50]

It was the opinion of the Government of Bosnia and Herzegovina that the terms of Resolution 836 imposed an obligation on NATO to take the action mandated by the Council. A letter dated 8 February 1994 from the Bosnian representative to the President of the Security Council provides:

> Pursuant to resolutions 824 (1993) and 836 (1993), the United Nations Security Council has already adopted the necessary mandate and authority for 'Member States, acting nationally or through regional arrangements' to 'take the necessary measures, including the use of force, in reply to bombardments against the safe areas'. In this context, NATO is obliged to act in accordance with the responsibilities and obligations delegated to it by the United Nations and the member states thereof. In response to the continuing siege of Sarajevo and the unprecedented bombardments of Friday, 4 February and Saturday, 5 February, the member states should have the opportunity to examine and evaluate, in an open debate of the Security Council, what steps have been undertaken or are contemplated by NATO having assumed the authority and responsibilities delegated to it by the United Nations.[51]

However, the content of any such 'obligation' cannot be legal, but is only political. The delegation of Chapter VII powers by the Council to a regional arrangement provides a mandate for, but does not require, military enforcement action. Thus it is inaccurate to speak in terms of an obligation, since neither NATO nor in fact UN member states on an individual basis are bound by law to carry out any action.[52]

[49] Accordingly, the lawfulness of the NATO ultimatum in respect of Gorazde was expressly affirmed by the following states in the Security Council: Turkey, Sweden, Spain, Rwanda, and New Zealand. See UN doc. S/PV.3367 of 21 Apr. 1994.

[50] Press Statement on 21 Feb. 1994 by NATO Secretary General Manfred Wörner following expiry of the deadline for withdrawal of heavy weapons from in and around Sarajevo, in *NATO Review* 22, Apr. 1994. See also UN doc. S/PV.3344 of 4 Mar. 1994, 4; and Leurdijk, *UN and NATO in Former Yugoslavia*, 55 6.

[51] UN doc. S/1994/134 of 8 Feb. 1994. See also the statement by the representative of Jordan in the Security Council: UN doc. S/PV.3336 (Resumption 2), 155.

[52] Nonetheless, there were additional air strikes carried out by UN Member States acting through NATO in coordination with the UN Secretary General's Special Representative. As the Secretary General stated on 24 May 1995: 'the use of air power was authorized not only for the defence of UNPROFOR personnel but also to deter attacks on the safe areas. UNPROFOR has requested NATO to use its air power on nine occasions when my Special Representative has deemed such action necessary and appropriate. In all cases air power was used against Bosnian Serb targets or targets in Serb controlled parts of Croatia that had been operating in support of the Bosnian Serbs. On 12 Mar. 1994, close air support was requested when UNPROFOR troops came under fire near Bihac but was not implemented because of bad weather. On 10 and 11 Apr. 1994, close air support was provided near Gorazde . . . On 5 Aug. 1994, air strikes were made against targets in the Sarajevo exclusion zone. On 22 Sep. 1994, an air strike was made near Sarajevo following an attack on an UNPROFOR armoured car. On 21 and 23 Nov. 1994, air strikes were made against Udbina airfield in Croatia, which had been used to launch air attacks in the Bihac safe area, and against surface to air missiles in western Bosnia and Herzegovina and in the Krajina region of Croatia that had threatened NATO aircraft' (UN doc. S/1995/444 of 30 May 1995, 16 17).

It was not until August 1995 in response to yet another shelling of Sarajevo that an intensive campaign of air strikes was carried out against the Bosnian Serbs to protect the safe areas and force a peace settlement. This campaign was known as Operation Deliberate Force. The NATO Secretary-General announced on 30 August 1995 that NATO military aircraft had commenced attacks on Bosnian Serb military targets in Bosnia.[53] The decision to initiate operations was taken jointly by the UN Force Commander and the NATO Commander-in-Chief, Allied Forces Southern Europe.[54] The declared aim of the operation was to 'reduce the threat to the Sarajevo Safe Area and to deter further attacks there or on any other Safe Area. We hope that this operation will also demonstrate to the Bosnian Serbs the futility of further military actions and convince all parties of the determination of the Alliance to implement its decisions.'[55]

There were conditions specified which the Bosnian Serbs had to fulfil before the air strikes would be terminated. In a letter of 3 September 1995 from General Janvier to the Bosnian Serbs, these were stated to be: 'the end of attacks by the Bosnian Serbs on Sarajevo or other Safe Areas; the withdrawal of Bosnian Serb heavy weapons from the total exclusion zone around Sarajevo, without delay; complete freedom of movement for UN forces and personnel and NGOs and unrestricted use of Sarajevo airport'.[56] There was concern expressed by the Russian representative to the Security Council that these air strikes were not in conformity with Security Council resolutions.[57] Subsequently, the Russian representative criticized the NATO action on, inter alia, the grounds that no consultations had been held with Council Members as to the decision to initiate the use of force.[58] However, the delegation of powers to member states in Resolution 836 clearly envisaged the use of force to achieve such objectives as the Secretary-General and member states deemed necessary to protect the Safe Areas.[59] The UN Secretary-General fully supported the NATO action.[60]

As a result of this military action, the Bosnian Serbs agreed to conclude on 14 September 1995 in Belgrade a framework agreement on compliance with NATO's conditions. Subsequently, the NATO leaders determined that the Bosnian Serbs had complied with their conditions and air strikes were suspended.[61]

This operation was clearly a case where NATO had accepted a delegation of Chapter VII powers from the Security Council and it was successful in achieving its limited objective. However, the problems arising from the 'dual-key' procedures

[53] Statement by NATO Secretary General, NATO Press Release (95) 73, 30 Aug. 1995.

[54] Ibid.

[55] Ibid.

[56] As contained in Statement by NATO Secretary General, Sep. 1995, NATO Press Release (95) 79.

[57] UN Press Release DH1969, 31 Aug. 1995.

[58] UN doc. S/PV.3575 of 8 Sep. 1995, 3.

[59] See also, in the context of Operation Deliberate Force, the following supportive statements by states in the Security Council: the United Kingdom, United States, Nigeria, Indonesia, Italy, and Turkey, in UN doc. S/PV.3575 of 8 Sep. 1995.

[60] UN Press Release DH/1971, 5 Sep. 1995.

[61] Joint Statement by General Janvier and Admiral Smith, NATO Press Release (95) 43, 21 Sep. 1995.

and in particular the perception that the UN's decision-making was cumbersome and ineffective arguably led to the UN being marginalized in the post-Dayton situation in the former Yugoslavia. From December 1995 the Implementation Force (IFOR), put in Bosnia to implement the Dayton Peace Accords, and its successor from 1996, the Stabilization Force (SFOR), both operated under the authority and subject to the direction and political control of the North Atlantic Council through the NATO chain of command.[62]

In more recent years the Council has had a less central role in the control of conflict: this seems to have been largely due to disagreement amongst the Permanent Members, but it may also be a result of its experience in the former Yugoslavia.[63] Often the disagreement between the Permanent Members is not over the existence of a threat to the peace in a particular case, that is, what community standards will trigger a collective security response and when have these been violated. Instead, the Permanent Members disagree on how to act in responding to these threats, and whether force should be used. This has caused a contraction in the collective security role of the Council. There is the danger here that the Council will become in practice limited to making Article 39 determinations, but decisions to use military force will be taken outside the sphere of the Council.

A clear example of this is provided by NATO's use of military force without prior Security Council authorization in the case of Kosovo where the Council was constrained from acting by the threat of a Russian veto.

Kosovo, NATO, and the UN Charter

NATO carried out extensive military air strikes against the Federal Republic of Yugoslavia, which commenced on 24 March 1999, in order to force the Yugoslav government to, inter alia, stop 'ethnic cleansing' in the Yugoslav province of Kosovo. This action was undertaken without a prior express delegation of Chapter VII powers by the Security Council to NATO. The three relevant Security Council resolutions on Kosovo – resolutions 1160, 1199, and 1203 – did not authorize military action by states either acting individually or through a regional arrangement. As such, this action may at first seem to be clearly contrary to the general prohibition on the use of force

[62] Both IFOR and SFOR were authorized by UN Security Council resolutions but were not under the direct control of the UN. On these forces, see, for example, D. Sarooshi, *The United Nations and the Development of Collective Security* (Oxford: Oxford University Press, 1999) 382 95 and citations contained therein.

[63] There is also the very important case here of Somalia where the UN Secretary General, through his Special Representative, sought to carry out military enforcement action using UN troops (UNO SOM II) with extremely problematic consequences: see Sarooshi, ibid., 263 9.

by states and the requirement of prior Security Council authorization of military action by a regional arrangement under Article 53, and thus unlawful.[64] However, on 26 March 1999, two days after the commencement of NATO bombing, a Russian attempt to get the Security Council to adopt a resolution condemning the NATO military action failed, its 12–3 defeat being seen by some as providing at least a degree of legitimacy to the NATO military action.[65]

In strict legal terms, the action may possibly be justified by an emerging doctrine of humanitarian intervention which, if it does exist, would allow the use of force by states to stop the commission of gross and widespread violations of human rights that are occurring within a state. However, the question whether the doctrine of humanitarian intervention exists in customary international law is a complex matter which is beyond the scope of our current discussion.[66] Nonetheless, any such doctrine would, if it does exist, have to recognize the primary role of the Security Council in this area, and as such its proponents advocate that it could only be used when the Council has made the following determinations: that a humanitarian catastrophe was occurring; that the situation constituted a threat to international peace; and where the Council had identified who was the entity responsible for the gross and widespread human rights violations, in other words who should be the target of the military action.[67] These requirements are fulfilled by the Security Council resolutions on the Kosovo crisis.

If a doctrine of humanitarian intervention does exist then in addition to the above three requirements for its use the UN Charter requires also that there at least be evidence that the Security Council was being prevented from acting to address such a

[64] This is the view of Simma, who finds that the NATO action in Kosovo is unlawful, although he does find that in the circumstances it may, however, have been at least on moral grounds a justifiable violation of the law: B. Simma, 'NATO, the UN and the Use of Force: Legal Aspects', *European Journal of International Law* 10/1 (1999), 1 22.

[65] Only three states voted in favour of this draft resolution in the Security Council: Russia, China, and Namibia. For detailed consideration of this draft resolution, see Adam Roberts, 'The So Called "Right" of Humanitarian Intervention', *Yearbook of International Humanitarian Law* 3 (2000) (The Hague: T.M.C. Asser Press, 2002), 28.

[66] For contrasting views on this highly contentious doctrine of humanitarian intervention in international law more generally see, Christopher Greenwood, 'Humanitarian Intervention: The Case of Kosovo', *Finnish Yearbook of International Law* (1999), 141 75; Roberts, 'The So Called "Right" of Humanitarian Intervention', 28; Sarooshi, 'Humanitarian Intervention and Humanitarian Assistance: Law and Practice'; Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law*, vol. 1 (London: Pearson, 1996), 440 4; Fernando Tesón, 'Collective Humanitarian Intervention', *Michigan Journal of International Law* 17, no. 2 (1996), 323 72 ; Richard Falk, 'The Complexities of Humanitarian Intervention: A New World Order Challenge', *Michigan Journal of International Law* 17, no. 2 (1996), 491 515; Yogesh Tyagi, 'The Concept of Humanitarian Intervention Revisited', *Michigan Journal of International Law* 16, no. 3 (1995), 883 910; Nigel Rodley (ed.), *To Loose the Bands of Wickedness: International Intervention in Defense of Human Rights* (London: Brasseys, 1992); Nigel Rodley, 'Human Rights and Humanitarian Intervention: The Case Law of the World Court', *Inter national and Comparative Law Quarterly* 38, no. 2 (1989), 321 33; and Richard Lillich (ed.), *Humani tarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973).

[67] Christopher Greenwood, *Economist*, 3 Apr. 1999, 20.

situation: such evidence being provided by, for example, the persistent use of a negative veto being cast by one of the Permanent Members.[68] The primary role of the Security Council concerning the use of force requires the fulfilment of all these conditions.[69]

The development of a practice whereby the decision to use military force to enforce earlier Council decisions was taken outside the sphere of the Council would be regrettable for a number of reasons. Primary among them is that one of the great achievements of the Charter was the centralization in the Council of the decision to use military force to protect common standards on behalf of the community of states. This is also, importantly, what the law would seem to require. As Judge Higgins, has pointed out extra-judicially: 'There is no entitlement in the hands of individual members of the United Nations to enforce prior Security Council resolutions by the use of force.'[70]

Regional Arrangements, the Security Council, and the Decision to Use Force

NATO activism has questioned the very issue of where should the balance lie when allocating authority between universal (i.e. the UN) and regional arrangements in the management of conflict. NATO certainly has its own ideas here. Consider, for example, the 1999 NATO Strategic Concept adopted by NATO heads of state and government which provides as follows:

> 6. NATO's essential and enduring purpose, set out in the Washington Treaty, is to safe guard the freedom and security of all its members by political and military means. Based on common values of democracy, human rights and the rule of law, the Alliance has striven since its inception to secure a just and lasting peaceful order in Europe. It will continue to do so. The achievement of this aim can be put at risk by crisis and conflict affecting the security of the Euro Atlantic area. The Alliance therefore not only ensures the defence of its members but contributes to peace and stability in this region.
>
> ...
>
> 24. Any armed attack on the territory of the Allies, from whatever direction, would be covered by Articles 5 and 6 of the Washington Treaty. However, Alliance security must also

[68] It is well settled in the practice of the Security Council that it can otherwise deal with human rights issues and delegate its Chapter VII powers to states to take action to deal with such issues.

[69] Moreover, if the Council were subsequently to become involved with a humanitarian intervention action which had already commenced, by, for example, authorizing states acting individually or through a regional arrangement to carry out a delegated mandate, then the objectives stipulated by the Council would, by operation of law, prevail over any contrary objectives which States or a regional arrangement had up until that time been pursuing. This is due to the effect of Article 103 of the Charter.

[70] Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford: Clar endon Press, 1994), 259.

take account of the global context. Alliance security interests can be affected by other risks of a wider nature, including acts of terrorism, sabotage and organised crime, and by the disruption of the flow of vital resources.

NATO does indicate in general terms that it will work with other international organizations to prevent conflict, but the claim being made in its strategy document, adopted at the highest level, is clear: NATO will act even when it cannot get a green light from the Security Council in order to protect 'Alliance security interests' as they are broadly defined in Paragraph 24. This is seen as being preferable to unilateral state action in such cases.[71] This interpretation must, however, be tempered with the very real contribution that NATO has made to broader peace and security in the former Yugoslavia through its use of close air support and air strikes pursuant to UN authority as set out above, but also its crucial role in implementing the Dayton Peace Accords through IFOR (Implementation Force) and its successor forces SFOR (Stabilization Force) and Kosovo Force (KFOR): in all three cases NATO was delegated authority to use military force. One also must take account of the very substantial contribution that NATO has made to restoring security in Afghanistan through its leadership of the International Security Assistance Force (ISAF) which has since 15 October 2003 operated pursuant to Security Council Resolution 1510.

However, even from a policy perspective, let alone the legal position, the argument that regional arrangements should have the right to initiate the use of force without a Security Council mandate lacks cogency. As John Norton-Moore has stated:

> There are strong reasons for urging that a universal organization should have ultimate authority for the maintenance of peace and security. In the interdependent world in which we live, most issues of peace and security affect all of the members of the world community. Moreover, a universal forum is a more broadly based forum for the resolution of security issues, both in the sense of greater assurance that decision will reflect common community interest, and in the sense of greater effectiveness by inclusion of the major powers in the decision process. A universal security organization should encourage regional settlement of disputes, however, in situations in which the interests at stake are primarily regional, in which regional machinery offers more effective conflict management, or in which the parties to a dispute genuinely prefer a regional forum.[72]

Most issues of peace and security affect all members of the world community. The very nature of the objective being considered – the control of conflict between and within states – requires a common approach in order to provide true security for all states, regardless of what region of the world they happen to fall into. Moreover, a universal forum is a more broadly based forum for the resolution of security issues,

[71] Roberts, 'The So Called "Right" of Humanitarian Intervention', 39 40.

[72] John Norton Moore, 'The Role of Regional Arrangements in the Maintenance of World Order', in Cyril Black and Richard Falk (eds.), *The Future of the International Legal Order* (Princeton: Princeton University Press, 1971), 140.

both in the sense of greater assurance that decision will reflect common community interest, and in the sense of greater effectiveness by inclusion of the major powers in the decision process. A universal security organization should encourage regional settlement of disputes, however, in situations in which the interests at stake are primarily regional, in which regional machinery offers more effective conflict management, or in which the parties to a dispute genuinely prefer a regional forum.

To move back to a practice where states decide unilaterally to take military action, albeit nominally acting within the context of a regional organization, while invoking common interests as a source of legitimacy for their actions, represents a regrettable retrogression in world order. And yet in a number of ways the Security Council as an institution is not at present up to the task of maintaining peace and security in an effective and just manner.

Another problematic issue is the veto. In many ways, the veto is a symptom of a possibly deeper problem: an uncertainty among states whether the Security Council is the right entity to be making decisions about the use of military force. While a multilateral forum is necessary, is the Security Council in its present form and with its present processes the right one? The orthodox view is that of course it is, and that the Security Council is all we have got. But does the Security Council today actually possess the authority and legitimacy that one would expect of a governmental organ taking decisions about the use of military force? Why is it that domestic constitutional and public law constraints that operate within a state to constrain the use of military force by a state are largely inapplicable in the context of the Security Council? And why is it that states which are dictatorships – whose representation of the peoples living within the territories of their states is questionable – should be able to contribute by their participation in the Security Council to the formulation of common standards on behalf of the international community of states and also participate in the decision whether force should be used to uphold these standards? These questions essentially of legitimacy are not of course specific only to the use of military force by regional organizations, but they do have particular relevance to our present discussion. For example, what legitimacy does a regional organization such as ECOWAS possess when it carries out military action in its member states (e.g. in Liberia) to prop up governments when it is itself composed of states some of which are ruled by military dictatorships?

Conclusion

In a case where the Security Council is willing and able to act to maintain or restore peace, then in order to maintain the primary role and authority of the Council in

the area of peace and security there should not be a bypassing of the security system of the Charter by a regional arrangement acting without a UN mandate. One of the major achievements of the Charter was to enact a general prohibition on the threat or use of force by states (except when acting in self-defence) and to centralize decisions relating to the use of force to achieve objectives on behalf of the international community in the UN Security Council. In practice, the Council has often delegated its powers in this regard either to ad hoc coalitions of UN member states or to regional arrangements. This represents a maturation of the system since the international community is accepting, implicitly, that these entities when exercising the delegated powers will be able to act in the interests of the international community and not simply in pursuit of their own interests.

One of the key institutional lessons from the operation of the UN–NATO relationship in the former Yugoslavia is that once the Security Council decides to delegate its military enforcement powers then the decision to use these powers should be left solely to NATO. The dual-key arrangements that were used in relation to the so-called 'safe areas' in Bosnia saw prevarication by the UN with fatal consequences. The UN as an organization – specifically the Office of the Secretary-General – is simply not well-suited to make decisions relating to the use of force and this points to a greater role for regional arrangements acting on behalf of the UN. NATO has taken such effective action on behalf of the UN in a number of cases – IFOR, SFOR, KFOR, and ISAF – but from a legal perspective the important issue in all of these cases is that the overall political authority to terminate such action rests with the Council.

CHAPTER 10

THE SECURITY COUNCIL IN THE POST-COLD WAR WORLD

JEREMY GREENSTOCK

The Global Context

The UN Charter places the primary responsibility for maintaining international peace and security on members of the Security Council, acting on behalf of the whole membership. The intention of the founders in 1945 was to establish a collective approach to matters of peace and war and to deter individual states from taking matters into their own hands. The founders were confident in their expectation that member states of the UN, with the searing experience of two world wars fresh in their minds, would see it as being in their interests to respect the Charter, including Article 25.[1] This responsibility is regularly proposed for re-quotation in Security Council resolutions, usually with the aim of reminding particular states that national objectives must be subordinated to the collective interest.

In practice, they rarely are. The reasons for that are less than perfectly understood around the globe, yet they lie at the heart of many of the political and security

[1] Article 25 of the UN Charter states that '[t]he members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.'

problems that the international system continues to confront in the twenty-first century. The UN Secretary-General appealed to the 2005 UN World Summit to forge a consensus on the security threats facing the international community and on the collective response required, but the different perceptions amongst different cultures and political systems of what comprises security make this a formidable task.[2] In studying how the Security Council discusses and attempts to manage the threat of war, this chapter will try to throw light on the way in which the human impulsion to use force to protect or advance specific interests plays itself out in the modern international arena and comes up against the provisions of the UN Charter.

The United Nations is often criticized for being ineffective in preventing conflict or restraining aggression. Yet the record shows a remarkable reduction in the number of wars between states to settle a clash of interests or to enlarge territory since 1945. The freezing effect of the Cold War, with its built-in threat of nuclear annihilation, played a strong role in this. So did the spread of freedom and democracy and the rejection of colonialism, in both moral and political terms. The impact of the UN, however, should not be underestimated. The existence of a forum for the discussion and resolution of problems between states, within which flowed a gradually strengthening current of condemnation in relation to the use of force against the collective interest, made it increasingly more difficult for individual states to resort to military action to promote national interests without incurring real penalties. The innate justice of the UN Charter in allowing force to be used for self-defence, but in hardly any other circumstances without collective authority, established lines of legitimacy and illegitimacy with genuine impact in the modern world. The UN has proved to be the most effective institution in history for aligning the security interests of the strong and the weak at the global level.

Yet plenty of problems remain. There are those who do not hear or respect what the UN stands for. In the post-Cold War era, these have tended to be political leaders in one of two categories: autocrats more concerned with their hold on national power than with international standards of human behaviour; and local warlords or heads of militias in weak societies where force and brutality are unlikely to be punished. Increasingly, the international system is beginning to reach these more remote areas of social and political collapse, but the UN's mechanisms were not originally designed to focus on them. Adapting UN and other international procedures to allow a more effective response to political and humanitarian abuses has come into conflict with the compulsion to keep the international order steady and unchanged in other respects. We shall see how this dilemma is played out from time to time in the Security Council. We shall also need to note instances where the strongest members of the UN decline to subordinate their vital national interests to collective international judgement, even though they loudly support the rule of law, and their stake in an effective global order is high.

[2] UN doc. A/59/2005 of 21 Mar. 2005, paras. 74 5.

In examining the subject of this chapter, certain fundamental facts have to be kept constantly in mind: the UN is not a global policeman or court, nor does it have resources of its own with which to maintain international order. UN funding comes primarily from the richer states, and its military capability (though not necessarily the greatest number of foot soldiers) from the more powerful. Where serious force has had to be used in the UN's name, it has usually been applied by ad hoc coalitions of states rather than by UN-directed forces as envisaged in the Charter. In practice, therefore, effective action has depended on the decision of the strongest nation states to contribute resources under their own national criteria. This has created, however unintentionally, a double burden on the stronger and larger states: the need to concede an equal vote at the UN to states of much smaller sizes and capabilities, and the need to pay the bill for almost all the executive activity. For governments that have to justify to their domestic constituencies how they expend available national resources, explaining why the call of the international system has to be given priority has proved more difficult the further the origins of the UN have receded in time.

Later chapters in this book will go into detail regarding the major instances of Security Council involvement, successful and unsuccessful, in seeking to restore peace or constrain conflict. In the early years – and the story of the Korean War brought this out well – the maintenance of peace was seen as a continuation of the struggle between the Great Powers and their contrasting political systems. The creation of the Military Staff Committee as a subordinate body of the Security Council, one which still exists in the structure though it never meets on substantive business, was intended to bring together the military representatives of the Permanent Members to ensure cooperation and prevent conflict between them when their forces were to be used in a UN capacity. Only in 1992 was the Department of Peacekeeping Operations (DPKO) established as part of the UN Secretariat to support peacekeeping operations, and only gradually did it begin to gather a capability to organize and lead a multinational assembly of military units from member states. With no more than a few hundred UN headquarters staff available, DPKO has never generated the strength or ability to conduct complex and powerful military operations. On several occasions, a debate has developed over the possibility of having member states allocate standing forces for the UN to deploy as necessary, but it has always ground to a halt when the cost and political commitment has been weighed in the relevant capitals.

The theme of national commitment to the ideals and purposes of the UN thus makes itself felt in a number of ways. The structure of the world, divided into states and related groups of states, lends itself poorly to the business of global government. Human societies have always needed an ethnic, racial, or territorial identity – and the motivation for war is often related to the requirement to express or defend a territorial, tribal, or national interest. Such interests may be disguised inside UN headquarters, but they nevertheless exercise a very real force. While globalization has

had a strong impact in the economic and communications fields, opening up commercial, professional, and indeed criminal opportunities for individuals, businesses, and other sub-national groups in quite remarkable ways, political structures have not evolved to keep up with it. The tensions that result are often felt within the UN, not least in both explicit and implicit appeals, on the one hand, to the sections of the Charter which protect state sovereignty (Articles 2(4) and 2(7)) and, on the other, to the Charter's human rights and collective security provisions. These factors are far more significant than any procedural or institutional considerations in limiting the capacity of the UN to promote peace, and will continue to make it difficult to create the international security consensus for which Kofi Annan has called.

The Security Council at Work

The Security Council comprises the national representatives of fifteen member states, five of whom are permanent and ten of whom are elected for a tenure of two years. The Charter enjoins them all to think and act in the collective interest of the UN membership as a whole.[3] The Permanent Members – China, France, the Russian Federation, the United Kingdom, and the United States (often referred to as the P5) – generate the greatest influence on the substance of the Council's business, partly because of their veto power, partly because of their inherent size and capability, and partly because of their continuity in and familiarity with the system. The ten Non-permanent Members, however, often determine the character of the Council in a particular year. Because they are its changing face, they represent more sensitively and actively than the P5 the interests of the wider UN membership and they can capitalize on the unpopularity of the privileged few. The Non-permanent Members sometimes act together to resist the power of the P5 and prevent them from dominating the proceedings. This has happened on numerous occasions in the Council's handling of the question of Palestine. A further example is the creation of the Amorim Panel of international experts on Iraqi disarmament in January 1999.[4] But the Non-permanent Members can also be paralysed when the P5 are bitterly divided between themselves. This happened most frequently over Iraq, but was also a feature on occasion in the Council's handling of the Balkans, the International Criminal Court, and Western Sahara, to take instances from my period as the UK's Permanent Representative to the United Nations in New York between 1998 and 2003.

The Security Council's agenda is set by agreement between the members at the start of each month, when a new President of the Council takes over (in the English alphabetical order of countries). The UN Secretariat, whose Department of Political

[3] UN Charter, Art. 24(1). [4] UN doc. S/1999/100 of 30 Jan. 1999.

Affairs handles liaison with the Council, offers good professional advice on the issues demanding attention, but the Council decides its own business. Most items on the agenda are carried over from the previous month, as there are numerous long-running matters requiring regular updates or new decisions. A new item can be introduced either by the Secretary-General, in person or through his designated subordinates, or by a member of the Council, many of whom may regularly consult their constituency in the wider membership. If, say, a violent upset has occurred in a particular country, or two neighbouring states which had been growling at each other start to move troops up to their common border, a member of the Council can call for a briefing from the Secretariat and a debate begins. On occasion this can happen in a formal meeting of the Council in the main chamber, but more frequently the first discussion of a new problem takes place in informal consultations in the side-room reserved for the Council. Here, the exchanges are restricted to Council members and relevant members of the Secretariat. The choice of topics is normally made in a common-sense way and the discussion proceeds in an informed and sensible manner. It sometimes takes a day or two for all Council members to catch up with events and receive instructions from their capitals, but the Security Council can move remarkably fast when it has to. The usefulness of informal consultations away from the public gaze is evident when sensitive information has to be included in a briefing or when action to restrain a particular UN member state may be more effective without public fanfare.

The Security Council remains the UN body with the greatest executive authority, since it often deals with headline issues and its resolutions can be binding on all member states. Moreover, it operates with the most efficient committee structure – no more than fifteen members meeting virtually every working day. Nevertheless, it also operates under two real constraints. First, its duties are limited to the maintenance of international peace and security: it is not supposed to stray into economic, social, funding, or other issues which are properly the preserve of different UN organs. This makes it very hard in the daily business of the UN to handle the interlinked nature of many of the modern world's security issues, especially when most members of the developing world place greater emphasis on the economic causes of violence and instability than on rogue behaviour, terrorism, or criminality. An attempt was made by the UK in 2002 to bring together the Security Council and the Economic and Social Council in informal communications and address the linkage between political and economic considerations, but the move was halted by internal suspicions and institutional jealousies. It was an illustration of the failure of the intergovernmental system at the UN to take a comprehensive approach to security matters and reflected the weakness of the General Assembly as an operational body. The 2005 World Summit made a healthy attempt to improve this issue by creating new bodies such as the Peacebuilding Commission and the Peacebuilding Support Office in the UN Secretariat. It will have to be seen whether these bodies will make a real difference in practice. The rather more fundamental problems associated with the practices and effectiveness of

the General Assembly may continue to be a more consistent drag on the power of the UN to address the more difficult issues.

The second major constraint is that the Council has few instruments at its disposal with which to implement its decisions in a compelling way. In the real world of power struggles, disorder, and greed, a seemingly haphazard collection of state representatives in New York pose a very remote threat to a determined political leader facing a crisis on his or her home territory. The Council can react to recalcitrance with verbal condemnation, moving on to a range of sanctions which are hard to direct at a precise target, with the ultimate choice being the authorization of military action if the situation appears to require it. The firmer the penalty, the more controversial it is likely to be within the Council and the broader the collateral or unintended effects of the action taken. The Council is a long way from being able to act as a global policeman.

A high proportion of the Security Council's business since the end of the Cold War has been in Africa, where armed factions rejecting the authority of central governments, sometimes with the assistance of a neighbouring state, have been the most frequent cause of conflict and political division. Control over natural resources, such as minerals for the export market, often fuel these conflicts. Angola, Sierra Leone, and the Democratic Republic of the Congo (DRC) have been classic examples of this kind of conflict, with Angola representing something close to a typical civil war between major internal factions, and the DRC demonstrating how a whole region can become embroiled in a breakdown of ethnic relationships and political order. It is the civilian population which tends to suffer most in such crises. International efforts to treat the causes of conflict have to run in parallel, and sometimes in competition, with action to address a humanitarian catastrophe. When the UN is attempting to cope at the same time with comparable disasters in Sudan, Somalia, Rwanda, Burundi, Liberia, Côte d'Ivoire, Equatorial Guinea, and Western Sahara, it is not surprising that the Security Council comes close to despair as it calculates its capacity to make a difference in one, let alone all, of these formidable challenges.

Action in the Council typically tends to start with a briefing by the Secretariat about the deteriorating situation, often accompanied by informal recommendations. The Secretariat cannot initiate action until it has obtained authorization from the member states and knows that it has funds to cover the operation. The Secretariat's suggestions are couched in language which carefully respects the structural sensitivities: for example, 'the Council may wish to consider whether to authorize a further study/fact-finding mission/preliminary peacekeeping operation.' The Council may decide to signal its intentions with an informal public statement, a formal Council Declaration or, if serious action is immediately required, a resolution authorizing specific remedial action or demanding a response from a government closely involved. An open debate in the main chamber might be scheduled to allow other member states to comment and to draw public attention to a worsening trend, although discreet action is usually tried first. The

Council might have to escalate its decision-making through all these stages before it catches the attention of its targets. The UN in New York might start to liaise with the regional organization – for instance, the Economic Community of West African States (ECOWAS) in the case of Sierra Leone or Liberia – to share the burden of necessary action.

In Sierra Leone, as the political situation gradually deteriorated in the late 1990s, the Council tried a number of avenues, eventually instituting a peacekeeping operation (UNAMSIL) when a Nigerian-led ECOWAS intervention failed to calm the crisis.[5] Then, in the course of 1999 and 2000, the peacekeeping operation found itself too weak to deal with the violence directed at it and it looked as if a few hundred rebels, supplied from Liberia, were going to defeat the efforts of the recognized government and the UN combined. It took an external decision by a friend of Sierra Leone, the UK, acting at the request of the legitimate government in Freetown and intervening with a swift commando action, to knock the rebels back and restore the morale of the UN force. The UK had not sought or received specific authorization from the Security Council, but the basis for the intervention was the need of the (internationally recognized) Freetown government to take measures in collective self-defence and the Council approved the action retrospectively, albeit in indirect terms.[6] There was a moment when France might perhaps have queried the right of the UK to take such forceful action, but the UK and France were working well together on other African issues at that time, a factor which added useful momentum to the Council's efforts on conflict in that continent, and the moment passed.

Neither Angola nor the DRC found an external guardian of this kind. Their troubles were too deep-rooted and the circumstances too complex and dangerous to attract the immediate interest of a capable power. The different factions involved had in any case garnered their own international sympathies and the politics in the Security Council were thus more complicated. Angola never did stimulate effective international action and the largely innocent population suffered two decades of misery and deprivation before the Angolan government finally succeeded in trapping and killing Jonas Savimbi, which cut the strength and motivation of the rebels. A further factor was the doubt in UN circles that the Angolan crisis could be classified as a threat to international peace and security. The exact placing of the dividing line between a domestic and an international issue has remained a constant source of division and controversy since the birth of the UN. Article 2(7) of the Charter expressly prohibits the UN from intervening in matters which are essentially within the domestic jurisdiction of any state, unless the Security Council requires the application of enforcement measures under Chapter VII. A large proportion of UN member states retain an acute interest in seeing that this article is strictly adhered to, as they want to ensure that their internal business is protected and that the powers with the greatest inclination to interfere are kept at bay.

[5] SC Res. 1270 of 22 Oct. 1999.

[6] SC Res. 1299 of 19 May 2000, Arts. 2 & 3.

Thus, on the one hand, we see the impulsion for a large number of UN member states to work for collective approaches to international problems, especially in the areas of politics and security, to diminish the scope for the most powerful states to take unilateral action in their own national interest. On the other hand, the same member states demand that the richest and most capable UN members should contribute a very high proportion of the resources to fund that collective action. They also insist that the circumstances for UN-authorized intervention be confined to instances in which national sovereignty is unlikely to be infringed, a category that is becoming increasingly rare in the modern age. At the same time, we see the world's most powerful countries, who hold a long-term and global interest in the strength and effectiveness of the UN but less often a short-term and domestic one, becoming frustrated with the workings of the General Assembly structure and the UN Secretariat, and reluctant to subordinate their national decision-making to an uncertain and sometimes an unsympathetic global community. It seems that the filter for effective UN action is developing an ever-finer mesh as all these interests come into play, and as the issues which catch the attention of world public opinion broaden and deepen.

Security Council Missions

At the turn of the millennium, the Security Council decided to address certain conflict areas more directly by sending out Council missions to the countries concerned. This was a good move, helping to sharpen the understanding by Council members of the particular issue and to dilute the impression of UN remoteness from the field of action. The DRC conflict, made more complex by its relationship to other problems within the Great Lakes region of Central Africa, was the subject of three such missions between 2000 and 2002. The objective each time was to put pressure on the governments involved in the ethnic and factional fighting in the DRC to reduce their differences and meet the requirements of the numerous UN resolutions and implementation agreements which they were bound to fulfil. A UN peacekeeping operation, eventually reaching a maximum of around 15,000 troops, was put in place during this period, although it faced huge difficulties controlling the outbreaks of violence over such a vast area.[7] Gradually, with the addition of measures to deter the trade in minerals stolen from DRC territory, UN efforts began to bear fruit and the scale of the conflict was narrowed down. But the international community has never been able to substitute for ineffective state structures: gangs of tribal fighters and murderous rebels have been able to operate with relative impunity in the more remote corners.

[7] SC Res. 1279 of 30 Nov. 1999.

The reintroduction of Council missions, an instrument abandoned for some years after the disasters of Rwanda and Srebrenica in 1994 and 1995 respectively, happened suddenly following the collapse of the East Timor peace process in September of 1999. The case will be discussed more fully in Chapter 15. Although Indonesia had appeared to agree to a fair procedure for self-determination for East Timor, the Indonesian military failed to contain the violence which greeted the outcome of a popular referendum on 30 August 1999. The Security Council initially hesitated to become directly involved, then realized that for the UN to stay on the sidelines when its authority was being blatantly contested would be a severe setback. A mission of five members of the Council visited Djakarta and Dili in the second week of September and, coinciding fortuitously with other international pressures on the Indonesian government, helped to persuade it to respect the results of the referendum. Within twenty-four hours of their return to New York, the Security Council had adopted a resolution authorizing an enforcement operation with Indonesian consent.[8] Eight days later, an ad hoc multinational force, led vigorously by Australia, arrived in the territory. This remarkably rapid turnaround did much to restore the morale of the UN in that period.

The Council had less success in addressing one of the rare bilateral conflicts of the modern era, the border dispute between Eritrea and Ethiopia. The first Council mission to the Great Lakes in May 2000, led by Ambassador Richard Holbrooke of the United States, was flying home from Central Africa via Cairo and passed directly over the area when the two countries were coming to the boil. A quick decision was taken on the aeroplane that the Security Council, even though not in proper session, could not ignore the imminent outbreak of war. We diverted immediately to Addis Ababa. Two days of express shuttle diplomacy was tried, but the two capitals – and in particular the two political leaders, Prime Minister Meles Zenawi of Ethiopia and President Isaias Afewerki of Eritrea – were too far gone in their fury at each other to listen to passing diplomats. Nonetheless the fact that the Council mission had taken the trouble to intervene might have shortened the resulting war and probably made it less problematic to establish a peacekeeping operation, the United Nations Mission in Ethiopia and Eritrea (UNMEE), thereafter.[9]

Iraq and its Implications

No issue has created a more severe division among the five Permanent Members of the Council since the end of the Cold War than the saga of Iraq. Chapter 17 goes into details. In the present chapter, it should serve as the prime contemporary

[8] SC Res. 1264 of 15 Sep. 1999. [9] SC Res. 1320, 15 Sep. 2000.

example of the paralysing effect on the Council when the P5 cannot bridge their differences. Iraq reminds us that the UN is, on matters of high politics and security, a reflection of its member states and cannot be expected independently to remedy situations when the protagonists themselves are beyond persuasion. Saddam Hussein counted on the splits visible within the Council to ward off any effective action against his defiance of UN resolutions. When, in early 2003, several years of argument about how to deal with the Iraqi regime came to a climax, the question that exercised the majority of UN members was more how to restrain one member state from action without specific authorization than how to uphold the authority of the UN itself against the ultimate refusal of Iraq to respect it. The application of power and its implications for national interests took precedence for capitals over the health and authority of the only global institution.

Opinions will remain divided on the legality of the armed action in March 2003 and even more on the political legitimacy – a different question – of the removal of Saddam Hussein from power. In the international arena there is no final arbiter of these things beyond the moral and political effect of international – and sometimes domestic – opinion. But the Iraq story demonstrates the clear truth that the UN cannot be expected to deal with every international security issue, particularly the most divisive ones. A certain basic unity of purpose amongst its most influential members is essential, especially in an organization where leadership, of the kind societies have come to demand in a national context, is sadly lacking. There is effectively no level of political decision-making in international affairs above the national level, no supranational structure of authority which can outrank the national level, and no independent body to judge and punish departures from the ideals of the UN's founding fathers. If a state with the power to take unilateral action decides to do so, whether or not the UN approves, the only instrument for resisting it is the opposition of other states. In the case of Iraq, the US had a number of allies willing to take action with it when the Security Council was paralysed, and was able to deflect a charge of unilateralism. Its opponents did not judge the situation as one which they would wish to counter by the use of force: Saddam did not have friends of that kind and the US was, in any case, too powerful. The disapproval of a large number of governments was manifested instead by their reluctance to assist with the aftermath of the conflict and their refusal to characterize the efforts of the Coalition in Iraq as fully legitimate. The UN did try to help the Coalition at the edges through the UN Assistance Mission for Iraq,[10] but the bomb attack on the UN's Headquarters in Baghdad on 19 August 2003, which tragically killed Sergio Vieira de Mello and many members of his team, cut away the capacity and enthusiasm of the UN to play a role on the ground and made the international atmosphere that much more bitter. The task of the Coalition leaders in Iraq since April 2003 was made more difficult as a result.

[10] SC Res. 1500 of 14 Aug. 2003.

The consequences of the Iraq intervention are still evolving. The damage done to the reputation of the UN by its failure to find a collective way to bring Saddam Hussein to order may prove to have been mitigated by perceptions of the travails suffered by the coalition countries because of the absence of UN and broad international support. UN agents were shown to have had a more accurate and professional view of the threat posed by Iraqi weapons of mass destruction than the US and the UK. The final effect of the invasion, if it transpires that Iraq eventually achieves a better condition than it might have done undisturbed, may turn out to have been, in net terms, beneficial. But there is no doubt that the issue has been an explosive one and the limits of the UN's effectiveness, however subjectively perceived, clearly exposed.

The Missing Parts of the Agenda

There are other issues which the UN has not been able to handle successfully because of the strength of national interests involved. The dispute between India and Pakistan over Kashmir, for instance, looks like a classic case for international diplomacy. India, however, the majority of whose population would regard UN intervention as an unacceptable indication that there was a case to arbitrate, has steadfastly refused to allow the Security Council to place Kashmir on its agenda. While not a Permanent Member of the Council, India carries enough weight, and can find enough support from within the P5, to wield an effective veto on this issue. It demonstrates how important it is for the UN to have the main protagonists in a conflict agreeing to UN action, even if they are not members of the Security Council. Indonesia succeeded in the same way over East Timor for over two decades. The internal divisions in Colombia and Sri Lanka, despite having international implications, have also avoided Security Council attention. China, Russia, and the UK have shown similar sensitivities over Taiwan and Tibet, Chechnya, and Northern Ireland respectively. There are many other examples.

It is the question of Palestine, however, which has most often and most controversially slipped away from the UN's grasp. One of the great tasks of the United Nations at its inception was to bring freedom and independence to territories where the native population had a justified claim to nationhood but had not been able to determine their own future. Palestine, though the circumstances were exceptional, clearly came into this category. Yet throughout the life of the UN, the organization has never succeeded, despite the manifestly expressed wish of the vast majority of its members, in settling this most poisonous of international disputes, nor even in establishing a principal role in addressing it. Israel has

declined to accept such a role for the UN and has retained the backing of the most powerful member state, the United States, in doing so.

The Middle East Peace Process, as it is optimistically labelled, has been affected more than any other agenda item by the threat or the use of the veto. While many observers of the UN accept that the veto was the price that had to be paid at the beginning to secure the support of the strongest powers, the majority of member states now resent the privilege more than any other aspect of the UN's machinery. It adds to the frustration felt by Palestine's supporters, which has boiled over into many other UN issues as they seek to raise the cost of the failure to resolve the conflict. The question of Palestine symbolizes, even more emphatically than Iraq, the limits of the UN's powers when member states are divided. It is also a manifestation of the absence of democratic principles and practice at the global level, even when democracy is so strongly advocated at the national level as a principal remedy for conflict.

How Does Security Council Practice Relate to the Charter Provisions?

Since the United Nations was established in 1945, the size and nature of the organization has evolved and the world has changed. It is much harder to elicit effective action from an organization of 192 members with little inclination to accept guidance or leadership from any particular elite than it was with the original membership of 51 and the circumstances of the Cold War. The legacy of the colonial era, the memory of competing superpowers, and the dominance of security issues, including the real risk of nuclear annihilation, still influence national and regional attitudes in the new millennium, even when the substantive priorities of the majority are focused on the unequal distribution of global wealth and a rapidly changing balance of global power. Nevertheless there is a growing sense of political independence everywhere, which encourages polarization rather than coherence. With this evolution, it is remarkable that the UN remains an organization so much in demand and doing so much good. The Security Council continues as a magnet for political attention and, when it gets its mandate right, can play a considerable role in maintaining international peace and security.

Yet there are severe strains. One of them surrounds the right to a veto resting with the five Permanent Members. This no longer has as much relevance to the balance of superpower interests as it did in the Cold War context. It is seen more as an anachronistic privilege, used too often for narrow national reasons to have

retained any real credibility. The UK, which has avoided the use of its veto since 1989, recognizes that it has to earn its status in the Security Council by making, and paying for, a concrete and effective contribution to problem-solving and peacekeeping arrangements wherever it can. The UK's unilateral effort to turn around the situation in Sierra Leone was valuable in this context, as well as signalling the strength of its relationship and debt to a West African partner in desperate need.

That, however, is an example of a rare Permanent Member intervention in peacekeeping, which illustrates another problem: the reluctance of countries with modern, technologically driven armed forces to contribute to peacekeeping operations run along less than modern lines by a hard pressed Department of Peacekeeping Operations. There is strong resentment across the UN membership over the burden, mainly carried by states in the developing world, of providing forces to UN peacekeeping operations.[11] Several attempts have been made to form a basis of cooperation between developed and developing world military philosophies to provide a harder cutting edge to operations in more difficult areas. But these have not so far resulted in a successful format.

There have also been problems over the use of another instrument of the Security Council, sanctions (see Chapter 8). Economic and other non-military penalties have to be available to the Security Council, which otherwise has no enforcement mechanism between the power of words and military intervention. But sanctions, as the record shows, too often do damage to innocent civilians rather than to the regime which has incurred the displeasure of the Council. Again, reforms to make sanctions better targeted and less economically destructive have not yet found the balance between over-comprehensiveness and irrelevance. The history of the various conflicts in Sudan, for instance, illustrates the difficulty for the international community in having a real effect on those responsible for massive abuses of human rights, while respecting the sovereign interests of a member state.

While their wisdom and relevance have in many ways survived the test of time, the Charter provisions of 1945 have not provided the complete answer to today's international peace and security problems. It would have been a miracle if they had, with the world changing so fast. Yet the dangers of revising the Charter, or of starting again with a new global institution, are all too clear. Increasingly, therefore, the UN risks preserving what is still valuable at the cost of a diminishing credibility when it is mixed with the elements that are no longer effective. This applies to the Security Council less intensely than to the General Assembly and some other parts of the organization, but it is still a relevant criticism. Because the United Nations

[11] As of 31 August 2006, the top ten troop contributors to UN missions were Bangladesh, Pakistan, India, Jordan, Nepal, Ghana, Uruguay, Ethiopia, Nigeria, and South Africa: UN Department of Peacekeeping Operations, Fact Sheet, Sep. 2006, available at www.un.org/Depts/dpko/fact sheet.pdf.

remains a rule-based organization, Security Council practice is tied to the provisions of the Charter, but neither the Security Council nor the Charter completely fit the bill of the world's security requirements.

Conclusions

This chapter has not sought to analyse the Security Council's case history in any depth. Other sections of the book will bring out in greater detail some of the trends which have characterized the UN's attempts to eradicate the scourge of war. The record suggests, nevertheless, that a mountain remains to be climbed if a truly global approach is to be forged from the swirl of national interests and cultural identities which make up the world community. What is at present missing from the UN scene is a comprehensive strategy for world security which aligns a proper understanding of the principal threats with linked mechanisms for addressing all their constituent causes. As recommendation 6(a) in Secretary-General Kofi Annan's 2005 treatise *In Larger Freedom* puts it, heads of state and government should

> commit themselves to implementing a new security consensus based on the recognition that threats are interlinked, that development, security and human rights are mutually interdependent, that no state can protect itself acting entirely alone and that all states need an equitable, efficient and effective collective security system; and therefore commit themselves to agreeing on, and implementing, comprehensive strategies for confronting the whole range of threats, from international war through weapons of mass destruction, terrorism, state collapse and civil conflict to deadly infectious disease, extreme poverty and the destruction of the environment.[12]

The successful implementation of such a strategy appears beyond the reach of the community of nations as they operate at present, unless both governments and their constituencies reorder their priorities and respond to the longer-term requirements of a decent, sustainable world. The members of the Security Council, in dealing with just a part of this vital agenda, cannot be expected to do more than reflect the tendencies and interests of those they represent. Until the UN creates its own constituency of global citizens who put their collective concerns first, the picture is unlikely to change.

The Security Council, then, has tried its best to address real security issues in effective ways and has recorded some successes. Its scope and power are constrained by the structural weaknesses in the UN system, and by the impact of national politics on international and collective interests. Improvements will not

[12] Kofi Annan, *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 2 Mar. 2005.

come from any tinkering with procedure or process, and although an expansion of its numbers would deliver a fairer representation of the wider membership, reform would have to address a range of other questions to bring a noticeable upgrading of its performance. The 2005 UN World Summit asked many of the right questions. Will member states be able to find the right answers?

PART III

CASE STUDIES

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CHAPTER 11

THE UNITED NATIONS, THE SECURITY COUNCIL, AND THE KOREAN WAR

WILLIAM STUECK

On 25 June 1950 North Korea launched a conventional military attack on South Korea. As an active participant in the creation of the now threatened Republic of Korea (ROK), the United Nations faced the first test of its capacity as an instrument of collective security. Although in important ways it passed that test, the experience of the Korean War that followed reflected the limitations of the United Nations at least as much as its potential strength. In particular the Korean case reaffirmed the limited utility of the Security Council in the Cold War context of sharp division between the world's two strongest powers. Indeed, in September 1950 the General Assembly emerged as the leading UN body regarding Korea, and it continued in that position not only until the shooting stopped with the signing of an armistice on 27 July 1953 but for the remainder of the Cold War.

From the Security Council to the General Assembly

On a superficial level the role of the Security Council in the Korean War is straightforward. Although Article 39 of the UN Charter gave that body authority to 'determine the existence of any threat to the peace, breach of the peace, or act of aggression, and . . . make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security', the veto power of each of the five Permanent Members, which the Soviet Union had used liberally prior to June 1950, appeared to make Security Council action unlikely in the event of a North Korean attack.[1] In January 1950, however, the Soviet Union began a boycott of the Security Council allegedly in protest of the Council's failure to replace the Republic of China in China's seat with the recently established People's Republic of China (PRC), which now controlled virtually all of the country except Taiwan and some offshore islands. So when war began in Korea on 25 June, the Soviet Union was absent from the Security Council and the United States took the opportunity to push through two resolutions. The first, passed just over twenty-four hours after hostilities began, declared that North Korea had launched an attack on South Korea, called on North Korea to withdraw to the thirty-eighth parallel, the boundary between the two, and requested that members assist in executing the resolution.[2] The second resolution, passed two days later, noted that North Korea had refused to cease hostilities and withdraw to the thirty-eighth parallel. It recommended that UN members 'furnish such assistance to the Republic of Korea [South Korea] as may be necessary to repel the armed attack and to restore international peace and security in the area'.[3] On 7 July, with US forces already committed to the peninsula, the Security Council passed a third resolution recommending that members providing assistance under the previous resolutions make it 'available to a unified command under the United States' and requested that the United States 'designate the commander'.[4] At the end of the month the Security Council passed a fourth resolution placing responsibility for the relief effort in Korea entirely under the unified command.[5]

This six-week period of successful US initiatives on Korea in the Security Council came to an abrupt end on 1 August, when Soviet delegate Jacob A. Malik returned to the body as its president, a month-long rotating position. The Security

[1] For anticipation that the Soviet Union would veto any effort by the Security Council to recommend military action to defend South Korea, see the statement by US Secretary of State Dean Acheson of 13 January 1950 in US Congress, Senate, Foreign Relations Committee, *Reviews of the World Situation: 1949 1950*, 81st Congress, 2nd session, Historical Series (Washington, DC: Government Printing Office, 1974), 191.

[2] SC Res. 82 of 25 Jun. 1950.

[3] SC Res. 83 of 27 Jun. 1950.

[4] SC Res. 84 of 7 Jul. 1950.

[5] SC Res. 85 of 31 Jul. 1950.

Council quickly became a debating society in which the United States and its allies battled the Soviet Union for world opinion rather than seeking solutions to the problems of war and peace. When on 19 September the General Assembly convened its annual session in New York, it largely replaced the Security Council as the focal point at the United Nations for diplomatic manoeuvring on Korea. After November the Security Council became merely the recipient of periodic reports from the UN command and of occasional Soviet and North Korean reports of alleged US misdeeds in the war.[6] Indeed, the United States used the occasion of the Korean crisis and the Soviet stymieing of Security Council action to persuade allies in the General Assembly to pass the 'Uniting for Peace Resolution', which sought to strengthen the larger body's capacity to respond effectively in crisis situations.[7]

US Containment Policy and the Response to North Korean Aggression

When we delve below the surface of this narrative, a variety of conclusions suggest themselves regarding the nature of the Security Council's role in the United Nations and in international politics during the early Cold War. The most obvious is that that role was narrowed severely by the Soviet-American conflict. The United States submitted the Korean issue to the Security Council, and in all likelihood would have done so first even had the Soviets not been absent; but from the beginning State Department officials calculated that, in the event the Soviets returned and blocked action there, the United States would press for a special session of the General Assembly.[8] Under Article 20 of the Charter, such a session could be 'convoked' by the Secretary-General if requested by a majority of its members.[9]

Why did the United States go to the Security Council first? After all, prior US action on Korea at the United Nations had been in the General Assembly. The answer here is also obvious: Chapter VII of the UN Charter grants clear priority to the Security Council in dealing with 'threats to the peace, breaches of the peace, and acts of aggression'.[10] In September 1947, when the United States took the Korean issue to the General Assembly, there was neither a breach of the peace

[6] For 1951 see *Yearbook of the United Nations, 1951* (New York: Columbia University Press, 1952), 229 30.

[7] GA Res. 377 (V) of 3 Nov. 1950. For a frank discussion of US motives here, see Dean G. Acheson, *Present at the Creation: My Years in the State Department* (New York: W.W. Norton, 1969), 448 51.See also Dominik Zaum's discussion of the Uniting for Peace Resolution in Chapter 6.

[8] Glenn D. Paige, *The Korean Decision* (New York: Free Press, 1968), 106, 203.

[9] UN Charter, Art. 20.

[10] UN Charter, Chapter VII.

nor an act of aggression; rather there was a diplomatic stalemate between the United States and the Soviet Union over how to bring about the independence and unification of the peninsula. Under the circumstances the United States could have gone to either UN body, but the existence of the veto in the Security Council steered it in the direction of the General Assembly, where at that time it consistently mustered large majorities in its favour. Now, in June 1950 a clear breach of the peace had occurred and, in the minds of American officials, so had an act of aggression; so the first stop was the Security Council.[11]

Why did the United States consider North Korea's action aggression? Why didn't Washington regard the crossing of the thirty-eighth parallel as merely another act in an ongoing civil war that had raged in Korea off-and-on since at least early 1948? The reason is that the new North Korean action was a large-scale, conventional military attack rather that a mere border raid or infiltration of guerrillas as had occurred in the past; it was into a state, the ROK, that had been recognized by the United Nations; and it could not have been executed without major outside assistance, especially from North Korea's sponsor, the Soviet Union.[12] US President Harry S. Truman believed that if North Korea was not repulsed, the Soviet Union and its allies might be encouraged to undertake a series of other aggressions, just as the Japanese, Italians, and Germans had during the 1930s, when their first moves were not effectively contested.[13] Since the United States and the Soviet Union had been direct competitors in Korea since their occupation forces entered the peninsula in 1945 and the former had been the leading promoter of the Republic of Korea at the United Nations, a failure to rise to the challenge also might undermine America's credibility with key allies, most notably in Europe where the balance of military forces was distinctly to Soviet advantage.[14]

Politics within the Council

Despite the absence of the Soviet Union, not all Security Council members were totally uncritical of US proposals. The body contained six Non-permanent Members

[11] For the State Department's explanation of the decision to go to the Security Council, see US State Department, *Foreign Relations of the United States, 1950*, vol. 7 (Washington, DC: Government Printing Office, 1976), 295 7. Henceforth volumes in this series will be referred to as *FRUS*.

[12] For an argument that the United States was essentially correct in its basic perceptions, see William Stueck, *Rethinking the Korean War: A New Diplomatic and Strategic History* (Princeton, NJ: Princeton University Press, 2002), 61 83.

[13] Harry S. Truman, *Memoirs*, vol. 2 (New York: Doubleday, 1956), 333 44.

[14] William Stueck, *The Road to Confrontation: American Policy toward China and Korea, 1947 1950* (Chapel Hill, NC: University of North Carolina Press, 1981), 185 95.

serving two-year terms. Of these, Cuba, Ecuador, and Norway were firmly in the American camp, but Egypt, India, and Yugoslavia were not, although none were allied to the Soviet Union. The first resolution introduced was passed by a vote of 9 to 0 with Yugoslavia abstaining. However, the wording of the US draft did not go unchallenged. In fact 'armed invasion' in the original American version was changed to 'armed attack'. When US delegate Ernest Gross tried to strengthen 'cease hostilities' to 'cease aggression', he was overruled. These decisions reflected the belief that the information available based on cables from the UN commission stationed in Seoul, the US ambassador to the ROK, and the ROK government remained too fragmentary to justify the stronger language. The delegate from Yugoslavia believed that even the toned down language was unjustified and proposed a resolution, which gained no support, calling only for a ceasefire, a withdrawal of forces to the thirty-eighth parallel, and an invitation to North Korea to send a representative to present its case before the Security Council.[15] (An ROK representative already had been invited and, since it had formal relations with the United States, its ambassador was present at the meeting.)

The second resolution, passed shortly before midnight on 27 June, also received considerable, if hasty, scrutiny. Again the Yugoslav delegate presented a substitute resolution, which was overwhelmingly rejected, reiterating the call for a ceasefire and renewing the invitation to North Korea as well as proposing mediation. By this time four more reports had arrived from the UN commission in Seoul and these provided much additional evidence that North Korea had initiated an all-out attack on South Korea and had no intention of stopping in the face of the first Security Council resolution.[16] Still, the resolution was passed by the bare minimum of seven affirmative votes, with Yugoslavia opposing and Egypt and India abstaining. Despite the expressed unwillingness of two members to assent to a resolution calling for military action without instructions from home, the Americans pressed for an early vote. Indeed, President Truman had authorized air and naval action in support of ROK forces the previous evening. The United States much desired the official stamp of approval of the Security Council for its actions, but its timetable was dictated by military developments in Korea, which were not favourable to the ROK.[17]

The last two resolutions on Korea passed by the Security Council also demonstrated how Washington could use the international body as an instrument of US policy. The first of the resolutions did not begin circulating among Security Council members until early July. By then the pressures of time seemed less compelling and private discussions went on for several days.

[15] UN doc. S/1500 of 25 Jun. 1950. The most detailed description of the meeting, which includes the original US draft, is in Paige, *Korean Decision*, 116 21.

[16] See UN docs. S/1503 of 26 Jun. 1950, S/1504 of 26 Jun. 1950, S/1505 of 26 Jun. 1950, and S/1507 of 26 Jun. 1950, the last being the most decisive.

[17] On the Security Council meeting of 27 Jun., see Paige, *Korean Decision*, 202 6. On Truman's decision for the use of US forces in support of the ROK, see *FRUS, 1950*, vol. 7, 178 83.

Years before, the Security Council had struggled to agree on a formula for designating armed forces from individual countries for use by the United Nations in cases of breaches of the peace. Articles 46 and 47 of the charter provided for a Military Staff Committee, among other things, to 'advise and assist the Security Council' on the 'military requirements for the maintenance of international peace and security... [and] the employment and command of forces placed at its disposal'. This committee was formed in early 1946 and held meetings into 1947, but a variety of divisions among representatives of the great powers, especially between the West and the Soviet Union, prevented agreement; the Security Council itself did no better.[18]

In the summer of 1950, with the Security Council having called on member states to contribute to a venture in Korea, military action under the UN banner had to be organized ad hoc, with units from nations willing and able to provide them. Prevailing conditions in Korea necessitated the immediate reinforcement of the ROK army if it was to have any hope of preventing North Korea from overrunning the entire peninsula, and the United States was the only nation with major forces nearby, namely in Japan. Fifteen other nations would eventually commit armed units to the UN enterprise in Korea, albeit small ones compared with the United States, but the immediate circumstances put Washington in a position largely to define conditions under which its forces would fight in Korea, and it took full advantage of that position.

In early July UN Secretary-General Trygve Lie circulated a draft resolution that included a call for creation of a 'Committee on Coordination of Assistance for Korea' to be made up of several Security Council members. Lie later explained that the committee's

> explicit purpose... was to stimulate and coordinate offers of assistance. Its deeper purpose was to keep the United Nations 'in the picture,' to promote continuing United Nations participation in and supervision of the military security action in Korea of a more intimate and undistracted character than the Security Council could be expected to provide.[19]

Security Council delegates could not agree on its membership, however, and the US Joint Chiefs of Staff viewed the committee as a potential threat to military efficiency, leading Washington to block its creation.

In addition, the Americans prevented any explicit statement in the resolution that UN action was limited to Korea. In response to the North Korean invasion, the United States had announced on 27 June that it would prevent attacks across the Taiwan Strait in the Chinese civil war, a move not supported by most of its European allies and India. Some Security Council members feared that the phrase 'to restore peace and security in the area' in the draft resolution implicitly endorsed

[18] Evan Luard, *A History of the United Nations*, vol. 1 (London: Macmillan, 1982), 98 103; Trygve Lie, *In the Cause of Peace: Seven Years with the United Nations* (New York: Macmillan, 1954), 95 9.

[19] Lie, *In the Cause of Peace*, 333 4.

the action and that this and other moves outside Korea might lead to an expanded conflict. Washington preferred that intervention in the Taiwan Strait be seen as protecting the southern flank while fighting raged in Korea and it accepted only a small change in wording, thus retaining a measure of ambiguity on the matter. The resolution was passed by the minimum of seven votes, as India, Egypt, and Yugoslavia abstained.[20]

The fourth resolution was passed, with nine affirmative votes and Yugoslavia's abstention, late on the day before the Soviet representative returned to the Security Council. Here, too, though, the United States pushed to keep UN operations in Korea, this time in the area of relief, under its own control through the United Nations Command (UNC), now headed by General Douglas MacArthur. In this case the Americans feared either a reappearance of the idea of a Security Council committee, which, if accepted, might encourage members to push again for a similar instrument regarding military assistance, or pressure from the Secretary-General or the Secretariat for a major role. Apparently, the second possibility assisted the United States in avoiding the first, as other members of the Security Council believed that the Secretary-General and the Secretariat already had exceeded their authority in their Korean activities and that direct involvement of the latter, not to mention the Economic and Social Council, might lead to a chaotic administration. Since the relief dimension of the United Nations did not hold the risks of expanded fighting as high as did the military, members were less inclined to want explicit Security Council oversight.[21]

At the same meeting at which the fourth resolution was passed, the United States rushed to introduce another measure in an effort to establish the lead agenda item for August. The initial State Department draft condemned North Korea's 'continued defiance of the United Nations' and called on members 'to prevent the spread to other areas of the conflict in Korea'.[22] The American mission at the United Nations informed Washington that Security Council members would view the latter provision 'as committing them in advance to use their armed forces to prevent [the] spread of conflict to areas other than Korea, and particularly to Formosa, and [it] therefore would be quite unacceptable to them'.[23] Washington got the point and by the time Ambassador Austin introduced the resolution the objectionable clause had been dropped.[24] Since the Soviets had made clear their plan to return to the Security Council on 1 August, US officials recognized that the

[20] For documentation on discussions in New York and between Washington and its allies, see *FRUS, 1950*, vol. 7, 291 329, and War in Korea File, vol. 2, Department of External Affairs, Ottawa, Canada.

[21] Ibid., 490 2. Concern about the Secretary General and the Secretariat among some Security Council members was mentioned by US Ambassador Warren Austin in his telegram to the State Department of 24 Jul., quoted ibid., 491n1. He did not identify the source of concern.

[22] Ibid., 491 2.

[23] Ibid., 495.

[24] UN doc. S/1653 of 31 Jul. 1950.

resolution was unlikely to be passed. In fact Malik's determined efforts to manipulate the agenda during August prevented its discussion until September, when the Norwegian Arne Sunde assumed the president's chair. The Soviet delegate vetoed the resolution on the sixth.[25]

Non-permanent Members and the General Assembly

If the Soviet return prevented the Security Council from passing resolutions, it did not eliminate behind-the-scenes manoeuvring on Korea. This manoeuvring foreshadowed later activities in the General Assembly that played a significant role in limiting the war. The leader was Sir Benegal Rau, who, as the delegate of India, possessed excellent contacts with representatives of other members of the British Commonwealth and delegates of an emerging Arab–Asian group at the United Nations of which his country was a leader. In July India had explored the possibility of a trade-off of Taiwan and China's seat in the Security Council in return for a North Korean withdrawal to the thirty-eighth parallel, but the Americans rejected the idea. Then, during the second week of August, Rau used an informal meeting of non-Communist members of the Security Council to propose creation of a commission of Non-permanent Representatives to that body to study all recommendations for a peaceful settlement in Korea. Rau assumed, he told his colleagues, that proposals would be based on the premises that North Korea would withdraw behind the thirty-eighth parallel and that there would be a ceasefire.[26] Despite encouragement from Canadian and Australian delegates outside the Security Council, Rau never formalized his commission proposal, as Malik threatened to veto any measure that made binding the resolutions of 25 and 27 June, which he claimed were illegal, and Austin expressed concern that any step failing to reaffirm them would imply they were invalid.[27]

Yet the deeper reason for US opposition to the Indian initiative was that Washington desired to keep the option open for a UN ground campaign in

[25] *Yearbook of the United Nations, 1950*, 236.

[26] *FRUS, 1950*, vol. 7, 555 6.

[27] *New York Times*, 15 Aug. 1950, 1; 16 Aug. 1950, 1, 5; 19 Aug. 1950, 3; 20 Aug. 1950, 1, 20; 21 Aug. 1950, 1, 5; 22 Aug. 1950, 1; 24 Aug. 1950, 5. On the Canadian role, see United Kingdom High Commissioner, Canada, to Commonwealth Relations Office, 5 Aug. 1950, FO371/84083, Public Records Office, Kew, UK. On the Australian reaction, see Australian Delegation to the United Nations to the Department of External Affairs, 18 Aug. 1950, A1838, 852/20/4/2/11, Australian Archives (Mitchell Branch), ACT, Australia.

North Korea. A day after Rau aired his proposal, Sir Gladwyn Jebb, the British delegate, told Ernest Gross that his Foreign Office was pressing him to interject 'some positive language' in his upcoming Security Council speech and that this meant something about a peaceful settlement consistent with Rau's premises. Gross cautioned Jebb that suggestion of a ceasefire would be unwelcome, as the United States eventually might want to move ground forces well beyond the thirty-eighth parallel and thus preferred to avoid any prior commitments.[28] In his speech before the Security Council on 11 August, Ambassador Austin indicated that the United States would push the United Nations for an effort to unify the peninsula. Although nothing explicit was said about military operations in North Korea, the context indicated that he was not entertaining the idea of negotiations with the Communists to achieve unification.[29] Three more times during the month, leading US officials made public comments similar to Austin's, while in private they talked increasingly seriously about a ground campaign north of the thirty-eighth parallel.[30] As in the earlier cases involving Korea, the United States was determined to retain the initiative and, apart from the Soviet Union, others were insufficiently discontent with the direction of events to take it away.

Such efforts from other states would come only from the end of November 1950 onward, when the dangers of an expanded war became manifest. By this time the Chinese Communists had intervened in Korea en masse and sentiment against them in the United States was highly inflamed. On 30 November the Security Council voted on a six-power resolution introduced eleven days earlier calling on China to withdraw its forces from the peninsula. Although nine members voted for it, the Soviet Union vetoed the measure (India did not participate), thus largely eliminating the Security Council as a serious force in the evolving crisis.[31] On the same day, however, President Truman engaged in some loose talk at a press conference about the possible use of atomic weapons in Korea and this brought to a head determination among allies and neutrals to restrain the United States.[32]

The General Assembly played a key role in the effort. Facing an insurmountable roadblock in the Security Council, the Americans took their six-power resolution to the larger body. Now, however, NATO allies led by the United Kingdom and Canada, and Arab-Asian states led by India, exerted sustained pressure on the United States to avoid an expansion of the war. They lacked confidence in General MacArthur, whose only concern appeared to be complete victory in Korea even if the fighting extended into China, and they justifiably feared that Washington wanted passage of the six-power

[28] *FRUS, 1950*, vol. 7, 556.

[29] *Department of State Bulletin*, 23 (28 Aug. 1950), 330 1.

[30] *New York Times*, 18 Aug. 1950, 1; *Department of State Bulletin*, 23 (11 Sep. 1950): 375 and 407. On discussion in Washington about a military campaign in North Korea, see William Stueck, *The Korean War: An International History* (Princeton, NJ: Princeton University Press, 1995), 61 3.

[31] UN doc. S/PV.530 of 30 Nov. 1950.

[32] On the beginning of the broad challenge to US leadership, see Stueck, *Korean War*, 130 1.

resolution to pave the way for another measure labelling China an aggressor and calling for sanctions. Fortunately for them, a delegation of the PRC had recently arrived in New York to discuss the Taiwan issue. Their effort focused on getting the PRC and the United States to accept a ceasefire. The latter seemed willing to consider such a step based on the thirty-eighth parallel, but the former, with events on the battlefield going their way, demanded a variety of conditions ranging from the withdrawal of US troops from the peninsula to a resolution of such issues as the fate of Taiwan, Chinese representation in the United Nations, and a Japanese peace treaty. With the United States unwilling to link a deal on Korea with concessions elsewhere, there was no hope of direct talks between the combatants, but the efforts of US allies and neutrals did produce a resolution calling for creation of a ceasefire group.[33] The president of the General Assembly, Nasrollah Entezam of Iran, quickly constituted the group with himself and the Canadian and Indian delegates. On 15 December they succeeded in getting from the Americans 'a generalized statement of conditions' for a ceasefire that included establishment of 'a demilitarized area across all of Korea approx[imately] 20 miles in width with the southern limit following generally the line of the 38th parallel'.[34] This formal expression reduced prospects that, later on, Washington would submit to the temptation of another effort to unite the peninsula by force.

The process of the General Assembly also soaked up time. So long as the military situation deteriorated in Korea, to be sure, pressure would grow in the United States to expand the war. The worst conditions for the United Nations Command developed at the beginning of 1951, when Chinese forces launched an offensive southward across the thirty-eighth parallel and quickly recaptured Seoul. Yet this occurred while the United States was still bogged down in the General Assembly trying to push through a resolution condemning the PRC as an aggressor. That resolution finally was passed on 1 February, but in a form that postponed sanctions indefinitely and by which time the UNC had halted the Chinese advance and was executing limited counteroffensives.[35] This outcome kept the United Nations engaged in the diplomatic processes of seeking a ceasefire and, failing that, of considering additional pressure on China. It was not until 18 May that the General Assembly adopted a measure to apply such pressure, and that pressure amounted merely to a limited embargo.[36] However, the measure, passed only under intense pressure from the United States, gave the Truman administration a victory of sorts at virtually no risk of military escalation beyond the peninsula and at a moment when domestic pressure was again at a peak in the face of General MacArthur's dismissal and the Chinese spring offensives.[37]

[33] GA Res. 384 (V) of 14 Dec. 1950.
[34] Stueck, *Korean War*, 130 42.
[35] GA Res. 498(V) of 1 Feb. 1951.
[36] GA Res. 500 (V) of 18 May 1951.
[37] Stueck, *Korean War*, 148 94.

Impact of the United Nations in the Korean War

The United Nations was only one of several factors in explaining why the war did not escalate beyond Korea. Of greatest importance was the fact that the top leadership of neither of the superpowers wanted such escalation, as they were uncertain of the outcome of a direct Soviet-US military clash and considered Korea to be of less importance strategically than Europe.[38] On the other hand, had the Chinese succeeded in driving UN forces out of Korea, it is doubtful that the Truman administration would have resisted pressures to attack China, at least by air bombardment and naval blockade. Thus battlefield events, rather than UN diplomacy, were indispensable to American restraint.

Still, when the United States went to the United Nations in response to the North Korean attack in June 1950, it committed itself to a process that could not be lightly abandoned, especially given the overriding foreign policy objective of creating an orderly world and the multilateralism regarded as essential for its achievement. This process proved to be an added source of restraint through the darkest days of the war in late 1950 and early 1951. By giving American allies and neutrals a common venue through which they could engage and exert pressure on the United States, the United Nations helped to weigh the scales toward containment rather than escalation.

The General Assembly turned out to be a more critical setting than the Security Council simply because the absence of the veto in the former gave the Americans hope that, with patience, they could forge agreements that, however restrictive, represented more effective instruments of US interests than would emerge from a more independent policy. Such patience was far from universal in the United States among military professionals, legislators, or the general public, but President Truman and Secretary of State Dean Acheson held to their course under sometimes extraordinarily intense pressure.

It is important to acknowledge, nonetheless, that insofar as the United Nations served as a source of restraint on the United States in Korea, it also encouraged the Communist powers to play hardball in negotiations for an end to the fighting. During the summer and autumn of 1951, the UNC was somewhat stronger than its enemy in Korea as is demonstrated by the gains it registered in limited offensives during September and October. Yet with the tentative agreement on an armistice line in November, it halted offensive action on the ground and, by the time the talks became stalemated on the prisoner-of-war issue in the spring of 1952, the Communists were well dug in and reinforced by expanded Soviet aid. A significant factor in

[38] William Stueck, *Rethinking the Korean War: A New Diplomatic and Strategic History* (Princeton, NJ: Princeton University Press, 2002), ch. 5.

American restraint within Korea during the previous autumn was pressure exerted by US allies at the UN General Assembly's annual session, which opened in Paris in November.[39] During the late summer and autumn of 1952, the Communists were encouraged to hold firm on the prisoner-of-war issue by the manoeuvres of several nations in search of a compromise, which culminated in the passage of an Indian resolution at the General Assembly in early December.[40] The Soviet Union sharply rejected that resolution, but the overt pressure placed on the United States by the United Kingdom, Canada, India, and even some countries in Latin America, undoubtedly heartened the Communists in their hope for concessions later on.[41] Ultimately it was the Communist side that made the key concessions, but only in early June 1953 after the new Dwight D. Eisenhower administration in Washington threatened in the face of allied and neutral opinion to the contrary to break negotiations and escalate the war both within and beyond Korea.[42]

One final point bears pondering in relation to the roles of the Security Council and the General Assembly. The presence of the veto in the Security Council unquestionably explains why from late 1950 onward the Korean crisis ended up in the hands of the General Assembly; however, one other difference between the two bodies raises the possibility that, even absent the Soviet presence, the former would have had difficulty sustaining the kind of intense bargaining that occurred in the latter during the winter of 1950–1 and the autumn of 1952. This difference is the non-permanent nature of a majority of the membership of the Security Council. India's delegates were the most consistent strivers for mediation between the Soviet Union and the United States and between the United States and its allies and neutrals, yet India left the Security Council at the end of 1951. Another consistent activist, Canada, never served on the Security Council. Mexico, Peru, and Indonesia – none of whom were on the Security Council – all participated actively in negotiations on Korea during the autumn 1952 session of the General Assembly. India and Canada enjoyed extra weight because of their membership of the British Commonwealth, which facilitated diplomatic cohesiveness. Mexico carried considerable influence with Latin American delegations as the largest of the countries of Central America and the Caribbean. In 1952 its chief delegate, Luis Padilla Nervo, was president of the General Assembly.

This point can easily be magnified out of proportion. Certainly the fact that the top leadership of the Soviet Union and the United States wanted to avoid an expanded war is the leading explanation for that outcome. Furthermore, it is likely that delegates of the countries mentioned above would have been active even had they not been members of the Security Council – as was Canada during the summer of 1950, for example.

Yet outcomes in international politics are not always dictated solely by broad strategic calculations, and leaders are sometimes carried along by forces they would

[39] Stueck, *Korean War*, 238–43.
[40] GA Res. 610 (VII) of 3 Dec. 1952.
[41] Stueck, *Korean War*, 286–306.
[42] Ibid., 313–30.

prefer to resist. Sometimes the institutional frameworks available to diplomats enhance their efforts in achieving important objectives. In the General Assembly every UN member possessed a vote and this fact provided extra motivation for governments to send top diplomats to its sessions and to watch its deliberations closely. The multilateral context of those deliberations facilitated communication among nations and the kind of ad hoc alliances often seen in legislative bodies within nations. Those alliances, in turn, provided an important instrument for exerting pressure on others. In the specific circumstances of the Korean War, the General Assembly, with a membership less than a third of what it is today and generally though not automatically sympathetic to the United States, may have contributed significantly to preventing a bad situation from becoming a lot worse.

Impact of the Korean War on the United Nations

Ironically, while from the autumn of 1947 through most of 1950 the United States used the United Nations largely as an instrument of its own policies in Korea, the war led ultimately to a surge in the influence of middle and smaller powers that survived the armistice. Although that surge was inevitable at some point, given the nature of the General Assembly, its manifestation in late 1950 and early 1951 in the midst of a crisis that threatened to escalate into another world war added dramatically to the sense of purpose of nations other than the superpowers in participating in the international organization.

Even before the crisis sparked by Chinese intervention, the Soviet Union had become persuaded of the utility of its participation in the United Nations. The Soviet boycott of the Security Council prior to the outbreak of war in Korea could easily have turned into an extended absence or even a permanent withdrawal from the entire organization. The Security Council's response to the North Korean attack, however, persuaded Moscow once and for all of the advantages of full participation. Until the United Nations expanded drastically during the late 1950s and 1960s, to be sure, the Soviet Union would most often find itself in the minority in both the Security Council and the General Assembly. Yet its presence in the Security Council gave it the veto power there and its participation in the General Assembly enabled it to manoeuvre in a way that often exacerbated divisions among non-Communist governments.

If the war provided the occasion for a return of the Soviets to full participation in the United Nations, had it not broken out when it did the stated reason for the

boycott might soon have disappeared. That is, the United States had decided earlier in the year that the issue of which government – the Communist or the Nationalist – should hold China's seat at the United Nations was procedural rather than substantive and thus not susceptible to the great power veto in the Security Council. On the eve of war the United Kingdom actively sought to cobble together a majority in the Security Council to vote to replace the Nationalists with the Communists. The United States never explicitly reversed itself regarding the use of the veto, but the outbreak of war in Korea led it to take a more active role in opposition to the PRC. (For one thing, the key resolution passed on 27 June was passed by a minimum of seven votes, with Nationalist China being one of them.) That opposition became all the stronger after the PRC intervened directly in Korea. Once the PRC was fully engaged on the peninsula, its prospects for assuming China's seat in the United Nations virtually disappeared for the foreseeable future.[43] So the Korean War proved decisive in freezing out of the United Nations for an entire generation the actual government of the most populous nation on earth.

In the end the Korean War established the United Nations neither as a reliable instrument of collective security nor as an effective arbiter of international disputes. In the first area, action through the Security Council was unlikely to be replicated because of the end of the Soviet boycott. In passing the 'Uniting for Peace' resolution in November 1950, the General Assembly established a Collective Measures Committee, but its activities over the next year proved no more successful than the Security Council's Military Affairs Committee before it in designating military forces from national armies that would contribute to future UN efforts against aggression.[44] The Korean War suggested that as the Cold War persisted, future UN efforts against aggression would have to depend on improvised action in specific cases through the General Assembly. Yet the Soviet Union was a consistent and aggressive opponent of an expansive role for the General Assembly; and the United States, though the initiator of the 'Uniting for Peace' resolution, was far from uniformly positive about its experience in Korea, where UN members often joined efforts to restrict American manoeuvrability while remaining content to saddle the United States and the ROK with over ninety per cent of the military burden. During the conflict Washington went to great lengths to strengthen the North Atlantic Treaty Organization and to enter into security pacts with nations in the western Pacific, an effort that continued after the armistice. These alliances

[43] On various aspects of the Chinese seat in the Security Council, see Robert Accinelli, *Crisis and Commitment: United States Policy toward Taiwan, 1950 1955* (Chapel Hill, NC: University of North Carolina Press, 1996), 44 5, 79; Ritchie Ovendale, 'Britain the United States, and the Recognition of Communist China', *The Historical Journal* 26, no. 1 (1983), 154 8; William Stueck, 'The Limits of Influence: British Policy and American Expansion of the War in Korea', *Pacific Historical Review* 55, no. 1 (Feb. 1986), 67 70.

[44] On the Uniting for Peace resolution, see Richard P. Stebbins et al, *The United States in World Affairs, 1950* (New York: Harper and Brothers, 1951), 369 72. For the 1951 report of the Collective Measures Committee, see UN doc. A/1891.

provided much more convenient instruments for future multilateral action than the unwieldy General Assembly.

As for the resolution of international disputes, the United Nations, which had played an earlier role in reinforcing the division of Korea, now proved a failure in bringing about its reunification. With the PRC, North Korea, and South Korea blocked from membership, the international organization was an unlikely venue for serious negotiations to end the division. And the maintenance of peace on the peninsula rested far more on the commitment to the ROK of the United States and its maintenance of substantial armed forces there than on any memory of past UN exploits.

So the Korean War revealed the United Nations largely as the equal of the sum of its parts. When most of those parts saw an interest in restraining one of its members – indeed, even the most powerful of them – the organization demonstrated a utility of some consequence. Looking forward from 1953, however, the consistent replication of that utility seemed highly unlikely. Even a single repeat performance was far from guaranteed. The best that can be said is that, unlike the League of Nations and the aggressions of the 1930s, the United Nations did play a useful role in Korea and it survived the experience to remain available as a possible venue for significant action in the future.

CHAPTER 12

THE SUEZ CRISIS AND THE BRITISH DILEMMA AT THE UNITED NATIONS

WM. ROGER LOUIS

> There is only one motto worse than 'my country right or wrong' and that is 'the United Nations right or wrong.'
>
> Aneurin Bevan.[1]

Aneurin bevan's witty yet incisive comment cut to the heart of the division of sentiment in Britain at the height of the Suez crisis in November 1956. On the one side stood those who continued to believe in the supremacy of Britain's traditional national and imperial mission. On the other were the champions of the United Nations who held that the UN Charter had opened a new chapter in international

[1] Richard Crossman quoting Bevan in *Jewish Observer and Middle East Review*, 27 Nov. 1964, cutting in FO 371/178598. Quotations from FO, CO, and other British documents refer to records at the Public Record Office, now the National Archives. The fiftieth anniversary of the Suez crisis in 1956 produced several books that are useful for the subject of Suez and the United Nations: Martin Woollacott, *After Suez: Adrift in the American Century* (London: IB Tauris, 2006); Barry Turner, *Suez 1956: The Inside Story of the First Oil War* (London: Hodder & Stoughton, 2006); Brian Cull, David Nicolle, and Shlomo Aloni, *Wings Over Suez: The Only Authoritative Account of Air Operations During the Sinai and Suez Wars of 1956* (London: Grub Street Publishing, 2006); Laura James, *Nasser at War: Arab Images of the Enemy* (London: Palgrave Macmillan, 2006); and Peter J. Beck, *Using History,*

law, indeed in human affairs, and that the United Nations therefore held the higher allegiance. In fact there was a great deal of ambivalence towards such passionate convictions, but feelings ran high – as high as on any other issue since the debate about appeasement in the late 1930s – and Bevan correctly detected the principal cleavage. At critical points in the Suez crisis, the debate centred as much on what was commonly assumed to be the new world order as on Gamal Abdel Nasser and the Suez Canal. To those who believed in the United Nations, the Suez confrontation represented a supreme test. Nasser's nationalization of the Suez Canal Company on 26 July 1956 not only created a crisis at the United Nations but also, it seemed to many at the time, a turning point in history in which fidelity to international principle came irrevocably into conflict with the self-interest of the European colonial regimes. In 1956 many – and not only in Britain – were cautious about approaching the United Nations to preserve the peace at Suez. This caution was partly because of awareness of the quite different motives and policies of Britain and the United States on this crisis. It may also have been caused by the poor record of the Security Council in the crises between Egypt and Israel in the years before 1956. In 1951 the Council had called on Egypt to stop interfering with goods destined for Israel passing through the Suez Canal.[2] In 1955 it had repeatedly called on both sides to observe the existing ceasefire provisions.[3] All this was to little effect. As the crisis over Suez unfolded in the summer of 1956, it was not referred to the United Nations until 13 September, nearly two months into the crisis, and then on the initiative of Sir Anthony Eden, not John Foster Dulles or Gamal Abdel Nasser.

Part of the reason for hesitation on the British side was the Prime Minister's aim to keep options open, to be able to use force against Egypt if necessary. But the possibility of military operations caused soul-searching reflection on Britain's commitment to the UN Charter, which forbids the use of unilateral action except in extreme circumstances of self-defence. Self-defence was the argument put forward by

Making British Policy: The Treasury and the Foreign Office, 1950 76 (London: Palgrave Macmillan, 2006); see also especially his article 'The Lessons of Abadan and Suez for British Foreign Policymakers in the 1960s', *Historical Journal* 49, no. 2 (2006). For recent decades, see David M. Malone, *The International Struggle over Iraq: Politics in the UN Security Council, 1980 2005* (New York: Oxford University Press, 2006). For further references see the expanded yet significantly different version of this chapter in W.R. Louis, *Ends of British Imperialism: The Scramble for Empire, Suez and Decolonization* (London: I.B. Tauris, 2006).

[2] SC Res. 95 of 1 Sep. 1951. The failure of the UN Security Council to follow up on this resolution, and its more general failure to get a grip on the deteriorating situation between Israel and its Arab neighbours, contributed to a sceptical and even dismissive view of the UN on the part of the Israeli government. See for example the discussion of the UN's role in Moshe Dayan, *Diary of the Sinai Campaign* (London: Weidenfeld & Nicolson, 1966), 10 19.

[3] See for example SC Res. 106 of 29 Mar. 1955, condemning the Israeli attack against the Egyptian forces in Gaza; SC Res. 107 of 30 Mar. 1955 on the demarcation line between Egypt and Israel; and SC Res. 108 of 8 Sep. 1955, urging both Israel and Egypt to continue the ceasefire accepted by both of them and to cooperate with the UN Truce Supervision Organization (UNTSO).

the Lord Chancellor, Lord Kilmuir, and accepted by Eden as the rationale if force proved to be necessary. But the Prime Minister was well aware that the overwhelming weight of legal opinion held that the invasion of Egypt would violate the Charter – a position tenaciously held by the head of the Foreign Office's Legal Department, Sir Gerald Fitzmaurice. So persistent and trenchant were Fitzmaurice's warnings that Eden at one point wrote: 'Fitz is the last person I want consulted. The lawyers are always against our doing anything. For god's sake, keep them out of it. This is a political affair.'[4] It was in fact both a legal and political affair. It is of considerable interest to those interested in the history of the United Nations that Fitzmaurice, one of the most distinguished lawyers within the British government who later became a judge of the International Court at The Hague, saw the issue clearly in both dimensions throughout. Aggressive action against Egypt, he wrote, would destroy Britain's moral influence at the United Nations. Fitzmaurice was emphatic about the result: 'If we attacked Egypt . . . we should, in my opinion, be committing a clear illegality and a breach of the United Nations Charter.'[5]

A guarded and sceptical approach to UN involvement characterized the attitude not only of Eden but also and above all of the Secretary-General, Dag Hammarskjöld.[6] Though he later acquired the reputation as an activist Secretary-General, the qualities of circumspection and caution defined the early years of Hammarskjöld's tenure. The Suez crisis marked his emergence as a leader with breadth of vision and galvanizing, nervous energy. On the whole he managed to steer a steady and neutral course. His performance was all the more remarkable because of his critics' warnings, which would become ever more insistent later in his career, especially during the Congo crisis of 1960–1. His position was vulnerable because neither of the superpowers could rely on him to promote aims other than those of the United Nations. Neither Britain nor Egypt, nor the United States could count on him to defend their interests. Hammarskjöld was his own man. The British referred to him sardonically as the Pope on the East River.[7]

This chapter will assess British aims and motives, thereby demonstrating some of the underlying reasons for the Security Council's failure to take effective action. It

[4] Quoted in Lewis Johnman, 'Playing the Role of a Cassandra: Sir Gerald Fitzmaurice, Senior Legal Advisor to the Foreign Office', *Contemporary British History*, 13 (Summer 1999), 56. See also especially Peter Hennessy, *Having It So Good: Britain in the Fifties* (London: Penguin, 2006), 426 30.

[5] Fitzmaurice to Sir George Coldsteam, Top Secret, 6 Sep. 1956, LCO 2/5760 [LCO = Lord Chancellor's Office]. Fitzmaurice also had emphatic views about the function of the Security Council: 'It is very difficult to get it into the heads of people in this country that the Security Council is not an institution for settling disputes, or even for doing justice between nations, but an institution for preventing or stopping wars.' Minute by Fitzmaurice, 24 Aug. 1956, FO 800/748.

[6] For Hammarskjöld see especially Brian Urquhart, *Hammarskjold* (New York: Harper & Row, 1972); see also Mark W. Zacher, *Dag Hammarskjold's United Nations* (New York: Columbia University Press, 1970).

[7] For this theme see Conor Cruise O'Brien, *The United Nations: Sacred Drama* (New York: Simon & Schuster, 1968).

will also outline the unusually central role of the General Assembly in the outcome of the crisis. The initial British assessment of the prospect of turning to the United Nations was negative. A Foreign Office committee agreed unanimously that it would be better to summon a conference of the maritime powers than to submit the matter to the United Nations. 'A special session of the General Assembly would be chancy', according to the Foreign Office committee, nor would the Security Council be satisfactory. In the atmosphere of the cold war that prevailed at the United Nations, the Soviet Union would probably veto any proposal sponsored by the British. The Foreign Office committee also reached a negative conclusion on the possibility of confiding in the Secretary-General because whatever information they gave him 'would tend to reveal our intentions'. The Committee's report ended on the further negative note that the Chinese President of the Security Council would probably vote with the Arabs. Clearly not much could be expected from the United Nations.[8]

Nor did the Prime Minister think it expedient to turn to the United Nations. 'Please let us keep quiet about the UN', he commented on 8 August.[9] In a manner entirely consistent with his earlier views about the League of Nations, Eden proclaimed himself to be an internationalist but privately he had viewed both the League and especially the United Nations as organizations that might do more harm than good. In the 1930s he regarded the League as an extension of the Foreign Office. The United Nations was much less malleable. Nevertheless he needed to rely on the support of the United States and the Commonwealth, both of which would increasingly insist that Britain show good faith by referring the dispute to the United Nations. Eden did not want to appear as the aggressor in the judgement of world opinion. He therefore acquiesced in the idea of a maritime conference and eventually agreed to submit the issue to the United Nations to prove that Britain had gone to every length to resolve the question by peaceful means. But ultimately there would be a fundamental and irrevocable difference between him and the United States, the Dominions, and not least the Labour Party. Many at the time assumed that the British government would abide by a UN solution to the problem. Yet Eden himself never wavered in the belief that the British must act in their own self-interest regardless of the United Nations.

By late August 1956, and even before, there were signs of internal strain on the British side. Four out of five British voters believed that the dispute should be referred to the United Nations.[10] Most members of the Cabinet now thought that the issue should be submitted to the United Nations before force could be used as an ultimate resort. In explaining British wariness towards the United Nations, Lord Home, the Secretary of State for Commonwealth Relations, succeeded more

[8] Memorandum by J. D. Murray, 30 Jul. 1956, FO 371/119118.

[9] Minute by Eden, 8 Aug. 1956 on Foreign Office to Washington, 7 Aug. 1956, PREM 11/1099.

[10] Ralph Negrine, 'The Press and the Suez Crisis', *Historical Journal* 25, no. 4 (1982), 978.

conspicuously with Australia and New Zealand than with Canada, Pakistan, and India.[11] Much would depend on the attitude of the United States. Within the Cabinet, Harold Macmillan as Chancellor of the Exchequer held a position of particular significance not only because of his estimate of the crisis in relation to the British economy but because of a visit to Washington in September and his assessment of Eisenhower and Dulles. If Eden misjudged the Americans, the misperception was all the more pronounced in Macmillan's celebrated misjudgement that Eisenhower was 'really determined, somehow or another, to bring Nasser down' and would not interfere with British plans.[12]

Much more accurately, Macmillan wrote of Dulles's reaction in mid-September to Britain's submission of the Suez issue to the United Nations. Dulles lost his temper: 'We should get nothing but trouble in New York.' As if to lend colour to the exchange, Macmillan added in his distinctive racy style: 'From the way Dulles spoke you would have thought he was warning us against entering a bawdy-house.'[13] Nevertheless Eden went ahead. The British decision on 13 September 1956 to refer the Suez issue to the United Nations marked a turning point in the crisis.[14] Eden himself had begun to play it both ways: he wanted to be able to use force, but also to emerge, if necessary and if possible, as a man of peace supporting a solution at the United Nations.

The same wariness demonstrated by the British also characterized the Americans and even the Egyptians. It puzzled the British at the time why Nasser did not protest to the Security Council against the mobilization of troops in the eastern Mediterranean. In fact Nasser was suspicious of the United Nations because he believed it to be an organization still dominated by the Western powers. He saw the danger that the United Nations itself might merely cloak a new form of European imperialism. The United States also viewed the United Nations with considerable circumspection. Dulles feared that he could not rely on either the Security Council or the General Assembly to support an American point of view, more specifically Dulles's own aims. The general attitude of uncertainty towards the United Nations helps to explain not only the chronology of events but also how the principles at stake in the crisis were articulated.

At the same time that Britain and France continued military planning and mobilization, and eventually entered into the fateful collusion with Israel, the Suez crisis played itself out at the United Nations. The British, French, and Egyptian representatives came close, as will be seen, to resolving the crisis. After

[11] See Peter Lyon, 'The Commonwealth and the Suez Crisis', in W. R. Louis and Roger Owen, *Suez 1956: The Crisis and Its Consequences* (Oxford: Oxford University Press, 1989).

[12] Macmillan to Eden, Top Secret, 26 Sep. 1956, PREM 11/1102.

[13] Harold Macmillan, *Riding the Storm, 1956 1959* (New York: Harper & Row, 1971), 135 6.

[14] Eden stated in the House of Commons that if the Egyptians defaulted on international obligations 'we should take them to the Security Council'. *Parliamentary Debates*, Commons, 13 Sep. 1956, col. 305. Britain and France submitted letters to the United Nations on 23 Sep.

the Israeli attack on Egypt in late October, however, the British and French vetoed resolutions by the Security Council. The vetoes demonstrated its paralysis. In striking contrast, the General Assembly played a paramount part in the crisis. This was because of the 'Uniting for Peace' resolution, which had been adopted in November 1950 after the end of a boycott of the Security Council by the Soviet Union.[15] According to this little-used procedure, matters affecting security could be transferred to the General Assembly if the Security Council itself could not agree because of the veto. On 31 October 1956, the Security Council decided, against the votes of Britain and France, to call for an emergency session of the General Assembly to discuss the crisis.[16] The General Assembly thus voted on 2 November 1956 to call for a ceasefire.[17] Though it lies mainly beyond the scope of this chapter, the General Assembly in the aftermath of the crisis also created the United Nations' first major peacekeeping mission – the United Nations Emergency Force. In a quite unexpected way, the Suez crisis thus played an important part in the early history of the United Nations.

Prelude to Crisis at the United Nations

In a visit to London in early August 1956, Dulles identified Lord Salisbury as one of the strongest personalities in the British Cabinet. Dulles preferred Salisbury to Eden as a social companion because of Salisbury's 'intellectuality', in other words, an ability to discuss abstract or engaging ideas as well as the scope, depth, and complexity of the problems of the moment.[18] As much as anyone in the Eden government, Salisbury had an understanding of the way the colonial and Commonwealth system had evolved since the beginning of the Second World War. A British representative at the San Francisco conference in 1945, he helped to create the trusteeship system of the United Nations.[19] He was thus one of the founders of the United Nations itself, but he was not uncritical of the organization. At San

[15] GA Res. 377 (V) of 3 Nov. 1950. This was adopted on the initiative of the Western powers in order to make it possible to continue the UN mandate for the use of force in Korea. This was done after the Soviet Union had returned to the Security Council and was thus once again in a position to veto resolutions.

[16] SC Res. 119 of 31 Oct. 1956. As a 'Uniting for Peace' resolution is considered to be a procedural resolution, the veto does not apply.

[17] GA Res. 997 (ES 1) of 2 Nov. 1956.

[18] Herman Finer, *Dulles over Suez: The Theory and Practice of His Diplomacy* (Chicago: Quadrangle Books, 1964), 160.

[19] See W. R. Louis, *Imperialism at Bay* (Oxford: Clarendon Press, 1977), chs. 32 5.

Francisco he had been on guard against establishing an international body that could interfere in the administration of the British colonies. Though an internationalist in the sense of wanting to learn from the mistakes of the League of Nations and to establish an organization that would preserve peace by preventing aggression, he did not want the affairs of the British Empire discussed, in Salisbury's own words, by the 'rag tag and bobtail' Latin American countries and former colonies that increasingly made up the membership of the United Nations.[20] He wanted to avoid, in Churchill's phrase, Britain being put 'in the dock'. It is thus a matter of considerable irony that in November 1956 Britain was not only put in the dock but widely condemned as a renegade rejecting the UN code of international conduct. By bombing airfields and other military targets in and around Cairo at the same time that Soviet tanks crushed Budapest, the British found themselves judged as possessing the same brutal and barbaric standards as the Russians.

Salisbury's support was critical to the Prime Minister. Not only was Salisbury one of Eden's few close friends, but he was also his trusted confidant and central figure within the Cabinet. His concurrence or dissent could influence the Cabinet as a whole. On 27 August he had written to Eden that the UN Charter must prevail over all other considerations, at least before force could be brought to bear as a last resort:

> By my reading, the Charter says clearly and again and again that no member may embark on forceful action until he has referred his problem to the Security Council. I cannot feel that we can get out of that definite undertaking . . . I may be wrong. But, every time, I come up against that snag.[21]

Salisbury and most others in the Cabinet were willing ultimately to use force, but only if it were clear that a genuine effort had been made at the United Nations to resolve the issue peacefully. Another irony of the Suez crisis is that the Foreign Secretary, Selwyn Lloyd, nearly achieved the goal of a UN solution but abruptly became a key figure in the Franco-British-Israeli military alliance leading to war.

Selwyn Lloyd had become Foreign Secretary in late 1955 for the pre-eminent reason that Eden himself wanted to control foreign policy.[22] In Lloyd he found a compliant, competent, and loyal lieutenant. A lawyer by training, Lloyd had served in 1951–4 as Minister of State in the Foreign Office during the Churchill government and had helped to resolve the complex problems of Sudanese independence

[20] As Salisbury had put it to Eden in a letter of 6 Nov. 1952, Salisbury Papers (Hatfield House). Salisbury elaborated on this theme in another letter written in 1953: 'The United Nations has become little more than a machine for enabling backward nations to press claims against the great powers to which they would normally not be entitled . . . As a result, I sadly fear that the strain that is put upon it may eventually kill the institution altogether, which would be a thousand pities.' Salisbury to Eden, Personal, 18 Oct. 1953, Salisbury Papers.

[21] Salisbury to Eden, 27 Aug. 1956, PREM 11/1100.

[22] For Lloyd see D. R. Thorpe, *Selwyn Lloyd* (London: Jonathan Cape, 1989); and Lloyd's own substantial and valuable record, Selwyn Lloyd, *Suez 1956: A Personal Account* (London: Jonathan Cape, 1978).

and British withdrawal from the Canal Zone. He held no brief for the United Nations but his inclination was to work towards a peaceful solution to the Suez crisis. Only because of his loyalty to Eden did he find himself pulled into the collusion with France and Israel.

In the earlier stages of the conflict, Lloyd had laboured tenaciously in the London maritime conference in August to discover principles acceptable to Egypt and the Soviet Union as well as the Western powers. At the Security Council – with Hammarskjöld taking the initiative in acting as an intermediary between the representatives of Britain, France, and Egypt – these points eventually evolved into what became know as the six principles of 13 October 1956:

- free and open passage through the Canal;
- respect of Egypt's sovereignty;
- insulation of the operation of the Canal from the politics of any country;
- Egypt and the users to agree on tolls and charges;
- allotment of a fair proportion of the dues to development of the Canal;
- arbitration to settle affairs between Egypt and the old Canal Company.[23]

The acceptance of the six principles, embodied in a report by Hammarskjöld to the Security Council, occurred at a time when the Suez crisis reached a turning point. Eisenhower at a press conference exclaimed that the work at the United Nations had saved the peace of the world. 'It looks as if a very great crisis is behind us.'[24] Dulles believed Eisenhower's comment to be too optimistic, as indeed it proved to be. No sooner did Lloyd arrive back in London than Eden commandeered him for a mission to Paris on 16 October. Thus began the fateful steps that led on to the secret military accord in a suburb of Paris, Sèvres, a week later.[25] Yet the odds on turning away from the United Nations in favour of military action would still have appeared to most contemporary observers to be no more than 50–50. Military operations were by no means inevitable.

By September–October a declaration of war to reverse the nationalization of the Canal Company was no longer a matter of practical politics, though the directors of the company itself now took certain measures to force the reversal. On 15 September the company withdrew European pilots. Of a total of 205, there remained 26 Egyptian and 7 Greek pilots.[26] Contrary to many assumptions of

[23] Largely because of Hammarskjöld's persistence, these six principles were drawn up at a meeting of the foreign ministers of Egypt, France, and Britain on 12 Oct. 1956. This summary of the principles is from Urquhart, *Hammarskjold*, 167 8. The full text may be found in the version that was formally adopted the following day as SC Res. 118 of 13 Oct. 1956.

[24] *The Times*, 13 Oct. 1956.

[25] For this side of the story see especially Avi Shlaim, 'The Protocol of Sèvres, 1956: Anatomy of a War Plot', *International Affairs* 73, no. 3 (1997).

[26] See D. A. Farnie, *East and West of Suez: The Suez Canal in History, 1854 1956* (Oxford: Clarendon Press, 1969), 726 7. See also especially Kennett Love, *Suez: The Twice Fought War* (New York: McGraw Hill, 1969), 421 4.

what would happen, the Egyptians managed to operate the Canal just as effectively as previously. They gave no ground for complaint. The pretext for declaring war on the issue of running the canal now virtually disappeared.

The archival evidence is ambiguous, but there is good reason to believe that from mid-September Eden began to look for a way out. The country was divided and the House of Commons unmanageable. 'Difficult days in the House', Eden wrote in his diary at one of his low points in the crisis.[27] Probably a majority in the House of Commons and the country at large would have been satisfied with Egyptian guarantees endorsed by the United Nations. When Eden decided, however reluctantly, that he must refer the issue to the Security Council on 13 September, he began to prepare the way for a peaceful solution that found expression in the six principles a month later.[28] But the military discussions came to a head at the same time. The French proposed an ingenious solution (so it seemed to Eden at the time) of intervention by encouraging the Israelis to strike first, thus providing the British and French with a pretext to advance into Egypt by conducting a police operation. Eden, along with his loyal lieutenant, cast Britain's fate towards war rather than peace through the United Nations.

The British Ordeal in Late October and Early November

The climax at the United Nations in late October and early November took everyone by surprise, not least the British Ambassador, Sir Pierson Dixon.[29] On 29 October Israeli forces attacked the Egyptian army in Sinai. On the next day Britain and France issued an ultimatum to Israel and Egypt to stop fighting within twelve hours and withdraw from ten miles of the canal. Israel would retreat from within enemy territory, but Egypt would withdraw from part of her own country under Egyptian sovereignty. British and French forces would occupy strategic

[27] Eden MS. Diary, 12 Sep. 1956, Eden Papers AP 20/1/32 (Birmingham University Library).

[28] The diary entries by Harold Macmillan reveal Eden's uncertainty as well as his ambivalent attitude to the United Nations. In Macmillan's impression, Eden uttered the phrase about taking the issue to the Security Council only after he became 'a little rattled'. A few days earlier Macmillan had written: 'To use force without going to the Security Council is really almost better than to use it after the Council has passed a resolution against it.' According to Macmillan's discerning interpretation of the British dilemma, Eden wavered indecisively and stumbled into the statement in the midst of conflicting pressures of the Parliamentary debate. Macmillan MS. Diary entries 10 13 Sep. 1956. (Macmillan Papers, Bodleian Library, Oxford.)

[29] See Piers Dixon, *Double Diploma: The Life of Sir Pierson Dixon Don and Diplomat* (London: Hutchinson, 1968).

points at Port Said at the north end of the canal, Ismailia towards the centre, and the port of Suez on the southern entrance. Israel accepted the ultimatum but Egypt, not surprisingly, rejected it. The subterfuge of Britain and France – claiming that they were conducting a police operation as peacemakers – deceived few people at the time. As one British commentator put it later, 'If anybody in America believes the story of mere "police action," let him stand up and be counted.'[30]

Dixon had no direct knowledge of the decision to support the Israelis and then to invade. He was not in the inner-circle of those making decisions (nor were the British Ambassadors or representatives in Paris, Washington, Cairo, or Tel Aviv). But he harboured no illusions about what was taking place. According to Harold Macmillan, he possessed 'the most subtle mind in Whitehall'.[31] At the United Nations he was put to the test. The normally gentle and congenial Dixon now had to use the first veto ever exercised by the British. Britain, one of the founding members, now seemed to be undermining the purpose of the organization itself. Though he maintained self-control and a dignified presence, Dixon occasionally revealed the anguish of defending a position he believed to be false.

He learned of the Israeli attack in the late afternoon of 29 October. Hammarskjöld immediately engaged him in conversation along with Henry Cabot Lodge, Jr. (the US Permanent Representative at the United Nations), and Bernard Cornut-Gentille of France who two days later collapsed. Dixon and Cornut-Gentille were disconcerted at the possibility of an emergency meeting of the Security Council – understandably enough, since neither had instructions. Neither welcomed the prospect of being put in the dock. That evening Lodge and Dixon both attended the Metropolitan Opera in formal dress. Lodge summoned Dixon out of one of the theatre stalls to say that he now had instructions from Eisenhower himself to request an urgent meeting of the Security Council to demand Israeli withdrawal.[32] Dixon and Lodge had always regarded themselves as friendly colleagues.[33] But Lodge remarked later the same night that the exchange with Dixon was 'one of the most disagreeable and unpleasant experiences' in his entire life. 'Dixon until now had always been amiable but at this conference the mask fell off and he was virtually snarling.' Dixon said to Lodge: 'Don't be silly and moralistic. We have got to be practical.'[34] The remark is ironic because Dixon himself possessed a keen sense of ethical conduct. He had once written that Britain's place in the world depended largely on 'prestige', by which he meant 'what the rest of the world thinks of us'.[35] A veto would call universal attention to Britain's isolated moral position at the United Nations.

[30] D. W. Brogan, in *The Spectator*, 30 Nov. 1956.

[31] Macmillan MS. Diary, 19 May 1962.

[32] For two slightly different but complementary accounts, Henry Cabot Lodge, *The Storm Has Many Eyes* (New York: Norton, 1973), 130 1, and Dixon, *Double Diploma*, 263 4.

[33] See Edward Johnson, 'The Diplomats' Diplomat', *Contemporary British History* 13, no. 2 (Summer 1999), 193.

[34] FRUS 1955 7, Vol. XVI, quoted in an editorial note 841.

[35] Minute by Dixon, 23 Jan. 1952, FO 371/96920.

The next day the Security Council met morning, afternoon, and night. To Dixon's own chagrin, he first learned of the British and French ultimatum from the Russian representative, who read an Associated Press report to the Security Council. At the meeting in the afternoon, Dixon read verbatim from Eden's speech and tried as best he could to explain the rationale of the ultimatum. He was 'obviously shaken'.[36] Lodge then introduced a resolution demanding Israeli withdrawal. Dixon and Cornut-Gentille thereupon exercised the veto. 'We were opposed by the Americans on every point', Dixon wrote in his diary.[37] In an extraordinary scene – unique in the annals of the cold war – the Russian representative then embraced the American position by submitting virtually the same resolution only to have it again vetoed by Britain and France. According to an American account, 'Both Dixon and Cornut-Gentille were white-faced and hostile to any conciliatory suggestions.'[38] In words that became famous in Foreign Office lore, Dixon wrote of the casting of the vetoes as the climax of 'a thoroughly unsatisfactory day's work.'[39] The world had witnessed the drama of Britain and France defying the United Nations. Paul Johnson, then a young editor at the *New Statesman*, caught the spirit of those who believed in the United Nations when he wrote some months later that 'Britain and France were lurching towards a moral disaster.'[40] The *New Statesman* itself summed up at the time what many believed to be a shattering truth: 'The British government has broken the Charter of the U.N.'[41]

On the next day, on the night of Wednesday 31 October, Britain and France launched air attacks on Egypt. It is revealing to study Dixon's reaction to events at the United Nations because he as much as anyone else felt the tension between Britain's commitment to the UN Charter and the military operations in the Middle East. But it is also useful to keep in mind the more general background. From the time of the Anglo-French air bombardment to the ceasefire less than a week later, events in Egypt took place against the background of the Hungarian uprising and the entry into Budapest by Soviet forces. The British economy seemed to be spiralling towards collapse because of the drain on gold and dollar reserves. On 2 November Israeli troops were on their way to completing the occupation of Gaza and Sinai.

[36] The phrase is Brian Urquhart's in *Hammarskjold*, 173.

[37] Dixon, *Double Diploma*, 265.

[38] US Mission at the United Nations to State Department, Secret, 30 Oct. 1956, FRUS 1955 7, vol. XVI, 859.

[39] Dixon to FO, 30 Oct. 1956, FO 371/121746, quoted in Johnson, 'Diplomats' Diplomat', 182.

[40] Paul Johnson, *The Suez War* (London: MacGibbon & Kee, 1957), 95. On the other hand, Robert Rhodes James correctly points out in a note about Johnson's book that more than half of the British public supported the Suez military operation. (Robert Rhodes James, *Anthony Eden* (London: Weidenfeld & Nicolson, 1986), 555.) Those in favour of the war were not necessarily anti United Nations, though there was a hard core group of Members of Parliament including Julian Amery and the Suez group who could certainly be described as hostile, not least because of the belief, accurate enough, that the United Nations would increasingly interfere in the affairs of the British Empire.

[41] *New Statesman*, 3 Nov. 1956.

Through the procedure of 'Uniting for Peace', the matter now passed immediately to the General Assembly, where the veto does not apply.[42] A resolution sponsored by the United States called on Israel to withdraw and urged an immediate ceasefire. With 6 abstentions, the vote was 64 to 5. Only Australia and New Zealand voted with Britain and her two collusionist allies against the resolution.[43] The resolution constituted one of the most emphatic censures voiced by the General Assembly up to that point.

Eisenhower was re-elected President on 6 November, the same day that British and French seaborne troops landed at the northern end of the canal. In a letter to Eden on 5 November the Soviet Prime Minister, Marshal Bulganin, had hinted at possible rocket attacks on London and Paris. The Soviet government would have been aware that a ceasefire was already under active discussion. Less than 24 hours later, on 6 November, when the invasion forces had advanced only 23 miles down the canal, they received orders to cease fire.

Along with his British and French colleagues, Dixon found himself shunned as an outcast. Condemnation mingled with anger and sorrow in oblique glances. Scornful and embarrassed silence sometimes concealed genuine grief. Dixon recalled the emotionally tense general mood: 'Flanked by our faithful Australians and New Zealanders, we wandered about the U.N. halls like lost spirits. Our best friends averted their gaze or burst into tears as we passed.'[44] The British delegates were avoided as if they were lepers, but some proximity remained necessary. In the General Assembly the seating arrangement was alphabetical, the United Kingdom next to the United States. Dulles himself represented his country on 1 November. He entered while Dixon was attempting to persuade the General Assembly to allow British and French forces to fly the UN flag as peacemakers. Dixon paused on seeing him, perhaps in presentiment of impending danger. 'There was a strained moment as the two men eyed each other.'[45]

Dulles's speech to the General Assembly on 1 November stands as one of the most eloquent statements made during the Suez crisis. He spoke urgently and simply but with deep reserves of sincerity and no ambiguity. He described the theme of his career as upholding international principles, at the Peace Conference in 1919 no less than the San Francisco Conference in 1945. He expressed sorrow at the United States finding itself in disagreement with historic allies. He re-endorsed the purpose of the United Nations in such a way as to cause acute discomfort among the British, French, and Israelis:

[42] SC Res. 119 of 31 Oct. 1956. This was the first time since the Korean War that the 'Uniting for Peace' procedure was invoked to call an emergency session of the General Assembly. Only four days later it was used again with regard to the Soviet use of force in Hungary (SC Res. 120 of 4 Nov. 1956). The 'Uniting for Peace' procedure has been used eight more times since then.

[43] GA Res. 997 (ES 1) of 2 Nov. 1956.

[44] Dixon Diary entry for 7 Jan. 1957, *Double Diploma*, 277.

[45] Leonard Mosley, *Dulles: A Biography of Eleanor, Allen, and John Foster Dulles and Their Family Network* (New York: Dial Press, 1978), 422.

I doubt that any delegate ever spoke from this forum with as heavy a heart as I have brought here tonight. We speak on a matter of vital importance, where the United States finds itself unable to agree with three nations with whom it has ties, deep friendship, admiration, and respect, and two of whom constitute our oldest, most trusted and reliable allies. . . .

We thought when we wrote the Charter in San Francisco in 1945 that we had seen perhaps the worst in war, that our task was to prevent a recurrence of what had been.[46]

He rejected the British solution of transferring authority from British and French forces to a UN peacekeeping operation. If the British proposal were accepted and the United Nations failed to insist on a ceasefire and a renunciation of force, then the General Assembly would have 'torn the Charter into shreds and the world would again be a world of anarchy'.[47] Dixon had forebodings that Britain would have to withdraw from the United Nations, perhaps even face expulsion.[48]

The UN part of the problem was only one aspect of the extraordinarily complicated emergency that now faced the British Prime Minister. But it was an important component in attempting to find an end to the crisis and in view of his own reputation as an international statesman. Eden made a television and radio broadcast on Saturday 3 November, the day after the UN resolution condemning the British and their allies. With the Commonwealth torn asunder and the United States alienated, Eden also faced unprecedented public protest, a tempestuous House of Commons, and an economic crisis that threatened to destroy the Sterling Area as well as the British economy. Yet on television he appeared unruffled and decisive. His calm and determined speech ranks along with Dulles's as one of the most memorable of the Suez crisis. He evoked memories of the 1930s and what appeared to him to be the ineluctable lessons of history. This passage became forever famous:

All my life I have been a man of peace, working for peace, striving for peace, negotiating for peace. I have been a League of Nations Man and a United Nations Man, and I am still the same man, with the same convictions, the same devotion to peace. I could not be other, even if I wished, but I am utterly convinced that the action we have taken is right.[49]

Eden left unspoken his premise that British self-interest must ultimately prevail, but he developed the theme that British and French action would prepare the way for a UN peacekeeping force. He said that the purpose of the military intervention was to put out the 'forest fire' in the Middle East. If the United Nations now wanted to take over from the British and French, 'we shall welcome it.'

[46] Finer, *Dulles Over Suez*, 394 6.

[47] Joseph P. Lash, *Dag Hammarskjold: Custodian of the Brushfire Peace* (Garden City, NY: Double Day, 1961), 83.

[48] Dixon's telegrams to the Foreign Office during these critical days are in FO 371/121746 and FO 371/121747. On the point of expulsion, see Bertjan Verbeek, *Decision Making in Great Britain during the Suez Crisis* (Burlington, vt: Ashgate, 2003), 122.

[49] D.R. Thorpe, *Eden: The Life and Times of Anthony Eden, First Earl of Avon, 1897 1977* (London: Chatto & Windus, 2003), 526. On Eden's television broadcast see especially Tony Shaw, *Eden, Suez, and the Mass Media: Propaganda and Persuasion during the Suez Crisis* (London: Tauris, 1996), 141.

The problem for the British was that there was no forest fire. The contrived rationale for the British and French presence no longer existed. The Israelis completed the conquest of Sinai and Gaza before the British and French invasion. Accusations of collusion were already rampant.[50] The suggestion that the British and French forces might now form part of a UN peacekeeping operation had no appeal at all to most members of the United Nations. Lester Pearson, the Canadian Secretary of State for External Affairs, had played a leading part in creating the UN peacekeeping force.[51] Although he was eminently successful in this project, Pearson found that even the Canadians were regarded with suspicion.[52] The British, French, and Israelis were left with an unqualified ultimatum to evacuate.

The Observer, always the foremost advocate of the United Nations in Britain, wrote on Sunday 4 November, the day after Eden's television broadcast, that the British government had 'flouted the United Nations' and 'dishonoured the name of Britain'. At the United Nations, the British noted with alarm the comparisons being drawn between the Anglo-French bombing of Egypt and the Russian attack on Hungary. Dulles himself went so far as to say that he saw no difference between the British and French action in Egypt and the Russian move to crush Hungary.[53] Dixon felt the full brunt of such judgements. According to the *New Statesman*, another champion of the UN cause in Britain: 'The pathetic figure of Sir Pierson Dixon, fighting back his tears . . . symbolised the dismay of all who had worked to weld the UN into an instrument of peace.'[54]

[50] For example John Coulson of the British Embassy in Washington wrote on 2 Nov. 1956: 'It was naturally particularly galling to the Americans . . . that we should have chosen to cooperate with the French, a country for which they have the greatest contempt and whose policy they consider to be largely to blame for events in the Arab world. Our denials will never catch up with the belief that we and the French conspired with the Israelis to bring this incident about, and we are bound to suffer from the suspicion of deep, if not double, dealing.' J. E. Coulson to Harold Beeley, Confidential, 2 Nov. 1956, FO 371/121794.

[51] A Canadian resolution for the setting up of an 'emergency international United Nations Force' was passed by the General Assembly in the early hours of Sunday 4 Nov. 1956 as GA Res. 998 (ES 1). Subsequent resolutions, such as GA Res. 1001 (ES 1) of 7 Nov. 1956, added concreteness and detail to the proposal.

[52] For the Canadians and the creation of the UN peacekeeping force, see especially Michael G. Fry, 'Canada, the North Atlantic Triangle, and the United Nations', in Louis and Owen, *Suez 1956*. For the United Nations, chs. 7 and 8 in Urquhart, *Hammarskjold*, are the best account.

[53] For example: on 30 October 1956 in a conversation with the French Ambassador Hervé Alphand, Dulles stated 'that in his opinion there was no difference between Anglo French intervention at Suez and the utilization of the Soviet army against the civilian population of Budapest'. In protest, Alphand thereupon got up to leave. Dulles then 'modified' the accusation to assuage him. (FRUS 1955 7, Vol. XVI, 868 n. 3.) On the other hand, the Editor of the *Sunday Times*, H. V. Hodson, who was in the United States at the time, wrote in a balanced comment that would have applied to Dulles and Eisenhower as well as the American public: 'Americans are an emotional people and sentiment against Britain and France may flare; but it will take more than this to turn the people against the Anglo American alliance.' *Sunday Times*, 6 Nov. 1956.

[54] *New Statesman*, 10 Nov. 1956.

The tension continued to mount. In the days following the Anglo-French paratroop drop on Monday 5 November and the landing of seaborne troops the following day, British and French aircraft continued to bomb military targets in and around Cairo. One bomb exploded near the central Cairo railway station. Dixon himself now had a crisis of conscience. He came close to resigning.[55] In a series of urgent telegrams and telephone calls to London, he had already warned both the Foreign Secretary and Prime Minister that the bombing of non-military targets would create an atmosphere of moral revulsion against Britain at the United Nations. On 3 November he had emphasized that further air attacks 'would make a mockery of our repeated assertions that our intervention was an emergency police action confined to the occupation of a few key points along the Canal'.[56] On 4 November the Soviet army launched a major attack on Budapest. On 5 November Dixon used the word 'butchery' to describe Russian behaviour. The same sort of language, to Dixon's distress, was now being used in the General Assembly to denounce the British. His moral turmoil spilled over into a telegram to the Foreign Office:

> Two days ago . . . I felt constrained to warn you that if there was any bombing of open cities with resulting loss of civilian life it would make our proposals seem completely cynical and entirely undermine our position here. . . .
>
> We are inevitably being placed in the same low category as the Russians in their bombing of Budapest. I do not see how we can carry much conviction in our protests against the Russian bombing of Budapest, if we are ourselves bombing Cairo.[57]

Eden promised that the bombing would stop. On the next day, Tuesday 6 November, he halted the advance of British troops down the canal. Eden announced to the House of Commons that the British and French governments had ordered a ceasefire by midnight.[58] The Suez war abruptly ended. Dixon's warnings were hardly influential in the decision to cease fire, but they certainly alerted the Cabinet to Britain's condemned position at the United Nations. Dixon himself later reflected in his diary that defending Britain's case before the General Assembly caused 'the severest moral and physical strain I have ever experienced'.[59]

Some of Dixon's most incisive comments during the Suez crisis focused on Hammarskjöld and the future of the United Nations. Though he reported under emotional stress and at a time of strained relations with the Secretary-General, Dixon always wrote perceptively and realistically. He was relieved, for example, when he wrote on 5 November that Hammarskjöld seemed to be 'far more

[55] See *The Storm Has Many Eyes*, 131, which records that, as early as 30 October during the air attack on Port Said, Dixon said to Cabot Lodge that if the bombing continued 'he personally would resign'.

[56] Dixon to FO, Emergency Secret, 3 Nov. 1956, FO 371/121747.

[57] Dixon to FO, Emergency Secret, 5 Nov. 1956, FO 371/121748. Dixon's telegram is printed in full in Richard Lamb, *The Failure of the Eden Government* (London: Sidgwick and Jackson, 1987), 265 6.

[58] Hansard, vol. 560, 75.

[59] *Double Diploma*, 278.

pre-occupied and incensed with the Israelis than with us'. It was at this time that Dixon observed, as has been mentioned earlier, that Hammarskjöld seemed fascinated by the emergence of a UN peacekeeping force – 'a sort of peace brigade to put out world fires under the general direction of the head of the world organization'.[60] But the creation of the United Nations Emergency Force (UNEF) proved to be a severe strain on both Hammarskjöld and the organization itself. Dixon wrote some weeks later that the Secretary-General told him that he did not possess 'the physical stamina or moral conviction' to continue:

> Hammarkjoeld, I think, is on the verge of collapse. . . . Surprisingly enough this strange intellectual whom we have elevated into a superman is made of flesh and blood. . . . He literally burst into tears this evening.[61]
>
> Allowance must, of course, be made for a very tired and nervous man but . . . he is a very obstinate creature with a unique gift for combining high moral principles with an obscurity of thought and expression which makes it almost impossible sometimes to understand what he is saying, let alone what he is driving at.[62]

But even Dixon recognized that Hammarskjöld had become a distinguished, creative, and indefatigable Secretary-General. Without him the British position at the United Nations might have been much more hazardous. 'It may sound absurd but if this man collapses or turns against us our position will become immeasurably more complicated.'[63] In such faintly disguised praise, Hammarskjöld emerges, even in British assessments, as the key figure in the transformation of the United Nations of the mid-1950s. Though Hammarskjöld attempted to be even-handed, the members of the General Assembly and Hammarskjöld himself regarded 'Egypt as the victim' – with a resulting bias, especially in Dixon's view, against the Western colonial powers.[64] For at least the next decade, anti-colonialism – so marked a feature of the debates during the Suez crisis – not only became the dominant characteristic of the United Nations but one of the principles forever associated with the organization.

[60] Dixon to FO, Emergency Secret, 5 Nov. 1956, FO 371/121748.

[61] Dixon to FO, Secret, 16 Dec. 1956, FO 800/743. On the other hand, Brian Urquhart, who worked under Hammarskjöld at the United Nations, regards Dixon's account as exaggerated, perhaps revealing more about Dixon himself than about Hammarskjöld: 'To one who worked with Hammarskjöld throughout his time at the UN, his "bursting into tears" in the presence of Dixon seems so out of character that I find it virtually impossible to believe . . . Dixon's story allows him to patronize the "strange" Swedish intellectual to whom the British were so deeply in debt.' Brian Urquhart, 'Disaster: From Suez to Iraq', *New York Review of Books* 54, no. 5 (2007).

[62] Dixon to Kirkpatrick, Secret, 22 Dec. 1956, FO 371/119189.

[63] Dixon to FO, Secret, 16 Dec. 1956, FO 800/743.

[64] Dixon to Kirkpatrick, Secret, 22 Dec. 1956, FO 371/119189. Dixon's attempt to correct the perspective was as close as he came in reflecting on the causes of the Suez crisis. In this regard one of the more searching contemporary comments came from the pen of Sir William Strang (Kirkpatrick's predecessor as Permanent Under Secretary): 'The Western world is now paying the price for the Balfour Declaration and all that flowed therefrom'. *Sunday Times*, 18 Nov. 1956.

Unexpected Consequences: UN Peacekeeping

This essay has pursued the theme of Britain and Suez at the United Nations. More generally, as has been emphasized, the year 1956 will be remembered for the dual crises of Suez and Hungary. The two crises were inextricably interwoven, but until recently the Soviet side has remained relatively obscure. At the time it seemed entirely possible that the invasion of Egypt by Britain and France contributed to the Russian decision to intervene in Hungary. Historical scholarship has verified the contemporary perception.[65] At the United Nations, the Soviet Union denounced the invasion of Egypt in part to deflect attention from the suppression of the Hungarian freedom fighters. Anger at Soviet brutality, however, proved to be comparatively muted. Even though the British and French had already alienated virtually all of the non-Western world, it seemed outrageous to the Colonial Office that the British were held to one standard and the Russians to another. The colonial issue became entangled with power politics. John Foster Dulles's slogan of rolling back the Iron Curtain, in the circumstances of 1956, caused anxiety about nuclear warfare. Yet in the event the Soviet Union demonstrated the same caution over Suez as the Western powers did over Hungary. The hollowness of Dulles's slogan became obvious. Short of dropping a nuclear bomb on Moscow, there was not much hope of rescuing the Hungarians. Hammarskjöld feared throughout that the Hungarian crisis or the Suez crisis, or both, might destroy the United Nations. In his own phrase, he believed that catastrophe might degenerate 'into something worse'.[66]

Hammarskjöld had an obsessive and sceptical personality, but his immense energy and unparalleled ingenuity contributed greatly towards the creation of the first UN peacekeeping operation, the United Nations Emergency Force (or UNEF, as it came to be known). British and French forces were mostly home before Christmas, but the UN contingent, initially a force of 700 from small if not entirely neutral nations, stayed until the eve of the 1967 war.[67] One of the ironies of the Suez crisis is that Eden's rhetoric had enabled the United Nations to take action. Despite the vetoes in the Security Council, the General Assembly provided the precedent for peacekeeping operations in subsequent decades.

[65] For example, the perceptive comment by Peter Unwin: 'The final, fatal Soviet decision to intervene . . . was forty per cent caused by developments in Hungary itself, forty per cent by the impact of those developments on the domestic concerns of the Soviet Union, China and the satellites, and twenty per cent by Suez.' Peter Unwin, *1956: Power Defied* (Norwich: Russell, 2006), 216.

[66] Urquhart, *Hammarskjold*, 194.

[67] UNEF itself was non neutral in the sense of monitoring the withdrawal of foreign troops from Egypt but neutral in the sense of remaining as impartial as possible. It came as a jolt to the British to be excluded from the peacekeeping mission, indeed not even to be provided with what Harold Macmillan called a 'fig leaf' to conceal abject withdrawal. For a useful discussion of these points, see Neil Briscoe, *Britain and UN Peacekeeping, 1948 67* (Basingstoke: Palgrave Macmillan, 2003), esp. 47, 84.

Hammarskjöld was described during the crisis as power-hungry for a world police force, but in fact he scrutinized the peacekeeping proposal with nervous pessimism. As has been mentioned, the Canadian Minister of External Affairs, Lester Pearson, proposed the idea and provided vigorous and inspired leadership in implementing it – and consequently received the Nobel Peace Prize.

Hammarskjöld reacted at first not only sceptically but also apprehensively, yet threw himself tirelessly behind the scheme once he became convinced it had practical potential. Pearson and Hammarskjöld were given this opportunity because the United States wanted the British and French plan to fail. The American aim, which succeeded, was to bring the crisis under control as quickly as possible. No one at the time anticipated the long-range consequences: the enhanced influence of the United States in the Middle East, the transformation of Israel from the plucky survivor of the Holocaust and victorious small state of 1948, the expansion of Israel into the regional superpower of 1967, the momentum of France towards creating a unified Europe, and the gradual fading of the mystique of the British Empire as well as the eclipse of Britain as a world power. For Britain, the defeat in 1956 ranks along with the fall of Singapore in 1942. For the United Nations, the peacekeeping precedent represents a landmark in the history of world order.

The British collapse at Suez can also be viewed in the context of decolonization. The Suez crisis did not cause decolonization but it did reflect the essential issues of asserting independence and claiming unfettered national sovereignty. The fault lines within the Commonwealth revealed the division between those who upheld the primacy of the UN's Charter and the goal of sovereign independence for colonial dependencies, and those who believed, for example, that the British Empire would or should continue as a principal guarantor of world peace and a trustee of colonial peoples. The contrast was apparent at the time of the maritime conference, halfway through the crisis in September 1956, in the quite different views of India and Australia. Krishna Menon believed that Egypt's sovereign rights over the canal and its management should be universally recognized. Robert Menzies upheld the view that the management of the canal was a matter of such critical international importance that conditions should be imposed – conditions that seemed to many at the time to amount to a continuation of colonial control. In the famous mission to Cairo to present the British and French demands, Menzies reported that Nasser refused to listen to common sense and rolled his eyeballs towards the ceiling. With the passage of time, it became clear that the implied irrationality belonged as much to Menzies as to Nasser.

The split was not quite along the lines of my country right or wrong, or the United Nations right or wrong, as between those who upheld the principles of the United Nations and those who believed that the future still belonged, or should belong, to the European colonial empires. The outcome of the crisis vindicated the view that colonialism was an anachronism. It also inspired the conviction that UN peacekeeping forces could be used to advantage in resolving future crises.

CHAPTER 13

THE SECURITY COUNCIL AND THE ARAB–ISRAELI WARS: 'RESPONSIBILITY WITHOUT POWER'

BRUCE D. JONES*

Arab–israeli conflicts and wars have preoccupied the Security Council since its founding, and preoccupy it still. More vetoes have been cast in the Security Council on this issue than on any other – nearly as many as on all other issues combined. Until the 1990s, Security Council-mandated peacekeeping operations were heavily focused on the Middle East. Likewise, in their interactions with the Security Council, successive Secretaries-General chose or were compelled to devote considerable attention to the prospects for peace-making in what, during more optimistic phases, has been called the Middle East peace process.

The Arab–Israeli issue, moreover, is one in which Security Council dynamics are intimately tied to complex foreign and domestic politics of the major capitals,

* This chapter benefited from research assistance from Sarah Atwood, Benjamin Tortolani, and from prior research undertaken by Feryal Cherif.

including those of the superpowers. Unlike Security Council responses to second-order conflicts (the majority of the Security Council's work in recent years), Security Council decision-making around the Middle East question often involves weeks of high-level deliberations in and between Washington, London, Moscow, and Paris (Beijing having taken, by and large, a more passive stand on the question). Complex Israeli security and democratic policy-making processes are in play, as are the multifaceted relations between Israel, the United States, and the Jewish community. No Security Council action is taken without facing equally complex dynamics in the Arab world, including the continuing search for prestige and influence by the leading Arab states, the strong emotions the issue evokes among Arab populations, and the often bitter rivalries between Israel's Arab neighbours. To add further complexity, pressure from the US and the international media on this issue is consistently intense.[1]

Owing to the significance and profile of the issue, the UN's performance in the Arab–Israeli theatre, and in the broader Middle East, has long shaped public perception of the body. The UN's relationship with Israel – complex at the best of times – heavily influences perception of the organization in the US media and by the US Congress. The UN's relationship with the Palestinians has long been among the primary issues by which the UN is judged in the Arab world. More recently, of course, the UN's actions and inactions in Iraq have deeply shaped international opinion about the UN – though that is a subject for a different chapter.[2] Moreover, to this day, one encounters the perception that the UN's inability to prevent the outbreak of the first Arab–Israeli war (1947–9) shaped or revealed the real limits of the UN; a perception recalled in Dean Acheson's astute observation that '[t]his idea that the UN was and should be different from its members and could assume responsibility without power has been a curiously persistent one.'[3]

Seen through the lens not of public perception but of the impact on events on the ground, the UN's role in the Arab–Israeli theatre can be seen to have evolved in three distinct phases, around which this chapter is organized. Between 1946 and 1978, the Security Council was engaged in what is best described as conflict management in every Arab–Israeli conflict other than the Suez crisis. During this period, it did not succeed in preventing conflict, though it often contributed to the process of bringing hostilities to an end. Only towards the end of the period did it begin the process of setting out principles or parameters for peace-making. Between 1979 and 1999, the Security Council was, for all intents and purposes, irrelevant to events on the ground (though of course, during the 1990s, the Security

[1] Readers who are inclined to believe that pressure from the press is limited to the contemporary CNN era would do well to read Dean Acheson's accounts of press pressure on US negotiators around the question of the transfer of the British mandate for Palestine to the UN. Dean Acheson, *Present at the Creation: My Years in the State Department* (New York: Norton, 1969).

[2] See also David Malone and James Cockayne's discussion of Iraq in Chapter 17.

[3] Acheson, *Present at the Creation*, 171.

Council was heavily preoccupied and influential in the management of a different Middle East problem, that of Iraq). Most recently, from 1999 to the present, the Security Council has had a growing role in conflict management, peace-making, and even political transformation in the Arab–Israeli theatre. Whether this new role will be sustained is as yet uncertain.

1946–78: Three Decades of Stabilization and Peacekeeping

When the Arab–Israeli issue was first thrust upon it, the Security Council had barely been formed and was meeting at a hotel at Lake Success, while the UN General Assembly was meeting in a converted skating rink in Flushing Meadows, Queens.

1947: The first Arab–Israeli war

For contemporary observers of the UN, two features of the Security Council's role during this period will be unfamiliar: the tensions and rivalry between the United States and the United Kingdom, and the fluidity and ease of relations between the General Assembly and the Security Council. Two other features are more familiar: the importance of the US in shaping overall strategy, and the important role of the UN Secretariat in shaping and implementing Security Council decisions.

The backdrop to the UN's involvement in what, to this day, is referred to in the UN as 'the question of Palestine' was Britain's effort to hand over its mandate responsibility for Palestine. It was an issue that evoked strong emotions, not least in the US where President Truman supported the British intention to transfer the mandate to the UN, while the US State Department resisted it. As then US Secretary of State George Marshall told British Foreign Secretary Ernst Bevin during the course of their negotiations, '[t]he transfer of a vexatious problem to the UN unfortunately does not render it any less complicated or difficult.'[4] The result of sometimes bitter negotiations between the US and the UK over the problem was the establishment of the UN Special Committee on Palestine (UNSCOP) by a Special Session of the General Assembly. UNSCOP was tasked with exploring options for Palestine, including the option of partition.[5]

Intense lobbying followed. In London, Cairo, Washington, and New York, the Jewish Agency for Palestine lobbied for UNSCOP to recommend an independent

[4] Acheson, *Present at the Creation*, 181.

[5] GA Res. 106 (S I) of 15 May 1947.

Jewish state – an outcome that required a partition decision – while the Arab League, the UK, and others lobbied for outcomes that would leave the state primarily in Arab hands, with protections built in for the Jewish population. The Jewish Agency was more successful: five months after it was established, UNSCOP gave its report, calling for partition. The issue was then brought to a vote in the General Assembly. On 29 November 1947, after fierce debate, the General Assembly adopted GA Resolution 181, thereby adopting the UNSCOP Partition Plan, by which the British Mandate was divided into two states, Arab and Jewish.

Sir Brian Urquhart, in his biography of Ralph Bunche, recalls how close the vote was in the General Assembly, with a bare majority mustered to pass the resolution, following which the Arab delegations walked out of the Assembly.[6] Abba Eban, Israel's legendary diplomat and first Permanent Representative to the UN, recalled the euphoria in the Jewish Agency delegation (led by the then aged and unwell Chaim Weizmann from his hotel room at the Waldorf) upon hearing of the result of the vote. He also recalled the stormy reaction of Azzam Pasha, Secretary-General of the Arab League, who warned that 'the partition line shall be nothing but a line of fire and blood', and the dejected certainty of David Ben-Gurion, Israel's Prime Minister-in-waiting, that the UN vote was 'the signal for a savage war'.[7]

The rejection of the Partition Plan by the Arabs – just as the Zionist movement had earlier rejected a similar proposal sponsored by British Foreign Secretary Arthur Balfour – meant in real terms that its provisions could not be implemented. The UN, confronted with the first (though by no means the last) instance of a party or parties to a conflict not abiding by UN decisions, established a UN Palestine Commission to oversee implementation of the General Assembly resolution.[8] Establishment of a force presence was also considered. Foreshadowing later actions, Secretary-General Trygve Lie instructed Ralph Bunche, then a political advisor in the Secretariat, to draft a proposal for the establishment of a UN force to assist in the implementation of the Partition Plan – a proposal that was never formalized after US objections.[9] Given the inability over the ensuing weeks of the Palestine Commission to make progress, the General Assembly disbanded the Commission following a US request, and the Security Council established a Truce Commission designed to ease the sharply escalating tensions in the region. The Truce Commission was composed of those Security Council members with consulates in Jerusalem, namely the US, France, and Belgium.[10] However, within three weeks of the establishment of the Truce Commission, just in advance of a 14 May 1948 midnight deadline for the expiration of the British mandate and against a backdrop of

[6] Brian Urquhart, *Ralph Bunche: An American Life* (New York: Norton, 1993), 153.

[7] Abba Salomon Eban, *An Autobiography* (New York: Random House, 1977), 99.

[8] GA Res. 181 of 29 Nov. 1947. While the Commission was established by the General Assembly, it reported to the Security Council.

[9] Urquhart, *Bunche: A Life*, 154.

[10] SC Res. 48 of 23 Apr. 1948.

mounting violence on the ground, Israel declared its independence. Lebanon, Syria, Iraq, Egypt, and Transjordan mounted a joint attack the next day.

During the 13-month war that followed, the search for an end to hostilities dominated the General Assembly and Security Council agendas, as well as that of the Secretary-General and the Secretariat. Indeed, on the same day as the outbreak of hostilities, the General Assembly established the position of UN Mediator in Palestine,[11] a post that was to be filled by Count Folke Bernadotte upon his selection by the Security Council. Bernadotte was a senior official of the International Committee of the Red Cross, already famous for his work in negotiating the release of several hundred Jews from Nazi Germany to Sweden and other neutral nations. It was not the last time that the UN would make use of Scandinavian neutrality in its search for peaceful solutions.

Bernadotte was immediately dispatched to the region, famously on a plane that was adorned with the emblems both of the UN and the Red Cross.[12] In Kati Marton's biography of Bernadotte, and in Urquhart's biography of Bunche (who had been Secretary to the UN Conciliation Commission for Palestine and was to become Bernadotte's principal aide and then successor), we see Bernadotte's short-lived mission unfolding in a way that is now familiar: the UN mediator travelling back and forth between the parties, engaged in shuttle diplomacy in the search for a ceasefire. Eight days after his appointment, Bernadotte wielded the tool of the Security Council, requesting and receiving a Security Council resolution calling for a truce. Resolution 50 was the first truce resolution in the UN's history, and also called for the establishment of a truce supervision capacity.[13] The UN Truce Supervision Organization (UNTSO) was established soon after, the first of its kind and a precursor to modern peacekeeping.[14] (It is at the same time amusing and dispiriting to read Marton's account of Bernadotte's concern about the slow deployment of police personnel and equipment to UNTSO, occasioned by disconnects between the field and headquarters, slow action by troop contributors, and UN administrative inefficiency. *Plus ça change*...!)

On 11 June 1948, the first UNTSO observers arrived in Jerusalem. One month later, faced with continued military action, the Security Council adopted Resolution 54 insisting that the parties desist from military action and agree to a ceasefire.[15] The binding nature of the Security Council resolution had some effect, and two weeks later Bernadotte and Bunche were able to send the Security Council a plan for the supervision of the truce that was gradually beginning to take hold.[16] Negotiations

[11] GA Res. 186 of 14 May 1948.

[12] Kati Marton, *A Death in Jerusalem* (New York: Arcade Publishing, 1996).

[13] SC Res. 50 of 29 May 1948.

[14] Urquhart notes that the principles set out by Bunche to guide the operation of UNTSO consent, neutrality, etc. hold to this day: Urquhart, *Bunche: A Life*.

[15] SC Res. 54 of 15 Jul. 1948.

[16] The Bernadotte plan was fiercely opposed by the State of Israel: Eban, *An Autobiography*.

and UNTSO deployments continued over the next two months until, on 17 September 1948, shortly after arriving back from his rear base in Rhodes, Bernadotte was ambushed by the Stern Gang, a hard-line Jewish resistance movement, and assassinated.

Three days later, the Security Council appointed Bunche as 'acting Mediator'. The 'acting' remained in Bunche's title throughout the subsequent months, at his own request, as a mark of respect for Bernadotte. Bunche took a very different tack to the ceasefire negotiations from Bernadotte, who had concentrated on getting a comprehensive ceasefire encompassing all the parties. Bunche recognized that the ceasefire would not hold unless tied to a political process leading to a longer-term framework, and decided to tackle each of the major Arab parties to the conflict separately.[17] Thus, in addition to the Security Council's renewed call for a ceasefire on 19 October,[18] Bunche sought and received a Security Council resolution calling for 'permanent armistice' arrangements, stipulated by Resolution 62 of 16 November 1948.

By 6 January 1949, following intense shuttle negotiations, Bunche was able to inform the Security Council that Israel and Egypt had accepted the ceasefire and had agreed to launch armistice negotiations, which Bunche would host and facilitate in Rhodes. Just over six weeks later, on 24 February 1949, Israel and Egypt concluded the Rhodes Armistice. This was followed on 1 March by the start of simultaneous but separate Israel–Jordan and Israel–Lebanon armistice talks. Each of the two tracks was led by one of Bunche's deputies, though Bunche oversaw the entire process. An Israel–Lebanon armistice agreement was reached on 23 March, and on 3 April an Israeli-Transjordan armistice agreement was concluded. All three armistice agreements were subsequently formalized by the Security Council. While the Israel–Egypt and Israel–Jordan armistice agreements were superseded by peace agreements in 1978 and 1994 respectively, the Israel–Lebanon armistice agreement remains in force to this day.

This protracted episode laid the foundations for Security Council diplomacy and more broadly for UN peace-making and peacekeeping, not only in the Middle East. It illustrates two essential themes. First, there are always strong pressures for the UN to act through negotiated consent with parties to a conflict, rather than by authorizing a major military operation, which it has done only rarely.[19] Secondly, to affect those parties' actions, there must be a direct connection between, on the one hand, formal action by the Security Council and, on the other, diplomatic or peacekeeping action by the Secretary-General or Secretariat on the ground. Such a connection can be achieved only if the Secretary-General, or his principal envoys or advisors, retain close relations of trust with the United States or another of the

[17] According to Urquhart (*Bunche: A Life*, n. 56), Abba Eban, then serving as Israel's Permanent Representative to the United Nations, credited the success of the Rhodes Armistice arrangements to Bunche's realization that each Arab party should be treated differently through separate negotiations with Israel, rather than through an all together process.

[18] SC Res. 59 of 19 Oct. 1948.

[19] The clearest examples of UN authorizations of states to use major military force to reverse the results of military attacks are SC Res. 83 of 27 Jun. 1950 on Korea, and SC Res. 678 of 29 Nov. 1990 on Iraq.

Permanent Members of the Security Council, as Bunche – an American himself, but a life-long civil servant of the UN – did with the US.[20]

1956–8: The Suez crisis, and crisis in Lebanon

In the seven years following the passage of the armistice resolution, the Security Council continued to pass occasional resolutions (eleven in all) in response to episodic violence in the still-tense Arab–Israeli theatre, calling for Israel and various Arab parties to abide by their commitments under the armistice resolution.

Tensions in the region began to mount discernibly in 1956 when the newly installed President Nasser of Egypt began to posture on the question of Israeli access to the Suez Canal. Over the course of several months during the summer of 1956, US Secretary of State John Foster Dulles engaged in shuttle diplomacy designed to defuse the mounting crisis. The UK also put pressure on Nasser to back down from his threats: at the time, the UK maintained a naval fleet off the coast of Egypt for the sole purpose of ensuring free passage through the Suez Canal. Nevertheless, on 13 October 1956, Nasser closed the Suez Canal to all international shipping, including that of Israel and the UK.

As elaborated in Roger Louis' chapter in this volume,[21] the UK resisted having the issue brought to the Security Council, as it feared that the vote would go against UK interests. When the issue finally did end up in front of the Security Council, sharp divisions between the UK and France on the one hand, and the United States on the other, created an intensely uncomfortable period in the Security Council.

Given the involvement of both the UK and France in military action in the Sinai, the Security Council was paralysed. But a procedural feint allowed the US, with support from the Soviet Union, to move forward on UN action. On 31 October, taking advantage of the fact that Security Council procedural motions are not subject to vetoes, the US tabled a procedural resolution calling for a General Assembly emergency session. Resolution 119 passed with seven 'yes' votes, two abstentions, and two 'no' votes from the UK and France, though these 'no' votes did not have the force of vetoes. By this device, the US managed to move the Suez Crisis issue from the Security Council to the General Assembly – a striking reflection of the fact that, in the 1950s, the General Assembly was still a body in which the US could normally count on a majority vote in support of its actions. By this time, however, Israel had moved against Egyptian positions in the Sinai on 29 October, followed within two days by UK and French forces. Once again, the Security Council was unable to prevent a war.

Having secured a swift and substantial military victory, and faced with the prospect of UN action through the General Assembly, Israel withdrew its forces

[20] Urquhart notes that, upon completion of the Rhodes negotiations, Bunche was offered a senior job in the US State Department but declined. Urquhart, *Bunche: A Life*.

[21] See Roger Louis' discussion of Suez in Chapter 12.

from Gaza and the Sinai Peninsula on 7 November. The same day, General Assembly Resolution 1001 established the UN's first major peacekeeping force, the UN Emergency Force. This force of over 6,000 troops, which included troops from Brazil, Canada, Colombia, Denmark, Finland, India, Indonesia, Norway, Sweden, and Yugoslavia, deployed within 48 hours to the Sinai Peninsula. To his chagrin, Ralph Bunche was once again dispatched to conduct the detailed negotiations on deployment of the force.

The Suez Crisis, discussed in far greater detail in Louis' chapter above, was thus an important instance of UN conflict management in the Middle East, but less so for the Security Council. It reveals only the obvious: that where a Permanent Member of the Security Council is actively engaged in a military conflict, the Security Council will not be able to act.

It was not long, however, before the Security Council was again engaged in the Middle East. Reeling from military defeat in the Suez conflict, President Nasser announced in March 1957 that Egypt and Syria would unite into the United Arab Republic (UAR). In January 1958, Lebanese President Chamoun called for a Security Council meeting to complain about Syrian/UAR interference in Lebanese domestic affairs, a call supported by the US, France and the UK (and Israel), but ultimately blocked by the Soviet Union. Following rising tensions, on 15 July 1958, the US deployed marines into Beirut to protect Chamoun. On the same day, the Security Council created a small (three-person) Observer Group in Lebanon (UNOGIL, perhaps the least well-known UN mission),[22] later increased in size by then Secretary-General Dag Hammarskjöld. The US marines withdrew on 25 October 1958, and UNOGIL had withdrawn by the end of November 1958.

The episode did not involve Israel, and thus does not fall within the scope of this chapter's focus on Arab–Israeli wars, nor was it a particularly significant episode either in the Middle East context or in the life of the UN. But what it does illustrate is that the character of Security Council involvement in the Middle East was starting to change. By the late 1950s, the Security Council's ability to act and the manner in which it did so was dominated – and not only in this theatre – by the Cold War, and by two concerns shared by the US and the Soviet Union: to prevent the other from taking a lead in the region, and to prevent the region from becoming a spark to a broader US–Soviet war.

1967: The Six Day War

These Cold War preoccupations would be front and centre as the region once again fell into violence in 1967. Since 1948, of course, the region had never been free from political tension and sporadic military clashes. Yet after a few years of relative calm

[22] The establishment of UNOGIL was based on SC Res. 128 of 11 Jun. 1958.

on the Arab–Israeli front following the Suez Crisis, tensions began to mount again in 1966. Tensions reached a crescendo in April 1967, as Israel and Egypt clashed in an aerial battle over the Golan Heights. (Wreckage from Egyptian MiGs can still be found on the eastern hillside of Mount Harmon.)

As had been true in 1956, escalation in the Middle East was matched by a ratcheting up of US shuttle diplomacy. US Secretary of State Henry Kissinger's autobiography of the period reflects his own realization about the ultimate futility of this diplomacy.[23] Certainly nothing in his diplomatic effort succeeded in dulling Nasser's appetite for a conflict, or in ultimately preventing war.

Security Council engagement in this pre-war period was dominated by the fact that on 18 May 1967, Egypt requested the withdrawal of UNEF from its borders. This episode has coloured perceptions of the UN ever since, especially in the Israeli mindset. Egypt had given its consent to the deployment of the force and could, according to the force's mandate (and the general realities of the UN), withdraw its consent at any moment, thereby facing Secretary-General U Thant with an acute dilemma. Thant was concerned that, should he not comply, UN forces on the ground would be targeted by Egypt. More to the point, it was far from clear, in legal terms, that the UN had any choice but to comply with the Egyptian request. On the other hand, compliance with the request would be seen to constitute UN acquiescence to a war.

Urquhart has written eloquently about the hypocrisy of member states that set certain conditions for the UN and then complain when the UN complies with them. In his view, the international outcry that accompanied Thant's decision ultimately to withdraw UNEF was an example of such hypocrisy.[24] Having supported a UN force for the Sinai on the condition that it was agreed to by the parties, member states then complained when the UN complied with a logical outcome of that condition. Certain historians, however, maintain that U Thant did too little to test Egyptian resolve or to rally international support in defence of UNEF and against the Egyptian request.[25] For example, Thant might have referred the matter to the General Assembly for debate prior to withdrawing the troops, thereby forcing Egypt to explain its actions.

Whichever perception is true, two facts remain: UNEF was withdrawn in late May 1967; and this decision was received by the Israeli public as a fundamental betrayal by the UN, forging a negative perception of the UN in the Israeli public mindset that has not been dispelled to this day. Abba Eban, at the time Israel's Foreign Minister, is fair in his treatment of U Thant's action during this period, calling his reasons for withdrawing UNEF forces – especially U Thant's argument about 'the essentially fragile nature of the basis for UNEF's operation throughout

[23] Henry Kissinger, *Years of Renewal* (New York: Simon & Schuster, 1999).

[24] Urquhart, *Bunche: A Life*, 407; see also U Thant's letter to the General Assembly from May 18, 1967, UN doc. A/6669.

[25] Urquhart, *Bunche: A Life*, 400 16.

its existence'[26] – as being 'beyond challenge'.[27] He is more searing in his conclusion that 'this "fragile nature" meant that, thereafter, Israel would refuse to place its vital interests in the UN's hands.'[28]

On 23 May 1967, Egypt closed the Straits of Tiran, a shipping route at the edge of the Sinai Peninsula critical to Israeli security and commerce. On 5 June, Israel attacked Egyptian forces in the Sinai, along with Egyptian and Syrian air defences, Syrian positions in the Golan, and the Jordanian front lines in the Jordan Valley and Jerusalem. At the end of the Six Day War, Israel controlled the Sinai, the Golan Heights, the Jordan Valley, and East Jerusalem.

Volumes have been written about this one episode in the broader history of Arab–Israeli conflict, most recently, in Michael Oren's sweeping account of the Six Day War.[29] Certainly this entire chapter, and even an entire volume could be devoted to an account of the Security Council's role during this period. However, the themes relating to Security Council action are few.

As with 1948, the Security Council was not used as an instrument in this case for the avoidance or prevention of war. Indeed, some would argue that the decision by the Secretary-General to withdraw UNEF helped trigger the war, though that seems an excessive judgement given the evident intent of Egypt to create a crisis. In any case, it remains true that, in 1967 as in 1948, the Security Council's engagement in conflict management largely took the form of seeking to stabilize the situation in the *aftermath* of war, and shape the political process ahead.

UN efforts to stabilize the political situation after the end of the war took place in three phases. First, the Security Council sought a resolution that would set out conditions for a ceasefire. Draft resolutions introduced by the Soviet Union called for the ceasefire to be based on a withdrawal to the lines that preceded the outbreak of hostilities, a position rejected by Israel and also by the United States. Israeli officials lobbied hard in Washington for the US to reject the Soviet proposal, and opened up an alternative by suggesting that Israel both wished to abandon the armistice agreements that had held since 1948 and was prepared to negotiate towards a peace deal. This in turn was rejected by the Soviets and the Arabs. By the time of the normal UN summer recess, no agreement had been reached in the Security Council. A late effort by the Soviets to obtain a General Assembly resolution failed when a joint US–Israeli lobbying effort managed to deprive the Soviets of the two-thirds majority needed.

[26] 'Cable containing instructions for the withdrawal of UNEF sent by the Secretary General to the Commander of UNEF on May 18, 1967, at 2230 hours New York time', UN doc. A/6730/Add. 3 of 26 Jun. 1967, Annex. Cited in Michael K. Carroll, 'From Peace (Keeping) to War: The United Nations and the Withdrawal of UNEF', *Middle East Review of International Affairs* 9, no. 2 (Jun. 2005), n. 27.

[27] Eban, *An Autobiography*, 323.

[28] Ibid.

[29] Michael Oren, *Six Days of War: Jun. 1967 and the Making of the Modern Middle East* (Oxford: Oxford University Press, 2002).

With the return to New York in the autumn, the Security Council again sought to pass a resolution. Negotiations in New York produced no results. Then in November, the Soviets raised the stakes by threatening intervention should no agreement be reached. Ultimately, Soviet Foreign Minister Andrei Gromyko cut a deal with the US State Department, whereby the two great powers took a common position on draft language that would link a ceasefire to withdrawal from the territories occupied during the Six Day War. However, as has been a steady pattern in Middle East diplomacy, the State Department discovered that it was not quite on the same page as the President when President Johnson reassured the Israelis that he would not accept a resolution that saw them return to the pre-1967 lines without political gains in return.[30]

Ultimately, the UK Permanent Representative to the UN Lord Caradon approached the Israelis with a set of proposals. Lord Caradon argued that there was no way of achieving a ceasefire resolution without emphasizing 'the inadmissibility of the acquisition of territory by war', but noting that this could be kept to a preambular paragraph, with an operative paragraph linking actual withdrawal to political negotiations.[31] The end result was Resolution 242, probably the most famous resolution in the Security Council's history, which established the principle thereafter referred to in shorthand as 'land for peace'.[32] Specifically, Resolution 242 asserted the non-admissibility of the acquisition of territory through force, and stipulated that Israel should ultimately return 'territories' occupied through the course of the 1967 conflict. Famously, the English language version of Resolution 242 did not specify that Israel should return 'the' territories, though the French language version does – the formulation 'the territories' was understood by Israel to constitute too precise a reference to all of the land east of the 1967 ceasefire line. The French language version is used to support a broad interpretation of Resolution 242, particularly by Arab states, such that Israel is required by Resolution 242 to return all of the lands seized during the 1967 war to gain peace and recognition. This interpretation, however, is at odds with the account of Lord Caradon, who made it clear that the definitive article 'the' was deliberately excised from the resolution to gain consensus within the Security Council.[33] The Soviets accepted

[30] Eban, *An Autobiography.*

[31] For Lord Caradon's own account of these negotiations, see Lord Caradon 'Security Council Resolution 242' in Lord Caradon et al., *UN Security Council Resolution 242: A Case Study in Diplomatic Ambiguity*, Institute for the Study of Diplomacy, Georgetown University, Washington, DC, 1981. See also Eban, *An Autobiography*, 451.

[32] SC Res. 242 of 22 Nov. 1967.

[33] A text that specified that 'the territories' seized in war would be interpreted by Israeli as constituting reference to the entirety of the territories east of the ceasefire line that they seized during the 1967 war; Israel was not willing to specify in advance of negotiations that peace was conditional on return of 100% of that territory. On the other hand, no mention of territory seized by war would be interpreted by the Arabs as meaning that they were supposed to enter political negotiations with no guarantee of the return of land. Both positions were unacceptable. By making a general reference to the principle of the inadmissibility of territory acquired in war, the resolution balanced the concerns of both

the resolution, stating in their vote that they did so on the basis of the interpretation that the reference to 'territories' encompassed all territories gained in 1967, an interpretation explicitly rejected by the US and the UK in their vote. Rarely has a definite article been of such import in international politics.

Two points about this period are critical. First, the politics of the Security Council's actions were importantly shaped by a mutual US and Soviet desire to avoid direct confrontation between the powers in the Middle East. Secondly, in passing Resolution 242, the Security Council evolved from its earlier role as merely shaping the end of hostilities, to attempting to lay down the basic principles of peace-making in the Middle East – principles, or parameters, that shaped subsequent negotiations and diplomacy until the Security Council itself changed those parameters in 2002.

On the back of Resolution 242, the Security Council also appointed (for the second time) a Swedish diplomat to serve as UN mediator in the Middle East. Gunnar Jarring, then serving as Sweden's ambassador to Moscow, took up the assignment shortly after the conclusion of hostilities. For four years, Jarring engaged in shuttle diplomacy of the kind pioneered in the UN by Bernadotte. At the suggestion of France, Jarring also convened a regular 'Four Powers' conference in New York, attended by the US, the Soviet Union, the UK, and France. With Jarring's work supplemented by the negotiating efforts of US Secretary of State William P. Rogers, the period from 1968 to 1970 saw multiple drafts of proto-proposals floated by both men, though these came to nought. In 1971, Jarring terminated his diplomatic efforts.

1970s: The Yom Kippur war

US–Soviet diplomacy and conflict management became important again in 1973, when Israel was shocked by a joint Arab attack on the day of Yom Kippur. Here, prevention was impossible, given the surprise nature of the attack. Security Council resolutions during the course of the Yom Kippur war calling for a ceasefire had as little effect as they had had during the 1948 and 1967 episodes. And, once again, the Security Council role took shape in the aftermath of the war.

The course of diplomacy followed the course of the war. Israel was rocked in the early days of the Yom Kippur war by the forcefulness of the Egyptian attack, by Jordan's decision to join the campaign, and by an effective Syrian assault on their northern flank. Within days, Israel's armed forces were on their back heels, and

sides. Speaking before the adoption of the resolution, Lord Caradon stated that, 'the draft Resolution is a balanced whole. To add to it or to detract from it would destroy the balance and also destroy the wide measure of agreement we have achieved together. It must be considered as a whole as it stands. I suggest that we have reached the stage when most, if not all, of us want the draft Resolution, the whole draft Resolution and nothing but the draft Resolution': UN doc. S/PV 1382 of 22 Nov. 1967, 31.

Israeli supplies of heavy armour and equipment were wearing thin. It was only through an emergency airlift of supplies from the US that Israel was able to regain its military footing. Once it did, however, the balance in the field swung rapidly and decisively in Israel's favour. Within a short period, Israeli troops had crossed the Suez Canal and were threatening the road to Cairo, while in the north, they were marching on the outer suburbs of Damascus. By this time, the Soviets were frantically seeking a ceasefire, before their client states' armies completely collapsed. Nevertheless, at two stages in late October, Egypt turned down ceasefire proposals that were better for its interests than those eventually adopted. President Anwar Sadat's biography makes clear his belief that Egypt was winning significant battles right up to the moment of the ceasefire.[34] The Soviet reading of the situation was more realistic.

Indeed, even more than in 1967, the end to the war was dictated by the realities of the US–Soviet relationship, whose recent détente was threatened by the prospect of US–Soviet hostility in the Middle East. Faced with the collapse of the Egyptian and Syrian armies, the Soviets signalled to the US that the two great powers should solve the situation together, or the Soviets would have to do so themselves – in effect, threatening intervention. Given the stakes, US Secretary of State Henry Kissinger flew to Moscow to negotiate directly with his counterpart. From these negotiations, an agreement emerged that was eventually codified in Resolution 338: termination of hostilities by the parties; recognition of Resolution 242; and agreement to convene, under appropriate auspices, negotiations designed to establish 'a just and durable peace in the Middle East'.[35] Over the following days, the Security Council further specified the terms of the Israel–Egypt truce, and called on the Secretary-General to deploy observers along the Israel–Egypt ceasefire line, the so-called UNEF II operation.[36]

No such deployment occurred along the Israel–Syria line, and tensions along that frontier remained high. In March 1974, the US, concerned about the effect of continued tensions on the overall stability of the region, brought Israel and Syria into negotiations over an armistice deal. This resulted in the March 1974 Agreement on Disengagement, endorsed by the Security Council in Resolution 350, which also established the UN Disengagement Observer Force (UNDOF) deployed to this day along a zone of separation on the Golan Heights.[37] UNDOF was deployed with an Austrian-led battalion in May 1974.[38]

The episode serves largely to illustrate the growing importance of the US–Soviet relationship as the basic one that determined the shape of UN action in the 1970s.

[34] See Anwar Sadat, 'The October War' *In Search of Identity: An Autobiography* (New York: Harper & Row, 1978), ch. 9.

[35] SC Res. 338 of 22 Oct. 1973.

[36] See SC Res. 339 of 23 Oct. 1973; SC Res. 340 of 25 Oct. 1973; and SC Res. 341 of 27 Oct. 1973.

[37] SC Res. 250 of 31 May 1974.

[38] See www.un.org/Depts/dpko/missions/undof/facts.html

But one additional note should be made, namely that Israel's acceptance of a UN peacekeeping operation along both the Israel–Egypt border and the Israel–Syria border (an operation that the Israeli government and armed forces continue to support) suggests that the collapse of confidence in the UN after 1967 was not as deep within the Israeli government as it was among the Israeli public. Moreover, Abba Eban, then Israel's Foreign Minister and over time perhaps its most acute observer of the UN, accepted in the autumn of 1973 that Secretary-General Kurt Waldheim should play the role of convenor at a US–Soviet–Israel–Egypt–Jordan conference, the Geneva Conference, to which Kissinger and his Soviet counterparts had agreed as a supplement to the elements of Resolution 338. In one of its odder moments, the Security Council passed Resolution 344 on 15 December 1973, endorsing the Geneva Conference and encouraging the Secretary-General to play a constructive role – a perfectly normal Security Council resolution made strange by the vote, which was ten in favour and four abstentions, from France, the UK, the US, and the Soviet Union!

The Geneva Conference was the first of what would become a steady diet of multilateral diplomatic conferences over the Middle East peace process, none of which has ever resulted in a political agreement. It did, however, establish a Military Working Group which, under the chairmanship of the UNEF II force commander, negotiated the further implementation of Israeli withdrawals in the Sinai to agreed ceasefire lines.

1978: Israel's first invasion of southern Lebanon and collapse of the Security Council's role

The Israel–UN relationship would alter more deeply and in a more lasting way in 1978. That year, following a rise in activism by the Palestine Liberation Organization (PLO, established in 1958) in its camps in Lebanon, and a number of significant attacks by the PLO against Israel from those camps, Israel invaded southern Lebanon on 14–15 March 1978 in Operation Litani.

Immediately, the Lebanese government called for Security Council action. On 19 March, the Council adopted Resolutions 425 and 426, calling for Israeli withdrawal and establishing the United Nations Interim Force in Lebanon (UNIFIL). The first UNIFIL troops arrived in the area on 23 March 1978. Israel's local proxy force, the South Lebanon Army (SLA) clashed with UNIFIL on 19 April, leaving eight Irish members of UNIFIL dead.

What is striking about UNIFIL is that it was created with the support of the US, despite Israeli objections. This was a reflection of a deeper rift between the US and Israel over Israel's actions in Lebanon. Eventually, it was intense pressure from the United States that led Israel to withdraw its forces from southern Lebanon. UNIFIL remained in place, however, deployed both within southern Lebanon and along the

Israel–Lebanon armistice line. The episode, however, certainly deepened Israel's sense of isolation from the UN.

Israel's sense of isolation from the UN would be further fuelled at the end of 1978 and in early 1979, by Arab reaction in the UN to the dramatic breakthrough in what, for the first time, could be referred to as the Arab–Israeli peace process: the signing of the Camp David Accords on 17 September 1978.

The signing of the Camp David Accords reflected a series of fundamental political shifts in the region. Most important, as recounted by Henry Kissinger,[39] was the decision by Egyptian President Anwar Sadat to break from the Soviet Union in 1972. Sadat effected this decision by expelling Egypt's Soviet military advisors.

In his autobiography, Sadat recalls that his decision to expel the military advisors was read by many as indicating that he would not risk military action in the region.[40] Of course, the following year witnessed the Yom Kippur war. According to Henry Kissinger, it was in the aftermath of this war that the real change occurred in US–Egyptian relations. It would take years of patient shuttle diplomacy, with all the ups and downs associated with this kind of negotiation, but Sadat's shift would ultimately lead to negotiations at Camp David, to the Accords, to Sadat's dramatic visit to the Israeli Knesset in Jerusalem – and to his assassination in 1981.

As further evidence of the fact that, in the period to the end of 1978, the Israeli government was still willing to accept a UN role in conflict management in the region, in the Camp David negotiations both the Egyptians and the Israelis accepted the notion of a UN force to be deployed along the eventual Israel–Egypt border.[41] However, at the UN, the General Assembly – now, after two decades of decolonization, a much larger body in which the US could no longer command a majority, and dominated politically by the Non-Aligned Movement (NAM) – there was no support for a UN force. Arab opposition to the Camp David Accords led to Arab hostility at the UN to the concept of a UN force. In a significant shift (compared with the situation in 1948, when an Arab walkout was inadequate to block passage of the Partition Plan), this opposition – voiced through proxies on the Security Council – was adequate to block any possible movement on a UN peacekeeping force. Eventually, the US, having mounted an interim Sinai Monitoring Force, proposed and created a non-UN option: the Multinational Force and Observers Sinai (MFO Sinai). The force was governed by a US–Israeli–Egyptian decision-making body and comprised US, Canadian, Italian, and other troops. The deployment of MFO Sinai to the Middle East, which for the first thirty years of the UN's existence had been the primary location for UN peacekeeping, marked the real collapse of the Security Council's role in the Arab–Israeli context.

[39] Kissinger, *Years of Renewal*, 457.

[40] Sadat, *In Search of Identity*, 232.

[41] The definitive account of these negotiations is found in William Quandt, *Peace Process: American Diplomacy and the Arab Israeli Conflict Since 1967* (Washington, DC: Brookings Institution Press, 2001).

1979–99: Two Decades of Irrelevance

For the next two decades, the Security Council's role was negligible. Unlike the previous three decades, when crises erupted in the Arab–Israeli theatre, the Security Council deployed neither troops nor diplomats, framed neither the principles of peace-making nor even the parameters of demilitarization. There were innumerable resolutions, and almost as many vetoes, but little result.

The 1980s

The first crisis in Arab–Israeli relations in the 1980s took the form of the Israeli air force strike against the Iraqi nuclear capacity at the Osirak reactor. This attack received overwhelming international condemnation, and the US did not veto a condemnation in Resolution 487, adopted on 19 June 1981. The Security Council resolution, coming after the attack had accomplished its aims, had no practical effect on realities on the ground.

The less active stance of the Security Council was manifest the following year, when Israel in June 1982 once again invaded southern Lebanon.[42] Notwithstanding the presence of UNIFIL on the ground, the Security Council's response was tepid. The Security Council passed twelve resolutions in the period between 5 June and 18 October, but these had little or no effect on the ground.

In large part, this reflected an important change in the US–Israeli relationship, occasioned by the election of President Reagan. The vetoes provide one clue explaining the nature of Security Council impotence during this period. These reflected a decisive shift in the US stance towards Israel, and a decision to treat Israel as a critical ally, warranting diplomatic protection. This was, moreover, the era in which Cold War tensions resumed after the partial easing of those tensions in the 1970s. The Middle East was not the only issue in relation to which Cold War tensions translated into gridlock between the Permanent Members of the Security Council, but it was the most visible. Between 1980 and 1991, the US cast twenty-four vetoes on the question of Israel alone, out of a total of 51 vetoes cast in the Council during the period.[43]

[42] The decision to invade was one of the most controversial in Israel's political history, and remains the subject of sharp debate in Israel and beyond. The Defence Minister at the time, Ariel Sharon, was eventually the subject of an investigation by the Kahan Commission over his conduct during the period, an investigation that recommended and led to his removal from office. Sharon overcame this obstacle in 2001 by winning election to another political office, that of Prime Minister.

[43] See Appendix 5.

The 1990s

The Middle East diplomacy of the 1990s had a very different tenor from that of the 1980s, though still not one that significantly engaged the Security Council. The diplomatic response was shaped by two critical international political events of the period: the end of the Cold War and the Gulf War. The later of these events, the Gulf War, is crucial to understanding the shape of international politics in the 1990s and the evolution of the Security Council in a range of areas. Nevertheless, it is not precisely germane to this chapter, not having an Arab–Israeli component (except for the brief instance when Saddam Hussein's army fired Scud missiles into Israel – had Israel responded, the situation would have been radically different, but it did not).

As to the end of the Cold War, numerous scholars writing on the Security Council and peacekeeping have correctly noted that the collapse of the Soviet Union and the consequent change in the relationships of the Permanent Members created fundamentally different conditions for the UN from those that had prevailed during the Cold War. These conditions led to the tremendous surge in UN peace operations in the early 1990s in places as far-flung as Cambodia, Mozambique, and Guatemala, then later in West and Central Africa, and the south Balkans. It is notable that this engagement encompassed places in Asia, Latin America, Europe, and Africa – but not the Middle East.

Indeed, for all that the Security Council was instrumental in the diplomatic campaign of President George Bush Sr. and Secretary of State James Baker around the 1991 Iraq war, and for all of the new UN political space liberated by the end of the Cold War, there was no new engagement by the Security Council in the Arab–Israeli conflict management and peace-making theatre. UN isolation from events in this arena was vividly illustrated in 1993 by the dramatic breakthrough in the negotiation of the Oslo Accords under Norwegian mediation, and the subsequent signing of those Accords in the presence of Palestinian Chairman Yasser Arafat and Israeli Prime Minister Yitzhak Rabin on the White House lawn – events from which the UN was entirely absent. The UN was absent too when, in the following year, Israel and Jordan concluded the second major Arab–Israeli peace treaty.

UN Secretary-General Boutros Boutros Ghali sought to reintroduce the UN into the diplomatic game in the Israeli-Palestinian context in 1994, asking the Oslo mediator Terje Roed-Larsen to open a UN coordination office in the Occupied Territories. The office, the UN Office of the Special Coordinator for the Occupied Territories (UNSCO) had a small staff, and a small role of supporting the aid coordination mechanisms established to assist in the implementation of the Oslo Accords. On the ground in Gaza, Roed-Larsen continued to play a political role in back-channel negotiations and in the back rooms of the formal negotiations that produced the Oslo II Accords, the Paris Protocols, the Wye River Agreements, and the various other subsidiary and complimentary agreements that constituted, over the course of the second half of the 1990s, the

ever-expanding set of partially implemented, constantly renegotiated Israeli-Palestinian agreements.

However, Roed-Larsen's office in Gaza was not authorized by the Security Council, and neither he nor Boutros Ghali (who was towards the end of his tenure and well into the period of breakdown in his relations with the United States)[44] had any ability to mobilize the Security Council in support of diplomatic efforts on the ground. Indeed, much of what Roed-Larsen did in diplomatic terms was done in his personal capacity rather than under UN auspices – a fact that was illustrated by the complete absence of the UN from formal processes in the period from 1995 to 1999 when Roed-Larsen left UNSCO and the office was left in the hands of a UN diplomat with little prior Middle East experience, the Secretary General's Special Representative Chinmaya Gharekhan.

1999–Present: A New Moment?

Israel's withdrawal from southern Lebanon[45]

A re-engagement by the Security Council in the real business of peace-making in the Middle East began after the election in 1996 of UN Secretary-General Kofi Annan. Early in his tenure, Annan worked to restore what by then were deeply corroded relations with Israel. Even prior to his election as Secretary-General, partially under the guidance of one of his principal campaign advisors, Shashi Tharoor, Annan began a quiet campaign – at cocktail parties, receptions, dinners, and events around New York – to reach out to the Jewish community in the United States. Tharoor and Annan understood what Boutros Ghali had not: that maintaining effective relationships with the United States was critical to the effective performance of a UN Secretary-General in the post-Cold War era. Given the Jewish community's perception of the UN – unchanged since 1967 – and given the community's influence in US Congress, Tharoor and Annan sought to diminish tensions with this important constituency.

Once elected, Annan worked with member states to reach an agreement for Israel to join the West European Group, given that Israel had been effectively excluded from the Asian Group for the length of its UN membership. Moreover, Annan worked to remove the 1975, 'Zionism is racism', resolution from the General

[44] Boutros Boutros Ghali, *Unvanquished: A US UN Saga* (New York: Random House, 1999).

[45] This section of the chapter draws on previously published material; see Bruce Jones, 'The Middle East Peace Process', in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004).

Assembly's agenda. The two efforts significantly improved Israel's position at the UN and earned Annan support and trust from the Israeli leadership.

These efforts were undertaken at a time during which implementation of the Oslo Accords had faltered following the assassination of Prime Minister Rabin in 1995, Hamas had launched terrorist attacks in Israel the same year, and Prime Minister Benjamin Netanyahu had been elected as Prime Minister in 1996. Between 1996 and 1999, the peace process largely stalled. However, the election in 1999 of Prime Minister Ehud Barak appeared to herald a new opportunity for peace-making. In this context, Annan reappointed Roed-Larsen to the post of Special Coordinator. Once again, the appointment was made by the Secretary-General, but Annan took care to ensure that the appointment had the political support of the Security Council.

The combination of Annan's efforts to restore relations with Israel and the reappointment of Roed-Larsen to UNSCO rapidly created new political space for the Security Council. In early spring 1999, Roed-Larsen was informed by Prime Minister Barak that he was contemplating a withdrawal from parts of southern Lebanon. Over a period of several weeks, in extensive discussions with Israeli officials, Roed-Larsen convinced Barak of the value of having the Security Council oversee and certify the withdrawal's compliance with Resolution 425, adopted at the time of the establishment of UNIFIL. Barak ultimately acknowledged the value of working within the framework of UN resolutions as a means of ensuring international support for the withdrawal.[46]

This created a situation that directly linked the authority and legal standing of the Security Council to concrete peace-making efforts on the ground. A process was launched whereby the boundary to which Israel would withdraw was determined by a UN team of cartographers and geographers.[47] Since no formal border existed between Israel and Lebanon, the UN arrived at the formula that they would identify a line that would 'correspond to the presumed international boundary', constituting a line beyond which the UN could certify that Israel had fully withdrawn from southern Lebanon. Because the withdrawal was seen as being in implementation of Resolution 425, the appropriate body to certify the withdrawal was the Security Council itself.

There followed an exhaustive process of consultations with the Security Council to lay the foundation for the certification. On the ground, Roed-Larsen and UNIFIL monitored the border to ensure full Israeli compliance. In May 2000, Secretary-General Annan wrote to the Security Council establishing the line for withdrawal, and in June 2000, he wrote to the Council noting that Israel had indeed withdrawn precisely to this line. On both occasions, the Security Council responded with Presidential Statements that together constituted certification of full Israeli withdrawal from southern Lebanon.[48]

[46] Author's field notes.

[47] Frederic Hof, 'Practical Line: The Line of Withdrawal from Lebanon and its Potential Applic ability to the Golan Heights', *The Middle East Journal* 55, no. 1 (2001), 25 44.

[48] UN doc. S/PRST/2000/18 of 21 May 2000; and UN doc. S/PRST/2000/21 of 18 Jun. 2000.

This episode constituted a significant re-entry of the Security Council into the process of peace-making in the Arab–Israeli theatre. Indeed, arguably not since 1948 had the Security Council had such a direct diplomatic role in creating the conditions for an easing of tensions between parties in the Middle East.

However, in September 2000 the outbreak of what became known as the Second, or Al Aqsa, Intifada presaged a return to the old role of the Security Council – as a forum for diplomatic manoeuvre between increasingly hostile Israeli and Arab representatives, as the site of repeated US vetoes or threatened vetoes, and as a space within which to articulate the basic principles for future peace-making.

Attempts at diplomacy and managing conflict: 2000–6

As violence flared on the ground, Middle East discussions in the Security Council became heated. The first major Security Council discussion during this period concerned a Palestinian initiative to gain Security Council backing for an international inquiry into Israel's actions. The US signalled on several occasions that it would veto any such resolution. However, the US was simultaneously attempting to resuscitate final status negotiations, which had temporarily abated after intensive talks in Camp David in June 2000, and was coming under increased pressure from the Arab world to moderate its strong support for Israel.[49] Under this pressure, on 7 October 2000, the US decided to abstain rather than veto Resolution 1322, which condemned Israel for its excessive use of force in suppressing the Intifada and called for an international commission of inquiry into the violence.[50]

The subsequent months saw intensive final status negotiations between the parties, which ended without a full agreement. Such progress as did occur was then overshadowed by Prime Minister Barak's failure at the polls and the election of Likud leader Ariel Sharon. Though Annan and Roed-Larsen remained active at the diplomatic level, repeated Security Council meetings on the Middle East produced no action.

In the period after Sharon's elections a number of issues, debates, and events contributed to an erosion of relations between Israel and the Security Council. At the same time, however, US diplomacy vis-à-vis the Arab world led to the passage of two important Security Council resolutions that once again played the role of establishing the basic principles for Middle East peace.

One significant issue was that of a potential Security Council role in authorizing an observer or protection force for the West Bank and Gaza. This emerged as a key Palestinian goal during the first months of the Intifada, and the idea had gained

[49] William Quandt, 'Clinton and the Arab Israeli Conflict: The Limits of Incrementalism', *Journal of Palestine Studies* 30, no. 2 (2001), 25 40. Also, author's field notes.

[50] Kirsten E. Schulze, 'Camp David and the *Al Aqsa Intifada*: An Assessment of the States of the Israeli Palestinian Peace Process, Jul. December 2000', *Studies in Conflict and Terrorism*, 24, 222.

considerable international support. A resolution to establish an observer force was vetoed by the US in March 2001, given strident Israeli objections to any perceived 'internationalization' of the Israeli–Palestinian conflict, a position that fuelled Arab anger towards the new Bush administration's Middle East policy.

Progress towards more extensive consideration of the topic was halted by a scandal that broke in October 2001 involving video evidence held by UNIFIL relating to the kidnapping of three Israeli Defence Force soldiers by Hezbollah in October 2000. Israel reacted furiously to the news, claiming that the incident provided clear evidence of the bias of the UN against Israel. The Secretary-General launched an investigation and determined that indeed 'serious mistakes were made' by UNIFIL.[51] The report, however, did not forestall a widespread perception within Israel that the Security Council could not be considered a reliable forum for managing the conflict with the Palestinians.[52]

The tenor of debate within the Security Council was also temporarily transformed by the 11 September 2001 terrorist attacks on the United States. These attacks ultimately created new tensions between the US and the Arab world but initially also created new support for the US in moderate Arab capitals. This support, or sympathy, helped facilitate the rapid Security Council response to the attacks in the form of Resolution 1373, which created a new international framework for states' efforts to combat terrorism.[53] Although addressing a global issue, Security Council action related to terrorism had particular salience in the Middle East and became part of the context of the overall balance of relations between the US and Middle Eastern states, especially the moderate Arab states – from whom the US, with the support of the Security Council, now expected a range of actions against domestic Islamist groups.

This pressure on the Arab world created its own pressure on the US. As the US began to prepare for its military campaign against Afghanistan, its Arab allies sought to contest the perception, which was growing among Arab populations, that the Security Council was simply an instrument of US power which was willing to act forcefully when a Muslim state had committed atrocities, but was unwilling to rein in Israeli actions seen in the Arab world and other countries as similarly atrocious. Through the Non-Aligned Movement, the Palestinian observers at the UN repeatedly sought to take advantage of this pressure, drafting several resolutions and introducing some of them to informal Security Council discussions. However, the Palestinians encountered significant resistance in the post-9/11 environment. Most members of the Security Council now attached greater importance to maintaining 'Council unity', that is, to avoiding a situation in which the US was forced to veto a resolution.

[51] Press release pertaining to the internal investigation available at www.un.org/News/dh/latest/videorpt.htm

[52] Author's field notes.

[53] SC Res. 1373 of 28 Sep. 2001.

Instead, the US sought to balance its position vis-à-vis the Arab world with declarative support for elements of the Palestinian position. Most importantly, President George W. Bush spoke to the UN General Assembly in November 2001 and affirmed his support for the creation of a 'state of Palestine' as the necessary end point of final status negotiations between Israel and the Palestinians.

However, President Bush's declarative balance was not matched by a US willingness to place pressure on Israel to alter its actions in the West Bank and Gaza. Even as the 2001 war in Afghanistan was underway, with support from moderate Arab states, the US vetoed a resolution that called on Israel to withdraw its forces from Palestinian-controlled areas. Palestinian and Arab anger grew, and Arab pressure on the US continued to mount. Ultimately, faced with both intense Arab pressure and growing European discontent about its policies, the US felt compelled to act. In March 2002, US Permanent Representative to the UN John Negroponte introduced and secured passage of Resolution 1397 which formalized President Bush's earlier statements and affirmed 'a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders'.[54] As soon as it was passed, Resolution 1397 became the new benchmark for peacemaking in the Middle East, with the principle of Palestinian statehood established alongside Resolution 242's principle of 'land for peace' as the presumed end points of the Middle East conflict.

None of these developments served to improve Israel's perception of the Security Council. Rather, they reinforced the Israeli perception of the UN as an Arab-dominated body. This was further reinforced in January 2002 by the election of Syria to a non-permanent seat on the Security Council.

Given the negative perception by Israel of the Security Council's role, and US willingness to use its veto to block measures such as the deployment of peacekeeping forces, the Security Council's role became once again fairly marginal. In a series of statements in 2002, as well as in Resolution 1402,[55] the Security Council confined itself to chiding Israel and the Palestinian Authority for their continued use of violence and terrorism, and to lending declarative support for the Quartet, a new mediating body that had been established at the initiative of Roed-Larsen and Secretary-General Annan.[56]

As violence continued on the ground, the Security Council's search for solutions deepened, supplemented by that of the Quartet. Most notably, following a speech by President Bush in which he laid out his own vision of the two-state solution, the Security Council adopted two resolutions which, for the first time since 1967, transcended the bedrock principle of 'land for peace' laid out in Resolution 242. Although Resolution 1397[57] and later Resolution 1402[58] refer back to and call for

[54] SC Res. 1397 of 12 Mar. 2002.
[55] SC Res. 1402 of 30 Mar. 2002.
[56] Author's field notes.
[57] SC Res. 1397 of 12 Mar. 2002.
[58] SC Res. 1402 of 30 Mar. 2002.

full implementation of Resolution 242, the reference in Resolution 1397 to 'a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders' signalled a critical political shift towards recognition of Palestinian statehood as the ultimate goal of negotiations. This represented a first, tentative step towards stipulating the content of an eventual final status deal despite the absence of real negotiations between the parties towards that end. Further, in Resolution 1435,[59] the reference to the 'continued importance of the initiative endorsed at the Arab League Beirut Summit' was a highly coded reference to three fundamental principles first articulated by the Saudis in a major break from their traditional position: that peace between Israel and Palestine would require abandonment of the right of return of refugees to Palestine, in exchange for the establishment of a viable state of Palestine along the lines of the 1967 borders and the sharing of Jerusalem.

These resolutions presaged and helped lay the groundwork for international acceptance, in 2005, of Israel's unilateral steps to end the occupation of Gaza. On 23 September 2005, the Security Council endorsed the position taken by the Quartet, welcoming and accepting Israel's unilateral withdrawal from Gaza. In 2005, the Security Council articulated its vision of a 'viable, democratic, sovereign, and contiguous Palestine'.[60]

Taken together, the Security Council resolutions of this period constitute, in effect, an international shift away from the premise of 'land for peace' on the basis of negotiations, and towards a quasi-managed, quasi-supported, quasi-coordinated process of (a) unilateral steps by Israel to disengage from Palestinian territory and (b) internationally supported steps to establish the economic and institutional preconditions for a Palestinian state. At the time of writing, however, this trend had been shaken by the election in January 2006 of Hamas to a majority position in the Palestinian parliament.

Regional issues: Security Council Resolution 1559 and Detlev Mehlis

If the Security Council's role in the Israeli-Palestinian process was in some ways complicated by the Hamas victory in 2006, its broader role in the management of Arab–Israeli conflict in the region was expanding. The character of that expansion has been unusual.

In September 2004, by way of a joint French-US initiative, the Security Council adopted Resolution 1559 in response to indications that the Syrian government would seek, through proxy actors inside Lebanon, to rig Lebanon's national

[59] SC Res. 1435 of 24 Sep. 2002.

[60] UN doc. S/PRST/2005/44 of 23 Sep. 2005; and UN doc. S/PRST/2005/57 of 30 Nov. 2005.

elections scheduled for that month.[61] The rigging of Lebanese elections is hardly new. However, given the close political relations between France and Prime Minister Rafik Hariri, the main opponent of the Syrian-backed candidates, France sought international support to push back against Syrian interference. At the same time, relations between the US and Syria (which had quietly improved in the immediate aftermath of 9/11, as Syria had provided some useful intelligence to the US on the whereabouts of some al-Qaeda members) were deteriorating rapidly in light of US perceptions that the Syrians were allowing Baathist remnant forces to operate out of rear positions inside Syria and that Syria was allowing foreign fighters into Iraq through its territory. France and the US joined forces on Resolution 1559, which called for the withdrawal of all foreign forces from Lebanon and for free and fair elections in Lebanon. The resolution also called on the Secretary-General to report on the parties' implementation of the resolution, which he did by tasking Terje Roed-Larsen, shortly before he retired from UNSCO, with the mandate of Special Envoy for the Implementation of Resolution 1559.

The Security Council role in dealing with Syria–Lebanon issues was then dramatically magnified when Rafik Hariri was assassinated in Beirut. In response, the Security Council adopted Resolution 1595 and established an International Independent Investigation Commission into the assassination of Rafik Hariri.[62] Detlev Mehlis was appointed as Commissioner of the Investigation Commission and, over the course of 2005, developed a detailed report which directly pointed the finger at the Syrian government. At the time of writing, the Security Council is continuing to push for deeper investigation into Syria's role in Hariri's death.

Meanwhile, of course, also at the time of writing, the Security Council had the question of Iran on its agenda. The referral of Iran to the Security Council by the International Atomic Energy Agency on 4 February 2006 created an entirely new dimension to the Security Council's work in the broader Middle East.

Indeed, the relationship between the UN Security Council, Iran, and the Middle East came to a head as fighting broke out between Israel and (Iranian-backed) Hezbollah inside southern Lebanon in July 2006. Over the course of July, Hezbollah fired several hundred Katusha and other rockets (from an estimated arsenal of over 10,000) into Israel, and Israel launched a major air and ground attack on Hezbollah positions and related infrastructure in southern Lebanon.

At the time of writing, the Security Council was negotiating a resolution that would do two things familiar to students of the region's history: set out in formal terms the basic requirements of a ceasefire that had been negotiated among several of the major parties, and lay out the elements of a UN-authorized international force to be deployed in southern Lebanon in the context of Israeli withdrawal.

The futility of UNIFIL – by this stage an observer force wholly unable to contribute to the implementation of Resolution 1559 – was evident. In discussing

[61] SC Res. 1559 of 2 Sep. 2004. [62] SC Res. 1595 of 7 Apr. 2005.

an international force for deployment in southern Lebanon, there was initially no consideration of an expanded UN force and debate moved immediately to the question of an international force, possibly under NATO or EU command (and almost certainly French-led.) Yet at the same time, there was no question about the fact that the Security Council was to be the forum for the negotiation of any set of political or operational arrangements to end the fighting. The Security Council was to be central to any possible resolution, as it had been in the earliest days of the Arab–Israeli wars. Indeed, as a result of both French and Arab pressure, the Security Council eventually authorized neither an EU nor NATO operation, but an expansion and transformation of UNIFIL into a major and credible enforcement operation. Between a major new operational role in southern Lebanon, and with the Hezbollah connection between the Arab–Israeli question and the Iran question, the Security Council is taking on perhaps its most direct role ever in shaping the politics of the region.

Conclusion

The Arab–Israeli theatre has been a laboratory for UN innovation: the first subsidiary organ (UNSCOP), the first specialized agency (UNRWA), the first mediator (Count Folke Bernadotte), the first observer mission (UNTSO), the first peacekeeping mission (UNEF), the first integrated mission (UNSCO), and the first instance of investigatory challenge to a member state (Detlev Mehlis).

In its actions in the Arab–Israeli context, the Security Council has also been a reflection of broader international political realities: of the transition from the United Kingdom to the US as the principal power in international politics; of the rise of the Soviet Union; of US–Soviet tensions, and then détente, and then tensions again; of the dominance of the US after the collapse of the Soviet Union; and of the assertive but complicated role of the US in seeking to shape the political direction of the Arab world in the aftermath of 9/11 and the 2003 Iraq war.

However, at no point in its history has the Security Council been the primary driver of events on the ground in the Arab–Israeli theatre. Nevertheless, at its most active, the Security Council has certainly contributed to the shape of those events. This was particularly so in 1948 and in 2000 – two periods that share the characteristics of seeing Security Council political action directly connected to peacekeeping missions and to peace-making activity by UN envoys.

Evaluation of the Council's role depends fundamentally on one's theory of its role. For those who continue to aspire to a UN that is in real terms the primary actor in international peace and security, the UNSC's role in the Middle East can be

seen at best as limited and disappointing. For those who see the UN as little more than a reflection of the realities of international power, it is important to have regard to two important facts: that the existence of the UN provided the US and the Soviets at critical junctures with a tool for exiting processes of escalation or the risk of confrontation on the ground; and that, at various junctures, UN officials – especially Bunche and in a later phase, Roed-Larsen – were able to combine the political weight of the Security Council, the diplomatic weight of the Secretary-General, and the realities of negotiations on the ground to achieve important results. It is notable that the innumerable ceasefire and armistice resolutions passed by the Security Council in the absence of UN envoy activity – especially in the 1970s – had little or no effect on the behaviour of the parties to the conflict. Rather, it is in the direct connection between political action by the Security Council and diplomatic and operational action on the ground by the Secretariat that we find the UN contributing to the resolution of conflicts on the ground.

CHAPTER 14

THE SECURITY COUNCIL AND THE INDIA–PAKISTAN WARS

RAHUL ROY-CHAUDHURY

Analysis of the Security Council's involvement in India–Pakistan issues tends to focus on the Kashmir conflict and the UN-mandated plebiscite to determine its final outcome that has never been held. This was a result of the messy transfer of power from British colonial rule to two newly independent states of India and Pakistan, currently celebrating their sixtieth anniversaries. But the Security Council also had a role, albeit limited, in the first two India–Pakistan wars in 1947–9 and September 1965, despite the fact that there was no direct great power involvement in these conflicts. At the same time, it was a Permanent Five (P5) member, the Soviet Union, and not the Council, which helped broker the formal end to the Second Kashmir War of 1965, with the Tashkent agreement between India and Pakistan on 10 January 1966. More generally, India–Pakistan issues have challenged UN norms on both territorial integrity (the Kashmir conflict) and the issue of non-proliferation (the nuclear weapon tests of 1974 and 1998). In addition, India's status as a rising great power, but not a member of the P5, has created tensions in its relationship with the UN – a body which has been highly supportive of India rhetorically but not in India's own disputes.

Since the partition of British India in mid-1947, India and Pakistan have fought 'three-and-a-half' wars with each other. Within months of partition, the first war over Kashmir took place (26 October 1947–1 January 1949). This was followed sixteen years later by skirmishes in the western Rann of Kutch in the spring of 1965, and the brief Second Kashmir War from 1 to 23 September 1965. In December 1971, both countries also fought a fourteen-day war in relation to the crisis in East Pakistan, leading to the creation of Bangladesh. Nearly thirty years later, they fought the eighty-day Kargil conflict in Indian-controlled Jammu and Kashmir (J&K), from 4 May to 26 July 1999. Although the Kargil conflict was a tense infantry- and artillery-dominated war, it was restricted geographically with only limited use of air power (by the Indian side alone) and no employment of naval power. This mutual restraint was largely the result of the nuclear weapon tests that had been carried out by both countries a year earlier. In 1962 India also fought a three-week border war with China (22 October–2 November) in the Himalayan region, which left an unresolved territorial dispute between the two countries.

In addition to these conflicts, India and Pakistan faced three mutual military crises short of open conflict. The first erupted in January 1987, following India's launch of a major military exercise named 'Brasstacks', amidst the Sikh insurgency, with subsequent Pakistani troop deployments and Indian forces moving into 'forward positions'. This was defused the following month with both sides withdrawing their forces. Secondly, in 1990 Indian and Pakistani troop movements and countermovements amidst the insurgency in Indian-controlled J&K raised Western concerns over a conventional war. The crisis was defused in April 1990, with both sides again agreeing to redeploy their armed forces. This was followed by the visit of the US Deputy National Security Advisor, Robert Gates, to India and Pakistan in mid-May 1990.

The most serious crisis between the two countries took place in 2001–2, when over a million armed forces personnel confronted each other across the border following the terrorist attack on India's parliament on 13 December 2001. India blamed the attack on Pakistani-aided and -based terror groups, a charge denied by Pakistan. After two particularly tense periods in January and May 2002, with prospects of a full-scale conventional war and fears over nuclear escalation, both sides agreed to defuse tensions through US and UK facilitation.

The Security Council's involvement in these different conflicts and crises varied. The UN first became involved with the India–Pakistan wars on 1 January 1948, when Indian Prime Minister Jawaharlal Nehru, on the advice of Lord Louis Mountbatten, the Governor General of India, took the case of Pakistani aggression in princely J&K (following its ruler's accession to India) to the Security Council. This resulted in the first Council resolution on India and Pakistan, Resolution 38 of 17 January 1948, calling for restraint and an improvement in the security environment on the ground. Further resolutions followed, aimed at preventing the escalation of the conflict between the two countries, and calling for the conduct of a UN-supervised plebiscite to determine the accession of J&K to either India or

Pakistan. Security Council resolutions on India and Pakistan were also adopted during the 1965 war and soon after the 1971 war (during this conflict the Soviet Union vetoed three draft resolutions calling for a ceasefire and the withdrawal of both Indian and Pakistani forces), and the 1998 nuclear weapon tests. There were no resolutions during the India–Pakistan Kargil conflict, or during the three crises in 1987, 1990, and 2001–2. Nor did the Council pass a resolution during the Sino-Indian war of 1962, due largely to the fact that the People's Republic of China was not represented at the UN at the time, and to India's reluctance to take any conflict to the UN in view of its prior experience over Kashmir.

During the Cold War, India and Pakistan found themselves on opposite sides of the global political–military divide. While Pakistan eagerly joined the Western military alliance through its membership of defence organizations such as the Central Treaty Organization (CENTO) and the South-East Asia Treaty Organization (SEATO), India tried to remain detached from military alliances by becoming a major proponent of the Non-Aligned Movement (NAM). But NAM was more often than not seen as being allied to the Soviet Union, especially at the height of the Cold War. Nonetheless, this did not stop India from seeking arms and weapons from the UK and the US after its defeat in the Sino-Indian war of 1962, although without much success as it was seen with some suspicion in its quest by the West. Its subsequent political and military relationship with the Soviet Union provided it with the guarantee, both perceived and actual, of a Soviet veto for Security Council resolutions when required. Meanwhile, Pakistan could count on the support of its Western allies, especially the US, for an equivalent prospective veto. These promises resulted in the lack of UN involvement in the 1965 and 1971 India–Pakistan wars.

The First India–Pakistan War, 26 October 1947–1 January 1949

At the partition of British India on 14/15 August 1947, conducted on the basis of demography and geography, predominantly Muslim contiguous areas went to Pakistan and the rest to India. The 562 princely states, nominally self-governing units, had realistically to opt for either India or Pakistan. While most of them did so, the three states of Junagadh, Hyderabad, and J&K were different, with Muslim ruling families governing predominantly Hindu populations. Although both Junagadh and Hyderabad were to be surrounded by Indian territory, J&K bordered both India and Pakistan. When the ruler of Junagadh acceded to Pakistan, the Indian government resisted his decision and called for a plebiscite to determine the will of

the people. Indian troops subsequently moved into Junagadh (in Exercise Peace) on 9 November 1947. The plebiscite held by the Indian government on 20 February 1948 resulted in the majority Hindu population voting overwhelmingly in favour of India.[1] In the case of Hyderabad in southern India, the Indian army invaded in September 1948 (in Operation Polo) and took control of the state.

Although the ruler of the largest princely state of J&K, Maharaja Hari Singh, preferred independence, this was not a viable option in the political climate following partition. While dithering over the future of the state, he signed a 'standstill agreement' with Pakistan on 14 August 1947 to continue trade, travel, and communication linkages, but not with India which sought prior consultations with the popular leadership of the state. At the same time, both India and Pakistan began to compete for J&K's accession on ideological grounds. For Pakistan, created on the basis of the two-nation theory that Muslims of the Indian subcontinent could not live alongside the majority Hindu population,[2] the incorporation of Kashmir would legitimize its claim as a Muslim state, even though a larger number of Muslims continued to live in India. For India, Kashmir would legitimize its claim as a secular state for both Hindus and Muslims alike.

It was a pro-Pakistan Muslim tribal rebellion against Hari Singh in Poonch in late August and September 1947 that led him to sign the treaty of accession with India. Supported by Pakistan, the armed Pathan tribesmen from the North-West Frontier Province (NWFP), along with Pakistani nationals, moved towards Srinagar, the J&K capital, to overthrow Hari Singh. On 22 October, they reached Muzaffarabad and began moving towards Uri and Baramula, thirty-five miles from Srinagar.[3] With local state troops unable to halt the advance, Hari Singh panicked and sought Indian arms and ammunition to prevent being overthrown. Jawaharlal Nehru agreed to do so, but only if Hari Singh formally opted for India. As a result, four days later (on 26 October) Hari Singh signed the Instrument of Accession in Jammu and acceded princely J&K to India; this was accepted by Mountbatten the next day.[4] In accordance with the Instrument of Accession, India was now responsible for the defence, external affairs, communication, and ancillary matters for J&K. On the morning of 27 October, the Indian air force flew the first batch of the Sikh battalion and military supplies into Srinagar airport, beginning the first India–Pakistan war over Kashmir.[5]

[1] Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unfinished War* (London: IB Tauris, 2000), 62.

[2] See text of Address delivered by Quaid i Azam, Muhammed Ali Jinnah in Lahore on 22 Mar. 1940, at www. Story of Pakistan.com.

[3] Sumit Ganguly, *Conflict Unending: India Pakistan Tensions since 1947* (New York: Columbia University Press, 2001), 1.

[4] Text of 'Instrument of Accession of Jammu and Kashmir State', 26 Oct. 1947, at mha.nic.in/accdoc.htm; and text of 'Reply from Lord Mountbatten to Maharaja Sir Hari Singh', 27 Oct. 1947, in Rajesh Kadian, *The Kashmir Tangle: Issues and Options* (New Delhi: Vision Books, 1992), 175.

[5] The sequencing of these events, especially the date of signing of the Instrument of Accession, is disputed, giving rise to controversy over whether the latter was signed before or after Indian troops

India seeks UN intervention

In the fighting that ensued in J&K between Indian troops and armed pro-Pakistan tribesmen and Pakistani nationals, Nehru was initially reluctant to seek a UN role as he was confident that Indian troops would expel the raiders from J&K. But after eight weeks of fighting, he realized this would not take place without an Indian counteroffensive into Pakistan. At the end of December 1947, he finally accepted the advice of Lord Mountbatten and decided to complain to the UN over Pakistan's aggression against what had become Indian territory.[6] On 1 January 1948, India formally referred the fighting in J&K to the Security Council under Article 35 of the UN Charter, which permits any member state to bring a situation to its notice whose continuance is likely to endanger the maintenance of international peace and security.[7]

India's complaint to the UN was based on Pakistan's aid and support to the raiders. In addition, it threatened to mount an Indian offensive into Pakistan to defend territory in Kashmir.[8] India sought Security Council support against the tribal invasion of J&K to prevent an escalation of conflict between the two countries. India expected the UN to act in three ways: first, to prevent the Pakistani government from participating or assisting in the invasion of J&K; secondly, to call upon other Pakistani nationals to desist from taking part in the fighting in J&K; and finally, to deny the invaders access to territory, military supplies, and aid.[9] However, Pakistan vigorously refuted these accusations by denying official sanction or support to the invaders (implying that it was a popular uprising), questioning the accession of J&K to India as fraudulent and conditional (thereby denying its legitimacy), alleging the covert presence of Indian troops in J&K prior to 26 October 1947, criticizing India for the violence against Muslims at the time of partition, and accusing India of threatening Pakistan with a direct military attack in an attempt to undo the partition.

UN Security Council resolutions

In response to the Indian and Pakistani claims and counterclaims, on 6 January 1948, the Belgian President of the Security Council appealed to both India and Pakistan to 'refrain from any step incompatible with the Charter and liable to result

landed in Srinagar. For this version of events, see Alastair Lamb, *Incomplete Partition: The Genesis of the Kashmir Dispute: 1947 1948* (Oxford: Oxford University Press, 1997), 150 60.

6 C. Dasgupta, *War and Diplomacy in Kashmir 1947 48* (New Delhi: Sage Publications, 2002), 99 100.

7 Text of 'India's Complaint to the Security Council', Letter from the Representative of India to the President of the Security Council', 1 Jan. 1948, at www.jammu kashmir.com/documents/jkindian complaint.html

8 Dasgupta, *War and Diplomacy in Kashmir*, 107.

9 Text of 'India's Complaint to the Security Council'.

in an aggravation of the situation'.[10] This was followed ten days later by the first of several Council resolutions on Kashmir. Resolution 38 of 17 January 1948 called upon *both* the Indian and Pakistani governments 'to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation, and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation'.[11] It also requested both governments to inform the Council immediately of any 'material change in the situation which occurs or appears to either of them to be about to occur' while the matter was under Security Council consideration.[12] Three days later, in terms of its mandate to investigate any situation that may endanger the maintenance of international peace and security, the Council adopted a further resolution.[13] This established a three-member UN Commission on India–Pakistan (UNCIP) and directed it to 'proceed to the spot as quickly as possible' to 'investigate the facts pursuant to Article 34 of the UN Charter' and 'to exercise any mediatory influence likely to smooth away difficulties'.[14]

In April 1948, in Resolution 47, the Security Council, while still calling for an end to the fighting, for the first time brought up the issue of a 'free and impartial' plebiscite in Kashmir to determine its accession to India or Pakistan.[15] There was to be no 'third option' of independence. By requesting the establishment in J&K of 'observers' 'in pursuance of [the] measures indicated', the Council also laid the basis for the establishment of the UN Military Observer Group in India and Pakistan (UNMOGIP), established to supervise the Ceasefire Line (CFL) and report upon any violations. In the Karachi Agreement of 27 July 1949, both India and Pakistan agreed to the presence of the UN observers. Under the command of the UN Military Adviser, UNMOGIP (which still exists today) is to 'observe and report, investigate complaints of cease-fire violations and submit its finding to each party and to the Secretary-General'. UNMOGIP's effectiveness has been determined by the level of cooperation provided by both sides. While it was most effective in the first fifteen years monitoring the CFL and dealing with allegations of ceasefire violations emanating from both sides, its role declined from the early 1960s. With Pakistan planning to instigate a rebellion in India, its cooperation with UNMOGIP decreased considerably. For its part, India lost faith in UNMOGIP when it did not condemn Pakistan publicly for initiating the 1965 war. After the 1972 Simla Agreement (discussed below), it began to see UNMOGIP as a nuisance, albeit one which had to be tolerated. UNMOGIP's effectiveness today is minimal.

Divided largely into two parts, Resolution 47 also elaborated on Pakistani and Indian responsibilities in bringing about peace and security in J&K. The first part, on restoration of peace and order, urged Pakistan to withdraw the tribesmen and Pakistani nationals who had entered the state for purposes of fighting, and to

[10] Dasgupta, *War and Diplomacy in Kashmir*, 115.
[11] SC Res. 38 of 17 Jan. 1948.
[12] Ibid.
[13] SC Res. 39 of 20 Jan. 1948.
[14] Ibid.
[15] SC Res. 47 of 21 Apr. 1948.

prevent any further intrusion by them into the state or the provision of aid to them. It stipulated that India should also withdraw its own forces from J&K virtually at the same time, and reduce them to a minimum for the maintenance of law and order.[16]

The second part of Resolution 47, on the plebiscite, noted the desire of both countries that the question of the accession of J&K to India or Pakistan 'should be decided through the democratic method of a free and impartial plebiscite'.[17] India was to ensure that the J&K government invited the major political groups to designate responsible representatives 'to share equitably and fully' in the administration at the ministerial level while the plebiscite was being prepared and carried out. The resolution also provided for the establishment of a plebiscite administration in J&K and the appointment of a Plebiscite Administrator by the UN Secretary General. The task of the Plebiscite Administrator was to hold a fair and impartial plebiscite as soon as possible. Finally, the resolution increased UNCIP Membership to five, and instructed it to proceed at once to the Indian subcontinent, which the Commission finally did three months later in July 1948.

Resolutions 38 and 47 came as quite a shock to the Indian government, which naively and simplistically believed that the UN would simply see the strength of its case, condemn the raiders, and call on Pakistan to withdraw them, thus putting an end to the invasion of J&K. Instead, the resolutions focused on preventing the escalation of conflict between India and Pakistan rather than branding Pakistan as the aggressor. They also called for the conduct of a UN-supervised plebiscite to determine the accession of J&K to either India or Pakistan, rather than confirming the accession of the state to India. Even worse, from the Indian perspective, was Resolution 47's request for the simultaneous withdrawal of forces of both countries from J&K – thereby appearing to equate both countries as guilty parties.[18]

Although India had formally agreed to a referendum as the final determinant of J&K's accession to India, the Security Council's discussion of a plebiscite was of some concern to the country. In the absence of a precedent for the plebiscite, its idea had originated from Mountbatten. At the meeting of the Defence Committee of Cabinet on 25 October 1947, Mountbatten had urged that the completion of the legal formality of accession be confirmed by 'a referendum, plebiscite, election, or even, if these methods were impracticable, by representative public meetings'.[19]

Later that day Nehru wrote to British Prime Minister Clement Attlee that 'our view which we have repeatedly made public is that the question of accession in any disputed territory or state must be decided in accordance with [the] wishes of [the] people and we adhere to this view.'[20] In Lord Mountbatten's letter to Hari Singh formally accepting J&K's accession to India, he wrote that 'as soon as law and order

[16] SC Res. 47 of 21 Apr. 1948. [17] Ibid.

[18] Dasgupta, *War and Diplomacy in Kashmir*, 131.

[19] Schofield, *Kashmir in Conflict*, 52 3.

[20] Nehru's cable to Prime Minister Attlee on Kashmir, 25 Oct. 1947, at www.mtholyoke.edu/acad/intrel/kasnehru.htm

have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.'[21] On 1 November 1947 Mountbatten met with the Muslim League's Muhammed Ali Jinnah to propose that a plebiscite be held in all the three princely states of Junagadh, Hyderabad, and Kashmir.[22] In a major broadcast on All India Radio the next day, Nehru promised that Kashmir's future would be decided in accordance with the wishes of the people through 'a referendum held under international auspices like the United Nations'.[23] Yet, to India, the discussion of a UN-supervised plebiscite in Resolution 47 appeared to question the accession of J&K to India, rather than to accept it unless a plebiscite decided otherwise.[24] In view of these objections, India refused to accept Resolution 47, and began its long-standing suspicion of the Security Council and caution in dealing with it when it came to Indian security concerns.

Interestingly, Pakistan also refused to accept Resolution 47, but for different reasons. Its rejection was on the basis that the resolution signalled a retreat from the earlier position taken by the Council (which focused mainly on preventing the escalation of conflict), that the ceasefire should be made a matter of cooperation between both countries, and that Pakistan ought to be entitled to deploy its forces in Muslim majority areas in J&K, with Indian troops stationed only in non-Muslim areas.[25] Nonetheless, Pakistan continued to keep faith in the Council, and began its long-standing public diplomacy in support of implementing the Security Council's resolutions.

The UN Commission on India–Pakistan (UNCIP)

On their first visit to Pakistan and India in July 1948, UNCIP members met senior government leaders in both countries. In Karachi, Pakistani Foreign Minister Sir Zafarullah Khan astounded them by revealing that three regular brigades of the Pakistani army had been involved in the fighting in J&K in the past two months, which he justified on grounds of self-defence.[26] This followed the shift in Pakistan's official position in May 1948 that its army was needed to protect its borders. However, the presence of these brigades was in violation of Resolution 38, which urged both states to refrain from acts which might aggravate the situation and to inform the Security Council immediately of any 'material change' in the situation.[27]

[21] Text of 'Reply from Lord Mountbatten to Maharaja Sir Hari Singh'.

[22] Navnita Chadha Behera, *Demystifying Kashmir* (Washington, DC: Brookings Institution Press, 2006), 31.

[23] Ibid.

[24] Dasgupta, *War and Diplomacy in Kashmir*, 131 2.

[25] Ibid., 132.

[26] Ganguly, *Conflict Unending*, 21.

[27] Dasgupta, *War and Diplomacy in Kashmir*, 161 and 165.

In Delhi, Indian leaders made it clear that Pakistan's aggression in J&K, following its accession to India, needed to be recognized and condemned.[28]

Soon after its return to New York, UNCIP issued its own three-part resolution reflecting the 'material change' in the situation on the ground in J&K. The first part of the UNCIP resolution of 13 August 1948 urged both India and Pakistan 'separately and simultaneously' to issue a ceasefire order to apply to all forces under their control and forces in J&K at the earliest possible moment. Military observers were to be appointed to 'supervise the observance of the ceasefire order'.[29] The second part called for a truce, and urged Pakistan to withdraw its troops from J&K as their presence constituted 'a material change in the situation'. The resolution also called for the withdrawal of tribesmen and Pakistani nationals. Following the Pakistani withdrawal, India was to agree to remove the bulk of its forces from J&K in stages to a minimum level. The third part of the UNCIP resolution affirmed that upon acceptance of the truce agreement, both governments were to agree to enter into consultations for a plebiscite.[30]

In marked contrast to Security Council Resolution 47, the UNCIP resolution came as a relief to India. It clearly focused on a ceasefire based on the withdrawal of regular Pakistani troops and raiders from J&K, to be followed by the reduction of Indian forces. The plebiscite arrangements were to come after both sides had accepted the truce arrangements. Furthermore, by clearly stating that a minimum number of Indian troops were to remain to maintain law and order, the UNCIP resolution appeared implicitly to recognize J&K's accession to India. Not surprisingly, after seeking clarifications on a few issues, India accepted this resolution on 25 August 1948. Pakistan, on the other hand, rejected it on the basis that UNCIP ought to have been guided by the provisions of Security Council Resolution 47, and to have dealt with plebiscite arrangements.[31]

On 5 January 1949, UNCIP published its second resolution. Most importantly, it noted the acceptance of both India and Pakistan of a 'free and impartial' plebiscite in J&K to decide its accession to either India or Pakistan. This was to be held when the ceasefire and truce arrangements had been carried out, and arrangements for the plebiscite completed, as outlined in the first UNCIP resolution. It also reaffirmed the UN Secretary General's nomination of a Plebiscite Administrator.[32]

In effect, these resolutions resulted in a diplomatic stalemate between India and Pakistan. Meanwhile the fighting in J&K continued for several more months, until 1 January 1949, when each side was exhausted and convinced that it could no longer make significant territorial gains against the other. India took the position that as the UN-mandated withdrawal of Pakistani troops and raiders had not taken place, it would not reduce its own troops in J&K. Consequently, the UN-supervised plebiscite was also not held. Both countries bolstered their case on the other side's inaction.

[28] Ganguly, *Conflict Unending*, 21. [29] UNCIP Resolution of 13 Aug. 1948.
[30] Ibid. [31] Dasgupta, *War and Diplomacy in Kashmir*, 166.
[32] UNCIP Resolution of 5 Jan. 1949.

India made it clear that it would only withdraw and reduce its forces following Pakistan's withdrawal of forces and raiders from J&K, as requested by the Security Council. Pakistan countered by stating that its obligation on troop withdrawal was not unilateral, but part of a staged withdrawal leading to the demilitarization of J&K. It also stated that the basis of the Kashmir dispute was the ability of the people of J&K to exercise their right to self-determination,[33] and that a range of Security Council Resolutions in 1948 and 1949 had called for such a free and impartial UN-supervised plebiscite. Countering this argument, India responded that the conduct of the plebiscite was dependent, in the first instance, upon the withdrawal of Pakistani forces from J&K.

UN-mandated ceasefire agreement

Amidst these diplomatic exchanges in the summer of 1948, the Indian army made further gains by retaking the strategic town of Rajauri in Jammu. This was followed by Pakistani forces launching a thrust towards the Kashmir valley from the mountainous area of Gilgit and Skardu, to be repulsed by Indian forces at the Zojila Pass. In November 1948, Indian forces captured the Ladakh towns of Dras and Kargil. By the end of 1948 the fighting reached an impasse, leaving India controlling the Kashmir valley and parts of Jammu and Ladakh, and Pakistan controlling the remainder of Jammu bordering Pakistani Punjab, the North West Frontier Province (NWFP), and parts of Ladakh (Skardu), and Gilgit and Baltistan (Northern Areas).[34] The supplementary plebiscite proposals of UNCIP of 11 and 23 December 1948 readily provided the basis for the India–Pakistan ceasefire, which took effect a minute before midnight on 1 January 1949.

Following the conclusion of the ceasefire, UNCIP invited the military representatives of the Indian and Pakistani governments on 2 July 1949 to a military conference in Karachi, in order to establish the CFL in princely J&K. The resulting agreement 'between the Military Representatives of India and Pakistan regarding the establishment of a ceasefire line in the State of Jammu & Kashmir' was signed on 27 July 1949 by Indian Lt. General S.M. Shrinagesh, Major-General J. Cawthorn for the Government of Pakistan, and Hernando Samper and M.Delvoie for UNCIP. The CFL, demarcated in detail on the basis of factual positions on the ground on 27 July, was to be drawn on a one-inch map and verified mutually on the ground by local commanders on each side, with the assistance of UN military observers.[35]

[33] 'Kashmir The History: UN Resolutions', at www.pakun.org

[34] Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* (Harvard University Press: Cambridge, 2003), 41.

[35] 'Agreement between Military Representatives of India and Pakistan regarding the Establishment of a Cease fire Line in the State of Jammu and Kashmir' (Annex 26 of UNCIP Third Report UN doc. S/1430 Add. 1 3), 29 Jul. 1949.

However, in view of the absence of troops beyond northern grid reference NJ 9842, the CFL Agreement left open to interpretation the phrase that the CFL would run 'thence north to the glaciers'. This was to lead to the Siachen conflict between the two countries beginning in the early 1980s.

Council involvement after the ceasefire

Following the ceasefire agreement between India and Pakistan, subsequent Security Council resolutions focused on the demilitarization of princely J&K as the key step towards a plebiscite, but without success. On 22 December 1949, General A.G.L. McNaughton, the Canadian President of the Security Council, proposed a programme of 'progressive demilitarization'[36] based on the reduction of armed forces on either side of the CFL by withdrawal, disbandment, and disarmament. The aim was to reduce armed personnel in J&K to a minimum compatible with the maintenance of law and order. The programme was to include the withdrawal of those regular forces from both countries not required for purposes of security or law and order; and the disbanding and disarming of local forces on the Indian- and Pakistani-controlled sides of the CFL, including the Pakistan-supported 'Azad (Free) Kashmir' forces. Following this demilitarization, the Plebiscite Administrator was to proceed with the conduct of the plebiscite.

Resolution 80 of 14 March 1950 urged the Indian and Pakistani governments to make immediate arrangements to prepare and execute within five months the stage-by-stage demilitarization process on the basis of the McNaughton proposals. It also appointed a UN Representative to supervise the demilitarization and arrange for the assumption of the Plebiscite Administrator. The UN Representative, Sir Owen Dixon, an eminent Australian lawyer, tried to implement this plan and narrow the differences between the two countries over the 'procedure for and extent of demilitarization',[37] but failed. A year later, all the Security Council could do was to recognize the lack of agreement between the two countries and appoint a successor to Owen.[38]

The new UN Representative, Frank P. Graham, an American, proposed a twelve-point demilitarization plan on 4 September 1952. However, there was disagreement over the specific number of forces to remain on each side of the CFL at the end of the period of demilitarization – between 3,000 and 6,000 on the Pakistani side and 12,000–18,000 on the Indian side.[39] The subsequent proposals on demilitarization by Swedish diplomat Gunnar Jarring also came to naught.

At the same time, India began to harden its position on the UN-supervised plebiscite, which it had committed itself to following the withdrawal of Pakistani

[36] SC Res. 80 of 14 Mar. 1950. [37] SC Res. 91 of 30 Mar. 1951.
[38] Ibid. [39] SC Res. 98 of 23 Dec. 1952.

forces from the Pakistani side of the CFL. With disenchantment at the nature of the UN's interventions in J&K and concern about Pakistan's growing military relationship with the West, Nehru began to distance himself from the plebiscite in the early 1950s. This was accentuated by the loss of political support to India from the nationalist Kashmiri leader, Sheikh Abdullah.[40] These factors made it difficult for India to be confident of a favourable result in the plebiscite. By late 1954 India had lost all interest in holding a plebiscite in princely J&K.[41]

Nevertheless, for much of the 1950s the Security Council regularly passed resolutions on the 'India–Pakistan Question', calling for demilitarization and the plebiscite in the entire state of J&K. Finally, realizing that neither India nor Pakistan was going to accept these resolutions, and with the possibility of a veto emanating from their new-found allies and supporters – the US in the case of Pakistan and the Soviet Union in the case of India – the Council gave up its attempts to intervene directly in the Kashmir dispute. In 1962, the Soviet Union voted against a draft resolution referring to the plebiscite in J&K for the first time.[42] Resolution 126 of 2 December 1957 was, therefore, the last Security Council resolution directly on the Kashmir dispute.

The Second India–Pakistan War, 1–23 September 1965

India's humiliating defeat against China in October–November 1962, combined with Nehru's death in May 1964, provided Pakistan with an opportunity to instigate a rebellion in Indian-controlled J&K. It was emboldened by the perceived lack of a vigorous Indian response in the skirmishes between the two countries in the disputed western region of the Rann of Kutch in spring 1965, with UK mediation leading India to accept international arbitration on its future status. Pakistan appeared to believe that as with the Rann of Kutch mediation, a mini-war in Kashmir would result in international mediation which would (in view of Pakistan's belief in the strength of its case) rule in its favour. In early August, in Operation Gilbratar, Pakistan began to infiltrate some 5,000–10,000 armed 'irregulars' and army personnel in disguise into Indian-controlled J&K to bring about a mass uprising against Indian rule. In this context, the UN Chief Military Observer, General Nimmo, noted that 'the series of violations that began on August 5 were to a

[40] Christopher Snedden, 'Would a Plebiscite Have Resolved the Kashmir Dispute?', *South Asia: Journal of South Asian Studies* 28, no. 1 (Apr. 2005), 64 83.

[41] Ibid.

[42] UN doc. S/5143 of 22 Jun. 1962. See also Schofield, *Kashmir in Conflict*, 87.

considerable extent in subsequent days in the form of armed men, generally not in uniform, crossing the CFL from the Pakistan side for the purpose of armed action on the Indian side'.[43]

The infiltration was followed on 1 September by an attack on Indian territory in the Chhamb area of Jammu. The Indian response largely involved military operations in Pakistan-controlled Kashmir and, from 6 September, escalation to a full-scale Indian offensive towards Lahore. After two weeks of bitter land and air warfare, the Indian and Pakistani armed forces reached a military stalemate.[44] Amidst considerable US and UK pressure, including an arms embargo by both on India and Pakistan, both India and Pakistan agreed to abide by the Security Council resolutions calling for a ceasefire.[45] The UN-mandated ceasefire that took effect on 23 September 1965 ended the Second Kashmir War.

Security Council resolutions

In view of the fighting taking place across the CFL, UN Secretary-General Thant submitted a report to the Security Council on 3 September 1965. Referring to the 'recent extensive disregard for the ceasefire agreement and the ceasefire line', he stated that 'there can be little doubt that the Kashmir problem has again become acute and is now dangerously serious.' He also indicated that the Karachi Agreement had collapsed. As a result, Resolution 209, passed the following day, called upon both governments 'to take forthwith all steps for an immediate ceasefire'.[46] It also sought the full cooperation of the two governments with UNMOGIP in its task of 'supervising the observance of the ceasefire'. Two days later, on 6 September, the Council adopted Resolution 210 calling on both parties 'to cease hostility in the entire area of conflict immediately' and 'promptly withdraw all armed personnel to the positions held by them before 5 August 1965'.[47] It also requested the Secretary-General 'to exert every possible effort to give effect to the present resolution and to resolution 209 (1965), to take all measures possible to strengthen the United Nations Military Observer Group in India and Pakistan'.

Following Resolution 210, the Secretary-General visited India and Pakistan and met government leaders in both countries. His report to the Council on 16 September noted that both sides had expressed their desire for a cessation of hostilities, but that each side had posed conditions which made the acceptance of a ceasefire very difficult. Following the escalation of fighting beyond the CFL to the

[43] B. G. Verghese, 'Pakistan's Stuck Record', *Indian Express*, 2 Jul. 1999, at www.indianembassy.org/new/NewDelhiPressFile/Kargil Jul. 1999/Pakistan Stuck Record.htm

[44] Ganguly, *Conflict Unending*, 45.

[45] SC Res. 211 of 20 Sep. 1965.

[46] SC Res. 209 of 4 Sep. 1965.

[47] SC Res. 210 of 6 Sep. 1965.

international border, Resolution 211 of 20 September 'demanded that a ceasefire should take effect on Wednesday 22 September 1965 at 0700 hrs GMT'.[48]

This resolution also decided to consider 'what steps could be taken to assist towards a settlement of the political problem underlying the present conflict'. Such a political settlement was to take place as soon as hostilities had ended and all armed personnel withdrawn to the positions held by them before 5 August 1965. This was the first, though indirect, reference to the Kashmir dispute in a Security Council resolution since the end of 1957. However, Resolution 211 contained no reference to earlier resolutions on Kashmir. On 22 September 1965 the Council expressed its satisfaction that the ceasefire demanded by Resolution 211 had been accepted by the two parties; and called upon them to 'implement their adherence to the ceasefire call as rapidly as possible, and in any case not later than 2200 hrs GMT on 22 September 1965'.

As ceasefire violations continued to take place, the Council continued to demand that the parties 'honour their commitments to the Council to observe the ceasefire' and called upon both parties to withdraw their troops from the CFL.[49] However, the situation remained volatile. In November 1965, the Council passed a resolution expressing its regret over the delay in the 'full achievement of a complete and effective ceasefire and a prompt withdrawal of armed forces personnel' and demanding that representatives of the two countries meet 'with a suitable representative of the Secretary-General' to agree to a plan and schedule 'for the withdrawals of both parties'.[50]

The aftermath

The Second Kashmir War formally ended with a peace agreement brokered not by the Security Council but by a member state, the Soviet Union, in Tashkent on 10 January 1966. In the Tashkent Agreement both Indian Prime Minister Lal Bahadur Shastri and Pakistani President General Ayub Khan agreed on the withdrawal of all armed forces personnel of both sides to the positions they held prior to 5 August 1965. This was to be completed not later than 25 February 1966, with both sides agreeing to observe the terms of the ceasefire on the CFL.[51] Both sides also agreed to exchange the territories captured by either across the CFL, thereby restoring the status quo ante.[52] The UN Secretary-General also set up, as a temporary measure,

[48] SC Res. 211 of 20 Sep. 1965.
[49] SC Res. 214 of 27 Sep. 1965.
[50] SC Res. 215 of 5 Nov. 1965.
[51] Ganguly, *Conflict Unending*, 47.
[52] The Kargil Review Committee Report, 'From Surprise to Reckoning', 15 Dec. 1999, (New Delhi: Sage Publications, 1999), 47.

the United Nations India–Pakistan Observation Mission (UNIPOM) to supervise the ceasefire along the India–Pakistan border beyond the CFL.[53]

On 22 January 1966, the Indian and Pakistani military commanders agreed to a plan for disengagement and withdrawals, which had been negotiated by their representatives under the auspices of the UN Secretary-General's representative. Three days later, again under the auspices of the UN Secretary-General's representative, they agreed on the ground rules for the implementation of the disengagement and withdrawal plan. UNMOGIP and UNIPOM were to ensure that the action agreed upon was fully implemented. On 26 February the Secretary-General reported that the withdrawal of troops by India and Pakistan had been completed on schedule the previous day, and that the withdrawal requests made by the Council had been fulfilled by the two parties. UNIPOM was subsequently terminated on 22 March 1966.

The Third India–Pakistan War, 3–17 December 1971

Towards the end of 1970, relations between India and Pakistan deteriorated dramatically over events in East Pakistan. Following rising discontent between the dominant West and the weaker East Pakistan, and the indefinite postponement of the convening of the new National Assembly which would have been dominated by Bengalis, West Pakistan unleashed military repression over the numerically dominant Bengali-speaking citizens of East Pakistan. This led to a civil war in Pakistan in March 1971, forcing some 10 million people, both Hindus and Muslims, to seek refuge in neighbouring India. As a result, in early October 1971, Indian and Pakistani troops in the eastern theatre exchanged gunfire, and later that month clashed with each other in a growing number of military encounters. India also aided, trained, and supported East Pakistani armed resistance fighters, the Mukti Bahini (Liberation Front), in an effort to divide Pakistan strategically. In an attempt to consolidate its position in East Pakistan, Pakistan launched a pre-emptive air strike against eight Indian airfields in the western theatre in Punjab, Haryana, and Indian-controlled J&K on 3 December 1971. This resulted in an Indian military response.

During the ensuing fourteen days of war, Indian and Pakistani forces fought each other in both the eastern and western theatres. On 6 December, Bangladesh declared its independence. Ten days later, Lt. General A.A.K. Niazi, the commander of Pakistan's eastern military command in Dhaka, surrendered. A day later, on 17 December

[53] The Security Council had requested in SC Res. 211 that the Secretary General should establish a monitoring mechanism on the India Pakistan border to supervise the ceasefire and the withdrawal of all armed personnel.

1971, India ordered a unilateral ceasefire in the western sector. This was reciprocated by Pakistani President General Yahya Khan, bringing to an end the third India–Pakistan war.

India justified its military actions again Pakistan mainly on the grounds of humanitarian intervention, in view of the Pakistani military's human rights violations against the Bengali population in eastern Pakistan and the urgency of responding to the arrival of ten million refugees on Indian territory. On 4 December 1971, the Indian representative to the UN boldly stated: 'We are glad that we have on this particular occasion nothing but the purest of motives and the purest of intentions: to rescue the people of East Bengal from what they are suffering.'[54] When India failed to gain support for the human rights justification, other than from the Soviet Union, it reverted to legitimizing its military actions on the basis of self-defence. This shift in rationale followed the Pakistani air strikes on Indian airbases on 3 December 1971, which marked the formal start of the war.

UN Security Council resolutions

During the war, the Council was paralysed because of the support of the US and the USSR for Pakistan and India respectively. The Soviet Union, which had signed a twenty-year friendship treaty with India only in August 1971, vetoed three draft resolutions in the Security Council, all calling for a ceasefire and the mutual withdrawal of troops.[55] In the light of the Council's paralysis, the US and its allies passed a 'Uniting for Peace' resolution transferring the matter to the General Assembly,[56] which called upon both governments to implement an immediate ceasefire, withdraw their armed forces to their own side of the India–Pakistan borders, and support the return of refugees.[57]

Four days after the end of the conflict, the Council passed Resolution 307, demanding that a 'durable ceasefire and cessation of all hostilities in all areas of conflict be strictly observed'.[58] It also demanded that the ceasefire remain in effect until withdrawals took place of all armed forces to their respective territories and to positions 'which fully respect the ceasefire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan'. Finally, the resolution called upon all member states to 'refrain from any action which may aggravate the situation in the subcontinent or endanger international peace', and called for support for the repatriation of refugees.[59]

[54] Adam Roberts, 'The So Called "Right" of Humanitarian Intervention', *Yearbook of International Humanitarian Law*, 3, 2000 (The Hague: T.M.C. Asser Press, 2002), 22.

[55] UN doc. S/10416 of 4 Dec. 1971; UN doc. S/10423 of 5 Dec. 1971; and UN doc. S/10446/Rev.1 of 13 Dec. 1971.

[56] SC Res. 303 of 6 Dec. 1971.

[57] GA Res. 2793 (XXVI) of 7 Dec. 1971.

[58] SC Res. 307 of 21 Dec. 1971.

[59] Ibid.

The aftermath

Pakistan suffered a devastating blow in the December 1971 war with India. It lost East Pakistan, Bangladesh became independent (undermining the two-nation theory on which Pakistan had been created), and nearly 90,000 of its troops and citizens were held as prisoners of war by India. It was understandable that the Pakistani delegation to the subsequent peace talks in July 1972 in the northern Indian town of Simla was disheartened.

The Simla Agreement, signed by Indian Prime Minister Indira Gandhi and the new President of Pakistan, Zulfiqar Ali Bhutto, on 3 July 1972, essentially laid down the principles for future bilateral relations between the two countries. It stated that India and Pakistan resolved to 'settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them'.[60] Indian and Pakistani forces were to be withdrawn to their side of the international border.

The Simla Agreement converted the CFL into the Line of Control (LoC), resulting from the territorial gains made up until the ceasefire of 17 December. In essence, this reflected minor variations in the CFL – some as little as 100 yards – including Indian gains in the north around Kargil and Pakistani gains in the west in the Chammb sector. The 460-mile LoC was subsequently demarcated and reproduced in detail in two sets of maps by both sides in the Suchetgarh Agreement of 11 December 1972. In accordance with the Simla Agreement, the LoC was to be respected by both sides, with neither side seeking to alter it unilaterally.

The Simla Agreement also stipulated that force withdrawals were to be completed within thirty days of its entry into force. It also stated that the two sides were to meet to discuss further the establishment of durable peace and normalization of relations, 'including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations'.[61]

Nonetheless, differences over the interpretation of the Simla Agreement soon arose. While India perceived the agreement's focus on bilateralism as superseding the internationalization of the Kashmir dispute through Security Council resolutions, Pakistan disagreed. Pakistan maintained that the Simla Agreement noted that 'the principles and purposes of the Charter of the United Nations shall govern the relations between the two countries.' As Bhutto subsequently noted, there was 'nothing in the Simla agreement to prevent Pakistan from taking the dispute to the UN'.[62] Subsequently, Kashmir has been raised both at the UN General Assembly

[60] 'Simla Agreement on Bilateral Relations between India and Pakistan', signed by Prime Minister Indira Gandhi, and President of Pakistan, Z. A. Bhutto, in Simla on 3 Jul. 1972, at www.indianembassy.org/policy/Kashmir/shimla.htm

[61] Ibid.

[62] The Kargil Review Committee Report, 47.

and the UN Human Rights Commission. Another key difference was that whereas India saw the LoC as virtually an international boundary, Pakistan disputed this. The latter's argument was that even the Simla Agreement noted the requirement for a 'final settlement of Jammu and Kashmir'.[63]

India–Pakistan Nuclear Tests

On 11 and 13 May 1998, India carried out a series of five nuclear weapon tests. In his statement to parliament on 27 May, Indian Prime Minister Atal Behari Vajpayee proclaimed that India was now a nuclear-weapon state. These were India's first nuclear tests since its single 'peaceful nuclear explosion' on 18 May 1974. Within a fortnight, Pakistan responded with six nuclear weapon tests of its own on 28 and 30 May. The explosions – the first nuclear tests by non-P5 states for nearly twenty-five years – shocked the international community. Their challenge to the normative framework on nuclear weapons was compounded by the fact that neither of these two countries had signed the nuclear Non-Proliferation Treaty (NPT) of 1968. For the Security Council, such a proliferation of weapons of mass destruction constituted a threat to international peace and security. This was therefore quite different from previous situations in which the Security Council passed resolutions over disputed territory.

As a result, on 6 June 1998, the Security Council condemned the Indian and Pakistani actions and demanded that both countries refrain from further nuclear tests.[64] In Resolution 1172, the Council expressed strong concerns over the tests in terms of their impact on the global non-proliferation regime, peace and stability in the region, and the risk of a nuclear arms race in South Asia. It also reaffirmed its full commitment to the crucial importance of the nuclear Non-Proliferation Treaty (NPT) and the Comprehensive Test Ban Treaty (CTBT), and urged both countries to become parties to the NPT and the CTBT. This was a very strongly worded resolution, which called upon both India and Pakistan not only to stop their nuclear weapon development programmes, but also to 'refrain from weaponization or from the deployment of nuclear weapons, to cease development of ballistic missiles capable of delivering nuclear weapons and any further production of fissile material for nuclear weapons'.[65] In a direct reference to the Kashmir dispute, the resolution also urged both India and Pakistan to resume a dialogue to remove the tensions between them, and encouraged them 'to find mutually acceptable solutions that address the root causes of those tensions, including Kashmir'.[66] This was

[63] Simla Agreement. [64] SC Res. 1172 of 6 Jun. 1998.
[65] Ibid. [66] Ibid.

followed by a statement of the Foreign Ministers of the P5 on 24 September 1998, which requested both countries to undertake 'serious discussions to address their bilateral disputes and to implement comprehensively and without delay all the provisions of Resolution No. 1172'.[67] However, to date neither India nor Pakistan has agreed to implement this resolution.

Conclusion

The Council has had mixed success in its involvement in the India–Pakistan wars. Clearly, it played a critical role in mediating the ceasefire between the two countries in 1949 and 1965, to end the First and Second Kashmir Wars. This required patience, focused engagement in the region, and deft negotiating skills, all of which the UN had plenty of. During the 1965 war, the influence of the US and the UK, especially their arms embargo on both India and Pakistan, assisted these efforts. The Council also played a key part in the Karachi Agreement of July 1949, which established the CFL between the two countries, and the military disengagement and withdrawal plan of 22 January 1966, which reverted to CFL status quo. It also established UNMOGIP, currently the second-oldest ongoing UN peacekeeping mission, and, for a brief period, UNIPOM.

But, with the Simla Agreement of July 1972 and the Suchetgarh Agreement of December 1972, India lost interest in UN involvement. It argued that as the agreed establishment of the LoC superseded the UN-mandated CFL, UNMOGIP had no role to play in the supervision of the LoC. Pakistan countered this view by stating that with the CFL being only slightly altered by the LoC, the 1949 Karachi Agreement was still valid, and UNMOGIP was therefore still relevant. For Pakistan, the mere presence of UNMOGIP enhanced the perception that Kashmir was an international issue. UNMOGIP can only be wound up with reference to the Security Council and with the consent of Pakistan; India has not made a formal request to the Security Council for the withdrawal of UNMOGIP.[68] In the absence of such a decision, India has unilaterally restricted its interactions with UNMOGIP on its side of the LoC, and, since January 1972, refuses to lodge any complaint of a ceasefire violation. This is in marked contrast to Pakistan's view of UNMOGIP and the number of complaints of ceasefire violations it has lodged over the past years. However, as the ceasefire on the LoC, initiated by Pakistan in November 2003 and reciprocated by India, has held, such complaints of violation are today the exception

[67] The Kargil Review Committee Report, 207.

[68] Pauline Dawson, *The Peacekeepers of Kashmir: The UN Military Observer Group in India and Pakistan* (London: Hurst and Company, 1994), 310 12.

rather than the norm. UNMOGIP currently has forty-four international military personnel, twenty-three international civilian personnel, and forty local civilian staff.[69]

Otherwise, however, the Security Council has been marginal to addressing the India–Pakistan conflict. Paralysed during the 1971 India–Pakistan War, the Security Council found that its resolution soon after the end of the conflict had limited impact. The possibility of a veto by either of the two superpowers on behalf of India or Pakistan limited its potential role, and the Council played no part in the Simla Agreement, which formally ended the 1971 war. The Council was also marginalized in the 1999 Kargil conflict, and in the three India–Pakistan crises, indicating its limitations in conflicts where it is in the interests of neither state to seek UN assistance and situations short of conflict. In the former case, Pakistan denied any official involvement in the territorial gains being made across the LoC by 'irregulars', whereas India wanted to avoid internationalizing the Kargil conflict as it was in a stronger military position.

It can also be concluded that the Security Council has had no impact on three key issues. First, notwithstanding considerable Council effort in the 1940s and 1950s on the UN-mandated phased withdrawal of troops from both the Indian and Pakistani side of the ceasefire line in princely J&K, there has been neither withdrawal of Pakistani troops nor a reduction of Indian troops from this area. While Pakistan refused to withdraw its forces from J&K until the mutual staged demilitarization of J&K was agreed upon and the people of Kashmir were able to exercise their right of self-determination, India refused to reduce its troops before Pakistan did so. These developments may well be overtaken by Pakistan President Musharraf's proposals in 2005–6 for the demilitarization of J&K, as part of a possible package deal with India on Kashmir.

Secondly, there has still been no UN-supervised plebiscite to determine the accession of J&K to either India or Pakistan. This was a proposal that both countries initially supported, but from which India gradually began to distance itself by the mid-1950s due to the evolving global security environment and local politics in J&K which made the majority vote in favour of India appear uncertain. It is now unlikely that this will ever take place. The entire state of J&K, to which the Council resolutions apply, no longer exists; the status quo on both sides of the CFL/LoC has changed considerably since the 1940s. On the Pakistani side, the Shaksgam Valley (Ladakh) was ceded to China in 1963, and large-scale demographic changes have taken place with the influx of a Punjabi and Hazra–Pathan population. On the Indian side, a constituent assembly election took place in September 1951, the Delhi Agreement of 1952 defined the relationship between the J&K and the central government, and the Indian-controlled J&K Constitution in 1957 declared that

[69] Website of the UN Military Observers Group in India and Pakistan (UNMOGIP), at www.un.org/Depts/dpko/missions/unmogip/mandate.html

the state of J&K was an integral part of India, and that accession to India was final and irrevocable. In March 1965, the ceremonial head of the state (Sardar-i-Riyasat) began to be called Governor and the state's prime minister, the Chief Minister. Furthermore, several parliamentary and assembly elections have subsequently taken place in J&K. In addition, China occupies the large Aksai Chin area in Ladakh, which was part of the entire J&K state.

Notwithstanding the growing practical difficulties in holding a plebiscite, Pakistan felt the need to refer to Council Resolutions in an attempt to internationalize the issue at a time when India was refusing to discuss Kashmir with Pakistan. On 17 December 2003, President Musharraf boldly offered to drop the traditional demand for a UN plebiscite in Kashmir, and meet India 'half way' in a bid to resolve the Kashmir dispute. This has been a major psychological and political irritant to India.[70] In response, India finally appeared to agree that Kashmir was disputed territory – which it had refused to do previously – and formally recognized Islamabad's role in the future of divided Kashmir. The India–Pakistan Joint Statement of 6 January 2004 clearly stated that the Kashmir problem was to be settled 'to the satisfaction of both sides'. In return, Pakistan pledged to prevent cross-border infiltration and terrorism by undertaking that it would 'not permit any territory under Pakistan's control to be used to support terrorism in any manner'.[71] In May 2007, the report entitled 'Kashmir: Present situation and future prospects' written by Baroness Nicholson of Winterbourne, received overwhelming support from the European Parliament, of which she is a member. This report suggested that the preconditions for holding the long-promised plebiscite on the final status in Kashmir do not yet exist.[72]

Thirdly, the Council's condemnation of the Indian and Pakistani nuclear weapon tests may have been dealt a major blow with the prospective landmark India–US civil nuclear deal concluded in 2006. This agreement will push for full bilateral civil nuclear cooperation despite India's refusal to sign the NPT or agree to the provisions of UNSC Resolution 1172. It aims to provide previously denied civil nuclear technology and supplies to India in return for the separation of civil and military nuclear facilities and acceptance of international safeguards on civil facilities.[73]

Although India advocates a strong pro-UN stance on global and international security issues, on security matters close to home it is far more circumspect. This is a direct result of what it perceived to be a bitter experience dealing with the Security Council over the Kashmir issue. Partly in view of its non-aligned foreign

[70] The International Institute for Strategic Studies (IISS), 'India and Pakistan: Towards Greater Bilateral Stability', *Strategic Survey 2003/4* (London: Routledge, 2004), 231.

[71] Ibid.

[72] Available at emmanicholson.info/work/overwhelming backing from the parliament.html

[73] The International Institute for Strategic Studies (IISS), 'South Asia: New Possibilities, Old Problems', *Strategic Survey 2006* (London: Routledge, 2006), 304 5.

and security policy and its perceived distance from military alliances, India preferred to task itself with maintaining the security of Kashmir rather than rely on multilateral institutions for this purpose. It has also favoured a bilateral approach in dealing with its neighbours, as illustrated by its relationship with Pakistan, for example, after the Simla Agreement of 1972. Such an approach takes advantage of India's own relative strengths and capabilities in relation to its neighbours and prevents them from 'ganging up' against it, especially as it is the only country which shares borders with virtually all its South Asian neighbours.

In the Indian experience, the differences among the P5 due to the Cold War provided a useful opportunity actively to seek the prospect of a veto by the Soviet Union on an unfavourable draft Security Council resolution. The Soviet Union also successfully brokered the end of the Second Kashmir War with a peace agreement at Tashkent in January 1966. As a rising great power, with a booming economy providing greater political influence, India needs to gain confidence in dealing with the UN in its own neighbourhood while at the same time seeking its reform and a seat for itself in an expanded Security Council.

CHAPTER 15

THE SECURITY COUNCIL AND EAST TIMOR

PETER CAREY
WITH THE ASSISTANCE
OF PAT WALSH*

The former Portuguese colony of East Timor, now the Democratic Republic of Timor Leste (Republica Democrática Timor Leste/RDTL), should have become an independent state on 15 October 1978. This was the date fixed by the Portuguese Council of the Revolution for the final transfer of power from Lisbon to a proposed Timorese National Assembly elected by popular mandate,[1] an arrangement which, it was widely acknowledged even by the Indonesians, had the overwhelming support of the majority of Timorese.[2]

* I am grateful to Pat Walsh, then (2002 5) Executive Director of the Commission for Reception, Truth and Reconciliation (Comissão Acolhimento, Verdade e Reconciliação (henceforth: CAVR)) in Díli, East Timor, for his assistance with the first section of this chapter and for providing all the references from the Public Record Office (PRO) FCO Archive, copies of which are held in the Dowson Archive of the CAVR.

[1] James Dunn, *Timor: A People Betrayed* (Milton, Qld: Jacaranda Press, 1983), 97 8. The text of Constitutional Law 7/75 can be found in Heike Krieger (ed.), *East Timor and the International Community: Basic Documents* (Cambridge: Cambridge University Press, 1997), 34 6.

[2] See Telegram 244 from British Embassy Jakarta to FCO, London, 4 Jul. 1975, FCO 15/1704, PRO; which reported that 'The Indonesians admit . . . that a referendum held now [mid 1975] would probably result in a majority for independence'; quoted Brad Simpson, ' "Illegally and Beautifully": The United States, the Indonesian Invasion of East Timor and the International Community, 1974 1976', *Cold War*

Enacted on 17 July 1975, Constitutional Law 7/75 was immediately overtaken by the events, most notably the three-week civil war between the two main independence parties (Fretilin and UDT) (11 August to early September 1975)[3] and the subsequent Indonesian invasion (7 December 1975). It was to be 24 years before the Timorese were again given the opportunity to exercise their right to self-determination. During that quarter century, perhaps as many as 183,000 out of a pre-1975 population of 700,000 perished from war-related causes.[4] More were to die between the 4 September 1999 announcement[5] of the 78.5 per cent popular endorsement of independence following the UN-supervised referendum on 30 August 1999 and the arrival of the Security Council-mandated and Australian-led International Force East Timor (InterFET) on 20 September. In those two and a half weeks, the departing Indonesians destroyed 75 per cent of the territory's infrastructure and displaced two-thirds of its population. If post-Khmer Rouge Kampuchea (1975–9) had to rebuild from Year Zero, East Timor had to begin from an even lower point as it made its long-denied transition to full statehood under the aegis of the UN Transitional Administration in East Timor (UNTAET, 1999–2002).

The Council was involved in the East Timor issue from the very moment the Indonesians invaded in December 1975, passing two resolutions calling for the immediate withdrawal of all Indonesian forces.[6] Yet it took nearly a quarter of a century before the UN's highest body backed its words with actions. Why? The short answer is the Cold War and the very different international contexts in which the East Timor issue was considered at the UN as the world moved from the bipolarity of the mid-1970s to the 'new world order' of the 1990s. This chapter will examine the role of the UN – in particular the Security Council – during the two periods 1975–89 and 1990–99 and assess what can be learnt from its handling of the Timor question. Was it indeed the 'success story' which the Council has claimed, or rather a brave – last minute – attempt to 'square the circle' between the imperative of East Timor's right to self-determination, the concern for Indonesia's stability, and the strategic interests of the Western powers?

History, 5.3 (Aug. 2005) 288, 307 n. 36, 308 n. 37. See also Peter Carey and G. Carter Bentley (eds.), *East Timor at the Crossroads: The Forging of a Nation* (Honolulu: Hawaii University Press, 1995), 5, on the 55 per cent vote for the main independence party, Fretilin, in local elections in Jul. 1975.

[3] Fretilin (Frente Revolucionária de Timor Leste Independente/Revolutionary Front for an Inde pendent East Timor) and UDT (União Democrática Timorense/Timorese Democratic Union) were the two main political parties founded in East Timor after the 25 Apr. 1974 'Carnation' Revolution in Lisbon. On the civil war, see Dunn, *Timor*, 165 206.

[4] The figure is from the 2005 CAVR Report on the killings and human rights abuses in Timor Leste between 1974 and 1999. It estimated the number of 'conflict related' deaths at between 102,800 and 183,000, a figure which includes both killings and deaths due to privation. CAVR Press Release, Díli, 4 Jan. 2006.

[5] The announcement was made simultaneously (there is a 14 hour time difference between NYC and Díli) on Friday, 3 Sep. in New York, and on Saturday, 4 Sep., in Díli.

[6] SC Res. 384 of 22 Dec. 1975; and SC Res. 389 of 22 Apr. 1976.

The East Timor Issue in the Mid-1970s

UN initiatives on decolonization

On 29 November 1974, just over six months after the fall of the Caetano regime in Portugal, General Assembly Resolution 3246 (XXIX) called on

> All States to recognise the right to self determination and independence of all peoples subject to colonial and foreign domination and subjugation, and to offer them moral, material and other forms of assistance in their struggle to exercise fully their inalienable right to self determination and independence.

This resolution harked back to Article 73 of the UN Charter which dealt directly with the issue of non-self-governing territories, enjoining those members with responsibilities for such territories to take due account of their political aspirations and to assist them in the development of their free political institutions.

In 1961, the UN had sought to give momentum to the decolonization agenda by creating a Special Committee on Decolonization, later known as the 'Committee of 24'.[7] This had a particular brief to advise the General Assembly on ways to promote decolonization and independence. To this end, it was authorized to travel widely, to hold hearings, prepare background papers, and to send missions to gather first-hand information about the situation of colonized territories and the wishes of their inhabitants. On the basis of that evidence, it would make recommendations to the General Assembly.

Portugal and the UN

Portugal denied the Special Committee access to East Timor and prevented the East Timorese from making any depositions to it. Indeed, during the entire 48 years of the Salazar–Caetano dictatorship (1926–74), there was no cooperation of any sort between Portugal and the UN or its League of Nations predecessor. That was the reality for Timor in the mid-1970s. Most Timorese knew little about the new UN decolonization initiatives and the implications they might have for their political future. When members of the tiny Timorese elite did get an inkling, such as the future Nobel Peace Prize winner, José Ramos-Horta, he was forced into African exile.[8]

[7] This was a reference to the increase in the Committee's numbers to twenty four in 1962. Its full title is 'The Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples'. See further Krieger (ed.), *Basic Documents*, 30 32.

[8] José Ramos Horta, *Funu: The Unfinished Saga of East Timor* (Trenton, NJ: Red Sea Press, 1987), 6 7.

Between 1960 and 1974, the Special Committee was passive on the Timor question. Even after the overthrow of the dictatorship by the Armed Forces Movement in April 1974, it met just once – in Lisbon in June 1975 – to consider East Timor's future, concluding that 'with regard to Timor and its dependencies, the Special Committee expresses the hope that the necessary steps will be taken . . . to enable the people of that Territory to attain the goals set forth in the UN Charter.'[9] This bland statement stands in stark contrast to its input into a series of General Assembly resolutions upholding the rights of peoples in other Portuguese colonial territories in Africa. The only positive step which the Special Committee took in the late 1970s and 1980s was to allow international non-governmental organizations (NGOs) to petition it on the situation of East Timor under Indonesian occupation despite Jakarta's objections.[10]

The lack of initiative taken by the Special Committee and the UN as a whole caused the last Governor of East Timor, Colonel Mário Lemos Pires (in office, 1974–5), to complain that 'all countries in the world asked Portugal to decolonise but when the time came [in the mid-1970s], none attempted to help or support us.'[11] There is no doubt that the Permanent Five (P5) and other UN member states with interests in South East Asia, all of whom had a responsibility for at least providing moral support for the process of self-determination and decolonization in East Timor, failed in their duties. Indeed, most were directly complicit in Indonesia's act of aggression and its twenty-four-year military occupation. As the British ambassador in Jakarta, John Archibald Ford, put it five months before the Indonesian invasion, 'it is in Britain's interests that Indonesia should absorb the territory as quickly and as unobtrusively as possible, and that if it comes to the crunch and there is a row at the UN we should keep our heads down and avoid siding with the Indonesians,'[12] sentiments echoed by his US colleague in the Indonesian capital, David Newsom, who remarked laconically that if Jakarta invaded, it should do so 'effectively, quickly and not use our equipment'.[13]

As for the Special Committee and the Portuguese government, an official at the UK Permanent Mission in New York summed up their supine stance some six months after the invasion:

There will probably be some discussion of Timor in the Committee of 24 during August [1976], [but] there is no enthusiasm for it whatsoever as it is widely recognised that the clock cannot be turned back. . . . Portugal remains quiet. They indicate privately that they

[9] Special Committee Statement, Lisbon, 14 Jun. 1975. See further Krieger (ed.), *Basic Documents*, 18 ff.

[10] Krieger (ed.), *Basic Documents*, 165, 166 83.

[11] Colonel Mário Lemos Pires, videotaped presentation to the Commission for Reception, Truth and Reconciliation (CAVR), Public Hearing on Self Determination, Díli, 15 17 Mar. 2004.

[12] Memo from J. A. Ford, British Embassy Jakarta, to P. J. E. Male of the FCO, 14 Jul. 1975, FCO 15/1715, PRO, quoted in Simpson, 'Illegally and Beautifully', 290, 308 n. 47. See further Dunn, *Timor*, 119 20.

[13] Quoted in Wendy Way (ed.), *Australia and the Indonesian Incorporation of Portuguese Timor, 1974 1976* (Carlton South, Victoria: Melbourne University Press, 2000), 314.

will accept anything that is acceptable to the UN as a whole. [But] they are not trying to get anything done.[14]

The UN Security Council

The one UN body which might have been able to make a difference at this time was the Security Council. As the most powerful organ in the UN system charged with maintaining peace and security between nations and the only body within the UN capable of imposing sanctions, it has the power to make decisions which UN member states must carry out under the UN Charter.

Under Chapter VI of the Charter (Pacific Settlement of Disputes), the Council may investigate disputes and recommend appropriate steps to end them. But these recommendations are not legally binding on member states unless they include sanctions. Under Chapter VII (Action with Respect to Threats to Peace, Breaches of the Peace and Acts of Aggression), the Council has broader powers to decide what should be done to address aggression and take action. It is generally agreed that Chapter VII resolutions are binding. Only two Chapter VII resolutions were passed on East Timor in this whole twenty-four-year period, namely Res. 1264 (15 September 1999) which authorized the establishment of InterFET (International Force in East Timor),[15] and Res. 1272 (25 October 1999) which established UNTAET. We will consider the background to these momentous decisions in the second part of this chapter.

In the immediate aftermath of Jakarta's 7 December invasion, the Council only debated East Timor twice. On both occasions resolutions were passed calling on Indonesia to withdraw its troops, and on both occasions Indonesia failed to comply, its representative asserting that it only had 'volunteers' in the territory and that by mid-April 1976 these were already withdrawing.[16]

The first (SC Res. 384 of 22 December 1975), adopted unanimously under UK chairmanship, censured Portuguese colonialism and 'deplor[ed] the intervention of the armed forces of Indonesia', but made no reference to aggression, breach of international law, or military occupation. It upheld the 'inalienable right' of the people of East Timor to 'self-determination and independence' but suggested no practical steps to bring this about. It called on Indonesia 'to withdraw its forces without delay', and urged the government of Portugal and 'all states and other parties' 'to cooperate fully with the UN so as to enable the people of East Timor to exercise freely their right to self-determination', but was not prepared to place any sanctions on Indonesia if it failed to comply. The only practical measure envisaged

[14] Richard Dalton to FCO, 11 Jun. 1976, CAVR Archive, Díli, East Timor, Dowson File, original document in FCO 15/1717, PRO.

[15] SC Res. 1264 of 15 Sep. 1999, para. 3.

[16] See Statements of Ambassador Anwar Sani of Indonesia in Krieger (ed.), *Basic Documents*, 63 para. 90, 103 para. 11.

was to request the Secretary-General to send a Special Representative (SRSG) to Indonesia and East Timor to make 'an on-the-spot assessment of the existing situation' and establish 'contacts with all the parties in the Territory and all States concerned in order to ensure the implementation of the present resolution'.[17] The second resolution, Resolution 389, was adopted exactly four months later on 22 April 1976, by twelve votes to none with two abstentions (US and Japan, Benin did not participate in the voting). Its contents were essentially the same as the first except for two significant omissions: the paragraphs 'regretting' Portugal's failures as administering power in the territory, and 'deploring' Indonesia's armed intervention were dropped.

By its actions, Indonesia was guilty of a serious breach of international law. But the Council must also accept some of the responsibility for failing to respond to this challenge to international order. Unlike Vietnam at the time of its Christmas Day 1978 invasion of Cambodia, Indonesia was not threatened with expulsion from the international body nor were any Western sanctions imposed. Instead, the Council resorted to a game of diplomatic 'hide-and-seek', most graphically illustrated by the useless peregrinations of the SRSG, Vittorio Winspeare Guicciardi in January–March 1976, to which we return shortly.

During the discussions which preceded the vote on that second resolution, Japan's permanent representative, Ambassador Kanazawa, introduced an amendment (not eventually accepted by the Council) which spoke of Indonesia being called upon 'to withdraw all its *remaining* forces' arguing that the Indonesian representative's assertion that 'armed volunteers are already leaving the Territory' should be accepted as fact.[18] The US and the UK went along with this deception. Of the major powers, only China did the right thing, but even then Beijing was going through the motions ('firing paper bullets' in the words of the Chinese Ambassador) rather than applying any significant pressure on Jakarta.[19] The US representative, Daniel Patrick Moynihan, was later to boast in his memoirs that 'the US Department of State desired that the United Nations prove utterly ineffective in whatever measures it undertook [on East Timor]. This task was given to me and I carried it forward with no inconsiderable success.'[20]

The problem for East Timor was that, unlike the situation which later pertained with regard to the Falklands/Malvinas (April 1982) and Kuwait (August 1990) following the Argentine and Iraqi invasions, none of the P5 had any strategic interests in the territory's political survival. Portugal, the former colonial power,

[17] Krieger (ed.), *Basic Documents*, 53 4.

[18] See Krieger (ed.), *Basic Documents*, 114 para. 13. See also Dunn, *Timor*, 363 on Japan's 'ardent support' for Indonesia in the months following the invasion.

[19] See Dunn, *Timor*, 362, 370.

[20] Daniel P. Moynihan with Suzanne Weaver, *A Dangerous Place* (Boston: Little, Brown, 1978), 247. On Secretary of State Henry Kissinger's equally dismissive attitude at the time of the Indonesian invasion, see Simpson, 'Illegally and Beautifully', 296 302.

which was still recognized by the UN post-December 1975 as 'the administering power', was also in disarray due to the political turmoil which had followed the overthrow of the Salazar–Caetano dictatorship.[21] Compared with Indonesia, then a key Western ally, a respected member of the Non-Aligned Movement (NAM), and a country experiencing record economic growth under the autocratic rule of President Suharto (in office, 1966–98), the former Portuguese territory counted for nothing. This was particularly the case in 1975 – that 'plausible apex of Communism's strange parabola of power in the modern world'[22] – a year when all the Indochina states fell like dominoes to the triumphant Communist forces. There could hardly have been a moment when Indonesia's value as a pro-Western and staunchly anti-Communist ally straddling some of the world's most important sea lanes was more significant.[23]

The role of the Secretary-General and developments at the UN, 1976–89

The Council did nothing more on East Timor until the 5 May 1999 agreement between Portugal and Indonesia. Starting on 7 May 1999, there were to be no less than six resolutions on East Timor in the space of five months culminating in the mandating of UNTAET on 25 October 1999.[24] In the intervening twenty-three years, however, the situation in East Timor was apparently not deemed a sufficient 'threat to international peace and security' to involve the Council further. The UN Secretariat, in particular the Secretary-General, remained apprised of the issue, though the character and commitment of those filling the highest UN post very much determined how much energy was put into finding a political resolution.

Kurt Waldheim was Secretary-General (in office, 1972–81) at the time of the Indonesian invasion and the two Council resolutions. He did little about East Timor. Indeed, his only practical initiative was that mandated by Resolution 384, namely the dispatch of an SRSG to make contact with the key governments and parties. The man chosen for this thankless task was the Director General of the UN Office in Geneva, Vittorio Winspeare Guicciardi. His mission was a complete

[21] See Eilís Ward and Peter Carey, 'The East Timor Issue in the Context of EU Indonesian Relations, 1975 99', *Indonesia and the Malay World* 29, no. 83 (2001), 56.

[22] Benedict R. O'G. Anderson, 'East Timor and Indonesia: Some Implications', in Carey and Carter Bentley (eds), *East Timor at the Crossroads*, 140.

[23] Indonesia lies along the Malaka Straits, which carries 42% of the world's maritime commercial traffic, and athwart the Sunda, Lombok, and Ombai Wetar straits. The last two are especially important as deepwater passages for tanker and submarine traffic: the US Seventh Fleet, for example, used the Ombai Wetar, which runs for some of its length along the north coast of East Timor, for the transit of its nuclear submarines at depths (2,000 metres+) undetectable by Soviet spy satellites.

[24] SC Res. 1272 of 25 Oct. 1999.

failure. After being given the run around by the Indonesians, who proceeded to bomb the four airfields designated by Fretilin as appropriate entry points for him,[25] he submitted two reports[26] concluding that 'under the circumstances . . . it was not possible to assess accurately the prevailing situation in East Timor, particularly as regards the implementation of SC Resolutions 384 (1975) and 389 (1976).'[27]

By the time Guicciardi filed his last report, the Indonesian-sponsored 'Provisional Government' in East Timor had established a 'People's Assembly' which had 'resolved' on 31 May 1976 that East Timor should be integrated with Indonesia. On 7 June, a petition expressing that decision was presented to President Suharto and the Indonesian parliament, who responded by sending a mission for the express purpose of 'making an on-the-spot assessment of the real wishes of the people [of East Timor] as formally expressed in the integration petition'.[28] While this charade was taking place, Waldheim confided to Evan Luard, the Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, that

> He could envisage some kind of act of self determination under UN auspices, but it was not clear what form it would take. The Indonesians clearly wish to legalise their *anschluss* . . . A process similar to that employed in West Irian [in August 1969] could be considered if the Indonesians would accept it.[29]

Horta, then Fretilin's representative at the UN (in office, 1975–85), was scathing about the role of the international body at this time,[30] confiding bitterly in his memoirs that

> No effort was made by Waldheim to have Guicciardi return to East Timor. I was not invited again for any consultations. . . . It was obvious that neither Waldheim nor the major powers were interested in resolving the Timor question. . . . They all wished the issue would simply fade away.[31]

This was corroborated by Richard Dalton, a member of the UK Permanent Mission to the UN, who reported to his FCO superiors on 11 June 1976 that

[25] See Dunn, *Timor*, 360; and Horta, *Funu*, 116 17.

[26] Guiccardi's reports of 29 Feb. and 22 Jun. 1976 can be found in UN doc. S/12011 of 12 Mar. 1976 and UN doc. S/12106 of 22 Jun. 1976, see Krieger (ed.), *Basic Documents*, 49 51.

[27] UN doc. S/12106, Annex 1, para. 8. Reprinted in Krieger (ed.), *Basic Documents*, 51.

[28] See Krieger (ed.), *Basic Documents*, 47.

[29] Confidential FCO Record of comments over dinner at the Excelsior Hotel, Heathrow Airport, 15 May 1976, between UN Secretary General Kurt Waldheim and The Rt. Hon. Evan Luard MP, Parliamentary Under Secretary at the Foreign & Commonwealth Office, from CAVR Archive, Díli, East Timor, Dowson File, original document in FCO 15/1710, PRO. On the Aug. 1969 'Act of Free Choice' in West Papua (then West Irian), see John Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962 1969: The Anatomy of Betrayal* (London: Routledge Curzon, 2003). The '*Anschluss*' (forced union/annexation) referred to by Waldheim was the Nazi takeover of Austria on 9 Mar. 1938, an unfortunate analogy given Waldheim's own murky war record in the Balkans.

[30] Horta, *Funu*, 117.

[31] Ibid., 122 3.

[Waldheim] has indicated that he is available if the parties wish to talk to him, but he is not making any efforts to bring them together. If challenged as to why he has not followed up SC Res. 389, he is quite prepared to argue that it is because none of the members of the Council have urged him to do so.[32]

The role of the General Assembly, 1975–82

Although the Council and the Secretary-General took no effective action, the East Timor issue continued to come before the General Assembly, at that time a rather more significant body than it was to become in the post-Cold War era.[33] Every year between 1975 and 1982, the 'Question of Timor' was debated and every year the resolution to support 'the inalienable right of the people of East Timor to self-determination and independence' was voted on, although the numbers in favour steadily declined.[34] The content of the resolution was also ineluctably watered down: in 1976 the reference to Portugal as 'the administering power' was dropped, and the following year all reference to the demand for Indonesia 'to withdraw all its forces from the Territory' went as well. Indeed, by time of the last General Assembly Resolution (37/30) of 23 November 1982, even the clause 'reaffirming the inalienable right of the people of East Timor to self-determination and independence in accordance with GA resolution 1514 (XV)' had been replaced by a more anodyne general reference to 'the inalienable right of all peoples to self-determination and independence in accordance with the principles of the charter of the United Nations'.[35] By then, Indonesia's Ambassador to the UN, Ali Alatas (in post, 1982–8; subsequently Foreign Minister, 1988–99), could scarcely contain his delight at the numbers voting. With just over 30 per cent of member states supporting the resolution, he looked forward to the 'so-called Question of East Timor' being dropped completely from the UN agenda.[36]

Horta referred to the 1982 General Assembly Resolution as 'a devastating blow',[37] but stated that his 'greatest contribution' to the cause of East Timor was his drafting of Resolution 37/30 which called on the Secretary-General, then Javier Pérez de Cuéllar (in office, 1982–91), to initiate consultations with all parties to 'achieve a comprehensive settlement of the East Timor issue'. As member states could not be seen to oppose

[32] CAVR Archive, Díli, East Timor, Dowson File, original in FCO 15/1717, PRO.

[33] See Peter Wallensteen and Patrik Johansson, 'Security Council Decisions in Perspective', in David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 21.

[34] See Krieger (ed), *Basic Documents*, 129 33, for a chart chronicling the steady decline in the percentage of votes cast in favour of GAOR Resolutions on East Timor: 50% in 1975, 46% 1976, 45% 1977, 39% 1978, 40% 1979, 37% 1980, 34% 1981, and 32% 1982. By the 1982 vote, only fifty countries supported the resolution with forty six against and fifty abstaining.

[35] Apparently at the new SG Javier Pérez de Cuéllar's insistence, see Horta, *Funu*, 134.

[36] Krieger (ed.), *Basic Documents*, 162 para. 37.

[37] Horta, *Funu*, 138.

dialogue, it made it very difficult for them to say no to this seemingly innocuous proposal. Horta believes that if that vote had been lost the East Timor cause would never have recovered.[38] In that situation, the territory might have suffered a similar fate to the former Spanish colony of Western Sahara where the failure to hold a referendum in the decade after 1991 had led to a proposal (May 2001) to give de facto recognition to Morocco's claims to the territory for a five-year period.[39]

The East Timor Issue in the 1990s

Developments in the UN, Indonesia, and East Timor

The 1990s were a remarkable decade in the history of the UN and the Security Council in particular. Mikhail Gorbachev's celebrated *Pravda* and *Izvestia* articles of 17 September 1987, which called on the P5 to become 'guarantors' of international security and urged the wider use UN military observers and UN peacekeeping forces in disengaging the troops of warring parties, foreshadowed a new era of P5 cooperation.[40] As the 1990s wore on, the Council's position as the key UN organ in all matters concerning peace and war far out-shadowed the previously influential General Assembly. Vetoes in formal debates became much rarer, and the adoption of fixed positions, which had so stymied the pre-1990 body, became less salient. Here was a Council making serious decisions and involved in decision-making on an unprecedented scale: 93 per cent of all Chapter VII resolutions passed between 1946 and 2002 were adopted in this post-Cold War period, and the total number of resolutions agreed (most unanimously) moved from roughly one per month to one per week. This was a dramatic change indeed.[41]

What did this mean for East Timor, that 'orphan conflict of the post-Cold War era in which the interests of the great powers were only marginally engaged'?[42] Initially, not much, although the shifts in the international order and changes within Indonesia and East Timor itself in the period 1989 to 1998 precipitated some important reassessments. First, at the international level, the end of the Cold War brought about a fundamental review of the West's relations with the Suharto regime. Whereas prior to 1989, an autocratic Indonesia had served the West's purposes, in the post-Cold War era a more critical attitude prevailed. This was especially the case at the time of crises, such as the Santa Cruz massacre in Díli in

[38] Ibid., 133.
[39] See Simon Chesterman, 'Virtual Trusteeship', in Malone (ed), *Security Council*, 225.
[40] Malone, 'Introduction', ibid., 5.
[41] Wallensteen and Johansson, 'Security Council Decisions in Perspective', ibid., 18 19.
[42] Jean David Levitte, Permanent Representative of France to the UN (1999 2002), quoted ibid., 644.

November 1991 and the Asian financial meltdown of 1997–8. The latter, in particular, saw a widening gap between Western expectations of the need for IMF-inspired financial reform, and Suharto's cronyist style of government. The resultant collapse of the Indonesian economy, the revolt of the country's small but influential middle class, and a damaging power struggle within the Indonesian army (Tentara Nasional Indonesia/TNI), precipitated Suharto's fall on 21 May 1998.

His replacement, Ir Bachruddin Jusuf Habibie (in office, 1998–9), an aeronautical engineer who had spent much of his young adult life in Germany, had very different views of the world. In his perspective, East Timor was a Catholic carbuncle on the face of majority Muslim Indonesia. He shared none of the army's sense of ownership of the recalcitrant 27th Province and wished to see the issue resolved in short order. Barely three weeks after taking office, he was already offering the former Portuguese territory 'autonomous' status (9 June 1998), and by 27 January 1999 that offer had been supplemented by an announcement that such 'special' autonomy would be put to a popular vote and if rejected would result in the immediate severance of East Timor from Indonesia. These were remarkable developments coming so soon after the long years of Suhartoist intransigence on the East Timor question. But there was a problem: Habibie was politically weak and lacked any constituency within the army. His ability to constrain those determined to take Timor apart should its people reject the suffocating embrace of the unitary Republic was thus limited.

On the ground in East Timor a number of developments seemed to offer new possibilities for a long-term political resolution. The decision by the Timorese resistance leader, Xanana Gusmão, to distance himself from the rigid Marxist-Leninism of the original Fretilin party opened the way for a new broad-based national movement, known as the National Council of Timorese Resistance (CNRT), encompassing differing ideologies.[43] Internationally, the previous perceptions of Fretilin as a Communist organization were replaced by a new understanding of its nationalist credentials. Nowhere was this change more important than in Portugal where the incoming president, Dr Mário Soares (in office, 1986–96), threw the full weight of Portuguese diplomacy behind the Timorese right to self-determination, a campaign greatly enhanced by Portugal's entry into the European Community on 1 January 1986.[44]

With the fight against Communism 'won', an independent East Timor was no longer seen as a potential South East Asian 'Cuba'. In January 1989, Indonesia had taken the decision to open East Timor and allow access to foreign visitors. But in less than two years that decision had rebounded, leading to unprecedented interest in what had long been a forgotten conflict. The infamous Santa Cruz massacre on 12 November 1991, when hundreds of protesters were gunned down in full view of

[43] See Sarah Niner, 'A Long Journey of Resistance: The Origins and Struggle of CNRT', in Richard Tanter, Mark Selden and Stephen R. Shalom (eds.), *Bitter Flowers, Sweet Flowers: East Timor, Indonesia and the World Community* (Lanham, Maryland: Rowman & Littlefield, 2001), 20 3.

[44] Ward and Carey, 'East Timor Issue', 56 7.

Western reporters at Díli's main civilian cemetery,[45] put East Timor under the international spotlight as never before, as did the 1996 award of the Nobel Peace Prize to José Ramos-Horta and Bishop Carlos Filipe Ximenes Belo.[46]

The role of the Secretary-General and the Security Council, 1997–9

Kofi Annan's appointment as Secretary General (in office, 1997–2006) led immediately to a more vigorous engagement with the East Timor issue by the UN Secretariat. Annan, who had been head of the DPKO at the time of the Rwandan genocide (April 1994) and the Srebrenica massacre (July 1995), showed a rare determination to make human rights the hallmark of his secretary-generalship. This would later manifest most strongly during the post-referendum violence in East Timor when Annan stated publicly that senior Indonesian officials risked prosecution for crimes against humanity if they did not consent to the deployment of an available multinational force (10 September 1999) and insisted that sovereignty must give way to the imperative of stopping crimes against humanity.[47]

In the weeks following his appointment, Annan breathed new life into the Tripartite Talks by placing more emphasis on meetings of senior officials rather than foreign ministers, and by appointing a Personal Representative, Jamsheed Marker, to facilitate discussions between Lisbon, Jakarta, Díli, and New York. A process was now embarked on which proved unstoppable. Two developments assisted here. First, the interest of concerned Western states, later to be known as the 'Core Group on East Timor', in seeing a lasting resolution of the East Timor issue. Secondly, Indonesia's economic weakness which made it much harder for Jakarta to prevent Timor reaching the agenda of the Security Council once agreements had been reached between Portugal and Indonesia on the modalities for the proposed popular consultation (5 May 1999).[48]

As it became clear in late 1998 and early 1999 that the East Timor issue was becoming ripe for resolution, an informal Core Group of states came into being

[45] According to the Lisbon based ecumenical organization A Paz é Possivel em Timor Leste (Peace is Possible in East Timor), *East Timor: The Santa Cruz Massacre/Timor Oriental: Le Massacre de Santa Cruz* (Lisbon: A Paz é Possivel em Timor Leste, Feb. 1992), 2, there were 271 killed, 250 'missing', and 382 wounded, but the numbers of dead were certainly much higher because the report does not mention the 'second massacre' when Santa Cruz survivors were done to death by the Indonesian Army in the main military hospital in Díli, see Max Stahl, 'Indonesians Fed "Death Pills" to Wounded', *Sunday Times*, 13 Feb. 1994, 17.

[46] See Wallensteen and Johansson, 'Security Council Decisions in Perspective', 24; and Fernando Mão de Ferro (ed.), *East Timor Nobel Peace Prize: Lectures Delivered at the 1996 Nobel Peace Prize Awarding Ceremony* (Lisbon: Ediçoes Colíbri, 1997).

[47] Joanna Weschler, 'Human Rights', in Malone (ed.), *Security Council*, 64.

[48] Wallensteen and Johansson, 'Security Council Decisions in Perspective', 23 4.

comprising a mixture of P5 (the UK and the US), and non-Council states (Japan, Australia, and New Zealand) with a strong regional interest in the fate of the former Portuguese territory. The Group's key inceptor was Australia, the state which had the most interest in seeing a peaceful outcome in East Timor and which had already taken an important initiative with President Habibie in late December 1998.[49] The Group also had the strong support of Annan and his senior staff. Its overall aim was to ensure that a historical injustice should be righted without destabilizing Indonesia just then at its most vulnerable stage of democratic transition.[50] Containing neither parties nor proxies to the conflict[51] and kept a quasi secret until late February 2000,[52] the Core Group in Teresa Whitfield's words 'proved an ideal buffer between the United Nations and the Security Council, particularly in the months in which the UN was effectively implementing the 5 May 1999 agreements on Indonesia's behalf, against a background of intense resistance by some Indonesian actors'.[53]

The Group's deep pockets, the leverage which some members, particularly the US, could exercise over Jakarta, and its access to substantial military resources – for example the heavy lift and logistical capacity of the US without which InterFET could not have moved – would all count for much in the coming months. So too would the skills available from both the energetic US Permanent Representative, Richard Holbrooke,[54] and the UK Mission in the drafting and tabling of resolutions, and the steering of business through the Council.

The Security Council and the post-popular consultation crisis, May–September 1999

Between 7 May and 15 September 1999, the Council was 'seized' of the East Timor issue in a way which it had never been before in the whole period since the Indonesian invasion. Starting with Resolution 1236, it 'welcomed' the conclusion

[49] On Prime Minister John Howard's letter to Habibie of 19 Dec. 1998 suggesting a New Caledonian style resolution of the Timor problem through an independence referendum in five to ten years time, see DFAT, *East Timor in Transition*, 29 37, 181 3. For Habibie's petulant 'autonomy or immediate inde pendence' response, see Ward and Carey, 'East Timor Issue', 67 n. 8.

[50] Teresa Whitfield, 'Groups of Friends', in Malone (ed.), *Security Council*, 319.

[51] Portugal only became a member of the Core Group in mid 2000 once UNTAET was clearly in nation building mode, see Stewart Eldon, 'East Timor', in Malone (ed.), *Security Council*, 553. Indonesia, for obvious reasons, was never invited to join.

[52] The Core Group's existence was first revealed in a speech by the Australian Ambassador to the UN, Penny Wensley, on 23 Feb. 2000, see Eldon, 'East Timor', 565 n. 4.

[53] Whitfield, 'Groups of Friends', 319, 'Indonesian actors' refers primarily to Defence Minister and Armed Forces Commander in Chief General Wiranto and the Indonesian Army.

[54] See Malone, 'Conclusion', in Malone (ed.), *Security Council*, 664; Sir Jeremy Greenstock referred to Holbrooke as a 'brilliant' diplomat 'whose weight was necessary to get things through the Council process' during the vote on SC Res. 1264 mandating InterFET. Interview with Sir Jeremy Greenstock, Ditchley Park, Oxon, 27 Oct. 2005 (henceforth: 'Greenstock, Interview').

of the 5 May agreement between Portugal and Indonesia on the popular consultation and the intention of the Secretary-General to establish a UN presence in East Timor.[55] Just over a month later (11 June), it sanctioned the establishment of the UN Assistance Mission in East Timor (UNAMET) to organize and conduct the popular consultation, originally scheduled for 8 August, with a mandate until 31 August and the support of 280 civilian police (Civpol) 'to advise the Indonesian police in the discharge of their duties and to supervise the escort of ballot papers and boxes to and from the polling sites', and 50 military liaison officers (MLOs) 'to maintain contact with the Indonesian Armed Forces'.[56] Informed by the Secretary-General and the intelligence services of their respective countries of the increasingly difficult security situation on the ground, the Council agreed to two extensions of the UNAMET mandate until 30 September and then 30 November 1999;[57] and on 15 September authorized – under Chapter VII of the UN Charter – the establishment of a multinational force (InterFET) under Australian command 'to restore peace and security in East Timor', 'to protect and support UNAMET in carrying out its tasks', and 'within force capabilities to facilitate humanitarian assistance operations'.[58] Just over a month later, also under a Chapter VII mandate, it established the UN Transitional Administration in East Timor (UNTAET) for an initial fifteen-month period with a robust military and international police component in order to ensure security during the challenging humanitarian and reconstruction phase, and to deter any possible cross-border incursions by TNI-sponsored militias.[59] Given its experience with Indonesia in the immediate post-ballot period, the Council was taking no chances.

All these resolutions were passed unanimously. In addition, the Council agreed on 5 September to send its first visiting mission to the field for four years (the last had been to Burundi in 1995).[60] This acted as a highly effective diplomatic tool to secure President Habibie's consent to the dispatch of a multinational force, as well as galvanizing regional and Council action in support of InterFET and the subsequent UNTAET. Many wavering Western policymakers, particularly in the US, were won over by its decisiveness.[61]

Much has been written on the May–September 1999 period from the vantage point of the key players in the Security Council, the UN Assistance Mission in East Timor (UNAMET), the UN Secretariat, and those covering events on the ground.[62]

[55] SC Res. 1236 of 7 May 1999.

[56] SC Res. 1246 of 11 Jun. 1999.

[57] SC Res. 1257 of 3 Aug. 1999; and SC Res. 1262 of 27 Aug. 1999.

[58] SC Res. 1264 of 15 Sep. 1999.

[59] SC Res. 1272 of 25 Oct. 1999. The resolution provided for a troop strength of 8,950 with 200 military observers, and an international police element of 1,640, at an estimated cost of US $900 million over UNTAET's two and a half year mandate (25 Oct. 1999 20 May 2002).

[60] Report of the Security Council Mission to Jakarta and Dili, 8 12 Sep. 1999, UN doc. S/1999/976.

[61] See Elizabeth M. Cousens, 'Conflict Prevention', in Malone (ed.), *Security Council*, 109 10.

[62] See Eldon, 'East Timor', 551 66; Ian Martin, 'A Field Perspective', in Malone (ed.), *Security Council*, 567 74; Ian Martin, *Self Determination in East Timor: The United Nations, the Ballot, and*

In the main, these accounts consider the Council's handling of the East Timor issue in a favourable light. Jeremy Greenstock, the UK permanent representative (in office, 1998–2003), who was a key member of the Council mission to Jakarta and Díli from 8 to 12 September 1999, sees the Council's actions as a fine example of the power of 'legitimacy'. Bringing non-self governing territories through to independence is central to the UN's mandate, and he remembers the day – 27 September 2002 – when José Ramos-Horta and Ambassador José-Luis Guterres, as RDTL Foreign Minister and permanent UN representative respectively, came to take their seats in the General Assembly as one of the most positive moments in his whole five years at the UN.[63]

While the ultimate outcome may have been satisfying, there are still troubling questions to answer. First, in view of Indonesia's appalling record as an occupying power in East Timor since December 1975 why was it vested with responsibility for security during the pre- and post-ballot phase? Secondly, even if it has to be acknowledged that an international peacekeeping force would have been politically unacceptable to Jakarta given its likely destabilizing effect on the Habibie administration, why did the Council not insist that the UN Secretariat engage in worst-case scenario planning for preventative action during the period of maximum danger, namely the days immediately following the ballot? Thirdly, why did the UN promise the East Timorese people that its mission (UNAMET) would 'remain in East Timor after the ballot to carry out its responsibilities and ensure the result of the vote is properly implemented'[64] when it knew full well that most of its personnel (i.e. its 425 UN Volunteers who constituted nearly half its expatriate staff)[65] would leave immediately after the ballot and that those who remained would have no capacity to protect either themselves or their Timorese staff – let alone the wider population – against the violence of the pro-autonomy militias and the Indonesian army?

Finally, why did the Council delay in agreeing that a mission should be sent to East Timor when it could have been present at the time of the 30 August vote and the subsequent 4 September announcement? Three times the Council was urged to consider sending a mission prior to the ballot announcement, but three times it declined citing the burden that it might put on UNAMET and the danger that it might itself become a target for the militias. Only when Kieran Prendergast,

International Intervention (Boulder: Lynne Reiner, 2001); Geoffrey Robinson, 'With UNAMET in East Timor An Historian's Personal View', in Tanter et al. (eds.), *Bitter Flowers, Sweet Flowers*, 55 72; Damien Kingsbury (ed.), *Guns and Ballot Boxes: East Timor's Vote for Independence* (Clayton., Victoria: Monash Asian Institute, 2000); DFAT, *East Timor in Transition*, 90 154; and, for a detailed journalistic account, Greenlees and Garran, *Deliverance* (Sydney: Allen & Unwin, 2003), 157 294.

[63] Greenstock, Interview, 27 Oct. 2005.

[64] Message broadcast to the people of East Timor on the eve of the 30 Aug. 1999 Popular Consultation by Secretary General Kofi Annan, quoted in DFAT, *East Timor in Transition*, 120 1. A rather similar address had been made by the SRSG, Ian Martin, on 29 Aug. 1999, see ibid., 118.

[65] On UNAMET's staffing and budget, see DFAT, *East Timor in Transition*, 94.

Undersecretary for Political Affairs, pressed again on 5 September after the post-ballot violence had broken out in a manner exceeding even his worst expectations did the Council act and then with commendable speed.[66] It is possible that had the mission been on the ground earlier it could have acted as a warning to Indonesia of the commitment of the international community to seeing through the post-ballot process. Given delays in convening the meeting of the Indonesian People's Consultative Assembly (Majelis Permusyawaratan Rakyat/MPR) in Jakarta, where the vote would finally be taken to accept the results of the ballot and agree to East Timor's formal severance from Indonesia, this process now had to last at least until 20 October. This was a very long time for a small UNAMET team of 282 international staff, 280 Civpol, and fifty MLOs[67] to be holding the UN mission together amidst the Indonesian army-orchestrated violence.

These are questions which admit of no easy answers. The Brahimi Report subsequently declared that 'the Secretariat must not apply best-case planning assumptions to situations where the actors have historically exhibited worst-case behaviour'[68] and it certainly had the example of East Timor in mind. As the UNAMET head, Ian Martin, has pointed out, the UN's formal planning process was carried out on the basis of a best-case scenario hoping that international attention and pressure would keep Indonesia in line. But this, in Martin's view, was never realistic.[69] Given the petulant nature of President Habibie's initial offer and his known desire to be rid of East Timor should his wide-ranging autonomy proposal be rejected – not least because of the expense of the Indonesian occupation[70] – it was hardly appropriate, as Martin points out, for the Council to expect Jakarta to be maintaining security, administration, and budgetary support not only till the MPR meeting on 20 October but many months beyond that when the UN had finally put a transitional administration and a peacekeeping force on the ground.[71] Even if the Indonesian army and its pro-autonomy militias were out of the picture – which they most definitely were not – this would still have been a huge assumption to make. At the

[66] Kieran Prendergast had twice suggested an SC Mission on 24 and 26 August, and the Portuguese permanent representative, Ambassador António Monteiro, had made a subsequent request on 1 September, see Eldon, 'East Timor', 555 6; Martin, 'Field Perspective', 569; and Greenstock, Interview, 27 Oct. 2005, who stressed the key role of the Council President, Peter van Walsum (the Netherlands), and the Dutch delegation in lobbying other Council members to approve the SC Mission on 5 Sep. Van Walsum's deputy, Alfons Havers, was one of the Mission's five official members.

[67] The Council by its Res. 1262 of 27 Aug. 1999 had agreed to double the number of Civpol to 480 ('to continue to advise the Indonesian police, and to prepare for the recruitment and training of the new East Timorese police force') and increase the MLOs six fold to 300, but it would have taken at least a month to get them on the ground in East Timor.

[68] *Report on the Panel on United Nations Peace Operations*, UN doc. A/55/305 S/2000/809 of 21 Aug. 2000, para. 9.

[69] Martin, 'Field Perspective', 569.

[70] See Ward and Carey, 'East Timor Issue', 68 n. 8.

[71] Martin, 'Field Perspective', 569. The formal handover from InterFET to UNTAET only took place in mid Feb. 2000, four and a half months after the 30 Aug. ballot.

same time, the UN was caught in a bind: it could hardly task its Secretariat with worst-case scenario planning on the basis that an important member state in good standing with the world body would violate its solemn undertakings, especially not when its friends on the Council, in particular Malaysia and Bahrain, were praising it for its cooperation while simultaneously accusing UNAMET of bias towards the pro-independence party.[72]

At no stage in the period up to the ballot, when evidence of Indonesia's bad faith was becoming ever more evident, was Jakarta given a direct warning by the Council of the consequences of reneging on its agreements. This only came later during the post-ballot turmoil when the Council mission visited Jakarta and Díli, by then 'a hell on earth' in Greenstock's words.[73] On two separate occasions, the UK permanent representative and the mission leader, Martin Andjaba (Namibia), were able to talk directly with General Wiranto.[74] But even then it is likely that the pressure coming from the US, in particular the 8 September meeting of the Commander-in-Chief of US Forces in the Pacific, Admiral Dennis Blair, with Wiranto,[75] and the messages delivered to the Indonesian government from World Bank President James Wolfensohn as well as the State Department about the likely impact of the continuing violence on international support for the Indonesian financial recovery programme, carried greater weight.[76]

Perhaps the Council's greatest service was to strengthen Habibie's hand against the TNI top brass and against members of his own government who were less than happy with his 12 September announcement to accept a multinational peacekeeping force. It is possible that if the Council mission had not taken place when it did, the Indonesian government would not have reached consensus and other options might have been considered including a military coup.[77] In Greenstock's view, Habibie showed himself 'a brave and a wise man' to take the decision to invite international intervention. It was a high risk decision for him. Besides the authority of the international community, the mission also brought two other pressures to bear on Jakarta: the voice of the developing world in the person of Andjaba, whose role in Namibia's own fight for independence (1969–89) gave him unimpeachable

[72] Ibid., 570; and Eldon, 'East Timor', 554.

[73] Interview with Greenstock. See DFAT, *East Timor in Transition*, 132.

[74] Greenstock, Interview, 27 Oct. 2005, who reported that Andjaba and himself had cornered Wiranto in a corridor of the burnt out Mahkota Hotel (now Hotel Timor) in Díli after a press conference and had told him that 'the current situation is intolerable and unsustainable. Peace must be restored and the UN must be allowed in to monitor that peace.' See also Eldon, 'East Timor', 558; Greenlees and Garran, *Deliverance*, 253; and David Usborne, 'A Chilling Audience with Dr Strange love', *Independent*, 11 Sep. 1999.

[75] On this see Greenlees and Garran, *Deliverance*, 243 4. It is likely that Admiral Blair warned Wiranto that US Indonesian military ties would be in jeopardy if the TNI did not get a handle on the situation in East Timor.

[76] See ibid., 244 5; and DFAT, *East Timor in Transition*, 134 7. President Clinton reinforced these messages in a phone call to Habibie from the APEC Summit in Auckland (9 12 Sep.).

[77] Greenstock, Interview, 27 Oct. 2005.

credibility; and the power of the international media, who had been invited to accompany the mission and whose presence helped to shame Wiranto into a climbdown.[78] This press role was duly noted by the UN Secretariat, which ensured that all subsequent Council missions – and there were no less than thirteen between 2000 and 2003 – had UN press officers attached.[79]

Conclusions

'Snatching victory out of the jaws of defeat' might be a suitable epitaph for the role of the Security Council and the UN more generally in East Timor. True, the territory did win its independence with the help of the UN. True, the Council did act with remarkable dispatch once it had become clear that Indonesia would not honour its international obligations. It also ensured that its key decisions to dispatch InterFET and establish UNTAET were taken under a robust Chapter VII mandate. But it is hardly a success story when perhaps a quarter of the original pre-1975 population of a territory have to die, and when the survivors have to live through no less than two major destructions of their homes and communities within the space of a single generation just to exercise their right to self-determination.

The Council failed the East Timorese in 1975–6 and nearly did so again in 1999. That it was able in the end to do the right thing by the territory in what the Timorese now know as 'Black September' (*September kelabu*) was perhaps more due to good fortune than to astute planning. It was fortunate, for example, in the role played by the Secretary-General during the crisis. Annan's focus on the Timor issue, his backing for the Core Group, his tireless energy in getting the support of the key members of the Council – the US and UK – in putting through the Chapter VII Resolutions, and his willingness to speak bluntly to the Indonesians, all stand him in sharp contrast with his predecessors, in particular Waldheim. Whereas Waldheim had just sat on his hands in 1975–6 and hoped the Timor issue would fade away, Annan was seized of the problem from the first, evincing impressive consistency and initiative. Here was a Secretary-General who made a real difference. He showed what could be done by an engaged UN secretariat in resolving an issue which touched the conscience but no longer the strategic interests of the great

[78] Ibid. According to Greenstock, 'the Defence Minister [Wiranto] was genuinely shocked and annoyed that he had not been properly informed about what was happening on the ground to forbid international journalists to accompany the Council Mission to Díli. Once [they] had been brought in, it was impossible to put the lid back on.' On the importance of the media, see further Eldon, 'East Timor', 557.

[79] Ibid. The UK Mission provided its own press officer (David Lloyd) for the Jakarta/Díli Mission.

powers. If ever there was the case of a Secretary-General and his key staff, in particular Under-Secretary for Political Affairs, Kieran Prendergast, leading and the Council following this was it, but it was done in such a way that the Council's powers were never impugned. Whether Waldheim could have achieved anything comparable in 1975–6 had he shown similar energy and purpose is moot given the constraints of the Cold War. But the fact is he never tried.

The presence of a 'coalition of the willing', in particular Australia, a militarily significant regional power which had the financial, diplomatic, and political commitment to intervene, was essential. A 'blue helmet' UN force would have taken months to assemble, and no other regional power or organization – certainly not the Association of South East Asian Nations (ASEAN) then paralysed by internal wrangling between Malaysia and Thailand over force leadership and its policy of non-intervention in the internal affairs of member states – was prepared to shoulder this burden. During the post-4 September crisis, Australia acted in Greenstock's phrase as a 'loaded spring' which put a powerful resource at the disposal of the UN.[80]

The Council was also fortunate that there were no cross-cutting concerns on the part of those P5 members, Russia and China, who might have opposed intervention on the grounds that it would create a precedent for similar interventions in Chechenya and Tibet. China, which was perhaps the most sensitive here given East Timor's location in the Asia–Pacific region, actually had a rather cool relationship with Jakarta at this point due to the TNI-orchestrated attacks on the Indonesian Chinese population at the time of the May 1998 riots preceding Suharto's fall.[81] Similarly, there were no intra-turf conflicts at this stage between the various UN agencies, in particular the DPA and DPKO, which might have complicated the planning process.[82] The timing of the Council's engagement with East Timor between May and September, especially during the period of crisis following the 4 September ballot announcement, was likewise propitious in that there were no other really pressing international issues – such as Kosovo and Iraq – which might have forced East Timor down the Council's agenda. Although Indonesia's friends on the Council (Malaysia and Bahrain) and some non-aligned members did feel that the UN body was according too high a priority to East Timor at the expense of other crises, particularly in Africa, and a number were upset about the double

[80] Greenstock, Interview, 27 Oct. 2005.

[81] See Whitfield, 'Groups of Friends', 319. On the gang rapes of Chinese women in Jakarta and other Indonesian cities, see 'Glodok Revisited: Sexual abuse used to terrorise minorities', *Tapol Bulletin*, 147 (Jul. 1998), 8 10; and 'The Findings of the TGPF', *Tapol Bulletin*, 149/50 (Dec. 1998), 18 19. At least 150,000 Indonesian Chinese and Western expatriates are thought to have fled Indonesia at this time.

[82] Such conflicts only emerged following the mandating of the UN Transitional Administration (UNTAET) on 25 Oct. 1999, see Martin, 'Field Perspective', 570 71; Astri Suhrke, 'Peace Keepers as Nation Builders: Dilemmas of the UN in East Timor', *International Peacekeeping* 8.4 (2001), 1 20; and Conflict, Security, and Development Group, International Policy Institute, King's College London, *A Review of Peace Operations: A Case for Change* (London: King's College, 2003), 215 91.

standards of the concern for the Christian Timorese and the comparative indifference to the plight of the Muslim Palestinians, their voices did not carry weight.[83]

The complexity of Indonesian politics in the challenging transition phase from Suhartoist autocracy to multiparty democracy and the vulnerability of the transitional president always meant that a resolution of the East Timor issue was going to be fraught with difficulties. The Core Group's goal of righting a historical injustice in East Timor while ensuring that Indonesia proper was not destabilized was never going to be easy. At its heart lay the paradox that only a weak Indonesia could open the way for a settlement in East Timor, but that this very weakness would make it an exceptionally difficult state to deal with. In the aftermath of the UN intervention, many goals not least in the human rights field (i.e the prosecution of those guilty of crimes against humanity in both East and West Timor post-4 September) had to be abandoned.[84] Indonesia's importance as an ally in the post-11 September 'war on terror' and newly independent East Timor's (then Timor Leste's) concern to build a harmonious relationship with its former occupier were both too pressing.[85]

When he came before the Security Council in January 2006 to reject the need for an International Tribunal to deal with the post–4 September crimes or the extension of the Special Panels for Serious Crimes to investigate and try all offences between 1975 and 1999, President Xanana Gusmão remarked:

> True justice for the East Timorese was the recognition by the international community of the right of the people of Timor Leste to self determination and independence. . . . If we consider that the previous 24 years were years of injustice injustice in which part of the international community was implicated then the collective actions taken by the United Nations in freeing our people, and assisting us ever since [in our transition to statehood], are acts of redemption.[86]

Postscript

Barely four months after President Xanana had uttered these emollient words in New York, Australian and other foreign troops[87] were back on the streets of Díli at

[83] Eldon, 'East Timor', 555.

[84] Both the Secretary General and the SC mission in their separate reports recommended that the Council should 'institute action for the investigation of apparent abuses of international humanitar ian law on the ground in East and West Timor since 4 September', see UN doc. S/1999/976 of 14 Sep.1999, section VI, para. 27, recommendation vii; and UN doc. A/54/654 of 13 Dec. 1999, 8 para. 42.

[85] For a good discussion of these pressures on East Timor, see Joseph Nevins, *A Not So Distant Horror: Mass Violence in East Timor* (Ithaca: Cornell University Press, 2005), 160 78.

[86] President Xanana Gusmão's Statement to the Security Council, 23 Jan. 2006, UN doc. S/PV.5351, 5.

[87] Between 25 May and 3 Jun. 2006, 1,200 Australian, 90 New Zealand, and 500 Malaysian troops were deployed in Díli along with a 120 strong contingent of the Portuguese Republican Guard (Garda

the request of the Timorese government following a mutiny by a third of the Timorese army (Falintil-Forças de Defesa Timor Leste/F-FDTL) and the collapse of the forces of law and order. The crisis revealed deep popular dissatisfaction with the Fretilin-dominated government and in particular with the person of the Prime Minister, Dr Mári Alkatiri, a Timorese of Hadhrami Arab origin who had been one of the pro-independence party's founding fathers. His administration's inability to address army grievances, in particular the blighted promotion prospects of recruits from East Timor's western areas in a military controlled by eastern-born commanders, betrayed a chronic problem of political engagement. In part this was personal: Alkatiri is by nature a bureaucrat and backroom politician rather than a charismatic communicator like President Xanana. But it also had much to do with the prime minister's years of Mozambiquan exile and his neo-Marxist adherence to a one-party state ideology which owed more to the bipolar politics of the mid-1970s than the pluralist democracy envisaged by UNTAET.

Timor's post-independence crisis has exposed the limitations of the UN experiment in state building. The hugely costly but all too brief UN Transitional Administration (February 2000–May 2002) and its much smaller successors (UN Mission of Support in East Timor (UNMISET)) (2002–5) and (UN Office in Timor Leste UNOTIL) (2005–6) failed to bequeath fully functioning state institutions, particularly in the justice and law-and-order sectors. Furthermore, UNTAET's decision to disband the National Council of Timorese Resistance (CNRT), albeit at Fretilin's urging, and to legislate for political parties (16 March 2001)[88] effectively delivered the country into the hands of the pro-independence party. Although new political associations were founded, they had no influence over the legislative process nor access to government following Fretilin's victory in the constituent assembly elections of August 2001.[89] From the outside, independent Timor may have looked like a functioning democracy, in reality it was a one-party state with power concentrated in the hands of the prime minister and a tiny Fretilin elite. This was all a far cry from the sort of independence which Xanana and others had fought for, and which many more thoughtful leaders – Horta amongst them –

Nacional Republica/GNR). On 25 Aug. 2006, the Security Council authorized the United Nations Integrated Mission in East Timor (UNMIT), to consolidate stability and support elections in 2007. See SC Res. 1704 of 25 Aug. 2006.

[88] UN doc. S/2001/436, paras. 2 7.

[89] Fretilin won 55 out of the 86 seats. Although just short of the two thirds majority needed to make constitutional changes and override the presidential veto, it gave it de facto control of the legislative process. This process, however, remained almost completely subordinate to the executive: during the entire five year period since the August 2001 elections, the assembly has only initiated one bill (on national holidays) and only one non Fretilin cabinet member, Senior Minister and Minister of Foreign Affairs & Cooperation, Dr José Ramos Horta, has come before the bar of the House to explain a piece of legislation. Fretilin also refused to contest new elections after the one year term of the Constituante had been completed, 1 Aug. 2002, and has been considering adopting the current Portuguese form of proportional representation for the Aug. 2007 elections which would almost certainly give it the two thirds majority it craves.

envisaged coming only after a lengthy ten-year transition period. Whether the UN will be able to help put East Timor back together again and secure its future as an independent state remains to be seen. What East Timor needs more than anything is effective joined-up government and a more deeply rooted culture of democratic pluralism. Failure now will condemn the world's youngest nation to continuing violence on a scale more destructive than either the August 1975 civil war or the scorched earth Indonesian withdrawal of 'Black September' 1999.

CHAPTER 16

THE SECURITY COUNCIL AND THE IRAN–IRAQ WAR

CHARLES TRIPP

> What is at stake here in the Council is not the territorial integrity of Iran but the moral integrity of the United Nations . . . If the Council chooses, whether through omission or commission, not to discharge properly its responsibilities in the present context, can any State be expected to take it seriously in other contexts ?
>
> Mr Ardakani (Representative of Islamic Republic of Iran to the UN) before the UN Security Council, 23 October 1980[1]

The Iran–Iraq war ended in 1988 when both Iran and Iraq accepted UN Security Council Resolution 598 as the basis for a ceasefire and for the beginning of negotiations. Satisfactory as this might seem, it must be set against the knowledge that the war had been grinding on by that stage for eight long years. It had started with a well-planned, if indifferently executed, Iraqi invasion of Iran, followed by years of bloody conflict in which hundreds of thousands of people died, chemical weapons were repeatedly used by Iraq, civilian areas in both Iran and Iraq were routinely bombarded, and commercial shipping in the waters of the Gulf was targeted by both sides.

In none of these situations was the UN Security Council prepared to act other than to issue statements hoping that the belligerents would desist. Furthermore,

[1] UN doc. S/PV.2252 of 23 Oct. 1980, 8.

regardless of the formal commitment of the Security Council to the preservation of international peace and security, the five Permanent Members (P5) spent most of the war years supplying arms, materiel, dual-use items, and financial credits to one or other of the belligerents, sometimes to both, in ways which materially helped their war efforts. Finally, it can plausibly be argued that Iran only accepted UN Security Council Resolution 598 in 1988 because its leadership was convinced by then that one of the P5, the United States, had entered the war as a belligerent on the side of Iraq.

Reflecting, therefore, upon the role of the Security Council in the Iran–Iraq war raises questions about the causes of this unilateralism and partisanship – how far was it due to the nature of this war in particular, and how far to the systemic weaknesses of the UN Security Council? Equally, it is useful to scrutinize the eventual coming together of the five Permanent Members of the Security Council to agree on Resolution 598. This has been taken by some to signal a radical shift in favour of the founding UN idea of collective security, whilst others have seen it simply as the outcome of a fortuitous combination of events connected to shifts in the domestic politics of the USSR and the US, generating modified ideas of self-interest. At the same time, there is the question of the relationship of the two belligerents to the UN and to the Security Council in particular, and the degree to which the governments of Iraq and Iran tried to encourage it to take a more active role. Given the tensions, confrontations, and wars which have marked the region's politics in the two decades after the end of the Iran–Iraq war, it is also worth reflecting upon whether these were in part a consequence of the 'omission or commission' of the UN Security Council during the 1980s.

Outbreak of War

In the early hours of 22 September 1980 Iraq invaded Iran, sending seven divisions deep into Iranian territory along a 500 kilometre front. At the same time, the Iraqi air force attacked Iranian air bases and radar stations in an attempt to neutralize Iranian air power. Within a couple of days, Iraqi forces were besieging the major cities of Khorramshahr, Ahvaz, and Dezful while Iraqi artillery bombarded the oil refinery at Abadan. The ill-prepared and outnumbered Iranian forces fell back, leaving Iraq in occupation of thousands of square kilometres of Iranian territory, but contested fiercely further Iraqi advances towards the main cities. Meanwhile, the Iranian air force, which had largely escaped unscathed, and the Iranian navy went into action, destroying Iraq's main oil terminal at al-Faw and cutting off Basra from the Gulf by blocking the Shatt al-Arab waterway.

At the UN it was the Secretary-General, Kurt Waldheim, not the Security Council, who reacted immediately. He offered his good offices to both sides, appealing to them to stop the fighting and to settle their differences by peaceful means. He convened the Security Council under Article 99 of the Charter because of the obvious threat to 'the maintenance of international security', but was rewarded merely with a statement by the President of the Council supporting his offer of mediation and appealing to both sides to resolve their dispute peacefully.[2] By 25 September, with the fighting intensifying, the Secretary-General requested the Council to 'consider the matter with the utmost urgency'. Finally the representatives of Mexico and Norway requested a formal meeting of the Council which convened in the evening of 26 September.[3]

At that meeting the Mexican representative challenged the Council to live up to 'its functions under the Charter', arguing that 'its deliberations should culminate, where appropriate, in decisions of a binding nature – not just in declarations or recommendations.' He seemed to be alluding to Chapter VII of the Charter, with its provision for robust measures to preserve collective security.[4] It would have been a dramatic new departure for the Security Council to have acted on such a basis, given its record during the preceding four decades, and it was not surprising that the Permanent Five failed to heed the call. However, the Security Council resolution which finally emerged (UN SC Resolution 479) was remarkably feeble, given the gravity of the situation and the scale of the invasion which had started the war. Notoriously, the resolution did not even use the term 'war', let alone 'invasion', and spoke only of 'the developing situation between Iran and Iraq'. It called on both states to end the fighting, urged them to accept mediation, and supported the Secretary-General in his efforts. As the Under-Secretary-General of the United Nations, Brian Urquhart, later reflected bitterly, 'the Security Council had seldom seemed less worthy of respect.'[5]

Not only had the Council taken nearly five days to react to a clear violation of the Charter, but when it did so, it reacted weakly, calling on the belligerents to cease fire but not to withdraw immediately to internationally recognized borders. Since Iraq had by this stage forcibly occupied some thousands of square kilometres of Iranian territory, it seemed clear which way the Security Council was tilting. This was clear enough to the Iranian government in any case, which regarded the resolution as evidence of flagrant bias. For Iraq, it was a diplomatic triumph. The Iraqi representative, Ismet Kittani, complained that the resolution had been adopted before the Iraqi foreign minister had had a chance to put Iraq's case. However, this visit

[2] UN doc. S/14190 of 23 Sep. 1980.

[3] Javier Peréz de Cuéllar, *Pilgrimage for Peace* (New York: St Martins Press, 1997) 132 3; UN doc. S/PV.2247 of 26 Sep. 1980, 1 2.

[4] UN doc. S/PV.2247 of 26 Sep. 1980, 2 3.

[5] SC Res. 479 of 28 Sep. 1980; Brian Urquhart, *A Life in Peace and War* (London: Weidenfeld & Nicolson, 1987), 325.

had itself been a ploy to delay any resolution until Iraq had seized or damaged enough Iranian assets to force Iran to negotiate an end to the fighting on terms favouring Iraq.[6]

For Saddam Hussein, a short demonstrative war against Iran was a key part of his own political project, domestically and regionally. It was intended to capture enough Iranian territory and do sufficient damage to Iran's already enfeebled military apparatus to force concessions from the government in Tehran. These were to be largely symbolic, but nonetheless important: the recognition of Iraqi sovereignty over the full width of the Shatt al-Arab waterway, the pledge not to interfere in Iraq's internal affairs, and, above all, the recognition by the revolutionary regime in Tehran not only of the Iraqi government, but also of the power of Iraq as a state – which Saddam Hussein would claim had single-handedly stopped the Iranian revolutionaries in their tracks.[7]

Consequently, the Iraqi government had no interest in any speedy response by the Security Council. Above all, it wanted to avoid any demand that its forces withdraw from Iran. Buoyed up by the Security Council's lack of condemnation and its apparent acceptance of Iraq's thesis that this was but the latest phase of a long-running conflict between the two countries, Iraq intensified its military campaign, eventually capturing Khorramshahr and laying siege to Abadan by the end of November.[8] Iraq was now in a strong position, Saddam Hussein thought, to wring concessions from Iran. He was disastrously mistaken, but he was supported tacitly or otherwise in this belief by some on the Security Council.

The Iranian government was correct in assuming that it faced a hostile Security Council, led by three at least of the Permanent Five members. The Western powers feared the implications of the Iranian revolution for regional order and for their interests in the Middle East. The US in particular had lost a close ally in the Shah and the new Iranian government made no secret of its desire to 'export the revolution', threatening the oil-producing states of the Gulf who were looking to the Western powers for protection. Against this background, the continued captivity of the staff of the US Embassy in Tehran since November 1979, despite UN Security Council Resolutions 457 and 461 of December 1979,[9] placed Iran in contravention of the rules of international law – something which Iran's representatives seemed to overlook when protesting about their cold reception by the Security Council. For its part, the USSR, facing fierce criticism from Iran for its recent occupation of Afghanistan, and linked to Iraq by a multitude of ties, not least the arms used by the Iraqi forces to attack Iran, tried with difficulty to dissociate itself from Iraq, warning Iran of Iraq's imminent invasion and stopping further arms deliveries.[10]

[6] UN doc, S/PV.2248 of 28 Sep. 1980, 10.
[7] Shahram Chubin and Charles Tripp, *Iran and Iraq at War* (London: IB Tauris, 1988), 53 7.
[8] UN doc. S/PV.2250 of 15 Oct. 1980, 1 6.
[9] SC Res. 457 of 4 Dec. 1979; SC Res. 461 of 31 Dec. 1979.
[10] Chubin and Tripp, *Iran and Iraq at War*, 191 2, 203 8, 220 1.

Thus, in the autumn of 1980 four of the Permanent Five members of the Security Council looked upon the Iraqi invasion of Iran less as a violation of international law and more as an opportunity, a chance to rein in a troublesome, potentially revisionist regional power. From this perspective, the war would humble, even undermine, the Islamic regime in Tehran, forcing it to concede the limits of its power and thus, presumably, to moderate its designs on the region and to modulate its hitherto defiant relationship with the status quo powers. For the US and for President Carter in particular, facing re-election in November 1980 and accused by his opponents of 'losing Iran', there was a hope that Iran's predicament might provide the basis for a deal whereby the hostages could be released in exchange for the unfreezing of assets and possibly military equipment – in good time to make an impact on the presidential election in November 1980.[11] For the USSR, despite its obvious anger at Iraq, the plight of Iran promised to provide openings for the USSR, as well as possibly moderating Iran's position on the Soviet occupation of Afghanistan. For France and the UK, in particular, relations with the Islamic republic had been troubled, and anything that seemed to blunt the revolutionary potential of Iran and to lead to a more accommodating stance to the vulnerable oil-producing states of the Gulf was welcomed.

In this respect, therefore, four of the Permanent Five seemed to share Iraq's view that the war was an opportunity to 'put Iran in its place'. It was not surprising that their deliberations and resolutions should have given so much leeway to Iraq. Of course, the major flaw in this argument was the assumption that Iraq's invasion would weaken the Iranian government, causing it to lose confidence in its revolutionary potential. The opposite was the case. The war had a galvanizing effect on the Islamic republic, causing Iranians to rally round their leadership in defence of their country and making that leadership more determined than ever to carry the revolutionary project into Iraq and beyond. As Saddam Hussein soon appeared to acknowledge, things had not gone according to plan.[12] This left both Iraq and the Security Council bereft of options. Iraq could not force Iran to negotiate and the Security Council's actions had so alienated Iran that it simply boycotted its meetings for the next seven years.

War-Related Issues

In these circumstances, as far as the UN was concerned, the initiative passed to the new Secretary-General, Javier Pérez de Cuéllar. Unlike the Permanent Five members of the Security Council, he continued to see the failure of the UN to halt the war as an

[11] Dilip Hiro, *The Longest War: The Iran Iraq Military Conflict* (London: Grafton Books, 1989), 71 2.

[12] Saddam Hussein to the Iraqi National Assembly 4 Nov. 1980, *BBC Summary of World Broadcasts, Middle East* 6 Nov. 1980 [A/5 10].

indictment of the organization and of the principles on which it had been founded. He had maintained good relations with both the Iraqi and the Iranian governments. This counted for a good deal with the latter, in view of their understandable mistrust of the Security Council itself. However, there was a limit to what he could achieve without the full participation of the P5. They were willing to give him their backing when it came to mediation, but remained as reluctant as ever to act collectively in such a way as to make an impression on the belligerents. Thus the Secretary-General's personal representatives periodically visited Tehran and Baghdad, but lacked sufficient authority to win major concessions from either side.[13]

Only in 1982, with the tide of battle turning against Iraq, did the Security Council bestir itself. It seemed as if the very thing that the Iraqi invasion of 1980 had been intended to prevent was about to happen. Iran had rallied its forces and launched a series of devastating offensives which drove most of the Iraqi forces from its territory, leading to the capture of thousands of Iraqi soldiers and leaving Iran poised to invade Iraq itself. Faced by this disaster, the Iraqi government was desperate to accept a ceasefire without preconditions. The Security Council obliged and passed Resolution 514 which called for a ceasefire and for the withdrawal of forces to internationally recognized boundaries.[14] Iran ignored the resolution. It had now achieved by force of arms that which the Security Council had failed to bring about in September 1980 and, overconfident in Iran's military prowess, Iran's leadership believed that it was on the verge of achieving its major political objective: the overthrow of Saddam Hussein and the Ba'thist regime in Iraq. Nor was it daunted by UN Security Council Resolution 522 of October 1982, which reiterated the terms of UN SC Resolution 514 – and pointedly welcomed its acceptance by Iraq. True to the Council's reluctance to contemplate more forceful ways of ensuring compliance, the resolution merely called upon Iran to accept the ceasefire. Iran felt no compunction about ignoring this resolution as well.[15]

The threatened Iranian occupation of Iraq did not materialize, although Iranian forces did occupy swathes of Iraqi territory along the border. Equally, the regime of Saddam Hussein stayed firm, despite visible jitters in the summer of 1982. Nevertheless, the Iranian threat remained a powerful one, with Iran's forces massed on the borders of Iraq, and there was no doubting the intention of the Iranian leadership to pursue the war until they had ended the rule of the Ba'th and had established an Islamic republic in Iraq. However, the open ambition of Ayatollah Khomeini and his government to bring about a radical change of regime in Baghdad stiffened the opposition of the US and its allies on the Security Council which then regarded such an objective as illegitimate. In these circumstances, the Iraqi government began to use all means at its disposal to meet the Iranian threat – some of which were in clear

[13] Cameron R. Hume, *The United Nations, Iran, and Iraq How Peacemaking Changed* (Bloomington: Indiana University Press, 1994), 41–5.

[14] SC Res. 514 of 12 Jul. 1982.

[15] SC Res. 522 of 4 Oct. 1982; Chubin and Tripp, *Iran and Iraq at War*, 57–61.

violation of international law. These brought only the mildest of rebukes from the Security Council, often phrased in such a way as to suggest that both belligerents were equally at fault.

The use of chemical weapons

Nowhere was this more apparent than in Iraq's repeated use of chemical weapons against Iranian forces and against its own population in Iraqi Kurdistan. Iraq had had a programme for the development of chemical weapons – both derivatives of mustard gas and nerve agents, such as Tabun – for some years. For the Iraqi high command, these provided potent weapons against the lightly armed massed infantry attacks favoured by Iran. It seems certain that Iraq first used some form of mustard gas against Iranian forces in 1983. However, when Iran formally complained to the UN Security Council in November 1983, there was no reaction. Iran then organized an international conference of experts to examine the evidence and they concluded that Iraq had indeed been using nitrogen–mustard gas during 1983. There was still no reaction from the UN. It was only when Iran went directly to the office of the UN Secretary-General in March 1984 that it received any response.[16]

Acting on his own authority, Pérez de Cuéllar informed the Security Council that he was sending a mission to Tehran to look into the claims. There it found incontrovertible evidence that Iraq had used mustard gas and Tabun nerve gas against Iranian forces and reported its findings at the end of March 1984.[17] Interestingly, although the report made it clear that Iranian forces had been attacked by chemical weapons dropped from Iraqi aircraft, the Secretary-General's accompanying note failed to name Iraq. The Security Council took its cue from this and on 30 March issued a statement strongly condemning the use of chemical weapons, but also making no mention of Iraq as the perpetrator, let alone condemning Iraq for its violation of international law.[18] Instead, it linked the use of these weapons to the situation created by the continuing hostilities, implying that Iran itself was partly at fault for prolonging the war. By that time the US State Department had publicly pointed the finger of blame at Iraq and had moved to block the export of certain dual-use chemicals.[19] This had enraged the Iraqi government, but it soon found other sources and had the gratification of seeing that, whatever the feelings about this matter within some branches of the US administration, when it came to the Security Council the US, no less than the other Permanent Members, was unwilling to act against Iraq.

[16] Edgar O'Ballance, *The Gulf War* (London: Brassey's Publishers, 1988), 149 50.

[17] *Report of the specialists appointed by the Secretary General to investigate allegations by the Islamic Republic of Iran concerning the use of chemical weapons*, UN doc. S/16433 of 26 Mar. 1984.

[18] De Cuéllar, *Pilgrimage for Peace*, 141 2; UN doc. S/16454 of 30 Mar. 1984.

[19] *International Herald Tribune*, 6 Mar. 1984; *Time*, 19 Mar. 1984; O'Ballance, *The Gulf War*, 150.

Thus encouraged, Iraq continued to use chemical weapons, causing the Secretary-General to send investigative missions to the region yearly. They all concluded that Iraq had used chemical weapons against Iranian forces, but when the Security Council was finally moved to pass another resolution relating to this in February 1986, it merely reminded Iraq and Iran that they were signatories to the 1925 Geneva Protocol prohibiting their use.[20] Admittedly, this was followed a month later, after yet another damning report by the Secretary-General's fact-finding mission, by a statement from the President of the Council which named Iraq for the first time, expressing profound concern 'that chemical weapons on many occasions have been used by Iraqi forces against Iranian forces' and strongly condemning their use.[21] However, there was no follow-up and Iraq suffered no adverse consequences.

Iraq persisted in using chemical weapons until the very end of the war against Iranian forces, and, notoriously, against its own population in the Kurdish region of Iraq where it became an integral part of the Iraqi government's al-Anfal campaign in 1988 to suppress the Kurdish insurrection.[22] In March 1988 Iraq's use of chemical weapons against the Kurdish town of Halabja – then under the occupation of Kurdish guerrillas and Iranian forces – resulted in the deaths of some five thousand of its inhabitants. Iran brought this to the attention of the UN Secretary-General, rightly believing that the Security Council was unlikely to respond – the Council at the time being both preoccupied with trying to get Iraq and Iran to accept UN SC Resolution 598, and restrained by concerns about Iraq's sovereignty in what was regarded as an 'internal affair'.[23] De Cuéllar sent a mission to Iran where they found clear evidence of Iraq's use of chemical weapons. However, when this was reported back to the UN Security Council it had already become clouded by accounts which suggested that both Iran and Iraq had used chemical weapons in the fighting around Halabja. These had arisen from confusion at the site of the attack and by the fact that some Iraqi soldiers had been affected, but also seems to have been taken up by some US government agencies, perhaps as a way of deflecting sole blame from Iraq.

These preoccupations had their effect on the Security Council and thus, when Resolution 612 was passed in May 1988 it vigorously condemned 'the continued use of chemical weapons in the conflict', but then stated that it 'expects both sides to refrain from the future use of chemical weapons in accordance with their obligation under the Geneva Protocol'.[24] Heartened by this response, Iraq not only stepped up its use of chemical weapons against the Kurds, but also used them

[20] SC Res. 582 of 24 Feb. 1986.

[21] *Report of the specialists appointed by the Secretary General to investigate allegations by the Islamic Republic of Iran concerning the use of chemical weapons*, UN doc. S/17911; and UN doc, S/17911 Add.1 of 21 Mar. 1986; UN doc. S/17932 of 21 Mar. 1986.

[22] Human Rights Watch, *Iraq's Crime of Genocide: The Anfal Campaign against the Kurds* (New Haven: Yale University Press, 1995), 254, 262 5.

[23] SC Res. 598 of 20 Jul. 1987.

[24] SC Res. 612 of 9 May 1988.

repeatedly in the series of offensives launched against Iranian forces from April to June.[25] There is little doubt that Iraq's use of these weapons in such a profligate way, unrestrained by any international sanctions or action from the UN Security Council, played an important role in undermining the morale of Iranian forces on the battlefield, and in influencing the Iranian government's decision to accept a ceasefire. There seemed to be nothing to prevent further escalation of the conflict by Iraq.[26]

Targeting civilians

At least as powerful in undermining morale in Iran and in influencing the thinking of the Iranian government in 1988, was the fear that Iraq might soon use chemical weapons against Iranian cities, as it had against Halabja. In both Iran and Iraq towns had been hit by artillery, air, and missile bombardment at various times during the war. In 1983, facing up to the imminent Iranian threat on the battlefield, it seems that Iraq deliberately targeted a number of Iranian towns for the first time, using both aircraft and surface-to-surface missiles. This led the Iranian government in May 1983 to ask the UN Secretary-General to send a fact-finding mission which reported on the 'heavy and intensive destruction of civilian areas of Iran by aerial, artillery and missile attacks and light damage in Iraqi civilian areas'. However, when this was taken up by the Security Council, it resulted in Resolution 540 of October 1983 which simply called for 'the immediate cessation of all military operations against civilian targets, including city and residential areas' and requested the Secretary-General 'to continue his mediation efforts . . . to achieve a comprehensive, just and honourable settlement' and 'to consult with the parties concerning ways to sustain and verify the cessation of hostilities'.[27] As de Cuéllar himself remarked, this 'was hardly realistic', not least because the Security Council's failure to single out Iraq had confirmed Iran's belief in the biased nature of the Council.[28]

Unsurprisingly, what came to be known as 'the war of the cities' continued, with both sides launching sporadic bombing or missile attacks against civilian population centres in the two countries. In view of the inactivity of the Security Council, de Cuéllar took an independent initiative in June 1984 to get Iran and Iraq to desist. He succeeded in persuading them both to sign up to this, and to agree to the stationing of UN observers in the two countries to monitor compliance. The arrangement lasted for nearly a year, but when de Cuéllar tried in March 1985 to

[25] Hiro, *The Longest War*, 203 10.

[26] *Report of the specialists appointed by the Secretary General to investigate allegations by the Islamic Republic of Iran concerning the use of chemical weapons*, UN doc. S/20060 of 20 Jul. 1988; and UN doc. S/20134 of 19 Aug. 1988.

[27] SC Res. 540 of 31 Oct. 1983.

[28] De Cuéllar, *Pilgrimage for Peace*, 137; O'Ballance, *The Gulf War*, 118.

get them to renew their pledges, he had little success. Exchanges of fire continued, tailing off largely because neither side saw much advantage in pursuing this strategy.[29] The tactic was revived in February 1988, leading Iraq to hit Tehran for the first time with modified Soviet Scud missiles. It had a terrifying effect on the population, large numbers of whom had fled the city by the end of March. The terror was compounded not only by news of the use of chemical weapons against civilians at Halabja, but also by the Iranian authorities' public acknowledgment that this might indeed be the next step in Iraq's escalation of the war, thereby playing into Iraq's hands by undermining morale further.[30]

Attacks on commercial shipping

The developing conflict in another theatre of war – the waters of the Persian Gulf – also played a role in 1988. Since 1981, Iraq had been attacking ships trading with a number of Iranian ports and in 1982 it had extended the range of its attacks to the Iranian oil-terminal island of Kharg, hitting neutral ships, as well as Iranian shipping. As Iraq's desperation about the situation on the land front increased, so it became more determined to strike at Iran's economic infrastructure, declaring naval exclusion zones and acquiring from France the planes and missiles to enforce this to Kharg and beyond. Iran responded by stopping and searching neutral shipping it claimed might be assisting the Iraqi war effort and by periodically threatening to 'close' the Straits of Hormuz. As the Iraqi campaign intensified in 1983, these Iranian threats became more strident, causing mounting concern amongst oil producers and consumers. In October 1983, the Security Council passed Resolution 540, using its customary 'even-handed' wording to call on both states 'to cease immediately all hostilities in the region of the Gulf, including all sea-lanes', even though, at that stage, only Iraq had been responsible for attacking and sinking neutral shipping.[31]

In May 1984, Iran began to strike back, hitting tankers trading with Kuwait and Saudi Arabia – Iraq's main financial backers. The concerned Arab Gulf states brought this formally to the attention of the Security Council which passed Resolution 552 in June 1984.[32] Although it did not mention Iran by name it unequivocally condemned 'the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia', demanding that 'such attacks should cease forthwith and that there

[29] De Cuéllar, *Pilgrimage for Peace*, 142–3; Anthony C. Arend, 'The Role of the United Nations in the Iran–Iraq War', in Christopher C. Joyner (ed.), *The Persian Gulf War – Lessons for Strategy, Law and Diplomacy* (New York: Greenwood Press, 1990), 196; Hiro, *The Longest War*, 134–6.

[30] *Report of the specialists appointed by the Secretary-General to investigate allegations by the Islamic Republic of Iran concerning the use of chemical weapons*, UN doc. S/19823 of 25 Apr. 1988.

[31] Martin S. Navias and E. R. Hooton, *Tanker Wars: The Assault on Merchant Shipping during the Iran–Iraq Conflict, 1980–1988* (London: I.B. Tauris, 1996), 45–69; SC Res. 540 of 31 Oct. 1983.

[32] SC Res. 552 of 1 Jun. 1984.

should be no interference with ships en route to and from the states that are not parties to the hostilities'. It also went so far as to threaten that 'in the event of non-compliance . . . to meet again to consider effective measures that are commensurate with the gravity of the situation in order to ensure the freedom of navigation in the area'. As de Cuéllar commented, 'the resolution served only to increase further Iran's disdain for the Council, if that were possible.'[33]

Even so, despite the fact that in the following two years some 90 ships were attacked by Iraq (of which 30 were sunk) and some 65 ships were attacked by Iran (of which 7 were sunk), the Security Council did nothing. Four of the Permanent Members of the Security Council – the US, the USSR, the UK, and France – did, however, act unilaterally or in concert with allies, increasing their military naval presence in the Gulf and the Arabian sea, responding to Iranian threats to close the Straits of Hormuz. With the escalation of the 'tanker war' as it became known, the US and the USSR became more deeply involved. In early 1987 the USSR leased three large tankers to Kuwait and in March the US, partly in response to this move, agreed to a Kuwaiti request to place thirteen of its fleet under the US flag, committing US naval forces to their protection. Effectively, the two superpowers had entered the conflict, doing nothing to discourage Iraqi attacks on the Iranian oil trade, even if it meant the sinking of neutral shipping, whilst seeking to deter Iran militarily from attacking the Kuwaiti and Saudi oil that was financing the Iraqi war effort.[34]

Inevitably, this led to an increasing number of confrontations between the Iranian and US navies, leading the USSR in 1987 to float the idea of allowing merchant ships to fly the UN flag, protected by a UN naval force. However, this came to nothing.[35] By April 1988 US warships had destroyed three Iranian oil platforms in retaliation for Iranian attacks on US-flagged tankers or on US naval vessels, effectively reducing Iran's oil exports by about eight per cent. When frigates of the Iranian navy tried to challenge the US navy, they were sunk. As McNaugher remarks, 'the United States was now hitting the same targets Iraq had been hitting for some years. From an Iranian perspective the strike on the Sirri [oil] platform represented the emergence of a U.S.–Iraqi axis.'[36] In July 1988, the confrontation went one step further when the *USS Vincennes* shot down a civilian Iranian airliner taking off from Bandar Abbas, mistaking it for a warplane. This prompted Iran to return to the UN Security Council for the first time since 1980, calling for an urgent meeting. The Council, mindful of the possibility that Iran might finally accept Resolution 598, passed Resolution 616, expressing 'deep distress' and 'sincere condolences' for the loss of life – and emphasizing the need for 'a full and rapid

[33] De Cuéllar, *Pilgrimage for Peace*, 142; Navias and Hooton, *Tanker Wars*, 77 85.

[34] Navias and Hooton, *Tanker Wars*, 128 47.

[35] De Cuéllar, *Pilgrimage for Peace*, 158 9; P. Tavernier, 'The UN Secretary General: Attitudes and latitudes', in Farhang Rajaee (ed.), *The Iran Iraq War The Politics of Aggression* (Gainesville: University Press of Florida, 1993), 177.

[36] Thomas L. McNaugher, 'U.S. Policy and the Gulf War', in Joyner (ed.), *The Persian Gulf War*, 116 17.

implementation' of resolution 598 as a basis for 'a comprehensive, just, honourable and durable settlement of the conflict' between Iran and Iraq.[37]

Ending the War: Security Council Resolution 598

These developments gave Ayatollah Khomeini the cue to approve Iran's pursuit of a negotiated end to the war. Not only had much of the Iranian leadership become convinced that Iran was now fighting the US directly, instead of its 'proxy' Iraq, but they also believed that the US and Iraq would stop at nothing to beat Iran into submission, whether this was through attacks on its armed forces, its population centres, or its economic infrastructure. Despite the fact that Iran had continued to portray the UN Security Council as little more than a plaything of the great powers, and of the US in particular, by 1988 there did exist at the UN a possible way out of the cataclysm which Iran's leadership felt was staring the country in the face: Security Council Resolution 598.

The resolution had its origins in factors working within the UN – and some important developments outside that body. Within the UN, the Secretary-General had become exasperated by the fact that war had escalated, with a bloody stalemate at the front and increasingly horrific accounts of the use of chemical weapons, of the bombardment of civilian areas, and of the sinking of merchant ships in the waters of the Gulf. Yet the Security Council seemed unwilling or unable to act collectively to prevent any of it. When he took this to the Security Council in October 1986, it responded with a resolution so vacuous that, as de Cuéllar drily remarked, 'this did not mark a high point in my appreciation of the Council's work.'[38] Exasperated as he may have been, however, this was not the time to show it in public since he was coming up for reappointment as Secretary-General. Having secured a second term in office, de Cuéllar lost little time in trying to get things moving and in a famous January 1987 press conference called for a 'meeting of minds' between the five Permanent Members of the Council to reach 'the solution of problems related to peace and security'.[39]

This initiated a process of secret negotiations between the representatives of the five Permanent Members of the Security Council to devise a resolution to end the war that would stand some chance of acceptance by both Iran and Iraq. The cooperative atmosphere which was created by the regular informal meeting of these representatives was due not simply to their personalities, nor to the managerial skill

[37] SC Res. 616 of 20 Jul. 1988.
[38] De Cuéllar, *Pilgrimage for Peace*, 150; SC Res. 588 of 8 Oct. 1986.
[39] De Cuéllar, *Pilgrimage for Peace*, 151 2.

of the Secretary-General, but to significant shifts occurring within the major powers, which affected their perception of the urgency of the need to resolve the conflict between Iran and Iraq. For the USSR, the coming to power of Gorbachev and the 'new thinking' and 'reconstruction' which were loudly proclaimed as the hallmark of a new Soviet politics also marked its approach to foreign policy – and inevitably affected what de Cuéllar called 'the stultifying shroud of the Cold War that had long enveloped the Security Council'.[40]

The US administration was receptive, if wary of this development, but in 1986/7 was smarting from the revelations of the 'Iran–Contra' scandal which had exposed the US, despite its public pronouncements, as yet another power willing to exploit and even prolong the war in order to advance its own narrow interests. This was equally the case in France, where a minister of defence was alleged to have been profiting personally from arms sales generated by the war. In the United Kingdom, government circles were only too well aware of the lucrative deals signed with Iraq that were so close to arms deals that they were to become the subject of a public enquiry in the 1990s. Thus for three of the Permanent Members of the Security Council, largely complacent during the previous six years of war, it was becoming apparent that the conflict had the potential to escalate not simply in the war zone, but also at home in ways that could be politically damaging.[41]

The renewed sense of urgency to resolve the conflict led to the development of a resolution that finally moved away from the bias in favour of Iraq that had so marked previous texts. The principal disagreement was on the question of enforcement. Although clothed in the language of collective security and the need to give Security Council resolutions 'teeth', the US insistence that sanctions should be imposed on the party that did not sign up to the ceasefire resolution seemed too obviously directed against Iran (Iraq had been willing to accept a ceasefire since 1982). China and the USSR objected to this aspect of the resolution, as did the UK. In these circumstances, the US had to abandon its plan for sanctions in the event of non-compliance and the draft was put to the remaining ten members of the Security Council – some of whom felt understandably aggrieved that they had been excluded from the process of discussion.

Nevertheless, the resolution was passed unanimously on 20 July 1987. Resolution 598 not only called for a ceasefire and a withdrawal of forces to the internationally recognized boundaries, but also requested the Secretary-General to 'explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict', and promised international assistance for reconstruction efforts. The Iraqi government rapidly accepted the resolution. For their part, the Iranian authorities were dismissive of this latest move, but they

[40] Marrack Goulding, 'The UN Secretary General', in David Malone (ed.), *The UN Security Council From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 273.

[41] See David M. Malone, *The International Struggle over Iraq: Politics in the UN Security Council, 1988 2005* (Oxford: Oxford University Press, 2006), 22 53.

did not reject it outright since it embodied some of Iran's long-standing demands. They also hinted that if the investigation into responsibility for the war proceeded as Iran hoped, then the demand for the overthrow of the Ba'thist regime and the payment of war reparations might be 'postponed'. However, there were many in Iran's political and military leadership who were deeply suspicious of the UN Security Council – and of the speed with which Iraq accepted the resolution – and who still believed that Iran could achieve all its goals by force of arms.[42]

It was this faction which was weakened by the events of 1988. The Secretary-General had kept the resolution before both Iran and Iraq, focusing on the practicalities and maintaining some kind of process – and waiting for the moment when Iran, as well as Iraq, would come to accept it as the basis of a ceasefire. This only came about as a result of the military reverses suffered by Iran in the first half of 1988, both on the land front and in the waters of the Gulf. It was this, combined with the fear of escalation in the 'war of the cities' and of full-scale US military involvement which strengthened the hand of those in Tehran who believed that Resolution 598 offered the best chance of ending the war before the tide turned irreversibly against Iran.

Iraq tried to get the UN to agree to direct negotiations between Iran and Iraq prior to a ceasefire, but the Security Council supported the Iranian minister of foreign affairs, Ali Akbar Velayati, in his rejection of this attempt to tamper with the resolution. Iraq dropped its demand. Iran then agreed to direct negotiations once the ceasefire was in place, indicating its acceptance of the resolution. The Security Council approved the plan for its implementation and the Secretary-General declared that the ceasefire would come into effect on 20 August 1988, once a UN observer force was in place.[43] The war was finally over. Awkward and protracted negotiations ensued, lasting for a couple of years until they were displaced by the Security Council's preoccupation with Iraq after its invasion of Kuwait in 1990. However, the ceasefire held and up to that point UNIIMOG (UN Iran–Iraq Military Observer Group) successfully carried out its mission.

Conclusion

The record of the UN Security Council during the Iran–Iraq war is not a very commendable one, but it was characteristic of the era and possibly of the system. It was also to a great extent a function of the particular dislike and suspicion with

[42] Hume, *The United Nations, Iran, and Iraq*, 117 21; Hiro, *The Longest War*, 199; SC Res. 598 of 20 July 1987; Arend, 'Role of the UN', 193 5.

[43] Shahram Chubin, 'Iran and the War: From stalemate to ceasefire', in Efraim Karsh (ed.), *The Iran Iraq War: Impact and Implications* (London: Macmillan, 1989), 21 4; Arend, 'Role of the UN', 193 5, 197 201; Hiro, *The Longest War*, 241 9.

which the revolutionary regime in Iran was regarded by the major world powers. They, the 'inner Council' of the Permanent Five members, determined the action, or inaction of the Council, not the Council as a whole. Their preoccupations with their own national interests shaped their attitudes to the belligerents, negating ideas of collective security or even support for the principles on which the UN was founded. Because of Iran's threatened revisionism at the time, and because of vested interests in Iraq and in Iraq's Arab allies, the Council was consistently biased against Iran. This was compounded by the peculiarly intimate and antagonistic relationship between the US and Iranian governments.

The consequences were visible from the very outbreak of war, through the eight years of its course, during which Iraq consistently violated the laws of war, but was rarely identified as the transgressor, let alone punished. This had more to do with the great powers' hostility to Iran, than to any Cold War logic. It was only when Iran began to fight back that the UN Security Council bestirred itself. However, it was then that the lingering inertia and mutual suspicions of the Cold War precluded collective action other than the passing of a series of resolutions which may have given heart to Iraq, but otherwise had no impact on the belligerents.

Instead, the Permanent Five on the Security Council had joined the rush to supply war materiel to the belligerents, seeing it as a strategic, or simply as an economic opportunity, as did the fifty or so members of the UN which were involved in selling such materiel to Iran and Iraq during the war. Precisely because of this and because of the inaction of the Security Council, Iran and Iraq geared their strategies to winning a military victory, either through outright defeat of the enemy on the battlefield or through attrition. To achieve this end, all means were possible. Their use only depended on the effect they had on the other side and their capacity to sustain the effort. It was thus a war, the course and outcome of which was determined, as wars have been throughout history, by the crude and violent measure of the capacity of one side to inflict unsustainable death and destruction on the other.

Throughout the eight years of the war, there was ample evidence in the press and on television of the scale and the brutality of a war fought out largely by the infantry of both sides, in a manner reminiscent of the Western Front in Europe during the First World War. One sobering measure of the scale of the conflict, which is also an indication of the reticence of both the Iranian and Iraqi governments to admit to the true human cost of the war, is that there is still no agreed figure for the numbers of those killed and maimed during those years. On the Iranian side, estimates of the dead range from 300,000 to 500,000, with a further 700,000 maimed and wounded. On the Iraqi side, the parallel figures are 100,000 to 200,000 dead and some 300,000 wounded.

It will probably never be possible to establish with any great degree of accuracy the terrible human toll of this war in which both countries were profligate with the lives of their soldiers, sacrificed to placate the political ambitions of their leaders.

The 'human wave' attacks launched by the Iranian high command could cost 15,000 lives in a single day, as lightly armed or even unarmed *basij* ('volunteers') many of them barely into their teens, were sent across minefields to face the guns and the poison gas of the Iraqis. For his part, the Iraqi leader had no compunction about sacrificing whole regiments, as in the attempt to recapture the al-Faw peninsula in 1986, if it could restore his prestige. Away from the main battlefront, the human misery of the war continued, with some two-and-a-half million refugees fleeing from the shattered cities of southern Iran and of Basra, shipping destroyed and sailors killed in the waters of the Gulf, and civilian casualties mounting in the bombardments that erupted periodically throughout the war. Meanwhile, some 80,000 Iraqis were led away into captivity, matched by, although far outnumbering the 10,000 Iranian POWs in Iraq. This war was the most costly in human terms, the most destructive, and the most financially ruinous in the history of the modern Middle East.

Yet far from acting to bring it to a speedy end through mediation and diplomacy, the Security Council and its Permanent Five members played their part in reinforcing the deadly logic of war, whereby the Iranian leadership was finally obliged to recognize that Iran could no longer sustain the kind of damage being inflicted on its forces and its people. There is little doubt that the massive military re-supply of Iraq, the failure to prevent Iraq from using chemical weapons, from bombarding Iranian cities, or from crippling its oil trade, as well as the active participation of the US in assisting the Iraqi war effort, did indeed push Iran into accepting a ceasefire in 1988. But it was at a terrible cost in terms of human lives, and in the licence it seemed to grant to Saddam Hussein to use military force as an instrument of Iraqi policy, for which the region was to pay the price during the following fifteen years. Of equal importance for the future, the Security Council's behaviour during the war coloured Iranian perceptions of its reliability and worth. Their understandable mistrust of it as a body concerned with collective security inevitably encouraged those in Iran who had long insisted that the country should rely on its own resources for deterrence and for defence, free of international supervision or restraint.

CHAPTER 17

THE SECURITY COUNCIL AND THE 1991 AND 2003 WARS IN IRAQ

JAMES COCKAYNE
DAVID M. MALONE

No wars have had more lasting impact on the Security Council's standing than those involving Iraq since 1980.[1] To think of the 1991 and 2003 wars in Iraq as distinct may be misleading: these campaigns – and all that transpired in the period between – are better considered as one long war, waged not only militarily, but also with regulatory tools such as economic sanctions and weapons inspections.

For many years, the legal-regulatory approach centred on 'sanctions plus inspections' seemed to provide a viable alternative to military action against Iraq. But by 1995/1996, Security Council strategy on Iraq was adrift. Coincident with a creeping resort to unilateral military action, support for sanctions slowly frayed. After the events of 9/11, influential voices in Washington sought to deal with Iraq in a manner that would deter others from challenging American power. Broad coalition-building became less of a priority, marginalizing the utility of the UN for Washington and precipitating US and UK military action without explicit Council authorization in March 2003.

[1] See further David M. Malone, *The Struggle over Iraq: International Politics in the Security Council 1980 2005* (Oxford: Oxford University Press, 2006).

The First Major Campaign: 1991

Iraq's invasion of Kuwait in many ways flowed from Iraq's bloody but inconclusive war with Iran. Saddam Hussein needed to deliver rewards to his long-suffering population. The small emirate of Kuwait was an obvious prize, offering both oil and improved access to the Persian Gulf. Long-simmering border disputes provided the pretext, while Kuwait's overproduction of oil, depressing prices, raised the stakes further.

Perhaps encouraged by signals from the US that it had 'no opinion' on the Kuwait–Iraq border dispute, and misled by the Security Council's timid response to his war with Iran, Hussein determined forcibly to annex Kuwait.[2] He did not foresee the unified response this provoked from the Council, itself a product of perestroika in the Soviet Union and an increasingly cooperative relationship amongst the five Permanent Members (P5). Nor did he anticipate the assembly of a somewhat improbable diplomatic coalition in opposition to the invasion, bringing together Western countries, Arabs, Israel, both superpowers, and a wide array of members of the Non-Aligned Movement (NAM). But Council acquiescence in the Iraqi invasion would have implied a profound threat to the sovereignty of many a small country. Mobilized by the US and UK, the Council acted within hours of the invasion, adopting Resolution 660 on 2 August 1990, demanding Iraq's unconditional withdrawal.[3]

American-Soviet cooperation during the crisis was unprecedented, signalling for US Secretary of State James Baker that 'a half-century after it began . . . the Cold War breathed its last.'[4] On 6 August the Council adopted Resolution 661, only the third embargo ever imposed by the Security Council (after Rhodesia in 1966 and South Africa in 1977). On 7 August, President Bush ordered 200,000 troops to the Persian Gulf for Operation Desert Shield, designed to protect Saudi Arabia from Iraqi aggression. The presence of Western troops in Saudi Arabia split Arab opinion, although twelve of twenty-one members of the Arab League voted on 9 August to support the UN sanctions and to provide troops for an all-Arab force in Saudi Arabia.[5]

Indeed, despite initial concerns within the region about US-led military action providing a basis for a continued US military presence, ultimately thirty-four countries formally joined the diplomatic coalition. Together, these countries provided

[2] Dilip Hiro, *Neighbours Not Friends: Iraq and Iran After the Gulf Wars* (London: Routledge, 2001), 29.

[3] Cameron Hume, *The United Nations, Iran and Iraq: How Peacemaking Changed* (Bloomington, IN: Indiana University Press, 1994), 188.

[4] James A. Baker, *The Politics of Diplomacy: Revolution, War and Peace, 1989 1992* (New York, NY: G. P. Putnam's Sons, 1995), 16.

[5] Only Iraq, Libya, and the PLO voted against the proposal. Importantly, Syria as well as Egypt joined in military action against Iraq in early 1991.

roughly 25 per cent of the troops and footed approximately 75 per cent of the total bill for the campaign of roughly US $70 billion, with the US supplying the rest. Particularly significant were the financial and troop contributions of Arab states: Saudi Arabia, Kuwait, and other Gulf states contributed roughly US $36 billion; and Arab states were seven of the top ten troop-contributing states.[6] The backing of many of these states apparently derived from concern at the prospect of Iraqi regional military hegemony, particularly if Hussein was left unchecked and managed to add the oil reserves of Saudi Arabia to those he had annexed in Kuwait. But Washington's promises of significant economic assistance, including extensive debt forgiveness, clearly also helped.

This coalition strategy of President George H.W. Bush – who had previously served as US Ambassador to the UN – was rooted in the idea that collective action through the UN would allow burden-sharing and risk mitigation:

> [w]hile I was prepared to deal with this crisis unilaterally if necessary, I wanted the United Nations involved . . . Decisive UN action would be important in rallying international opposition to the invasion and reversing it.[7]

In Bush's eyes, a Security Council resolution created a well-spring of legitimacy for military action, which 'eased some of the problems of coalition maintenance' while also – and crucially – helping to foster domestic support for military action by 'resolv[ing] the debate about the need for provocation before we could act'.[8]

Following a US lead, the Council repeatedly married patience with creativity. In Resolution 669, it provided a means for those adversely affected by sanctions to be heard.[9] Attempts by the NAM first to create a mediating role for the Secretary-General, and then to move discussion of the crisis to the General Assembly, were contained.[10] Unusually violent clashes on Jerusalem's Temple Mount on 8 October created challenges by drawing attention to apparent double standards in allowing Israel but not Iraq to flout Council decisions. The US proved flexible, voting for Resolution 673 on 24 October deploring Israeli failure to cooperate with the Secretary-General in an investigation of the 8 October violence.[11]

[6] Top ten troop contributions were: USA (550,000); Saudi Arabia (118,000); Turkey (100,000); UK (43,000); Egypt (40,000); UAE (40,000); Oman (25,500); France (18,000); Syria (17,000); Kuwait (11,000). The US flew 86% of all sorties during the campaign and provided the vast bulk of all military hardware: on this latter point see Anthony H. Cordesman, *U.S. Forces in the Middle East: Resources and Capabilities* (Boulder, CO: Westview Press, 1997), 62 3.

[7] George Bush and Brent Scowcroft, *A World Transformed* (New York: Alfred A. Knopf, 1998), 303.

[8] Ibid.

[9] SC Res. 669 of 24 Sep. 1990. The Council later established the UN Compensation Commission (UNCC) to deal with complaints arising from the Iraq Kuwait conflict (SC Res. 692 of 20 May 1991). It awarded US $52.5 billion in compensation. See generally Andrea Gattini, 'The UN Compensation Commission: Old Rules, New Procedures on War Reparations', *European Journal of International Law* 13, no. 1 (2002), 161 81.

[10] See Hume, *The United Nations*, 207 8.

[11] SC Res. 673 of 24 Oct. 1990.

But Hussein's rhetoric remained belligerent, and his forces remained in Kuwait. Slowly, the Council moved towards an authorization of the use of force to expel Iraqi forces from Kuwait. Several American voices argued that such an authorization was unnecessary given existing resolutions, foreshadowing argumentation in 2003.[12] But Bush saw a Council authorization of force as an opportunity to institute 'a new world order and a long era of peace'.[13] This was to be a world order based on US leadership, values, and power, allowing the US 'to pursue our national interests, wherever possible, within a framework of concert with our friends and the international community'.[14]

Bush's Council-focused strategy soon seemed to bear fruit. Resolution 678, adopted on 29 November by twelve affirmative votes, one abstention (China), and two votes against (Cuba and Yemen), invoked Chapter VII, and authorized 'member states cooperating with the government of Kuwait to use all necessary means to uphold and implement resolution 660' if Iraq did not comply with earlier Security Council resolutions by 15 January 1991. The resolution in effect authorized a US-led war to expel Iraqi forces from Kuwait. On 12 January 1991, the US Congress endorsed SCR 678.[15] While the resolution passed through the House of Representatives relatively straightforwardly (250 for, 183 against), its passage through the Democrat-controlled Senate was much tighter (fifty-two for, forty-seven against), with SCR 678 clearly playing a key role in securing Congressional support.

But the US was not alone in seeking to provide political leadership. After French diplomatic overtures to Baghdad failed, France took centre stage in the Council on 15 January, as it did again a dozen years later, suggesting a simple trade: an Iraqi withdrawal in return for an international conference on Palestine. The US and the UK strongly opposed the suggestion, perhaps annoyed at what they perceived – not for the last time on Iraq – as French grandstanding.[16] With the Council's deadline for Iraqi withdrawal passing, in the morning of 16 January 1991 the coalition air campaign, Operation Desert Storm, began.

This bombing campaign lasted almost six weeks, degrading Iraqi defensive infrastructure, and pulverizing strategic sites, including Iraq's nuclear installations. Iraqi attempts to escalate the conflict by firing Scud missiles at Israel failed, the Israeli government – under strong American pressure – declining to respond with force. The ground campaign was launched on 24 February. Softened up by the relentless coalition bombing, Iraqi front lines rapidly disintegrated. Chemical weapons, such a vital element of Saddam Hussein's arsenal against Iran, were

[12] Abraham D. Sofaer, 'Asking the U.N. is Asking for Trouble', *Wall Street Journal*, Editorial, 5 Nov. 1990, A14.

[13] George H. W. Bush, 'Address before the 45th Session of the United Nations General Assembly in New York, New York', 1 Oct. 1990.

[14] Bush and Scowcroft, *A World Transformed*, 399 400.

[15] *Persian Gulf War Resolution*, House Joint Resolution 77, 12 Jan. 1991.

[16] John Goshko, 'U.N. Chief Issues Plea as Peace Efforts Fail; Opposition Scuttles France's Proposal', *Washington Post*, 16 Jan. 1991, A6.

never used. By 27 February the Iraqi forces were routed and Kuwait liberated. Once Iraq accepted all relevant Council resolutions later that day, President Bush declared a cessation of hostilities, with coalition troops occupying roughly 15 per cent of Iraqi territory.

Bush indicates in his memoirs that he did not press on to Baghdad in order to overthrow Saddam Hussein because, on the one hand, such an objective had not been authorized by the Security Council and, on the other, he feared for Iraq's cohesion following the end of a coalition occupation.[17] Bush also clearly had an eye to the impact that an occupation would have had on his domestic political standing, especially with an election looming and given the razor-thin majority with which he had secured Congressional authorization for military action in the first place.[18] In addition, his administration was concerned to retain regional support, and indeed capitalize upon it as a basis for renewed efforts to resolve the Arab–Israeli conflict – which might have been jeopardized, if coalition forces had pushed on to Baghdad. Reread today, all of these concerns seem prescient.

1991–2003: War by Other Means

The Council took more than a month after the initial ceasefire to reach agreement on a framework for dealing with the longer-term Iraqi threat. Resolution 687 – drafted in Washington and London – was adopted by twelve affirmative votes, with one negative vote (Cuba), and two abstentions (Ecuador, Yemen).[19] It marked a fundamental shift: from a Council using its coercive powers under Chapter VII of the UN Charter to generate politico-military responses to threats, to a strategy using these powers to prevent and manage threats through legal-regulatory standards enforced by complex administrative machinery.[20] Resolution 687 featured a host of new regulatory mechanisms in support of new objectives: mandatory border demarcation; weapons inspection; judicial determination of reparations claims; imposition of new treaty obligations; and the continuation of economic sanctions as an inducement to internal disarmament. These mechanisms were essentially imposed on a defeated and begrudging sovereign UN member state. As a consequence, Resolution 687 served not to create the framework for a consensual peace, but to transform the dynamic of the conflict between Iraq and

[17] Bush and Scowcroft, *A World Transformed*, 463 4. See also Baker, *The Politics of Diplomacy*, 435 8.

[18] Interview by Don Imus with George H. W. Bush, 1 Sep. 2004, *MSNBC*.

[19] SC Res. 687 of 3 Apr. 1991.

[20] For further discussion of this distinction, see James Cockayne and David Malone, 'The UN Security Council: 10 Lessons from Iraq on Regulation and Accountability', *Journal of International Law and International Relations* 2, no. 2 (2006), 1 24.

the US-led coalition from overt military confrontation to covert competition for control of Council-backed regulatory institutions.

Humanitarian intervention

With hostilities between the coalition and Iraqi forces at an end, Hussein moved to repress uprisings amongst Kurds in the north and by Shi'a militias in the south, both threatening the movement of hundreds of thousands of refugees into neighbouring Turkey and Iran. On 3 April, France tried unsuccessfully to insert a clause regarding the plight of the Kurds into what became Resolution 687.[21] President Mitterrand declared that failure to protect the Kurds would severely affect the 'political and moral authority' of the Security Council.[22] On 5 April, the Council passed Resolution 688, condemning the Iraqi repression and terming the cross-border incursions produced by the resulting refugee flows a threat to international peace and security.[23]

Resolution 688 garnered only ten affirmative votes.[24] Members of the Council were acutely aware of the potential to provide a precedent for forceful humanitarian intervention, presenting a radical challenge to state sovereignty.[25] But despite the absence of a Chapter VII reference, US and UK officials claimed that either Resolution 688 or customary international law provided either a right or, according to French Foreign Minister Roland Dumas, a *duty*, to send troops into Iraq to meet extreme humanitarian need.[26] Both Iraq and the UN Secretary-General contested this.[27] Yet, the Secretary-General was prepared to look the other way if Western forces chose to act alone: 'if the countries involved do not require the United Nations flag, then that is quite different.'[28] Neither Russia nor China spoke out against Western unilateral enforcement, though India, voicing concerns throughout the developing world that this created a precedent eroding state sovereignty, was vocal in its opposition.

[21] Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), 141.

[22] Leonard Doyle, Steve Boggan, and Safa Haeri, 'Security Council abandons Kurds to their fate with non intervention policy', *Independent*, 4 Apr. 1991, 1.

[23] See Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 132.

[24] Cuba, Yemen, and Zimbabwe voted against; China and India abstained.

[25] J. E. Stromseth, 'Iraq' in L. E. Damrosch, (ed.), *Enforcing Restraint: Collective Intervention in Internal Conflicts* (New York: Council on Foreign Relations Press, 1993), 81; Wheeler, *Saving Strangers*, 141 6.

[26] See especially *A. Aust, Legal Counsellor, FCO, statement before HC Foreign Affairs Committee*, 2 Dec. 1992, in 'United Kingdom Materials on International Law 1992' in *British Yearbook of International Law* LXIII, 827.

[27] James Bone, 'UN Envoy Pours Cold Water on Kurd Refugee Plan', *The Times*, 10 Apr. 1991.

[28] Doyle, Leonard, 'West and UN Shamed into Aiding the Kurds', *Independent*, 18 Apr. 1991.

President Bush announced the beginning of a US-led effort involving relief drops in Iraqi airspace above the 36th parallel, from which all Iraqi aircraft would be excluded (a 'no-fly zone' – NFZ). The US was quickly joined by the UK and France in this humanitarian effort. By 16 April, they had decided additionally to send in ground troops to provide Kurdish refugees with 'safe havens'.[29] Ultimately, Operation Provide Comfort involved 20,000 troops from thirteen nations and contributions from thirty – a narrower coalition than had been assembled for the earlier military action, but still substantial.[30] US troops remained until early July 1991, when the UN High Commissioner for Refugees assumed responsibility for the camps the Western troops had established.[31] The NFZ remained in force after the ground troops departed.[32]

The UN ground presence in Northern Iraq operated under a Memorandum of Understanding (MOU) with Iraq providing unprecedented humanitarian access, including the establishment of a 'Humanitarian Relief Programme', going well beyond temporary protection. Humanitarian workers were protected in the north by a Contingent of 500 UN Guards of varied provenance. This operation contained the germ of later UN transitional administration projects in East Timor, Kosovo, and elsewhere.[33] But Operation Provide Comfort and the UN Guards Contingent in Iraq both seemed to suggest vulnerable civilian populations could be shielded from local repression by lightly armed personnel, perhaps lulling some within the Security Council into a dangerous complacency, ultimately shattered by events in Rwanda in 1994 and Srebrenica in 1995.[34] In addition, these experiences in Iraq foreshadowed much of the blurring between military action and humanitarian assistance that has increasingly bedevilled the Council, particularly as its involvement with internal conflicts has grown.

Economic sanctions and the Oil-for-Food Programme

Initially adopted to force Iraqi withdrawal from Kuwait, economic sanctions were retained as an incentive for Iraqi compliance with UN weapons inspections and other regulatory mechanisms. The human costs of war quickly became clear. A UN report

[29] Wheeler, *Saving Strangers*, 149–50.

[30] *Operation Provide Comfort After Action Report (U)*, Headquarters United States European Command/ECJ3, 29 Jan. 1992.

[31] Barton Gellman, 'Last Coalition Units Are Leaving Iraq; Ultimatums Issued to Protect Kurds', *Washington Post*, 13 Jul. 1991, A1; D. Hiro, *Desert Shield to Desert Storm: The Second Gulf War* (London: HarperCollins, 1992), 416–17.

[32] Following the US withdrawal, a Western rapid reaction force ('Operation Poised Hammer') was stationed at the Incirlik airbase in Turkey, as a security guarantee for the Kurds.

[33] See Michael Ignatieff, 'State failure and nation building', in J. L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), 308.

[34] *The Fall of Srebrenica*, UN doc. A/54/549 of 15 Nov. 1999.

on 20 March 1991 described conditions in Iraq as 'near apocalyptic'.[35] The UN Secretariat proposed that the Council regulate Iraq's sale of oil, calibrating sales to provide revenue for Iraq's 'essential civilian needs' but not for Iraqi re-militarization. This 'oil-for-food' formula was adopted by the Council, and a formal Oil-for-Food (OFF) programme established by Resolution 706 on 15 August 1991 – though it did not become operational until 1996, since it relied on Iraqi cooperation.[36] OFF established a system whereby all Iraqi commercial transactions with foreign suppliers were overseen by the UN Secretariat, in turn responsible to a committee of the Security Council (the so-called '661 Committee'). The unprecedented and highly intrusive OFF Programme involved regulation of a sovereign state's revenues and direction of its expenditures – not only to benefit its own population, but also to pay costs incurred by the UN in the destruction of Iraqi arms, compensation to third parties, and the boundary settlement process.[37]

By early 1995, with OFF still unimplemented due to Iraqi non-cooperation, opposition to continuation of the sanctions regime had developed on three fronts: within the Council from France, Russia, and China; from Arab (and some other Muslim) countries, increasingly restless about the humanitarian situation in Iraq; and from domestic constituencies in the US and UK.[38] In March 1995, Russia, France, and China circulated a draft resolution that would have lifted sanctions on Iraq.[39] Though the draft was not brought to a vote, the fraying of Council consensus on Iraq strategy was clear. In April 1996, the Council passed Resolution 986, giving Iraq the primary responsibility for the distribution of humanitarian goods under the OFF, and allowing it to deal directly with suppliers in the drafting of contracts.[40] This was an important concession, since it gave Iraq significant leverage – which Hussein used to pass the costs of sanctions on to the most vulnerable sectors of Iraqi society, while extracting illegal rents that reinforced his hold on power.[41] As the later Independent Inquiry Committee under the leadership of former Chairman of the US Federal Reserve Paul Volcker (the 'Volcker Inquiry') would make clear, over time UN officials, too, became entangled in the corruption of the OFF. Ultimately, this scandal rocked the UN, revealing

[35] *Report on humanitarian needs in Iraq in the immediate post crisis environment by a mission to the area led by the Under Secretary General for Administration and Management, 10 17 March 1991*, UN doc. S/22366 of 20 Mar. 1991, para. 8.

[36] See also SC Res. 712 of 19 Sep. 1991.

[37] SC Res. 706 of 15 Aug. 1991, para. 3. See also SC Res. 778 of 2 Oct. 1992, para. 5(c)(ii).

[38] Madeleine K. Albright, 'A Humanitarian Exception to the Iraqi Sanctions', US Department of State Dispatch 6/17, 24 Apr. 1995; James Traub, 'Off target', *The New Republic* 232/6 (2005).

[39] Sarah Graham Brown, *Sanctioning Saddam: The Politics of Intervention in Iraq* (London: I.B. Tauris, 1999), 80.

[40] SC Res. 986 of 14 Apr. 1995.

[41] UN doc. E/CN.4/Sub.2/RES/1997/35 of 28 Aug. 1997; David Cortright and George Lopez, 'Reforming Sanctions', in David M. Malone, (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004).

'egregious lapses' in management throughout the OFF – and the broader UN.[42] The shift to a legal-regulatory approach exposed the Council to a variety of risks it had not anticipated.

Over its lifetime, OFF handled US $64 billion worth of Iraqi oil revenues, and served as the main source of sustenance for 60 per cent of Iraq's twenty-seven million people, reducing malnutrition amongst Iraqi children by 50 per cent, decreasing child mortality, and eradicating polio.[43] In addition, it employed more than 2,500 Iraqis.[44] Yet despite efforts to improve OFF's effectiveness, support for the regime within the Council slowly eroded. Saddam Hussein skilfully used evidence of suffering inside Iraq as part of a propaganda campaign against sanctions, and pressure grew to allow the termination of sanctions. Yet the US and UK could block any such attempt through a 'reverse veto'.[45] Opposition grew even greater after it became clear in 1997 that the US now saw sanctions as a tool not for containment but for regime change, which became entrenched policy in the US when, in 1998, Congress passed the Iraq Liberation Act.[46]

On many levels, OFF worked: it saved many lives, it supported the disarmament process, and it prevented rearmament by keeping the lion's share of Iraq's oil wealth and imports – which could be used to produce WMD – out of the hands of Saddam Hussein. Iraqi military and weapon programmes steadily eroded under the weight of sanctions, contrary to the claims of some in 2002 and 2003.[47] Yet OFF also demonstrated that the Council had much to learn about legal-regulatory approaches to security challenges, not least as humanitarian costs continued to accrue within Iraq.

Unilateral enforcement of resolutions

Throughout the 1990s, the US and UK – and until the mid-1990s, France – engaged in military action to contain Iraq, ostensibly 'enforcing' existing Council resolutions. However, there was no explicit Council authorization for such actions. This unilateral enforcement, at first accepted by other Council members, induced escalating resentment. After France ceased to participate in these actions in 1998, unilateral military action became a flashpoint, ultimately sundering the unity of

[42] SC Res. 1538 of 21 Apr. 2004; and Independent Inquiry Committee, *Report on the Management of the Oil for Food Programme*, I, 4.

[43] Oil For Food Facts, 'Oil For Food: FAQ', www.oilforfoodfacts.com/faq.aspx See also Independent Inquiry Committee into the United Nations Oil for Food Programme, *The Impact of the Oil for Food Programme on the Iraqi People: Report of an Independent Working Group established by the Independent Inquiry Committee* (7 Sep. 2005), 177, 179.

[44] Oil for Food Facts, 'Oil For Food: FAQ'.

[45] See for example David Cortright et al., *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 1997).

[46] 'Iraq Liberation Act of 1998', H.R. 4655, 31 Oct. 1998.

[47] George A. Lopez and David Cortright, 'Containing Iraq: Sanctions Worked', *Foreign Affairs* 83, no. 4 (2004), 97.

the Council's purpose on Iraq, as China, Russia, and France became increasingly vocal in their criticism of such action.[48]

When Operation Provide Comfort ended, unilateral enforcement continued through two NFZs, nominally to enforce the protection of the Kurds and the Shi'a in Iraq's south. Although neither NFZ was specifically provided for by Council resolutions, no Council members protested. Secretary-General Boutros Boutros-Ghali even argued in a letter to US Congressional leaders that the US military actions were justified by a 'mandate' from the Council to enforce the ceasefire agreement.[49]

US military actions became increasingly decoupled from the stated objectives of the Council. In mid-1993, US intelligence discovered an alleged plan by the Iraqis to assassinate former President Bush, during a visit to Kuwait. Claiming self-defence, on 26 June 1993 the US fired twenty-four cruise missiles at intelligence headquarters in Baghdad.[50] In early October 1994, a US expeditionary army of some 54,000 troops assembled in the Persian Gulf as Iraqi troops appeared poised to attack Kuwait – but without any clear direction from the Council. After much debate, the Security Council hammered out a unanimously adopted compromise in Resolution 949, issuing specific demilitarization demands to Iraq.[51] As would occur with Resolution 1441 in 2002, the US and UK interpreted Resolution 949 as giving them authorization to use force in the event of Iraqi non-compliance; the French and Russians suggested a further resolution would be needed.[52] Iraq pulled back its army, rendering the debate moot.

The important lesson of 1994, largely overlooked at the time, was the French defection from the 'Western' consensus, partly obscured by continuing French enforcement of the NFZs, soon to end. In 1996, after the election of the Gaullist Jacques Chirac, an independent French stance became more pronounced, first in its refusal to join the US and UK in extending the southern NFZ in response to Hussein's continued non-compliance with earlier resolutions, and culminating in its condemnation of the intensive US and UK bombing of Iraq in December 1998, Operation Desert Fox, and withdrawal from enforcing the NFZs. Undeterred, the US and UK instigated a policy of 'aggressive enforcement'. The growing rift within the Council on how to conduct this 'war by other means', was increasingly clear; but its outcome was as yet unknown.

[48] James Cockayne and David Malone, 'Creeping Unilateralism: How Operation Provide Comfort and the No Fly Zones in 1991 and 1992 Paved the Way for the Iraq Crisis of 2003', *Security Dialogue* 37, no. 1 (Mar. 2006), 123 41.

[49] 'Letter to Congressional Leaders reporting on Iraq's Compliance with UN SCRs', *Weekly Compilation of Presidential Documents* 29 (19 Jan. 1993), 67.

[50] David Von Drehle and R. Jeffrey Smith, 'U.S. Strikes Iraq for Plot to Kill Bush', *Washington Post*, 27 Jun. 1993, A1; see also Alan D. Surchin, 'Terror and the Law: The Unilateral Use of Force and the June 1993 Bombing of Baghdad', *Duke Journal of Comparative & International Law* 5 (1995), 459.

[51] SC Res. 949 of 15 Oct. 1994.

[52] Barbara Crossette, 'U.N. Council Unanimous In Condemning Iraq Move', *New York Times*, 17 Oct. 1994, 10.

Weapons inspections

Weapons of Mass Destruction (WMD) in Iraq had long been a source of international concern.[53] In June 1981, Israel had destroyed Iraq's nuclear reactor at Osiraq – meeting with condemnation in the Security Council.[54] But by 1991, the Council had determined that Iraq's possession of WMD threatened international peace and security. Disarmament thus became a centrepiece of Resolution 687, with the Council establishing 'the most intrusive system of arms control in history', as US Vice President Richard Cheney later described it.[55]

The Council delegated the tasks of disassembling Iraq's chemical and biological weapons capabilities to a specially created sub-organ, the United Nations Special Commission (UNSCOM), with the International Atomic Energy Agency (IAEA) playing a similar role for nuclear weapons. Although the Executive Director of UNSCOM was appointed by the Secretary-General, formally UNSCOM reported only to the Security Council – a design flaw highlighted when UNSCOM Executive Director Richard Butler clashed with Secretary-General Kofi Annan in 1998.[56] From the outset, UNSCOM was hampered by a pattern of Iraqi obstructionism. Concerned by the flagrancy of Iraq's defiance, the Council issued Resolution 715, which approved a more intrusive Ongoing Monitoring and Verification (OMV) regime to be implemented by UNSCOM – though this was not accepted by Iraq until 1993.[57]

Iraqi defections in 1994–5, including that of a former head of Iraqi military intelligence, a senior Iraqi nuclear scientist and General Hussein Kamel Hassan, Saddam Hussein's son-in-law, helped UNSCOM, revealing details of Iraqi concealment strategies and advanced biological weapons programmes.[58] The pattern of feints and taunts continued through 1996, with inspectors eventually barred from several 'sensitive' sites, files destroyed, and increased interference with UNSCOM helicopter flights.[59] To defuse the tension, Rolf Ekéus, the accomplished Swedish Executive Chairman of UNSCOM, agreed to 'modalities' – perhaps more accurately described as conditions – of access to sites in which 'the President of Iraq was present'.[60]

Iraqi obstructionism nevertheless grew. By November 1997, the Security Council was warning of 'serious consequences' (code for possible use of force).[61] Encouraged by rifts within the Council, Baghdad staged further provocations, soon expelling all

[53] Richard Butler, *Talk* (Sep. 1999), 198.

[54] SC Res. 487 of 19 Jun. 1981.

[55] 'Vice President Honors Veterans of Korean War', *White House Office of the Press Secretary*, 29 Aug. 2002.

[56] David M. Malone, 'Iraq: No Easy Response to the Greatest Threat', *American Journal of International Law* 95, no. 1 (2001), 235 45.

[57] SC Res. 715 of 11 Oct. 1991.

[58] Graham Brown, *Sanctioning Saddam*, 84; see also UN doc. S/1995/864 of 11 Oct. 1995.

[59] SC Res. 1051 of 27 Mar. 1996, and SC Res. 1060 of 12 Jun. 1996.

[60] Rolf Ekéus interview, 28 May 2005.

[61] SC Res. 1137 of 12 Nov. 1997.

US personnel in UNSCOM. A serious US military build-up in the Gulf followed, with token support from only a few of its allies. The broad coalition built by Bush and Baker in 1990 had withered away.[62] After a 'self-inflicted . . . public relations disaster'[63] at home resulting from a misconceived attempt by Clinton administration officials to sell war in Iraq to a sceptical public at a 'town hall' meeting at Ohio State University, Washington's interest in a negotiated outcome increased markedly. Kofi Annan then stepped in.[64] On 22 February, he secured Iraqi agreement for 'unlimited access' by UN inspectors to the presidential sites.[65] But Annan's success was undermined by an ill-advised characterization of Hussein: 'I think I can do business with him.'[66] Annan's private characterization to the Council of some UNSCOM inspectors as 'cowboys' did not help either.[67]

Further crises followed. A 15 December report of Iraqi non-compliance by Richard Butler – who had succeeded Ekéus within UNSCOM – was the final straw for an increasingly frustrated US and UK. In retaliation, they launched Operation Desert Fox without seeking Council authorization, relying instead for legal justification on Iraqi non-compliance with earlier Council resolutions. US and UK forces conducted roughly 650 air strikes against approximately 100 Iraqi targets.[68] The strikes did little to change Saddam Hussein's behaviour. As Anthony Cordesman noted, the Iraqi President had again shown the world that he could survive US attack.[69] Perhaps even more important, it was now clear that the US and UK would not in all circumstances wait for Council authorization before launching military action, as events in Kosovo a year later would confirm.

In the wake of Operation Desert Fox, and weighed down by allegations of heavy CIA and other US intelligence infiltration, UNSCOM imploded.[70] A panel established by the Security Council to reconsider weapons inspection concluded that 'the bulk of Iraq's proscribed weapons programmes has been eliminated', but nevertheless endorsed the continuation of inspections to guard against rearmament – a clear demonstration of the Council's legal-regulatory approach to Iraq, focused on prevention rather than response.[71] While the US seemed content to do without inspections,

[62] John M. Goshko, 'Security Council Debate Reflects Continued Split on Iraq', *Washington Post*, 19 Dec. 1997, A20.

[63] Martin Kettle, 'Iraq crisis: The debate: White House scores a PR own goal', *Guardian*, 19 Feb. 1998, 13.

[64] Dilip Hiro, *Iraq: In the Eye of the Storm* (New York: Thunder's Mouth Press/Nation Books, 2002), 116.

[65] UN doc. S/1998/166 of 25 Feb. 1998.

[66] John M. Goshko, 'U.S. Says Questions Remain on Iraq Pact', *Washington Post*, 25 Feb. 1998, A01.

[67] 'Reversing Course on Iraq', *Washington Post*, Editorial, 26 Feb. 1998, A14.

[68] Tom Clancy with Tony Zinni and Tony Koltz, *Battle Ready* (New York: G.P. Putnam's Sons, 2004).

[69] Tim Weiner, 'U.S. Long View on Iraq: Patience in Containing the Ever Deadlier Hussein', *New York Times*, 3 Jan. 1999, 10.

[70] Confidential interviews in Washington, Jan. 1999. See David M. Malone 'Goodbye UNSCOM: A Sad Tale in UN US Relations', *Security Dialogue* 30, no. 4 (Dec. 1999), 393 411.

[71] Letter dated 27 Mar. 1999 from the Chairman of the panels established pursuant to the note by the President of the Security Council of 30 Jan. 1999 (S/1999/100) addressed to the President of the Security Council, UN doc. S/1999/356 of 30 Mar. 1999.

as long as sanctions remained in place, for other P5 members, the exact reverse arrangement was preferable.[72] A consensus was not reached until December 1999, when Resolution 1284 established the UN Monitoring, Verification, and Inspection Commission (UNMOVIC) – although even then, China, France, Russia, and Malaysia abstained.[73] In spite of measures to safeguard its independence, by 2001, UNMOVIC had still not been permitted into Iraq.[74]

For over a decade, Saddam Hussein had outmanoeuvred the Council and its agents, successfully obscuring not his rearmament, but the degree to which disarmament had actually been achieved, and sowing confusion about his future intentions. The uncertainty created by Iraqi obstruction was assessed very differently by Paris and Washington. These differences might have remained tolerable for all concerned had 9/11 not intervened. The post-9/11 testosterone rush in Washington made company (with the exception of UK) less of an issue and induced myopia in evaluating possible consequences of military action (particularly without the Arab support that had existed in 1990–1).

The Second Major Campaign: 2003

Abandonment of the 'war by other means' in favour of full military intervention seemed implausible in early 2001, not least given the antipathy of the incoming Bush administration towards 'nation-building', some of which would inevitably follow any invasion of Iraq.[75]

But the events of 11 September 2001 transformed the strategic outlook of decision-makers in many capitals. Hussein's presumed pursuit of WMD no longer represented a nuisance: it was now perceived as a potentially serious threat, on the assumption he might pass on those weapons to terrorists. Within days of the 9/11 attacks, President Bush and Secretary of Defence Donald Rumsfeld were urging military action against Iraq once al-Qaeda and the Taliban had been disposed of.[76] The Administration soon identified 'evidence' suggesting links between Iraq and al-Qaeda, with Iraq now becoming the 'central front in the war on terrorism'.[77] In

[72] Richard Butler, *The Greatest Threat: Iraq, Weapons of Mass Destruction, and the Crisis of Global Security* (New York: Public Affairs, 2000), 200.

[73] SC Res. 1284 of 17 Dec. 1999.

[74] Teixeira da Silva, 'Weapons of Mass Destruction', in Malone, *The United Nations Security Council*, 213; and Hans Blix, *Disarming Iraq: The Search for Weapons of Mass Destruction* (New York: Pantheon, 2004), 59.

[75] Condoleezza Rice, 'Campaign 2000: Promoting the National Interest', *Foreign Affairs* 79, no. 1 (2000), 45 62.

[76] Richard A. Clarke, interview with Leslie Stahl, *60 Minutes*, CBS, 21 Mar. 2004.

[77] Jonathan S. Landay, Warren P. Strobel, and John Walcott, 'Doubts Cast on Efforts to Link Saddam and Al Qaeda', *Knight Ridder/Tribune News Service*, 3 Mar. 2004.

November–December 2001, Rumsfeld instructed the Pentagon to develop war plans for Iraq.[78]

In his 29 January 2002 State of the Union address, Bush signalled a paradigm shift in US strategic thinking, describing a need to 'prevent regimes that sponsor terror from threatening America or our friends and allies with weapons of mass destruction', and naming Iraq, Iran, and North Korea as an 'axis of evil, arming to threaten the peace of the world'.[79] In September 2002, this approach was more fully articulated in a new US *National Security Strategy* favouring pre-emptive military action.[80]

In early October, in a strong speech at the UN General Assembly calling for a collective approach against Saddam Hussein, Bush stated:

> If Iraq's regime defies us again, the world must move decisively to hold Iraq to account. . . . Are Security Council resolutions to be honored and enforced? Will the United Nations serve the purpose of its founding, or will it be irrelevant?[81]

The uncomfortable implication for the Council was clear: either it must back the US demand for forceful disarmament of Iraq – and by implication regime change – or it would be sidelined. For the UN, the options were stark: kowtow to the hegemon, or face irrelevance.

But within the Council, there was little sense that Iraq posed a serious threat and consequently little support for an early resort to force. European Commission President Romano Prodi warned that 'unilateral US military action could destroy the keystone of US diplomacy, the global antiterrorist alliance.'[82] His Commissioner for external relations, Chris Patten, criticized the notion of the 'axis of evil' as 'absolutist and simplistic', and warned of pending 'unilateralist overdrive'.[83] German Chancellor Gerhard Schröder ruled out German participation in an invasion of Iraq, whether or not there was a UN mandate,[84] while French President Chirac expressed 'great reservations'.[85]

The UK remained true to Washington. On 3 April 2002, Prime Minister Tony Blair asserted that London knew Iraq to possess stockpiles of chemical and biological weapons.[86] But the US and UK differed significantly over what role the

[78] Bob Woodward, *Plan of Attack* (New York: Simon & Schuster, 2004), 8, 38.

[79] 'President Delivers State of the Union Address', *White House Office of the Press Secretary*, 29 Jan. 2002.

[80] President of the United States, *The National Security Strategy of the United States of America* (Washington, DC: The White House, 2002), 15.

[81] General Assembly official records, 57th session: 2nd plenary meeting, 8.

[82] Karen DeYoung, 'Bush to Challenge U.N. on Iraqi Threat; President Will Demand Action Soon on Hussein', *Washington Post*, 11 Sep. 2002, A13.

[83] Jonathan Freedland, 'Patten lays into Bush's America: Fury at president's "axis of evil" speech', *Guardian*, 9 Feb. 2002, 1.

[84] Steven Erlanger, 'Stance on Bush Policy Could Swing Election in Germany', *New York Times*, 9 Sep. 2002, 3. For analysis, see Anja Dalgaard Nielsen, 'Gulf War: The German Resistance', *Survival* 45, no. 1 (2003).

[85] 'French Leader Offers America Both Friendship and Criticism', *New York Times*, 9 Sep. 2002, 9.

[86] UK Prime Minister Tony Blair, *NBC TV News*, 3 Apr. 2002.

UN should play in the decision to go to war: as the record of a high-level meeting in London in July 2002 made clear, while the US was fixed on war with Iraq whether or not the Security Council approved it, the UK saw the Council as more important.[87] An agreed basis for Council authorization was crucial: US Deputy Secretary of Defence Paul Wolfowitz later admitted that WMD were 'settled on' as 'the one reason that everyone could agree' in seeking Security Council authorization for the use of force against Iraq.[88]

But by choosing WMD as the trigger for recourse to force, the US and UK confronted demands from the other Permanent Members to give weapons inspections more time to prove their success. Some in the Administration appear to have feared 'the UN route' not because it might fail but because it might succeed and thereby prevent a war that they were convinced had to be fought.[89] Bush appears ultimately to have been persuaded by Secretary of State Colin Powell and by Blair that an effort needed to be made to bring the UN on board.[90]

Bush faced a very different response to calls for Council action in 2003 than his father had in 1991. But equally, the domestic political climate he faced was vastly different: whereas the father had to use Council decisions to generate Congressional authorization for the use of force, the son was given the green light by Congress well before Security Council support was certain. With some in the US Administration committed to the overthrow of Saddam Hussein as a much-needed demonstration of US power after 9/11, an atmosphere developed in Washington apparently influencing intelligence findings that soon overstated the threat.[91] On 16 October the US Congress passed a joint resolution authorizing military action.[92]

Under tremendous pressure from Washington, in November 2002 the Security Council adopted Resolution 1441.[93] Resolution 1441 found Iraq had been and continued to be in 'material breach' of its disarmament obligations but afforded it one 'final opportunity' to meet its disarmament obligations, through an enhanced inspections regime. It ambiguously threatened 'serious consequences' for Iraqi non-compliance. This represented a compromise between the US and UK, which sought to make authorization for the use of force 'automatic' upon Iraqi non-compliance, and other members of the Council, which maintained that a 'second Resolution' would be needed before any military enforcement action.

[87] 'The secret Downing Street memo', *Sunday Times*, 1 May 2005.

[88] Deputy Secretary Wolfowitz Interview with Sam Tannenhaus, *Vanity Fair*, 9 May 2003.

[89] Mark Danner, 'The Secret Way to War', *New York Review of Books* 52, no. 10, 9 June 2005.

[90] Woodward, *Plan of Attack*, 178; Christopher Bluth, 'The British road to war: Blair, Bush and the decision to invade Iraq', *International Affairs* 80, no. 5 (2004), 879.

[91] Walter Pincus and Dana Priest, 'Some Iraq Analysts Felt Pressure From Cheney Visits', *Washington Post*, 5 Jun. 2003, A01.

[92] United States Congress, *Authorization for the Use of Military Force Against Iraq*, Public Law 107 243, 116 Stat. 1498, H.J. Res. 114, 16 Oct. 2002. The Resolution also passed more easily than its 1991 analogue, 296 133 in the House, and 77 23 in the Senate.

[93] SC Res. 1441 of 7 Nov. 2002.

Resolution 1441 resulted in the return, after four years of absence, of weapons inspectors to Iraq. Whether this inspections exercise was fated to prove a blind alley is open to debate. The UK representative on the Council at the time, Jeremy Greenstock, argues that 'the fact that there was unanimity, while it did not help provide a basis for a second resolution in March, did in my view help to bring the Security Council together . . . after the conflict.'[94] His French colleague, Jean-David Levitte believes that Resolution 1441 could have provided a good basis for negotiation between Europeans and Americans, had the Europeans been united.[95] Recalling that France was then quite open to the use of force against Saddam Hussein as long as it was authorized by the Security Council, he notes that his first senior visitor in Washington, mid-December 2002, was a French military officer offering the Americans 15,000 troops, the nuclear-powered aircraft carrier *Charles de Gaulle*, and other military assets, under the right political dispensation.[96] However, with the UK increasingly lined up behind the US diplomatically and as an unconditional military partner, Washington had little reason to negotiate with Paris (or the rest of the Council members) to meet conditions on its use of force.

In early December, Iraq presented the 'currently accurate, full and complete declaration' on its weapons programmes demanded by Resolution 1441. The US, trying to spring a trap,[97] pointed to omissions in this declaration as material breaches in themselves. But most Council members were disposed to give UNMOVIC and the IAEA more of a chance. The weapons inspectors quickly set to work, conducting 237 inspections at 148 sites between November 2002 and March 2003, even as the US began a massive military build-up in the Persian Gulf.[98]

By early January, Washington had given Paris clear signals that the US was intent on a military solution.[99] Paris privately offered Washington a significant compromise, promising a degree of accommodation as long as a clash in the Council was avoided – suggesting that Washington '[j]ust do what we did for Kosovo' – not seek an explicit authorization of the use of force but instead rely on existing Resolutions.[100] But Blair had promised his public a second resolution.

The pattern of P5 mutual accommodation in the post-Cold War era seemed to make a veto by one Western power of an initiative vital to others unlikely.[101] Yet Washington was dismissive of its diplomatic antagonists, with Rumsfeld denigrating

[94] Correspondence with David Malone, 6 Jun. 2005.

[95] Interview, 7 Jun. 2005.

[96] Ibid.

[97] See Lawrence Freedman, 'War In Iraq: Selling The Threat', *Survival* 46, no. 2 (2004), 29.

[98] Lopez and Cortright, 'Containing Iraq', 92.

[99] Quentin Peel et al., 'How the US Set a Course for War with Iraq', *Financial Times*, 26 May 2003.

[100] James Traub, *The Best Intentions: Kofi Annan and the UN in an Era of American World Power* (New York: Farrar Straus Giroux, 2006).

[101] See for example David Malone, 'The UN will come around to the Bush Blair view', *International Herald Tribune*, 1 Feb. 2003, 4.

France and Germany as 'old Europe'.[102] President Chirac soon hardened his opposition to military action, characterizing it as 'the worst of solutions' and 'an admission of defeat', which 'everything must be done to avoid'.[103] But the prospect of a French veto remained implied rather than explicit. Chirac's rhetoric helped generate a wave of public sentiment well beyond France intensely opposed to American militarism, which German Chancellor Gerhard Schröder rode to an election victory. Russia and China, too, were supportive of France.[104]

Indications from chief weapons inspectors Hans Blix and Mohammed El-Baradei that Iraq was improving its cooperation were read by the US and UK as a classic Iraqi smokescreen pointing to further deception, while France and Russia suggested it proved that Resolution 1441 was bearing fruit.[105] On 5 February Colin Powell, reprising Adlai Stevenson's role in the Cuban Missile Crisis, presented a multimedia dossier detailing 'evidence' of Iraqi WMD to the Security Council.[106] The presentation was broadcast live around the world, in an atmosphere of real tension, but failed to produce a 'smoking gun', focusing instead on shadowy photographs and assertions of connections between Iraq, al-Qaeda, and nuclear proliferators. Only his claim that Iraq was manufacturing prohibited missiles has held up well.[107]

Washington's attacks on one set of UN instruments (inspections) and its narrow reliance on the other (sanctions) greatly undermined its international support. When UNMOVIC and the IAEA began to produce tentative evidence of Western intelligence failures, visiting sites identified by the US and UK without finding anything of substance, and the IAEA declared that Iraq was not in the process of reconstituting its nuclear programme, the US stepped up its criticisms of inspections.[108] This seemed to fulfil an earlier promise by Vice-President Cheney to Hans Blix that the US would, if necessary, 'discredit inspections in favour of disarmament'.[109] The US deployed all the diplomatic, financial, surveillance, and military leverage at its disposal to influence votes in the Council, particularly targeting

[102] Steven R. Weisman., 'U.S. Set To Demand that Allies Agree Iraq is Defying U.N.', *New York Times*, 23 Jan. 2003, 1.

[103] Peel et al., 'How the US Set a Course for War'.

[104] 'No evidence yet to justify war on Iraq: Ivanov', *Agence France Presse*, 23 Jan. 2003; 'China adds voice to Iraq war doubts', CNN.com, 23 Jan. 2003, edition.cnn.com/2003/WORLD/asiapcf/east/01/23/sprj.irq.china/index.html.

[105] See Philip H. Gordon and Jeremy Shapiro, *Allies at War: America, Europe and the Crisis over Iraq* (New York, NY: McGraw Hill, 2004); and Michael Clarke, 'The Diplomacy that Led to War in Iraq', in Paul Cornish (ed.), *The Conflict in Iraq 2003* (Basingstoke: Palgrave Macmillan, 2004).

[106] See 'U.S. Secretary of State Colin Powell Addresses the U.N. Security Council', *White House Office of the Press Secretary*, 5 Feb. 2003.

[107] Powell later called this episode a 'blot' on his record: Steven R. Weisman, 'Powell Calls His U.N. Speech a Lasting Blot on His Record', *New York Times*, 9 Sep. 2005, A10.

[108] Blix, *Disarming Iraq*, 157, 167.

[109] Ibid., 86.

Non-permanent Council Members such Angola, Chile, Guinea, Mexico, and Pakistan.[110] To Washington's fury, France did likewise.

Sensing that unilateral military action by the US and the UK was in the offing, France, Russia, and Germany agreed to list 'benchmarks' for Iraqi compliance and to consider a second resolution setting out an inspections timetable stretching over the coming months. But with over 200,000 troops in the Persian Gulf and the summer heat and sand storms fast approaching, Washington was in no mood to wait.

Blair was in a bind, committed to a war that large sections of his own party and much of his public opposed. British diplomats worked frantically to bridge the gap between the US and France, but without success. On 24 February 2003, the US, Britain, and Spain introduced a draft resolution stating that the Council '[d]ecides that Iraq has failed to take the final opportunity afforded to it in resolution 1441 (2002)'.[111] Legal advisers of both US and UK indicated that this would revive the authorization to use force provided by Resolution 678, reopening the hostilities begun in 1991, which had lain dormant under a ceasefire for twelve long years.[112]

But British efforts were to no avail. On 5 March the Foreign Ministers of France, Germany, and Russia met in Paris, and agreed to block any resolution authorizing the use of force. On 7 March another meeting of the Security Council at foreign minister level failed to break the deadlock. A French proposal to allow a further 120 days of inspections was rejected by the US.[113] The UK announced one last-ditch draft text, allowing Iraq until 17 March to demonstrate complete cooperation.[114] This shifted no country's vote.

With a timetable for war now in place, President Chirac made explicit what had until then been only implied: France would veto any resolution that would lead to war. With perhaps three vetoes imminent, and, importantly, lacking even those affirmative votes needed to meet the minimum threshold for passage of a Resolution (9 votes), Blair, Bush, and Spanish Prime Minister José Maria Aznar, after an hour-long meeting in the Azores Islands on 16 March, withdrew the draft resolution.

On 17 March President Bush delivered an ultimatum to Saddam Hussein:

> Saddam Hussein and his sons must leave Iraq within 48 hours. Their refusal to do so will result in military conflict, commenced at a time of our choosing. . . . The United Nations Security Council has not lived up to its responsibilities, so we will rise to ours.[115]

[110] Sarah Anderson, Phyllis Bennis, and John Cavanagh, 'Coalition of the Willing or Coalition of the Coerced?', Institute for Policy Studies, 26 Feb. 2003, www.ips dc.org/COERCED.pdf

[111] United States Department of State, 'Iraq: U.S./U.K./Spain Draft Resolution', 24 Feb. 2003.

[112] This argument is laid out most cogently in the secret legal advice provided by UK Attorney General Lord Goldsmith on 7 Mar. 2003 and released to the public on 28 Apr. 2005, 'Iraq: Resolution 1441'. See also Adam Roberts, 'The Use of Force', in Malone, *The UN Security Council.*

[113] Blix, *Disarming Iraq*, 212.

[114] Ibid., 212 13.

[115] 'President Says Saddam Hussein Must Leave Iraq Within 48 Hours', *White House Office of the Press Secretary*, 17 Mar. 2003.

Although Coalition Special Forces had already been operating in remote areas of Iraq for two days, major hostilities commenced on 19 March 2003, when Bush, reacting to intelligence about Hussein's whereabouts, ordered an air strike against him at Dora Farms, which proved unsuccessful.[116] The ground war, dubbed 'Operation Iraqi Freedom', began the next day. Just over two weeks later, after meeting weak resistance from a dispirited Iraqi military, US troops took control of the Baghdad airport. By 9 April US troops had taken control of central Baghdad, pulling down an iconic statue of Hussein in Firdos Square. Hussein himself, and many of his top Ba'ath regime leaders, vanished.

In the weeks following the occupation of Iraq, the high costs of this venture gradually emerged. The US-led occupation force was soon revealed as both undermanned and under-prepared, with looting in the immediate aftermath of the invasion gradually spiralling into terrorism, insurgency, and, more recently, intense sectarian conflict. Without the participation of a broad military coalition analogous to that assembled in 1991, the brunt of these costs – military, financial, and political – fell on the US and UK.

Others also lost. France, which overplayed its diplomatic hand on Iraq seriously within the European Union setting, saw its own influence decline within that body, as it was enlarged in 2003 by the accession of members generally sympathetic to the US. Germany, which subordinated its UN diplomacy to French aims and tactics, was in a poor position to argue for a Permanent Seat in the Security Council in 2005, weakening the claims of its partners (Japan, Brazil, and India) in a strong but ultimately failed push for Security Council reform.

The UN itself also sustained considerable damage. On 22 May 2003 the Council adopted Resolution 1483, through which the P5 sought to chart a new working relationship with other countries on Iraq, despite lingering bitterness in some quarters. The text, including both aspirational and regulatory elements, was 'as much . . . an invitation to further dialogue as . . . a detailed blueprint' for how the Council would address occupied Iraq.[117] It reflected a compromise between the US and UK, who sought an omnibus blessing recalling Resolution 687, and the French, Russians, and Chinese, who were eager to avoid repeating the *post facto* validation that was widely seen as characterizing Resolution 1244 in the wake of NATO's Kosovo intervention. The resolution ultimately affirmed that the US and UK were occupying powers – a provision initially resisted by some coalition countries. At the same time, in contradiction to much traditional occupation law, the resolution gave the Coalition Provisional Authority a central role in transforming Iraq's political and constitutional landscape.[118]

[116] Douglas Jehl and Eric Schmitt, 'Errors Are Seen in Early Attacks on Iraqi Leaders', *New York Times*, 13 Jun. 2004, 1.

[117] Thomas D. Grant, 'The Security Council and Iraq: An Incremental Practice', *American Journal of International Law* 97, no. 4 (2003), 824.

[118] See David Scheffer, 'Beyond Occupation Law', *American Journal of International Law* 97, no. 4 (2003), 842 60. See also David Scheffer's discussion of military occupation in Chapter 26.

The US and UK decision to go to war without explicit Council approval effectively sidelined the UN. Addressing the Security Council, Kofi Annan asserted that '[w]e must all feel that this is a sad day for the United Nations and the international community.'[119] The Council struggled to assert a clear role for the UN in Iraq, but the coalition was uninterested in any UN lead beyond humanitarian assistance. Although the US looked occasionally to the UN for assistance with elections and constitution-making in the years after it invaded, the UN's role through 2006 proved at best cosmetic.

The UN's sidelining over Iraq generated a genuine crisis of confidence amongst member states and UN staff, including the Secretary-General himself. This was only deepened by revelations by the Volcker Inquiry of the extent to which the legal-regulatory approach mandated by the Council in the OFF Programme had been politicized and corrupted. Yet this same inquiry largely overlooked the Security Council's very serious failings of oversight and the complicity of several of its Permanent Members in the corruption of the OFF, notably through sanctions-busting by Jordan and Turkey.

By 2006, a newly sceptical US public was exerting pressure on the Bush administration to wrap up its military involvement in Iraq. Yet the US administration had no exit strategy, unable to turn to the allies it had so carefully cultivated in 1990. In face of the frightening violence on the ground, it was even denied the options of simply 'declaring victory'. While Blair remained in office in Britain, it was far from clear that he was fully in power, the UK's adventure in Iraq having significantly sapped his support within the Labour party and within the broader public.

Conclusions

The Security Council's long engagement with Iraq has produced many losers. Saddam Hussein was put on trial for his atrocities and executed, but conditions on the ground in much of Iraq are distressing, risking regional conflagration in the event of full-fledged civil war. US international leadership has been undermined, and confidence in the UN is at an all-time low. The Iraq wars hold many lessons for the Council.

First, the Council's long experience with Iraq points to the difficulty of waging a 'war by other means'. The regulatory approach adopted by the Council towards Iraq from 1991 to 2003 mostly achieved its disarmament goals, although the sanctions regime became very leaky and caused severe suffering to Iraqi populations. Yet

[119] UN doc. S/PV.4721 of 19 Mar. 2003, 22.

waging 'war by other means' seems increasingly likely to be the Council's preferred modus operandi, confronted by diffuse and asymmetric threats such as terrorism and WMD proliferation. The Council seems likely increasingly to focus on preventive regulation by states (as demanded by Resolutions 1373 and 1540).[120] If the Council relies too heavily on Chapter VII to impose such regimes, this risks creating a perception amongst member states of the imposition of 'legislation' by a non-legislative, unrepresentative supranational body.[121] This will exacerbate sharp North–South fault lines at the United Nations, and risks setting the Security Council against the General Assembly.

The Volcker Inquiry points to even more severe limits on the Council's capacity to maintain collective security through a legal-regulatory approach. Resolution 687 represented a bold new experiment, substituting regulatory enforcement for military enforcement: but its implementation was often absent-minded, inconsistent, politicized, and, over time, increasingly incoherent. The Council's early acquiescence in unilateral military action by several Permanent Members against Iraq further aggravated matters, suggesting that different member states played by different rules.

The Council might avoid these failings in the future, but only if it recognizes its own pathologies: its brief attention span and tendency to improvise in response to immediate stimuli – its tendency, in the words of former UN Under-Secretary-General Kieran Prendergast, to 'expediency';[122] and the limits of its own political and legal power and of its regulatory capacities. If it wishes to persevere with legal-regulatory approaches, it will need to engage in reflection and reform to ensure it can do so credibly, and not thereby risk further undermining its own legitimacy, effectiveness, and utility.

Secondly, the Council must also continue to grapple with US ambivalence. The US is, after Iraq, resentful of the lack of international support in the Council in 2003, but also, after the problems it encountered during its occupation of Iraq, aware of the utility of the Council as a US policy instrument in 1990 and much of the subsequent fifteen years. The Iraq case demonstrates both how useful the Council can be to the US, and how risky ignoring international sentiment (as reflected in the Council) can be.

Finally, perhaps the most important lesson relates to the costs of unilateralism – for all concerned. In 1990, George H. W. Bush, who understood the value of the legitimacy and burden-sharing offered by Council support, relied on diplomacy focused on and through the Council to build a broad coalition, including credible Arab support. His successors, Bill Clinton and George W. Bush, gave less heed to the Council as a means of leveraging US power.

[120] SC Res. 1373 of 28 Sep. 2001; SC Res. 1540 of 28 Apr. 2004.

[121] Paul C. Szasz, 'The Security Council Starts Legislating', *American Journal of International Law* 96, no. 4 (2002), 901 5.

[122] Conversation with David Malone, 3 Mar. 2005.

The events of 9/11 inspired the younger Bush to act, but bearing none of his father's reservations over a US occupation of Iraq in mind. With potential international support undermined by clumsy diplomacy and weak rationales for war, the US attacked Iraq without clear international legal sanction, supported by a narrow coalition including no regional powers. Costs for the US, for Iraq, and for the UN have been staggering. Among the UN's members, only Iran emerged a clear winner from the fiasco.

At the time of writing, the US is once again recognizing the usefulness of allies and partners, and reengaged meaningfully with the Council on Iran, Lebanon, and Haiti. Although the post-Cold War unity of the Council is much tested by several key security challenges, the Council is likely to remain not only the UN's most effective decision-making body but also a key forum for international diplomacy, for dealing with wars and, on occasion, for waging them.

CHAPTER 18

THE SECURITY COUNCIL AND THE WARS IN THE FORMER YUGOSLAVIA

SUSAN L. WOODWARD

The role of the Security Council in response to the violent break-up of former Yugoslavia, beginning in 1991, tarnished the reputation of the United Nations so deeply that many feared it might not recover. Analysts writing at the time and since have been at pains to express the widespread outrage: 'a spectacular setback',[1] 'collective spinelessness',[2] the first in a 'series of horrendous failures' in the 1990s.[3] The anger was not limited to the vast, mobilized public opinion but included

[1] David M. Malone, 'The UN Security Council in the Post Cold War World: 1987–97', *Security Dialogue* 28, no. 4 (1997), 393.

[2] Thomas G. Weiss, 'Collective Spinelessness: U.N. Actions in the Former Yugoslavia', in Richard H. Ullman (ed.), *The World and Yugoslavia's Wars* (New York: Council on Foreign Relations, 1996), 59–96.

[3] Elizabeth M. Cousens, 'Conflict Prevention', in David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (New York: Lynne Rienner, 2004), 103. To be fair, Sir David Hannay characterizes the UN role in Bosnia as 'an unmitigated *public relations* disaster for the UN', while 'its actual performance on substance deserves to be treated less negatively', in 'The UN's Role in Bosnia Assessed', *The Oxford International Review* (Spring Issue 1996), 4.

practitioners, within and outside the UN system, who sought as early as late 1992, in Somalia,[4] and in 1994 in Rwanda to avoid making the same mistakes again.

Nor did the influence of this global disillusionment wane. In 1995, the case led the Secretary-General to qualify his hopeful *Agenda for Peace* of June 1992.[5] It shaped key recommendations of the Brahimi Panel for reform of peacekeeping operations in 2000[6] and the UN reform proposals made by the High-level Panel Report on Threats, Challenges, and Change in December 2004. It provided the public excuse and justification for the United States and its NATO allies to defy the Security Council entirely in threatening and then unleashing a bombing campaign of seventy-seven days against Serbia in March 1999. Even France's conditions in negotiations over an enhanced UNIFIL mandate in Lebanon in the summer of 2006 drew directly from the lessons of its peacekeepers in the United Nations Protection Force (UNPROFOR) in Yugoslavia.

This legacy of ignominy is almost entirely based, however, on the war in Bosnia and Herzegovina, 1992–5, and specifically on the cavalier invocation by the Security Council of Chapter VII authority without providing the mandate or resources necessary to stop the war – sending peacekeepers, the refrain went, where 'there was no peace to keep'. All lessons drawn, moreover, focus on the use of force. This chapter will argue that the Security Council did fail miserably in this case, but that to explain why, one cannot treat the Bosnian war or the use of force in a vacuum. The focus must shift to the problem that the crisis in Yugoslavia in general presented to the Council and to the full range of actions it authorized or enabled. The Council did not have then, nor does it yet have, a policy on how to address and manage conflicts that threaten the territorial integrity of a country from within. It cannot, therefore, prevent the parties in conflict from resorting to violence. Secondly, it does not have a mechanism for establishing a policy of collective security separate from a policy of European security and those on the Council who would set such a policy. The apparent end of the wars in former Yugoslavia, circa 2004, had not brought an end to either problem for the Security Council as it confronted a new stalemate in 2007 on the former Serbian province of Kosovo.

To restore perspective to the role of the Security Council in the wars of former Yugoslavia, this chapter will first examine the problem that the principle of territorial integrity caused for the Security Council in 1990–1, then turn to its role as a handmaiden of European security, and finally to the use of force in Bosnia–Herzegovina and how the Security Council did, in fact, wage war.

[4] Including the nearly identical Resolutions, SC Res. 733 of 23 Jan. 1992 on Somalia reproducing SC Res. 713 of 25 Sep. 1991 on Yugoslavia.

[5] *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace keeping*, UN doc. A/47/277 S/24111 of 17 Jun. 1992.

[6] *Report of the Panel of Experts on United Nations Peace Keeping Operations*, UN doc. A/55/305 S/2000/809 of 21 Aug. 2000.

The Sovereignty Problem

The war in Bosnia–Herzegovina, 1992–5, was the third in a series of wars – five or six by 2007, plus at least two prevented – in the contested unravelling of the Socialist Federal Republic of Yugoslavia that began with the secession of one part, the republic of Slovenia, on 25 June 1991. The causes leading up to the crisis of 1991 were many and remain highly disputed.[7] They are inseparable from the changes taking place internationally that also affected the Security Council, from the global debt crisis of 1979–80 to the end of Europe's division and the Cold War. The effects in Yugoslavia of economic crisis and then political conflict over the appropriate economic and security policies provoked calls for (and disagreements over) fundamental reform of its constitutional order. The end in 1989 to socialist property rights and in 1990 to one-party rule only intensified the last phase of constitutional conflict about the federal system, citizenship rights, and the country itself.

Until 28 June 1991 when the European Community (EC) and Conference on Security and Cooperation in Europe (CSCE) intervened,[8] however, the crisis was not seen as an issue of regional or international security. Both NATO and the CSCE discussed engagement in November 1990 but decided against on the principle of non-intervention. The Security Council did not discuss the Yugoslav situation at all until September 1991 and then reaffirmed the non-intervention principle in its first Resolution (SC Res. 713) on 25 September. After 28 June, the issue was still squarely one of sovereignty, but in its other face: the right to sovereignty – who had it, and what were its territorial borders?

The first war, when the government of the federal republic of Slovenia seized control over its external border posts and waged war against an unprepared federal army, lasted only ten days, from 28 June to 7 July. The second war, in the federal republic of Croatia, was preceded by significant armed clashes in August 1990 and spring 1991 when paramilitary Croat nationalists sought to force Croatian Serbs to leave their homes in border areas, and when the Serbs' elected leaders sought defence in territorial autonomy after the Croatian parliament demoted the legal status of all citizens who were not ethnically Croat to that of a minority. The federal government and its army sought to restore order, including a campaign to expose and interrupt a secret Croatian government plan of defence preparation that involved the purchase and import of weapons from Hungary and Germany, but its efforts were criticized internationally,

[7] I argue, in 'Costly Disinterest: Missed Opportunities for Preventive Diplomacy in Croatia and Bosnia and Herzegovina, 1985 1991', in Bruce W. Jentleson (ed.), *Opportunities Missed, Opportunities Seized: Preventive Diplomacy in the Post Cold War World* (Lanham, MD, and Oxford: Rowman & Littlefield, 2000), 133 72, that there were many opportunities to prevent the violence, but they were between 1985 and March 1991, when EC crisis management mechanisms only began.

[8] The names of most of the regional organizations involved during 1990 1 changed after 1991, such as the EC to the European Union (EU), the CSCE to the Organization for Cooperation and Security in Europe (OSCE), the G7 to the G8.

particularly by the United States, and the violence worsened when the Croatian government also declared independence, on 25 June. These two secessions created a constitutionally ambiguous situation for the federal government and army, however, while Slovenia and Croatia had succeeded in winning their year-long propaganda campaigns. Two months of low-intensity warfare, when the army attempted to interposition as a way of reducing the violence but also preventing secession and of defending minority Serbs, gave way to full-scale war and appalling destruction after 22 August, when Croatian President Tudjman declared war on the army as an occupying force and the two fought for control in ethnically mixed border regions.

Not only the status of the army and federal government was constitutionally ambiguous by September 1991; so, too, were the exact borders and political allegiances in the contest over who would rule and where in the rest of the Yugoslav space. Whereas Slovenes and Croats were ethnically in the majority in their two republics, the federal republic bordering Croatia – Bosnia and Herzegovina – was constitutionally the home of three equal nations, Croats, Muslims (renamed Bosniacs in 1993), and Serbs. The first multiparty elections in Yugoslavia in 1990, moreover, had created a consensual, power-sharing government of parties representing these three national identities (they defeated social democrats, former communists, and federalists) plus one representative of 'others.' As in Croatia, armed violence in the republic preceded the official start of war by at least six months. By September, the Croatian war was no longer respecting Bosnian borders, for example, and growing uncertainty about the future also led villages and towns to arm defensively and paramilitaries to form along partisan lines. The end of the Yugoslav framework opened two options, to negotiate a new constitutional framework for an independent Bosnia or for Bosnian Croats and Bosnian Serbs to 'secede' and join their sister political parties and 'homelands' in neighbouring Croatia or Serbia. It was only when an EU-mandated referendum on independence and then EU and US recognition chose the first option, in March–April 1992, however, that this third war began officially. Repeating the pattern in Slovenia and Croatia, the head of the Bosnian Muslim/Bosniac party ordered mobilization and demanded the Yugoslav army depart; Bosnian Serb leaders left the government in protest and began a brutal campaign of terror in the east while Croat and Muslim paramilitaries turned on each other in mixed communities in the centre and west.

Two military campaigns by the Croatian government in May and August 1995, although the last phase of the Croatian war of independence, are worth labelling a fourth war because the goal was to 'liberate' three of four UN Protected Areas (UNPAs) from the control of UN peacekeepers. The two campaigns were also part of a wider regional strategy to defeat Serbs militarily, in alliance with a joint UN–NATO operation in Bosnia.

Not all territorial contests in the former Yugoslavia led to war, however. In at least two, this was due to UN preventive deployments to the Prevlaka Peninsula and to Macedonia. At the same time, the last secession from what was once Yugoslavia, that

of Montenegro, took place peacefully through a referendum on independence on 21 May 2006, with international recognition in June, against all predictions that the post-1992 Yugoslav army would attempt to use force to prevent it.

The 'Albanian question', however, like that of Croats and Serbs who wanted to be citizens in a country of their own nation, not a minority in another state – in this case affecting three republics, Serbia, Montenegro, and Macedonia, where Albanians lived – did eventually lead to war as well – a fifth over Kosovo and a brief sixth in Macedonia. While Albanians in the Serbian autonomous province of Kosovo declared their right to independence in July 1990 at the same time as Slovenia and Croatia first did, this did not lead to war initially because the Serbian leadership in Belgrade imposed martial law on the province and the Albanian leadership in Kosovo chose a non-violent strategy of resistance and created an entirely parallel system of governance. This stalemate of accommodation between the two lasted until 1996 when impatience at continuing international disinterest and the demonstrated success of a violent strategy for Slovenia, Croatia, and Bosnia won out. Disparate village militia calling themselves members of a Kosovo Liberation Army (KLA) sought to repeat the Slovene strategy, provoking retaliation by the 'Yugoslav' security forces (such as with targeted assassinations of police in Kosovo and Macedonia) to gain international sympathy and action. The local violence escalated by 1998 into the fifth war when Belgrade chose an active counterinsurgency response and, in March 1999, NATO intervened with a bombing campaign aimed at the Serbian president, Slobodan Milošević, and his army and security police.

The NATO operation forced the withdrawal of the UN border monitors from Macedonia in February 1999,[9] and, alongside the international support for Albanian rights in Kosovo, left Macedonia (whose independence was not yet fully recognized due to open Greek and covert Bulgarian opposition) exposed to a spillover of weapons and militia into the internal conflict over national rights and sovereign border between the government and the Albanian minority. In February 2001, the sixth war began when a Macedonian branch of the KLA attacked government police in villages near the Kosovo border.[10] Although the violence was very brief due to intervention by the EU, US, and NATO in August 2001, doubts remain about the viability of the required constitutional reformulation of the Macedonian state (and that of Bosnia as well) in the face of a still unresolved and frequently violent contest over the sovereign status of neighbouring Kosovo.

[9] The Chinese vetoed extension of its mandate in the Security Council because the Macedonian government recognized Taiwan in exchange for aid (which never arrived), but the real cause of its removal, in fact, was preparations for Operation Allied Force.

[10] It is perhaps ironic that the trigger, at least, for this violence was the (peaceful) agreement between Serbia and Macedonia to complete the definition of their border which, this argument goes, Albanian nationalists perceived as an obstacle to their national goals.

Collective Security or European Security?

Where was the Security Council in this unfolding story? Its alleged failure to use force to stop the violence is only the third of three problems the Yugoslav crisis posed. The two prior issues are far more consequential, even in retrospect: (1) defence of the territorial integrity and sovereignty of a UN member state; and, when that failed, (2) the management of a country's break-up with the minimum of violence. If the Council had addressed these two questions successfully and as core tasks of collective security, not only that of Yugoslavia, the third issue of its use of force would never have arisen.

Because it is now conventional wisdom that internal wars of the Yugoslav kind are the primary threat to international peace and security in the post-Cold War era, it is necessary to recapture the moment and the way that the Yugoslav crisis first reached the Council's agenda. This was nearly twelve months to the day after the violence began in Croatia and the military preparations (including covert arms deliveries) for Slovene and Croatian independence became public, in August 1990. By November, when intelligence in major capitals and political analysis within the Secretariat were predicting Yugoslavia's violent disintegration, US President George Bush made very clear that Article V of the North Atlantic Treaty excluded NATO action in Yugoslavia; it was 'out of area'. Although the Charter of Paris adopted by the CSCE summit on 21 November aimed to shift leadership over common security for a reunified Europe (calling it cooperative rather than collective), the United States and the Soviet Union both vetoed an explicit request at the Paris Summit that the CSCE act in Yugoslavia, arguing the principle of non-intervention. The same month, the Security Council authorized Operation Desert Storm to reverse Iraqi aggression against Kuwait.

Less than two months later, in January 1991, however, the idea that internationally prohibited aggression could also occur within a country was implicit in harsh warnings from the US Ambassador to the Yugoslav army against its efforts to restore internal order so as to support the political negotiations taking place between January and June among the presidents of its six federal units over Slovene conditions to remain a member of the federation and the necessary constitutional principles. Given the large number and types of external actors and actions already deeply involved in the Yugoslav crisis, particularly in the period leading to war, 1987–91, this was no longer, any more than other internal wars in the current era, a solely domestic conflict. Some were pursuing specific interests (such as bankers or the IMF seeking debt repayment), or national interests (such as neighbouring states, the US Treasury and diplomatic corps [as Yugoslav patron since 1949], or states supporting Slovene and Croatian independence with advice or arms, such as

Austria, Germany, Denmark, Norway, and Hungary).[11] Others engaged on the common security implications for Europe of a violent implosion. Like the CSCE, the EC was also in the process of adopting a new treaty (Maastricht), to be signed at the end of 1991, which included a commitment to a Common Foreign and Security Policy (CFSP) and the instruments necessary to it. EC federalists (especially EC President Jacques Delors and the current and upcoming presidencies of Luxembourg and the Netherlands and later the Italian foreign minister) seized on the opportunity that Yugoslavia provided. The difficulty was that these many actors had not only disparate interests but also profound disagreements as to the preferred fate of Yugoslavia. The solution to collective action was found in their insistence on the Helsinki Charter (to which Yugoslavia was a signatory) on the peaceful resolution of disputes. Thus, although coming from very different political perspectives, Europeans and the US settled on a definition of the Yugoslav problem as the domestic use of force.

But what actions did this principled stand require? There were two obstacles. The Helsinki principles, like the UN Charter, also included the territorial integrity of existing states. On what principle could they intervene? The Slovene government solved this problem by accompanying its declaration of independence on 25 June with a request for European intervention. Within three days, EC and CSCE delegations began negotiating the steps toward ceasefire in Slovenia, de facto recognition of its independence in the Brioni Agreement of 7 July, and the groundwork for the other half of the Slovene and Croatian strategy, the withdrawal of the Yugoslav army.

The second obstacle, which had already been foreseen by the West European Union (WEU) secretariat in December 1990, was pragmatic and operational: what if negotiations did not stop the violence? The WEU (and later France) had drawn up plans for a potential interposition force around a core of French, German, and possibly Belgian and Dutch troops, but this had been adamantly opposed by the United States as a direct threat to NATO's role in European security. Without US troops, the UK refused to agree to a separate force as well (in part because of the drain of the concurrent Operation Desert Storm). The alternative emerged early in July from the German parliament (Bundestag): recognize Slovene and Croatian independence immediately.[12]

By early July, therefore, a new line had been drawn within Europe. On one side was an increasingly activist German foreign minister, Genscher, supported by the early advocates of Slovene independence (Austria, the Vatican, Denmark, and

[11] For example, the Austrian foreign minister promoted the Slovene cause for independence in many European forums for more than two years and was joined by Switzerland in early 1991; Germany and Norway counselled Slovene and Croat strategists in 1990 1; and Hungary and Germany, at least, secretly sent infantry weapons and communications equipment (and assurances that the EC would not stop them if they chose secession) in May/Jun. 1991 (on the latter, see Aleksandar Pavković, *The Fragmentation of Yugoslavia: Nationalism and War in the Balkans*, 2nd edn. (London: Palgrave Macmillan, 2000), 138).

[12] More detail can be found in Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, DC: Brookings Press, 1995), 158 60 and ch. 6.

Switzerland), and on the other were those such as the participants at the G7 Summit in July who sought to send a military force to interpose between warring parties, whoever they were, so as to create conditions for negotiating an all-Yugoslav solution. As debate between these two options intensified, the EC reached for such instruments as it had. On the basis of its achieved consensus that the Yugoslav problem was the use of force *by the federal army*, it suspended, on 5 July, the second and third protocols (US $1 billion) of the US $4.5 billion in aid it had promised the federal government as late as May on the conditions that the country remain together and continue its programme of economic reform, and it imposed an arms embargo on the federal government.[13] The Brioni agreement of 7 July set a three-month moratorium on Slovene independence (and by implication, that of Croatia), required the federal army to return to barracks, demanded an end to opposition by the Serbian-led coalition in the federal (collective) presidency to the election of the Croatian representative as chair,[14] and established an unarmed monitoring mission (the ECMM) for neighbouring Croatia (but refused to send one to Bosnia–Herzegovina). Working in parallel, EC and CSCE[15] negotiators then began rounds of discussions with the federal prime minister and foreign minister and the presidents of Slovenia, Croatia, and Serbia to obtain a ceasefire in Croatia but refused to speak to the Yugoslav army. Equally inexplicably, the negotiators simply ignored the other three republics (Bosnia and Herzegovina, Macedonia, and Montenegro). Although the new Dutch presidency of the EC, led by foreign minister Hans van den Broek, appears to have understood fully the many complications of dissolving a country and state, its confidential telegram to the other eleven EC members proposing serious negotiations on all such details, including the borders of the new states, was rejected on 29 July by all eleven.[16]

As both the violence in Croatia and German pressure for immediate recognition mounted during July, EC foreign ministers meeting on 3 August at the initiative of Luxembourg revived the idea of an interposition force, but France took the issue

[13] The effect of these sanctions on the federal government and its ability to protect the survival of Yugoslavia compounded penalties that had been mounting for several years: in April 1990, the EC excluded Yugoslavia from PHARE; in Jul. 1990, it stopped renegotiations of the 1982 EC association agreement at the behest of Greece, and in mid May the initial offer by Delors and EC Chair Santer of a US $4.5 billion aid package was blocked by the UK. In Nov. 1990, the US Congress voted to end all US economic assistance and support with the international financial institutions by 5 May 1991, if human rights in Kosovo did not improve; although Secretary Baker was able to interrupt, temporarily, its implementation, Congress then embargoed its Aid to Democracies assistance to the federal govern ment in early Jun. but exempted the Slovene and Croatian republics.

[14] The federal government had been without a functioning presidency since March, when the Croatian member (Stipe Mesić) declared his goal upon assuming the rotating chair that spring to be the independence of Croatia, causing the Serbian led bloc of 4 out of 9 to vote against him. When eventually elected as the EC required, he ordered the federal army to leave Slovene territory immediately.

[15] A new mechanism, the Council of Senior Officers, was charged by the CSCE June summit to support Yugoslav unity, but its first chair was German foreign minister Genscher, who used the position in support of German policy, which was Slovene and Croat independence.

[16] David Owen, *Balkan Odyssey* (London: Victor Gollancz, 1995), 31.

directly to the Security Council, on 5 August. Three of the Permanent Five, P5, (the US, USSR, and the UK) were against the proposal, most openly the USSR, stating that intervention would be one-sided and thus fuel the violence, with the potential of an all-European conflict. Criticism has focused on the Soviet and subsequently Russian role in the Council as anti-Western and anti-interventionist, but it is worth noticing that none had a deeper understanding of the substantive issues at stake because the USSR was going through its own state crisis for nearly identical reasons (a similar economic reform programme, constitutional revision, and massive mobilizational cycle based on national identities and secessionist demands); the attempted putsch against the new Union Treaty took place on 19 August, and by 24 December, the USSR was no more. Equally important, however, was the reason that France turned to the Council, to seek a United Nations force as substitute for the military force the EC lacked and whose creation the US was preventing. The US objection to such a deployment was no less firm in the Security Council, having decided in 1987 that Yugoslavia was no longer strategically important to it. France countered by mobilizing Austria, Canada, and Hungary – all sitting as Non-permanent Members at the time – and prepared a draft resolution, written by the foreign ministers of France, the UK, and Belgium, to permit the deployment of UN troops without the consent of the parties. Only after an Austrian request for urgent informal consultations among its members to debate on what grounds it could agree to violate Yugoslav sovereignty, however, did the Council agree to grapple with the Yugoslav crisis, on 19 September.

By this time, the EC had recognized Slovene and Croatian leaders as legitimate negotiating partners internationally; assigned responsibility for the violence to the federal government, declaring on 27 August the army's use of force (including in defence of Croatian Serbs) illegal; established an arbitration commission of foreign jurists to decide on matters of the country's dissolution (primarily the distribution of economic assets and financial obligations);[17] and proposed a peace conference, which opened on 7 September at The Hague, to negotiate its end. While war between the Croatian and federal armies raged,[18] the conference reaffirmed the Helsinki principle that only peaceful change in borders was acceptable and, at the

[17] The term 'dissolution' was proposed early by Slovene leaders, on the argument that the 1945 federal constitution was a voluntary pact among separate nations which could thus be dissolved by a voluntary act of one or more of its republics, even though the country's constitutional court had issued repeated rulings in 1989 91 explicitly against this interpretation and any right to secession. Because the right to secession does not exist in international law either and is highly contentious internationally, Slovenes knew to avoid the term. The term dissolution allowed them to argue before the EC's Arbitration (Badinter) Commission and the subsequent working group of ICFY that Slovenia should receive its share of Yugoslav assets and obligations in relation to its pre 'dissolution' contributions to GDP and the federal budget. The Commission adopted this legal formula on 7 October when the three month moratorium concluded (Yugoslavia, it ruled, was 'in the process of dissolution').

[18] By the second week of August, 300 had lost their lives and 79,000 had been internally displaced in the war in Croatia; between mid August and mid October 1991, 300,000 Serbs fled Croatia for Bosnia.

same time, adopted the position already set by the European parliament on 13 March that the only acceptable international borders were the existing borders of the federal republics.

At the meeting of the Council on 19 September, opposition to action came from Zimbabwe, India, China, Cuba, and Zaire,[19] on the principle that this was an internal conflict. France, holding the presidency at the time, thus proposed a draft endorsing EC actions up to that point, including the peace conference. It also proposed to universalize the EC embargo on weapons and military equipment on the basis of Chapter VII, and to ask the Secretary-General to begin fact-finding consultations, all on the grounds that the violence was a threat to the *region*'s security. The Council met again on 25 September, with eleven of the fifteen represented by foreign ministers (two others were caught in delayed aeroplanes). All fifteen spoke, and Resolution 713 was adopted unanimously, but only because of a letter obtained the evening before from the Yugoslav Permanent Representative that 'my government welcomes the decision' of the Council to meet, followed by the presence and a statement of the Yugoslav foreign minister, Budimir Lončar – a decision taken alone, however, by the chair of the Yugoslav federal presidency, the Croatian representative whose installation had been required by the EC in July and who had refused to convene the presidency after 6 September in anger at the army.[20]

This success, in finally getting the Yugoslav crisis onto the Security Council agenda, did serve its initial intention. The Council authorized Secretary-General Pérez de Cuéllar to send an envoy, and in contrast to the EC diplomatic efforts led by Lord Peter Carrington as chair of the EC peace conference, which began 8 September and included fourteen signed and failed ceasefires, Cyrus Vance did finally succeed in obtaining a sustainable ceasefire in the Croatian war on November 23. Two reasons for his success, all agree, are that unlike the EC, Vance thought it necessary to talk to the Yugoslav army (by including the Minister of Defence Kadijević in negotiations), and as UN envoy, he could offer to both parties the promise of United Nations peacekeeping forces to help enforce a ceasefire. For Croatia, UN troops would replace the Yugoslav army, a necessary element of their independence strategy, while Germany was still promising the other piece, nearly immediate recognition. For Serbia, now treated by the EC (and thus the UN) as the political arm of the federal army and, by similar logic, as representative of the interests of Serbs in Croatia, the UN was the lesser of two evils, still offering the possibility of diplomatic objectivity against EC bias and of respect for Yugoslav sovereignty.

Vance's success created two new problems, however: first, for the Serbian leadership in Belgrade, to find a way to persuade Croatian Serbs to accept the substitute of UN troops (they remained convinced, rightly in the end, that the withdrawal of the Yugoslav army left them with no protector); and secondly,

[19] Now the Democratic Republic of Congo.

[20] By a strange twist of fate, both Stipe Mesić and Budimir Lončar are from Croatia.

for the Secretariat, to persuade the Security Council and potential troop-contributing countries that conditions for a ceasefire and UN deployment did exist. The Security Council responded by sending a military fact-finding mission to Croatia, and in the interim, encouraging humanitarian efforts by the Secretary-General in liaison with ICRC, UNHCR, UNICEF, and others, and strengthening measures to implement the 'general and complete' arms embargo. Far more fateful, however, were the terms under which the Council had assumed responsibility for the Yugoslav crisis: by defending Yugoslav sovereignty only as a minority insistence on the principle of non-interference in its domestic affairs (whatever that meant by 25 September) and by accepting wholesale the policies and results of European efforts to solve the crisis even though it was the failure of these efforts that led to Council engagement in the first place. Although France sought UN involvement as a source of troops and an end-run against the German position, it had succeeded by forming an alliance with others, especially Austria, who were in the German camp. Security-Council actions from then on reflected three internal divisions: between Europe and the rest of the world (especially Russia and the non-aligned) over intervention, among NATO powers (particularly the US and UK against the rest) on the purpose of intervention, and within the EC/EU on the nature of the wars and political options.

The Content of Self-Determination: Managing the Break-Up of a State

The expressed concern at the Council session on 25 September over the violence, possible spillover, and threat to international peace and security together with Yugoslav formal consent did not dampen the objections expressed during the preceding informal consultations about the use of Chapter VII language or violation of Article 2(7) on non-intervention. The representatives of China, Côte d'Ivoire, India, Romania, Yemen, USSR, Zaire, and Zimbabwe took the floor to reiterate the principle of non-intervention, condemn the flow of arms from outside the country, and emphasize the necessity of a solution reached by the Yugoslavs themselves. All, though most distinctly Ecuador, conceded only because they were endorsing a Chapter VIII effort at peaceful settlement of disputes by the EC and CSCE. In the words of the Indian foreign minister, 'The main purpose of the draft is, in my delegation's view, to throw the Council's moral and political weight behind collective regional efforts.'[21] None expressed any awareness that the EC and US had already

[21] UN doc. S/PV.3009 of 25 Sep. 1991.

made irreversible decisions on the acceptable terms of a political settlement in the service of which the United Nations instruments of peacekeeping troops, good offices, universal sanctions, and moral authority would be placed at an increasing frequency over the next four years (ninety Resolutions and ninety Presidential Statements from Resolution 713 to the end of the Bosnian war in late 1995).[22]

Discussion did not occur, at this session or later, of the conditions necessary to allow the Yugoslav people themselves to find a solution or on the creation of a UN policy separate from that of the EC and US.[23] Three reasons suggest themselves. One is that new alternatives were already being crowded out within the Council by two polar-opposite characterizations of the conflict – as Serbian aggression against internationally recognized internal borders, according to US Secretary Baker in his speech at the Council on 19 September, and the other, as 'tribal conflicts' (Zimbabwean foreign minister Shamuyarira) and 'a slide toward fragmentation and anarchy' inside states similar to Liberia and Somalia at the time (Yemen's permanent representative). A second reason is the original construction of the Council, at San Francisco. As long as the Yugoslav conflict did not provoke war among the major powers, the UN's role in collective security was fulfilled, even though Yugoslavs themselves had twice, in 1914 and 1941, learned the need as well for institutional protections of smaller states against those powers.[24] There is some support for this second reason in the growing tendency over the subsequent sixteen years to treat any Russian or Chinese opposition to Council actions on the Yugoslav conflicts, whether or not they threatened to veto, as the real problem – as uncooperative obstacles to action – instead of as efforts at policy debate or, in its absence, at balancing against the US and Europe.[25]

[22] Between SC Res. 713 and the end of 2006, the Security Council adopted 172 Resolutions on parts of the Yugoslav conflicts and issued 193 presidential statements.

[23] A major unresolved dispute about the causes of the Yugoslav crisis includes the extent to which the Yugoslav state was irredeemable by 28 Jun. 1991, or could have survived the crisis and continued its process of democratization. The EC and CSCE delegations clearly considered the latter unthinkable, but there is much evidence to the contrary in public opinion polls, the ambiguous meaning of the Croatian referendum on independence in May, the many alternative citizens' groups, political organizations, and social movements (see the work of Ana Dević in particular), the explicit proposals made in June by the presidents of Bosnia and Herzegovina and Macedonia, etc. (see Woodward, *Balkan Tragedy*, ch. 5, and 'Costly Disinterest'). Sir David Hannay criticizes the Yugoslav government for its 'reluctance to come to the UN', ('The UN's Role', 8), but when it was still being heard, the prime minister and foreign minister were looking to the US and EC for help.

[24] Sir David Hannay ('The UN's Role') is explicit about this concern in regard to Bosnia in the spring of 1992, which many critics of the UN's non action rued, 'the one common point amongst all the external parties was their determination not to be drawn into the fighting themselves' (5) and 'the risks of the Balkans becoming a cockpit for great power rivalry' are fewer than before 1914 or in the 1930s but 'not so negligible as to be completely ignored' (10). If not already, then within months this would no longer be true.

[25] The Russian role is very complex and much criticized from within as well (see, e.g. Oleg Levitin, 'Inside Moscow's Muddle', *Survival* 42, no. 1 (2000), 130 40, and James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (New York: Columbia University Press, 1997), ch. 8).

The third reason is the one commonly accepted since then: the constraints on UN deployment of military force. The Council could authorize states acting individually or collectively to use force, but the US opposed all such options at the time because it would admit the possibility of European defence autonomy. The conditions for a UN deployment instead – the rules of consent, impartiality, and the proportionate use of force in self-defence only – did not exist in July, when this option was first entertained as an alternative to German policy. By the time those rules could be assured, when the Security Council endorsed the Vance Plan for Croatia on 21 February 1992 following a formal ceasefire, however, Germany's option had won. EC member states bowed to German pressure on 16 December and recognized Slovenia and Croatia as independent states. The mandate of UNPROFOR, which deployed to Croatia on 8 March 1992, was to support a 'plan and its implementation [which] are in no way intended to prejudge the terms of a political settlement',[26] but the EC (and others such as the Vatican and Ukraine) had erased the political context of Vance's ceasefire and any remaining possibility for negotiations on the Yugoslav space. Not only did the recognition decision, 'before a global agreement . . . undermine the very bases of the peace conference', in Carrington's words,[27] but also the basis of Security Council involvement in the conflict itself – Resolution 713. Now UNPROFOR was deployed to enable peaceful negotiations between two parties, one of whom was now recognized by the EC as sovereign over the territory under UN protection and had made clear that the UN presence and mission were the one remaining obstacle to its realization of that sovereignty.

The EC recognition decision did require Croatia to grant the 'special status' (presuming territorial autonomy) for Serbs in these 'enclaves' proposed by the Carrington Plan and German experts assisted in the redrafting of the Croatian constitutional law accordingly, but the government simply ignored this commitment.[28] The mission's design in what Vance and his assistant Herbert Okun called an 'inkblot' or 'leopard skin' pattern, placing the 14,000 troops at 'flashpoints', appears a literal interpretation of the UN role – to keep the ceasefire but not to intervene in the domestic affairs of what was now, basically, a sovereign state – but its consequence was to reaffirm the EC decision by handing decisive influence over any political settlement between the Croatian government and Serbs in what they called 'the Republic of Serb Krajina' to the former. Because this plan was militarily unimplementable, creating such difficulties for UNPROFOR military commanders that they eventually had to map a military 'confrontation line' and adjoining 'pink zones' excluding all military activity and to adjust their deployment accordingly,

[26] SC Res. 740 of 7 Feb. 1992.

[27] Cited by Henry Wynaendts, Carrington's assistant for the Hague Conference, in his memoir, *L'engrenage: Chroniques yougoslaves juillet 1991 août 1992* (Paris: Denoël, 1993), 154.

[28] An effort to revive this idea in the 'Z 4 Plan' of spring 1995 when the ICFY team joined forces with the US and Russian Ambassadors to Croatia was similarly doomed from the start, although many declared great hopes for it at the time.

however, the prospect of territorial autonomy did become the basis of subsequent negotiations (and the necessity, in Zagreb's view, to return to war in 1995).

The Croatian army waged military offensives against the UNPAs and thus UN troops four times between 1992 and 1995: at Maslenica Bridge on 21 June 1992; in Medak pocket on 9–17 September 1993, where three whole villages of Serbs were massacred;[29] on 1 May 1995, to capture the UNPA of Western Slavonia; and on 4 August 1995, to retake UNPA Sectors North and South, deliberately attacking and killing UN peacekeeping soldiers and Serb civilians and creating the largest refugee wave of the entire Yugoslav conflict: 250,000 Croatian Serbs. Diplomatic negotiations also continued, first under Carrington and then when the EC and UN joined forces in the International Conference on Former Yugoslavia (ICFY) in August 1992, although the EC half of Owen, then Stoltenberg and his assistant Kai Eide, took responsibility for Croatia. But none had any remaining leverage.[30] Throughout the three years from March 1992 to March 1995, however, the Security Council never changed UNPROFOR's mandate in Croatia (the Vance Plan), indeed it reaffirmed it multiple times until it acquiesced to a Croatian government demand in January 1995 to separate it from the other two missions.[31]

The broader issue, however, is the surprising lack of attention by the Council to rules on recognition of statehood since this is what the wars in Yugoslavia are all about. Here, too, the EC made the decisions and the Security Council ratified them. In a compromise that Germany proposed on 16 December to secure the necessary EC consensus against remaining opposition to recognition, especially from France, Greece, and the UK, the EC invented a procedure. It would invite all six republics (thus dismissing the vital disputes over eventual borders) to submit requests for recognition. The Security Council made no reference to the Montevideo Convention at the time or in May 1992 when it recommended to the General Assembly to admit Croatia and Bosnia–Herzegovina as UN member states,[32] though neither controlled the territory in their recognized boundaries. Thus, neither Bosnia nor Croatia met the conditions for recognition, as the EC's Arbitration Commission noted in January 1992.[33] Nonetheless,

[29] There is now a large literature in Canada about this operation, which involved Canadian contingents of UNPROFOR in war fighting; see, for example, Lee A. Windsor, 'Professionalism Under Fire: Canadian Implementation of the Medak Pocket Agreement, Croatia 1993', *Canadian Military History* 9, no. 2 (2000); and the debate on Carol Off, *The Ghosts of Medak Pocket: The Story of Canada's Secret War* (Toronto: Vintage Canada, 2005); SC Res. 762 of 30 Jun. 1992 demanded a halt to the operation.

[30] See Wynaendts, *L'engrenage*, 151 6.

[31] SC Res. 981 of 31 Mar. 1995 established the United Nations Confidence Restoration Operation in Croatia (UNCRO) as 'an interim arrangement to create the conditions that will facilitate the negotiated settlement consistent with the territorial integrity of the Republic of Croatia' which 'guarantees the rights of all communities irrespective of whether they are majorities or minorities'.

[32] SC Res. 753 of 18 May 1992; SC Res. 755 of 20 May 1992.

[33] The Badinter Commission ruled that only Slovenia and Macedonia, of the four requesting EC recognition, met the international legal conditions of statehood, but the EC ignored this ruling in response to national interests in three cases Croatia because of Germany, Macedonia because of

the decisions of the previous six months had demonstrated that any Yugoslav leader who wanted the status of full negotiating partner (including the authority to request United Nations troops) would have to seize the EC invitation and presume the right to sovereignty, regardless of the political consequences that such a momentous act entailed. This was, Carrington declared, 'a tragic error' for Bosnia–Herzegovina which 'unless there is a rapid deployment of an "important presence of the UN in BiH"' (for which Vance and Under-Secretary-General for Peace-keeping Operations Marrack Goulding both declared the conditions did not exist) 'would only uncork a civil war'.[34] After seven months of violence in the republic, that war was officially declared by President Izetbegović[35] on 4 March, a month before its recognition as a UN member state. It was some time before the consequences would also face the eastern half of former Yugoslavia.

Secretary-General Pérez de Cuéllar, along with Vance and Carrington, did warn Genscher of war on a 'horrific scale' in Bosnia in letters they sent in November 1991, but Bosnian sovereignty was not German policy. European stability required, it argued, that Yugoslavia break into three states, Slovenia, Croatia, and a rump Yugoslavia of the remaining four republics. Given that the Security Council was only providing moral weight to, and authorizing enforcement of, EC/EU policy, and given that Bosnia was not yet sovereign, the Council's position prior to 16 December, despite its tragic consequences, was to refuse multiple requests for preventive action, especially border monitors in October from Serbian president Milošević and in November and December from Bosnian president Izetbegović. Although Germany abandoned its own policy, that Yugoslavia should break into three states, to win independence for Croatia, it also defied the EC decision it had obtained to wait until the Badinter Commission could rule in January, recognized Slovenia and Croatia on 18 December, and then moved to build regional stability by bringing Serbia back into the fold. Now, however, opposition came from the United States. Although actively pushing the view since June 1991 that Serbia was the aggressor in Slovenia and Croatia (stated without finesse by Secretary of State Baker in the Council discussion of Resolution 713 in September),[36] the Bush Administration had insisted on the non-intervention position in the Council. Now German policy

Greece, and eventually, Bosnia Herzegovina because of the US. In the Security Council, the recommendation to admit was adopted without a vote, but the president of the Council issued the following statement on their behalf: 'We note with great satisfaction Bosnia and Herzegovina's solemn commitment to uphold the Purposes and Principles of the Charter of the United Nations, which include the principles relating to the peaceful settlement of disputes and the non use of force' (UN doc. S/PV.3079 of 20 May 1992).

[34] Cited by Wynaendts, *L'engrenage*, 154.

[35] Izetbegović did not actually have that authority because his term as chair of the collective presidency had expired in Nov. 1991, but his refusal to allow the normal rotation to the Croat member, as the constitution required, and his claim to be the legitimate Bosnian president until the first post war elections elected him and two others in Sep. 1996, drew little notice and no challenge by external actors throughout the war.

[36] UN doc. S/PV.3009 of 25 Sep. 1991.

threatened the US's dominant role regarding European security (including in the east where Germany was taking the lead after 1989), and Washington's relations with the vigorous Croatian lobby at home. Ever more assertive during February–March, the US demanded immediate recognition of all four republics so requesting, so that it had a principled basis to recognize Croatia, even though the EU decision in January on Bosnia and Herzegovina was to insist on a constitutional agreement between the three nations of Bosnia prior to recognition and the Portuguese EU presidency had begun negotiations.[37] Nonetheless, the EU gave in to Baker's campaign on 6 April and recognized Bosnian sovereignty.

Despite this second political fait accompli, equal in consequence for Security Council decisions and the eventual Bosnian deployment of UNPROFOR to the earlier German recognition of Croatia and Slovenia, the Council addressed the mounting violence in Bosnia for the first time on the day the US recognized it.[38] The pattern of summer and autumn 1991 toward Croatia was repeated: appealing to the parties to stop fighting and to cooperate with the EU on a ceasefire and negotiated solution. Presidential statements on 10 April and again on 24 April reiterated those appeals and urged the new Secretary-General Boutros Boutros-Ghali to dispatch Cyrus Vance again as his personal envoy to Bosnia and to work closely with the EU. Vance's visit to Bosnia on 14–18 April and a visit by Goulding on 4–10 May produced reports that the conditions for deploying UN peacekeeping troops did not exist. By this time, however, there was growing pressure within the UN Secretariat and some foreign offices (including the US State Department) and among vocal Bosnian experts for an international conference to replace EU efforts (some calling even for a UN protectorate over Bosnia[39]), but the new Secretary-General resisted strongly, arguing that the conflict was a matter of regional (European) security.

At first glance, the Security Council decisions in October and December 1992, to engage preventively with troops to the Prevlaka Peninsula and to Macedonia, present a sharp contrast to its approach through May 1992. Both conflicts involved competing national claims over territory and sovereignty, and both deployments occurred early enough to create the conditions necessary to let political negotiations

[37] Given only one week to request recognition by the EC in December ('a Hobson's choice', as Elizabeth Cousens writes in Cousens and Charles K. Cater, *Toward Peace in Bosnia: Implementing the Dayton Accords* (Boulder, CO: Lynne Rienner, 2001), 19), the Bosnian president had consulted no one, despite the country's power sharing constitution that required consensus among all members of the collective presidency, thus all three constituent nations and the 'others'.

[38] SC Res. 749 of 7 Apr. 1992. The US delayed recognition until 7 April, at Izetbegović's request, for domestic symbolic reasons.

[39] These calls began much earlier, in 1991, from knowledgeable Yugoslavs and some Western diplomats and scholars, and the ideas are worth recording in the list of alternatives under such circumstances, for example, a state treaty of the kind the Allied powers used after the Second World War to protect Austrian integrity and neutrality until 1955, guaranteed by Europeans, or a revival of the UN concept of trusteeship, which had more adherents. See for example James Fearon and David Laitin, 'Neotrusteeship and the Problem of Weak States', *International Security* 28, no. 4 (2004), 5 43. See also Richard Caplan's discussion of this issue in Chapter 25.

do their primary work in resolving those claims with relatively little violence. Neither deployment was fully consistent with the principle of consent because neither the new state created on 27 April 1992 between Serbia and Montenegro (the Federal Republic of Yugoslavia, or FRY) nor Macedonia was legally sovereign (FRY had not requested recognition from the EC, claiming it was the successor to Yugoslavia, although the Council disagreed,[40] while the EU continued to defer to Greek opposition on Macedonia).[41] As in Croatia, both were explicitly mandated as interim measures, pending political settlements by the parties. One could speculate that the presumed threat of Serbian aggression in the formulation of each was sufficient, by satisfying the US. But whatever the reasoning, the Council was able to ignore sovereign legalities, which were the cause of war throughout the former country, when pragmatic agreements seemed to support a peaceful resolution of disputes, or at least sufficient to deploy UN military monitors.

In the case of Prevlaka, Vance and Owen, the ICFY co-chairs, negotiated a demilitarization of the peninsula, in the context of a wider negotiation on improving relations between Croatia and FRY, when Croatia sent its army onto the peninsula (federal land) and its boats into the adjacent Montenegrin Bay of Kotor to claim extensive territorial waters.[42] The Council agreed to extend UNPROFOR's Croatian mandate to monitor it,[43] and the UNMOP mission lasted more than ten years until Croatia and the FRY were able to establish their own interim agreement.[44] In the case of Macedonia, the Security Council responded to the formal request on 11 November 1992 from its elected President Kiro Gligorov for the kind of border-monitoring mission that had eluded Izetbegović, and to an approving Secretary-General's report of an exploratory mission sent on 28 November.[45] In 1994, it added 'good offices' to the mandate of UNPROFOR in Macedonia, to assist the OSCE with internal issues of conflict resolution while Vance and Okun dedicated substantial effort as UN envoys to negotiating the remaining conflict with Greece over the name and flag of Macedonia.[46]

[40] SC Res. 757 of 20 May 1992; SC Res. 777 of 19 Sep. 1992.

[41] The Council recommended Macedonian admission to membership in SC Res. 817 of 7 April 1993, long before the recognition by the EU or the US, but under a temporary name, 'The Former Yugoslav Republic of Macedonia', (FYROM, listed under 'T').

[42] For the 'Belgrade Joint Communique', see B. G. Ramcharan, (ed.), *The International Conference on the Former Yugoslavia: Official Papers*, volume 1 (The Hague, London, Boston: Kluwer Law International, 1997), 454 6.

[43] SC Res. 779 of 6 Oct. 1992. The monitoring mission began with 14 observers, expanded to 26, and when UNCRO ended, it was given a separate mandate as UNMOP (SC Res. 1038 of 15 Jan. 1996). While independent, it was transferred to the UN Mission in Bosnia. Renewed 16 times every 6 months, it was only terminated on 15 Dec. 2002 after Croatia and the FRY agreed a provisional cross border regime on 10 Dec. 2002.

[44] SC Res. 1437 of 11 Oct. 2002.

[45] SC Res. 795 of 11 Dec. 1992.

[46] UNPROFOR in Macedonia was renamed UNPREDEP (United Nations Preventive Deployment Force) in March 1995 when Croatia insisted on separate mandates and names for the three compon ents of UNPROFOR.

Although the deployment of UNPROFOR along the northern and eastern border of Macedonia was justified as a 'tripwire' against a Serbian invasion from the north, a near total improbability, it did serve a far more important function as yet another interim arrangement necessitated by the EC decisions of December 1991, to affirm Macedonian sovereignty and borders against all neighbours who challenged both (Bulgaria and Greece, and Albanian nationalists in both Macedonia and neighbouring Kosovo) until the legal issues could be resolved to Greek satisfaction. Moreover, because, as in Croatia, there was also an internal conflict over the national character of the state between a Macedonian majority and an Albanian minority (the latter 24 per cent in 1994), the effect of this border mission was to provide the psychological reassurance of de facto international recognition that was vital to keeping the politics of these constitutional questions peaceful. It is unlikely the Security Council recognized this role, however, since it overrode this positive contribution with economic sanctions on Serbia (and FRY) without consideration of their drastic consequences for Macedonia and its domestic political stability in both the short and long run.

The irresolvable contradiction of European policy on the break-up of Yugoslavia, between recognizing the right of national self-determination while simultaneously specifying that the internal borders of the federal republics were the one and only basis for the new sovereign territories, was solved in the case of Croatia by the territorial principle. Despite the terms of its own mandate for UNPROFOR there, Council resolutions from 1992 to 1995 increasingly reflect its contractual relation with a sovereign Croatian government. It thus acquiesced in the Croatian decision to solve the problem militarily, reducing the proportion of Serbs from 12 per cent in 1991 to under 3 per cent in 1995 through expulsion and obviating any talk about autonomy. Although military conquest of the one remaining UN protected area, eastern Slavonia, would have risked regional war because it bordered Serbia, it was US negotiators on the sidelines of the Dayton talks for Bosnia and Herzegovina in November 1995 who persuaded the remaining local Serb representatives to concede to Croatian sovereignty under the promise of protection by an interim UN mission. The Council agreed to welcome this agreement signed at Erdut, and to establish the UN Transitional Authority in Eastern Slavonia, Baranja, and Western Sirmium (UNTAES).[47] In 2001, after the removal of UNPROFOR from Macedonian borders and the NATO operation in Kosovo in 1999 opened the door to those who would attempt to solve the conflict between the Macedonian government and the Albanian majority with violence, the Council stayed deliberately aloof, leaving it to EU and US negotiators to mediate and NATO to help implement the resulting Ohrid Framework.

[47] SC Res. 1037 of 15 Jan. 1996. Originally authorized for twelve months, the mandate of UNTAES was extended by the Council twice for another six months. A transitional support group of 180 civilian police monitors, authorized for nine months, replaced UNTAES in 15 January 1998 (SC Res. 1145 of 17 Dec. 1997).

The EC peace conference and draft ('Carrington') treaty also declared Kosovo to be an integral part of the Serbian republic and, like Serbs in Croatia, deserving some form of special status. This, too, was no solution to the conflict between the Serbian government and an Albanian population within the province which was overwhelmingly Albanian (from 80 to 90 per cent during the 1991–9 period of standoff) and demanded independence. As in eastern Slavonia and Macedonia, the Council left diplomatic action to the US and NATO, plus the UK and France, in 1999, when violence began to escalate in 1997–8 between the KLA and Serbian security forces. Failing to find a political solution, however, they turned back to the Council with the same issue as in 1991, as if nothing had changed: would it authorize the use of force to intervene in the domestic affairs of a sovereign state in order to stop violence? What had changed was the effect on the Council debate of nine years' experience of war in Yugoslavia and a Russia more ready to play a major power role. The consequence of a Council less ready to ratify transatlantic policy was to bypass it entirely and, after an unauthorized, 77-day bombing campaign by NATO powers against Serbia in March–June 1999, to hand back to the Council the task of implementing a ceasefire agreement and facing the irresolvable contradiction created by European decisions in 1991.

The Security Council and the Use of Force: War in Bosnia

The sovereignty problem was of an entirely different order in the case of the Yugoslav republic of Bosnia–Herzegovina. If the basis of EC policy was to recognize new states on the principle of national self-determination and if the basis of Security-Council actions (including preventive deployments) was sovereign consent, what was to be done when there was no agreed party to represent Bosnian sovereignty or give consent? The EC solution was to presume that any government of the six federal republics could request recognition because this would (in theory) avoid a border conflict and then to add the condition (based on hurried opinions from the jurists on its Arbitration Commission) that the three national parties then in a power-sharing government negotiate a constitutional settlement and hold a referendum on independence before full recognition.

Remarkably, given the clear preferences of the Bosnian Croat and Bosnian Serb leaderships, the Portuguese presidency of the EU appeared to have succeeded by March 1992. However, the EU had already undermined its commitment to a negotiated settlement by requiring an early referendum (held 28 February–1 March),

which the Serbs chose to boycott as predetermining the outcome. Then the US scuppered the Lisbon Agreement by pressuring its European allies (successfully) for immediate recognition.[48] In contrast, the Security Council appears to have learned from the Croatian war, for it now chose to add to the UNPROFOR mandate for Croatia a monitoring mission of 100 military observers for Bosnia – ironically deployed on the very day of US recognition, 7 April.[49] Nonetheless, by the time the first contingent of forty-one arrived in Mostar on 30 April, there was nothing to forewarn. The worsening violence forced their retreat into Croatia two weeks later. On 20 May, the Security Council proceeded to affirm EU and US recognition with UN membership (along with Slovenia and Croatia), even though the war between Bosnia's three national communities, each with external support, had been raging for almost three months.

It is the role of the Security Council in the war in Bosnia that provoked widespread outrage and disillusionment. The prevailing criticism is of the Council's refusal to authorize peace-enforcement and stop the war, particularly through aerial bombing.[50] This criticism mistakes the term 'peace-enforcement', which means the use of robust military rules of engagement up to and including war to enforce compliance with a peace agreement, for a campaign to defeat an enemy and impose a military victory. It also misunderstands what the Security Council did – what policy was guiding Security Council resolutions, how the UN eventually did wage war in Bosnia, and why success in ending the war took so long.[51]

The policy behind the Council's authorization of force in Bosnia evolved in four stages. The first stage was inadvertent, a policy driven by two prior commitments – the universal mandate of the UNHCR and its protection regime and the mandate of UNPROFOR in Croatia. Like the EC, the Security Council appears to have ignored the reality it faced in the dissolution of a country, not just a state. Its areas, peoples, and infrastructure were, by definition, so interconnected that even if the borders among the successor states were uncontested (which they were not), no one theatre could be or should have been treated in isolation from the others. From the start of its deployment to Croatia, UNPROFOR faced complications from the war escalating in Bosnia: a mounting refugee crisis out of Bosnia was diverting

[48] Reflecting the legal complexity, the US ambassador to a country that no longer existed (Yugoslavia) counselled Alija Izetbegović, whose position as chair of the Bosnian collective presidency had ended in November 1991, to reverse his support in Mar. 1992 for the Lisbon Accord and then treated him throughout the war, as did the Security Council, as the legal Bosnian president.

[49] SC Res. 749 of 7 Apr. 1992.

[50] See, for example, Rosalyn Higgins, 'The new United Nations and former Yugoslavia', *International Affairs* 69, no. 3 (1993), 465–83.

[51] This argument would appear to differ, therefore, from that presented in Ch. 19 by Rupert Smith, who makes the same crucial distinction between military force and the political aim that force is to achieve, but who argues that the Security Council failed because until mid 1995 'the Bosnian operation of UNPROFOR was an operation without a strategy.' I will argue here that there was an agreed political aim, but until mid 1995, two real but competing political military strategies.

UNHCR, and the siege of Sarajevo was endangering UNPROFOR personnel in Sarajevo, the initial location of the mission's headquarters,[52] and relief organizations trying to deliver humanitarian supplies through Sarajevo airport. Even the International Committee of the Red Cross (ICRC) felt compelled to pull out temporarily.[53] The ground presence in Sarajevo was sufficient, however, to provide witness to the growing humanitarian crisis, contributing to its recognition in the Secretary-General's reports to the Council in April and May.[54] Although still convinced by the fact-finding visits of two UN envoys, Vance and Goulding, in April and May that conditions were not suitable for a peacekeeping deployment to Bosnia,[55] the Security Council came under increasing pressure, led by France, to do more on the humanitarian crisis than its approach in earlier resolutions and statements, of simply appealing to the parties to stop fighting.[56]

The emerging response combined economic and military sanctions on Belgrade with military protection for the delivery of relief to Bosnians, first of the airport and later of land convoys. On 15 May, the Council demanded the withdrawal from the republic, disarmament, or subordination to Bosnian authority of all units of the federal army and the Croatian army,[57] and two weeks later called for a security zone around Sarajevo airport and imposed comprehensive mandatory economic sanctions under Chapter VII on the new state of FRY for failure to comply with Resolution 752.[58] On 5 June, UN military personnel negotiated an agreement between the Bosnian government and Bosnian Serbs to withdraw anti-aircraft weapons from the airport and to hand authority over the airport to the UN 'exclusively'. In the first act of its almost four-year-long military involvement in Bosnia, the Council authorized the redeployment of 1,100 UNPROFOR soldiers from the Croatian theatre to implement this airport agreement and more generally to promote the conditions necessary for the 'unimpeded delivery of humanitarian

[52] A decision by UN DPKO, it is said, as a symbolic gesture of support to Bosnia (requested initially by Izetbgović, according to Marrack Goulding, *Peacemonger* (Baltimore, MD: Johns Hopkins University Press, 2003), 299), but more important was to make clear its commitment to neutrality by distinguishing itself physically from the EU presence. The resulting logistical nightmare led UNPROFOR to redeploy to Zagreb on 17 May but to leave 120 personnel behind in Sarajevo.

[53] The ICRC began active involvement in the former Yugoslav theatre in November 1991; the death of a team member on 18 May led to this pull out, but they returned to Bosnia again on 7 Jul. and played an indispensable role during the war.

[54] In particular the report of 12 May 1992 (UN doc. S/23900).

[55] Goulding describes these trips in *Peacemonger*, 311 13, and the prior trip in November together on 294 305, providing useful background.

[56] See for example SC Res. 749 of 7 Apr. 1992, and the presidential statements of 10 and 24 Apr. 1992.

[57] SC Res. 752.

[58] SC Res. 757 of 30 May 1992. As with the arms embargo in SC Res. 713, this simply universalized the authority of sanctions which the EC and US imposed in mid April; it also marked the first shift by the Security Council to the EC position of May/Jun. 1991, pushed repeatedly by the US representative, to a political position on responsibility for the war, namely, that of the Serbian leadership in Belgrade (and by 17 Apr. 1993, with much harsher sanctions in SC Res. 820, also the Bosnian Serbs).

supplies to Sarajevo and other destinations in Bosnia and Herzegovina'.[59] Sector Sarajevo, with a commanding general (Canadian Lewis MacKenzie), began.

From 18 June, when the Council added Chapter VII authority to enforcement of the sanctions regime,[60] to Resolution 770 passed on 13 August, when it called on states 'to take nationally or through regional agencies or arrangements all measures necessary', the Council rapidly increased the instruments of authority and troops to implement UNPROFOR's mandate in Bosnia.[61] Within two months, the financial cost of delivering humanitarian aid by air forced a shift to land convoys through Croatia and particularly through Serbia, with UNPROFOR protection. In immediate response to Resolution 770, France, Spain, Italy, Belgium, and the UK agreed to send troops. To the humanitarian mandate, moreover, Resolution 770 added a second obligation flowing from international humanitarian law and norms, this time in response to journalists' reports in July that Bosnian Serbs might well be violating the Geneva Conventions in detention camps in eastern Bosnia. Resolution 770 now required UNPROFOR to help ensure access to camps, and protect special envoys and commissions on human rights and convoys carrying civilians or prisoners of war being exchanged.[62]

The second stage of Security Council policy governing the use of force in Bosnia also began from European initiative, to resume efforts at finding a political settlement to the war. Acting as chair of the EU presidency and following a month of consultations with the US and Russia to gain their support, the UK proposed on 25 July to join the diplomatic efforts of the EU and the UN.[63] ICFY was inaugurated at London on 26–27 August, welcomed by the Security Council, and went into permanent session in Geneva. Mindful of the initial Chapter VIII construction of Council action in Yugoslavia, and also of the severe financial constraints on UN action elsewhere, the Secretary-General repeatedly encouraged the EU to take action, implying that the Security Council would have no trouble authorizing it – after all, it had welcomed and affirmed all EC/EU action until then. The implications for UN military assets, however, had already created deep tensions between him and the UK (and later the US): the SG had been furious that the UK, without informing him, had induced the Council to mandate UN supervision

[59] SC Res. 758 of 8 Jun. 1992. [60] SC Res. 760.

[61] SC Res. 761 of 29 Jun. and 764 of 13 Jul. French pressure included a dramatic flight into Sarajevo airport on 28 Jun. by French president Mitterrand to demonstrate it could be done.

[62] SC Res. 780 of 6 Oct. 1992 requested the SG to establish a Commission of Experts to report on violations of the Geneva Conventions and other humanitarian law, warnings were issued to the parties in two presidential statements (30 Oct. 1992 and 25 Jan. 1993), and on 22 Feb. 1993 Resolution 808 created an international tribunal 'for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991'. The International Criminal Tribunal for former Yugoslavia (ICTY) remains in session in mid 2007 and became the precedent for similar tribunals for Rwanda, Sierra Leone, and Liberia.

[63] According to Goulding, at the time USG for Peace keeping, however, this idea originated with Boutros Ghali, which he proposed to Major in London in Jul. (*Peacemonger*, 316).

over all heavy weapons throughout Bosnia according to the terms of an EU-negotiated ceasefire of 17 July.[64] There was little or no disagreement between them, however, over the solution to the war – that there was no military solution but only a political agreement which would then create the conditions for a UN peacekeeping deployment. As Prime Minister John Major noted in his opening remarks establishing the principles of the conference, it could propose but not impose. The principles also reaffirmed EU policy (which the Security Council adopted in May) on the political outcome, that the borders of the federal units of Yugoslavia were now international borders and that the Bosnian war was a fight among three political nations over their constitutional rights to self-determination *within* Bosnia's borders.

Although the ICFY negotiators failed repeatedly over the following two years to obtain a political agreement that would meet the Security Council criteria for a peacekeeping operation,[65] there was now a UN policy guiding the use of force. Officially declared a distinct Bosnia force of 7,700,[66] though with overall command remaining in Zagreb, UNPROFOR had two goals in Bosnia: minimize civilian casualties while the war raged, and take all actions possible 'to create the conditions for peace and security'. Military instruments were increasingly mandated to assist these two goals in the field, while negotiations took place. Thus, the Council banned military flights over Bosnia,[67] extended the arms embargo and economic sanctions to fuel and maritime shipping with a naval blockade (beginning with routine inspections) on the Adriatic and Danube,[68] welcomed air drops of relief into eastern Bosnia by US planes beginning on 1 March 1993, and, in five Council resolutions from 16 April to 18 June, created safe areas, starting with weapons-exclusion zones within a specified perimeter around Sarajevo and then an additional five Muslim-majority towns (Srebrenica, Žepa, and Goražde in eastern Bosnia, Tuzla in north-central Bosnia, and Bihać in the north-west).

[64] See Goulding, *Peacemonger*, 317; and Woodward, *Balkan Tragedy*, n. 37, 498 9. Although the result on 17 Jul. was only a presidential statement welcoming the agreement, in the end Boutros Ghali lost this battle. His growing concern over the financial implications of these Council resolutions, at a time when the US was insisting on these mandates (and efficiency oriented reforms in the Secretariat) while refusing to pay back dues and when many other countries outside Europe were in greater need of UN assistance due to violence and humanitarian crises, was overshadowed by the growing quarrel over the willingness of the Council to authorize sufficient troops and enforcement powers, and by European, American, and Bosnian anger at his public choice of words such as 'white Muslims' and 'rich Europeans' who could afford to take responsibility. On this growing financial constraint and the many in arrears at the time, see Higgins, 'The New United Nations', 475 9.

[65] In early 1994, when US actions threatened their marginalization entirely, the co chairs proposed a different strategy, to hand the task over to a Contact Group of representatives from the US, UK, France, Germany, and Russia so as to prevent the same fate that befell the Hague conference in 1991 and the Lisbon negotiations in 1992. Italy was added later, and ICFY focused on the remaining issues.

[66] SC Res. 776 of 14 Sep. 1992.

[67] SC Res. 781 of 9 Oct. 1992; SC Res. 786 of 10 Nov. 1992; SC Res. 816 of 13 Mar. 1993.

[68] SC Res. 787 of 16 Nov. 1992.

In accord with the goal of a negotiated settlement and the fact of UN authorization, these uses of force had to respect the principle of sovereignty and thus consent. This meant to be ready to enforce agreements made by the parties themselves, from access for aid convoys to the terms of local ceasefires, and thus to employ force transparently (with prior warning) and in proportion to the specific violation or in self-defence. Impartiality, the brunt of much criticism, meant that all civilians had the equal right to UNPROFOR's protection and that all mandated tasks applied equally to all warring parties. Although the principle of consent was necessary to protect the premise of a negotiated end to the war, it had three additional, crucial reasons: (1) for obtaining consensus in the Security Council by protecting the principles of legitimate intervention; (2) for obtaining troops since no state was willing to provide ground troops equipped and willing to go to war, and most adamantly and persistently the one state which had such assets, the United States; and (3) because it was likely to be most effective in ending the war.

UNPROFOR's rules of engagement (ROE) for the use of force were mercilessly criticized as classic peacekeeping rules unsuited to war, but they had, in fact, both doctrinal and practical reasons for just such conditions, given the UNPROFOR mandate. Doctrinally for most units in UNPROFOR, these rules were based on the serious argument (called 'the dynamic of force') that the more force one uses, the more it escalates. Interpreting the UNPROFOR mandate as reducing the lethality of war and thus the number of civilian victims while supporting an end to the war by negotiation, military commanders also saw adding force to the environment as counterproductive. This reasoning was reinforced on a daily basis by UNPROFOR's experience with the warring parties, particularly the Serbs, as Council, diplomatic, and international attention increasingly focused on their compliance alone and ways to force it. When force was used according to these ROE, it was respected; when it was not, the violence escalated seriously, cooperation collapsed, civilians were deprived of humanitarian relief or life itself, and the specific tasks could not be done.[69] At the same time, these ROE had to serve the same troops in their other goal, to facilitate conditions for peace, which included actual peacekeeping tasks, that is, responsibility to assist in the implementation of ever more local ceasefire agreements, whoever negotiated them, including the Sarajevo ceasefire of February 1994 (negotiated by UNPROFOR civilian and military leadership under a NATO bombing threat), the March 1994 ('Washington') agreement between the Bosnian government (Bosniac forces) and Bosnian Croats negotiated by US and German diplomats, and the Christmas truce of December 1994 negotiated between Bosnian Serbs and the Bosnian government by former US president Jimmy Carter. All were consensual agreements, even if, as in the Washington agreement, the purpose was to forge a military alliance to wage war against the

[69] Such experience is documented in manifold participants' reports; see, for a particularly detailed example, Lt. Col. J. P. Riley, 'The 1st Battalion on UN Operations in the Balkans, 1995', *Regimental Records of the Royal Welch Fusiliers*, vol. VI, ch. XLII, on its deployment Feb. 1995 28 Aug. 1995 in Goražde.

third party (Bosnian Serbs). Being perceived as politically neutral was also necessary to their peacemaking role, in which commanders on the ground sought every opportunity to keep lines of communication and contact open between the warring parties, to negotiate and then monitor local ceasefires as a bottom-up approach to a general ceasefire, and, with the assistance of UN civil affairs officers, to promote peace-building activities with civilians, such as family visits across confrontation lines, mine clearing for agricultural activities, and local commerce to improve livelihoods.

Four aspects of Council decisions interfered with this policy, however, and provoked a third stage in the Council's policy on force. First, as military commanders correctly and repeatedly complained, the Council's resolutions on the use of force seemed to show no respect for the requirements of military operations.[70] They were too vague, too slow in relation to events on the ground, and under-resourced. In a constant struggle to find countries willing to provide troops, even as the mission became the largest in the history of the United Nations by early 1994,[71] the Council notoriously ignored military advice on what would be necessary to implement its resolutions and adopted in each case the 'light option' (e.g. authorizing 7,600 troops to implement the safe-area mandate where the Force Commander had estimated the need, for deterrence alone, of 34,000),[72] and then did not even provide what it had itself committed. Secondly, to compensate, NATO increasingly offered its assets but, due to US objection, refused to be a part of UNPROFOR command and control. In fact, UNPROFOR in Bosnia was composed initially entirely from NATO countries, and its headquarters was formed in September 1992, to the dismay of UNPROFOR officials from countries with a peacekeeping tradition, by NATO's Northern Army Group. Under-resourced and at serious risk to their soldiers from the war around them, UNPROFOR commanders welcomed the additional security which NATO offered in terms of close air support (CAS), but they increasingly lost command and control of their units because

[70] See, for example, General Bertrand de la Presle, 'Principles to be Observed for the Use of Military Forces Aimed at De escalation and Resolution of Conflict', in Wolfgang Biermann and Martin Vadset (eds.), *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia: Peacekeepers' Views on the Limits and Possibilities of the United Nations in a Civil War like Conflict* (Aldershot, UK: Ashgate, 1998), 137 8 and 143.

[71] UNPROFOR was comprised of three commands Croatia, Bosnia Herzegovina, and Macedonia. Until the Croatian and Macedonian commands were given separate names on 31 Mar. 1995, leaving UNPROFOR for Bosnia only, the three were distinguished with roman numerals, as UNPROFOR I, II, and III (for Croatia, Bosnia Herzegovina, and Macedonia). The number of troop contributing countries varied from thirty one at the start to thirty nine in Mar. 1995. In March/April 1992, it comprised 13,240 troops including military observers (UNMOs); by Mar. 1994, it was at 30,655; and by Nov. 1994, there were 38,130 troops (including 680 UNMOs). These numbers do not count civilian police (between 543 and 727) or civilian staff (by Mar. 1995, 2,017 international and 2,615 local). The cost of the mission, from 12 Jan. 1992 to 31 Mar. 1996, was more than US $4 billion (US $4,616,725,556) and 213 dead.

[72] UN doc. S/1994/291 of 11 Mar. 1994. These figures can be found in all Secretary General Reports after Jun. 1993, however.

countries insisted on separate instructions (e.g. varying ROE) and additional assets (e.g. Danish tanks near Tuzla) to protect their troops as both war and NATO's actions increased the risks.

Thirdly, the ambiguity in the approach to Bosnian sovereignty of the EC 'solution' placed UNPROFOR in a genuine dilemma: were they responsible to the Security Council's mandates and its policy of a negotiated settlement among the three warring parties and impartiality, or to those treated as legally representing the Bosnian government, a UN member state? Conflicts between these two principles, without guidance, confronted UNPROFOR commanders in operational decisions on the use of force every day. Fourthly, this ambiguity in Council policy was worsened by what was perhaps its most significant complication, the early abandonment of neutrality by the Security Council itself. Moving increasingly in its resolutions to single out one of the three parties, the Bosnian Serbs, as non-compliant and the obstacle to peace, the Council sought to impose its decisions, with force if necessary.[73] As UNPROFOR military doctrine predicted, moreover, the more it violated impartiality and proportionality in the use of force, the more it was seen as a party to the war and needed protection, creating a vicious spiral of force, ever greater anti-Serb targeting, especially by NATO air power, and risk to UN soldiers.

The political-military strategy to end the war in Bosnia of this second stage bears the primary brunt of criticism of the Security Council and UNPROFOR – either it did not exist, or it was incoherent, or it was wrong because it would never work, or it was immoral because of its neutrality toward the parties. Its actual effects cannot be tested, however, because already by mid- to late 1993, there were two competing strategies on the ground. Designed and driven by the US, although it had at least implicit support among some EU states, the second policy was to go to war against the Serbs.[74] This military defeat had to be accomplished without US ground forces, however, so the strategy was to shift the military balance in favour of both Bosnian government and Croatian forces through covert arms deliveries (called 'levelling the playing field'), NATO air power, and Council resolutions restraining Bosnian Serb military action. Simultaneously, the Serbian leadership in Belgrade had to be persuaded, by sanctions and diplomacy, to commit actively to the recognized borders of both Bosnia and Croatia and Serbs' status as minorities in both countries. Although the core elements of this policy originated with the Bosnian Muslim leadership of Izetbegović, his foreign minister Haris Silajdžić, and their UN

[73] This shift is most noticeable with SC Res. 816 of 31 Mar. 1993 and SC Res. 820 of 17 Apr. 1993; its primary manifestation in 1994 and 1995 is the sanctions of SC Res. 913 of 22 Apr. 1994 and SC Res. 914, 942, and 943, all of 23 Sep. 1994, followed by four from 12 Jan. to 15 Sep. 1995.

[74] This US strategy did not, in fact, have consensus within the Clinton Administration which was waging it. It remained divided throughout the two year plus period in which it operated, and many on the professional diplomatic side, in particular, worked tirelessly to obtain a political solution in order to stop the war earlier and interrupt this military strategy. They did not succeed, however, some tragically (e.g. Robert Frasure), nor did they have influence at the level of the Security Council.

envoy, Muhamed Sačirbey, and was entertained by the Bush Administration in summer and autumn 1992 under congressional pressure and Pentagon planning, this idea of 'lift and strike' – lift the Security Council arms embargo on Bosnia on the basis of Article 51 of the Charter and deploy NATO air strikes in support – was repeatedly rejected by the Council throughout 1992: first by the UK, France, and UNPROFOR Force Commander Satish Nambiar in July, then in general response to a written request from Izetbegović on 3 August, and again in November by Russia. US diplomatic consultations in EU capitals in December 1992 and again in February 1993 also failed to persuade its European allies. Endorsed as policy, nonetheless, by US President Clinton in April 1993, its execution had to be secret.

All four elements of this alternative US strategy required UN acquiescence or active support: (1) the covert violation of the arms embargo used Iranian and Turkish planes into Zagreb and Tuzla airports and Ukrainian helicopters into the Bihać pocket (all of which were UN-controlled) to deliver weapons and other military equipment; (2) the 'Washington agreement' to ally Bosnian Croats and Bosniacs militarily against the Serbs and gain Croatian consent to open supply lines for weapons deliveries to Bosnian government forces in violation of the arms embargo, which was negotiated by US and German diplomats between Tudjman and Izetbegović, and was implemented by UNPROFOR; (3) ever greater pressure on UNPROFOR from NATO (AFSOUTH) not to limit its requests to CAS but to call in NATO air strikes against Bosnian Serb forces for violating weapons-exclusion zones around the six safe areas and against their planes for violating the ban; and the one exception until mid-1995, (4) a train-and-equip programme for the army in Croatia by Military Professional Resources, Inc. (MPRI) (on contract to the US State Department under a programme for the democratization of armed forces in eastern Europe for purposes of plausible deniability) which strategized the Croatian military campaigns of 1 May and 4 August 1995 to overrun three of the UNPAs, followed by a Croatian sweep through western Bosnia immediately thereafter, which then combined with a new UNPROFOR strategy to end the military stalemate in Bosnia.

The result of the internal complications created by Council resolutions and this competing US campaign was the third stage of Security Council policy, clear to all on the ground by late autumn 1993. Council-authorized instruments and policies on the use of force were now serving two competing political-military strategies, one official, one covert, in the same theatre. UNPROFOR commanders faced an ever messier military situation and enlarged mandate driven by both strategies, peacemaking on the one hand and war-fighting on the other. The US strategy created havoc with the official policy and UNPROFOR tasks, reducing cooperation by all parties with UNPROFOR. Whereas Washington had prevented a political settlement before the war (Lisbon) and in early 1993 (Vance–Owen Peace Plan), its policy now gave a strong incentive to the warring parties in Zagreb and Sarajevo to retard ICFY political negotiations as each waited for the military strategy to play out in their favour. While one ICFY peace plan after another failed to get signatures of at least

one or more parties, the war dragged on. It increasingly tried the patience of troop-contributing countries and also became ever bloodier and brutal as each side had a rising incentive to fight (and, with the Bosnian Serb army, to take ever greater risks as it perceived itself at war with NATO and increasingly abandoned by Belgrade and UNPROFOR).

Although the Security Council continued to insist in resolutions and statements that its goal was a negotiated settlement to the war among Bosnian parties, the distance between this political objective and the tasks which it mandated UNPROFOR and authorized NATO to do grew ever greater.[75] Resolutions were being drafted by representatives of both strategies, the US and the primary troop contributors, above all France and the UK. An increasingly mobilized international public only saw failure to stop the war and added constant pressure on the Council (from the General Assembly,[76] domestic publics of Council members, the global media, human rights envoys,[77] and even Secretary-General's reports) to authorize more force and troops. Had the Council taken some responsibility for the implementation of its policy on the ground, it might have had to confront its inconsistencies. Instead, it focused on adding instruments which could then be used by either strategy and on delegating authority to ever more complex hierarchies. While the ICFY peace negotiations took place in Geneva, for example, the parties were also aiming their military operations and their local agreements with UNPROFOR at improving their bargaining position. Because the ICFY and UNPROFOR missions were both so demanding, the civilian leadership was divided in January 1994 with little obvious policy connection other than personal communication between SRSGs (and then the Contact Group, too). The effort to keep the three UNPROFOR commands separate in line with the sovereignty of the three countries involved made little sense when at least two theatres were militarily and logistically intertwined and the Council itself had created a single UNPROFOR command with one ultimate Force Commander. Adding NATO to the mix made this much worse. The solution, in practice, to repeated debates over the actual locus of command over UN troops was left, as the desk officer in DPKO for Yugoslavia in this period, Shashi Tharoor, wrote in 1994, 'in the hands of the commanders in the field'.[78]

[75] As Mats Berdal reveals in 'Lessons Not Learned: The Use of Force in "Peace Operations" in the 1990s', *International Peacekeeping* 7, no. 4 (Winter 2000), 55, the result by 1994 is what then head of Bosnia command, General Rupert Smith, neatly concludes about the use of force in intervention operations after the Cold War: 'we had been unclear as to what it is we expect the use of force or forces to *achieve* as opposed to *do*.'

[76] GA Res. 46/242 of 25 Aug. 1992, proposed by the Islamic Conference Organization (which Turkey and Iran initiated), endorsed the use of force to end the war.

[77] The extraordinary session of the UN Human Rights Commission on 13 14 August 1992 was particularly influential as were subsequent reports by its special envoy, Tadeusz Mazowiecki; see Human Rights Watch, *The Lost Agenda: Human Rights and UN Field Operations* (New York: HRW 1993), 99 100.

[78] 'United Nations Peacekeeping in Europe', *Survival* 37, no. 2 (Summer 1995), 129 (written, however, in Nov. 1994).

Two of the most contentious instruments which the Council authorized, NATO air power and the 'dual key', and safe areas, can best illustrate this confusion and the conflict it created. NATO air power served two purposes: close air support, which UNPROFOR commanders could call in to defend lightly armed and under-resourced UNPROFOR soldiers at risk from any of the parties (and a welcome additional asset), and air strikes to enforce Council resolutions and parties' agreements, such as on safe areas, weapons-exclusion zones, and air-interdiction resolutions. As long as UNPROFOR commanders were in control of both so that their ROE of transparency, proportionality, and self-defence governed their use, the first political-military strategy prevailed. Thus, as originally demanded by the UK, a 'dual key' was necessary whereby UN authorities would initiate and NATO officials agree to a decision to bomb. Yet for those who supported, knowingly or not, the second strategy, the problem was that NATO was not bombing Serbs (or was only delivering 'pinpricks'), and this was because UN officials (civilian and military) refused to 'turn its key'. While the conflict between the UN and NATO on air power was about the doctrinal and pragmatic issues discussed earlier on the use of force, in reality the primary problem of the quite practical military obstacles to the effective use of air power in this theatre was never adequately explained.[79] The same misunderstanding arose over the military concept of 'robustness', to keep humanitarian convoys moving. For most UNPROFOR military, 'all necessary means' in Council resolutions meant a finely tuned calculation of military force to succeed largely through its psychological effect so as to protect the legitimacy of its use in the future and be more effective in the present. For critics, it meant forceful protection of blue routes, air drops, and disproportionate force to deny access to strategic routes, deliver weapons, and provide cover for actual war-fighting. International control over airports (Sarajevo and later Tuzla) had the same dual purpose and critical reaction.[80]

The other main debate on the use of force focused on the safe-area policy. Initially proposed by the UK to counteract German demands in July 1992 for EU burden-sharing quotas on refugees (i.e. protect Bosnians at home instead), the concept was taken from the safe havens created after the Gulf War for Iraqi Kurds (Operation Provide Comfort). The idea coincided with the effort at the time by the High Commissioner, Sadako Ogata, to add a 'right to return' and a 'right to stay' to UNHCR's protection regime. At the same time, activists in France, the US, and UK pushing for a stronger international right to intervene, and in Bosnia in particular, conceived the safe areas in ways closer to the second strategy, to defeat the Bosnian Serbs from initially small to ever larger territory where UN troops and NATO airpower would defend civilians militarily and stop the war. The Security Council

[79] Such as problems with the weather, lack of targets, guerrilla style warfare, and complex lines of communication between the UN and NATO, but that is a larger discussion.

[80] Covert deliveries of weapons during 1994 and communications equipment in February 1995 were largely made in Tuzla.

adopted the concept in Resolution 819 on 16 April 1993, however, when the substantial operational latitude its actions gave to UNPROFOR commanders produced a problem, that is, not for reasons of policy or strategy. After rushing to Srebrenica at the demand of local authorities who then refused to allow him to leave, the French commander of UNPROFOR in Bosnia, François Morillon, proposed UN protection for the town in exchange for his exit.[81] To cover the embarrassment with a principle, the concept was extended on 6 May to five other Muslim-majority enclaves surviving in Bosnian Serb held territory.[82]

A huge literature analyses the failure of the Security Council to define the resolution's phrasing ('deter attacks'), to understand the military requirements of its implementation, and to provide the military resources necessary.[83] Nor was there much effort made to explain to residents of these towns or to the international public what was being promised, what was not, and what was possible. Yet it is very clear that where its implementation followed the rules of the official Council policy, it succeeded, as in Sarajevo, where General Briquemont, commander of Sector Sarajevo in 1993, laid its political preconditions with careful local negotiations for months leading up to the NATO threat to bomb Serb positions in the weapons-exclusion zone around Sarajevo in February 1994, and then UNPROFOR civilian and military officials together negotiated a ceasefire that held for more than six months. Where the safe areas were an integral component of the second, war-fighting strategy of the Sarajevo government and US covert policy, however, all such efforts to negotiate and monitor local ceasefires were repeatedly interrupted (most notably in Goražde and Srebrenica) on purpose. While their location deep into Bosnian Serb held territory and at strategic crossroads did, as aimed, tie down substantial Bosnian Serb forces in defending against Bosnian army forces within the towns (only demilitarized in Security Council resolutions, but not in reality), the price was paid by the local inhabitants and surrounding villages, and when the clash between the two strategies had to be resolved in the spring and summer of 1995, most egregiously by the men and boys of Srebrenica.[84]

[81] Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (London: Penguin, 1996), 71 98.

[82] SC Res. 824.

[83] Useful beginnings in this huge literature are Honig and Both, *Srebrenica,* 99 117 and Lars Eric Wahlgren, 'Start and End of Srebrenica', in Biermann and Vadset (eds.), *UN Peacekeeping in Trouble*, 168 85. The uproar over the Bosnian Serb massacre of Srebrenica's male citizens eventually provoked the DPKO to commission an internal report written by David Harland, UN doc. A/54/549 of 15 Nov. 1999, and the Dutch government, whose troops were accused of primary responsibility, to commission a massive, independent investigation by the Netherlands Institute for War Documentation, *Srebrenica, A 'Safe' Area Reconstruction, Background, Consequences and Analyses of the Fall of a Safe Area*, (Amsterdam: NIOD, 20 April 2002).

[84] The most recent confirmed death toll of the Srebrenica massacre, according to the *Bosnian Book of the Dead* database compiled by the Research and Documentation Centre (RDC), Sarajevo, is 6,882 (Jul. 2007).

In the fourth and final stage of Security Council policy toward the Bosnian war, when these two competing strategies had created more than a year of political stalemate and increasing inability of UNPROFOR troops to implement Council resolutions, the Council was de facto irrelevant, limited to providing authorization for a combined political-military strategy designed elsewhere. On the diplomatic front, the Contact Group and US diplomats separately pursued the US strategy to complete the isolation and political defeat of the Bosnian Serbs by working only with Serbian president Milošević and rewarding him accordingly. Militarily, UNPROFOR's Bosnia commander, British General Rupert Smith, began in early spring 1995 to put in place his own strategy for breaking out of the stalemate and ending the war. The Council responded by adjusting its sanctions regime against the FRY,[85] removing the dual key and authorizing NATO air strikes to allow NATO greater independent latitude, and, crucially, authorizing the establishment of a rapid reaction force (RRF) for UNPROFOR of 12,500 additional troops armed with heavy artillery which the British and French, with some Dutch and Belgian support, had already created for General Smith for the Mount Igman Road in and out of Sarajevo.[86] All Council resolutions still reiterated UNPROFOR's original mandate and the commitment to a negotiated, non-military solution to the war. Most notable, however, is a return to its lame stance of early 1992 – condemning armies and demanding compliance after the fact (e.g. Resolutions 994 of 17 May and 1009 of 10 August on Croatian forces *after* Operations Flash and Storm, Resolution 998 of 16 June on Bosnian Serbs *after* taking UNPROFOR soldiers hostage, and Resolution 1004 of 12 July on the day *after* Bosnian Serbs took Srebrenica and the day the massacre began).[87]

Despite obstacles from the Security Council, including surprising interventions from the US Ambassador, Madeleine Albright,[88] Smith's strategy did succeed eventually in forcing coherence with the second, covert strategy. Although US diplomats claim that NATO bombing of Serb targets in late August and early September 1995 (Operation Deliberate Force) ended the war because it 'brought

[85] SC Res. 970 of 12 Jan. 1995, SC Res. 988 of 21 Apr. 1995, SC Res. 1003 of 5 Jul. 1995, and SC Res. 1015 of 15 Sep. 1995.

[86] SC Res. 998 of 16 Jun. 1995.

[87] In commenting on the declining credibility of the Security Council because it issued so many resolutions and presidential statements with little relation to 'realities on the ground' ('the parties routinely ignored them' and even UNPROFOR military officers read them less and less), Yasushi Akashi, UNPROFOR SRSG, illustrates the absurdities with SC Res. 1004 of 12 Jul. 1995: 'The Council, acting under Chapter VII, demanded [unanimously] that the Bosnian Serbs "respect fully the status of the Safe Area", "withdraw from the Safe Area", ensure the complete freedom of movement of UNPROFOR, and requested "the Secretary General to use all resources available to him to restore the status . . . of the Safe Area . . . and calls on the parties to cooperate",' in 'Managing United Nations Peacekeeping: The Role of the Security Council vs. the Role of the Secretary General', in Biermann and Vadset, *UN Peacekeeping in Trouble*, 135.

[88] On Washington's role in the fall of Srebrenica, including its refusal to support the diplomatic agreement made by its own envoy, Robert Frasure, with Slobodan Milošević on 18 May, one would do well to start with chs. 7 and 8 and the post mortem (139 86) of Honig and Both, *Srebrenica*.

the Bosnian Serbs to the bargaining table', it was ground forces – Croatian, Bosnian government, and UNPROFOR (the RRF) in Croatia, western Bosnia, and around Sarajevo in July and August 1995 – that ended the war. Ironically, the primary role of US policy (apart from its substantial military role in Croatia) was diplomatic, in reversing its opposition to the principles of all six prior EU and UN peace plans since February/March 1992, that all three parties in Bosnia including the Serbs should be both constitutionally protected and territorially autonomous, and in persuading the Bosnian Muslim government (with Operation Deliberate Force and military commitments in the Dayton negotiations) to concede. Bosnian Serbs were actually excluded from the negotiations and represented (at US insistence) by Milošević. Although the Security Council had no role in the denouement of May–September 1995, its original strategy had in many ways been vindicated.[89] As always, it did agree to legitimate the General Framework Agreement for Peace and to authorize a successor to UNPROFOR led by NATO, EU, and the US, including in it a UN civilian police force (IPTF) and associated civilian office.[90]

Did the Security Council Learn? Kosovo and the Lack of any Conclusion

The peace in Bosnia did not end the problem of Yugoslavia for the Security Council, indeed, the lessons drawn by the US and a new government in Britain in 1997[91] about the use of force, on the one hand, and by Russia, China, and the non-aligned states about the principle of non-intervention, on the other, sharpened the divisions. The first camp, led by the US, now insisted that only the threat of force would make diplomacy credible, while the second camp were now persuaded that intervention in internal conflicts inevitably legitimized the secessionist forces.

In response to the growing violence in Kosovo after 1997, Council resolutions eerily returned to the original debate of September 1991. Resolution 1060 of 31 March 1998 declared the territorial integrity of the FRY, called for an enhanced status for Kosovo, imposed an arms embargo under Chapter VII, and welcomed efforts by the US and the Contact Group to negotiate between Belgrade and Priština. It repeated this message on 23 September, though with extremely tough

[89] Elaboration of this argument is beyond the scope of this chapter, but it is critical because of the lessons that the US drew from Bosnia.

[90] SC Res. 1031 of 15 Dec. 1995; and SC Res. 1035 of 21 Dec. 1995.

[91] Rhiannon Vickers, 'Blair's Kosovo Campaign: Political Communications, the Battle for Public Opinion and Foreign Policy', *Civil Wars* 3, no. 1 (2000), 55 70, dissects an important role the UK prime minister now played.

language, demanding under Chapter VII an immediate end to hostilities by both sides to avert a 'humanitarian catastrophe' and to lay conditions for dialogue but also reminded the FRY of its sovereign obligation to protect international humanitarian personnel.[92] One month later, it endorsed a ceasefire agreement between Belgrade authorities and the OSCE and demanded cooperation by both Serbian and Albanian leaderships with two verification missions, one by the OSCE on the ground, and one by NATO in the air.[93] It also repeated the Chapter VII basis of its demands on FRY in Resolutions 1160 and 1199, although this time Russia and China abstained.

Nonetheless, the US and most of its NATO partners (particularly the UK and Canada) interpreted these resolutions in terms of the lessons they had drawn from 1991: that the Security Council had failed when it refused to authorize bombing in Croatia at the time of Vukovar or Dubrovnik and in Bosnia in the summer of 1992 (although such proposals never reached the Council), that (as US Secretary of State Albright repeated often) they had to pledge 'never again' and make up for the failure of 'Europe' (the EU), and that Russian rhetoric suggested the Council would refuse force again. This time, they would ignore the Security Council and take a parallel track based on Contact Group diplomacy and NATO force.[94] And, in fact, NATO, the Contact Group, the G8, and US diplomats were already moving rapidly on a parallel track in the summer of 1998 with NATO military preparations, an official NATO threat to Milošević, rushed diplomatic negotiations in Belgrade, and then, in February 1999, a time-limited 'peace conference' at Rambouillet, France. Secretary-General Kofi Annan did brief the Council frequently, but with much stronger language than his predecessor's. In February, the Council's Canadian presidency chose not to seek authorization for NATO bombing from the Council so as to avoid a feared Russian veto, and two days after the bombing began, on March 26, Russia did table a resolution calling for an immediate end to the operation. Its defeat, with only Russia, China, and Namibia voting in favour, has been interpreted, as Heinbecker writes, as a 'major moral victory for the proponents of military action'.[95]

Despite this apparent standoff on the use of force and the subsequent and major debate over whether internationally illegal action (the NATO operation) can nonetheless be internationally legitimate,[96] British foreign-office lawyers took care to find a formulation that would retain the Council's authority in such matters

[92] SC Res. 1199. [93] Sc Res. 1203 of 24 Oct. 1998.

[94] Paul Heinbecker, Canadian permanent representative at the time, argues that this decision was based on the assumption that Russia would veto any Council authorization of the use of force, though this was never tested, and that to avoid being in this position, Russia 'could accept the Council's being bypassed'. He also adds that 'the same approach' was proposed to the US by the French ambassador to Washington, Jean David Levitte (whose prior posting was to the UN), in Mar. 2003 for Iraq (p. 540 in his detailed account of 1998 9, 'Kosovo', in Malone, (ed.), *The UN Security Council*, 537 50).

[95] Heinbecker, 'Kosovo', 542.

[96] See, for example, Adam Roberts, 'NATO's "Humanitarian War" over Kosovo', *Survival* 41, no. 3 (Autumn 1999), 102 23; and Albrecht Schnabel and Ramesh Thakur (eds.), *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (New York and Tokyo: United Nations University Press, 2000).

by defining this use of force, as the UK permanent representative told the Council on the day it began, 'as an exceptional measure to prevent an overwhelming [imminent] humanitarian catastrophe . . . exclusively'.[97] On 14 May, the Council sought to restore UNHCR to its rightful role as lead humanitarian agency including refugee protection against the assertion by NATO commanders in Albania, Macedonia, and Kosovo, and it endorsed the G8 package used in June to end the bombing.[98] Moreover, 77 days of bombing succeeded only in producing two ceasefire agreements with NATO (for Yugoslav security forces to withdraw from the territory entirely, and for KLA to 'undertake' to demobilize within the province) that would lay the conditions, as in Croatia in early 1992, for the Security Council to authorize a peacekeeping force. It did not resolve the underlying conflict over Kosovo's status. Although NATO was now willing to lead this force (KFOR), at US insistence so its troops would not be under UN command, Resolution 1244 of 10 June 1999 was also only an interim agreement, refusing to take a political position on the conflict by leaving FRY (Serbian) territorial integrity intact while granting Kosovo *extensive* political autonomy. The diplomatic task returned to the Security Council and a UN transitional administration the UN Interim Administration Mission in Kosovo (UNMIK). Like UNPROFOR, UNMIK was increasingly criticized by both parties as an obstacle to its own political goals. Pressure to end its mandate and to move toward final status came, as in Bosnia, from impatience in the US and Europe at the cost of troops and aid, despite the absence of conditions for sovereignty.[99] The Council thus requested the SG in May 2005 to commission a report (written by Kai Eide)[100] and appointed a negotiator (former Finnish president Martti Ahtisaari) as UN Special Envoy to initiate a negotiating process on final status in 2005, but by March 2007, Ahtisaari insisted that compromise was unattainable.[101] After sixteen years, the Security

[97] Sir Jeremy Greenstock, as quoted by Heinbecker, 'Kosovo', 542. This argumentation is rather disingenuous, given the order of events and its humanitarian consequences, but its importance remains, including its repeat in relation to Iraq in early 2003.

[98] SC Res. 1239 of 14 May 1999. Heinbecker describes in detail the G8 role, sought explicitly to avoid the publicness and formality of the Security Council, i.e. have no press, no voting, no veto, in 'Kosovo', 543 7.

[99] The reason is generally assumed to be the threat to regional stability that a rampage of Albanian violence against minority Serbs in Mar. 2004 revived (although low intensity violence was a feature of daily life throughout the 1999 2004 period) and the view that this was a consequence of growing Albanian frustration with UNMIK and impatience which would only intensify over coming years. In fact, the reason was the impending economic crisis predicted in 2004 for 2005, its threat to peace, declining donor interest, and the alternative solution to which (foreign finance) required resolution of Kosovo's status. See Susan L. Woodward, 'Does Kosovo's Status Matter? On the International Management of Statehood', *Südosteuropa* 55, no. 1 (Spring 2007), 1 25.

[100] UN doc S/2005/635 of 7 Oct. 2005.

[101] By 10 Mar. 2007, UN Envoy Martti Ahtisaari and his team had held seventeen rounds of direct talks with the two parties (Belgrade and Pristina) and twenty six expert missions to each capital. The two sides remained completely at odds with no compromise in sight, leading to the necessity of an imposed solution, he argued. (Transcript of Ahtisaari press conference that day, www.unosek.org). On 3 Apr. 2007, the Security Council began discussion of the action it should take on the most contentious issue since September 1991. Not all analysts agree (see, for example, Thomas Fleiner, in an interview with Valérie de Graffenried, 'Mieux vaut dix ans de négociations qu'un jour de guerre civile au Kosovo', *Le Temps*, 3 Feb. 2007), and the early stages of the Security Council debate included demands from a number of countries, with Russia leading, that a new UN envoy be selected to replace Ahtisaari.

Council had to confront the issue raised by European decisions in 1991 and by its own willingness to provide the instruments for European policy (and later, of US policy, too) rather than assert its own, collective policy. Although the EU had already set the key international precedent in 1991 and was committed in 2007 to take on the role of implementing a Council decision on Kosovo's status, it was more divided by the threat of the Kosovo precedent than any other decision on the former Yugoslavia.

Conclusion

The wars in Yugoslavia had disproportionate influence, given its relative size, death toll in the wars, and strategic insignificance to the major powers, on international practice and norms. Some resulted from Security Council actions, such as the creation of ICTY and the idea of international tribunals to prosecute war crimes in internal conflicts, and some resulted from angry reaction to Security Council actions, such as the increasing militarization of approaches to internal wars, humanitarian crisis, and other global threats promoted by a US-led coalition and supported by international outrage at the Council's alleged failure to authorize war in Bosnia, which was manifest first on the Kosovo question in 1999 and then in 2002–3 in Afghanistan and Iraq.

Because the prevailing criticism of the Council regards its policies toward Bosnia and the use of force, it is notable that a Bosnian NGO, the Research and Documentation Centre, which is painstakingly identifying all actual war casualties, reported in June 2007 not only that the actual numbers (about 100,000) were less than half of that claimed at various times during the war but that almost half of all deaths (and more than half of civilian casualties) occurred in May–August 1992.[102] One plausible explanation is that the military and humanitarian deployment by the Security Council in June–August did achieve the first of their two goals, to save lives while waiting for a political settlement, with striking effectiveness. This chapter has argued that the Council did fail, but in other regards whose importance for global collective security and the peaceful resolution of related disputes worldwide is far greater for those who want to prevent war in the first place than for its authorization of force once war has begun. The Council failed to defend the territorial integrity of a UN member state, and it then failed to establish and enforce rules on the recognition of statehood and borders, even though disputes over the two were the cause of the six Yugoslav wars and were well known in advance. It also failed in its implementation of Chapter VIII of the Charter, by

[102] Among others, see Nidzara Ahmetasevic, 'Justice Report: Bosnia's Book of the Dead', *Balkan Investigative Reporting Network (BIRN)*, 21 Jun. 2007 (www.birn.eu.com/en/88/10/3377/).

allowing European and US policies (including their many disagreements) to define Security Council policy rather than the reverse. Finally, it failed to provide transparent explanations of the policy and political-military strategy on which its resolutions were based, thereby preventing those who opposed to do so constructively and the Council itself to know when, and why, its own actions (as in Bosnia) may be vindicated. While the US and European powers and organizations bear full responsibility for the errors in the Yugoslav wars, the Security Council bears the larger moral responsibility, for never having sought to craft a policy of its own independent of the actions of its members, permanent and non-permanent, either for the Yugoslav conflicts or for the generic problem which it will continue to face, in Kosovo and in many other countries in the world.

CHAPTER 19

THE SECURITY COUNCIL AND THE BOSNIAN CONFLICT: A PRACTITIONER'S VIEW

RUPERT SMITH

This chapter is based on my experience of UN operations in the Balkans during the 1990s and, more specifically, during 1995 when I was in command of UNPROFOR in Bosnia. During 1993 and 1994, I was a senior staff officer in the Ministry of Defence in London and dealt daily with the Balkan operations and the UN, albeit from a national perspective. As Commander of UNPROFOR, I was temporarily on the inside of the UN structure and, nominally at least, serving the Security Council.

The chapter seeks to explain the fundamental cause of the Security Council's failure to achieve its stated purpose in the Balkans from 1992 to 1995, and to answer the following specific questions:

- How should the role of the SC be evaluated?
- Did the existence and actions of the SC significantly affect events in the conflict?
- How did the role of the SC change over the time of the conflict?

- What were the attitudes of the main actors towards the SC?
- What are the main views of the role of the SC in the conflict?

The Role of Strategy in UN Peace Operations

Before addressing these questions, a couple of fundamental premises regarding strategy and implementation of strategy against opponents should be explained. These premises do not serve so much to seek agreement, but rather provide the basis on which my own judgements are formed.

The first is to define 'strategy'. I know of no better definition than that provided by Field Marshal Alanbrooke:

> [S]trategy is to determine the Aim, which should be political: to derive from the aim a series of Military Objectives to be achieved: to assess these objectives as to the military require ments they create, and the pre conditions which the achievement of each is likely to necessitate: to measure available and potential resources against the requirements and to chart from this process a coherent pattern of priorities and a rational course of action.[1]

Two points of this definition are particularly important. The first is that the aim or outcome that military force is intended to achieve is political. Thus, to have a strategy for the use of military force, one must have a political aim that can be achieved by force. Without such a political aim, one may deploy force but will not be able to employ it to strategic advantage. If the political aim cannot be achieved by force alone, then the other measures necessary to achieve it must be closely aligned and coordinated with the military activities. Often the military will be acting in support of the other measures. Failure to establish the aim and, if necessary, close coordination between military and non-military activities leads to there being no linkage between the political purpose and the military acts. Secondly, a strategy is not so much a plan as a desired pattern of events to achieve a desired outcome. The architect does not produce the drawings for the builder – the military plan – until he has decided in the circumstances on what he is to build, for what purpose – the aim – and with what resource. A military plan should lay down a coherent course of events that leads to achievement of the aim in a specified set of circumstances. Subordinates are allocated objectives and the forces and resources to achieve them, together with the means necessary to command, supply, and administer the force in the circumstances. A strategy and, to a large extent, a

[1] David Fraser, *Alanbrooke* (London: Harper Collins, 1997), 187.

campaign plan describes the conditions one wants to achieve so that it is possible to use one's forces advantageously to achieve one's aim.

In addition to a strategy, one needs an organization at the strategic level to put that strategy into effect: to shape the pattern of events and develop them to achieve the desired goal. Such an organization, sometimes called a strategic headquarters (HQ), must link the political objectives to the military means. In the case of NATO, for example, the political leadership sits in the NATO HQ in Brussels, containing the North Atlantic Council, the Military Committee and International Military Staff. The Supreme HQ Allied Powers Europe, its military strategic HQ, is based in Mons, 40 kilometres away. Beneath the strategic HQ, one generally finds other HQs charged with achieving the military objectives outlined by the strategy. Particularly in the case of multinational operations where an organization is intervening in a conflict in another country, it is necessary to establish a theatre HQ. HQ UNPROFOR was such an HQ. The Security Council, the Secretary-General, and the UN Secretariat in New York constituted the political HQ, but there was no military strategic HQ to link to the theatre HQ of UNPROFOR in Sarajevo.

Moreover, in formulating a strategy, it is necessary to understand the opponent's one. A strategy involving the use of force is always used against an opponent with its own political aims, and, it must be supposed, the will and means to achieve it. It too will have a strategy, and will do everything in its power to frustrate one's strategy while advancing its own. It is even more difficult and complex when one intervenes in a fight between two or more parties with the intention of not taking sides. Then, to a greater or lesser extent, all groups are opposed to the intervener. This is the situation UNPROFOR found itself in.

Against this backdrop, it is possible to break down the role of the UN in military conflicts. At the strategic level, a UN operation has to address five issues in particular:

- First, it has to form the force. The UN needs to gain contingent forces from member states and, when necessary, provide them with equipment, as had to be done for the troops from Bangladesh for UNPROFOR, for example. Such a force will always be a collection of contingents rather than a cohesive whole. Each contingent is from a different state, each with its own reason for providing the contingent, and with its own organization, training, culture, law, and language.
- Secondly, the force needs to be dispatched. When the state providing the contingent cannot do this, the UN will contract a carrier to fly the contingent to the theatre of operations.
- Thirdly, the UN must direct the force to its objective within the overall context of the confrontation. This is the very essence of strategic command: it requires a clear idea of the desired outcome, the part the military and other agencies have in achieving it, and a comprehensive understanding of the current situation. Finally the strategic commander must be able to alter priorities and the sequence of

actions. As I will discuss later in this chapter, the UN HQ was unable to carry out this function.

- Fourthly, the force needs to be sustained. This involves more than ensuring that the force is adequately fed and housed, although this is important enough. It also involves the moral, legal, and personnel measures that motivate the manpower, and supporting functions such as the ability to communicate that make it possible for the force to act together. In UN peace operations, the national authority of each contingent is usually responsible for those matters to do with supporting the manpower and the UN is responsible for those matters relevant to the contingents acting together.
- Finally, it must recover the force. Recovering the force is not just a matter of arranging the transport. To meet this requirement, a mission needs to succeed in such a way that the force can return.

Each one of these functions is dependent on one or more of the others, and to be carried out successfully they require a clear definition of the desired outcome and knowledge of those opposed to it. Thus, without knowing the desired outcome and the opponent, one cannot know what force to form, cannot know what force to move and to sustain, and cannot know how to direct the force to achieve its goal and enable its recovery.

Applying this framework to UNPROFOR, it is possible to see that UNPROFOR's Bosnian operation was an operation without a strategy. It lacked an agreed outcome, or aim. Whatever political purposes the forces deployed into the Balkans served, they were not supporting goals directly related to a resolution of the conflict. Indeed there was no clear agreed idea as to the nature of the desired political outcome. There was discord between the European allies and the US over the nature of the political compromises necessary to resolve the situation. In a conflict such as that in Bosnia involving an international intervention, the different warring parties will never agree to the painful compromises necessary, as long as they believe that they can get a better deal by holding out for longer, in the hope that outside forces will manage to tilt the equation more in their favour. An international effort to achieve peace will never succeed unless there is peace within that international effort, and that was certainly not the case during much of the period of the Bosnian conflict up to mid-1995.

Hostage and Shield: UNPROFOR, 1994–5

In 1993, the search for a solution, the desired political outcome, was placed in the hands of Lord Owen acting for the European Union, and Ambassador Vance acting for the UN, as co-chairmen of the Conference for the former Yugoslavia. These two

travelled widely and consulted deeply in their efforts to find a resolution to the conflict. Their efforts were undercut by the Clinton administration in 1993 on the grounds that the US considered that too much, geographically and morally, was being given to the Bosnian Serbs. From this point onwards, the US pursued its own Balkan policy, concentrating in the first instance on supporting Croatia's military development and later sponsoring the Bosnian Croat Federation. The European allies were surprised by the US pulling the rug from under the Vance–Owen Plan and, in the aftermath, the Contact Group was formed in 1994 (so named to show the intention of staying together), including France, Germany, Russia, the UK, and the US, to find a resolution to the conflict.

Throughout this search for a political solution, the Security Council remained responsible for the military operation. However, the operation was limited in purpose, and states were so averse to risk to their contingents that they retained in large measure the authority to deploy and to employ force. The initial purpose of the operation was to protect the delivery of humanitarian aid. However, as the fighting continued with the associated scenes of atrocities, destroyed homes, and refugees, ever more was expected of UNPROFOR. Expectations were held by those whose lives had been disrupted by war, by the losing factions, and by the US. These expectations were expressed in Security Council resolution after resolution, and were expectations that the force could not fulfil. UNPROFOR was hindered by a number of limitations: it was bound by national caveats on the use of its contingents; the extra contingents required for the new tasks were slow to arrive and never in the numbers required; the troop-contributing states were reluctant to allow UN HQ to redeploy their contingents away from the original tasks; and it lacked suitable firepower.

In addition, NATO became involved in the military aspects of the conflict. The US, spurred on by television pictures of Bosnian Serb aircraft attacking refugee columns and seeking to apply pressure to the Bosnian Serbs, proposed that a NATO-imposed no-fly zone should exist over Bosnia. The Security Council established a ban on military flights in October 1992,[2] but only in March 1993 authorized the implementation of the ban by NATO,[3] and the North Atlantic Council agreed to enforcement in April 1993. On 28 February 1994, four warplanes violating the no-fly zone over Bosnia and Herzegovina were shot down by NATO aircraft. It was also agreed that, should UNPROFOR call for it, NATO aircraft would give close air support to UN peacekeepers that came under attack. In 1994, the role of NATO airpower was expanded when the North Atlantic Council declared the establishment of exclusion zones for heavy weapons around so-called 'safe areas', and threatened air strikes against any heavy weapons found in those zones.

Until the end of 1994, force was threatened and applied incrementally by the Security Council and by NATO, to mitigate the awfulness of the conflict and to

[2] SC Res. 781 of 9 Oct. 1992. [3] SC Res. 816 of 31 Mar. 1993.

prevent it spreading rather than to support the achievement of a resolution of the matter. The efforts of Owen and Vance and the subsequent efforts of the Contact Group during 1994 were made irrelevant by the failures of the different states to reach agreement not only on which political deal they should seek to impose on the parties, but also on how far they were prepared to go in enforcing its implementation by military means. In these circumstances, and standing between two or three factions at war with each other, UNPROFOR (and so by implication the Security Council) became in my words in 1995 either a hostage or a shield to one or other party. The tragic story of the safe areas and Srebrenica gives a good example of the weakness of these arrangements.

During 1992, the Bosnian Serbs in the east of the country had maintained control of substantial areas of territory. The humanitarian situation inside these areas was poor and UNHCR and UNPROFOR became caught, in hindsight, in the first of the hostage or shield situations that mark the story of UNPROFOR. As a UNHCR official explained to Lord Owen:

> [T]he Muslim pockets were used by the Sarajevo government in November [1992] as pressure points on the international community for firmer action. The longer that aid convoys were unable to reach them, the greater the pressure on the mandate. When convoys did succeed, calls for firmer action were unwarranted. Two weeks after the first successful delivery Muslims launched an offensive towards Bratunac. Thus the integrity of UNHCR and UNPROFOR was undermined, further convoys were impossible, and the pressure for firmer action resumed.[4]

The Bosnian Serbs attacked the eastern Muslim area in January 1993 and the defenders were driven into enclaves centred on two towns, Srebrenica and Goražde, and a village, Žepa. By mid-February, the humanitarian situation in the enclaves was very bad, there was little food or medicine, and people were dying of malnutrition and of simple wounds. Convoys were denied access by the Bosnian Serbs. The pressure on the 'international community' to do something intensified. In April, the Security Council requested the Secretary General to increase UNPROFOR's presence in eastern Bosnia.[5] The UN force commander led a small group drawn from his state's contingents into Srebrenica, and rapidly became personally involved in the crisis on the ground.

At the same time, the idea of declaring safe areas was being discussed in capitals, in the media, and in the Security Council. The idea of having a zone in which combat does not take place is not new. Regardless of the historical evidence, the idea had been voiced in relation to the Balkan crisis from about 1992 onwards, with its proponents drawing on the recent use of 'safe havens' in Kurdistan in 1991 and 1992 in the aftermath of the Gulf War. In Kurdistan, the idea had worked, it was

[4] Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (London: Penguin, 1996), 80.

[5] SC Res. 819 of 16 Apr. 1993.

thought, because after the war over Kuwait, the Iraqis did not see the UK and US as neutral or impartial, and the allies had demonstrated their willingness to use force. Furthermore, the terrain allowed for the use of airpower, and the areas in question were not isolated and could be reached by crossing the border with Turkey, a NATO ally. Unfortunately, none of these criteria applied in Bosnia. Nevertheless, the idea of demilitarizing the area around Srebrenica began to be discussed in capitals and the UN, and the national representatives all worked hard to draft a Security Council resolution, while at the same time avoiding exposing their own nation to risk.

One has only to read the 'constructive ambiguities' of Resolution 819 of 16 April 1993 and Resolution 836 of 4 June 1993 to see how well they did. As Shashi Tharoor, then Special Assistant to the Under-Secretary-General for Peacekeeping Operations, commented in an article for *Survival* in 1995, the Security Council resolutions

> required the parties to treat [the areas] as 'safe', imposed no obligation on their inhabitants and defenders, deployed UN troops in them but expected their mere presence to 'deter attacks', carefully avoided asking the peacekeepers to 'defend' or 'protect' these areas, but authorised them to call in airpower 'in self defence' a masterpiece of diplomatic drafting but largely unimplementable as an operational directive.[6]

This drafting of the resolutions had only limited military input. The UN HQ in New York had at the time a small military staff whose primary purpose was to advise the Secretary-General what forces would be required from the nations to put resolutions into effect and to monitor the current operations. They depended on reports from the field, and input from national governments for most of their information. The bulk of military advice about safe areas, if it was given or received at all, came from the military staff in the capitals. Their interest, however, was not so much whether or not they thought the idea was workable, but rather the potential risk to their forces and the anticipated demands for more manpower.

In short order, other areas, Žepa, Goražde, Sarajevo, Tuzla, and Bihać were declared 'safe'.[7] UNPROFOR was never provided with the necessary forces for this new task. The military planners assessed that some 34,000 extra troops would be necessary to defend the areas. In the end, some 7,000 were found but they were slow to arrive – the last contingent did not reach Bihać until late in 1994. Nevertheless, UNPROFOR had been given the task and was responsible, particularly in the eyes of the Bosnians, for the supply of food and medicine into the areas as well as for their security. When these responsibilities were not adequately met, the Bosnians and their international supporters used the fact to beat the UN for its failure and to demand more robust international action. In the eyes of the Bosnian Serbs, UNPROFOR was responsible for keeping the safe areas demilitarized, and when the Bosnian Muslims mounted operations from them, which they did

[6] Shashi Tharoor, 'Should UN Peacekeeping Go "Back to Basics"?' *Survival* 37, no. 4 (1995/96), 60.

[7] SC Res. 824 of 6 May 1993 declared Sarajevo, Bihać, Tuzla, Srebrenica, Žepa, and Goražde as safe areas.

increasingly, the inhabitants and the UN were 'punished' by the denial of convoys and the safe area was attacked. This epitomized the hostage and shield situation. It described generally UNPROFOR's relationships with the warring parties. In the case of Srebrenica, the UN forces in the safe area became a shield behind which the Bosnian Muslims could operate to develop their strategy, and a hostage to the Serbs as they endeavoured to develop theirs.

The Security Council, having willed the end of the conflict, was unable to raise the means to reach it or think of another way to achieve the end within the means available, or rather the Secretary-General and UN HQ was unable to do this on their behalf. Structurally, the UN was unable to fulfil the function of a strategic HQ. It was not able to form the force, states did not provide contingents, it was unable to direct the force, the operation had no aim. The political process was stagnant. There was no strategic direction, there was no strategic military goal to achieve, there were no theatre-level military objectives. All acts had only tactical results: UNPROFOR opened up routes, secured and ran Sarajevo Airport, and guarded convoys of aid. As events unfolded, the ability to achieve even the humanitarian tasks was eroded. Although there was no form of strategic or theatre direction, nobody appeared to have noticed how dangerous the position was for the UN. The very standing of the UN, its strategic essence, was at risk. This risk became a reality in 1995.

The Marginalization of the Security Council, 1995

By mid-1995, UNPROFOR was operating in an international political vacuum and the fighting continued. After the Serbs had taken some 300 UN hostages, the protection of the force became the Security Council's primary concern, and the use of force in any circumstances except self-defence was denied. The authority to order air attacks was removed from the military commanders and held by the Secretary-General. In July, the safe area of Srebrenica was overrun by the Bosnian Serbs, and the male captives were murdered in their thousands. The safe area of Žepa fell shortly after, although without the same murderous consequences as in Srebrenica. Faced with the prospect of the Goražde safe area, which was defended by a British unit, being attacked the London Conference was called in late July. As a result of this conference, the Security Council was effectively prevented from taking any further strategic decisions in the matter. It was decided, essentially by the United Kingdom and France with the approval of the United States, that any attack on Goražde would be met by continuous and disproportionate air attacks until it stopped. Furthermore the decision to initiate such a response was to lie with the

military commanders in the theatre. Soon after the conference, this threat was extended to cover attacks on any of the remaining safe areas.

In early August, after the Croatian Army had swept the Serb defenders aside, the UN Protected Areas in Croatia were cleansed of their inhabitants in the largest case of ethnic cleansing in the whole war. The protection of these areas in Croatia, or more correctly of the Croatian Serbs who lived in them, had been the original purpose of UNPROFOR. As the fighting spread into Bosnia, UNPROFOR's command was divided with the HQ in Sarajevo being responsible for Bosnia and the one in Zagreb being responsible for the Protected Areas in Croatia. In the same month, and as a direct result of the Croatian attack, the US announced the Lake Initiative and became, through the representation of Richard Holbrooke, actively and positively engaged in the political process.

At the end of August, after mortar rounds were fired into Sarajevo, UNPROFOR, supported by NATO, put the decision of the London Conference into effect and engaged the Bosnian Serbs. The Secretary-General learnt of these attacks after the decision was made. The attacks, particularly the air raids, went on for some three weeks. By the end of the first week of September, political and military actions were being linked, and led to a ceasefire throughout Bosnia and the subsequent signing of the Dayton Accords in November 1995.

UNPROFOR was able to take such action, among other things, because of the decision made earlier in 1995 to create a Rapid Reaction Force (RRF). Originally formed during May 1995 from forces already deployed in Bosnia, when air strikes were used against the Bosnian Serbs, it was subsequently decided to retain such a force. Two armoured infantry battle groups and an artillery group were placed under HQ RRF, and elements of a British airmobile brigade were deployed on the coast near Split. The declared purpose of the RRF was to defend UNPROFOR. When the RRF artillery was deployed in range of Sarajevo, the UN had a force that could match that of the Bosnian Serbs; a force that was immediately to hand and was not constrained by the characteristics of airpower. It was this force, together with NATO's 5th Allied Tactical Air Force, that carried out the attacks that started in late August. Commander UNPROFOR chose the targets, with the exception of those to do with air defence, and using the two forces in concert broke the siege of Sarajevo within a few days and then continued to apply pressure on the Bosnian Serbs.

In the six weeks from mid-July to the end of August, forces acting on the basis of Security Council resolutions had failed to protect the people in the safe areas of Srebrenica and Žepa in Bosnia, and the Protected Areas of the Krajina in Croatia. All political control over the use of force had been removed from the Secretary-General and his subordinates. From August onwards, UN forces had become actively engaged against one side, the Bosnian Serbs, in an inter-factional war in direct support of the US-led political process to bring the matter to resolution.

Conclusion

By way of a conclusion, I want to return to the specific questions raised at the beginning of this chapter. The performance of the Security Council was poor. The existence and actions of the Security Council negatively affected events, as it gave member states, in particular its five Permanent Members, either a reason not to take action, or a process through which they could will the end without taking responsibility for achieving it. As a result, the role of the Security Council became increasingly less significant as the conflict continued, until it was marginalized in July/August 1995, and sidelined in the Dayton negotiations. The consequence of this failing was the destruction of the credibility of the UN. The Bosnians, Serbs and Croats, all expected that UN forces, once deployed, would take control of events and create order if not justice. They expected power to be exercised. Instead, over the years as the Security Council and the UN demonstrated their lack of resolve and powerlessness, and the main actors and then the on-looking world, led in large measure by the US, became contemptuous.

In summary, if you choose to intervene in someone else's war, whether in the Balkans or Darfur, and you want something to happen, you had better be prepared to fight one or all parties. But to do this you need to decide several key matters: what you want to happen, what part the use of force has in achieving it, and how the result is to be exploited to advantage and by whom. In short, you need a strategy. If the Security Council and its executive HQ is to change so as to wield force for good, then structural and organizational changes are necessary. These changes must enable the formation of a strategy for the use of force, and the execution of this strategy to achieve a successful conclusion in the face of opposition.

CHAPTER 20

THE SECURITY COUNCIL AND THE AFGHAN CONFLICT

GILLES DORRONSORO

The conflict in Afghanistan has persisted in various forms since 1979, making it one of the longest conflicts since 1945. Twice, foreign powers intervened militarily (the USSR from 1979 to 1989; and the US from 2001 to the present), while neighbouring countries – notably Pakistan, Uzbekistan, and Russia – have continuously supported different armed Afghan military movements. The Afghan conflict is a good case study by which to analyse the role of the UN Security Council, with the conflict spanning a pivotal period of evolution in the international system. At the beginning of the conflict in 1979, the Security Council was paralysed by the standoff between the Soviet Union and the Western bloc. Following the breakdown of the Soviet Union, it was widely believed that the Security Council would start to function as envisaged in the Charter. The debate surrounding UN Secretary-General Boutros Boutros-Ghali's report *An Agenda for Peace*[1] reflects a concentrated attempt to create a stronger security system led by the Council. However, the attacks of September 11 challenged the central role of the Security Council,

[1] UN doc. A/47/277 S/24111 of 17 Jun. 1992. The report aimed at reinforcing the decision making processes for preventive diplomacy, peace making, and peacekeeping.

confronting the UN with a hegemonic superpower willing to bypass the Council, threatening to marginalize it.

The key question explored by this chapter by reference to the Afghan conflict is whether the Security Council is an institution capable of managing an international security regime. An international security regime is a group of implicit or explicit norms, rules, and procedures, around which the expectations of the various actors converge in decisions regarding international security.[2] Has the Council contributed, if only marginally, to the definition of behavioural norms for the various actors in the case of Afghanistan? Has the post-Cold War era been favourable to developments in the collective security framework? Has the Security Council been able to establish a system of collective security that serves more than the specific national interests of its Permanent Members?

The chapter will proceed in three sections. The first section will examine who has determined the Council's policy with regard to Afghanistan, and the specific interests that have shaped the Council's approach. As the chapter shows, the level of Security Council involvement in Afghanistan has been determined by the national interests of its Permanent Members, with phases of lack of interest alternating with strong mobilization around issues where little is at stake. The Security Council's approach has generally been limited and short-term, and has failed to manifest an overarching strategy. This has meant that the Council's approach has at times been in conflict with that of other UN agencies involved in Afghanistan, such as ad hoc groups or the Secretariat. These dynamics may change over time, but the Council has never appeared to be in a position to provide the impetus for a global policy representative of the interests of the 'international community'.

The second section will examine the two different forms of involvement by the Security Council in the Afghan conflict, namely, establishment of the sanctions regime from 1999–2001,[3] and development of the framework for the reconstruction of Afghanistan following the 2001 US intervention. This section will explore the purpose behind the sanctions taken against the Taliban regime, and the rationale of the Council's political decisions in rebuilding Afghanistan.

The final section will examine the role the Security Council played in upholding the *jus ad bellum* (the law governing the use of force) and the *jus in bello* (the law of armed conflict) in the course of the Afghan conflict. The American intervention of 2001 was an exceptional case in that the preceding attack had been committed by a non-state actor. In the wake of the terrorist attacks on the US on 11 September 2001, the Council recognized the right to self-defence against such attacks by non-state actors[4]. In the year following the attacks, the US consistently argued for a broadening of the concept

[2] This follows Stephen Krasner's definition of a regime, in Stephen D. Krasner, *International Regimes* (Ithaca: Cornell University Press, 1983), 2.

[3] A targeted sanctions regime against the Taliban and al Qaeda has continued after 2001. See Appendix 4.

[4] SC Res. 1368 of 12 Sep. 2001; SC Res. 1373 of 28 Sep. 2001.

of self-defence, to include the notion of pre-emptive self-defence, marking a possible shift in the legal regime governing the use of force. In addition, the conflict in Afghanistan and the linked US-led global 'war on terror' has raised a range of challenges to the law of armed conflict, such as torture of terrorist suspects and their indefinite detention in Guantanamo Bay, issues on which the Security Council has been largely silent.

The Development of Security Council Policy

Two factors have shaped the nature of the Security Council's involvement in the Afghan conflict. First, the Council only got involved when its Permanent Members had a direct interest in developments in Afghanistan, and when there was consensus among them. In theory, the Security Council is a relatively broad authority consisting of fifteen states, while other members of the UN can chime in on debates though they lack voting rights. In practice, however, only the Permanent Members played a role in the resolutions regarding Afghanistan. Moreover, the decisions of the Council, at least in the case of Afghanistan, do not reflect a larger evolutionary process in institutional design on matters of law or a collective security. Rather they are the result of specific negotiations between the powers based on a traditional diplomatic model. There has been no long-term strategy for dealing with the Afghan conflict in the Council, and it was not involved at key moments in the evolution of the conflict. This is most likely attributable to the way in which resolutions were negotiated in the Council. Secondly, in certain cases, the Council's policy was either in direct opposition or ran parallel to that of the Secretariat or of ad hoc institutions involved in trying to resolve the conflict in Afghanistan, and was thus implemented without any regard to the impact of its policies on wider efforts to address the conflict.

The interests of the Permanent Members

The Security Council's failure to address the Afghan conflict following the 1979 Soviet intervention did not indicate a lack of interest in the conflict among its member states. Rather, the involvement of several of the Permanent Members in the conflict made the crisis part of the broader confrontation between the USSR and the West. The Soviet intervention on 27 December 1979, and its consequences, highlighted the Cold War paralysis of the Council. First, by intervening in another state, a member of the

Council had violated one of the central principles, if not *the* central principle, on which the post-Second World War international security system was founded – that of sovereignty and non-intervention. The Soviet Union's attempts to legitimize the intervention by appealing to an invitation by the government of Afghanistan, in circumstances where Soviet commandoes had assassinated President Amin, convinced no one save the closest of Soviet allies. On the other side of the conflict, the Western countries armed, trained, and diplomatically supported the Mujahideen in their fight against Soviet occupation.[5] Secondly, the Council found itself marginalized because of its inability to condemn the intervention due to the USSR's exercise of the veto. Resolution 462 of 9 January 1980 noted the Council's inability to perform its principal responsibility – the maintenance of international peace and security – and transferred the issue to the General Assembly via the mechanism of the Uniting for Peace Resolution. The General Assembly's call for the immediate, unconditional, and total withdrawal of the foreign troops from Afghanistan was ignored by the USSR.[6]

The Soviet occupation of Afghanistan can be divided into two periods. Until 1985, the Soviets directed their efforts towards military victory and attempted to stabilize the country. After 1986, the USSR decided to withdraw its troops and sought to internationalize the crisis, and to establish a government of 'national reconciliation' that would include representatives of the Mujahideen, proposals that the US did not take seriously until the end of 1987. When the Geneva Accords were negotiated in 1988 under the auspices of the UN Secretary-General, the Security Council did not take part in the negotiations. Instead, the US and the USSR were the guarantors of the Accord's provisions.

To support the implementation of the Accords, the Secretary-General deployed the UN Good Offices Mission in Afghanistan and Pakistan (UNGOMAP).[7] The presence of UNGOMAP (from May 1988 to March 1990) could have strengthened the Soviet-supported regime in Kabul, as it aimed to limit further conflict and establish local ceasefires between the government and the US-supported Mujahideen. The effective implementation of the peace agreement, most notably the 'non-intervention' clauses, however, was difficult because of UNGOMAP's insufficient resources, compounded by a lack of political will among some members of the Security Council to implement the Accords fully. When the US withdrew its support for the Mujahideen after the failed siege of Jalalabad in 1989, the Mujahideen alliance quickly disintegrated and collapsed into civil war.

Between 1989 and 1991, the Security Council was, for a number of reasons, largely absent from the crisis in Afghanistan. The Council's Permanent Members did not feel

[5] According to Charles Cogan, the United States gave Afghan guerrillas two billion US dollars in aid. The Gulf States gave their side an equivalent amount. See Charles Cogan, 'Partners in Time: the CIA and Afghanistan since 1979', *World Policy Journal* 10, no. 2 (1993), 73 82. France and Britain also trained and financed certain groups, notably that of Ahmed Shah Masud.

[6] GA Res. ES 6/2 of 14 Jan. 1980.

[7] SC Res. 622 of 31 Oct. 1988; GA Res. 43/20 of 3 Nov. 1988.

that their interests were directly affected. While Russia feared an Islamist contagion in Central Asia, in particular in Uzbekistan and Tajikistan, it failed to rally the United States in support of its concerns. It was only gradually that the US became aware of the outright hostility against it from the various radical groups based in Afghanistan. Afghanistan sheltered networks and hosted training camps established in the 1980s, with collaboration between the Islamist movements and the Afghan parties actively encouraged by the United States.[8] The majority of the Afghan groups, including those that later formed the Northern Alliance, were in contact with Islamist movements based in Peshawar in Pakistan, which had provided financial assistance and volunteers for the Afghan jihad. Their time in Afghanistan was an important, if not decisive, experience for the thousands of militants involved in conflicts in Kashmir, the Caucasus, and Central Asia. These militants became more and more radicalized and the dozens of small groups present in Peshawar at the end of the 1980s became increasingly anti-Western.[9] The Gulf War instigated the final rupture with the United States, in particular because of the presence of American troops in Saudi Arabia.

The United States was initially favourable to the Taliban, partly due to economic considerations. Thus, when the Taliban captured Kabul in 1996, this was relatively well received by the then Under-Secretary of State Robin Raphael.[10] When neighbouring states became increasingly involved in Afghanistan, they were not explicitly named and condemned by the Security Council in the few resolutions relating to Afghanistan during this period. The resolutions merely emphasized the importance of non-interference in the internal affairs of Afghanistan.[11] Pakistan's extensive support of the Taliban in its attempt to capture Herat in 1995, for example, was not explicitly condemned. The consolidation of the Taliban's power could have opened the way to international recognition, thus depriving the opposition of its last chances.[12]

It was the presence of radical groups on Afghan soil that ultimately precipitated the rupture with the United States. After the fall of Kabul at the hands of the Taliban in 1996, foreign non-Pakistani radical groups, whose presence had been diminished by the previous fall of Kabul four years earlier, returned to Afghanistan.

[8] See John Cooley, *Unholy Wars* (London: Pluto Press, 2002).

[9] The organizers of a number of anti American attacks had spent time in Afghan camps, including the perpetrator of the 1993 World Trade Centre bombings, Ramzi Yusuf (a Kuwaiti of Pakistani descent) and Mir Aimal Kansi (a Pakistani citizen) accused of firing outside CIA headquarters in January 1993. Consequently, Pakistan was nearly added to the US State Department's list of terrorist countries in 1994. This would have resulted in the cancellation of international foreign aid, which was essential to Pakistan's economic survival. In response to these criticisms, Pakistan drove out the Jihadist militants, pushing them towards Afghanistan.

[10] Until 1998, oil companies, in particular UNOCAL, worked towards developing relations with the Taliban with the hope that they would be able to transport oil and gas from Turkmenistan through Afghanistan. The future US ambassador to Afghanistan, Zalmay Khalilzad, initially advocated dia logue with the Taliban. However, he later changed his opinion and advocated the destabilization of the Taliban. See Zalmay Khalizad and Daniel Byman, 'Afghanistan: The Consolidation of a Rogue State', *Washington Quarterly* 23, no. 1 (Winter 2000).

[11] See for example SC Res. 1076 of 22 Oct. 1996.

[12] As it was, only Saudi Arabia, Pakistan, and the United Arab Emirates recognized the Taliban regime.

Militants from the Uzbek Islamic Movement (an estimated 2,000 men) and Arabs from different groups (an estimated 3,000 men) installed bases with the consent of the Taliban.[13] The coordination of the foreign combatants was done under the direction and instigation of Osama bin Laden, whose marriage to the daughter of Taliban leader Mullah Omar would only further strengthen his ties to the Taliban. The 'fatwa' issued on 23 February 1998 and signed by various persons in charge of al-Qaeda, sheds light on al-Qaeda's vision of the world and its larger political objectives, including bringing an end to the presence of American forces in Saudi Arabia, the sanctions regime against Iraq, and the occupation of Palestine. Additionally, however, the text calls for an indiscriminate attack against Americans (military or civilian) in the name of jihad.[14] On 7 August 1998, eight years after the arrival of American troops in Saudi Arabia, the American embassies in Nairobi (Kenya) and Dar Es Salaam (Tanzania) were the target of two simultaneous attacks, in which 247 people, including twelve Americans, died.

As a result of these attacks, the US approached the Security Council to apply sanctions against the Taliban. This marked the beginning of a new phase of direct Security Council involvement, starting with a rapprochement on the issue between the United States and Russia, the latter of which had been arming the Taliban's opponents for many years. The Council did not propose a general plan for resolving the Afghan civil war, but focused on the link between the Taliban and al-Qaeda. The only condition to lift the sanctions was the extradition of bin Laden under the provision specifying the 'closing of terrorist facilities', a provision also included to satisfy Russian concerns over Chechen and Uzbek groups located within Afghanistan.[15] The other dimensions of the conflict were clearly peripheral to the Council, exemplified by the fact that the Taliban's efforts at opium production did not elicit any repercussions, though it undermined their social base in the east of the country which was to prove advantageous to the United States in 2001. Thus, it was not the Afghan conflict per se which elicited greater involvement by the UN Security Council, but rather the conjectural alliance between two Permanent Members – Russia and the US – and the association increasingly made by the US between Afghanistan and terrorism.

Did the Security Council advance a coherent policy?

In the case of Afghanistan, Cold War paralysis and lack of interest of the Council in the early 1990s led, in various forms dependent on the period, to the involvement of

[13] Anthony Davies, 'Foreign Fighters Step Up Activity in Afghan Civil War', *Jane's Intelligence Review* 13, no. 8, (Aug. 2001).

[14] For a translation and commentary on the text see Magnus Ranstorp, 'Interpreting the Broader Context and Meaning of Bin Laden's Fatwa', *Studies in Conflict & Terrorism* 21, no. 4, (1998), 321 30.

[15] SC Res. 1193 of 28 Aug. 1998.

other UN actors. In particular, the repeated criticisms by the General Assembly, starting with the emergency special session on 14 January 1980, weighed heavily on the policy of the USSR. Capitalizing on the paralysis of the Council, the Secretary-General positioned himself as the lead mediator in the long negotiations which led to the Geneva Accords.[16] The Security Council was not involved in the Geneva talks, largely due to a desire on the part of both the USSR and the US to underline their status as superpowers.

Following the Soviet withdrawal from Afghanistan, the lack of interest of the majority of the Permanent Members and the absence of any agreement opened the door to greater involvement by regional powers, and the handling of the Afghan crisis passed to actors other than the Security Council, notably the Secretariat and the 'Six-plus-Two' group.[17] The UN's involvement had been foreseen in the Geneva Accords, in particular with the formation of the UN Office for the Coordination of Humanitarian and Economic Assistance Programmes in Afghanistan (UNOCA), which was initially placed under the direction of Benon Sevan. The collapse of the Najibullah regime and the Mujahideen's takeover of Kabul in 1992 marked the lowest point in the United Nations' involvement, leading to the termination of all peace processes in relation to Afghanistan. In 1994, the UN Secretary-General restarted the diplomatic process by appointing Mahmoud Mestiri as his Special Representative to Afghanistan,[18] in charge of a new UN Special Mission to Afghanistan (UNSMA). This mission would later be directed by Lakhdar Brahimi, followed by Francesc Vendrell in 2000–1. However, it was not the Security Council but the General Assembly that authorized the establishment of UNSMA.[19] UNSMA's mandate was to resume negotiations between the Taliban and the Northern Alliance in an attempt to broker a ceasefire and, if possible, to support the creation of a broad-based government. UNSMA was thus, first and foremost, a diplomatic mission, and supposed to be neutral between the various parties to the conflict.

There was an inherent contradiction between the General Assembly's resolutions, which called for a halt to the delivery of weapons to both warring parties and

[16] Diego Cordovez and Selig Harrison, *Out of Afghanistan. The Inside Story of the Soviet Withdrawal* (Oxford: Oxford University Press, 1995); Barnett Rubin, *The Search for Peace in Afghanistan: From Buffer State to Failed State* (New Haven: Yale University Press, 1995), 39.

[17] Established in 1997, the 'Six plus Two' group is comprised of Afghanistan's neighbours (Paki stan, Iran, Turkmenistan, Uzbekistan, Tajikistan, China), as well as the United States and Russia. Its official objective is to build consensus on policy pertaining to the crisis in Afghanistan. For example, in Jul. 1999, the group published a declaration denouncing their support of the armed combatant groups in Afghanistan. In practice, however, this declaration was not followed and had little effect Pakistan continued to arm the Taliban, and Russia continued to arm the Northern Alliance. Following a meeting in New York on 15 Sep. 2000, the group restated its principal objective: 'no military solution to the Afghan conflict', and encouraged the parties to the conflict to 'enter in negotiations aimed at bringing about a political solution'.

[18] Rubin, *The Search for Peace in Afghanistan*, 135.

[19] GA Res. 48/208 of 21 Dec. 1993.

the brokering of a political settlement, and the Council's position as it developed after 1999, which called for an embargo exclusively against the Taliban.[20] The Council's sanctions criminalized the Taliban (even though the Taliban's ties to the US were to continue informally until 2001) and excluded the Taliban from the proceeding negotiations. Following the closure of the Taliban offices in New York as demanded by the Security Council in Resolution 1333, diplomatic contact between the UN and the Taliban virtually ceased, thus putting a de facto end to the peace negotiations organized by Francesc Vendrell.

Sanctions and Reconstruction: The Council's Political Failure

Since 1999, Security Council involvement in Afghanistan has taken two distinct forms. First, the Security Council established sanctions against the Taliban regime between 1999 and 2001. Secondly, the Security Council helped develop the framework for the reconstruction of Afghanistan following the American military intervention in 2001.

Sanctions against the Taliban

The American strategy, as it unfolded before the September 11 attacks, did not aim to dismantle the Taliban regime but rather to place enough pressure on the Taliban to obtain bin Laden's expulsion. Following the attacks in Africa, the US had two main policy options with regard to the Taliban and Osama bin Laden. Its first option was to support the fight against the Taliban by supporting Ahmed Shah Masud and by putting pressure on Pakistan. However, the US had a history of poor relations with Masud and did not want to risk opposing Pakistan's interests. The second option was for the US to recognize the Taliban and to speed up the reconstruction of the Afghan state, strengthening the parts of the Taliban opposing the presence of radical movements. Such a long-term strategy, however, was hard to sell politically in the US, and it was thwarted by an anti-Taliban movement in the media, which in particular emphasized their treatment of women. Thus, the US chose a third option, to apply gradual pressure to the Taliban through sanctions, despite the fact that such sanctions were an ineffective tool against this type of regime.

[20] These conflicting aspects are evident in SC Res. 1333 of 19 Dec. 2000, which renewed the sanctions and, at the same time, affirmed its support for the 'Six plus Two' group and UNSMA.

The sanctions against the Taliban were adopted unanimously in the Council on 15 October 1999,[21] and extended on 19 December 2000.[22] The sanctions envisaged an arms embargo, the reduction of on-site diplomatic representation, and the termination of all Taliban representation abroad. Moreover, the financial assets of the Taliban leaders were frozen and the national air carrier Ariana was no longer authorized to travel beyond the borders of Afghanistan. These sanctions were not on the same scale as those against Iraq after the 1991 Gulf war, which had severe humanitarian consequences for Iraqi society. In turn, the sanctions only had a marginal effect on the economy, as Afghanistan's physical infrastructure was largely non-existent, and as it would have been difficult for political reasons to prevent UN agencies from providing humanitarian aid to a country on the brink of famine due to a persistent drought.[23]

The Taliban rejected the extradition of bin Laden to the US, and was supported in this by the Government of Pakistan prior to September 11.[24] Having rejected the options of either trying bin Laden in Afghanistan or extraditing him directly to the US, the Taliban proposed several intermediary solutions, including the extradition of bin Laden to a Muslim country after having first been judged by Afghans, Saudis, and an additional third country *ulema*. Ahmed Muttawakil, the Taliban's foreign minister, proposed putting bin Laden under tight security watch of the Organization of the Islamic Conferences (OIC). It seems that this last option also entailed a deal whereby bin Laden would be expelled in return for diplomatic recognition of the Taliban regime. Whether due to a lack of support by Mullah Omar or the refusal of the US, these propositions were rendered moot.

Any agreement most likely failed because of inadequate understanding of and uncertainty about the ideological and military constraints on the Taliban, and the Taliban's mistrust of the American government. Rather than the US being regarded as a party seeking to enter negotiations, a perception the American government would have been delighted with, the West was perceived as an existential threat. This reflected not only the growing influence of bin Laden on the Taliban regime

[21] SC Res. 1267 of 15 Oct. 1999.

[22] SC Res. 1333 of 19 Dec. 2000. There seems to be an escalation in the terminology used by the Council in the resolutions leading up to SC Res. 1333: 'expressing its grave concern at the continued Afghan conflict which has recently sharply escalated due to the Taliban forces' offensive in the northern part of the country' (SC Res.1193 of 28 Aug. 1998); 'deeply disturbed by the continuing use of Afghan territory, especially areas controlled by the Taliban, for the sheltering and training of terrorists and the planning of terrorist acts' (SC Res. 1214 of 8 Dec. 1998); and '[s]trongly condemning the continuing use of the areas of Afghanistan under the control of the Afghan faction known as Taliban, which also calls itself the Islamic Emirate of Afghanistan (hereinafter known as the Taliban), for the sheltering and training of terrorists and planning of terrorist acts, and reaffirming its conviction that the suppression of international terrorism is essential for the maintenance of inter national peace and security' (SC Res. 1333 of 19 Dec. 2000).

[23] See also the wider discussion of the impact of sanctions by David Cortright, George Lopez, and Linda Gerber Stellingwerf, in Chapter 8.

[24] See the interview with President Musharraf in the *Washington Times*, 21 Mar. 2001.

but also an ardent nationalist reaction following the US bombings of alleged terrorist training camps in Afghanistan on 20 August 1998, following the terrorist attacks on US embassies,[25] as well as the importance of transnational solidarity for the Taliban among a range of Islamic societies. The sanctions regime failed because the Taliban, isolated diplomatically, was radicalized without having its capacity for fighting diminished due to continued backing by Pakistan. Indeed, without pressure on Pakistan the sanctions had no real impact. Additionally, the Taliban benefited, particularly with respect to their large offensives, from the support of Pakistani fundamentalists. The Taliban regarded itself as untouchable – previously because they believed an American intervention was unlikely and now because they were convinced that they would be able to deal with the American invasion as the Afghans had dealt with the Soviet invasion in the 1980s.

The extension of sanctions in December 2000 was followed by further radicalization of the regime in 2001. In this light, the destruction of the monumental Buddhas of Bamiyan marked a definitive rupture with the international community. This decision was essentially political, as Mullah Omar had previously issued a decree in July 1999 calling for the protection of pieces of art, and specifically the Buddhas. A new decree issued on 26 February 2001 led to their destruction with dynamite in March, despite numerous attempts to dissuade the Taliban from this course of action.[26]

The post-2001 reconstruction

The reconstruction of Afghanistan has presented a series of challenges that are entirely unique in the history of the UN's state-building efforts. Since the end of the Cold War, the Security Council has been involved on several occasions in setting up interim or transitional governments.[27] What differentiates this particular case is that the UN's state-building efforts occurred in parallel with ongoing US military operations against the Taliban and al-Qaeda in Afghanistan, and thus often appeared to be part of the US operation.

For example, while the Bonn Agreement was officially negotiated and signed under the auspices of the UN, and was endorsed by the Council in Resolution 1386,[28] the Afghan negotiators who were present in Bonn were selected by the US. Rather than creating a transitional authority marked by ethnic and political

[25] The US bombings may have contributed to general opposition by the Taliban to the mission of Prince Turki (the head of the Saudi secret service) to Kandahar in the late summer of 1998, after he had received a relatively encouraging reception at an earlier mission to Kandahar in Jun. 1998 to obtain the expulsion of bin Laden.

[26] See Pierre Centlivres, *Les Bouddhas d'Afghanistan* (Lausanne: Favre, 2001).

[27] See also Richard Caplan's discussion of UN international administrations in Chapter 25.

[28] SC Res. 1386 of 20 Dec. 2001.

diversity, and including all parties to the conflict in Afghanistan, the Bonn negotiations led to a government dominated by the Northern Alliance and those closest to the US. A few months later, the choice of Hamid Karzai for President and the marginalization of the ancient king, Zâher Shah, limited the scope of the *Loya Jirga* (Constituting Assembly) which was summoned in March 2002.

Further, the mandate of the UN Assistance Mission in Afghanistan (UNAMA) and its 'light footprint' objective reflected the American preference for a tightly circumscribed UN presence in Afghanistan.[29] US policy was shaped by two priorities. On the one hand, the US wanted to avoid UN oversight and any constraint limiting the use of its armed forces in Afghanistan. This was eventually accomplished by a bilateral agreement signed by Hamid Karzai in 2005.[30] On the other hand, the US wanted to keep its counter-terrorism efforts distinct from the UN-mandated reconstruction and peacekeeping efforts in Afghanistan. This resulted in the formation of a UN-authorized peacekeeping mission under the name of the International Security Assistance Force (ISAF), originally a small force designed to support the government in maintaining order and security in the capital. In 2002, the Bush government, responding to the repeated demands of President Karzai; the head of UNAMA, Lakhdar Brahimi;[31] and members of the American Congress, appeared to be willing to extend ISAF's mission to cover other parts of Afghanistan. However, this idea was abandoned largely because of opposition by US Secretary of Defense, Donald Rumsfeld.

Faced with a deteriorating security situation, by October 2003 the US accepted the extension of ISAF's mandate to cover areas outside Kabul,[32] and by the end of 2006, ISAF covered the whole of Afghanistan. This extension was arguably granted too late, given that the Taliban and the local war lords regained control over significant parts of Afghanistan's territory, making reconstruction and political development difficult in areas beyond the effective control of the Afghan government. The operations of ISAF, now under NATO command, have been increasingly challenged by the resurgence of the Taliban. To enhance reconstruction, since 2003, US and NATO forces have been involved, albeit somewhat marginally, in the reconstruction of Afghanistan through their Provincial Reconstruction Teams

[29] SC Res. 1401 of 28 Mar. 2002. There is no evidence of any discussion on the establishment of the ISAF in the resolutions or the related statements (See UN Doc. S/PV.4443 of 20 Dec. 2001).

[30] The agreement, which was signed at the time of his trip to Washington in May 2005, in practice, gives the United States total autonomy in organizing military operations on Afghan territory. See *Joint Declaration of the United States Afghanistan Partnership*, Washington, DC, 23 May 2005. By the end of 2006, the US and Afghanistan had not signed a Status of Forces Agreement (SOFA), regulating the rights and responsibilities of US troops in Afghanistan.

[31] See Lakhdar Brahimi's report on Afghanistan, advocating the extension of the ISAF with 5,000 additional soldiers, and American ambassador Negroponte's rebuttal (UN doc. S/PV.4579 of 19 Jul. 2002). This refusal to extend ISAF was a reaffirmation of the position of his predecessor in Mar. 2002 (S/PV.4497 of 26 Mar. 2002, 9).

[32] SC Res. 1510 of 13 Oct. 2003.

(PRTs). While these operations respond to the wishes of many Western countries for greater strategic integration of both military and civilian efforts, such initiatives have been criticized by a large number of international NGOs in Afghanistan, who fear that the PRTs blur the line between military tasks and civilian reconstruction. None of these decisions were taken by the Security Council, which merely endorsed and arguably 'rubber-stamped' them.

Afghanistan, the War on Terror, and Humanitarian Law

In response to the attacks against the American embassies in Africa on 7 August 1998, US missiles targeted several camps in Afghanistan and a pharmaceutical plant in Sudan on 20 August 1998. The military effectiveness of these targeted attacks is doubtful: twenty radical militants (none belonging to the cadres of the movement) were killed in Afghanistan, while the destruction of a pharmaceutical plant was based on false intelligence that the plant was producing chemical weapons and was associated with al-Qaeda. The bombings were a political disaster, as they increased bin Laden's popularity and power, and hardened anti-American sentiments in the region. Both of these military operations were decided unilaterally by the US and were executed without any consultation with its allies or UN authorities. While it has never been suggested that the Taliban was responsible for the attacks, following the 1998 embassy bombings, the Security Council has regularly called upon states (and explicitly on the Taliban regime) to take measures to prevent acts of terrorism, and not to acquiesce in the presence of terrorist organizations on their territory, and to take measures for the prosecution and punishment of the perpetrators.[33]

Following the attacks on 11 September 2001, the Security Council was faced with an unprecedented situation, as the attacks were committed by non-state actors while at the same time the gravity of them made them classifiable as an act of war.[34] The resolution passed by the Council essentially gave the US free rein in indicating the 'inherent right of individual and collective self-defence in accordance to the Charter', as well as specifying the need to 'bring to justice those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts', and holding them accountable.[35] From the very beginning the US military operation

[33] See for example SC Res. 1189 of 13 Aug. 1998; SC Res. 1214 of 8 Dec. 1998; SC Res. 1267 of 15 Oct. 1999; and SC Res. 1333 of 19 Dec. 2000.

[34] Anna Müller, 'Legal Issues Arising from the Armed Conflict in Afghanistan', *Non State Actors and International Law* 4, no. 3 (2004), 239 76.

[35] SC Res. 1368 of 12 Sep. 2001.

was not conducted under a specific UN mandate, but rather was justified by Article 51 of the UN Charter affirming the right to use force in self-defence, a right that was explicitly recognized in Resolution 1368. In the course of the year following the attacks on September 11, there was an extensive debate, in particular in the US, about a possible widening of the concept of self-defence. Notions of 'pre-emptive' and 'anticipatory' self defence were widely discussed, and the US was essentially hoping for a change in the legal doctrine authorizing military action.[36]

One can question the US tendency to avoid multilateral frameworks in the context of the Afghan conflict. The US justified its invasion, not by claiming that the Taliban were the perpetrators behind the attacks, but by arguing that their harbouring of terrorists such as bin Laden gave the US the right to use force. Moreover, as statements by members of the American administration until the end of September indicate,[37] the US was willing to leave the Taliban in place had they accepted the previous Security Council resolutions (requiring the extradition of bin Laden and the closing of all camps). However, once the military was deployed, the official goal of the US was to destroy the Taliban regime.

The war in Afghanistan marks a new phase in practices condemned by international law: the poor treatment and, in some cases, torture of prisoners; the refusal to recognize the legal status of combatants even those from recognized Taliban units; the creation of a detainment camp for prisoners without trial at Guantanamo Bay; the transfer of detainees to countries that practise torture; and the execution of military operations with little regard for the well-being of civilians.

In spite of the fact that the Security Council had, in several resolutions, indicated a specific interest in respecting the rights of civilian populations and the laws of war,[38] the Council's silence regarding these repeated violations of the *jus in bello* in Afghanistan has been one of the most notable aspects of the conflict since 2001. Even though, in practice, previous calls by the Security Council for respect of international humanitarian law were not always heeded, at the very least they served as a reminder of the existence of the *jus in bello*. However, the direct involvement by Permanent Members of the Security Council in a counter-insurgency war has resulted in the Council being silent on specific violations of international humanitarian law in the ongoing conflict in Afghanistan. The massacre of numerous prisoners (up to 3,000, depending on the source) by General Rashid Dostum, an ally of the US who played an important role in capturing the north of the country, for example, was not subject to any thorough and complete

[36] The US doctrine, as presented in the National Security Strategy issued in Sep. 2002, practically erases all distinction between prevention and pre emption (text is available at www.white house.gov/nsc5/html/). See also Mark A. Drumbl, 'Self Defense and the Use of Force: Breaking the Rules, Making the Rules, or Both?' *International Studies Perspectives* 4, vol. 4 (2003), 409 31.

[37] See statement made by Colin Powell in *The Statesman* (Pakistan), 20 Sep. 2001.

[38] See also Georg Nolte's discussion of the Council's role with respect to humanitarian law in Chapter 23.

investigation and the amnesty law passed in January 2007 by the Afghan government is closing the possibility of further inquiries in the matter.[39]

Conclusion

In reference to the three questions posed in the introduction, we can conclude that the Council has not been able to articulate a coherent policy with regard to Afghanistan. Throughout the conflict the Council has been instrumentalized by the interests of its Permanent Members, notably the USSR/Russia and the US. When it was involved, through sanctions and post-conflict reconstruction, the effect of its policies has been limited, and in the case of the reconstruction of Afghanistan, the failure of its policy is now widely recognized. This analysis has revealed that the Council has not provided a framework through which a legitimate regime could be born, but rather has been a forum in which Permanent Members furthered their own short-term interests.

Despite the fact that proper reform of the Security Council is, in reality, very unlikely, one cannot fail to highlight the Council's inability to adapt to the current international environment. In the absence of an international hierarchy, we will continue to require a forum where the rules and practices of international security can be properly defined. However, at present, as revealed in the case of Afghanistan, the Council was not even able to act as the spokesperson for the 'international community', the existence of which is yet to be demonstrated.

[39] Aunohita Mojumdar, 'Doubts Grow over Afghan War Crimes Amnesty', *Financial Times*, 12 Feb. 2007.

CHAPTER 21

THE SECURITY COUNCIL AND THREE WARS IN WEST AFRICA

ADEKEYE ADEBAJO*

Since the end of the Cold War in 1989, West Africa has been among the most volatile regions in the world. Local brushfires have raged from Liberia to Sierra Leone to Guinea to Guinea-Bissau to Senegal to Côte d'Ivoire in an interconnected web of instability.[1] Owing in large part to neglect by the United Nations (UN) Security Council, West Africa has gone further than any other African sub-region in efforts to establish a security mechanism to manage its own conflicts.[2] The Economic Community of West African States (ECOWAS) Ceasefire Monitoring Group (ECOMOG) intervention in Liberia between 1990 and 1998 was the first such action by a sub-regional organization in Africa relying principally on its own men, money, and military material. It was also the first time the UN had sent military observers to support an already established sub-regional force. The ECOMOG intervention in

* The author would like to thank Ngozi Amu, James Jonah, Lansana Kouyaté, Musifiky Mwanasali, and Dominik Zaum for invaluable comments on an earlier version of this chapter.

[1] See Adekeye Adebajo and Ismail Rashid (eds.), *West Africa's Security Challenges: Building Peace in a Troubled Region* (Boulder, CO, and London: Lynne Rienner, 2004).

[2] See ECOWAS Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security, Lomé, 10 Dec. 1999.

Sierra Leone to restore the democratically elected government of Ahmed Tejan Kabbah to power in 1998 was equally unprecedented, and the UN took over ECOMOG's peacekeeping responsibilities by 2000.[3]

Building on the two experiences in Liberia and Sierra Leone, as well as the ECOWAS interventions in Côte d'Ivoire and Liberia in 2003 – both missions were also later taken over by the UN – West Africa's leaders are currently attempting to institutionalize a security mechanism to manage future sub-regional conflicts. This mechanism could eventually become a system of subsidiarity directed by a Nigerian-led ECOWAS in which West Africans take decisions over security issues in their own sub-region without prior UN Security Council authorization: an issue that does not seem yet to trouble the Council much. In crafting the ECOWAS security mechanism of 1999, West African leaders feared that the UN Security Council could delay approval for necessary action in cases of sub-regional instability. They have thus interpreted Chapter VIII of the UN Charter – dealing with regional arrangements – to allow military interventions in cases of regional instability and unconstitutional changes of government, with the flexibility of informing the Council *after* troops have already been deployed. This approach is controversial and not universally recognized under international law, with many arguing that the UN Security Council is the only legitimate body that can sanction the use of force.[4] In seeking to establish a Pax West Africana, ECOWAS leaders may be trying to define their own sub-system of international law that does not require prior UN authorization, but rather legitimation by ECOWAS.

But despite the lofty aspirations of West African leaders, hopes of a self-run security system are currently confronting the harsh reality of a lack of unity, capacity, and resources, as the three cases of Liberia, Sierra Leone, and Côte d'Ivoire will clearly demonstrate. The UN Security Council was forced eventually to take over all three missions from ECOWAS's logistically ill-equipped and under-resourced peacekeepers. A division of labour was then worked out between the Council and ECOWAS in which the West Africans contributed the core of UN peacekeepers (and usually the

[3] For a background to the Sierra Leone conflict, see Ibrahim Abdullah and Patrick Muana, 'The Revolutionary United Front of Sierra Leone: A Revolt of the Lumpenproletariat', in Christopher Clapham (ed.), *African Guerrillas* (Oxford, Kampala, and Bloomington: James Currey, Fountain Publishers, and Indiana University Press, 1998); Adekeye Adebajo, *Building Peace in West Africa: Liberia, Sierra Leone and Guinea Bissau* (Boulder, CO, and London: Lynne Rienner, 2002); Adekeye Adebajo and David Keen, 'Sierra Leone', in Mats Berdal and Spyros Economides (eds.), *United Nations Interventionism 1991 2004* (Cambridge and New York: Cambridge University Press, 2007), 246 73; *African Development* 22, nos. 2 and 3 (1997), special issue on 'Youth Culture and Political Violence: The Sierra Leone Civil War'; John Hirsch, *Sierra Leone: Diamonds and the Struggle for Democracy* (Boulder, CO: Lynne Rienner, 2001); David Keen, *Conflict and Collusion in Sierra Leone* (Oxford and New York: James Currey and Palgrave, 2005); and Mark Malan, Phenyo Rakate, and Angela McIntyre, *Peacekeeping in Sierra Leone: UNAMSIL Hits the Home Straight* (Pretoria: Institute for Security Studies, 2002).

[4] See, for example, Musifiky Mwanasali, 'Africa's Responsibility to Protect', in Adekeye Adebajo and Helen Scanlon (eds.), *A Dialogue of the Deaf: Essays on Africa and the United Nations* (Jacana: Johannesburg, 2006), 89 110.

political or military heads of the missions), while the Security Council contributed additional troops, financing, and political oversight of the missions. This chapter will examine peace-making and peacekeeping cooperation between the UN and ECOWAS in Liberia, Sierra Leone, and Côte d'Ivoire.[5] It will draw policy lessons from all three missions, which can guide future cooperation in the area of conflict management between the UN and ECOWAS.[6]

The chapter sets out to address four important questions related to the role of the Security Council in West Africa. First, what impact did the Council have on the management of the conflicts in Liberia, Sierra Leone, and Côte d'Ivoire, and can its role be considered a success or a failure in each case? Secondly, did the role of the Council change during the course of the three conflicts? Thirdly, what was the reaction of regional actors in West Africa to the role of the Council in these three cases? Finally, what lessons can the Council learn from these three conflicts in order to act more effectively in future cases in West Africa and beyond? The first three questions will be addressed in assessing the three cases, as well as in a short analytical section on the significance of the cases in relation to these questions. The final question about the policy lessons for the Council will be tackled in a concluding section that offers four policy recommendations for the Council's future conflict management role in the areas of burden-sharing between the UN and ECOWAS; gaining and sustaining the political and financial support of key Council members; crafting targeted sanctions against 'spoilers' who obstruct peace processes; and harnessing the relative military and political clout of local hegemons like Nigeria to the UN's conflict management efforts.

The Tragic Triplets

Liberia and Sierra Leone both endured a decade of civil wars that resulted in nearly 300,000 deaths and the spilling across borders of over one million refugees.

[5] See, for example, Clement Adibe, 'The Liberian Conflict and the ECOWAS UN Partnership', *Third World Quarterly* 18, no. 3 (1997), 471 88; Norrie MacQueen, *United Nations Peacekeeping in Africa since 1960*, (London and New York: Pearson Education, 2002); Binaifir Nowrojee, 'Joining Forces: UN and Regional Peacekeeping, lessons from Liberia', *Harvard Human Rights Journal* 8 (Spring 1995), 129 51; Funmi Olonisakin, 'UN Cooperation with Regional Organizations in Peacekeeping: The Experience of ECOMOG and UNOMIL in Liberia', *International Peacekeeping* 3, no. 3 (Autumn 1996), 33 61; and United Nations, *The United Nations and the Situation in Liberia*, Revision one, (New York: Department of Public Information, Feb. 1997).

[6] Though 712 ECOWAS troops from Benin, Gambia, Niger, and Togo intervened unsuccessfully in Guinea Bissau in Feb. 1999 before being withdrawn following fighting four months later, the UN did not deploy any military personnel into Guinea Bissau and the country did not experience the same level and duration of protracted fighting as the other three cases. I have therefore decided not to focus attention on Guinea Bissau despite the UN's involvement in the country's post conflict peace building efforts.

Liberia's civil war lasted from December 1989 until early 1997 and was fought mainly by eight factions.[7] Elections in July 1997 were won by the most powerful warlord, Charles Taylor. The conflict erupted again in 1999 and ended only with Taylor's enforced exile to Nigeria in 2003. ECOMOG's involvement in Sierra Leone's civil war was inextricably linked to its peacekeeping efforts in neighbouring Liberia's civil war. The Revolutionary United Front (RUF) had invaded Sierra Leone from Liberia in March 1991 with the assistance of Taylor's National Patriotic Front of Liberia (NPFL), resulting in several hundred Nigerian, Ghanaian, and Guinean troops being deployed to assist Sierra Leone, a fellow ECOMOG member, to defend its capital of Freetown. ECOMOG's role in Sierra Leone increased tremendously after late Nigerian autocrat General Sani Abacha diverted peacekeepers from the concluding Liberia mission to Sierra Leone in an attempt to crush a military coup by the Sierra Leone Army (SLA) in Freetown in May 1997. After the putsch, the military junta invited the RUF to join its administration. They thus cemented a marriage of convenience between soldiers and rebels, giving birth to the 'sobel'[8] phenomenon in West Africa. A Nigerian-led ECOMOG force reversed the coup in February 1998 and restored the elected president, Ahmed Tejan Kabbah, to power. However, the unsuccessful but devastating rebel invasion of Freetown in January 1999 demonstrated that ECOMOG was unable to eliminate the rebels as a military threat. In both Liberia and Sierra Leone, logistically ill-equipped and poorly funded peacekeeping missions[9] were unable to defeat recalcitrant rebels who refused to implement peace accords, and a military stalemate forced political accommodation and the appeasement of local warlords. The UN Security Council eventually stepped in to authorize a more international peacekeeping force under its control in both countries.[10]

[7] For accounts of the Liberian civil war, Adekeye Adebajo, *Liberia's Civil War: Nigeria, ECOMOG and Regional Security in West Africa* (Boulder, CO, and London: Lynne Rienner, 2002); Abiodun Alao, John Mackinlay and Funmi Olonisakin, *Peacekeepers, Politicians, and Warlords: The Liberian Peace Process* (Tokyo, New York, and Paris: United Nations University Press, 1999); Alhaji M.S. Bah and Festus Aboagye (eds.), *A Tortuous Road to Peace: The Dynamics of Regional, UN and International Humanitarian Interventions in Liberia* (Pretoria, South Africa: Institute for Security Studies, 2005); Stephen Ellis, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimensions of an African Civil War* (London: Hurst and Company, 1999); and Karl Magyar and Earl Conteh Morgan (eds.), *Peacekeeping in Africa: ECOMOG in Liberia* (Hampshire, London, and New York: Macmillan and St. Martin's Press, 1998).

[8] This term also refers to soldiers who pretend to be rebels in order to loot and ambush.

[9] For further details on ECOMOG's military shortcomings see Herbert Howe, 'Lessons of Liberia: ECOMOG and Regional Peacekeeping', *International Security* 21, no. 3 (Winter 1996/7), 145–76; Cyril Iweze, 'Nigeria in Liberia: The Military Operations of ECOMOG', in M. A. Vogt and A. E. Ekoko (eds.), *Nigeria in International Peacekeeping 1960–1992* (Lagos and Oxford: Malthouse Press Limited, 1993); and Robert Mortimer, 'From ECOMOG to ECOMOG II: Intervention in Sierra Leone', in John W. Harbeson and Donald Rothchild (eds.), *Africa in World Politics: The African State System in Flux*, 3rd edn. (Colorado and Oxford: Westview Press, 2000).

[10] SC Res. 1270 of 20 Oct. 1999 established UNAMSIL in Sierra Leone. SC Res. 1509 of 19 Sep. 2003 established UNMIL in Liberia.

The conflicts in Liberia and Sierra Leone highlight the interdependence of security in West Africa and the importance of adopting a regional approach to conflict management, a point that the Security Council recognized by establishing a UN Office for West Africa (UNOWA) in Senegal in 2001.[11] The civil war in Liberia had led to deep political splits within ECOWAS, with several francophone states opposing the Nigerian-led intervention which had also largely involved Ghana, Guinea, Sierra Leone, Senegal, Mali, and Gambia. The Liberian civil war had been triggered from Côte d'Ivoire, and the rebels received military support from Burkina Faso and Libya. The subsequent instability on the Guinea–Liberia border, and the rebel invasion of Liberia's northern Lofa county by Liberians United for Reconciliation and Democracy (LURD) rebels in 1999 saw governments in Conakry and Monrovia supporting rival rebel movements against each other's regime.

The descent of Côte d'Ivoire – formerly an oasis of calm amidst West Africa's troubled waters – into conflict, took many observers by surprise. Though operating an autocratic, patrimonial political system between 1960 and 1993, Ivorian leader Félix Houphouet-Boigny had managed this system with great dexterity and adopted an enlightened policy towards the country's large immigrant population – estimated at a quarter of the population.[12] The Ivorian leader died in December 1993. Houphouet's heirs – Henri Konan Bédié, General Robert Guei, and Laurent Gbagbo – showed less skill and foresight than *le vieux* ('the old man') in managing the political system.[13] They instituted a xenophobic policy of *Ivoirité* which discriminated against Ivorians of mixed parentage and 'foreigners,' many of whom had been born in Côte d'Ivoire or lived in the country for a long time. The exclusion of former Ivorian premier Alassane Ouattara (who apparently had one parent born in Burkina Faso) from contesting presidential elections alienated many of his northern Muslim constituents, while Gbagbo – whose flawed election under the Ivorian Patriotic Front (FPI) in November 2000 was boycotted by most of the North – dismissed about 200 mostly northern soldiers from the army. These tensions culminated in a coup attempt by largely northern officers in September 2002 and the eventual emergence of three rebel factions: the Mouvement pour la Justice et la Paix (MJP), the Mouvement Populaire Ivorien du Grand Ouest (MPIGO), and the Mouvement Patriotique de la Côte

[11] See UN doc. S/2001/434 of 2 May 2001.

[12] See Femi Aribisala, 'The Political Economy of Structural Adjustment in Côte d'Ivoire', in Adebayo Olukoshi, Omotayo Olaniyan and Femi Aribisala (eds.), *Structural Adjustment in West Africa* (Lagos: Nigerian Institute of International Affairs, 1994); and Yves A. Fauré, 'Côte d'Ivoire: Analysing the Crisis', in Donal Cruise O'Brien et al. (eds.), *Contemporary West African States* (Cambridge: Cambridge University Press, 1989).

[13] For a background to the current crisis see A. Adebajo, 'Pretoria, Paris and the Crisis in Côte d'Ivoire', *Global Dialogue* (2006); A. Bathily, 'La Crise Ivoirienne: Elements pour Situer ses Origines et ses Dimensions Sous regionales', *Democarcy and Development* 3, no. 2 (2003), 93–9; A. R. Lamin, 'The Conflict in Côte d'Ivoire: South Africa's Diplomacy, and Prospects for Peace', Occasional Paper no. 49, Institute for Global Dialogue, Johannesburg, Aug. 2005; and K. Whiteman, 'Côte d'Ivoire: The Three Deaths of Houphouet Boigny', in *African Conflict, Peace and Governance Monitor* (Ibadan, Nigeria: Dokun Publishing House, 2005), 43–59.

d'Ivoire – all later became known as the *Forces Nouvelles*. Gbagbo accused Burkina Faso and Liberia of fomenting the rebellion, while Taylor accused Côte d'Ivoire of backing Movement for Democracy in Liberia (MODEL) rebels. Liberian and Sierra Leonean fighters were reported to be fighting on the side of both the government and rebels in the Ivorian conflict. The war spilled over 125,000 Ivorian refugees into Liberia, Ghana, Guinea, Mali, and Burkina Faso.

Having provided the context for the role of the Security Council in West Africa's wars, we next turn our attention to the three cases of Liberia, Sierra Leone, and Côte d'Ivoire.

The UN and ECOWAS in Liberia

The Security Council's involvement in Liberia's civil war was slow and tentative, underlining the UN's historical reluctance to undertake peacekeeping missions with regional organizations.[14] ECOWAS requested technical assistance from the Council in 1990 to establish a peacekeeping force. The UN Secretariat in New York did not respond positively, though James Jonah, UN Under-Secretary-General for Special Political Questions, was dispatched to regional peace meetings and became a trusted adviser for ECOWAS leaders and a strong advocate for ECOMOG within the Secretariat.[15] When the Liberian civil war erupted, Security Council action was blocked at first by the three African members – Côte d'Ivoire, Zaire (now the Democratic Republic of Congo (DRC)), and Ethiopia – who reflexively opposed interference in the internal affairs of an Organization of African Unity (OAU) – now the African Union (AU) – member state. While African countries could not veto any Security Council action, Council members traditionally deferred to their African colleagues when discussing action on continental issues. Côte d'Ivoire was also supporting Charles Taylor's NPFL faction. Only after political consensus had emerged within ECOWAS and ECOMOG had intervened in the conflict did the Security Council issue a statement, at Abidjan's request, commending ECOMOG's efforts in January 1991.[16] Many ECOWAS states strongly opposed a UN presence in Liberia in these early stages, as they did in Sierra Leone, out of fear that the Blue Helmets would steal the glory for ECOWAS's sacrifices.[17]

West African governments, however, strongly lobbied the Security Council to impose an arms embargo against Liberia's warlords in November 1992 after nine

[14] For an overview see Shepard Forman and Andrew Greene, 'Collaborating with Regional Organizations', in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004), 295 309.

[15] J. Jonah, 'The United Nations', in Adebajo and Rashid (eds.), *West Africa's Security Challenges*, 325.

[16] UN doc. S/22133 of 22 Jan. 1991.

[17] Jonah, 'The United Nations', 323 6.

ECOWAS foreign ministers had participated in a Council debate in New York.[18] This marked the start of increasing UN involvement in peace-making efforts in the same year that the new UN Secretary-General, Boutros Boutros-Ghali, had just published his landmark *An Agenda for Peace* report calling for increased collaboration between the UN and regional organizations.[19] The Cotonou accord of July 1993 saw the Secretary-General dispatch a Special Representative, Trevor Gordon-Somers, to take the lead from ECOWAS in peace negotiations. The agreement also called for the involvement of UN and OAU peacekeepers in Liberia. A Joint Ceasefire Monitoring Committee was mandated to investigate and resolve ceasefire violations. The Committee was chaired by a UN Observer Mission in Liberia (UNOMIL) and involved ECOMOG as well as representatives of all of Liberia's armed factions. ECOMOG's 16,000 peacekeepers had an explicit right of self–defence under Cotonou which mandated them to exercise 'peace enforcement powers' with the approval of a UN-chaired Ceasefire Violations Committee. The UN was effectively being sent to 'police' ECOMOG's peacekeepers: a role that was to fuel tensions between both forces.

Demonstrating the increasing but still insufficient international attention that Liberia was attracting, the Security Council established the $US 5,650,000 a month UN Observer Mission in Liberia in September 1993, dispatching 368 unarmed military observers to Liberia by early 1994 under Kenyan General Daniel Opande.[20] Under the Cotonou agreement, UNOMIL was responsible for monitoring the cantonment, disarmament, and demobilization of Liberian combatants, as well as overseeing the UN-imposed arms embargo of 1992. UNOMIL was also mandated to work with ECOMOG which had primary responsibility for disarming the factions. The UN's mandate further obliged it to report on human rights violations and to coordinate humanitarian assistance. ECOMOG would be responsible for ensuring the security of UNOMIL's civilian and unarmed military personnel.

Sharp disagreements soon arose between ECOMOG and UNOMIL. Initial friction was already evident after the arrival of the UN military observers in 1993. ECOMOG's logistically ill-equipped peacekeepers were often heard complaining that the UN did not make its vehicles and helicopters available for their use, and felt that the better paid UN staff flaunted their status while leaving most of the difficult tasks to ECOMOG. These problems were further exacerbated by Boutros-Ghali's allegations, in an October 1994 report to the Security Council, that ECOMOG had collaborated with anti-NPFL combatants during fighting in Gbarnga in September 1994.[21] ECOMOG officers felt that these accusations detracted from other praiseworthy activities by their peacekeepers like escorting humanitarian

[18] SC Res. 788 of 19 Nov. 1992.

[19] See *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace keeping*, UN doc. A/47/277 S/24111 of 17 Jun. 1992.

[20] SC Res. 866 of 22 Sep. 1993.

[21] See UN doc. S/1994/1167 of 14 Oct. 1994.

relief convoys to the countryside and providing security to displaced persons in Monrovia and Tubmanburg. But ECOMOG's cooperation with anti-NPFL factions, dating back to the beginning of its mission in Liberia, was not in dispute.

There were five other key areas of disagreement between ECOMOG and UNOMIL. First, ECOMOG soldiers, who earned US$5 a day and were often irregularly paid, were irritated that UNOMIL observers were earning US$100 for performing far less strenuous and risky activities. Secondly, ECOMOG wanted UNOMIL strictly to 'observe' rather than 'supervise' disarmament. Thirdly, ECOMOG's officials were irritated by what they regarded as UN Special Representative Gordon-Somers' unilateral disarmament negotiations with the parties without proper consultation with ECOMOG staff. The fourth area of disagreement involved UNOMIL's Chief Military Observer, General Opande, and ECOMOG's Nigerian Field Commander between 1993 and 1996, General Mark Inienger: both held different views about disarmament strategy. Opande asked that Charles Taylor be given the benefit of the doubt in his offer to disarm his combatants unilaterally and talked of the NPFL's 'good faith'. Inienger and his officers considered this view naive, and saw Taylor's offer as an attempt to avoid close scrutiny of his arms and military positions. The final area of disagreement involved ECOMOG's criticism of UNOMIL for deploying some of its military observers without consultation with the West Africans who were mandated to protect them.[22] UNOMIL argued that it had obtained the consent of the factions to deploy, and that it could not fulfil its mandate by remaining in the capital of Monrovia. It also accused ECOMOG of violating its mandate by not protecting UN personnel and by restricting their freedom of movement.[23]

It is important to note how regional and Liberian actors viewed the UN's role in Liberia. Gordon-Somers resigned his post in December 1994. During his two-year stint, the Jamaican technocrat had become deeply unpopular among Liberian political actors for what they considered to be a reckless push for the premature installation of an interim government before the completion of the disarmament process, and for his apparent willingness to accommodate warlords like Charles Taylor and Alhaji Kromah. After the debacle over the stillborn Akosombo accord in September 1994, which awarded Liberia's powerful warlords seats on a ruling Council and was strongly opposed by Liberia's civil society groups as well as the Nigerian government, Gordon-Somers wrote to Boutros-Ghali and requested that he be withdrawn from his post, saying that he had achieved as much as he could in Liberia.[24]

With ECOMOG struggling to overcome its financial difficulties and political divisions, Boutros-Ghali suggested in February 1995 that the Security Council establish a large UN peacekeeping force under which ECOMOG would be

[22] See UN doc. S/2003/1175 of 15 Dec. 2003.
[23] Personal Interview with Trevor Gordon Somers, New York, May 1997.
[24] Ibid.

subsumed.[25] But with the most powerful members of the Council – particularly the US – increasingly wary of proliferating peacekeeping missions amidst the disasters of Somalia in 1993 and Rwanda in 1994, the proposal met with an eloquent silence. After Boutros-Ghali's threat in June 1995 to withdraw the UN's sixty-three observers from Liberia, nervous ECOWAS states reacted by warning that any UN withdrawal would compromise ECOMOG's efforts and could lead to the further destabilization of the West African sub-region.[26] This again underlined the importance, for reasons of international legitimacy and attention, of the largely symbolic UN presence to ECOMOG's efforts. But it also underlined the complex relationship between the UN and ECOWAS. While ECOWAS leaders wanted the UN's political legitimacy and greater military and economic resources, they were concerned about the UN coming in late in the day to steal ECOMOG's thunder after several years of lonely peacekeeping. Military cooperation between the UN and ECOMOG after the start of the disarmament and demobilization process in 1996 saw continued joint investigations of ceasefire violations and UNOMIL's verification of the arms and ammunition secured during ECOMOG's cordon-and-search operations. Two weeks before elections in July 1997, the UN deployed 200 observers to Liberia to monitor the poll. The four-year UNOMIL presence in Liberia eventually cost the international community no more than US$115 million.[27] This mission was more effective in providing ECOMOG with political legitimacy than in bolstering military efforts on the ground.

Despite ECOMOG's peacekeeping presence in Liberia between 1990 and 1998, the lack of security sector reform and reintegration of ex-combatants into local communities, as well as Charles Taylor's autocratic rule and the transformation of his NPFL rebel movement into a private security force to protect his regime, eventually triggered the second civil war in a decade when LURD rebels attacked Liberia from Guinea in 1999. The volcanic situation in Liberia threatened to spread its deadly lava across the sub-region. After fighting between Taylor's government and rebels in June and July 2003 that killed an estimated 1,000 civilians in Monrovia, the warlord-turned-president was pressured by regional leaders and the US to go into exile in Nigeria in August 2003. In the same month, a Comprehensive Peace Agreement was signed by all of Liberia's parties which called for the establishment of a National Transitional Government under businessman, Charles Gyude Bryant.

A Nigerian battalion deployed in Liberia shortly after Taylor's departure. These were the advanced units of a 3,600-strong ECOWAS Mission in Liberia (ECOMIL) which became part of a UN peacekeeping mission to which Ghana, Senegal, Mali, Benin, Gambia, Guinea-Bissau, and Togo also contributed. The US sent a small

[25] UN doc. S/1995/158 of 24 Feb. 1995, 12.
[26] UN doc. S/1995/781 of 13 Sep. 1995, 2.
[27] UN doc. S/1997/712 of 12 Sep. 1997, 4.

force of 200 soldiers – who remained off the Monrovian coast – to provide limited logistical support for ECOMIL, while the UN took over the peacekeeping mission in October 2003.[28] Burned by their earlier experiences in Liberia and Sierra Leone, the Nigerians agreed to deploy only if the UN took over the force three months later. Stung by its own experiences in Somalia when eighteen American troops had been killed in October 1993 during a botched military mission, Washington was only too willing to support a Nigerian-led mission in order to avoid pressure to intervene itself in Liberia – a country set up by freed American slaves in 1847 with long historical ties to the US.

The Security Council mandated the UN Mission in Liberia (UNMIL) to support the implementation of the ceasefire agreement and peace process; to provide assistance for security sector reform; and to facilitate humanitarian and human rights assistance.[29] No doubt to maintain Washington's interest in the mission, American diplomat Jacques Paul Klein was named Special Representative of the UN Secretary-General. UNMIL's largest contingents came from Bangladesh, Ethiopia, Nigeria, and Pakistan. By May 2004, 14,131 troops had arrived in Liberia.[30] While UN peacekeepers were able to avert the imminent bloodshed in Monrovia and to increase stability in the country during the three-year mission, sporadic incidents continued throughout UNMIL's stay: inter-factional fighting within LURD; fighting in Nimba, Grand Bassa, and Bong counties; churches, mosques, and property being burned; and ex-combatants embarking on violent demonstrations. Rampant corruption within the interim government was also a frequent source of concern.

The Joint Monitoring Committee chaired by UNMIL – and former UNOMIL – force commander General Daniel Opande, and consisting of all the factions and government forces, met regularly to try to resolve security disputes. Disarmament of the factions began in December 2003 and was completed in October 2004, by which time 101,449 combatants had been disarmed and demobilized, as well as 612 'mercenaries' from Côte d'Ivoire, Ghana, Guinea, Mali, Nigeria, and Sierra Leone. An Implementation Monitoring Committee also started meeting in November 2003 chaired by UNMIL and ECOWAS and involving representatives of the AU, the European Union (EU), and the International Contact Group on Liberia, which extended its work to the Mano River basin in September 2004. An International Reconstruction Conference for Liberia in New York in February 2004, pledged US$522 million towards the country's rebuilding, US$244 million of which had arrived six months later.

Liberia held elections on schedule in October and November 2005. UN peacekeepers provided security in the election which Ellen Johnson-Sirleaf, a former Liberian finance minister and former head of the UN Development Programme's

[28] The presence of ECOWAS and US troops was authorized by SC Res. 1497 of 1 Aug. 2003. UNMIL was established by SC Res. 1509 of 19 Sep. 2003.

[29] SC Res. 1509.

[30] UN doc. S/2004/1430 of 26 May 2004, 2.

(UNDP) Africa Bureau, won to become Africa's first elected female head of state. Despite these polls, the security situation in Liberia remained fragile. Plans for restructuring a new Liberian army proceeded slowly, as the international community once more failed to provide sufficient funding for both this exercise and reintegrating ex-combatants into local communities. There was a US$3 million shortfall for security sector reform in December 2005[31] and a US$5 million deficit in the reintegration of ex-combatants in March 2006[32], raising fears of future insecurity. Since the failure to undertake security sector reform in 1997 and to provide jobs for ex-combatants had contributed greatly to a return to war after only two years, the Security Council would be wise to prioritize these two key areas to ensure that its annual peacekeeping investment in Liberia of about US$700 million between 2004 and 2006 is not wasted. The Council wisely decided to maintain the UN peacekeeping mission in Liberia until at least 2007 so as to ensure a gradual drawdown of its troops.

The UN and ECOWAS in Sierra Leone

Significant cooperation between the UN Security Council and ECOWAS in Sierra Leone started in March 1995 with the appointment of the UN Special Envoy, Berhanu Dinka, who was involved in negotiations between the government of Ahmed Tejan Kabbah and RUF rebels in Abidjan in 1996. The Abidjan accord soon became a dead letter due to the profound distrust between Dinka and Côte d'Ivoire – the host – as well as the pernicious role played by Akyaaba Addai-Sebo, a friend of Charles Taylor and reportedly of Ivorian foreign minister Amara Essy.[33] Addai-Sebo was the representative of International Alert, a London-based Non-Governmental Organization (NGO), who is said to have encouraged RUF intransigence during negotiations. After a military coup toppled Kabbah in May 1997, the Security Council imposed an arms and oil embargo on Sierra Leone five months later.[34]

The Council established the UN Observer Mission in Sierra Leone (UNOMSIL) in July 1998 under Indian General Subhash Joshi.[35] UNMOSIL was tasked with monitoring the military and economic situation in Sierra Leone; observing respect of international humanitarian law; and monitoring the disarmament and demobilization of ex-combatants. But with only about fifty observers, the UN played a very limited role alongside ECOMOG's 13,000 troops. As in Liberia, there was strong resentment among ECOMOG soldiers against the better-paid and better-resourced UN military observers. As one ECOMOG officer wryly put it: 'They

[31] This information on Liberia has drawn upon UN doc S/2005/764 of 7 Dec. 2005.
[32] UN doc. S/2006/159 of 14 Mar. 2006, 7.
[33] Jonah, 'The United Nations,' 333.
[34] SC Res. 1132 of 8 Oct. 1997. See also Appendix 4.
[35] SC Res. 1181 of 13 Jul. 1998.

[UN observers] are here on picnic and holiday. I wish we could open the beaches for them to sun-tan and enjoy their dollars.'[36] Another issue that caused friction between ECOWAS and the UN was the intervention by a largely Nigerian force in Freetown to reverse a military coup in February 1998. An ECOWAS Committee of five foreign ministers was consulting with UN Security Council members in New York at the time, and diplomats on the Council felt that they should have been informed about the intervention. The foreign ministers were, however, themselves unaware of the timing of the intervention.[37]

The Lomé agreement was signed in July 1999 between Kabbah's government and the RUF. The accord provided for cabinet posts for the RUF in a Government of National Unity and gave its leader, Foday Sankoh, a ceremonial vice-presidency as well as the Chairmanship of a Commission for the Management of Strategic Resources. The RUF had committed many atrocities during the conflict – including the amputation of limbs and countless massacres – and many people were uncomfortable with its presence in the government. As with earlier accords in Abidjan (1996) and Conakry (1997), a controversial amnesty was offered for war crimes, though the UN Special Representative, Francis Okelo, entered a reservation for the organization in cases of crimes against humanity. The UN was asked to contribute troops to help oversee disarmament and to provide staff to help conduct elections, while an ECOWAS-chaired Joint Implementation Committee was established to meet every three months to oversee the agreement's implementation. This Committee was also charged with monitoring the repatriation and resettlement of 500,000 Sierra Leonean refugees from Guinea and Liberia.[38]

On 19 August 1999, Nigeria's new president, Olusegun Obasanjo, wrote to UN Secretary-General, Kofi Annan, informing him of Nigeria's intention to withdraw 2,000 of its peacekeepers from Sierra Leone every month. The Nigerian president, however, offered to subsume some of Nigeria's 12,000 troops under a new UN mission.[39] Obasanjo began the phased withdrawal on 31 August and suspended the process only after a plea by Sierra Leonean president Ahmed Tejan Kabbah and Annan not to leave a security vacuum in Sierra Leone. But with the UN's realization that Obasanjo was not bluffing when he announced the withdrawal of Nigerian troops from Sierra Leone, Annan was forced to recommend to the Security Council that a UN peacekeeping Mission in Sierra Leone (UNAMSIL) take over from ECOMOG. The mission was established in October 1999 under an Indian Force Commander, General Vijay Jetley.[40]

Obasanjo rejected a Security Council proposal that ECOMOG continue to protect Freetown and undertake enforcement actions against rogue rebel elements.

[36] Personal Interview with an ECOMOG officer, Freetown, Jul. 1999.
[37] Jonah, 'The United Nations', 331.
[38] UN doc. S/1999/836 of 30 Jul. 1999, 2.
[39] UN doc. S/1999/1003 of 23 Sep. 1999, 6.
[40] SC Res. 1270 of 22 Oct. 1999.

Nigeria's president realized that ECOMOG, in being saddled with these dangerous tasks, would remain a useful scapegoat if things went wrong in Sierra Leone. As the UN was widely criticized for failing to protect 'safe havens' in Bosnia and civilians in Rwanda, critics would have been able to blame any failings in Sierra Leone on ECOMOG rather than the UN. Nigeria thus refused to remain in Sierra Leone in a situation in which there would be two peacekeeping missions with different mandates, commands, and conditions of service.[41] The UN Secretariat turned down ECOMOG's request for the UN to finance the entire ECOMOG force, though about 4,000 of its peacekeepers were subsumed under the new UN force.[42] ECOWAS and other sub-regional organizations continue to question why their peacekeepers should be accountable to a Security Council that refuses to finance their missions.[43] There was also much hostility directed against the presence of Nigerian peacekeepers from within the UN's Department of Peacekeeping Operations (DPKO). Many UN officials insisted on a reduced Nigerian role while overselling a new UN mission to Sierra Leoneans who were misled into believing that the Blue Helmets would be prepared to fight the country's rebels.[44]

In order to fill the vacuum left by the departure of Nigerian peacekeepers, UNAMSIL was expanded to 11,000 troops in February 2000, and eventually to more than 17,500 peacekeepers.[45] Oluyemi Adeniji, a Nigerian diplomat who had served as the UN Special Representative in the Central African Republic, was appointed as the UN Special Representative in Sierra Leone. This compensated Nigeria for not gaining the force commander position which Obasanjo had wanted but which had been strongly resisted within the UN Secretariat and Security Council.[46] UNAMSIL's core contingents consisted of Nigerian, Indian, Jordanian, Kenyan, Bangladeshi, Guinean, Ghanaian, and Zambian battalions. But the logistically ill-equipped UN force soon ran into difficulties. The RUF prevented the deployment of UNAMSIL to the diamond-rich eastern provinces, and, from May 2000, attacked UN peacekeepers, killing some of them, holding 500 of them hostage, and seizing their heavy weapons and vehicles.[47] The rebels were seeking to exploit the vacuum created by the departure of Nigerian peacekeepers from Sierra Leone. A brief British military intervention with about 800 troops between May and June 2000 helped to stabilize the situation in Freetown and its environs.

UNAMSIL also experienced its own internal problems. A UN assessment mission sent to Sierra Leone in June 2000 found serious management problems in the

[41] Jonah, 'The United Nations', 330.

[42] Ibid.

[43] 'Funmi Olonisakin and Comfort Ero, 'Africa and the Regionalization of Peace Operations', in Michael Pugh and Waheguru Pal Singh Sidhu (eds.), *The United Nations and Regional Security: Europe and Beyond* (Boulder, CO,: Lynne Rienner, 2003), 246.

[44] Jonah, 'The United Nations', 331.

[45] SC Res. 1289 of 7 Feb. 2000.

[46] Jonah, 'The United Nations', 330.

[47] UN doc. S/2000/186 of 7 Mar. 2000, 3 4; and UN doc. S/2000/751of 31 Jul. 2000, 4.

mission and a lack of common understanding of the mandate and rules of engagement. The assessment mission noted that some of UNAMSIL's military units lacked proper training and equipment.[48] There were constant reports of tension between the UN's political and military leadership[49] even before a confidential report written by General Jetley was inadvertently leaked to the international media in September 2000. In the report, the Indian force commander accused senior Nigerian military and political officials of attempting to sabotage the UN mission in Sierra Leone by colluding with RUF rebels to prolong the conflict in order to benefit from the country's illicit diamond trade. No evidence was provided for the allegations. Tremendous political damage was, however, done to UNAMSIL by this incident: Nigeria refused to place its peacekeepers under Jetley's command, and India subsequently announced the withdrawal of its entire 3,000-strong contingent from Sierra Leone in September 2000. India was followed by Jordan which cited the refusal of the UK to put its own forces under UN command as a reason for its departure.[50] Following the difficulties with the RUF, ECOWAS also agreed, as the Nigerians were withdrawing their troops, to send a 3,000-strong rapid reaction force, consisting largely of US-trained Nigerian, Ghanaian, and Senegalese troops to bolster UNAMSIL.

After the events of 2000, an International Contact Group for Sierra Leone was established by the Security Council involving the US, the UK, and key donor and ECOWAS governments. The Group held periodic meetings in order to mobilize funds for Sierra Leone's peace process. In recognition of the role of the illicit diamond trade in fuelling this conflict, the Security Council prohibited the global importation of rough diamonds from Sierra Leone in July 2000 until a certification scheme was put in place for official diamond exports three months later.[51] At a UN hearing in the same month, Washington and London strongly criticized Liberia and Burkina Faso for their alleged role in diamond-smuggling and gunrunning in support of RUF rebels in Sierra Leone. The Council thus imposed sanctions on Liberia's diamond exports and slapped a travel ban on its officials in March 2001,[52] even in the face of opposition from several ECOWAS leaders who argued that Taylor's help had been vital in securing the Lomé accord.

The UN's disarmament programme for 72,000 Sierra Leonean combatants was completed in January 2002. UN-monitored elections in May 2002 saw president Kabbah re-elected in a landslide victory and the RUF Party (RUFP) failing to win a single seat. The decade-long war in Sierra Leone was finally over. In September 2004, UNAMSIL completed the transfer of primary responsibility for maintaining

[48] UN doc. S/2000/751 of 31 Jul. 2000, 9.

[49] See Lansana Fofana, 'A Nation Self destructs', *NewsAfrica,* 31 Jul. 2000, 1 no. 5, 25; and Chris McGreal, 'UN to sack its general in Sierra Leone', *Guardian Weekly,* 29 Jun. 5 Jul. 2000, 2.

[50] John Hirsch, 'Sierra Leone', in Malone (ed.), *The UN Security Council,* 528.

[51] SC Res. 1306 of 5 Jul. 2000.

[52] SC Res. 1343 of 7 Mar. 2001.

peace and security to the government of Sierra Leone. By the end of December 2004, the UN had about 4,000 peacekeepers in Sierra Leone.[53] After five years of sometimes tortuous peacekeeping, the UN finally withdrew its remaining troops from Sierra Leone in December 2005. Though the country remained largely peaceful in 2005, many peace-building challenges remained unresolved. The UN had spent an estimated US$5 billion in Sierra Leone in five years,[54] but much of this had gone towards its peacekeeping mission rather than to reintegrate ex-combatants into society; to reverse massive youth unemployment; to restructure a new national army; or to help restore state institutions.

The UN established an Integrated Office in Sierra Leone (UNIOSIL) in January 2006, under Executive Representative Victor da Silva Angelo, to coordinate international peace consolidation efforts and to support the government with the organization of the 2007 elections. However, given past experiences in Liberia, Angola, and the Central African Republic (CAR), it is highly unlikely that this office will have sufficient resources and staff to assist the Sierra Leonean government effectively in its peace-building tasks. The government in Freetown collected revenues from its diamond industry of only US$82 million in the first half of 2005, and more than half of its diamond mining still involved unlicensed operators.[55] Violent student and labour protests increased amidst widespread youth unemployment and weak government capacity. Instability in Côte d'Ivoire, the fragile situation in Liberia, and reports of encroachment into Sierra Leonean territory by Guinean troops occupying disputed border areas in April 2006 could still threaten the country's new-found peace.[56]

The UN and ECOWAS in Côte d'Ivoire

We next turn our attention to the role of the UN Security Council in Côte d'Ivoire. Several mediation efforts by ECOWAS in Accra, Ghana, and Lomé, Togo, eventually led to the brokering of the Linas–Marcoussis accord in France in January 2003. The accord established a transitional government with a neutral prime minister, Seydou Diarra – a respected northern former diplomat – who was mandated to oversee the disarmament of the rebels and to organize elections. Ivorian president Laurent Gbagbo and his supporters felt that they had been railroaded into this accord and resented being treated on a level of parity with the rebels, thus setting the scene for anti-French demonstrations in Abidjan.[57] France, which has maintained a permanent military base in Côte d'Ivoire since the country's independence

[53] UN doc. S/2004/965 of 10 Dec. 2004.
[54] Personal discussions with senior UN officials, New York, Feb. 2006.
[55] UN doc. S/2005/596 of 20 Sep. 2005.
[56] UN doc. S/2006/269 of 28 Apr. 2006, 2 3.
[57] Whiteman, 'The Three Deaths of Houphouet Boigny', 53.

in 1960, deployed about 4,600 troops to monitor the ceasefire (Operation Licorne). And 1,288 troops from largely francophone Senegal, Niger, Togo, Benin, and Ghana known as the ECOWAS Mission in Côte d'Ivoire (ECOMICI) were also deployed in the country by early 2003 in what represented the fourth ECOWAS military mission to a West African country in thirteen years. Nigeria, which had been the backbone of the ECOWAS missions in Liberia and Sierra Leone, would contribute just 5 troops to a UN mission in Côte d'Ivoire, underlining its historical rivalry for leadership of West Africa with both Paris and Abidjan.[58]

The ECOWAS mission in Côte d'Ivoire was largely financed and equipped by France, with other logistical and financial assistance provided by Belgium, the UK, the Netherlands, and the US. ECOWAS promised to increase the number of its peacekeepers to 3,209 if funds could be secured, and on a visit to New York in April 2003, its Ghanaian Executive Secretary, Mohammed Chambas, asked the Security Council to provide these funds.[59] Meanwhile, France also sought – like Britain in Sierra Leone – to use its permanent seat on the Security Council to secure a substantial UN peacekeeping force in Côte d'Ivoire.[60] Tensions over the Anglo-American occupation of Iraq in March 2003 at first contributed to Washington's reluctance to sanction a large UN force in Côte d'Ivoire. After France overcame American opposition, the Council authorized a political assistance mission in Côte d'Ivoire (MINUCI),[61] which was then transformed in February 2004 into the US$400 million a year, 6,240-strong UN peacekeeping mission (UNOCI).[62] The mission was mandated to work alongside the 4,600 French troops to maintain a 'zone of confidence' between government and rebel troops and to implement the Marcoussis peace accord. UNOCI was also tasked to oversee the disarmament of 26,000 *Forces Nouvelles* troops and 4,000 government soldiers. The peacekeepers further provided security to opposition politicians in Abidjan. Senegalese general Abdoulaye Fall was named force commander of UNOCI which also had a 700-strong contingent from Morocco: one of France's most reliable African allies. By November 2004, the UN force, under Special Representative Albert Tevoedjre, had 5,995 peacekeepers. The small ECOWAS force was 'rehatted' under this new UN mission, as had occurred in Sierra Leone and Liberia.

[58] See, for example, Adekeye Adebajo, 'Nigeria: Africa's New Gendarme?', *Security Dialogue* 31, no. 2 (Jun. 2000), 185 99; Adebayo Adedeji, 'ECOWAS: A Retrospective Journey', in Adebajo and Rashid (eds.), *West Africa's Security Challenges*, 21 49; and John Chipman, *French Power in Africa* (Oxford: Basil Blackwell, 1989).

[59] See Mohammed Chambas. 'The Security Council and ECOWAS: Facing the Challenges of Peace and Security', New York, 11 Apr. 2003. Annex II of the New York based International Peace Academy seminar report, 'Operationalising the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security', based on a meeting in Dakar, Senegal, 12 13 Aug. 2002. (Available at www.ipacademy.org).

[60] See UN doc. S/2003/374 of 26 Mar. 2003.

[61] SC Res. 1479 of 13 May 2003.

[62] SC Res. 1528 of 27 Feb. 2004.

UNOCI was rocked in November 2004 when government soldiers attacked *Forces Nouvelles* positions and killed nine French soldiers in the northern city of Bouaké. French troops destroyed the entire Ivorian air force of nine planes, resulting in violent demonstrations against French interests and a mass evacuation of about 10,000 foreign (mostly French) citizens from Côte d'Ivoire. Jittery French troops killed about fifty government-backed 'Young Patriot' demonstrators outside Abidjan's Hotel Ivoire where many foreigners had taken shelter. These violent demonstrations by government-backed and other militias continued throughout the conflict, sometimes resulting in murders of innocent civilians. The distrust between the former colonial power and many Ivorians, fanned by a government that feared that Paris was bent on its removal, reached new heights. Gbagbo's supporters accused France of trying to 'recolonise' the country by using 'agents' like Burkina Faso.[63] The *Forces Nouvelles* rebels accused Guinea of backing the government militarily. While Gbagbo talked of leaving the French-dominated CFA (Communauté Financière Africaine) franc currency zone, his hard-line speaker of parliament, Mamadou Coulibaly, called for a complete break with the former colonial power. Gbagbo was further angered when France pushed the Security Council to impose an arms embargo and legal sanctions supported by largely francophone countries and Nigeria at a summit in Abuja.[64] There were also splits between the *Forces Nouvelles* rebels which sometimes resulted in deadly military clashes. Both the UN and French Licorne troops came under attack and frequently had their freedom of movement restricted by the warring factions.

Part of the complication of the Ivorian case lay in the proliferation of external mediators which raised obvious questions about too many cooks spoiling the broth. Presidents John Kufuor of Ghana, Nigeria's Olusegun Obasanjo, Gabon's Omar Bongo, Sierra Leone's Ahmed Kabbah, Togo's Gnassingbé Eyadéma, and Niger's Mamadou Tandja were all involved in peace-making efforts. South Africa, ECOWAS, the AU, the UN, and the Francophonie all nominated their own special envoys to Côte d'Ivoire. AU Chairman Obasanjo appointed South Africa's Thabo Mbeki as the organization's mediator in November 2004, bringing some focus to the peace-making process. After his appointment, Mbeki visited Abidjan and called the parties to Pretoria to discuss their differences. The Ivorian factions had gone to Accra in July 2004 in a meeting chaired by Kufuor and UN Secretary-General Kofi Annan, and attended by thirteen African heads of state. The Accra III accord that emerged set a new timetable for implementing the Marcoussis accord: amending of discriminatory nationality and electoral laws by September 2004, and starting the disarmament process by October 2004. Both deadlines were missed.

To increase the pressure, the Security Council finally imposed an arms embargo on all the factions in November 2004[65] (followed a year later by an embargo on the

[63] Lamin, 'The Conflict in Côte d'Ivoire', 27.
[64] Whiteman, 'The Three Deaths of Houphouet Boigny', 57.
[65] SC Res. 1572 of 15 Nov. 2004.

trade of diamonds[66]), and unveiled the threat of travel sanctions and a freezing of financial assets of individuals obstructing the peace process. Within the Council, France pushed strongly for individual sanctions, while Russia, China, and Algeria were opposed to these measures as well as further actions to tighten the arms embargo.[67] Mbeki also successfully urged the Council to hold off individual sanctions to give his mediation efforts time to bear fruit. A tripartite monitoring group of ECOWAS, the AU, and the UN started submitting fortnightly monitoring reports. The main source of problems was that Gbagbo refused to empower his prime minister, Seydou Diarra, with decision-making powers, and dragged his feet on amending laws that would have allowed his rival, Alassane Ouattara, to participate in elections. Rebel leader Guillaume Soro, backed by the Coalition des Marcoussistes opposition parties, refused to disarm until the laws had been passed. Along with other opposition politicians, Soro frequently walked out of his ministerial post in Abidjan to protest what they perceived to be Gbagbo's recalcitrance in implementing the peace accords.

By 2005, the epicentre of conflict in West Africa appeared to have shifted from Liberia to Côte d'Ivoire. The country has remained divided since 2002. Côte d'Ivoire's volatile western region saw ethnic and community-based militias continue to clash violently, while the 'zone of confidence' continued to be violated, mainly by the rebel *Forces Nouvelles*. In August 2005, the government-backed 'Young Patriots' militia attacked the vehicle of the Swedish UN Special Representative, Pierre Schori, who had replaced Tevoedjre in January 2005. The UN mission also reported an eight-fold increase in the limiting of its peacekeepers' freedom of movement between June and July 2005, and a Moroccan UN peacekeeper was murdered in the northern town of Bouaké a month later. The government of Laurent Gbagbo, Konan Bédié's Democratic Party of Côte d'Ivoire (PDCI), Alassane Ouattara's Rally of Republicans (RPR), and Guillaume Soro's *Forces Nouvelles* continued to squabble over implementation of the Pretoria Agreement of June 2005 that had been negotiated by Thabo Mbeki, setting timetables for implementing Marcoussis and Accra III. This resulted in the failure to achieve disarmament targets in August 2005, and the postponement by a year of elections which had been originally scheduled for October 2005.

Consistent with the Pretoria accord, Mbeki had urged Gbagbo to use his exceptional powers to amend discriminatory laws (on nationality, identification, the Human Rights Commission, and the print media) in July 2005, when it became clear that the Ivorian parliament would not amend them. After Gbagbo adopted these laws by decree, Soro and the Group of Seven (G7) opposition parties challenged these measures, as did the parties of Ouattara and Bédié. These politicians

[66] SC Res. 1643 of 15 Dec. 2005.

[67] *Security Council Report*. Monthly Forecast Jan. 2006, 22 Dec. 2005, 14; and Monthly Forecast Apr. 2006, 30 Mar. 2006, 8. (Available at www.securitycouncilreport.org).

argued that certain groups in Côte d'Ivoire were still deprived of their rights under the nationality law and that the country's Independent Electoral Commission (IEC) needed to have clear primacy over the National Institute of Statistics in organizing elections. Gbagbo further amended the laws on the Independent Electoral Commission, the nationality code, and the naturalization law – again by decree – in August 2005, but this still did not break the deadlock.

Apart from recalcitrant politicians and warlords, friction between some of the key mediators further complicated the resolution of the Ivorian crisis. French sensitivities at South Africa's lead role in the traditional Gallic *chasse gardée* erupted into the open when President Jacques Chirac, during a visit to Senegal in February 2005, complained that the peace process was too slow because the South Africans did not understand 'the soul and psychology of West Africans'. Regional actors, not least Mbeki, were taken aback by the cultural arrogance and political insensitivity of this statement which underlined the continuing paternalism with which some Gaullists still regarded their former colonies. Some in France also called for French troops to be withdrawn from Côte d'Ivoire, even as the South Africans quipped that they had achieved more in three months than Paris had done in two years.

After a South African statement blaming Soro for blocking the peace process, the *Forces Nouvelles* withdrew support from Mbeki's mediation efforts, accusing him of bias towards Gbagbo. The rebel group then urged the AU Chairman, Olusegun Obasanjo, to find an alternative way of resolving the impasse. These events unfortunately coincided with tensions between South Africa and Nigeria over regional diplomatic issues and the acrimonious battle for an African seat on a reformed UN Security Council. At a meeting of the AU's fifteen-member Peace and Security Council on the margins of the UN General Assembly in September 2005, ECOWAS was tasked with overcoming this impasse: a clear attempt to shift the locus of peace-making from South Africa to Nigeria.[68] Mbeki and Obasanjo jointly visited Côte d'Ivoire in November and December 2005 to meet all the parties, and were eventually able to convince them to agree on a new prime minister, technocrat Charles Konan Banny, to replace Diarra.

However, the stalemate over implementing disarmament and the amended laws continued. Elections scheduled for October 2005 had again to be postponed by another year. The distrust between the Ivorian parties remained strong, and divisions between the regional mediators did not help. Kofi Annan had asked the Council to deploy an additional 1,226 peacekeepers in December 2005. The Council approved only 850 troops who arrived by January 2006. Annan, pushed by France, asked for a further 3,400 peacekeepers to maintain security in the volatile country. Washington agreed to consider an increase of 1,500–2,000 troops but resisted the increase that Paris was strongly pushing for. With other African members of the Council (Tanzania,

[68] This information on Côte d'Ivoire has drawn upon UN doc. S/2005/398 of 17 Jun. 2005; and on UN doc. S/2005/604 of 26 Sep. 2005.

Ghana, and Congo-Brazzaville), the US insisted that the UN mission in Liberia should not be weakened by redeploying UNMIL troops to Côte d'Ivoire – as France had suggested – to bolster UNOCI.[69]

After UN and AU representatives called for the Ivorian parliament (whose term had expired) to be dissolved, violent demonstrations by the 'Young Patriots' in Abidjan and the West of the country targeted UN and French interests in January 2006. South Africa, which had earlier backed this position, reversed itself to support a parliamentary extension, raising questions again among rebel and opposition groups about its bias towards Gbagbo.[70] In February 2006, a Security Council committee slapped targeted sanctions on two leaders of the 'Young Patriots,' Charles Blé Goudé and Eugene Djué, as well as a *Forces Nouvelles* commander, Fofié Kouakou.[71] It seems that the Council will have to continue these and other sanctions against 'spoilers,' and a strengthened UN mission will also be critical to achieve UNOCI's goals in Côte d'Ivoire. Prime Minister Banny was forced to dissolve his cabinet in September 2006, following riots after the dumping of toxic waste in Abidjan killed and hospitalized dozens of Ivorians. With both Obasanjo (privately) and Senegal's Abdoulaye Wade (publicly) increasingly critical of Mbeki's mediation, South Africa stepped down from the role at an AU meeting in October 2006 before it was pushed. UNOCI now had 8,045 peacekeepers in the country, but durable peace in Côte d'Ivoire still remained elusive, despite Soro becoming Prime Minister in March 2007.

The Role, Impact, and Perceptions of the UN Security Council in West Africa

We now return to the first three questions we posed at the beginning of this chapter on the role, impact, and perceptions of the UN Security Council in Liberia, Sierra Leone, and Côte d'Ivoire, much of which has been covered in the three case studies. It is important to note at the outset that it was ECOWAS (and later the US and Britain) and not the UN that drove the peace processes in Liberia and Sierra Leone for most of the duration of these conflicts. This was less the case in Côte d'Ivoire where France played a significant role from the beginning of the conflict, deploying troops, financing an ECOWAS force, and hosting peace talks. The Council's involvement in Liberia was slow and tentative: only thirteen months after the

[69] *Security Council Report*. Monthly Forecast May 2006, 27 Apr. 2006, 9; and Monthly Forecast Mar. 2006, 24 Feb. 2006, 12.

[70] Francis Ikome, 'Côte d'Ivoire Follow up Dialogue', Unpublished report of the Institute for Global Dialogue, South Africa of a seminar on 21 Jun. 2006, 4.

[71] UN doc. S/2006/222 of 11 Apr. 2006, 5.

start of the conflict did the Council rouse itself to pass a resolution recognizing ECOMOG's efforts; it took the Council three years to impose an arms embargo on Liberia's recalcitrant warlords; and it took nearly four years from the start of the conflict to deploy UN military observers. In the second peacekeeping deployment to Liberia between 2003 and 2006, the Council, pushed by the US, was involved in conflict management efforts from the start, and thus played a more effective role. The second deployment stemmed a certain bloodbath in Monrovia and was more decisive than the lackadaisical and reluctant 1993 deployment during which the UN clearly played second fiddle to ECOMOG.

In Sierra Leone, the Security Council adopted a policy of 'malign neglect' to the conflict between 1991 and 1999, leaving ECOMOG again to improvise another effort at 'peacekeeping on a shoestring' with predictable results. The British military and political role proved decisive in convincing the Council to replace the ECOMOG force with a UN mission. The Council thus helped to end the conflict in 2002, improvising a rare UN peacekeeping success in Africa. Finally, in the third case of Côte d'Ivoire, the French pushed the Security Council to transform a weak ECOWAS force into a UN force after a year. While the conflicts in Liberia and Sierra Leone had temporarily ended through the leadership of ECOWAS and the support of the UN by 2006, the war in Côte d'Ivoire was still far from over. All three states pushed for UN involvement due to their historical relations – in the case of Britain and the US – and strategic interests – in the case of France – in Sierra Leone, Liberia, and Côte d'Ivoire.

With regard to the issue of the reaction of regional actors to the Security Council, in Liberia and Sierra Leone some of the warlords often called for an increased UN role in order to counter the dominance of a Nigerian-led ECOMOG. Some of the parties in Côte d'Ivoire – particularly the government of Laurent Gbagbo – have, however, looked upon the UN with suspicion due to French influence within the Council. They have thus sought to balance the French role by calling for a stronger AU and ECOWAS role. Significantly, no peace conference was held in France after 2003, and the centre of peace-making moved from Paris to Pretoria as Thabo Mbeki took up the reins of AU mediator. ECOMOG maintained a somewhat ambiguous attitude towards the Security Council in both Liberia and Sierra Leone. On the one hand, many of its leaders wanted a larger Security Council role to make up for their financial and logistical deficiencies; on the other hand, West African leaders were reluctant to hand over the credit for any peacekeeping success to the UN after nearly a decade of often thankless and frustrating peacekeeping in both countries.

Some ECOWAS countries such as Côte d'Ivoire and Burkina Faso opposed the Nigeria-led ECOMOG, backed rebels in Liberia and Sierra Leone, and contributed little to sub-regional peacekeeping efforts in either case. Both therefore seemed to prefer a UN force and a stronger Security Council role. Similar splits were evident in Côte d'Ivoire, with Nigeria – the traditional rival of France in West Africa – seeking to wield its influence through peace-making within the AU (which it chaired in 2004 and

2005) and ECOWAS frameworks. Francophone countries such as Niger, Togo, and Benin which had deployed troops under a French-financed ECOWAS that was later subsumed under a UN mission had a stake in supporting the UN Security Council as well as French diplomatic and military efforts in Côte d'Ivoire.

Learning Four Lessons: The UN Security Council and West Africa

On the basis of the three cases, there are four lessons for the Security Council's future efforts at managing conflicts in West Africa and elsewhere: establishing an effective division of labour between the UN and regional organizations like ECOWAS; acknowledging the role of external actors – particularly the powerful members of the Security Council – in ensuring an effective UN role in regional conflicts; developing effective strategies to deal with spoilers; and cooperating with local hegemons like Nigeria, which possess relative political and military clout in their regions, in undertaking multilateral UN missions.

The UN and ECOWAS: From burden-shedding to burden-sharing

In discussing the lessons of UN–ECOWAS cooperation in Liberia, Sierra Leone, and Côte d'Ivoire, it is important to emphasize that the UN Security Council has primary responsibility for international peace and security and simply shifted its responsibilities to ECOWAS due to the reluctance of the Council, after debacles in Somalia and Rwanda, to sanction UN missions in Africa. The ECOWAS interventions underlined the importance of an active Security Council role in sub-regional peacekeeping efforts. In Liberia, the UN played a limited but useful monitoring role to ECOMOG, and oversaw the country's 1997 election. The UN also deployed a peacekeeping mission into Liberia between 2003 and 2006. In Sierra Leone, the UN played a similar military monitoring role as in the first intervention in Liberia until it took over peacekeeping efforts from ECOMOG in 1999. In Côte d'Ivoire, the UN took over ECOWAS's peacekeeping responsibilities after a year in 2004.

The creation of UN peace-building offices in Liberia and Sierra Leone represents a potentially significant innovation in the organization's conflict management strategy. However, these offices will have to be substantially bolstered with stronger mandates and greater staff and resources. Their cooperation with ECOWAS and

civil society groups will also have to be strengthened and more clearly defined. The peace-building office in Liberia, established in 1997, was the first ever such office established by the UN. However, as an internal UN report of July 2001 admitted, the peace-building office in Liberia was poorly resourced and its mandate was weak and not politically intrusive due to the initial reluctance of the UN to establish the office.[72] The Liberian government had accepted the office as the lesser evil to a continued ECOMOG presence in the full knowledge that the UN would not interfere with its running of the country. The UN also established a peace-building office in Sierra Leone in January 2006.[73] These offices have been mandated to perform such tasks as providing electoral assistance; promoting human rights and the rule of law by working through both governments and civil society actors; mobilizing donor support for disarmament, demobilization, and the reintegration of ex-combatants into local communities; supporting the rebuilding of administrative capacity; and rehabilitating local infrastructure.

Many of these goals have, however, often not been met in fragile situations in which donors have repeatedly failed to deliver on their pledges. The UN office in Liberia, under Felix Downes-Thomas, was regarded as too close to Charles Taylor's government. It narrowly interpreted its mandate as mobilizing donor support for peace-building, and declined to work closely with civil society groups and to report on human rights abuses. It is vital that the UN collaborate with ECOWAS in its future peace-building tasks, particularly with the establishment of a thirty-one-member UN Peacebuilding Commission in December 2005 to mobilize resources for post-conflict reconstruction, along with regional development banks, the World Bank, and the IMF.

Following the recommendations of the UN's Inter-Agency Task Force on West Africa of May 2001, the decisions by the Security Council to establish a UN office in West Africa and to appoint a Special Representative of the UN Secretary-General, Ahmedou Ould-Abdallah, to head this office both represented positive steps for UN–ECOWAS cooperation.[74] The Council mandated the office to help strengthen ECOWAS's peacekeeping and electoral capacities and to work with civil society groups in West Africa. The UN office was also tasked with performing the following specific tasks: assist the UN and its sub-regional offices to coordinate strategies in West Africa; monitor and report on political, humanitarian, and human rights developments; harmonize UN activities with those of ECOWAS; monitor ECOWAS's decisions and activities; and support national and sub-regional peace-building efforts.[75] While these are all noble objectives, the curious decision not to locate this office in Abuja – site of the ECOWAS secretariat – has reduced its effectiveness in fulfilling its mandate, particularly in light of the complications of

[72] See Report of the Joint Review Mission on the United Nations post conflict peacebuilding offices. Department of Political Affairs/United Nations Development Programme, 20 Jul. 2001, 12.

[73] SC Res. 1620 of 31 Aug. 2005.

[74] UN doc. S/2001/129 of 29 Nov. 2001.

[75] UN doc. S/2001/434 of 2 May 2001, 15.

communication and travel within West Africa. The one success of the office (with fewer than five professional staff) has been the organization of regular meetings between the political and military heads of UN missions in Liberia, Sierra Leone, Côte d'Ivoire, and Guinea-Bissau to discuss cross-border issues and to share comparative experiences as part of a regional approach to managing West Africa's conflicts. The UN office has also conducted research on youth unemployment in West Africa and has been engaged in private sector round tables to attract investment to the region. UNOWA was further involved in the seventh EU–ECOWAS Ministerial Troika in Luxembourg in May 2005, where a Trilateral Framework of Action for Peace and Security was agreed to provide support for ECOWAS in the areas of security sector reform; electoral missions; mediation; peace support operations; and disarmament, demobilization, and reintegration.[76]

External friends and foes

The UN Security Council must also provide regional peacekeepers in West Africa and elsewhere, in a timely manner, with the logistical and financial resources they need if such missions are to achieve their goals. The Liberia experiences in 1997 and 2003 revealed that, if these resources and funds are provided by external actors, and if there is a will on the part of the parties to disarm their factions, even a poorly resourced regional body can achieve some success. The second important lesson for the Council is therefore the need to encourage external actors to contribute substantially to conflict management efforts. While external actors like the US and France often fuelled conflicts and/or supported autocrats in West Africa during the Cold War era, Council members have played a more positive role in peace-making efforts in post-Cold War West Africa. Significantly, it took the support of the UK, the US, and France – three western 'godfathers' and all veto-wielding Permanent Members of the UN Security Council – to establish a UN presence in their former spheres of influence. The UN mission in Liberia was headed until April 2005 by an American national, Jacques Klein. In Sierra Leone, the UK sent 800 troops to help stabilize a faltering UN mission; led international efforts to mobilize donor support; and used its permanent seat on the Security Council to increase the size of the peacekeeping force to 20,000 – the largest UN peacekeeping mission in the world at the time. London also pushed for the imposition of sanctions (with the strong support of Richard Holbrooke, America's forceful permanent representative at the UN) against Charles Taylor. Likewise, France ensured the deployment of a UN mission to Côte d'Ivoire in 2004. The International Contact Groups in Liberia and Sierra Leone were also useful mechanisms for mobilizing Council support for, and sustaining interest in, these missions.

[76] ECOWAS EU UNOWA Framework of Action for Peace and Security (draft, n.d.).

Spoilers and sanctions

The two cases of Liberia and Sierra Leone underline the importance of developing effective strategies and sanctions to deal with spoilers like Charles Taylor and Foday Sankoh.[77] In Liberia and Sierra Leone, warring factions killed and kidnapped ECOMOG and UN peacekeepers and stole their weapons and vehicles. In both cases, peacekeepers were deployed into countries in which there was no peace to keep and in which certain parties were determined to use violence to force the withdrawal of its peacekeepers. It is difficult to remain neutral under such circumstances, and the Security Council should consider, when appropriate, imposing carefully targeted economic, political, and legal sanctions of the sort that were successfully applied to the RUF in Sierra Leone and Charles Taylor in Liberia. European, North American, and Asian commercial firms played a negative role in supporting Liberian and Sierra Leonean warlords through the illicit export of natural resources and minerals in both countries. In devising sanctions, the Council should also consider the actions of these firms, and, if necessary, punish them.[78]

Led by Britain and the US, the Security Council imposed economic and travel sanctions, as well as an arms embargo on Charles Taylor's regime in May 2001. Though ECOWAS leaders opposed these sanctions at the time, the punitive measures appear to have had a major impact in ending the arms-for-diamond trade between Taylor and the RUF. They weakened his regime tremendously and thus helped to end the wars in Liberia and Sierra Leone. The opposition of West Africa's leaders to sanctioning Taylor's fuelling of conflicts in the sub-region and the granting of political asylum to the Liberian president by Nigeria underlined the traditional reluctance of the continent's leaders to punish each other. While Taylor's autocratic rule and war crimes in Liberia are indefensible (though the Security Council met the former warlord in Monrovia during its visit to the region in October 2000), American pressure saw Nigeria hand Taylor over to the Special Court in Sierra Leone in April 2006. Such selective, self-interested efforts at punishing warlords – apparently based on Washington's concerns of an alleged link, reported by Douglas Farah, a *Washington Post* journalist, between Taylor-backed RUF Sierra Leonean diamonds and al-Qaeda in America's global 'war on terror' – are, however, unlikely to contribute to boosting the credibility of the evolving international criminal justice regime.[79]

[77] See, for example, David Cortright and George A. Lopez (eds.), *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner Publishers, 2000); and Stephen Stedman, 'Spoiler Problems in Peace Processes', *International Security* 22, no. 2 (Fall 1997), 5 53.

[78] See David Cortright and George A. Lopez, 'Reforming Sanctions', in Malone (ed.), *The UN Security Council*, 167 79.

[79] See A. Bolaji Akinyemi, 'The Taylor Saga: A Clash of Civilisations', *New African* no. 451 (May 2006), 20 23; and Ali A. Mazrui, 'A True Citizen of the World', (Interview), *AU Magazine*, June Aug. 2005, 1 no. 4, 17.

Nigeria: Multilateralizing hegemony

The final lesson for the Security Council is to find ways of harnessing the important military and financial capacity of local hegemons like Nigeria into more multilateral efforts under a UN umbrella. South Africa has played a similar role as part of UN missions in Burundi and the DRC. The two ECOMOG interventions in Liberia and Sierra Leone demonstrated the importance of Nigeria to peacekeeping missions in West Africa. Despite continuing fears expressed by several ECOWAS states and numerous commentators of a bullying Nigeria clumsily rampaging through West Africa like a bull in a china shop, Nigeria appears to be an important presence to the success of sub-regional peacekeeping initiatives.[80] In Liberia and Sierra Leone, Nigerian-led ECOMOG forces were able to overcome their logistical shortcomings to protect Monrovia and Freetown from being overrun by rebels in 1992 and 1999 respectively. The Nigerians had also been able to repel the NPFL from Monrovia in 1990 and to restore the Kabbah government to power in Freetown in 1998.

The mission in Côte d'Ivoire has been sustained by the presence of 4,600 French troops. France is, however, unlikely to be a more natural and reliable hegemon in West Africa than Nigeria. Pax Nigeriana, though, faces both opportunities and obstacles in a post-Cold War West Africa. The country's enormous political and socio-economic problems and the aversion of Nigerian public opinion to future costly interventions may prove to be major constraints for elected civilian governments as opposed to the military brass hats who launched the interventions into Liberia and Sierra Leone. Most ECOWAS countries, however, no longer question the need for Nigerian leadership but rather its penchant for a unilateral diplomatic style that offends the sensibilities of smaller, poorer, and weaker states. Nigeria must learn to speak softly, even as it carries a big stick.

Conclusion

What do the three cases of Liberia, Sierra Leone, and Côte d'Ivoire suggest about the future of UN peacekeeping in Africa? The need for UN peacekeeping in Africa is clear: nearly half of the fifty UN peacekeeping missions in the post-Cold War era have been in Africa; the continent currently hosts the most numerous and largest UN peacekeeping missions in the world; and the world body has established sub-regional offices in West Africa, the Great Lakes, and Central Africa, as well as peace-building offices in Liberia, Sierra Leone, Guinea-Bissau, and the Central African

[80] This view was confirmed by Ahmedou Ould Abdallah, UN Special Representative for West Africa, during an interview in Dakar, Senegal, on 5 Jun. 2006.

Republic. In 2006, seven out of the seventeen UN peacekeeping missions in the world were in Africa,[81] and nearly 90 per cent of its personnel were deployed on the continent. Both the 2004 High-level Panel report and the Secretary General's response, *In Larger Freedom*, called on donors to devise a 10-year capacity-building plan with the African Union and advocated UN financial support for Africa's regional organizations.[82] This is particularly welcome in light of our three case studies as well as the AU's peacekeeping difficulties in Sudan's Darfur region between 2004 and 2006 which led to its call for the UN to take over the mission. Africa must, however, remain vigilant to ensure that this capacity-building plan is implemented, given the penchant of many donors to make similar unfulfilled promises in the past. The difficult experiences of regional peacekeepers in Liberia, Sierra Leone, Côte d'Ivoire, as well as in Lesotho, Burundi, Rwanda, Comoros, and Sudan, are all clear signs of the need for better-equipped and richer western peacekeepers to continue to contribute to efforts to maintain peace and security in Africa. It is important that the Security Council not turn peacekeeping in Africa into an apartheid system in which Africans and Asians spill most of the blood and the West pays some of the bills. The Council's support for 'African solutions to African problems' often appears to many Africans as a cynical attempt to convert a Cold War battle cry by Africans to rid their continent of foreign meddlers into an excuse to abandon the UN's proper peacekeeping responsibilities in Africa.

Finally, a potentially useful mechanism that was employed in West Africa was the visits to the sub-region by UN Security Council members. Three missions of UN Security Council permanent representatives visited West Africa in October 2000, July 2003, and June 2004. The main purpose of these three visits was for Council members to gain a better understanding of the situation on the ground in this volatile sub-region. They thus met heads of state; diplomats; rebels; and civil society actors. The missions urged more effective UN action in deploying peacekeepers and civilian staff; called for greater support for ECOWAS's peace-making and peacekeeping efforts; saw the need for greater coordination of the UN's efforts in various sub-regional peacekeeping missions (the genesis of the regional approach); advocated greater support for civil society actors; championed support of electoral and post-conflict peace-building efforts; and called for an end to a 'culture of impunity' by sub-regional warlords through targeted sanctions.[83]

[81] These missions are in Liberia, Côte d'Ivoire, Ethiopia/Eritrea, Sudan, Western Sahara, DRC, and Burundi.

[82] See High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004; and see *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 2 Mar. 2005. See also 'A More Secure Continent: African Perspectives on the UN High level Panel Report', CCR Seminar Report, May 2005. (Available at www.ccrweb.ccr.uct.ac.za).

[83] See UN doc. S/2000/992 of 16 Oct. 2000; UN doc. S/2003/688 of 7 Jul. 2003; and UN doc. S/2004/525 of 2 Jul. 2004.

These trips allowed the Council's ambassadors to gain first-hand experience of the situation on the ground and to assess the views and personalities of the key actors in West Africa's three destructive wars. These three missions also provided Council members with insights that were useful for making decisions in New York. Such high-level field missions can bring home to parties in dispute the Council's seriousness to understand and address their conflicts. They can also bring hope to the populations of conflict-ridden regions like West Africa that they have not been forgotten by the international community.

CHAPTER 22

THE SECURITY COUNCIL IN THE WINGS: EXPLORING THE SECURITY COUNCIL'S NON-INVOLVEMENT IN WARS

J. P. D. DUNBABIN

The UN Charter confers on the Security Council 'primary responsibility for the maintenance of international peace and security'.[1] Moreover, UN members must 'make available' to it 'armed forces, assistance and facilities'[2] and, using these, the Security Council should 'take such action . . . as may be necessary to maintain or restore international peace'.[3] That is not the world we know – indeed only a minority of post-1945 conflicts have generated serious UN intervention. This

[1] UN Charter, Art. 24. [2] Ibid., Art. 43. [3] Ibid., Art. 42.

chapter demonstrates such non-involvement on the part of the Security Council, explores factors explaining it, and, more briefly, analyses certain factors shaping the 'peace-building' role into which the UN's post-Cold War activism has been largely channelled.

Significant Examples of Non-Involvement by the Security Council

The Cold War

President Roosevelt hoped that the UN, headquartered in America, would so anchor US participation in international affairs as to provide the world order with the preponderant backing it had lacked after US withdrawal into 'isolation' in 1920. In addition, the Security Council (whose 'Military Staff Committee' was to 'consist of the Chiefs of Staff of the permanent members')[4] would institutionalize the cooperation between the Big Three (the US, the UK, and the Soviet Union), and more especially the US-Soviet cooperation, that Roosevelt had set such store by since 1943. However, the conflict dominating the forty-five years after Roosevelt's death was the Cold War, a largely bipolar struggle between the US and Soviet superpowers. UN involvement was slight. Iran's reference (with US backing) to the Security Council of the USSR's refusal to withdraw its troops from Iran played a significant role – though probably a lesser one than direct Iranian-Soviet negotiations – in resolving an early crisis. But, later in 1946, the US turned to traditional fleet movements to stiffen Turkey's resistance to Soviet demands for (in effect) control of the Black Sea Straits. Indeed the UN's role in the early Cold War was chiefly as a propaganda forum, with the USSR's repeated vetoes earning it a bad reputation. Only on one occasion did the Security Council respond to a Cold War challenge more or less as initially envisaged: in 1950, a Soviet boycott enabled the Security Council to authorize intervention by a multinational, if essentially US, force to counter North Korea's invasion of the South.[5]

The Korean War opened up the possibility of the United Nations becoming aligned in the Cold War, much as the League of Nations came in the 1930s to represent (for many) an alignment against the revisionist powers. Had the USSR and its satellites walked out in protest, as Japan, Germany, and Italy had left the League, this might indeed have happened. But Moscow was too prudent to hand

[4] Ibid., Art. 47. [5] SC Res. 83 of 27 Jun. 1950.

the West such an advantage, and soon resumed its Security Council place and veto. The United States sought to bypass this by securing from the General Assembly, where it then commanded a large majority, the 1950 'Uniting for Peace' resolution. This resolution provided that, if a veto stopped the Security Council exercising 'its primary responsibility for the maintenance of international peace', then 'the General Assembly shall consider the matter immediately with a view to making recommendations . . . for collective measures, including . . . the use of armed force.'[6]

The resolution impacted for a time on the internal workings of the UN, but markedly less so on the Cold War itself. Though the Assembly in February 1951 condemned communist China as an aggressor and in November 1956 called on the USSR to withdraw from Hungary, it showed no disposition to invoke 'the use of armed force'. Nor indeed could it, since the United States (though occasionally tempted) always decided not to expand the Korean fighting into China, and since it saw no possibility of safely challenging Soviet actions in Hungary.

Mutual restraint usually stopped Cold War rivalries reaching the point of 'clear and present danger'. However, there were occasions when World War III seemed far closer: the years of hectic mutual rearmament that followed the outbreak of the Korean War, during which the USSR was run by an increasingly paranoid Stalin of whose intentions in 1950–3 nobody can be sure; the 1954–5 period, encompassing the fall of Dien Bien Phu and the first Chinese 'off-shore islands' crisis, of which one historian wrote that '[f]ive times in one year [1954] the experts advised the President to launch an atomic strike against China';[7] the better-known Cuban missile crisis in 1962; and autumn 1983, when the ageing Yuri Andropov, General Secretary of the Communist Party of the Soviet Union, convinced himself that NATO's 'Able Archer' command-and-control exercise was cover for a real 'first [nuclear] strike'.[8]

Why, then, were these issues not brought before the Security Council? In theory, Andropov could have taken his fears to the Security Council; but he would have had nothing to go on except suspicion. Equally there was, in 1950–3, no definite crisis situation (beyond Korea) for the UN to focus on. But this cannot be said of 1954–5. Here, however, the UN was debarred from any useful role not only by the prospect of Soviet or US vetoes in the Security Council, but also by its own non-recognition of one of the major participants, the People's Republic of China. Any worthwhile negotiations would therefore have to be – and in fact were – conducted more directly, outside the UN format. Finally there remains the Cuban missile crisis; here the Security Council did play a role, but only as a forum in which the US could prove the installation of strategic missiles in Cuba and expose unwise Soviet lies on the subject. This gave the US diplomatic and public opinion advantages. But

[6] GA Res. 377 (V) of 3 Nov. 1950.

[7] Stephen E. Ambrose, *Eisenhower The President* (London: Allen & Unwin, 1984), 229.

[8] Peter V. Pry, *War Scare. Russia and America on the Nuclear Brink* (Westport, CN: Praeger, 1999), part 1.

the crisis itself was resolved by a combination of direct Soviet-American diplomacy and mounting US military pressure. Had it not been, we now know that Kennedy hoped, as a last resort, to invoke UN good offices, but those of the Secretary-General not the Security Council.[9]

Potential nuclear conflicts: India–Pakistan and China–Taiwan/US

Besides the Cold War, two other rifts may have had the potential to provoke Armageddon, that between the now nuclear India and Pakistan, and that between China and a Taiwan backed by the United States. In neither case has the Security Council played a significant role.

The Indo-Pakistani dispute is more fully treated in Chapter 14. It has, of course, generated real, though deliberately limited, conventional wars. But there have also been occasions when something much bigger seemed in the offing: in early 1987, though the crisis was dispelled by Pakistani President Zia's diplomatic visit to India, 'ostensibly to watch a Test cricket match';[10] the long-continuing post-1989 violence in Indian-held Kashmir, which India believed (with some justice) to be fomented by Pakistan; the 1999 'Kargil conflict', from which Pakistan eventually withdrew in the face of 'mounting military losses and intense pressure from the US government';[11] and the climactic confrontation that followed terrorist attacks in 2001, first on the Kashmir State Assembly in Srinagar, then on the parliament building in Delhi. India moved troops to the border and, in 2002, tensions 'rose to the point where armed conflict, with a possible escalation to a nuclear exchange, seemed a definite possibility'.[12] Indian ministers talked, in the language of the 'War on Terror', of retaliation against militant training camps in Pakistan-held Kashmir or, more generally, against Pakistan itself – following one militant attack, India's Prime Minister secured parliamentary backing for an (unspecified) fight against 'cross-border terrorism'. Unsurprisingly 'frantic international diplomatic activity' ensued, but, as in 1999 and 1987, this did not extend to the Security Council.[13] Open war, such as might have required at least verbal UN involvement, did not break out, and nobody seems to have thought UN resolutions likely to help prevent

[9] Raymond L.Garthoff, *Reflections on the Cuban Missile Crisis* (Washington, DC: Brookings, 1987), 59 60.

[10] *Annual Register* (1987), 292 3, 299.

[11] *Annual Register* (1999), 316 17, 323.

[12] In 2003 it transpired that President Musharaf had told India that Pakistan could have considered a 'non conventional' military response had Indian troops entered its territory. In Jan. 2002, India's senior general had declared his troops prepared for the retaliatory use of nuclear weapons, and in Jan. 2003, the Indian Defence Minister observed, during the test firing of missiles, that Pakistan would be destroyed if it started a nuclear war: *Annual Register* (2002), 315; (2003), 336.

[13] *Annual Register* (2001), 334, 337; (2002), 315 21, 380 93; *Keesing's Record of World Events*, 44792 3.

one. It might have been considered that Great Powers are more readily influenced behind the scenes, and Pakistan might, in any case, have been protected by China's veto. In any event, though Pakistan would welcome international mediation over Kashmir, India (the stronger party, but also the one more vulnerable to pressure for 'self-determination') stands firm on Kashmir's 1947 accession to India, and insists that other aspects of the question can be resolved only by direct talks with Pakistan.

Like Kashmir, the Taiwan Straits have witnessed intense confrontation since early in the post-war era. Things seemed to ease with China's economic reforms and the investment they engendered from Taiwan. However, Taiwan's democratization has tilted its political balance away from the post-1949 Kuomintang refugees, and towards the locally born majority, which is more prone to stressing the island's separate identity. While ready to contemplate a long transitional period of 'One Country Two Systems' on the Hong Kong model, Beijing's rulers were viscerally opposed to the idea of Taiwan instead edging to sovereign independence. Accordingly, they sought to prevent overseas visits by its leaders. In June 1995, China responded to Taiwanese President Lee's visit to his alma mater, Cornell University, by firing missiles into the sea off Taiwan. Quiet US remonstrances were rebuffed, which drew a signal in the form of the dispatch of a US aircraft carrier through the Taiwan Strait for the first time since 1979. Then in the run-up to Taiwan's 1996 elections, China staged military exercises and fired missiles close to Taiwan's major ports. In response, the US sent two carrier groups to the positions they would occupy if they really had to defend Taiwan.[14]

Before the 2000 Presidential elections in Taiwan, Beijing declared that if Taiwan 'indefinitely' refused negotiations on reunion, China would be 'forced to take all possible drastic measures, including the use of military force', and warned the Taiwanese not to vote for a 'pro-independence' candidate.[15] Taiwan elected Chen Shui-bian, who had in the past spoken of declaring Taiwan an independent state (rather than the old 'Republic of China'). He did now promise not to do so unless China invaded, but he continued to explore formulas emphasizing Taiwan's distinctive statehood. There have been a string of Chinese warnings, notably a 2004 statement that military action by 2008 could not be ruled out if Chen persisted with his plans for constitutional reform. In March 2005, the passage of an 'Anti-Secession Law' formalized the warning of military action in the event of moves toward a Taiwanese declaration of independence.[16]

All this is reflected in a major Sino-Taiwanese arms race, with China targeting missiles at Taiwan and developing amphibious capabilities,[17] while Taiwan's strategy supposedly includes a threat to destroy Shanghai. Behind this alarming prospect

[14] James Mann, *About Face: A History of America's Curious Relationship with China from Nixon to Clinton* (New York: Vintage Books, 2000), ch. 17.

[15] *Keesing's Record of World Events*, 43412, 43460.

[16] Ibid., 45900, 46118, 46410, 46521.

[17] Ibid., 44101 2, 44898, 45088, 46063, 46204. For a 2005 joint Sino Russian invasion exercise, see *Daily Telegraph*, 19 Aug. 2005, 16.

lurks that of US–Chinese catastrophe. The US could not easily permit a dictatorship to conquer a democracy, and, in 2001, President Bush, while discouraging overt Taiwanese assertions of independence, promised to do 'whatever it took to help Taiwan defend itself'.[18] This posture, in turn, has drawn at least unofficial warnings that China might respond to US military action by a nuclear attack on American cities.[19] The scenario does not at present appear very plausible, and tensions are currently subsiding. But though many parts of the world seem more immediately dangerous, perhaps none has the same potential for escalation if things really go wrong. The Security Council, however, plays no role. Faced with the prospect of US and/or Chinese vetoes, it is hard to see how it could. Beijing would, in any case, see UN involvement in what it regards as a purely domestic Chinese problem as highly inflammatory.

Constraints on Security Council Involvement

Thus far we have been concerned with potential Armageddons, in which the UN has played only a marginal role. But there have been plenty of actual conflicts since 1945. Again UN involvement has been far from automatic: of the five wars with the highest 'battle' deaths,[20] Vietnam (1954/1959–1975), Korea (1950–3), the Chinese civil war (1946–9), Iraq–Iran (1980–8), and the Afghan Civil War (1978–2002), the UN was only heavily involved in one (Korea), though it contributed to the eventual ending of the Iraq–Iran war. From the list of conflicts in Appendix 7, it emerges that the United Nations, and a fortiori the Security Council, has not really been involved in most post-war conflicts most of the time. This cannot simply be blamed on the Cold War. As Elizabeth Cousens writes, there is a 'long list' of post-Cold War 'crises and conflicts that have been left unaddressed in any significant measure – Algeria, Burundi, Chechnya, Colombia, Nepal, Sudan, and, curiously, even the Israeli-Palestinian conflict, which despite being an object of Council consideration has not seen the Council contribute productively to its resolution'.[21]

[18] *Keesing's Record of World Events*, 44101 2.

[19] At the same time, the US has been at pains to discourage overt Taiwanese assertions of independence: *Financial Times*, 15 Jul. 2005, 9.

[20] Bethany Lacina and Nils Petter Gleditsch, 'Monitoring Trends in Global Combat: A New Dataset of Battle Deaths', *European Journal of Population* 21 (2005), 154, 156 7.

[21] Elizabeth M.Cousens, 'Conflict Prevention', in David Malone (ed.), *The UN Security Council. From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 114 15. Since Cousens wrote this article, the UN has at last become involved in Burundi and Sudan, following ceasefires arranged by others.

Competition from the General Assembly

Some of the reasons for the Security Council's non-involvement relate simply to the UN's internal functioning. As discussed in a previous section, in 1950, with the Council seemingly paralysed by the Soviet veto, the US sought to transfer security questions to the General Assembly. Indeed, though the Council had authorized forcible intervention in the Korean war,[22] it was the General Assembly that endorsed the crossing of the 38th Parallel boundary between North and South Korea. Following China's intervention, it was before the General Assembly that ceasefire proposals were floated in December 1950–January 1951, and, when China rebuffed them, it was the General Assembly that declared China an 'aggressor'.[23]

Of more lasting importance in the UN context was the 1956 Suez crisis. Here too the Council was paralysed by (Anglo-French) vetoes, and the question passed to the Assembly. After US pressure outside the UN had forced a ceasefire, the General Assembly authorized a 'United Nations Emergency Force' (UNEF I) that supervised the Anglo-French and later the Israeli withdrawals, and was then deployed along the Egypt–Israel border and on the strategic Sharm el-Sheikh.[24] It was this that blazed the trail for 'peacekeeping' as opposed to 'peace-enforcing' forces. Peacekeeping forces – present by the consent of the parties, to interpose between them, not impose on them – were to become the UN's hallmark and (though not absolutely novel)[25] were a major innovation in the international system. UNEF had been put together largely by Secretary-General Hammarskjöld, who thereafter ventured forth on the international scene as a major player, backed by the UN's prestige and looking for support chiefly to the General Assembly. His high point was, perhaps, the diplomacy that defused the 1958 Middle East crisis through a General Assembly resolution that the rival Arab states could all sponsor.[26]

In 1959, it was to the General Assembly that the Dalai Lama appealed over the suppression of the Tibetan revolt (though its resolution condemning China's behaviour was without effect).[27] Also, it was to the General Assembly that the Netherlands and Indonesia turned in 1962 to implement their deal over West Irian/West Papua. The Assembly created a United Nations Temporary Executive Authority (UNTEA) to administer the territory for seven months before transfer to Indonesian control.[28]

[22] SC Res. 83 of 27 Jun. 1950; SC Res. 84 of 7 Jul. 1950.

[23] GA Res. 498 (v) of 1 Feb. 1951.

[24] GA Res. 1000 (ES 1) of 5 Nov. 1956; GA Res. 1001 (ES 1) of 7 Nov. 1956.

[25] In 1934 5, the League of Nations deployed an international force to permit the conduct of the Saar plebiscite. Also, some 19th century Great Power interventions in the Balkans aimed as much at peacekeeping as at peace enforcing. Thus the 1827 Anglo French fleet was instructed only to interpose itself between Ibrahim Pasha and the Greeks to establish a de facto armistice, while in 1897 8 warships of the Powers spent many months seeking to mediate a ceasefire and settlement between recalcitrant Turks and Cretans; but in both cases a robust peacekeeping flipped into the forceful destruction of Turkish power in the area.

[26] GA Res. 1237 (ES III) of 21 Aug. 1958.

[27] GA Res. 1353 (XIV) of 21 Oct. 1959.

[28] GA Res. 1752 (XVII) of 21 Sept. 1962.

Again, though it was the Security Council that initially authorized the Congo force (ONUC) in 1960,[29] following a Soviet veto, initiative passed to the Assembly, which invited the Secretary-General to continue with the actions the USSR had opposed. This Hammarskjöld did, taking advice from Western and non-aligned, but not from Soviet, sources. The Council was not completely bypassed (in 1961 it twice voted additions to ONUC's powers), but in 1962 it did not discuss the Congo once, while in 1963 it simply received two reports from Secretary-General U Thant. The Soviet response was a failed attempt to replace the office of Secretary-General by a 'troika' representing East, West, and non-aligned countries, and the successful assertion, in conjunction with France, that countries need not pay for UN operations not properly sanctioned and controlled by the Council.[30] Later, as the US lost its previous 'automatic majority' in the General Assembly, this approach has come to suit its interests too, and Security Council control over the initiation of UN operations has become firmly established.

The Veto

More important in restricting the range of conflicts the Security Council has (or could have) addressed are such 'permanently operating factors' as the veto and the UN's limited resources, on the one hand, and the availability, on the other, of approaches and remedies outside the UN framework. Little need be said on the veto.[31] US–UK vetoes in 1977 and 1987 prevented the expansion of mandatory UN sanctions on South Africa beyond the field of arms supplies. In addition, the veto obviously constrained UN involvement in major Cold War conflicts, whether between the superpowers or their clients. Indeed the UN's most activist Secretary-General during that era, Hammarskjöld, soon accepted that there was nothing he could do about the Soviet intervention in Hungary (unlike the situation in the Middle East), and steered well clear of central Cold War issues like Berlin.[32] 'The UN', he felt, 'enters the picture on the basis of its non-commitment to any power bloc'. Its Secretary-General should 'aim at keeping newly arising conflicts outside the sphere of bloc differences', and seek 'to lift [marginal] problems out of the cold war . . . [I]t is one way we can get over the difficulties created for the UN . . . by the cold war[,] . . . if not to thaw the cold war, at least to limit its impact on international life.'[33]

[29] SC Res. 143 of 14 Jul. 1960.

[30] Richard Hiscocks, *The Security Council: A Study in Adolescence* (London: Longman, 1973), 197 294, 242, 273 5, ch. 8. The USSR and France had also taken exception to the Secretary General's powers in relation to the UN Cyprus force (UNFICYP).

[31] For a list of vetoes cast see Appendix 5.

[32] The only reference to Berlin in his 'official' biography is to his declaration that the idea of a UN force there was 'basically quite unsound': Brian Urquhart, *Hammarskjöld* (London: Bodley Head, 1972), 230.

[33] Ibid., 256 8.

Since the end of the Cold War, vetoes have been less common, and cast chiefly by the US in connection, not with substantive proposals, but with language condemnatory of Israel. Further, in 1997, China vetoed the dispatch of UN observers to monitor Guatemala's post-insurgency peace agreement, while in 1999 it vetoed a renewal of the mandate of the UN Preventive Deployment Force in Macedonia, in both cases because of these countries' recognition of Taiwan. More importantly, as one Council member (Jamaica) observed in 2001, 'the mere presence of the threat of the veto . . . more often than not determined the way the Council conduct[ed] its business.'[34] This may be an exaggeration. Yet when in relation to Kosovo, Russia made clear that it would veto UN enforcement action against Serbia, while this did not prevent either the threat or the implementation of such action, both were conducted instead through NATO (with at least a notional loss of international 'legitimacy'). Four years later the prospect of French and Russian vetoes led the US and UK, in 2003, to discontinue their search for a Council resolution explicitly authorizing invasion of Iraq, and to proceed instead on the basis of the more debatable authority conveyed by previous resolutions.

Lack of resources

Security Council action has been further limited by the UN's lack of *propres resources*, since it depends almost entirely on the contributions of its members. There is some scope for juggling – if country A will not contribute troops, countries B and C can be approached. But if troops are withheld, the operation cannot be launched; if they are withdrawn, it may have to be wound up. No doubt U Thant bungled his response to Egyptian President Nasser's 1967 request that UNEF leave Sinai, but the force always had been conditioned on Egyptian consent to its presence. In any event, it would probably no longer have been viable once such major contributors as India and Yugoslavia had determined to withdraw. Likewise, the UN presence intended to sort out Somalia crumbled when the US panicked after losing eighteen men in October 1993: US withdrawal in March 1994 was followed within months by that of India, and the entire enterprise was wound up in March 1995. Fear of a repetition also temporarily prevented the landing of US and Canadian peacekeepers in Haiti in October 1993. More seriously, a major factor contributing to the passivity of the UN in the face of genocide in Rwanda was the killing of ten Belgian soldiers on 7 April 1994. Brussels withdrew its battalion from UNAMIR, followed rapidly by Bangladesh. The then Security Council President maintains that, had the Council not reduced the force to a tiny holding presence,[35] it would have disintegrated as other countries pulled out.[36]

[34] Susan C.Hulton, 'Council Working Methods and Procedure', in Malone, *Security Council*, 239.

[35] SC Res. 912 of 21 Apr. 1994.

[36] See the discussion by Colin Keating, Ibrahim Gambari, Howard Adelman, and Astri Suhrke in Malone, *Security Council*, ch. 32, esp. 506 8, 514 15.

States' reluctance to incur casualties where they have no interests directly at stake is one constraint. Another is money. It has been said that the UN 'teeter[s] constantly on the brink of financial calamity'.[37] Peacekeeping demands are inherently unpredictable and have, in some years, exceeded all other UN expenses.[38] Generally the UN sets financial prudence aside and responds to needs, if necessary leaving in arrears payments due to the providers of peacekeeping forces and services. However, this probably impacts on the speed with which forces can be assembled, and perhaps on their size. For example, in 1993, General Dallaire wanted 8,000 troops for Rwanda, hoped to get 5,000, but had to settle for 2,500.[39] It is also contended that 'funding constraints weighed heavily' in Secretary-General Annan's 2000 recommendation to terminate the UN force in Haiti.[40] Indeed a recent RAND study, though generally laudatory, sees most UN missions as

> undermanned and under resourced . . . because member states are rarely willing to commit the manpower or the money any prudent military commander would desire. As a result, small, weak UN forces are routinely deployed into what they hope, on the basis of best case assumptions, will prove to be post conflict situations. Where such assumptions prove ill founded, UN forces have had to be reinforced, withdrawn, or, in extreme cases, rescued.[41]

Resolution of Conflicts outside the UN

In addition, it should be acknowledged that the United Nations is not the only game in town.[42] Many conflicts have terminated quite independently of UN involvement, through their own dynamics, through the mediation or intervention of outside powers, or through that of regional organizations. For example, the decisive factor may simply be military success: North Vietnam eventually conquered South Vietnam,

[37] *Annual Register* (1996), 373 4. For Under Secretary General Joseph Connor's February 1996 report, and other UN financial documents, see Global Policy Forum, UN Finance (www.globalpolicy.org/finance/index.html).

[38] For the 2006 7 biennium, the regular budget was US$3.79 billion, while the peacekeeping budget for 2006 alone was US$4.72 billion. See GA Res. 60/247 of 1 Feb. 2006, and UN doc. GA/AB/3749.

[39] Howard Adelman and Astri Suhrke, 'Rwanda', and Ibrahim Gambari, 'Rwanda: An African Perspective', in Malone, *Security Council*, 490 1, 518. Similarly, in Feb. 2006, the UN force in southern Sudan numbered only half its intended strength: *Economist*, 11 17 Feb. 2006, 60.

[40] Sebastian von Einsiedel and David Malone, 'Haiti', in Malone, *Security Council*, 477.

[41] James Dobbins et al., *The UN's Role in Nation Building: From the Congo to Iraq* (Santa Monica: RAND, 2005), 243.

[42] For example, the 1954 Geneva conference that, though unsuccessful over Korea, temporarily settled Indochina derived not from the UN but from the four Great Powers, who had met from 1945 9 as the 'Council of Foreign Ministers' and resumed meeting after Stalin's death. China attended as a Korean War belligerent. The conference's chairs, the UK and USSR, reconvened it in 1961 2 to restore Laotian neutrality.

while Eritrea secured independence by defeating the Mengistu regime in Ethiopia. Armed struggle also brought Castro to power in Cuba, and the Sandinistas in Nicaragua. Equally, even formidable rebellions can sometimes simply be put down, as was that of Biafra by the federal Nigerian government. At a lower level, the Philippines, in the early 1950s, ended the Huk insurgency by a mixture of strength and 'hearts and minds' conciliation. Countries can also sometimes heal their domestic conflicts without external assistance, as with the negotiated end of white minority rule in the Republic of South Africa.

Such 'internal' outcomes are common. So, also, is resolution through the intervention of an external power. At one extreme, this can take the form of skilled low-key mediation. The major Sri Lanka–Tamil Tigers war outlasted the 1987–90 'peace-enforcing' intervention by the predominant regional power, India, but in 2000 Norwegian diplomacy secured at least a shaky ceasefire on the basis of Tamil autonomy.[43] Earlier, while certainly not solving the Israeli-Palestinian problem, the 1993 Oslo agreement succeeded, where previous talks under UN and US auspices had not, in paving the way for a Palestinian Authority in the occupied territories (thus also making politically possible the direct negotiation in 1994 of an Israel–Jordan peace treaty). Further, a 2005 agreement struck through Finland's mediation may perhaps resolve the Aceh dispute in Indonesia.[44]

Great Powers and spheres of influence

'Realists' would find more natural the ending of conflicts by the interposition of a single hegemonial, or at least regionally dominant, power. Again, this can be purely diplomatic. When Turkish invasion of Cyprus seemed imminent in 1967, President Johnson shot his special representative Cyrus Vance off to the area with the instruction, 'Do what you have to to stop the war'. The next year, after the North Korean seizure of the *USS Pueblo*, Vance's instructions were, 'Do what is necessary to stop [South Korea's President] Park from invading North Korea.'[45] In 1996, another 'highly threatening situation' between Greece and Turkey 'was defused by the direct intervention of President Clinton', US pressure bringing both sides to withdraw their forces from around the disputed Imia/Kardak islets.[46] Further, the apparent 2005 settlement of the southern Sudan civil wars (which had long eluded diplomacy of all kinds) was attributed largely to carrot-and-stick US negotiation.[47]

[43] Admittedly the precise area of the Tamil region was never mutually agreed and, at the moment of writing, the ceasefire itself seems in grave jeopardy.

[44] *Keesing's Record of World Events*, 46775 6.

[45] Cyrus Vance, *Hard Choices: Critical Years in America's Foreign Policy* (New York: Simon & Schuster, 1983), 144.

[46] *Annual Register* (1996), 90 1, 96.

[47] *Annual Register* (2002), 233 4; (2003), 256 7; (2004), 215 16.

Arguably, US diplomacy (albeit often cloaked in a multilateral context) underlies a significant proportion of all settlements.

Great Power interventions are not limited to diplomacy. In 1965, the US moved troops into the Dominican Republic to forestall what it saw as a prospective Castro-style takeover by crypto-communists. Its action was retrospectively 'legitimated' by the Organization of American States, which established an 'Inter-American Peace Force'. Despite its Brazilian command, the force remained essentially under US control, and managed the country until elections in 1966.[48] Similarly, in 1983, the US took advantage of the murder of Grenada's Marxist Premier by more extreme colleagues to move in troops and hold elections. Nor, of course, have Great Power interventions always been so limited. For example, when months of repression in East Pakistan created a massive refugee problem, India went to war in 1971 to liberate what became Bangladesh (and incidentally cut Pakistan down to size).

'Spheres of influence' are not what they once were, but they may still serve to limit or exclude significant UN involvement. Thus (besides 'covert action') the US has mounted overt or semi-overt interventions in Guatemala (1954), Cuba (the 'Bay of Pigs' in 1961), the Dominican Republic (1965–6), Grenada (1983), and Panama (1989–90). Until 1989, the USSR maintained a sphere of much tighter control in Eastern Europe, which it preserved in 1956 through unilateral intervention in Hungary. And, though Gorbachev abandoned first the 'Brezhnev doctrine' and then communist Eastern Europe itself, the break-up of the USSR was followed by numerous Russian interventions, covert and – in conjunction with the Commonwealth of Independent States – overt, in what was claimed as the special area of the 'Near Abroad'. France, too, for decades after decolonization, exerted major influence over much of francophone Africa, backed by the small-scale use of military force to stabilize the Congo (Zaire) in 1978 (Shaba 2) and 1991 (both in association with a rather reluctant Belgium), and Chad (especially in 1983).

Regional organizations

Countries may act alone. However, they often prefer to act through, or at least with the blessing of, regional organizations in which they predominate. Thus the 1968 Soviet intervention in Czechoslovakia was conducted through the Warsaw Pact. A document produced by the Economic Community of West African States

[48] The USSR obtained Security Council discussion of the intervention, but could achieve only the dispatch of a diplomatic representative of the UN Secretary General. See Hiscocks, *Security Council,* 235 9; J. P. D. Dunbabin, *The Post Imperial Age: The Great Powers and the Wider World* (London: Longman, 1994), 408 9.

(ECOWAS) refers to 'perceptions' in the 1990s that ECOWAS forces 'were an instrument of Nigerian foreign policy'. The document observes that the 'presence of a dominant actor' was 'crucial to effective peace initiatives [in Liberia and Sierra Leone], and Nigeria helped in many ways to play this role, despite both internal and external misgivings', whereas 'its absence in Guinea-Bissau and Côte d'Ivoire' had 'a negative impact'.[49] It was to Australia that the Solomon Islands' prime minister appealed for aid in April 2003, and the plan for intervention was then put to a Pacific Islands Forum meeting in June. A 'Regional Assistance Mission to the Solomon Islands' (RAMSI) resulted, but it was very much Australian-led and could be seen as benign neo-colonialism. NATO itself, where the 'Supreme Allied Commanders' are all American, may constitute another such grey area of muted primacy. For example, the US desire to intervene in Kosovo in 1999 enjoyed strong north European (and in particular Anglo-French) support, but the strategy of intervention by air power alone was very much the United States' choice, and when this initially seemed counter-productive, it took US will, and alliance discipline, to keep a reluctant Italy and still more reluctant Greece in line.

In such other regional organizations as the Arab League and the African Union, primacy is less marked. Both have, on occasion, intervened to halt, or forestall, conflicts. Thus the Arab League accepted Kuwait's independence in 1961, and deployed a multinational force to take over from Britain the task of protecting it from Iraqi annexation. Later, in 1972 and 1979, it twice persuaded North and South Yemen to draw back from the brink of war. And, in 1989, with the Lebanese civil war long mired in stalemate, it reassembled the Lebanese parliament in a Saudi resort, resulting in a constitutional compromise, the election of a new President, and the giving of a green light to Syrian military intervention to compel acceptance of the new regime. The African Union is a much younger organization, but one ready (unlike its precursor the OAU) not only to negotiate to end conflicts, but also to mount peacekeeping/humanitarian interventions. Its first, the African Union Mission in Burundi (AMIB), enjoyed considerable success. Less obviously productive, at least so far, has been the 2004 deployment of a protective African Union Mission in Sudan (AMIS) in Darfur, a disaster area where African leaders were insistent on claiming, and the UN was happy to concede, the leading role.[50]

[49] 'Report of the ECOWAS Workshop: Lessons from ECOWAS Peacekeeping Operations 1990–2004', Accra, 10–11 Feb. 2005, 15. Available at www.un.org/unowa/unowa/reports/ecowas110205.pdf

[50] African leaders dislike the potential for secession in the north–south settlement in Sudan (one 'realised through pressure from the US and Europe and against the original will of African nations'). This may well underlie their calls 'for exclusively African peacekeeping troops': *Afrol News*, 6 Jan. and 18 May 2005. SC Res. 1556 of 30 Jul. 2004 and subsequent resolutions stressed 'the leadership of the African Union' in Darfur and restricted the UN's role to providing support, in contrast to its activism in southern Sudan.

Systemic Changes Bearing on UN (Non-)Involvement

The 'New International Order'

Changes in the international system could make UN interventions more (or less) likely. In the early 1990s there was talk of a 'New International Order'. The close of the Cold War, it was held, had liberated the Security Council from vetoes cast for 'zero-sum' reasons by antagonistic powers, while the 1991 liberation of Kuwait demonstrated the potential of UN-authorized action. UN prestige was further boosted by the contribution of its more traditional diplomacy to the settlement – or apparent settlement – of such long-running problems as Namibia, Cambodia, Angola, and El Salvador. Malone writes of an 'era of euphoria' lasting roughly from the end of the first Gulf War until 'the failure to deploy successfully the UN mission in Haiti . . . a week after the deaths of U.S. Army Rangers in Somalia had seriously undermined . . . UNOSOM II'. During this period, 15 new peacekeeping operations were launched, as compared with 17 in the previous 46 years.[51] The UN would set the world to rights, backed, and where necessary impelled, by the now manifest hyper-power, the United States. This vision was, as events in the former Yugoslavia showed, unrealistic even at the time, and it soon faded.

For one thing, the US was not disposed to 'bear any burden, pay any price' in contexts where its interests were not involved, and where there was often no clear-cut issue of right and wrong to galvanize it. Having gone into Somalia to relieve famine and sort out a failed state, the US exited once things became less simple and it started taking casualties. This was an unusually rapid volte-face, but the history of the Vietnam and Korean wars (and very possibly of the Iraq occupation) emphasizes US difficulties in sustaining domestic support for lengthy and peripheral commitments that involve casualties without clear-cut achievements. But even were US commitment greater, one cannot assume that the UN will always be available to give effect to American purposes. For though there is, at present, no real disposition in the world outside the UN to embark on traditional balancing against the dominant power, within the Security Council the veto makes this both feasible and safe. For here, the US is no more than first among equals. Yet unless the UN can draw on US resources, there are fairly low limits to the military operations it can undertake.

The changing nature of conflicts

Over time, the nature of conflicts has been changing in a way that might prima facie have been expected to make UN intervention less likely. On one calculation,

[51] Malone, *Security Council*, 5 6.

Table 1 Nature of wars, 1816–1997 (shown by percentage share)

Years	Inter-state wars (%)	Colonial/'extra-state' wars (%)	Intra-state wars (%)
1816–1870	19	33	48
1871–1913	20	46	34
1914–44	17	56	27
1945–60	11	30	59
1961–79	23	11	66
1980–97	11	–	89

Source: 'Revised Correlates of war data: 1816 1997 (v3.0)', available at www.correlatesofwar.org; Meredith Reid Sarkees, 'The Correlates of War Data on War: An update to 1997', *Conflict Management and Peace Science*, 18 (2000), 123 44. The categorization of specific conflicts is inevitably debatable. Statistics for a further category, conflicts where no party is a government, have only just started to be collected: in 2002 and 2003, these supposedly outnumbered conflicts to which a state/government was a party, though they were less lethal: Andrew Mack, *Human Security Report 2005*, available at www.humansecurityreport.org/info/ p. 21.

the number (though not the intensity) of conflicts can be divided between 'inter-state', colonial ('extra-state'), and 'intra-state' as shown in Table 1.

The UN was originally established to deal with 1930s-style cross-border aggression. With the advent of an Afro-Asian majority, the concern with decolonization was heightened: in 1960, the General Assembly noted that 'the increasing conflicts resulting from the denial of' freedom to dependent peoples 'constitute a serious threat to world peace', and declared that '[i]nadequacy of . . . preparedness should never serve as a pretext for delaying independence.'[52] However, UN involvement in purely domestic conflicts (which now dwarf 'inter-state' wars in both numbers and casualties) is inhibited by the Charter, which makes clear in Article 2(7) that it does not authorize UN intervention 'in matters which are essentially within the jurisdiction of any state'. In reality, such involvement now represents the commonest kind of UN operation. For there have been important changes in attitudes towards host-government consent.

Host-government consent and 'peace-building'

Host-government consent is formally required for the deployment of UN peacekeeping missions or the like. Often it is simply out of the question: Russia would never admit a UN peacekeeping force to Chechnya, nor India to Kashmir; and China (with its Security Council veto) is very cautious about authorizing intrusive UN activity that might constitute a precedent in relation to Tibet.

[52] GA Res. 1514 (XV) of 14 Dec. 1960. Admittedly UN involvement in the conflicts of decolonization was, apart from the special cases of UN Trusteeships, the Congo, and Rhodesia, largely limited to General Assembly resolutions and the gadfly activities of its Committee on Colonialism.

Weaker states, however, can sometimes be lent on (as Turkey regularly was in the nineteenth century). In 2006, Sudan was being pressed, though, at the time of writing, without success, to allow a more capable UN force to take over from the African Union in Darfur. Very occasionally, too, the requirement of host-government consent has simply been overridden, notably in Haiti. Here, following ineffective sanctions, the UN in 1994 authorized an invasion to displace the de facto power-holders and reinstall the elected President they had driven out. However, President Aristide proved a disappointment and, when rebellion erupted in 2004, the UN authorized new forces (UNMIH, followed by MINUSTAH) to usher (Aristide says compel) him out of the country, and then held the field until elections in 2006.

Often, however, UN involvement is not merely accepted, but actively sought by the local parties. The closing stages of civil wars now frequently give rise to a new genre of activity – 'peace-building' – to which the UN is well equipped to contribute. Kissinger argued in 1982 that '[c]ivil wars almost without exception end in victory or defeat . . . [I]t is next to impossible to think of a civil war that [genuinely] ended in coalition government.'[53] Kissinger exaggerated – Colombia's *violencia* was ended (or at least much reduced) by the 1958 agreement that for twelve years the Presidency should alternate between the Liberal and Conservative parties. Even so, conflicts like Vietnam were of the winner-take-all variety; and one cannot readily imagine, say, Lenin and Kolchak joining in a power-sharing administration with a view to League of Nations-supervised elections. However, over the last decade and a half such 'peace processes', while far from universally successful, have become not uncommon.

Specific cases vary. But one can speak of a paradigmatic sequence of: a 'peace accord' negotiated (often under external pressure) between the parties to a conflict, followed by ceasefire/s; a transitional government, often involving power-sharing and buttressed by a UN or other external force to disarm and help reintegrate former combatants; assistance in the return of refugees; and the conduct of internationally supervised elections. Thus following brief fighting (with some foreign involvement) in Guinea-Bissau, Security Council resolution 1216 welcomed agreements signed in Praia, Abuja, and Lomé, and called on the government and the rival military junta to 'implement fully' their provisions, including

> the ceasefire, the urgent establishment of a government of national unity, the holding of . . . elections no later than . . . March 1999, . . . the withdrawal of all foreign troops . . . and the simultaneous deployment of the interposition force . . . (ECOMOG) of the Economic Community of West African States (ECOWAS).[54]

Such a paradigm can proceed without UN involvement. In Lebanon, it was the Arab League that brought the parties together and 'sister Syria' that then enforced

[53] Henry Kissinger, *Years of Upheaval* (London: Weidenfeld & Nicolson, and Michael Joseph, 1982), 312 13.

[54] SC Res. 1216 of 21 Dec. 1998.

submission to the new government (while maintaining a general proconsular presence). In Northern Ireland, negotiation was essentially between the British and Irish governments, on the one hand, and the local parties and paramilitaries on the other, with some US mediation and some external monitoring, but no UN participation. More commonly, there is a symbiosis between the UN and the major regional actors.

Despite its copious recent use of Chapter VII language,[55] the UN has been reluctant to put its forces in harm's way by crossing the 'Mogadishu Line' and operating without at least the broad consent of the local warring parties. It prefers not to intervene until after the contestants have been induced, whether by negotiation or compulsion, to stop fighting. As the *Annual Register* commented on Burundi in 2001, the 'absence of a cease-fire precluded the United Nations from assisting in the implementation of the [largely Ugandan, South African, and Tanzanian brokered Arusha] peace accord'.[56] Instead, the UN limited itself to blessing the efforts of South African and other peacekeepers. Then, years later, with a final peace agreement seemingly within reach, the UN Mission in Burundi took over the African Union's peacekeeping mission, AMIB.[57] Or, as a joint UN–ECOWAS document put it:

> Increasing demands for the rapid deployment of peacekeeping forces in the aftermath of intra state conflict has [sic] confronted the United Nations with a requirement it has not been able to meet within an acceptable timeframe . . . [This] has given rise to a reliance on others to bridge the gap . . . [with UN peacekeepers subsequently taking over from regional forces] . . . in Sierra Leone, . . . East Timor, . . . Liberia, . . . Côte d'Ivoire, . . . Haiti, . . . [and] Burundi.[58]

Assessing UN Non-Involvement and Involvement

The UN, of course, touches international affairs at many points. Focusing on the Security Council, it can be seen that, while some pronouncements (notably Resolution 242) have helped mould the terms of debate on major issues or, like Resolutions 211 and 598 (calling respectively for Indo-Pakistani and Iran–Iraq ceasefires), afforded a golden bridge across which one of the belligerents could retire, many others have been ignored with impunity when that seemed better to

[55] Whereas 22 resolutions 'cited Chapter VII, or used its language' between 1946 and 1989, 1990 9 saw 174 Chapter VII resolutions: see Mats Berdal, 'Bosnia', in Malone, *Security Council*, 459.

[56] *Annual Register* (1999), 278; (2001), 290 1.

[57] Henry L. Stimson Center, 'UN Mission in Burundi (ONUB)', available at www.stimson.org/fopo/?SN=FP20040408637 and SC Res. 1545 of 21 May 2004.

[58] ECOWAS, *Lessons from ECOWAS Peacekeeping Operations*, 41.

suit national interests. Beyond this, the Council has mounted two major exercises in coercion, over Korea and the liberation of Kuwait. In both, though more especially the latter, the US found UN backing very useful, though in the first case it would certainly, and in the second very possibly, have acted without it. These apart, most UN operations have either sought to separate former combatants, or to consolidate and develop 'peace-building' processes that owe more to the prior actions of other states and alliances. All are valuable functions, but essentially the Security Council is a niche player that states use chiefly to handle conflicts (admittedly often tragic ones) seen as relatively peripheral.

People differ in assessing past UN operations (listed in Appendices 1–3) and, correspondingly, in their views of what the UN could or should undertake in the future. On the critical side it is contended that, whatever their humanitarian merits, some interventions have preserved rather than resolved problems. For example, in its first decade the UN Peacekeeping Force in Cyprus did indeed protect the Turkish minorities in Cyprus, but only by ghetto-izing them, leaving the island's underlying problems unchanged until Turkey seized an opportunity to intervene in 1974. In a provocative article, Edward Luttwak expands such criticisms into a condemnation per se of peacekeeping interventions and of most refugee relief.[59]

War, Luttwak holds, 'can resolve political conflicts and lead to peace', but only 'when all belligerents become exhausted or when one wins decisively'. But since 'the establishment of the United Nations . . . , wars among lesser powers have rarely been allowed to run their natural course'. Thus the 1948 imposition of ceasefires during the Arab–Israeli war had the perverse effect of enabling the parties to regroup, rearm, and continue fighting. Externally imposed armistices 'freeze conflict and perpetuate a state of war . . . by shielding the weaker side from the consequences of refusing to make concessions for peace'. Perhaps over-pessimistically, Luttwak gives the 1995 Dayton accords as a prime example: they 'condemned Bosnia to remain divided into three rival armed camps . . . Since no side is threatened by defeat . . . , none has a sufficient incentive to negotiate a lasting settlement; . . . [instead] the dominant priority is to prepare for future war rather than to reconstruct devastated economies and ravaged societies.' Further:

> the first priority of U.N. peacekeeping contingents is to avoid casualties among their own personnel. Unit commanders therefore habitually appease the locally stronger force . . . Peacekeepers chary of violence are also unable effectively to protect civilians . . . At best, U.N. peacekeeping forces have been passive spectators to outrages and massacres, as in Bosnia and Rwanda; at worst, they collaborate with it, as Dutch U.N. troops did in . . . Sreb renica by helping the Bosnian Serbs separate the men of military age from the rest of the population. The very presence of U.N. forces, meanwhile, inhibits the normal remedy of endangered civilians, which is to escape from the combat zone. Deluded into thinking that they will be protected, civilians . . . remain in place until it is too late to flee.

[59] Edward M. Luttwak, 'Give War a Chance', *Foreign Affairs*, 78 (Jul. Aug. 1999), 36 44.

Indeed, during the siege of Sarajevo, the UN, 'in obedience to a cease-fire agreement with the locally dominant Bosnian Serbs', 'inspected outgoing flights to prevent the escape of . . . civilians'.

'Humanitarian relief', Luttwak continues, can prove even worse. The United Nations Relief and Works Agency (UNRWA) 'turned escaping civilians into lifelong refugees, who gave birth to refugee children' and grandchildren, while the 'concentration of Palestinians in the camps . . . has facilitated the . . . enlistment of refugee youths by armed organisations'. Had each European war 'been attended by its own post-war UNRWA, today's Europe would be filled with . . . camps for millions of descendants of up-rooted Gallo-Romans, abandoned Vandals, . . . – not to speak of more recent refugee nations such as the [three million] post-1945 Sudeten Germans [and their seven million Silesian counterparts] . . . It . . . would have led to permanent instability and violence.' Among developing nations, NGO provision of relief exceeds 'what is locally available to non-refugees. The consequences are entirely predictable . . . refugee camps along the . . . Congo's border with Rwanda . . . sustain a Hutu nation that would otherwise have been dispersed, . . . providing a base for . . . Tutsi-killing raids across the border', and (one might add) the occasion for the Rwandan invasions of the Congo that set off one of the most damaging wars in the past decade. For such reasons, Luttwak concludes, '[i]t might be best for all parties to [stand aloof and] let minor wars burn themselves out.'

Luttwak is far too extreme, and some of his contentions plainly flawed.[60] Even were they not, the advice to 'let wars burn themselves out' is frequently unrealistic. Already in the nineteenth century public outcry often, though certainly not always, prompted intervention to prevent (or, on other occasions, at least humanize) Turkish suppression of revolts in the Balkans. Today such outcry has been greatly strengthened by both television and democratization. That said, there is substance in several of Luttwak's attacks on UN operations, and though his perspective should be taken with much salt, it should not be overlooked.

A very different judgement is based on quantitative studies of recent conflicts. These have generated a reassuring consensus that the number of 'conflicts' has fallen sharply since its peak at the end of the Cold War, and that 'battle-deaths' have, apart from a brief revival in 1998–2000, been in decline since about 1986.[61] Admittedly we cannot speak with confidence about 'war-related' deaths (chiefly

[60] Not all clear cut victories lead to peace in the long run: France's 1847 defeat of Abd al Qadir in Algeria, and Russia's defeat of Shamil in Chechnya in 1859, did not preclude the revival of war many decades later; and, as regards Franco German relations, the sequels of World Wars I and II were very different. Moreover it was precisely the fact that, thanks to external intervention, Egypt did not lose the 1973 war, as it had that of 1967, which enabled Sadat and his negotiating partners to move to peace in 1979. Part of this movement depended on the interposition between Egyptian and Israeli forces, during a prolonged disengagement, of external peacekeeping troops, first UN, then 'multinational'. By agreement of the parties, too, the UN had a role, that of supervising Eastern Slavonia's retro cession, after the 1995 war in which Croat victories (and ethnic cleansing) probably did create the conditions for a lasting Serbo Croat peace.

[61] Mack, *Human Security Report 2005*, 29.

from hunger and disease) or about the numbers killed in 'genocides' or other 'one-sided' killings.[62] But, after surveying the consensus about the decline in conflicts, and noting the 'explosion of conflict prevention, peace-making and post-conflict peace building activities' (a six-fold increase in the 1990s in UN preventive diplomatic missions, fourfold in UN peacekeeping activities, and elevenfold in the imposition of economic sanctions), Andrew Mack contends that though the concurrent fall

> in the number of crises, wars and genocides . . . does not prove cause . . . [none of the other factors encouraging a reduction of conflict] can account for the sharp decline in political violence around the world that started in the early 1990s and has continued ever sin ce . . . [T]he single most compelling explanation . . . is the upsurge of international activism ['spearheaded' by the UN].[63]

Mack's claims are vulnerable to disaggregation. He concedes that 'in the Middle East and North Africa, and in East Asia, Southeast Asia and Oceania the decline started earlier' and for other reasons. Further, he links the 'dramatic decline in political violence' in Central-South America rather directly to the 'end of the Cold War', and he admits that in sub-Saharan Africa (where much UN activity was concentrated) the number of conflicts 'remained high until 2002', following which there has been insufficient time to be confident of any trend.[64] But, if well-founded, Mack's findings would obviously be highly important.

It may, therefore, be worth focusing briefly on Africa, a continent where (Mack says) by 2000 'more people were being killed in wars . . . than in the rest of the world combined', but also one in which there are perhaps fewer political barriers than elsewhere to UN involvement. David Malone gave a bleak assessment as of 'mid-2003': the 'Council spends the majority of its time on African issues, but frequently with little success'. On the credit side, he lists 'the UN's preindependence role in Namibia' and its 1990s involvement in ending the civil war in Mozambique. 'Less happy' were its various interventions in Angola in the 1990s, while its 'botched' operations in Somalia have 'produced negative fallout for UN peacekeeping operations ever since. Above all, the Council's catastrophic performance in Rwanda in 1994 has yet to be fully digested', while its 'action on Western Sahara, the Central African Republic and Liberia was more window dressing than deeply substantive'.

[62] Numbers of 'one sided killings' are said to be in decline, but this is not necessarily true of their overall magnitude. Also since most conflicts recently have been in areas of poverty and/or weak state machinery in Africa, and have displaced more people in the 1990s than in previous decades, the fall in 'battle deaths' may not equate to one in the in Africa far more numerous 'war related' deaths.

[63] Mack, *Human Security Report 2005*, esp. 8 9, overview, and parts 1 and 5. Mack draws on several sources, but chiefly the highly respected Uppsala University International Peace Research Institute, 'UCPD/PRIO Armed Conflicts Dataset' (available at www.prio.no/cscw/cross/battledeaths), described in Lacina and Gleditsch, 'A New Dataset of Battle Deaths'.

[64] Mack also notes the 1990s rise in the number of conflicts in former Yugoslavia (where the UN was active) as well as in the former Soviet Union (where it was not): Mack, *Human Security Report 2005*, 24 5.

'The Council did little to solve the acute problems of . . . Guinea-Bissau', while the 'conflict in Eastern Congo . . . remains unresolved and dangerous.' However, after a 'catastrophic' UN start, the situation in Sierra Leone was improving, and the Council's efforts to address the crisis arising out of the Eritrea–Ethiopia war had been 'ambitious'.[65] A couple of years later one would be more optimistic about Guinea-Bissau, and would note gratifying improvements in Burundi, Sierra Leone, and (though UN input was relatively minor) Liberia. On the other hand, troops were in December 2005 again gathering on the Eritrea–Ethiopia border, while the UN was (or seemed[66]) powerless in the face of Ethiopia's reneging on its promise to implement the Boundary Commission's 2002 award, and Eritrea in retaliation imposed increasing restrictions on the UN Mission in Ethiopia and Eritrea (UNMEE). Tension did relax slightly, but in May 2006 the Security Council cut UNMEE numbers further, following failed Ethiopia–Eritrea talks.[67] Meanwhile, in the Sudan, 2004–5 brought remarkable, though still precarious, UN steps to end the interminable wars in the south, but at the same time saw the UN turn over the almost equal horror of Darfur in the east to a so far near ineffective African Union peacekeeping operation.

The record, then, is mixed. Mack's 'international activism' 'spearheaded' by the UN is not without successes. But claims of its producing a 'sharp decline in political violence' should be modest. Nor can we disregard Luttwak's charge that attempts (through 'Operation Turquoise' and refugee relief) to prevent ethnic war in Rwanda from spilling over into eastern Congo in fact had quite the opposite effect.

Conclusion

Is the glass, then, part full or part empty? It is hard to know the real expectations of the UN's founders, but judging by their rhetoric (and that of the Charter), the Security Council's glass is largely, though not quite, empty. It is seldom the medium through which high profile conflicts are addressed – 'seldom', though not 'never'. Even as regards lesser conflicts, the Council's agenda has proved remarkably selective. As Malone has it, Colombia, though 'much discussed' unofficially, is excluded

[65] Malone, 'Conclusion', in *Security Council*, 640 1.

[66] Land locked Ethiopia would presumably be vulnerable to tough sanctions, though these would hurt its people before they affected its rulers.

[67] *The Times*, 8 Dec. 2005, 37; 'Report of the Secretary General on Ethiopia and Eritrea', 3 Jan. 2006; SC Res. 1670 of 13 Apr. 2006; SC Res. 1681 of 31 May 2006; *Keesing's Record of World Events*, 47240.

because Latin American countries generally support Colombia's reluctance to see its internal problems 'internationalized'. Burma . . . has never made it to the Council's agenda due to a preference by Asian states for non interference in internal affairs and fears that the Council might become the cockpit for ugly . . . clashes over . . . [its] future . . . between India and China. India has vigorously opposed a role for the Security Council on the Kashmir problem.[68]

Judged, however, by less demanding criteria than those of 1945, the Council has often proved the best way of addressing distressing problems (albeit not usually those regarded as being of the greatest international magnitude), or of consolidating the initial successes of other actors in addressing them. Moreover, it has done so by drawing on a wide range of countries for its operations, in an inclusive way far more acceptable to the modern world than the most obvious precedent, the nineteenth-century handling of the Balkans by the Great Power Concert of Europe. From this perspective, the glass of water appears much fuller. Even so, the Council's handling of African conflicts is at best mixed; and though the UN, along with other external actors, has influenced their outcome, forces within the countries involved have had far greater influence.

[68] Malone, 'Conclusion', in *Security Council*, 625.

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PART IV

THE SECURITY COUNCIL AND THE CHANGING CHARACTER OF WAR

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CHAPTER 23

THE DIFFERENT FUNCTIONS OF THE SECURITY COUNCIL WITH RESPECT TO HUMANITARIAN LAW

GEORG NOLTE*

SINCE the end of the Cold War, both the UN Security Council and international humanitarian law have moved to the centre of attention of international lawyers. However, little attention has been given to the relationship between the two. In their collection of *Documents on the Laws of War*, Roberts and Guelff explain why this relationship deserves to be explored:

The UN Security Council has . . . developed an expanded role relating to the laws of war. In many emergency situations, especially in the 1990s, its binding resolutions have not merely

* I wish to thank Roland Otto, University of Göttingen, and Chun Kyung Paulus Suh and Marianne Vicari, both University of Munich, for their diligent and competent assistance during the preparation of this chapter.

reaffirmed the application of this body of law to particular events and conflicts, including those with an element of civil war, but have also defined the content of the law and stressed the responsibility of individuals and states with regard to its implementation.[1]

It would go beyond the limits of this chapter comprehensively to assess the influence of the Security Council on humanitarian law. However, it may nevertheless be helpful to review a representative sample of Security Council decisions. This could make it possible to substantiate Roberts and Guelff's observation.

The point of departure for this chapter is the analysis by van Baarda[2] who, in 1994, distinguished four different phases of Security Council involvement in maintaining humanitarian law: a first phase of '*tabula rasa*' (until the Six-Day War of 1967) during which the Council did not address humanitarian law at all; a second phase of 'reluctant involvement' (between 1967 and 1979) in which the Council exceptionally addressed the issues of humanitarian protection and humanitarian assistance; a third phase of 'moderate involvement' (the 1980s) during which the number of relevant resolutions rose from twelve to thirty-six; and a fourth phase of 'intensive involvement' (starting in 1990).[3]

This chapter builds on and continues van Baarda's analysis. It examines all Security Council resolutions (but not Presidential Statements) from January 1993 to April 2006, which include the terms 'humanitarian', or 'Geneva Convention(s)' or 'law(s) of war'. A search of those terms in the UN's Official Document System leads to more than 400 such resolutions. While this approach is certainly somewhat formalistic, the material it yields is sufficiently representative to draw a meaningful sketch of Security Council practice in the last decade or so.

Fruitful criteria for classifying Security Council practice derive from the domestic analogy. The Security Council can be said to perform legislative, executive, and adjudicative functions.[4] The main function of the Security Council is obviously *executive*. Tied to its central function of maintaining peace and security, the Security Council undertakes a responsibility to monitor the implementation of international humanitarian law. As the Security Council itself has stated, it has a 'primary responsibility for the maintenance of international peace and security

[1] Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3rd edn. (Oxford: Oxford University Press, 2000), at 16 17.

[2] Ted van Baarda, 'The Involvement of the Security Council in Maintaining International Humanitarian Law', *Netherlands Quarterly of Human Rights* 12 (1994), 137 52; see also Christiane Bourloyannis, 'The Security Council of the United Nations and the Implementation of International Humanitarian Law', *Denver Journal of International Law and Policy* 20 (1992), 335; Stephen Schwebel, 'The Roles of the Security Council and the International Court of Justice in the Application of International Humanitarian Law', *NYU Journal of International Law and Policy* 27 (1995), 731 59.

[3] Van Baarda, 'The Involvement of the Security Council in Maintaining International Humanitarian Law', 138 43.

[4] Jochen A. Frowein and Nico Krisch in Bruno Simma (ed.), *The Charter of the United Nations: A Commentary*, vol. 1, 2nd edn. (Oxford: Oxford University Press, 2002), Introduction, Chapter VII, MN 14 and 17 31; Bardo Fassbender, *UN Security Council Reform and the Right to Veto: A Constitutional Perspective* (The Hague: Kluwer Law International, 1998), 98 et seq.

and, in this context, [reiterates] the need to promote and ensure respect for the principles and rules of international humanitarian law'.[5]

Technically, the Security Council performs an *adjudicative* function through the International Criminal Tribunals on the former Yugoslavia and Rwanda, which are subsidiary organs of the Security Council.[6] Such adjudication, however, is independent from the Security Council proper and therefore cannot be considered as an adjudicative function of the Council in the full sense of the term.[7] Here, adjudication is understood as being a more or less conclusive determination in a more or less specific case that humanitarian law has or has not been, or is being, violated. Adjudication in this sense borders on a function which can be called clarification of the law. This function is located somewhere between the adjudicative and the executive realm.

The *legislative* function is also difficult to define very precisely.[8] In humanitarian law, as in other areas of international law, 'legislation' or law-making takes place in the form of a complex mixture of treaty-making, custom, soft law, and the codification and shaping of custom, in particular by military manuals. The question is which role the Security Council plays in this process of rulemaking, setting aside the special issue of the law of occupation as it has arisen in the context of the occupied Palestinian territories and Iraq.[9]

The Executive Function

The Security Council has developed a rather extensive practice with respect to the execution, or implementation, of humanitarian law. The pertinent resolutions can be divided into three categories: (1) those in which the Security Council puts

[5] SC Res. 1502 of 26 Aug. 2003 on the protection of UN personnel, associated personnel, and humanitarian personnel in conflict zones.

[6] Cf. SC Res. 808 of 22 Feb. 1993; SC Res. 827 of 25 May 1993, and SC Res. 955 of 8 Nov. 1994 respectively.

[7] Statute of the International Criminal Tribunal for the Former Yugoslavia, Art. 1 and 9; Statute of the International Tribunal for Rwanda, Art. 1 and 8.

[8] Christopher Greenwood, 'The Impact of Decisions and Resolutions of the Security Council on the International Court of Justice', in W. P. Heere (ed.), *International Law and The Hague's 750th Anniversary* (The Hague: T. M. C. Asser Press, 1999), 83.

[9] SC Res. 1483 of 22 May 2003, on the situation between Iraq and Kuwait. See Eyal Benvenisti, 'The Security Council and the Law of Occupation Resolution 1483 on Iraq in Historical Perspective', *Israel Defence Forces Law Review* 1 (2003), 19 38; Eyal Benvenisti, 'Future Implications of the Iraq Conflict: Water Conflicts During the Occupation of Iraq', *American Journal of International Law* 97 (2003), 860 72; David Scheffer, 'Future Implications of the Iraq Conflict: Beyond Occupation Law', *American Journal of International Law* 97 (2003), 842 60. See also David Scheffer's discussion of military occupation in Chapter 26.

pressure on parties to an armed conflict to comply with humanitarian law in general; (2) those in which it puts pressure on parties to an armed conflict to implement certain more specific rules of humanitarian law; and, finally, (3) those in which it takes institutional steps to implement humanitarian law.

General pressure to comply

The most general form of pressure to comply is expressed in those resolutions which deal with the implementation of international humanitarian law in general, regardless of any particular conflict. While the immediate executive effect of resolutions such as SC Resolution 1674, setting out the law relating to the protection of journalists in armed conflict, and their right to protection as civilians, may be rather limited,[10] they do express the normative priorities of the Council. Their main function is to set out the law, and such resolutions could accordingly be seen as quasi-legislative rather than executive.[11]

The softest form of executive activity in a particular conflict by the Council is the expression of 'deep concern' with respect to 'grave violations of humanitarian law',[12] or of being '[m]indful of the need for accountability for violations of international humanitarian law'.[13] Somewhat more directly, the Security Council sometimes demands that the parties to a conflict 'fulfil their obligations under... international humanitarian law'.[14] Such general appeals are expressed in sharper language when the Council

> Condemns the massacres and... demands once again that all the parties to the conflict put an immediate end to violations of human rights and international humanitarian law... and stresses that all forces present on the territory of the Democratic Republic of the Congo are responsible for preventing violations of international humanitarian law in the territory under their control.[15]

The pressure to comply is more focused when the Council names certain parties to the conflict, such as when it is 'deeply concerned by the grave humanitarian

[10] SC Res. 1674 of 28 Apr. 2006, on civilians in armed conflict.

[11] See below under 'Application of norms to facts'.

[12] e.g. SC Res. 1493 of 28 Jul. 2003, on the situation concerning the Democratic Republic of the Congo.

[13] SC Res. 1662 of 23 Mar. 2006, on the situation in Afghanistan; SC Res. 1637 of 8 Nov. 2005; SC Res. 1509 of 19 Sep. 2003, on the situation in Liberia.

[14] SC Res. 1466 of 14 Mar. 2003; SC Res. 1430 of 14 Aug. 2002; SC Res. 1398 of 15 Mar. 2002; SC Res. 1369 of 14 Sep. 2001, on the situation between Ethiopia and Eritrea. See also SC Res. 1566 of 8 Oct. 2004, on threats to international peace and security caused by terrorist acts; SC Res. 1545 of 21 May 2004, on the situation in Burundi; SC Res. 1535 of 26 Mar. 2004, on threats to international peace and security caused by terrorist acts.

[15] SC Res. 1355 of 15 Jun. 2001 and SC Res. 1635 of 28 Oct. 2005, both on the situation concerning the Democratic Republic of the Congo; see also SC Res. 1386 of 20 Dec. 2001, on the situation in Afghanistan; SC Res. 1547 of 11 Jun. 2004, on the Report of the Secretary General on the Sudan (S/2004/453).

situation and the continuing serious violations by the Taliban of human rights and international humanitarian law'.[16] The same is true for resolutions which address certain regions, such as when the Council expresses 'its deep concern at all violations of human rights and international humanitarian law, including atrocities against civilian populations, especially in the eastern provinces',[17] or 'especially the Kivus and Kisangani',[18] and when it addresses 'all the parties to the conflict in Ituri and in particular in Bunia'.[19]

Sometimes the Council addresses member states which are only indirectly affected by a particular armed conflict, such as when it is '[u]nderlining the importance of raising awareness of and ensuring respect for international humanitarian law, stressing the fundamental responsibility of Member States to prevent and end impunity for genocide, crimes against humanity and war crimes'.[20] It may even be seen as a form of general pressure to comply when the Council is 'recognizing the role of the ad hoc tribunals for the former Yugoslavia and Rwanda in deterring the future occurrence of such crimes thereby helping to prevent armed conflict',[21] or when the Council declares that it is 'ready to impose certain measures on any person responsible for serious violations of international humanitarian law'.[22]

Focused pressure to comply

The Security Council exercises more focused pressure to comply when it focuses on violations of certain elements of humanitarian law. This happens, for example, when the Council deplores violations of humanitarian law, 'particularly discrimination against women and girls',[23] or when it reaffirms certain rules, such as 'the obligation of all parties involved in an armed conflict to comply fully with the rules and principles of international law applicable to them related to the protection of humanitarian personnel and United Nations and its associated personnel, in particular international humanitarian law'.[24] Other examples concern calls by the

[16] SC Res. 1378 of 14 Nov. 2001, on the situation in Afghanistan; see also SC Res. 1592 of 30 Mar. 2005 and SC Res. 1649 of 21 Dec. 2005, both on the situation concerning the Democratic Republic of the Congo.

[17] SC Res. 1355 of 15 Jun. 2001 and SC Res. 1304 of 16 Jun. 2000, on the situation concerning the Democratic Republic of the Congo.

[18] SC Res. 1304 of 16 Jun. 2000, on the situation concerning the Democratic Republic of the Congo; cf. SC Res. 1565 of 1 Oct. 2004, on the situation concerning the Democratic Republic of the Congo.

[19] SC Res. 1484 of 30 May 2003, on the situation concerning the Democratic Republic of the Congo.

[20] SC Res. 1366 of 30 Aug. 2001, on the role of the Security Council in the prevention of armed conflicts.

[21] Ibid.

[22] SC Res. 1633 of 21 Oct. 2005, on the situation in Côte d'Ivoire.

[23] SC Res. 1333 of 19 Dec. 2000, on the situation in Afghanistan; see also SC Res 1653 of 27 Jan. 2006, on the situation in the Great Lakes region.

[24] SC Res. 1502 of 26 Aug. 2003, on the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones; see also SC Res. 1545 of 21 May 2004, on the situation in Burundi.

Council 'to allow full unimpeded access by humanitarian personnel to all people in need of assistance',[25] 'to refrain from any violence against civilians',[26] 'to refrain from acts of reprisal',[27] to refrain from 'the use of child soldiers',[28] to 'refrain from forcible relocation of civilians',[29] or 'not to undertake demolitions of homes contrary to the law'.[30]

Another way of exercising even more focused pressure to comply is the invocation of certain international conventions, such as the call 'on all parties to the conflict in the Democratic Republic of the Congo to protect human rights and respect international humanitarian law and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948'.[31] It is rare, however, that the Council refers to specific provisions, such as when it

> [e]mphasizes the responsibility of States to end impunity and to prosecute those respon sible for genocide, crimes against humanity and serious violations of international hu manitarian law, affirms the possibility, to this end, of using the International Fact Finding Commission established by Article 90 of the First Additional Protocol to the Geneva Conventions,[32]

or when it notes that 'under the provisions of Article 55 of the Fourth Geneva Convention . . . , the Occupying Power has the duty of ensuring the food and medical supplies of the population.'[33]

Another form of a more focused pressure to comply is the reference to specific acts or persons. Thus, the Council can call 'upon the Polisario Front to release without further delay all remaining prisoners of war in compliance with international humanitarian law',[34] or assert that it '[w]elcomes the release of 101 Moroccan prisoners of war'.[35] The Council '[e]mphasizes again the need to bring to justice those responsible for the serious violations of human rights and international humanitarian law that have taken place in Côte d'Ivoire since 19 September 2002',[36]

[25] SC Res. 1502 of 26 Aug. 2003, on the protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones; SC Res. 1545 of 21 May 2004, on the situation in Burundi.

[26] SC Res. 1572 of 15 Nov. 2004, on the situation in Côte d'Ivoire.

[27] SC Res. 1378 of 14 Nov. 2001, on the situation in Afghanistan.

[28] SC Res. 1643 of 15 Dec. 2005, on the situation in Côte d'Ivoire.

[29] SC Res. 1574 of 19 Nov. 2004, on the situation in Sudan.

[30] SC Res. 1544 of 19 May 2004, on the situation in the Middle East, including the Palestinian question.

[31] SC Res. 1291 of 24 Feb. 2000, on the situation concerning the Democratic Republic of the Congo; cf. SC Res. 1565 of 1 Oct. 2004, on the situation concerning the Democratic Republic of the Congo.

[32] SC Res. 1265 of 17 Sep. 1999, on the protection of civilians in armed conflict.

[33] SC Res. 1472 of 28 Mar. 2003, on the situation between Iraq and Kuwait.

[34] SC Res. 1495 of 31 Jul. 2003 and SC Res. 1429 of 30 Jul. 2002, on the situation concerning Western Sahara.

[35] SC Res. 1429 of 30 Jul. 2002, on the situation concerning Western Sahara.

[36] SC Res. 1479 of 13 May 2003 and SC Res. 1643 of 15 Dec. 2005, both on the situation in Côte d'Ivoire.

or addresses a certain government.[37] A very specific resolution concerns the Congo in which the Council

> Condemns the massacres and other systematic violations of International Humanitarian Law and human rights perpetrated in the Democratic Republic of the Congo, in particular sexual violence . . . as a tool of warfare . . . perpetrated in the Ituri area by the Mouvement de Libération du Congo (MLC) and the Rassemblement Congolais pour la Démocracie/ National (RCD/N) troops, . . . Stresses that the military officers whose names are mentioned in the report of the United Nations High Commissioner for Human Rights in connection with serious violations of international humanitarian law and human rights should be brought to justice through further investigation, and if warranted by that investigation, held accountable through a credible judicial process;
>
> Calls upon the Congolese parties, when selecting individuals for key posts in the transitional government, to take into account the commitment and record of those individuals with regard to respect for International Humanitarian Law and human rights and the promotion of the well being of all the Congolese; . . . Reiterates that all parties claiming a role in the future of the Democratic Republic of the Congo must demonstrate their respect for human rights, International Humanitarian Law.[38]

This resolution is rather exceptional in so far as it not only addresses specific violations by referring to the time and place of their commission, but also by referring to individual persons who are allegedly responsible for such violations and should be brought to justice.[39] Somewhat similar cases are those in which the Security Council refers to reports by the Secretary-General, and, for example, '[e]xpresses its serious concern at the evidence UNAMSIL has found of human rights abuses and breaches of humanitarian law set out in paragraphs 38 to 40 of the Secretary-General's report . . . , [and] encourages . . . further assessment . . .',[40] or 'deplores all violations of human rights and international humanitarian law which have occurred in Sierra Leone during the recent escalation of violence as referred to in paragraphs 21 to 28 of the report of the Secretary-General, including the recruitment of children as soldiers'.[41] It must be emphasized, however, that such referrals to specific situations or even to individual persons in combination with specific norms are the exception. Mostly the Security Council speaks in broader terms.

[37] Compare e.g. SC Res. 1649 of 21 Dec. 2005, on the situation in the Democratic Republic of the Congo; SC Res. 1564 of 18 Sep. 2004 and SC Res. 1556 of 30 Jul. 2004, on the Report of the Secretary General on the Sudan; SC Res. 1528 of 27 Feb. 2004, on the situation in Côte d'Ivoire.

[38] SC Res. 1468 of 20 Mar. 2003, on the situation concerning the Democratic Republic of the Congo. On the condemnation of sexual violence, see also SC Res. 1545 of 21 May 2004, on the situation in Burundi.

[39] But see also SC Res. 1672 of 25 Apr. 2006, on the situation in Sudan.

[40] SC Res. 1400 of 28 Mar. 2002, on the situation in Sierra Leone.

[41] SC Res. 1231 of 11 Mar. 1999, on the situation in Sierra Leone.

Institutional measures

Another important technique by which the Council seeks to achieve implementation of humanitarian law is through the adoption of resolutions that provide for institutional measures, and in particular for the investigation of violations of humanitarian law. Apart from the one referral so far of a situation to the International Criminal Court,[42] and the rare imposition of sanctions specifically for violations of international humanitarian law,[43] this is mostly done by way of mandating the Secretary-General and peacekeeping missions. The Secretary-General is naturally one of the most frequent addressees of Security Council resolutions, for example when the Council

> [r]equests the Secretary General to increase the number of personnel in MONUC's human rights component to assist and enhance, in accordance with its current mandate, the capacity of the Congolese parties to investigate all the serious violations of international humanitarian law and human rights perpetrated on the territory of the Democratic Republic of the Congo.[44]

The Secretary-General is often requested to submit reports or other information, for example, 'to submit . . . his next report on the protection of civilians in armed conflict' and 'to include in this report any additional recommendations on ways the Council and other Organs of the United Nations . . . could further improve the protection of civilians in situations of armed conflict',[45] or 'to refer to the Council information and analyses from within the United Nations system on cases of serious violations of international law, including international humanitarian law and human rights law'.[46]

Other resolutions ask the Secretary-General 'to respond, as appropriate, to requests from African States . . . for advice and technical assistance in the implementation of international refugee, human rights and humanitarian law . . . including through appropriate training programmes and seminars',[47] or 'to continue to ensure that training gives due emphasis to international refugee, human rights and humanitarian law'.[48] The Security Council further '[e]ncourages the Secretary-General to continue his efforts to despatch a mission to Afghanistan to investigate numerous reports of grave breaches and serious violations of international humanitarian law in

[42] SC Res. 1593 of 31 Mar. 2005, on the situation in Darfur.

[43] SC Res. 1672 of 25 Apr. 2006; SC Res. 1591 of 29 Mar. 2005, both on the situation in Sudan; SC Res. 1649 of 21 Dec. 2005, on the situation concerning the Democratic Republic of the Congo.

[44] SC Res. 1468 of 20 Mar. 2003, on the situation concerning the Democratic Republic of the Congo; cf. SC Res. 1565 of 1 Oct. 2004, on the situation concerning the Democratic Republic of the Congo.

[45] SC Res. 1296 of 19 Apr. 2000, on the protection of civilians in armed conflict.

[46] SC Res. 1366 of 30 Aug. 2001, on the role of the Security Council in the prevention of armed conflicts.

[47] SC Res. 1208 of 19 Nov. 1998, on the situation in African refugee camps.

[48] Ibid.

that country, in particular mass killings and mass graves of prisoners of war and civilians and the destruction of religious sites',[49] and supports his 'proposal . . . to establish within UNSMA . . . a civil affairs unit with the primary objective of monitoring the situation, promoting respect for minimum humanitarian standards and deterring massive and systematic violations of human rights and humanitarian law in the future'.[50]

Some resolutions address peacekeeping missions more generally,[51] although they are ultimately also addressed to the Secretary-General. The Council, for example, 'indicates its willingness, when authorizing missions, to consider . . . steps in response to media broadcasts inciting genocide, crimes against humanity and serious violations of international humanitarian law';[52] and affirms:

> that, where appropriate, United Nations peacekeeping missions should include a mass media component that can disseminate information about international humanitarian law and human rights law, including peace education and children's protection, while also giving objective information about the activities of the United Nations, and further affirms that, where appropriate, regional peacekeeping operations should be encouraged to include such mass media components.[53]

Such resolutions can include decisions on the establishment of further institutions, for example by expressing Council support for the establishment of a civil affairs unit for the monitoring and promotion of the observance of humanitarian law,[54] or of institutions, such as 'UNOMSIL . . . with the . . . mandate: . . . (c) To assist in monitoring respect for international humanitarian law',[55] UNOMIL with the mandate to, inter alia, 'report on any major violations of international humanitarian law to the Secretary-General'[56] or MINUSTAH in order to collaborate with the High Commissioner for Human Rights,[57] or supporting the establishment of a Truth Commission.[58] Since UN forces do not have a general duty to take action against violations of international humanitarian law,[59] it is significant that such measures are at least sometimes included in their mandate.

[49] SC Res. 1214 of 8 Dec. 1998, on the situation in Afghanistan.

[50] Ibid. see also SC Res. 1564 of 18 Sep. 2004, on the Report of the Secretary General on the Sudan.

[51] On the applicability of international humanitarian law to UN forces, cf. Christopher Greenwood, 'International Humanitarian Law and United Nations Military Operations', *Yearbook of International Humanitarian Law* 1 (1998), 14 15.

[52] SC Res. 1296 of 19 Apr. 2000, on the protection of civilians in armed conflict.

[53] Ibid.

[54] SC Res. 1214 of 8 Dec. 1998, on the situation in Afghanistan.

[55] SC Res. 1181 of 13 Jul. 1998, on the situation in Sierra Leone.

[56] SC Res. 866 of 22 Sep. 1993, on Liberia.

[57] SC Res. 1542 of 30 Apr. 2004, on the question concerning Haiti.

[58] SC Res. 1606 of 20 Jun. 2005, on the situation in Burundi.

[59] Greenwood, 'International Humanitarian Law and United Nations Military Operations', 32 et seq.

Adjudication or Clarification of the Law

The adjudicatory function of the Council is represented by those resolutions which apply and/or interpret the law in relation to a particular set of facts. Such resolutions can be divided into three groups: the first group concerns cases in which the Council explicitly applies norms to specific facts; the second concerns general determinations of the applicability of humanitarian law with respect to certain conflicts, the third relates to more abstract interpretations of substantive provisions of this law in the light of a particular set of facts.

Application of norms to facts

So far, the Council has not ventured to make conclusive adjudicatory determinations, except of course by way of creating independent criminal tribunals which would then make such determinations. It should be noted, however, that certain forms of focused pressure to comply, as they have been described above, simultaneously contain applications of norms to facts. The clearest cases are those in which sanctions are imposed for violations of international humanitarian law on specific individuals, or on members of a group of persons who are to be identified by a UN sanctions committee. The sanctions against the Taliban and al-Qaeda under Resolution 1267[60] are the best-known instances of this technique, but it has also been used in other contexts.[61] But the adjudicatory function is also exercised when the Council calls 'upon the Polisario Front to release without further delay all remaining prisoners of war',[62] or '[e]mphasizes again the need to bring to justice those responsible for the serious violations of human rights and international humanitarian law that have taken place in Côte d'Ivoire since 19 September 2002'.[63] The same is true, a fortiori, for resolutions which address specific violations not only by referring to the time and place of their committal, but also by referring to individual persons who are allegedly responsible for such violations and should be brought to justice.[64] Conversely, the Council occasionally determines that certain activities have been in compliance with international humanitarian law.[65]

[60] SC Res. 1267 of 15 Oct. 1999, on the situation in Afghanistan.

[61] SC Res. 1672 of 25 Apr. 2006; SC Res. 1591 of 29 Mar. 2005, both on the situation in Sudan; SC Res. 1649 of 21 Dec. 2005, on the situation concerning the Democratic Republic of the Congo.

[62] SC Res. 1495 of 31 Jul. 2003 and SC Res. 1429 of 30 Jul. 2002, on the situation concerning Western Sahara.

[63] SC Res. 1479 of 13 May 2003, on the situation in Côte d'Ivoire; similar calls were already made in SC Res. 1464 of 4 Feb. 2003, on the situation in Côte d'Ivoire.

[64] SC Res. 1577 of 1 Dec. 2004, on the situation in Burundi; SC Res. 1572 of 15 Nov. 2004, on the situation in Côte d'Ivoire; SC Res. 1468 of 20 Mar. 2003, on the situation concerning the Democratic Republic of the Congo.

[65] See, for example, SC Res. 1634 of 28 Oct. 2005, on the situation concerning Western Sahara, where the Security Council commended the release of prisoners of war.

Applicability of humanitarian law

Resolutions which explicitly or implicitly make determinations with respect to the applicability of humanitarian law make up a rather large group. The most important examples are the resolutions concerning the occupied Palestinian territories,[66] terrorism,[67] ethnic cleansing during the Yugoslav conflict,[68] and the Western Sahara conflict.[69]

The resolutions concerning the occupied Palestinian territories do not merely express general support for the efforts to reach peace:[70] they also more specifically address 'the need for all concerned to ensure the safety of civilians, and to respect the universally accepted norms of international humanitarian law' in the Jenin refugee camp,[71] and clarify a long-time contentious question of applicability by stressing 'the need for respect in all circumstances of . . . the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949'.[72]

Since 1999, the Security Council has stressed the need for 'respect for international humanitarian law and human rights'[73] in the fight against terrorism, a demand that has been expressed more specifically in a Declaration by the Security Council at a meeting on the Minister of Foreign Affairs level: 'States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.'[74] However, the Council

[66] SC Res. 1435 of 24 Sep. 2002; SC Res. 1405 of 19 Apr. 2002 and SC Res. 1397 of 12 Mar. 2002, on the situation in the Middle East, including the Palestinian question. On earlier resolutions see Schwebel, 'The Roles of the Security Council and the International Court of Justice in the Application of International Humanitarian Law', 751 et seq.

[67] SC Res. 1566 of 8 Oct. 2004; SC Res. 1269 of 19 Oct. 1999, on threats to international peace and security caused by terrorist acts; SC Res. 1269 of 19 Oct. 1999, on the responsibility of the Security Council in the maintenance of international peace and security; SC Res.1456 of 20 Jan. 2003 regarding High level meeting of the Security Council on the issue of combating terrorism.

[68] SC Res. 941 of 23 Sep. 1994, on violations of international humanitarian law in Banja Luka, Bijeljina and other areas of Bosnia and Herzegovina under the control of Bosnian Serb forces; SC Res. 824 of 6 May 1993, on Bosnia and Herzegovina.

[69] SC Res. 1598 of 28 Apr. 2005, SC Res. 1495 of 31 Jul. 2003; SC Res. 1429 of 30 Jul. 2002 and SC Res. 1359 of 29 Jun. 2001, all on the situation concerning Western Sahara.

[70] SC Res. 1397 of 12 Mar. 2002, on the situation in the Middle East, including the Palestinian question.

[71] SC Res. 1405 of 19 Apr. 2002, on the situation in the Middle East, including the Palestinian question.

[72] SC Res. 1435 of 24 Sep. 2002, on the situation in the Middle East, including the Palestinian question; cf. *Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Rep., 2004, paras. 89 101.

[73] SC Res. 1269 of 19 Oct. 1999, on the responsibility of the Security Council in the maintenance of international peace and security; SC Res. 1624 of 14 Sep. 2005; SC Res. 1566 of 8 Oct. 2004, both on threats to international peace and security caused by terrorist acts.

[74] SC Res. 1456 of 20 Jan. 2003, regarding High level meeting of the Security Council on the issue of combating terrorism; see also SC Res. 1544 of 19 May 2004, on the situation in the Middle East, including the Palestinian question.

has, so far, not gone any further and has made no more precise statement as to the scope of application of humanitarian law to the fight against terrorism.[75]

In resolutions concerning Bosnia and Herzegovina and the Western Sahara the Council, by condemning specific violations of humanitarian law, has clarified the applicability of this body of law to these conflicts. More than once the Council has emphasized that the practice of ethnic cleansing 'constitutes a clear violation of international humanitarian law and poses a serious threat to the peace effort'.[76] Similarly, in resolutions concerning Western Sahara, the parties were called upon 'to abide by their obligations under international humanitarian law to release without further delay all those held since the start of the conflict'.[77] Later, the Security Council more specifically called for the 'release without further delay [of] all remaining prisoners of war in compliance with international humanitarian law'.[78] By using the term 'prisoner of war' the Council made it clear that it considered the Geneva Conventions to be the legal regime applicable to the situation.

Substance of humanitarian law

Other resolutions do not merely invoke but also clarify the substantive content of humanitarian law by dealing with specific questions such as the right of access for humanitarian organizations,[79] the possible extent of amnesties,[80] the duty to protect refugees[81] and attacks against civilians and UN personnel.[82] Lately, the Council has even articulated 'that the governments in the region have a primary responsibility to protect their populations, including from attacks by militias and armed groups'.[83]

[75] Faiza Patel King and Olivia Swaak Goldman 'The Applicability of International Humanitarian Law to the "War Against Terrorism"', *Hague Yearbook of International Law* 15 (2003), 39–50.

[76] SC Res. 941 of 23 Sep. 1994, on violations of international humanitarian law in Banja Luka, Bijeljina and other areas of Bosnia and Herzegovina under the control of Bosnian Serb forces.

[77] SC Res. 1359 of 29 Jun. 2001, on the situation concerning Western Sahara.

[78] SC Res. 1495 of 31 Jul. 2003; cf. SC Res. 1429 of 30 Jul. 2002, on the situation concerning Western Sahara.

[79] SC Res. 1239 of 14 May 1999, on Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998).

[80] SC Res. 1315 of 14 Aug. 2000, on the situation in Sierra Leone; SC Res. 1120 of 14 Jul. 1997, on the situation in Croatia.

[81] SC Res. 1208 of 19 Nov. 1998, on the situation in African refugee camps.

[82] SC Res. 864 of 15 Sep. 1993 and SC Res. 851 of 15 Jul. 1993, on Angola.

[83] SC Res. 1653 of 27 Jan. 2006, on the situation in the Great Lakes region; but see already SC Res. 1208 of 19 Nov. 1998, on the situation in African refugee camps, where the Council further affirmed a duty of states to protect refugees as it is 'the primary responsibility of States hosting refugees to ensure the security and civilian and humanitarian character of refugee camps and settlements in accordance with international refugee, human rights and humanitarian law'.

Shortly before the Kosovo intervention by NATO forces, the Security Council by, inter alia, relying on humanitarian law articulated a legal basis, albeit in careful language, for a right of access of humanitarian organizations to the theatre of conflict:

> Bearing in mind the provisions of the Charter of the United Nations and guided by the Universal Declaration of Human Rights, the international covenants and conventions on human rights, the Conventions and Protocol relating to the Status of Refugees, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, as well as other instruments of international humanitarian law, . . . Calls for access for United Nations and all other humanitarian personnel operating in Kosovo and other parts of the Federal Republic of Yugoslavia.[84]

Another example concerns the Yugoslav conflict where the Security Council gave interpretative guidelines concerning the requirements for a fair and objective implementation of an amnesty. The Council urged Croatia

> to eliminate ambiguities in implementation of the Amnesty Law, and to implement it fairly and objectively . . . [and] review . . . all charges outstanding against individuals for serious violations of international humanitarian law which are not covered by the amnesty in order to end proceedings against all individuals against whom there is insufficient evidence.[85]

In addition, the Security Council clarified that the law limits the possibilities for extending amnesties in the case of 'international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law'.[86]

Other resolutions note 'that the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection afforded to civilians under existing international humanitarian law',[87] or affirm 'the primary responsibility of States hosting refugees to ensure the security and civilian and humanitarian character of refugee camps and settlements in accordance with international refugee, human rights and humanitarian law'.[88]

These examples show that the adjudication and/or clarification of specific questions of humanitarian law have become part of Security Council practice. Although they are still the exception, their frequency appears on the increase. Assertions or clarifications concerning the general applicability of humanitarian law form the largest group among them. The interpretation of specific substantive norms takes place only occasionally and does not concentrate on particular areas of humanitarian law. The same is true for instances in which the Council, explicitly or implicitly, applies norms to a particular set of facts.

[84] SC Res. 1239 of 14 May 1999; see also SC Res. 1653 of 27 Jan. 2006, on the situation in the Great Lakes region.

[85] SC Res. 1120 of 14 Jul. 1997, on the situation in Croatia.

[86] SC Res. 1315 of 14 Aug. 2000, on the situation in Sierra Leone.

[87] SC Res. 1296 of 19 Apr. 2000, on the protection of civilians in armed conflict.

[88] SC Res. 1208 of 19 Nov. 1998, on the situation in African refugee camps.

The Legislation Function

Since the adoption of Resolution 1373, deciding on measures that member states have to implement to suppress the financing of terrorism, one of the most interesting developments in the practice of the Security Council is resolutions which can be described as having a legislative effect.[89] While resolutions which impose new international obligations on all states have not yet been adopted in the area of international humanitarian law, the Council does occasionally make general normative pronouncements, as in Resolution 1674 on the protection of civilians in armed conflict.[90] Such resolutions mostly reaffirm the existing body of law and express normative and practical priorities, and are thus good indicators of the general direction in which the normative development is heading. In other resolutions, the Council involves itself in supporting preparatory legislative activities, in hortatory form, as when it expresses its support of 'the work of the open-ended inter-sessional working group of the Commission on Human Rights on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict'.[91] Another example is the recommendation 'that the subject matter jurisdiction of the special court should include notably . . . crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law'.[92] Whereas a certain movement towards more explicit legislative Security Council resolutions can be observed in other areas,[93] such resolutions do not yet seem to play a role in the context of humanitarian law.

[89] SC Res. 1373 of 28 Sep. 2001, on threats to international peace and security caused by terrorist acts; Paul Szasz, 'The Security Council Starts Legislating', *American Journal of International Law* 96 (2002), 901–5; Jurij Daniel Aston, 'Die Bekämpfung abstrakter Gefahren für den Weltfrieden durch legislative Massnahmen des Sicherheitsrats – Resolution 1373 (2001) im Kontext', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 62 (2002), 257–91. Earlier reflections on this trend include Christian Tomuschat, 'Obligations Arising for States Without or Against Their Will', *Recueil des Cours*, 1993 IV, 199–374, at 344 et seq.; G. Arangio-Ruiz, 'On the Security Council's "Law-Making"', *Rivista di Diritto Internazionale* 83 (2000), 609–725.

[90] SC Res. 1674 of 28 Apr. 2006, on civilians in armed conflict.

[91] SC Res. 1261 of 30 Aug. 1999, on children and armed conflict.

[92] SC Res. 1315 of 14 Aug. 2000, on the situation in Sierra Leone.

[93] SC Res. 1373 of 28 Sep. 2001, on threats to international peace and security caused by terrorist acts; SC Res. 1540 of 28 Apr. 2004, on non-proliferation of weapons of mass destruction. See also Szasz, 'The Security Council Starts Legislating', 901; Matthew Happold, 'Security Council Resolution 1373 and the Constitution of the United Nations', *Leiden Journal of International Law* 16 (2003), 593–610; Andreas Zimmermann and Björn Elberling, 'Grenzen der Legislativbefugnisse des Sicherheitsrats: Resolution 1540 und abstrakte Bedrohungen des Weltfriedens', *Vereinte Nationen* 52 (2004), 71–3; and the contributions by Erika de Wet, Michael Wood, and Georg Nolte in Rüdiger Wolfrum and Volker Röben (eds.), *Developments of International Law in Treaty Making* (Berlin: Springer, 2005), 183–243.

Conclusion

The Security Council mostly reaffirms the body of humanitarian law in general terms. It is cautious not to appear to legislate or to change existing law. The Council still follows the example it gave while establishing the International Tribunals for the Former Yugoslavia and Rwanda[94] when it was careful not to alter the substantive law the tribunals would have to apply.[95] A certain number of resolutions clarify the law by adjudicative interpretation, but this mostly concerns rather general and uncontroversial questions. The Council does not pretend to act as a judicial organ and rarely addresses specific legal questions.[96] In that respect the Council still follows its practice at the time of the establishment of the ICTY when it left the question to the judgment of the tribunal itself whether the conflict in Bosnia–Herzegovina was of an internal or an international character.[97]

Concerning its legislative function, the policy of the Council seems to be restricted to propelling new factors, such as sexual violence, into the discussion of humanitarian law.[98] Theoretically, the Security Council has a large potential to act legislatively: when acting under Chapter VII of the UN Charter, the Council can theoretically suspend the treaty law which exists under or alongside the Charter. Nevertheless, the Security Council is only at the beginning of a practice of overriding international law[99] and it is rather unlikely that such a practice would affect international humanitarian law very much. This is because a significant part of international humanitarian law is not simply treaty law, but belongs to customary law and even to *ius cogens*.

Thus, ultimately, the Security Council's focus is still very much on the implementation of humanitarian law. It draws attention to particular events, regions, and forms of violations and it predetermines judicial assessments by denoting manifest violations. Additionally, the Council is engaged in institution-building and is mainstreaming certain issues in a way that cannot be described as merely hortatory. While the reaffirmation of the law and the denunciation of its violation are important

[94] Cf. SC Res. 808 of 22 Feb. 1993; SC Res. 827 of 25 May 1993 and SC Res. 955 of 8 Nov. 1994 respectively.

[95] Compare the crimes included in the Statute of the ICTY adopted by the Security Council in SC Res. 827 of 25 May 1993 and in the Statute of the ICTR, annexed to SC Res. 955 of 8 Nov. 1994.

[96] But cf. SC Res. 1405 of 19 Apr. 2002 and SC Res. 1435 of 24 Sep. 2002, on the situation in the Middle East, including the Palestinian question.

[97] Cf. ICTY, *Prosecutor* v. *Dusko Tadic,* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT 94 1 AR72, 2 Oct. 1995, 105 ILR, 419 et seq., at paras. 71 8.

[98] Cf. SC Res. 1468 of 20 Mar. 2003, on the situation concerning the Democratic Republic of the Congo.

[99] This possibility was contemplated in the process of the establishment of the Proliferation and Security Initiative (PSI), available at www.state.gov/t/np/rls/fs/23764.htm See Michael Byers, 'Policing the High Seas: The Proliferation Security Initiative', *American Journal of International Law* 98 (2004), 526 45.

functions of the Council, increasing emphasis lies on institutional mechanisms for enforcing international humanitarian law, such as sanctions, peacekeeping missions, and demands for implementation by states and by international agencies. The frequency and occasional specificity with which the Council invokes, applies, and interprets international humanitarian law now make it, together with the ICRC, the major intergovernmental institution acting in this field.

If the preceding description and analysis is correct and representative of Security Council practice, Roberts and Guelff's observation cited at the beginning of this chapter can be somewhat substantiated. While the Council has by now reaffirmed the application of international humanitarian law, in whole and in part, to particular events and conflicts, it is, on the one hand, still rather reluctant to define the content of the law. On the other hand, it has increasingly developed new mechanisms and techniques to stress and implement the responsibility of individuals and states.

CHAPTER 24

THE SECURITY COUNCIL AND HUMANITARIAN INTERVENTION

JENNIFER M. WELSH*

Among the many ways the UN Security Council has implemented its special responsibility for managing international peace and security, one of the most controversial is its authorization of the use of force for humanitarian purposes. This chapter examines Council practice in this area – often referred to as 'humanitarian intervention'[1] – focusing mainly on the post-Cold War period. Excluded from the analysis are military actions which may have had a humanitarian component (for example, NATO's actions in Bosnia), but which had other guiding objectives. In analysing interventions with a humanitarian purpose, I argue that while the Council initially was reluctant to authorize force in circumstances involving the mistreatment of a state's civilians, it has gradually asserted its competence through an expanded definition of what constitutes a threat to international

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[1] There is no standard definition of 'humanitarian intervention', and there is a significant debate as to how it should be conceived. For the purposes of this chapter, the following definition will be used: *coercive interference in the internal affairs of a state, involving the use of armed force with or without Security Council authorization, with the purpose of addressing massive human rights violations or preventing widespread human suffering.*

peace and security. It has also committed itself in principle, through four resolutions, to improving the physical and legal protection of civilians in situations of armed conflict. Nonetheless, the Council has often proven unwilling to give its authorization for military action when the consent of the target country is clearly absent. This reluctance has led to sharp criticism of the United Nations in general, and the Security Council in particular, most notably in the ongoing case of crimes against humanity in the Darfur region of Sudan.

The Charter and Humanitarian Intervention

The UN Charter is silent on the question of whether states can use military force to address a humanitarian crisis occurring within the sovereign jurisdiction of another member state of the UN. As others in this volume have noted, the two main exceptions to the Charter's prohibition on the use of force in Article 2(4) are military actions deemed to be in self-defence (Article 51) or actions authorized by the Security Council under Chapter VII. This framework for the use of force reflects the purpose of the treaty signed in 1945. By consulting the *travaux préparatoires* for the Charter, one finds a strong commitment to delegitimizing acts of war outside the context of self-defence, and to transferring authorization for the use of force to the Council.[2] Part of the explanation for the unwillingness to endorse widespread powers of intervention, as Adam Roberts has noted, was 'a natural concern not to frighten off the very entities, namely states, of which the UN was to be formed'.[3]

This is not to say, however, that the framers of the Charter were unconcerned about human rights violations occurring within member states of the United Nations. With the memory of the holocaust still fresh in diplomats' minds, representatives argued forcefully that the promotion and protection of human rights had to be one of the core purposes and principles of the new organization.[4] This is

[2] Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), 48 9. For a discussion of the legitimacy of actions beyond these two exceptions, see Christine Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 2000), 24 6; and Oscar Schachter, 'The Legality of Pro Democratic Invasion', *American Journal of International Law* 78, no. 3 (1984), 645 50.

[3] Adam Roberts, 'The United Nations and Humanitarian Intervention', in Jennifer M. Welsh (ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), 72.

[4] British representatives were particularly keen on the language of human rights in the early Articles of the Charter, partly as a way of giving the Security Council some freedom of action with respect to human rights violations occurring inside member states. See Llewellyn Woodward, *British Foreign Policy in the Second World War*, Vol. II (London, 1971), 212 17.

reflected in the human rights commitments in the Preamble and in Articles 1(2), 1(3), and 55. Moreover, one can interpret the Charter as leaving open the possibility of interventions for humanitarian purposes through Security Council action. As Roberts argues, while Article 2(7) is normally taken as *the* definitive statement of non-intervention in domestic affairs, the final phrase of that same article allows for enforcement actions under Chapter VII. This, combined with the provisions of Articles 39 and 42, gives the Council the right to define what constitutes a threat to international peace and security and to decide on the appropriate type of military action – should it deem it to be necessary to counter that threat.[5]

The Council proved reluctant to engage in an expansive definition of threats for most of the Cold War period. Of the three main instances that most closely resemble 'humanitarian interventions' – India in East Pakistan (1971),[6] Vietnam in Cambodia (1978), and Tanzania in Uganda (1979) – only the former two were discussed within the Council, and in both cases humanitarian rationales for military action were hotly contested. Nicholas Wheeler concludes that the behaviour and rhetoric of member states during these cases indicate that humanitarian claims were not accepted as a legitimate basis for the use of force in this period.[7] The attitude of the UN Secretary-General at the time of the Indian intervention, however, was quite different. U Thant's attempts to persuade Security Council members to take action foreshadowed future developments in the area of humanitarian intervention, particularly his argument that Pakistan's internal repression constituted a threat to international peace and security that the Council had a responsibility to address.[8]

Security Council Practice after the Cold War

The end of the Cold War brought about a change in the Security Council's capacity and willingness to manage a series of new threats to international peace and security. This is especially true in cases of grave danger to civilians within the

[5] Roberts, 'The United Nations and Humanitarian Intervention', 74.

[6] See also Rahul Roy Chaudhury's discussion of this issue in Ch. 14.

[7] Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000), chs. 2 and 3.

[8] U Thant, *View from the UN* (London: David & Charles, 1978), 422 4. It is also noteworthy that some legal scholars began to argue in favour of humanitarian rationale as a legitimate justification for the use of force. See Richard B. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia, 1973).

frontiers of UN member states. The cases below, while not an exhaustive treatment of Council practice, discuss the main instances in which force was considered for humanitarian purposes. The chronology reveals that, while the Council initially framed such interventions as 'exceptional' measures, and non-precedent setting, by the end of the 1990s it had become more confident in its expanded definition of threats to international peace and security.

Northern Iraq

Security Council Resolution 688, passed on 5 April 1991 in the aftermath of the UN-authorized use of force against Iraq over Kuwait,[9] is often cited as a milestone in the Council's practice with respect to humanitarian crises, given its interpretation of what constituted a threat to international stability.[10] The resolution was designed to address Saddam Hussein's repression of the Kurdish population in northern Iraq, which led to the flight of up to a million civilians – many into neighbouring Turkey.[11] France and Turkey brought the issue of the suffering refugees before the Council, with France arguing that failure to protect the Kurds would damage the 'political and moral authority'[12] of the Council, and Turkey insisting that the movement of so many civilians was affecting regional security. Following the passage of the resolution, the US, in cooperation with the UK and France, sent troops into northern Iraq to provide for the safety of Kurdish refugees and facilitate the delivery of humanitarian assistance.[13]

In reality, however, the resolution was less revolutionary than it appears, and did not necessarily offer a precedent for future interventions for humanitarian purposes.[14] Resolution 688 is striking for two reasons. To begin, it was the first of the Council's resolutions on the Iraq–Kuwait crisis to recall the contents of Article 2(7). The Council's deliberations over the resolution indicate that most member states perceived the relevant threat to international peace and security to be the 'transboundary effects' of the conflict in Iraq – the flow of refugees across international frontiers – rather than the actual suppression of the Kurds within the borders of Iraq.[15] This justification

[9] See also James Cockayne and David Malone's discussion of this issue in Chapter 17.

[10] See, for example, Richard B. Lillich, 'The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post Cold War World', *Tulane Journal of International and Comparative Law* 3, no. 1/2 (1995), 7.

[11] See 'Letter to the President of the Security Council from Permanent Representative of Turkey to the UN', UN doc. S/22435 of 2 Apr. 1991.

[12] French President Mitterand, cited in Wheeler, *Saving Strangers*, 141.

[13] The troops remained in Iraq until mid Jul. 1991 as part of Operation Provide Comfort. The military exclusion zone subsequently became a northern 'no fly' zone.

[14] For a more in depth discussion of the politics surrounding this resolution, see Chesterman, *Just War or Just Peace*, 131 3.

[15] This interpretation is reflected in the preambular paragraph of the resolution itself.

allowed the supporters of Resolution 688 to avoid the seeming contradiction between the Charter's commitment to non-intervention and its promotion of human rights. As the US representative in the Council put it:

> It is not the role or the intention of the Security Council to interfere in the internal affairs of any country. However, it is the Council's legitimate responsibility to respond to the concerns of Turkey and the Islamic republic of Iran . . . about the massive numbers of people fleeing, or disposed to flee, from Iraq across international frontiers because of the repression and brutality of Saddam Hussein. The transboundary impact of Iraq's treatment of its civilian population threatens regional stability. That is what the Council has addressed today.[16]

Secondly, as scholars have noted, Resolution 688 gave at best 'meagre legal cover' for the extended Western military intervention in Iraq.[17] Indeed, it was the first of the Council's resolutions on Iraq–Kuwait *not* to refer explicitly to Chapter VII. While the Security Council appealed to states and NGOs to contribute to humanitarian relief efforts, it did not explicitly authorize an enforcement action – despite US claims that Resolution 688 justified its warning to Iraq that any military activity by Saddam Hussein north of the 36th parallel would be met with force. The rationale for the Western coalition not seeking a specific Council mandate for Operation Provide Comfort is clear: the debate in the Council illustrates that the Soviet Union and China would have vetoed any effort to authorize the use of force in defence of humanitarian assistance or human rights. The strength of these states' commitment to upholding Article 2(7) of the Charter prevented the Security Council from crossing that significant 'normative Rubicon'.[18]

Somalia

Between 23 January 1992 and 4 November 1994, the Security Council passed seventeen resolutions concerning the breakdown of order and humanitarian crisis in Somalia,[19] only one of which was not adopted unanimously. The US-led intervention in Somalia is particularly notable, given it is the first occasion on which the Council authorized military action under Chapter VII without the consent of the sovereign government *and* for solely humanitarian reasons.[20] The degree of consensus within the Council on the legitimacy of military action by the Unified Task Force (UNITAF) is all the more interesting, in light of the discussion

[16] See UN doc. S/PV.2982 of 5 Apr. 1991.

[17] Wheeler, *Saving Strangers*, 154. See also Chesterman, *Just War or Just Peace*, 196 206.

[18] Wheeler, *Saving Strangers*, 169.

[19] The Council's decisions correspond with three phases of UN (or, in the case of UNITAF, UN authorized) missions: UNOSOM I, established by SC Res. 751 of 24 Apr. 1992, UNITAF, established by SC Res. 794 of 3 Dec. 1992 and UNOSOM II, established by SC Res. 814 of 26 Mar. 1993.

[20] For a more in depth discussion of the international response to the humanitarian crisis in Somalia, see Wheeler, *Saving Strangers*, ch. 6.

above about member states' concerns not to contravene Article 2(7) in the case of northern Iraq.

The Council's attention focused on Somalia relatively late in the crisis, given its preoccupation with the situation in Iraq and the civil war brewing in the former Yugoslavia.[21] Its first decision, Resolution 733, made reference to Chapter VII and highlighted the conflict's 'consequences on stability and peace in the region'.[22] While the precise nature of the enforcement mechanisms to be used under Chapter VII was not specified, the objectives were limited to the implementation of an arms embargo against the two main warring camps in the Somali conflict, led by Mohamed Farah Aidid and Ali Mahdi. Following the fragile ceasefire signed in March 1992 (facilitated by the UN's special envoys), the Council members' primary concern shifted away from the armed factions towards civilians, and the need to ensure that humanitarian assistance reached the population. During the debate over Resolution 746, there was only passing reference to the flow of refugees across borders and a clear indication that member states regarded civilian suffering alone as a justification for a Security Council response.[23] The preambular paragraph to the resolution describes the Council as 'deeply disturbed by the magnitude of human suffering caused by the conflict and concerned that the continuation of the situation in Somalia constitutes a threat to international peace and security.'[24]

Nonetheless, the Council's first steps during the spring of 1992 can at best be described as timid, given the scale of the humanitarian crisis: the dispatch of fifty unarmed observers to monitor the ceasefire[25] and an agreement in principle to send a small contingent of peacekeepers (with the consent of the warring factions) to facilitate humanitarian assistance. UNOSOM I had little impact, in large part because of the absence of a governing agent in Somalia and the unwillingness of the warlords to honour the ceasefire. While the mission's mandate and strength were later expanded through Resolution 775 of 28 August 1992, which authorized the deployment of a peacekeeping force of 3,500, there were long delays in implementing this decision, due to the logistical and financial constraints operating on key states that were to make up the force.[26] More significantly, there was still no specific mandate permitting the use of force.

[21] During Somalia's fall into chaos in 1991, UN involvement was limited to its humanitarian organizations and the activities of the Secretary General.

[22] SC Res. 733 of 23 Jan. 1992.

[23] UN doc. S/PV.3060 of 17 Mar. 1992.

[24] SC Res. 746 of 17 Mar. 1992. While this resolution did not authorize the use of force, it nonetheless emphasized the need to 'establish mechanisms to ensure the unimpeded delivery of humanitarian assistance'.

[25] SC Res. 751 of 24 Apr. 1992.

[26] See Ioan Lewis and James Mayall, 'Somalia', in James Mayall (ed.), *The New Interventionism 1991 1994: United Nations experience in Cambodia, former Yugoslavia and Somalia* (Cambridge: Cambridge University Press, 1996), 108 9.

The key resolution on the Somali crisis came only at the end of 1992, after the United States made an offer to provide 20,000 troops to address the unfolding humanitarian disaster. In Resolution 794 (which was adopted unanimously), the Council authorized an enforcement mission whose troops would be under US command and control.[27] Under paragraph 10, UNITAF (in what became known as Operation Restore Hope) was authorized to 'use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia'. Moreover, the use of force was justified solely on the basis of the 'magnitude of the human tragedy caused by the conflict in Somalia'.

While the text of the resolution appeared to alter dramatically the Council's long-standing interpretation of its roles and responsibilities under Article 39 of the Charter, an analysis of the debate among Security Council members indicates wariness about establishing any new precedent for interference in the domestic affairs of sovereign states on humanitarian grounds. In the words of the Chinese representative: 'As we understand it, according to the recommendations of the Secretary-General, the military operation authorized by the draft resolution is an exceptional action in view of the unique situation in Somalia.'[28] What made the case so unique, diplomats argued, was the lack of a responsible government that could act as an interlocutor at the UN for the purposes of permitting a military action designed to facilitate humanitarian assistance. This made it unnecessary for member states to reference Article 2(7) in the resolution (which they had done in the case of Resolution 688 on northern Iraq). In practical terms, however, the combined efforts of UNITAF and UNOSOM I 'had established an unprecedented level of UN intervention in a previously sovereign state'.[29]

Haiti

The actions taken by the UN, and specifically the Security Council, in response to the overthrow on 30 September 1991 of Jean-Bertrand Aristide (the first democratically elected President of Haiti), constitute another notable change in the Council's conception of a threat to international peace and security.[30] The most significant decision, Resolution 940, was unprecedented in two respects: the United States, for the first time, sought UN authority for the use of force within the

[27] SC Res. 794 of 3 Dec. 1992.

[28] UN doc. S/PV.3145 of 3 Dec. 1992.

[29] Lewis and Mayall, 'Somalia', 114.

[30] Before the Security Council started to address the question of Haiti and authorized the use of force in Jul. 1994, the UN had been involved through the International Civilian Mission, known as MICIVIH. This joint UN/OAS mission was established by the General Assembly in the spring of 1993 (at the request of Aristide) to monitor human rights violations in Haiti. See GA Res. 47/20B of 20 Apr. 1993.

Western hemisphere; and the Security Council showed it was prepared to authorize force to unseat one regime and install another within a member state.[31]

The refusal of the de facto regime to reinstate Aristide, coupled with reports of the persecution of Aristide's supporters, led to mounting pressure (particularly from the UN Secretary-General) on the Council to take action. On 7 June 1993, the Haitian Ambassador to the UN wrote to the President of the Security Council requesting that the Council make 'universal and mandatory' the sanctions that had been established by the Organization of American States in 1991.[32] On 16 June 1993, the Council unanimously adopted Resolution 841 under Chapter VII, instituting a worldwide fuel and arms embargo on Haiti and freezing the assets of the Haitian state. In passing Resolution 841, the Council had two primary concerns: the current 'incidence of humanitarian crises, including the mass displacements of population' and the *potential* increase in Haitian refugees as a threat to regional security, stating 'that the persistence of this situation contributes to a climate of fear of persecution and economic dislocation which could increase the number of Haitians seeking refuge in neighbouring member states'. These factors led the Council to determine 'that, in these unique and exceptional circumstances, the continuation of this situation threatens international peace and security in the region'.[33]

During the debate in the Council, Canada, the United States, France, and Venezuela strongly supported the resolution, whereas Pakistan, China, and Brazil were more sceptical. For the Chinese, the crisis was depicted as 'essentially a matter which falls within the internal affairs of the country, and therefore should be dealt with by the Haitian people themselves'.[34] In the end, however, China did vote in favour of the resolution, and (along with Pakistan and Brazil) voiced two arguments similar to those noted above in relation to Somalia. The first was the 'unique and exceptional' character of the situation, specifically identified by the representative of Pakistan as 'the request by the legitimate government of Haiti that the Security Council make universal and mandatory the measures recommended by OAS'.[35] Secondly, China and others argued that the prior action on the part of OAS and the GA had established a framework that 'warrant[ed] the extraordinary consideration of the matter by the Security Council and the equally extraordinary application of measures provided for in Chapter VII'.[36]

While some progress was made after the imposition of the sanctions and the acceptance of the Governors Island Agreement (GIA) signed by both Aristide and

[31] SC Res. 940 of 31 Jul. 1994. For a detailed discussion, see David Malone, *Decision Making in the UN Security Council: The Case of Haiti* (Oxford: Oxford University Press, 1998).

[32] UN doc. S/25958 of 16 Jun. 1993. This request was further supported by the Group of Friends (which included Canada, the US, France, and Venezuela) and the GRULAC, the group of Latin American and Caribbean states which contains thirty three members.

[33] SC Res. 841 of 16 Jun. 1993.

[34] UN doc. S/PV.3238 of 16 Jun. 1993.

[35] Ibid.

[36] Ibid.

Raul Cedras, the leader of the de facto regime,[37] Venezuela stressed its increasing 'concern over the serious violations and abuses relating to human rights that continue to take place in Haiti'.[38] Not long after, the Council unanimously authorized both an advance team of thirty personnel to prepare for the deployment of the proposed UN mission to Haiti,[39] and the creation of the mission (UNMIH) for a period of six months.[40] Further intransigence on the part of Haitian authorities, coupled with a renewed surge in violence, led to the withdrawal of personnel from UNMIH and the International Civilian Mission in Haiti (MICIVIH), and ultimately the imposition of both a naval blockade and a commercial embargo.[41] The latter was imposed unanimously, in response to what the Security Council condemned as 'numerous instances of extra-judicial killings, arbitrary arrests, illegal detentions, abductions, rape and enforced disappearances, the continued denial of freedom of expression and the impunity with which armed civilians have been able to operate and continue operating'.[42]

From May until July 1994, reports continued to flow into New York concerning the deteriorating human rights situation under the new military-backed provisional government led by President Émile Jonassaint. Jonassaint's subsequent expulsion of inspectors from MICIVIH was vigorously condemned by the Council in a Presidential Statement issued on 12 July 1994, which asserted that this 'provocative behaviour directly affects the peace and security of the region.'[43] The Council's Statement, combined with domestic pressure on the Clinton Administration to act (from both the Congressional Black Caucus and those concerned with the influx of refugees), marked the end of the UN's reluctance to use force in Haiti.

On 31 July 1994, the Security Council adopted Resolution 940 (drafted by Argentina, Canada, France, and the US) by twelve votes in favour and two abstentions.[44] Citing grave concerns over the 'significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties, the desperate plight

[37] The agreement was followed by talks at UN Headquarters on 14 Jul. 1993 among the majority of Haiti's political parties, as specified by Article 1 of the Agreement.

[38] UN doc. S/PV. 3271 of 27 Aug. 1993.

[39] SC Res. 862 of 31 Aug. 1993. Dockside demonstrations by the Front for the Advancement and Progress of Haiti (FRAPH), combined with downing of US helicopters in Somalia a week earlier, led the US to withdraw the ship carrying American and Canadian UNMIH troops (the *USS Harlan County*) from Haitian waters.

[40] SC Res. 867 of 23 Sep. 1993. The mission was initially comprised of 567 UN police monitors and a military construction unit of 700 (including sixty military trainers).

[41] SC Res. 917 of 6 May 1994. The embargo included a ban on all flights in and out of Haiti, with the exception of scheduled commercial flights and flights for humanitarian assistance purposes; the prevention of any member/family member of the Haitian military and participants in the coup of 1991 from entering another state; and a ban on the import and export of all commodities and products to and from Haiti (with the exception of medical and foodstuffs, petroleum for certain specified uses, and education information materials).

[42] Ibid.

[43] UN doc. S/PRST/1994/32 of 12 Jul. 1994.

[44] SC Res. 940 of 31 Jul. 1994. Brazil and China abstained, and Rwanda was absent.

of Haitian refugees and the recent expulsion of the staff of the MICIVIH',[45] the Council authorized the use by a US-led multinational force (MNF) of 'all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti'. In addition, the MNF was mandated to establish and maintain a secure and stable environment that would permit implementation of the GIA. In its resolution, the Council planned deployment in three stages, consisting of an advance team of the UN peacekeeping mission (UNMIH), then the US-led MNF, and ultimately the full deployment of UNMIH, to replace the MNF.[46]

Rwanda

Although Council members were explicit in their desire *not* to have the intervention in Somalia set a precedent for subsequent humanitarian interventions, the mission did have at least one critical knock-on effect for the future. The death of eighteen US soldiers in the autumn of 1993 in Mogadishu contributed to the reluctance of the Clinton administration to contemplate military force in the context of the genocide in Rwanda.[47] This landmark case of non-intervention has engendered criticism of, not only US foreign policy, but also the entire UN system. Faced with arguably the first instance of genocide since the holocaust of the 1930s and 1940s, the international community failed to mount an effective response and, in the eyes of some critics, 'condemned the Rwandans to their fate'.[48] Indeed, Permanent Members never even suggested that Rwanda – which coincidentally held a non-permanent seat during the genocide – should be barred from the Council.

A key factor in accounting for the inaction of the Council in the most critical phase of the genocide (6–21 April 1994) was the way in which the conflict was framed in debates. Member states did issue a statement on 6 April, when the violence erupted, condemning the killings and demanding protection for civilians

[45] These were similar to the concerns voiced in the second report submitted by the Secretary General (S/PRST/871).

[46] SC Res. 940 of 31 Jul. 1994. The Council extended the size and prolonged the mandate of UNMIH on four occasions: SC Res. 964 of 29 Nov. 1994, SC Res. 975 of 30 Jan. 1995, SC. Res. 1007 of 31 Jul. 1995, and SC Res. 1048 of 29 Feb. 1996. The mission ended in Jun. 1996, and was replaced by a UN support team (UNSMIH).

[47] See also Adam Robert's discussion of this issue in Chapter 4.

[48] Wheeler, *Saving Strangers*, 208. For other critiques of the United Nations' performance during the Rwandan crisis, see Linda Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000); Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002); and Roméo Dallaire and Brent Beardsley, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (New York: Carroll & Graf, 2005). The United Nations produced a damning indictment of its own behaviour five years later. See *Report of the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda*, UN doc. S/1999/1257 of 15 Dec. 1999.

and UN officials. However, Council records over the next two weeks show member states choosing to portray the crisis, not as a case of genocide, but as a civil war between government forces and the Rwandan Patriotic Front (RPF) – an impression that was reinforced by the Secretary-General's own representative on the ground.[49] The characterization as genocide would have given the Council not only a clear legal right to act, but also a duty to do so: Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide obliges state parties to prevent and punish acts of genocide. It was the depiction as a civil war, combined with a breakdown in communication between UN forces on the ground, the Department of Peacekeeping Operations, and the Security Council,[50] that laid the groundwork for the crucial decision in Resolution 912 of 21 April 1994 to *withdraw* the bulk of UNAMIR's forces.[51] But the event that precipitated this resolution was the death of ten Belgian peacekeepers and the return of their bodies to Brussels on 14 April. The incident was followed by Belgium's swift decision to withdraw its troops from UNAMIR, and to US Secretary of State Warren Christopher's instructions to the US Ambassador to the UN (Madeleine Albright) to demand a full UN pull-out.

The most powerful member states in the Council, along with officials at UN headquarters in New York, voiced concern that outside military forces would have little chance of success in the context of civil conflict, and that a 'failure' along the lines of Somalia would have damaging consequences for the organization as a whole. This high estimation of the costs of intervention was coupled with a low estimation of its expected benefits. US pessimism[52] about the prospects for international actors in situations of 'political turmoil' was reflected in Presidential Decision Directive 25 (PDD 25), which was issued in early May 1994. In the words of then National Security Adviser Anthony Lake: 'neither we nor the international community have either the mandate, nor the resources, nor the possibility of resolving every conflict of this kind . . . the reality is that we cannot solve other people's problems.'[53] In fact, PDD 25

[49] Colin Keating, 'Rwanda: An Insider's Account', in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (London: Lynne Reiner, 2004), 505.

[50] The most glaring illustration of this breakdown is the fact that UNAMIR General Roméo Dallaire's cabled reports, which contained strong warnings of ethnic slaughter, were not communi cated fully to the Security Council.

[51] SC Res. 912 of 21 Apr. 1994. While this resolution was to leave Dallaire in command of 270 troops, approximately 500 remained in Rwanda. UNAMIR had been created by SC Res. 872 of 5 Oct. 1993 to monitor the ceasefire between the government and the Tutsi dominated Rwandan Patriotic Front and to secure a weapons free zone in Kigali.

[52] For a comprehensive discussion of the US opposition to intervention in Rwanda, see Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002), ch. 10.

[53] PDD 25, which was a review of US policy on multilateral peace operations, remains classified. The quotation comes from a press briefing on its content. See Anthony Lake, 'Press Briefing by National Security Advisor Tony Lake and Director for Strategic Plans and Policy General Wesley Clark', 5 May 1994. Available at www.fas.org/irp/offdocs/pdd25 brief.htm I am grateful to Patrick Travers for pointing out this source to me.

did more than discourage US intervention during the genocide; it also contributed to US efforts to block the attempts of other states to put together a robust UN mission.[54]

Owing to the pressure exerted by key Non-permanent Members, the Security Council did eventually authorize an expansion of UNAMIR's mandate and numbers.[55] However, the Council also maintained that a ceasefire needed to precede deployment and implementation. This precondition continued to prove elusive, given the incentives for the RPF to keep fighting. As a result, states delayed in providing both the forces (with many of the troops offered arriving long after the genocide was over) and the supporting military equipment (the armoured personnel carriers promised by the US did not arrive until early August).[56]

The failure by member states to assemble UNAMIR II led the Council to authorize a second-best option: the deployment of the French-led *Opération Turquoise* on 22 June 1994. This mission (authorized under Chapter VII) was tasked with an explicitly humanitarian goal, and did manage to save, by some estimates, approximately 10,000 lives.[57] Indeed, *Opération Turquoise* proved two things: that interventions could be mounted quickly if there was a ready and determined state willing to lead; and that a relatively small force could have made a difference in Rwanda (as General Roméo Dallaire had insisted when he called for an expansion of UNAMIR in the early stages of the genocide). Nonetheless, a shadow hung over the operation owing to questions about France's lack of impartiality and the clear opposition of the RPF to its presence. Moreover, the French troops failed in two crucial ways: they did not protect refugees (who had fled to the border of Zaire) from the leaders of the genocide (who took control of the refugee camps); and they allowed key perpetrators of the killing to escape Rwanda.[58] Many members of the Security Council feared that France's motives in offering to lead the mission were more strategic than humanitarian (given its past efforts to rescue its own allies from the fighting in Rwanda), and therefore ensured that the resolution approving the French mission warned against attempts to affect the course of the civil war.[59] Others, particularly Dallaire, went further to suggest that the UN might unwittingly end up aiding the genocidaires through its association with French troops and jeopardize the safety of its peacekeepers. But as Barnett concludes, 'it was hardly imaginable that the Security Council would reject the first offer to provide humanitarian assistance to come its way in over two months of empty searching.'[60]

[54] Power, *A Problem from Hell*, 370–80.

[55] SC Res. 918 of 17 May 1994.

[56] Barnett, *Eyewitness to a Genocide*, 142–4.

[57] James Mayall, 'Humanitarian Intervention and International Society: Lessons from Africa,' in Welsh (ed.), *Humanitarian Intervention*, 137.

[58] Ibid.

[59] See SC Res. 929 of 22 Jun. 1994. The vote was 10 in favour, with five abstentions.

[60] Barnett, *Eyewitness to a Genocide*, 148–9.

The horrors of the Rwandan genocide, and the international community's inadequate response, had an important legacy for the UN's posture with respect to humanitarian intervention. Not long after Bill Clinton's now famous apology for US inaction during the genocide, former UN Secretary-General Kofi Annan challenged the international community to prevent 'another Rwanda' and to develop a new consensus on how to respond more quickly and effectively to humanitarian tragedies within the sovereign jurisdiction of states.[61] A key plank in that emerging consensus was an attempt to reframe the traditional understanding of sovereignty, and its corresponding right of non-intervention, through the principle of the 'responsibility to protect'. According to the formulation of the International Commission on Intervention and State Sovereignty (ICISS), which released its report to the Secretary-General in 2001, sovereignty had come to imply a 'dual responsibility' for each member of international society: to respect the sovereign rights of other states *as well as* the rights and dignity of citizens within one's territory. 'Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.'[62] As is shown below, the 'responsibility to protect' was eventually endorsed by member states of the UN in 2005.

The post-Rwanda debate also facilitated the 'Protection of Civilians in Armed Conflict' initiative, which was officially instigated by then Secretary-General Annan's report entitled *Situation in Africa* on 13 April 1998. In this report, he identified the protection of civilians in instances of conflict as a 'humanitarian imperative', and called for the Security Council to pay greater attention to areas of concern.[63] Responding to this call, the Council, led by the Canadian delegation, released a Presidential Statement on 12 February 1999 highlighting several issue areas and requesting that the Secretary-General provide recommendations as to how the Council could improve the physical and legal protection of civilians in situations of armed conflict.[64] In its Presidential Statement, the Council underlined the 'intimate connections between systematic and widespread violations of the rights of

[61] See UN doc. SG/SM/7136 of 20 Sep. 2000. Annan's experience as UN Under Secretary General for Peacekeeping Operations during the genocide informed his later views on how the international community should respond to humanitarian crises. He claimed in 1999 that of all his objectives as Secretary General, he was most committed to ensuring that the UN never again failed to protect a civilian population from genocide. See Kofi Annan, 'Two Concepts of Sovereignty', *Economist*, 352 (18 Sep. 1999), 49–50.

[62] Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, (Ottawa: International Development Research Council, 2001), 8, xi. For an assessment of the ICISS report, see Jennifer Welsh, Carolin Thielking, and S. Neil MacFarlane, 'The Responsibility to Protect: Assessing the Report of the International Commission on Intervention and State Sovereignty', in Ramesh Thakur, Andrew F. Cooper, and John English (eds.), *International Commissions and the Power of Ideas* (Tokyo: United Nations University Press, 2005), 198–220.

[63] UN doc. S/1998/318 A of 13 Apr. 1998.

[64] UN doc. S/PRST/1999/6 of 12 Feb. 1999.

civilians and breakdowns in international peace and security', noting that large-scale human suffering is a 'consequence and sometimes a contributing factor to instability and further conflict'.[65]

Reflecting at the end of a decade that had witnessed some of the worst atrocities committed against civilians, Annan's subsequent report to the Security Council insisted that 'massive and systematic breaches of human rights law and international humanitarian law constitute threats to international peace and security', thereby demanding the attention and action of the Council (including, if necessary, enforcement under Chapter VII). He also recalled instances from the 1990s (such as Iraq and Somalia) where, he argued, such a precedent had been established. This call for greater attention and action was reinforced by member states, who emphasized that because 'human security had become synonymous with international security,' the principles of state sovereignty and non-interference, while still applicable, had certain qualifications. In Resolutions 1265[66] and 1296[67] (and later in Resolutions 1674 and 1738[68]), the Security Council responded by underlining its commitment to human security, condemning the deliberate targeting of civilians, and affirming the view that violations of international humanitarian and human rights law could 'constitute a threat to international peace a security'.[69] However, members of the Council also indicated their reluctance to embrace doctrinal change, instead advising that it approach the issue of protection on a case-by-case basis.

Kosovo

The memory of Rwanda and diplomatic initiatives such as the 'Protection of Civilians in Armed Conflict' served as a backdrop for one of the most contentious cases to appear on the Security Council's agenda: the question of military action to halt ethnic cleansing in the Serb province of Kosovo.[70] This humanitarian intervention, which NATO undertook without the Council's authorization, caused a severe rupture within the international community about the legitimacy of the use of force and revealed the limits of the Security Council consensus over how to interpret threats to peace and security. The Security Council first became 'seized of the matter' through Resolution 1160, adopted under Chapter VII, which determined

[65] Ibid., and UN doc. S/1999/957 of 8 Sep. 1999.

[66] SC Res. 1265 of 17 Sep. 1999.

[67] SC Res. 1296 of 19 Apr. 2000.

[68] See SC Res. 1674 of 28 Apr. 2006 and SC Res. 1738 of 23 Dec. 2006. The first of these resolutions expressed particular concern about violence against women and children, and the second highlighted the treatment of members of the media in situations of armed conflict.

[69] UN doc. S/PV.4130 of 19 Apr. 2000. For a discussion of these resolutions and their implications, see S. Neil MacFarlane, 'Human Security and the Law of States', in Benjamin Goold and Liora Lazarus, *Security and Human Rights* (Oxford: Hart, 2007), 357 60.

[70] See also Susan Woodward's discussion of this issue in Chapter 18.

that the conflict between the Kosovo Liberation Army and Serbian security forces constituted a threat to international peace and security.[71] In a preview of the debate that would later prevent the Security Council from reaching consensus over military action, both Russia and China abstained in this vote, insisting that the situation in Kosovo was within the domestic jurisdiction of the Federal Republic of Yugoslavia (FRY). This interpretation was increasingly challenged by other members of the Council, particularly after the UN High Commissioner for Refugees briefed the Security Council in April 1998 about the deteriorating humanitarian situation for the Albanian population in Kosovo.

When Milosevic stepped up the intensity of his attacks on Albanian villages over the next three months, pressure mounted within NATO to move away from neutrality and towards stronger action against Serbia.[72] As international attention to the civilian suffering and displacement grew, the Security Council requested a special UNHCR briefing about events on the ground in Kosovo.[73] While heated debate ensued among Security Council members, NATO's hopes that the Council would mandate the use of force were dashed. Resolution 1199, adopted on 23 September 1998, repeated the earlier determination that the events in Kosovo threatened international peace and security.[74] However, while this time China was alone in abstaining, the Council's reluctance to infringe upon the territorial integrity of the FRY was made clear. Moreover, although the Council acted under Chapter VII, it did not explicitly threaten military action.

Despite the attempts by the US and UK to produce a further Security Council resolution authorizing a NATO military strike against the Milosevic regime, Russia and China continued to threaten their veto. This forced the alliance to justify its eventual bombing on the basis of previous Council resolutions[75] – a strategy which much subsequent analysis judged to be illegal.[76] Nonetheless, some have argued

[71] SC Res. 1160 of 31 Mar. 1998. The Resolution also called for an end to the violence, established an arms embargo, and supported the peaceful path of resistance employed by the Democratic League of Kosovo (PDK), which had claimed to represent the Kosovo Albanians since Milosevic's revocation of the province's autonomy in 1989.

[72] Wheeler, *Saving Strangers*, 259 60. As Wheeler shows, former UK Prime Minister Tony Blair was a driving force in these NATO discussions.

[73] Nicholas Morris, 'Humanitarian Intervention in the Balkans', in Welsh (ed.), *Humanitarian Intervention*, 112 13. As Morris notes, the UN lacked any senior political presence in Kosovo; therefore, decision makers in the Council relied heavily on the monthly reports of Kofi Annan. These reports, in turn, depended on input from humanitarian organizations such as UNHCR. Later, Milosevic blamed these humanitarian groups for exaggerating their assessment of civilian suffering and encouraging NATO action.

[74] SC Res. 1199 of 23 Sep. 1998.

[75] NATO members also appealed to different rationale to justify intervention, including the moral responsibility to avoid a humanitarian catastrophe, the strategic imperative to address a long term threat to European security, and the need to preserve the credibility of the alliance itself.

[76] See the findings of the Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000). It should also be noted that members of NATO (most notably Germany) voiced concerns about the legality of the operation in the lead up to the bombing campaign. For a review of the arguments that NATO's

that NATO's intervention was accepted as legitimate, given its purpose (to address ethnic cleansing) and the fact that it was endorsed by many member states of the UN and enjoyed majority support within the Council.[77] Evidence for this latter point can be found in the defeat of a Russian-sponsored resolution of 26 March 1999, condemning NATO's use of force.[78] '[I]n the eyes of many members of international society,' write Morris and Wheeler, 'NATO's action was in conformity with the underlying normative purposes of the collective security regime, but . . . the voting requirements of the Charter were preventing the UNSC from living up to its responsibilities.'[79] In the end, however, NATO never gave members of either the Council or the General Assembly a chance to vote in the affirmative for its military campaign. While delegation to regional bodies is a recognized and legitimate practice,[80] under the UN Charter members of such organizations cannot assume an enforcement role without explicit authorization. Thus, one of the main lessons drawn from NATO's bombing of Serbia was the need to make the Security Council work more effectively so as to avoid deadlock among the Permanent Five (P5) over whether force should be used to address a humanitarian crisis.[81]

The other legacy of the NATO intervention was the Council's establishment in June 1999 of an interim administration for Kosovo (UNMIK) to facilitate the return to a 'peaceful and normal life for all inhabitants'.[82] The debate leading up to the passage of Resolution 1244, however, revealed the extent to which P5 members remained divided over the legitimacy of military action to address a humanitarian crisis within the domestic jurisdiction of a member state of the UN. In the end, China agreed not to block the resolution owing to the text's strong reaffirmation of the FRY's sovereignty and territorial integrity and to the fact that the FRY had consented to the peace plan.[83]

East Timor

The UN's intervention in East Timor[84] came at the end of a decade in which the international community, through both the UN and other organizations, had

action was legal, see Ian Johnstone, 'Security Council Deliberations: The Power of the Better Argument', *European Journal of International Law* 14, no. 3, (2003), 437 80.

[77] David Clark, 'Iraq has Wrecked Our Case for Humanitarian Wars', *Guardian*, 12 Aug. 2003; and Nicholas Wheeler, 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society', in Welsh (ed.), *Humanitarian Intervention*, 44 7.

[78] The resolution was defeated by twelve votes to three. Russia, China, and Namibia voted in favour.

[79] Justin Morris and Nicholas J. Wheeler, 'The Security Council's Crisis of Legitimacy and the Use of Force', *International Politics* 44, nos. 2/3 (Mar./May 2007), 221.

[80] See Dan Sarooshi's discussion of this issue in Chapter 9.

[81] Wheeler, 'The Humanitarian Responsibilities of Sovereignty', 46.

[82] SC Res. 1244 of 10 June 1999, Annex 2.

[83] See UN doc. S/PV.4011 of 10 Jun. 1999, 9.

[84] See the discussion of this issue in Chapter 15.

proven willing and able to use force for humanitarian purposes. But it also occurred in the context of the contentious cases of Rwanda and Kosovo, where the Council had either failed to contemplate action or reached an impasse over whether intervention was justified.

What is noteworthy about this case is the change in language within the Council with respect to threats to international peace and security. While during earlier instances, such as Somalia and Haiti, member states had stressed the unique and non-precedent setting nature of the Security Council's actions, in East Timor there was a greater willingness to describe action as consistent with both the Charter and contemporary expectations of the international community's obligations. That consensus was facilitated, however, by the crucial factor of Indonesian consent for the intervention. This made it easier for previously reluctant states, such as China, to support military action within the sovereign jurisdiction of another state.

In late January 1999, following more than two decades of oppression that left roughly 200,000 people dead, the newly elected President Habibie of Indonesia agreed to give the people of East Timor the choice between autonomy within Indonesia or independence. On 5 May 1999, an agreement between Indonesia and Portugal (as the administering power of a non-self-governing territory) provided the framework for a 'popular consultation' on East Timor's future, to be held in August. The Security Council's involvement in this process began in June,[85] when it passed Resolution 1246 establishing UNAMET (the mission whose primary objective was to organize and conduct the popular consultation).[86] While UNAMET was responsible for overseeing the election and advising the police, the Government of Indonesia was responsible for maintaining peace and security in East Timor during the election to ensure that it was 'free of intimidation, violence or interference from any side'.[87]

Despite numerous instances of intimidation and violence prior to the vote, the popular consultation was held on 30 August 1999, with 98.6 per cent of those registered turning out to vote, and 78.5 per cent voting for independence. The initial optimism surrounding the consultation was obliterated when pro-Indonesian armed elements engaged in massive violence, killing approximately 2,000 East Timorese, displacing several hundred thousand, and forcibly deporting over 200,000 to refugee camps in West Timor.[88] These actions resulted in the majority of UNAMET personnel

[85] During the preceding two decades, the Council was inactive with regards to the situation in East Timor with the exception of SC Res. 384 of 22 Dec. 1975 and SC Res. 389 of 22 Apr. 1976, which called upon all states 'to respect the territorial integrity of East Timor and on Indonesia to withdraw its forces from the territory'.

[86] To facilitate its advisory role, the Council authorized the deployment of up to 280 civilian police officers and fifty military liaison officers. This was expanded in SC Res. 1262 of 27 Aug. 1999 to include a civilian police component of up to 450 personnel and a military liaison component of up to 300 personnel.

[87] SC Res. 1246 of 11 Jun. 1999.

[88] Joel C. Beauvais, 'Benevolent Despot: A Critique of U.N. State Building in East Timor', *New York University Journal of International Law and Politics* 33, no. 4 (2001), 1103.

withdrawing on 5 September. In response, the UN launched a series of diplomatic initiatives in an attempt to contain the violence and incite greater Indonesian action in controlling the situation. These initiatives included the dispatch of a Security Council mission led by the Ambassador of Namibia on 8 September, the first of such missions to be sent by the Council since Haiti in 1994–5.

From this point onward, member states shifted from trying to induce Indonesia into taking effective action to end the violence, to pressing the Indonesian government for its consent to the deployment of an international force. This shift was largely brought about by reports from the field which increasingly implicated the Indonesian military in the violence and displacement of civilians. On 12 September, Habibie yielded to international pressure and gave his consent, albeit somewhat reluctantly, for a UN-authorized multinational force.[89] In 'inducing' consent, the role of international financial institutions was pivotal, as they warned of dire economic consequences if Indonesia did not honour its commitment to restore order and respect the results of the ballot.

The Council deliberated over the issue of intervention by a multinational force on two occasions: an open Council session held at the request of Portugal and Brazil on 11 September 1999, and a Council meeting on the draft of Resolution 1272 held on 15 September 1999. Of these two sessions, 11 September was by far the more substantial with delegations from fifty countries taking the floor. The majority of states condemned the grave security situation, or what the Portuguese delegate described as the 'rape of East Timor'.[90] It was these concerns – informed by reports from the Security Council Mission, on-the-ground media, and independent observers – which formed the basis of the delegates' description and conceptualization of threats to peace and security. Several members of the Council contended not only that Indonesia was failing to fulfil its obligation to maintain peace and order, as per the May Agreements, but also that the Indonesian military was colluding with the various militias committing the atrocities.

The case for intervention was further strengthened by specific references to earlier post-Cold War cases where similar atrocities were committed and in which the international community had either intervened, thus setting a precedent (Somalia and the former Yugoslavia), or failed to intervene, leading to international condemnation (Rwanda). Austria emphasized the 'uncanny parallels to the killings, attacks on and forced relocations of civilians, the destruction of homes and property, and the total lack of respect for international humanitarian law and human rights in . . . Yugoslavia and in Kosovo'.[91] For its part, the United States asserted that the crisis in East

[89] Former UNAMET official Ian Martin has highlighted the role of several actors in putting pressure on the Indonesian government, including non governmental East Timor solidarity networks, regional actors (APEC), the IMF and World Bank, the US Government, and the United Nations itself. See Ian Martin, 'International Intervention in East Timor', in Welsh (ed.), *Humanitarian Intervention*, 142 62.

[90] UN doc. S/PV. 4043 of 11 Sep. 1999.

[91] Ibid.

Timor, compared with that in Kosovo, is 'even deeper, the need for action even greater and the dangers at this point larger. Our responsibility is similarly profound'.[92] In citing these previous cases, several states raised questions about the credibility of the UN, arguing that the failure to act would weaken the organization's reputation in the eyes of the international community. Alluding to cases such as Rwanda and Bosnia where UN troops acted merely as 'shameful bystanders', Portugal contended that '[t]he UN cannot afford to – and it must not – once again intervene in a conflict only to stand by helplessly while the process then loses its way.' Stating it more bluntly, the French asked: 'Are we back in 1994, dealing with another Rwanda? Are we back in 1998, facing another Kosovo? Are we going to react in time to prevent forced exodus and massacres?' Singapore and Pakistan both cast East Timor as an opportunity for positive precedent setting, emphasizing that the Security Council's action in this case could 'set a pattern for the Council's response to future similar tragedies, wherever they may occur'.[93]

On 15 September 1999, under Resolution 1264, the Council unanimously established the Australian-led International Force in East Timor (INTERFET) in Operation Stabilize.[94] The Council had determined that the situation 'constitut[ed] a threat to peace and security' and thus called upon a multinational force to 'use all means necessary' to bring about the cessation of hostilities. The force was tasked with restoring peace and security in East Timor, providing UNAMET with protection and support to carry out its mandated tasks, and, within force capabilities, to facilitate humanitarian assistance operations. Moreover, the Council requested the planning and preparation for a UN transitional administration with a peacekeeping component.[95]

Assessing the Impact of Intervention

Any assessment of the Council's involvement in situations of humanitarian crisis requires analysis of not only how the Security Council justified action (or inaction), but also whether its authorized interventions were in fact successful. But as

[92] Ibid. This comparison was based on a testimony made the previous day by Bernard Kouchner (SG Special Representative in Kosovo).

[93] Ibid.

[94] The force comprised of approximately 2,500 soldiers had contributions from seventeen other countries. These included: Brazil, Canada, France, Germany, Ireland, Italy, Malaysia, New Zealand, Norway, Philippines, Portugal, Kenya, Republic of Korea, Singapore, Thailand, United Kingdom, and United States. In addition, Japan contributed roughly US$100 million in funds to the trust for INTERFET and the subsequent mission, UNTAET.

[95] This latter mission, UNTAET, was created under SC Res. 1272 on 25 Oct. 1999.

philosophers and political scientists have shown, the task of evaluating consequences in the realm of humanitarian intervention is notoriously tricky. Most agree that it is useful to distinguish between short- and long-term outcomes, with the former referring to the immediate alleviation of human suffering (by ending the killing, delivering humanitarian assistance, and assisting refugees in returning to their homes), and the latter addressing the underlying causes of that suffering through the reconstruction of stable and viable polities.[96]

Philosophers such as Michael Walzer argue that a just and successful humanitarian intervention by necessity must address the deeper political, social, and economic problems that give rise to the human rights crisis. In Walzer's words:

> [O]nce we have acted in ways that have significant negative consequences for other people (even if there are also positive consequences), we cannot just walk away. Imagine a humanitarian intervention that ends with the massacres stopped and the murderous regime overthrown; but the country is devastated. . . . The forces that intervened did well, but they are not finished.[97]

Using this standard, however, one would judge none of the above cases of intervention as particularly successful. In northern Iraq, for example, the interest of Western powers declined over time and the UN relief effort was badly equipped, leaving the long-term protection of the Kurds in jeopardy once they had returned to their homes. Similarly, looking at East Timor today, it is clear that many facets of the new state are precarious and that both unrest and violence are common features of daily life for its inhabitants. Haiti gives rise to even greater pessimism as, by 2004, the country's fortunes seemed to have 'executed a full circle', with a new international intervention launched to restore peace and stability.[98] And finally, in the case of Somalia, the expanded UN mission (UNOSOM II) which followed on from UNITAF in May 1993 was not up to the task of disarming the militias or restoring law and order in the country – both fundamental to addressing the underlying causes of the humanitarian crisis. As Wheeler and Bellamy conclude: 'The haunting question raised by Somalia is whether intervention that tries to combine both the short-term and long-term goals of rescuing victims from starvation and lawlessness, and restoring legitimate authority, is *always* doomed to end in a humiliating exit.'[99]

Using a more modest and short-term yardstick, which focuses on saving civilians from starvation and violence and on refugee returns, it is possible to find some

[96] Nicholas J. Wheeler and Alex J. Bellamy, 'Humanitarian Intervention in World Politics', in John Baylis and Steve Smith (eds.), *The Globalization of World Politics*, 3rd edn. (Oxford: Oxford University Press, 2005), 570–72.

[97] Michael Walzer, *Arguing about War* (New Haven: Yale University Press, 2004), 20–1. See also Bikhu Parekh, 'Rethinking Humanitarian Intervention', *International Political Science Review* 18, no. 1 (1997), 49–70.

[98] Sebastian von Einsiedel and David M. Malone, 'Peace and Democracy for Haiti: A UN Mission Impossible?', *International Relations* 20, no. 2 (Spring 2006), 153–74.

[99] Wheeler and Bellamy, 'Humanitarian Intervention in World Politics', 571.

positive consequences from four of the interventions for humanitarian purposes that were carried out in the 1990s with UN involvement.[100] The first two, Haiti and East Timor, involved a similar pattern: a well-equipped MNF responding quickly under Security Council authorization, followed as soon as possible by a UN force (in which some of the same troops would come under UN command) and peace-building mission. This strategy enabled the Council to circumvent the full UN procedures for authorizing and assembling a force, which might have taken months.[101] In both instances, the short-term objectives of the MNF were largely met. By 18 September 1994, when US military aircraft were preparing to set off for Haiti, the military leadership in the country agreed to leave. By 15 October, Aristide had returned, and the next day the Security Council lifted both the sanctions and blockade. By January 1995 the MNF commander on the ground proclaimed a 'secure and stable environment' in Haiti.[102] And in the case of East Timor, advance planning by Australia for an extraction force to pull out UNAMET officials enabled it to respond quickly to the eventual mandate to lead a multinational enforcement operation. Five days after the Security Council passed the resolution authorizing Operation Stabilize, the international force was on the ground in Dili and taking effective action to quell the post-ballot violence. In addition, Haiti and East Timor witnessed the return of a significant number of refugees – an indication that the peoples of both countries perceived a more secure environment.

Turning to the remaining interventions, the story is more mixed. In the case of northern Iraq, Operation Provide Comfort did succeed in saving thousands of Kurdish refugees by bringing them down from the mountains and into safe havens. However, it is important to reiterate that this was a victory for Western forces, and not a UN-mandated mission. Moreover, it is clear that the legitimacy of the rescue effort rested on the very fact that it was to be temporary, and not followed up by such further and more explicit encroachments on Iraqi sovereignty as would have been required to bring about lasting security. In the case of Somalia, the UN-mandated Operation Restore Hope was effective in providing food to over a million Somalis, thereby contributing to the end of the famine by 1994. But some analysts have questioned whether starvation was the most pressing problem when UNITAF entered the country,[103] while others believe the mission involved too much collusion with the warlords.[104] It is easier to reach a definitive conclusion on the subsequent mission, UNOSOM II, which was weaker in terms of both

[100] The Kosovo intervention is excluded from this analysis, as it was not a UN mission.

[101] Martin, 'International Intervention in East Timor', 152.

[102] Von Einsiedel and Malone, 'Peace and Democracy for Haiti'.

[103] Alex de Waal, 'Dangerous Precedents? Famine Relief in Somalia 1991 93', in J. Macrae and A. Zwi (eds.), *War and Hunger* (London: Zed Books, 1994), 152. De Waal argues that by the time UNITAF arrived the bigger problem was death from disease.

[104] Walter Clarke and Jeffrey Herbst, 'Somalia and the Future of Humanitarian Intervention', *Foreign Affairs* 75, no. 2 (1996), 74 5.

military strength and Somali support. It is questionable, as noted above, whether the troops in this united force could *ever* have achieved the ambitious objectives set out by the Security Council in Resolution 814, which included political reconciliation – particularly once the Council sanctioned the arrest of Aidid and compromised UNOSOM's neutrality. But it is crucial to note that the Security Council itself lost control of the mission it had mandated. As the Commission of Inquiry established by the Council concluded in 1994, many of the major operations undertaken under the UN flag in Somalia 'were totally outside the command and control of the United Nations'.[105]

Diplomatic Initiatives: 2000–5

The above review of a decade of Security Council practice has shown that the record of the Council in responding to humanitarian crises within the jurisdiction of member states is an uneven one. Moreover, the attitude of states towards the legitimacy of intervention has varied widely. Given this variation, some scholars and practitioners have suggested that the Council needs general rules or criteria to assist it in determining whether, when, and how to intervene in situations where massive human rights violations are occurring. The advocates of this position (which include former Prime Minister Tony Blair[106] and former Australian Foreign Minister Gareth Evans[107]) have argued that such a checklist would help to establish a robust culture of justification that would both prevent illegitimate interventions and enable quicker action in conscience-shocking situations.

In fact, the question of whether the Security Council should be guided by clearer criteria in its decision-making with respect to humanitarian intervention is not new. Following the brutal treatment of the Ibo tribe by Nigerian troops in 1967 during the conflict over secession for Biafra, two American legal scholars petitioned the UN to adopt a 'Protocol of Procedure for Humanitarian Intervention', to be drafted by the International Law Association.[108] But the campaign in favour of establishing guidelines for the use of force was given greater impetus following the controversy over

[105] Report of the Commission of Inquiry Established by SC Res. 885 of 16 Nov. 1993, (Feb., 1994), 39.

[106] Speech by the British Prime Minister Tony Blair to the Economic Club of Chicago, 22 April 1999.

[107] Gareth Evans, 'When is it Right to Fight?', *Survival* 46, no. 3 (2004), 59 81.

[108] Michael Reisman and Myers S. McDougal, 'Humanitarian Intervention to Protect the Ibos', in Lillich (ed.), *Humanitarian Intervention*, 168 95. See also Dennis T. Fenwick, 'Note: A Proposed Resolution Providing for the Authorization of Intervention by the United Nations, a Regional Organization, or a Group of States in a State Committing Gross Violations of Human Rights', *Virginia Journal of International Law* 13 (1972 3), 340 74. A sub committee of the International Law Associ ation was tasked with drafting the Protocol, but the group was eventually disbanded.

both Rwanda and Kosovo and the 2001 ICISS report.[109] The issue of criteria was also addressed by the High-level Panel of experts chosen by Kofi Annan in September 2003 to address the growing tensions in the UN's management of international security. The panel's final report, *A More Secure World*,[110] adopts the approach of ICISS in listing five criteria for the Security Council to use in determining whether military action in response to a security threat would be considered legitimate: seriousness of the threat; proper purpose; last resort; proportional means; and the balance of consequences (i.e. that force cannot be justified if it is likely to make matters worse). These recommendations were echoed by Kofi Annan in his March 2005 document, *In Larger Freedom*,[111] which called on the Security Council to adopt a resolution setting out the five criteria listed above and to express its intention to be guided by them when deciding to authorize or mandate the use of force. 'By undertaking to make the case for military action in this way', reads paragraph 126, 'the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion.'

The question of whether codifying criteria would actually enhance decision-making by the Council with respect to humanitarian intervention has been analysed by scholars elsewhere.[112] The point to highlight here is that the United States (along with some other P5 members) has never been enthusiastic about the proposal. During the 2004 US Presidential election, candidates Bush and Kerry raised concerns about any measures that might tie US hands in advance, thereby compromising the sovereign right of the US to decide when to go to war. It also remains unclear how the Council would operationalize abstract guidelines in the context of chaotic and rapidly changing humanitarian crises. In light of these objections, state representatives failed to endorse the Secretary-General's set of criteria for the use of force at the UN Summit of World Leaders, held in September 2005.

The diplomatic lobbying on behalf of the 'responsibility to protect' fared somewhat better, as delegates to the summit included the principle in its Outcome Document.[113] The key clause, Article 139, states:

[109] See *The Responsibility to Protect*.

[110] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004. It should be emphasized that the panel's remit included all uses of force mandated by the Security Council not just those for humanitarian purposes.

[111] Kofi Annan, *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 21 Mar. 2005.

[112] See Nicholas J. Wheeler, 'Legitimating Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law* 2, no. 2 (October 2001), 550 67; Jennifer M. Welsh, 'The Responsibility to Protect: Securing the Individual in International Society', in Goold and Lazarus (eds.), *Security and Human Rights*, 363 83; and Alexander Cameron, 'Criteria and Humanitarian Intervention: An Appraisal of the Proposal to Codify Just War Principles', Unpublished M.Phil. Thesis, University of Oxford, April 2007.

[113] '2005 World Summit Outcome' (16 Sep. 2005), UN doc. A/RES/60/1 of 24 Oct. 2005. The relevant articles of the Outcome Document (138 and 139) were reiterated by the Security Council in its Resolution on The Protection of Civilians in Armed Conflict, SC Res. 1674 of 28 Apr. 2006.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the UN Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their populations.

However, there are two main ways in which this text weakens earlier formulations of the international responsibility to protect. First, whereas the ICISS report suggests that responsibility for protecting citizens would transfer to the international community if a host state proved itself 'unable or unwilling' to act, the Outcome Document replaces this with the stronger hurdle of 'manifest failure'.[114] Moreover, Article 139's articulation of the responsibility to protect is preceded by Article 138, which declares that individual sovereign states still bear the *primary* responsibility to protect their population from atrocities such as war crimes or ethnic cleansing. This puts the international community into a 'fallback' position, and gives states room to argue about the appropriate basis for moving from the national to the international level. So, for example, those states that in 2004 opposed the application of sanctions against Sudan over the humanitarian catastrophe in Darfur contended that action by international or regional organizations was premature, since it could not be definitively concluded that Sudan had failed to live up to its responsibilities.[115]

Secondly, while ICISS and the High-level Panel spoke of a collective responsibility on the part of the international community to respond to the slaughter of civilians, the text above places the responsibility in the hands of the Security Council, acting under Chapter VII. In other words, no new law has been created; existing collective security mechanisms are to be used. This notion of a 'UN responsibility to protect' moves away from the boldness of the ICISS report in terms of its willingness to entertain alternatives, should there be failure by the P5 to agree on military action to address humanitarian crises.

Conclusion

Kofi Annan's address at the 2005 summit proclaimed that heads of state had, for the first time, accepted 'clearly and unambiguously' a collective responsibility to

[114] For a discussion of the evolution of language from the preliminary to final drafts of the Outcome Document, see Alex Bellamy, 'Whither the Responsibility to Protect? Humanitarian Inter vention and the 2005 World Summit', *Ethics and International Affairs* 20, no. 2 (2006), 164 5.

[115] Paul D. Williams and Alex J. Bellamy, 'The Responsibility to Protect and the Crisis in Darfur', *Security Dialogue* 6, no. 1 (2005), 27 47.

protect civilian populations from genocide, war crimes, ethnic cleansing, and crimes against humanity: 'Excellencies, you will be pledged to act if another Rwanda looms.'[116] This declaratory commitment, however, seemed hollow as the humanitarian catastrophe continued to unfold in Darfur, with hundreds of thousands of civilians displaced by the fighting between government and rebel forces.

From December 2003, when Annan issued a statement warning about the deteriorating situation in Darfur, to May 2004, when the Council issued a Presidential Statement expressing its 'grave concern',[117] the Security Council refrained from involvement in the crisis. Indeed, because no member of the Council wanted to table the issue of Darfur as an agenda item, the initiative came from the UN Secretariat.[118] This reluctance of the Security Council to discuss Darfur was due to two factors: the opposition of the African governments on the Council (Angola, Algeria, and Benin), which argued that action would constitute interference in a member state's internal affairs; and the concern voiced by other governments that a confrontational approach to the crisis might disrupt peace talks between Khartoum and insurgent groups in southern Sudan. But visits to the region by both Kofi Annan and then-US Secretary of State Colin Powell, combined with a briefing to the Council by the Secretary-General's Special Representative Jan Pronk, led to the plight of Sudanese refugees and the attacks of pro-government Arab *Janjaweed* militia being elevated on the Security Council's agenda.

The efforts of the Bush administration to pressure the Council into taking a strong line on Darfur ran into the opposition of China and Russia (along with Non-permanent Member Pakistan), which insisted that Khartoum be given more time to meet its promise to control the militia. On 30 July 2004, the Security Council passed Resolution 1556, condemning the human rights atrocities being committed by the *Janjaweed* against Sudanese civilians and threatening the Government of Sudan with 'measures as provided for in Article 41 of the Charter' if it failed to disarm the militia and bring the perpetrators to justice.[119] While this Article is normally used to impose economic sanctions, the word 'sanctions' did not appear in the resolution – a US concession for those who objected to the Council threatening this step.[120] In addition, though there was recognition of a responsibility to protect, there was ambiguity about how that responsibility should be allocated, particularly among the Government of Sudan, the African Union

[116] Kofi Annan, 'Address to the 2005 World Summit', New York, 14 Sep. 2005.

[117] Statement of the President of the Security Council, 26 May 2004. See UN doc. S/PRST/2004/18.

[118] In a joint statement of early Apr. 2004, the Secretary General and the heads of all of the UN agencies expressed their deep concern over the serious human rights abuses in Darfur. See UN News Centre (3 Apr. 2004).

[119] SC Res. 1556 of 30 Jul. 2004. In an earlier resolution, passed on 11 Jun. 2004, the Council called for an immediate halt to the fighting in Darfur. See SC Res. 1547.

[120] SC Res. 1556 of 30 Jul. 2004, which was taken under Chapter VII, passed by thirteen to two (China and Pakistan abstained).

(AU), and the UN.[121] At this point, the Council maintained that the primary responsibility for protecting civilians remained with the Sudanese government, and that the AU was the legitimate regional partner to lead in that protection. There were, however, limitations to such as strategy, as the Secretary-General himself noted: 'It is good that the Council has chosen to work through African institutions, *provided that members do not forget the Council itself retains primary responsibility* for the maintenance of international peace and security... What is happening in the Sudan... is a grave challenge not only to Africa but to all humanity.'[122]

Even after Colin Powell stated in September 2004 that his government believed genocide had been committed in Sudan, the response of the Security Council remained limited to monitoring the peace agreement, implementing an arms embargo against parties to the civil conflict, and establishing a commission to investigate reports of violations of international humanitarian law.[123] Upon receiving the report of the Commission,[124] the Security Council took the unprecedented step on 31 March 2005 of referring the Darfur case to the International Criminal Court.[125] Resolution 1593 was notable not only because it was the Council's first referral to the ICC, but also because the US government had continually insisted it would block any Security Council attempt to legitimize the Court. In the end, the US agreed to drop its opposition and abstain during the vote, 'because of the need of the international community to work together to end the climate of impunity in Sudan'.[126]

Clearly the ICC reference could not serve as a substitute for more robust measures to end the systematic atrocities being committed against civilians in Darfur. In January 2006, after almost two years of relying upon African-led monitoring and peacekeeping missions, the Secretary-General finally admitted

[121] Alex J. Bellamy and Paul D. Williams, 'The UN Security Council and the Question of Humani tarian Intervention in Darfur', *Journal of Military Ethics* 5, no. 2 (2006), 150.

[122] S/PV/5080 and S/PV/5081 of 18 Nov. 2004.

[123] SC Res. 1564 of 18 Sep. 2004.

[124] See the Report of the International Commission of Inquiry on Darfur to the UN Secretary General (Geneva: 25 Jan. 2005). While the Commission found evidence of attacks that were deliber ately and indiscriminately directed against civilians, it concluded that the Government of Sudan was *not* pursuing a policy of genocide. Here, the issue was the absence of clear genocidal intent on the part of the government.

[125] SC Res. 1593 of 31 Mar. 2005. The resolution passed 11 0, with the United States, China, Algeria, and Brazil abstaining. Two days earlier, the Security Council had adopted a resolution strengthening the arms embargo on Sudan and imposing a travel ban on those considered responsible for the killings in Darfur: SC Res. 1591 of 29 Mar. 2005.

[126] Anne Patterson, Deputy US Permanent Representative to the United Nations, in *Keesing's Record of World Events*, 46557. In place of the ICC, US diplomats had suggested that the Council respond to the Commission's report on atrocities in Darfur by expanding the mandate of the existing International Criminal Tribunal for Rwanda. Some analysts have argued that Resolution 1593, while an important precedent, had a number of problematic features stemming from the compromise needed to win approval for the reference to the ICC. See Matthew Happold, 'Darfur, the Security Council and the International Criminal Court', *International and Comparative Law Quarterly* 55 (January 2006), 226 36.

that the AU's forces had failed to curb the violence and would need to be replaced by a stronger and better financed UN force The Security Council followed suit, by passing a resolution in May 2006 that accelerated plans for a UN peacekeeping mission.[127] Resolution 1679 was contingent upon a peace agreement being signed by the Sudanese government and Darfur's main rebel groups, as well as agreement by the African Union to transfer authority for its 7,300-member force to the UN by the end of September 2006.

In deference to Khartoum's repeated objections about the presence of Western troops in its territory, the Security Council eventually established an AU/UN Hybrid Operation in Darfur (UNAMID) in July 2007, which would continue to employ a significant number of African personnel. Invoking Chapter VII, Resolution 1769 authorized UNAMID to take all necessary action to support the Darfur Peace Process and to protect civilians, without 'prejudice to the responsibility of the Government of Sudan.'[128]

The UN force was mandated to incorporate the troops from the AU already in the field, solicit contributions from other states, and eventually assume full authority for the mission on 31 December 2007. On the last day of 2007, at a ceremony marking the transfer of control over the mission from the AU to the UN, Secretary-General Ban Ki Moon was still emphasizing the critical gaps in resources that would hinder UNAMID's effectiveness, and called on member states to provide personnel, helicopters, and heavy transport equipment. At the time of writing, only 9,000 of the roughly 20,000 promised blue helmets were on the ground in Darfur.

The period from May 2006 to January 2008 illustrates clearly how the Security Council's increased willingness to authorize force for humanitarian purposes is still confronted with two obstacles. The first is the UN's limited capacity to assemble the necessary troops from member states. Even if the Security Council overcomes objections to the legitimacy of acting within the domestic jurisdiction of a member state, its authorization to use force has not always been followed by a quick mobilization of forces. The unwillingness on the part of key states to take part in such missions was clearly a problem in the critical phase of the Rwandan genocide, and is an ongoing problem in the case of Darfur. It also highlights that when blame is directed at the UN for 'failing to act', the dereliction of duty is as much that of the member states as it is of the Security Council.

The second ongoing challenge facing the Council as it engages in interventions for humanitarian purposes is the question of consent from the government of the state in question. Action mandated under Chapter VII of the Charter does not depend on the consent of the target state; however, the Security Council has at times sought to gain an explicit invitation for reasons of either pragmatism (the host government's consent can make a military operation easier to carry out) or principle (consent is viewed by many states, including China, as an expression of sovereign equality). In

[127] SC Res. 1679 of 16 May 2006. [128] SC Res. 1769 of 31 Jul. 2007.

the cases of Haiti, Kosovo, and East Timor, consent of the host government was critical in securing the agreement of key members of the Council to UN involvement. But closer analysis reveals that such consent was in many ways coerced, thereby raising questions about both the necessity of this precondition for action and the process for legitimating Security Council decisions.

When the Council passed Resolution 1706 in August 2006 to expand the UN mission in Sudan to cover Darfur, it 'invited' but did not require the consent of the Sudanese government. Instead, it relied on the principles contained in previous resolutions on the 'Protection of Civilians in Armed Conflict' as justification for its action. Yet, in practice, member states proved reluctant to endorse or participate in a mission that did not enjoy Khartoum's permission. During the autumn of 2006, the Government of Sudan continued to raise serious objections to the Council's plans, claiming that the AU had no right to transfer its peacekeeping mission to the United Nations. As a result of the continuing intransigence of the Government of Sudan, objections to strong action from key states (such as Russia and China), and the inability of those who favoured action to commit 'hard' resources, the Security Council's efforts to address this particular humanitarian crisis were delayed and compromised, casting a shadow over its professed commitment to intervene, where warranted, for the protection of civilians.

CHAPTER 25

THE SECURITY COUNCIL AND THE ADMINISTRATION OF WAR-TORN AND CONTESTED TERRITORIES

RICHARD CAPLAN

The end of the Cold War has witnessed the re-emergence of international territorial administration as an instrument of conflict management. In a manner reminiscent of such bygone institutions as the International Control Commission for Albania (1913–14) and the League of Nations administrations of the Saar Basin (1920–35), the Free City of Danzig (1920–39) and the Colombian town and district of Leticia (1933–4), international organizations have assumed extensive administrative control over war-torn and contested territories during the past fifteen years. In Eastern Slavonia, Bosnia and Herzegovina, Kosovo, and East Timor, these organizations have exercised authority so far-reaching that they have become, in effect, surrogate sovereign authorities pending the implementation of a negotiated peace agreement and/or the establishment of a self-sustaining peace.

The United Nations has played a prominent role in the administration of these territories. It is not, however, an entirely unprecedented role for the organization. In the Congo, between 1960 and 1964, the UN exercised various administrative prerogatives, while in West New Guinea (Indonesia) between 1962 and 1963, the UN possessed plenary administrative authority. Plans for UN-administered territorial regimes were also drawn up for Jerusalem (1947), Trieste (1947), and South West Africa/Namibia (1967), although these plans were never realized. The purposes for which these territorial administrations were envisioned have varied but they have all been characterized by temporary UN control of the principal governance functions of the state or territory in question.

Numerous UN organs and agencies have participated in the administration of these territories. This chapter focuses on the role of the Security Council in particular. The discussion proceeds in two parts. First, there is an examination of the Charter basis for territorial administration in its various guises. There then follows an analysis of the principal functions that the Security Council performs with respect to the administration of war-torn and contested territories specifically.

The Charter and Territorial Administration

The UN administration of war-torn and contested territories is not a formal practice or institution. It has no specific UN Charter mandate and there is no dedicated UN bureaucracy to support it even if these operations have attracted considerable human and material resources from within the organization and by its member states. While there is an explicit Charter basis for various kinds of territorial administration, these provisions of the Charter do not extend to sovereign states incapacitated by conflict or to sub-state entities whose status is or has been in dispute – the circumstances in response to which international territorial administrations have been established in the past fifteen years.[1] Nevertheless, these other operations have some relevance for recent experience and it is useful, therefore, to note them briefly before proceeding to a discussion of the UN administration of war-torn and contested territories.

There is an explicit Charter basis for three (or perhaps, more accurately, two-and-a-half) types of territorial administration: the administration of non-self-governing territories, which is the subject of Chapter XI of the Charter; the

[1] Ralph Wilde, 'From Danzig to East Timor and Beyond: The Role of International Territorial Administrations', *American Journal of International Law* 95, no. 3 (2001), 583–606.

administration of other dependent territories placed under the trusteeship system, which is the subject of Chapters XII and XIII; and the Allied military occupation of Germany and Japan, which is dealt with in Article 107 of the Charter.

Trust and non-self-governing territories together comprise what are known as 'dependent territories'. These are colonies, protectorates, mandate territories, and all other territories subject to or integrated into another state without the free decision of the territory or without the status of equal rights within that state.[2] Trust territories differ from non-self-governing territories insofar as the former are administered under the supervision of the UN Trusteeship System, which imposes more exacting reporting requirements on the trustee than on the administering authorities of other dependent territories. Furthermore, trust territories are subject to oversight by the UN Trusteeship Council. The distinction between trust and non-self-governing territories was introduced largely in deference to the United Kingdom (and other colonial powers) who at the end of the Second World War were unwilling to place their colonies under the Trusteeship System.[3] With the ascendance of the right of self-determination and the concomitant decline of the imperial system, the differences between the two types of territories became blurred such that independence – an option once envisioned only for trust territories – would become available to all dependent territories. The independence of Palau in 1994 – the last remaining trust territory – meant that the Trusteeship System effectively ceased to exist.[4] (There remain some sixteen non-self-governing territories, however.) There have been calls, as a result, to eliminate the Trusteeship Council. Heads of state and government gathered at the World Summit in September 2005 – the high-level plenary meeting of the 60th Session of the UN General Assembly – proposed deleting Chapter XIII ('The Trusteeship Council') from the Charter and all references to the Council in Chapter XII.[5]

Both trusteeship and other dependent territorial administrations are associated largely with the decolonization process and not with war, which is the focus of this volume, hence they will not be discussed here at any length.[6] A further important

[2] Ulrich Fastenrath, 'Article 73', in Bruno Simma (ed.), *The Charter of the United Nations: A Commentary* (Munich: C. H. Beck, 1995), 923 4.

[3] Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State Building* (Oxford: Oxford University Press, 2004), 38. There was also some opposition within the US government to trusteeship: for strategic reasons the US Navy was reluctant to relinquish US control over Japanese islands seized during the Second World War, a number of which had been under League of Nations mandate. See Jean Krasno, 'Founding the United Nations: An Evolutionary Process', in Jean Krasno (ed.), *The United Nations: Confronting the Challenges of a Global Society* (Boulder, CO: Lynne Rienner, 2004), 34 5.

[4] In May 1994, the Trusteeship Council changed its rules of procedure to meet only as occasion required, rather than annually. See Trusteeship Council Res. 2200 of 25 May 1994.

[5] GA Res. 60/1 of 24 Oct. 2005, para. 176.

[6] This is not entirely true as one of the territories in question was a colonial possession of a former enemy state i.e. South West Africa, a former German colony administered by South Africa under a League of Nations mandate after the First World War; others were mandate territories of another

distinction between dependent territories and war-torn or contested territories is that the administration of the former has been or is performed by an administering power other than the United Nations – that is, individual members of the United Nations who have assumed such responsibility. However, in a post-colonial age it would be politically unacceptable to entrust responsibility for the administration of a territory to a single state, even if elaborate accountability mechanisms were to be established. Moreover, the costs of administration would likely be too great for any single state to bear. As a result, the function has been performed either by the United Nations or, in the case of Bosnia and Herzegovina, by an ad hoc entity operating with the endorsement of the UN Security Council.[7]

The third Charter-based territorial administration – the Allied occupation of the enemy states of the Second World War – is only mentioned in the Charter for the purpose essentially of exempting the Allied powers from possible Charter obligations in the course of their occupation and administration of these states, which is why it constitutes the 'half case' in the two-and-a-half cases referred to above. Article 107 states: 'Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Government having responsibility for that action.' The Charter, in effect, gives 'negative authorization' to these particular territorial administrations cum military occupations (and to no others). As with the Trusteeship Council, heads of state and government meeting at the 2005 World Summit called for the removal of references to 'enemy States' in the UN Charter (Articles 53 and 77 as well as 107).[8]

The fourth category of international territorial administration, and the most pertinent in the post-Cold War era, does not have an explicit Charter basis: it is the direct UN administration of war-torn or contested territories. There have been three such administrations established to date in the post-Cold War period: the UN Transitional Administration in Eastern Slavonia, Baranja, and Western Sirmium (UNTAES) from 1996 to 1998; the UN Interim Administration Mission in Kosovo (UNMIK) from 1999 and ongoing; and the UN Transitional Administration in East Timor (UNTAET) from 1999 to 2002.

These administrations have been established for several related reasons. In the case of Eastern Slavonia, a Serb-controlled region of Croatia during the wars of Yugoslav dissolution, the Croatian government and the local Serb leadership agreed to the establishment of an interim UN administration in November 1995

enemy state (Japan) notably the Pacific islands of Marianas, Caroline, and the Marshall Islands, which were transferred to the United States as trust territories after the Second World War; and one other territory Somaliland, a colony of yet another enemy state (Italy) was detached from that state and placed under trusteeship with Italy as the administering authority. Nevertheless, it is fair to say that the administration of all of these territories was primarily a part of the colonial legacy.

[7] SC Res. 1031 of 15 Dec. 1995 endorsed the Bosnian arrangements.

[8] GA Res. 60/1 of 24 Oct. 2005, para. 177.

to 'govern' the territory and to help implement an agreement between the parties that foresaw the peaceful reintegration of the territory into Croatia within two years.[9] The Croatian government threatened to recover the territory using military means, as it had done with other Serb-held regions of the state, and the UN administration made it possible to achieve the restoration of Croatian sovereignty in a manner that helped also to ensure some measure of protection of Serb rights.[10] In Kosovo, the Albanian-majority province of Serbia, the UN Security Council authorized the establishment of a territorial administration in June 1999 in the wake of the NATO bombing campaign against Yugoslavia in response to Belgrade's violent repression of the Albanian population – an air assault that prompted the complete withdrawal of the Yugoslav authorities from the province. UNMIK was established to perform basic civilian administrative functions and to promote 'substantial autonomy and self-government' pending determination of the final status of the territory.[11] In East Timor in 1999, similarly, UNTAET was given full responsibility for the administration of this former Portuguese and then Indonesian-occupied territory when, following a 'popular consultation' that saw the overwhelming majority of East Timorese opt for independence, the Indonesian armed forces and locally organized militia unleashed a devastating wave of violence before withdrawing from the territory. The UN administered East Timor until it achieved independence in May 2002.[12]

What these three territories have in common is the following: they were all wracked by violent conflict that either created an acute administrative, political and strategic vacuum – as it did in the cases of Kosovo and East Timor – or left local structures intact but where the internal situation was a highly unstable one and the parties sought or at least accepted international assistance in implementing a peace settlement – as was the case in Eastern Slavonia (and the non-UN territorial administration of Bosnia and Herzegovina). The principal purposes of these UN administrations have thus been threefold: to provide transitory administrative services (governance); to promote the development of democratic self-governing institutions (institution and capacity building); and to facilitate either a predetermined political settlement (e.g. reintegration or independence) or a process leading to the specification of an outcome.

The fact that there is no explicit Charter basis for these territorial administrations does not mean that they have no basis in the Charter at all. Like many other actions authorized by the Security Council in the name of 'the maintenance of international peace and security', these instruments may not be specified by the

[9] Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium (also known as the Erdut Agreement), was signed on 12 Nov. 1995. SC Res 1037 of 15 Jan. 1996 established UNTAES.

[10] For a discussion of UNTAES see Derek Boothby, 'The Political Challenges of Administering Eastern Slavonia', *Global Governance* 10, no. 1 (2004), 37 51.

[11] SC Res. 1244 of 10 Jun. 1999 established UNMIK.

[12] SC Res. 1272 of 25 Oct. 1999 established UNTAET.

Charter but they are sanctioned by a broad interpretation of the functions and powers of the Security Council (Article 24), the nature of 'threats to the peace' and 'breaches of the peace', and the actions that the Security Council may take in response to them (Chapter VII).[13] Historically such threats and breaches have been associated with hostile acts, in particular aggression, by one state or group of states against another. And while broad interpretations are not unprecedented – witness the adoption of UN economic sanctions and arms and oil embargoes against Southern Rhodesia and South Africa from the mid-1960s in reaction to the racist policies of those two regimes – recourse to expanded notions of threats to and breaches of the peace increased markedly in the 1990s.[14] Peacekeeping, it bears recalling, is not mentioned in the Charter either and yet is generally accepted to be a legitimate instrument of peace maintenance.

Some thought had in fact been given to a role for the Security Council in the administration of war-torn or contested territories by the drafters of the UN Charter. At the San Francisco conference, Norway proposed an amendment to the Chapter VII enforcement powers of the Council that would have allowed the Council to assume responsibility for the administration of a territory temporarily if administration by the occupant state was thought to pose a threat to the peace.[15] The proposal was not adopted, however, out of concern that any specification of Council powers might be interpreted to mean that other powers not specified were excluded from those available to the Council. The proposal thus became a historical footnote until the end of the Cold War, when the idea of UN 'conservatorship' and similar notions gained currency among scholars and analysts as a possible means of coping with the problem of so-called state failure.[16]

Although no Charter provision was established for the Security Council to administer war-torn or contested territories, the prospect for such administration emerged very soon after the Charter was adopted. In 1947, in an effort to resolve the 'Trieste Problem' – concerning the port city and surrounding territory occupied by Yugoslavia and claimed by Italy – the peace treaty signed by the Allies and Italy provided for the establishment of a 'Free Territory of Trieste' whose 'integrity and independence shall be assured by the Security Council of the United Nations'. The

[13] As the UN Secretary General's High level Panel on Threats, Challenges and Change observed: 'The language of Chapter VII is inherently broad enough to allow the Security Council to approve any coercive action at all, including military action, against a state when it deems this "necessary to maintain or restore international peace and security".' *A More Secure World: Our Shared Responsibility*, UN doc. A/59/565 of 2 Dec. 2004, para. 193.

[14] Richard Caplan, *International Governance of War Torn Territories: Rule and Reconstruction* (Oxford: Oxford University Press, 2005), 5 11.

[15] Chesterman, *You, The People*, 50.

[16] See, for instance, Gerald B. Helman and Steven R. Ratner, 'Saving Failed States', *Foreign Policy* no. 89 (Winter 1992 3), 3 20; Peter Lyon, 'The Rise and Fall and Possible Revival of International Trusteeship', *Journal of Commonwealth & Comparative Politics* 31, no. 1 (1993), 96 110; and William Pfaff, 'A New Colonialism?', *Foreign Affairs* 74, no. 1 (1995), 2 6.

Council approved these arrangements, which entrusted it with responsibility for the protection of the basic human rights of the inhabitants and the maintenance of public order and security, and which envisioned the appointment of a governor by the United Nations, who would be given broad powers – comparable with those of transitional administrators today – to veto legislation, appoint and dismiss officials, and take emergency action as required.[17] The onset of the Cold War, however, prevented the appointment of a governor and the plan never materialized.

A second prospective UN territorial administration, also tabled in 1947, was for the city of Jerusalem within the context of a two-state solution for Palestine that was to be implemented following the termination of the British Mandate there. Alongside the creation of an Arab and a Jewish state, it was proposed that Jerusalem be established as a separate entity (a '*corpus separatum*') under a special international regime to be administered by the United Nations. Here, too, there was to be a UN-appointed governor, selected this time by the UN Trusteeship Council, who was to exercise executive authority as well as mediate disputes between religious groups and supervise the holy places.[18] Although in this case it was envisioned that the Trusteeship Council would assume responsibility for administration of the city, local representative bodies were to have the right to petition the Security Council on the exercise of these powers.[19] The proposal was endorsed by the General Assembly[20] and the Trusteeship Council drew up a draft statute, but the war of Israeli independence in May 1948 put an end to the plan – although not an end to the idea, which lives on in the minds of some scholars and policymakers today.[21]

To summarize, there is no explicit Charter provision for the administration of territories, except with regard to decolonization. There have been a few plans for territorial administration – one can also mention the Council for Namibia in this regard, created by the General Assembly in 1967 to serve as the legal administrator of the territory pending independence[22] – but these plans were not implemented. Until the end of the Cold War, there was, additionally, some actual but fairly limited experience with territorial administration, notably in the context of the UN peace operation in Congo from 1960 to 1964 (ONUC), in West New Guinea in 1962 as a prelude to the transfer of this former Dutch colony to Indonesia (UNTEA),

[17] SC Res. 16 of 10 Jan. 1947. See also Steven R. Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War* (Basingstoke: Macmillan, 1995), 98; Chesterman, *You, The People*, 50 2.

[18] Ratner, *The New UN Peacekeeping*, 98 9.

[19] Chesterman, *You, The People*, 52 4.

[20] GA Res. 185 (II) of 26 Apr. 1948.

[21] For instance, the 'Taba Agreement' negotiated between Ehud Barak and Yassir Arafat in January 2001 envisioned 'some form of internationalization' of Jerusalem's 'Holy Basin'. See text of 'Tentative Taba Agreement', available at www.fmep.org/resources/peace plans/clinton parameters.html

[22] GA Res. 2248 (5th Special Sess.) of 19 May 1967.

and with the UN transitional authority in Cambodia (UNTAC).[23] It was with the UN administrations of Kosovo and East Timor and, to a somewhat lesser extent, Eastern Slavonia that a new breed of operation was introduced. What distinguishes these administrations from all other actual, rather than proposed, UN field operations since the founding of the organization is both the *scope* of the organization's interest in the governmental functions of the state or territory in question and its *authority* over these functions. International organizations have been active before in areas of governance thought historically to be the exclusive domain of domestic jurisdiction, for instance as part of 'complex' peacekeeping or peace-building arrangements that have granted the UN and its representatives intrusive powers, ranging from human rights monitoring and the supervision of elections to the demobilization of armed forces and the reorganization of police forces. Donor states and international financial institutions (IFIs), too, have encroached on traditional sovereign competences through their use of conditioned aid in support of 'good governance'. Yet arguably never has an international body had the power and responsibility of today's international territorial administrations in a wide range of local executive, legislative, and judicial affairs.

The Role of the Security Council

What role does the Security Council play, then, in the international administration of war-torn and contested territories? Apart from the initiation of these administrations,[24] there are three principal functions that the Council performs. These are legitimization; oversight; and the promotion or diffusion of political, social, and economic norms.

[23] On the Congo, see Harold Karan Jacobson, 'ONUC's Civilian Operations: State Preserving and State Building', *World Politics* 17, no. 1 (1964), 75 107; on West New Guinea, see John Saltford, *The United Nations and the Indonesian Takeover of West Papua, 1962 1969: The Anatomy of Betrayal* (London: RoutledgeCurzon, 2003); on Cambodia, see Janet E. Heininger, *Peacekeeping in Transition: The United Nations in Cambodia* (New York: Twentieth Century Fund Press, 1994).

[24] The Security Council has not authorized the establishment of every UN territorial administration. General Assembly Res. 1752 (XVII) of 21 Sep. 1962 authorized the Secretary General to establish the UN Temporary Executive Authority (UNTEA) in West New Guinea. The constitutional basis of this action arguably lies in Article 14 of the UN Charter, which allows the General Assembly to 'recommend measures for the peaceful settlement of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations'. This is very different from what has become the standard dependence on authorization by the Security Council of any military deployment by the Secretary General. See D. W. Bowett, *United Nations Forces: A Legal Study* (New York: Praeger, 1964), 255 6.

Legitimization

Legitimization is what gives authority to power.[25] NATO's actions over Kosovo in 1999 may not have been lawful but UN Security Council resolutions 1199 and 1203, by acknowledging a 'grave humanitarian situation' and 'an impending humanitarian catastrophe', and the need to prevent this catastrophe from happening, helped to legitimize NATO's action and thus to mitigate the offence – in the eyes of many states at least – associated with NATO's unilateral use of force. The establishment of a UN-led civilian administration in Kosovo and the deployment of a NATO-led military presence enjoyed even greater legitimacy than the war campaign by virtue of the fact that both were authorized by the UN Security Council.[26] Indeed Slobodan Milosevic, the Serbian leader at the time, made it clear that the Serbian Parliament would accept the deployment of NATO forces only if the deployment were subject to an affirmative vote of the Security Council, including the approval of the Russian Federation, which is what in the end transpired.[27] One can also say that, by authorizing a continuing role for NATO in Kosovo alongside the UN, the Security Council provided NATO with an exit from the purgatory to which its earlier, arguably unlawful acts had consigned it.

It is here where the distinction between international administration and military occupation is perhaps most stark. Many of the challenges that military occupations and international territorial administrations face can be very similar.[28] Insofar as occupations and administrations are initiated and sustained by force, they can even be said to exhibit a strong family resemblance. Indeed, Milosevic's concessions notwithstanding, to the average Serb there may be little difference between a UN-authorized NATO-led deployment and a foreign military occupation of Kosovo. From the standpoint of international politics, however, there can be a very important difference between the encroachment on sovereign territory by a state or group of states acting without the authorization of the Security Council and the same action as authorized by the Council.

What follows from this greater legitimacy? For one thing, the legitimacy that the Security Council can confer on a transitional administration may have implications for the ease or not of attracting donor and other external (especially regional) support. The difference between Iraq and Kosovo is instructive in this regard:

[25] For a discussion of the role of the UN in the legitimization of state policies and actions, see Inis L. Claude, 'Collective Legitimation as a Political Function of the United Nations', *International Organization* 20, no. 2 (1966), 367 79.

[26] SC Res. 1244 of 10 Jun. 1999.

[27] 'The most important is the fact that forces would come under the mandate of the United Nations,' Vuk Draskovic, the parliamentary leader of the Serbian Renewal Movement (SPO), said in support of the G8 peace plan at the time of the vote in Parliament. See the CNN report, 'Yugoslavia accepts peace deal on Kosovo', 3 Jun. 1999, available at www.beqiraj.com/kosova/de/allied force/cnn/26.asp

[28] See the companion studies by RAND analysts James Dobbins *et al.*, *America's Role in Nation Building: From Germany to Iraq* and *The UN's Role in Nation Building: From the Congo to Iraq* (Washington, DC: RAND, 2003 and 2004).

donor and other support has been far easier to attract in the case of Kosovo than in the case of post-Saddam Iraq. While in other cases the lack of support may reflect a lack of interest – as with the lack of Western support for many peace operations in Africa – that would not appear to be the case with respect to Iraq. If anything, Iraq is even more important than Kosovo internationally because of its oil reserves. A key difference (but not the only difference) is the greater legitimacy that the Kosovo operation enjoys among donors and troop-contributing states – legitimacy that the Council helps to confer on the operation. While it is true that the Council acknowledged a central role for the Coalition Provisional Authority in Iraq,[29] Resolution 1483 affirmed that the United States and United Kingdom were occupying powers and that the occupation was a US–UK undertaking, not a UN-sanctioned one.[30]

The sources of legitimacy at the international level are not necessarily the same as those at the local level. It is not evident, for instance, that Kosovars attach any particular importance to the fact that the international administration that governs them is sanctioned by the Security Council. Indeed, many if not most Kosovar Albanians would have been only too happy to be subject to a US-led military occupation. Croatian President Franjo Tudjman, too, was more concerned that the troops deployed to Eastern Slavonia were NATO forces than he was with whether the operation had the blessing of the United Nations, which he held in very low esteem.[31] One could say that the source of legitimacy in both of these cases is the effectiveness of the administration: can it deliver? And this is why there has been growing frustration with the UN in Kosovo, evidenced by the riots of March 2004. UNMIK is seen increasingly by Albanians to be not a vehicle but an impediment to Kosovo independence.[32] Effectiveness, however, is not everything at the local level: in Iraq, enmity towards Westerners and the United States in particular has certainly been a key factor behind the insurgency there. This is why the United Nations historically has enjoyed certain advantages in its field operations: it is not tainted with colonialism and it is seen as blunting some of the political interests of the member states.

Oversight

The second function that the Security Council performs – in theory if not necessarily in practice – is to provide oversight of the administration of a territory. A UN territorial administration is under the control of, and accountable to, the Security

[29] SC Res. 1483 of 22 May 2003.

[30] David M. Malone, *The International Struggle over Iraq: Politics in the UN Security Council 1980 2005* (Oxford: Oxford University Press, 2006), 205.

[31] UN Department of Peacekeeping Operations, Lessons Learned Unit, *The United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), January 1996 January 1998: Lessons Learned*, Jul. 1998, para. 9.

[32] See 'Report on the Situation in Kosovo', UN doc. S/2004/932 of 30 Nov. 2004, esp. para. 12.

Council. As such, a UN administration is subject to constraints that an occupying power may be more easily able to elude – with respect to the transfer of authority to local officials, for instance, or the mechanics of post-war reconstruction, as again we have seen in Iraq, where the US initially set the agenda, in consultation with its allies, perhaps, but with arguably fewer restraints than those to which a UN operation would be subject.

What does it mean that the Security Council provides oversight of a territorial administration? To begin with, transitional administrators must comply with a variety of reporting obligations. The Security Council requires the Secretary-General to report regularly on the activities of the territorial administrations whose establishment the Council has either authorized (in the cases of Eastern Slavonia, Kosovo, East Timor) or endorsed (in the case of Bosnia and Herzegovina).[33] In addition to these reports, the Council will often also request the transitional administrator to brief the Council directly and members of the Council may also visit the territory in question. Other international or regional organizations participating in territorial administrations, such as the World Bank and the Organization for Security and Cooperation in Europe (OSCE), have similar reporting requirements. Of course, reporting on one's own activities has obvious limitations as far as critical examination is concerned, even if these reports often contain fairly candid assessments and, moreover, are subject to scrutiny by higher and outside authorities. There are other mechanisms of accountability, some of them official (e.g. ombudspersons and inspector generals), others unofficial (e.g. the international and local media, and international and local NGOs), but none of these other mechanisms are instruments of the Security Council.

In actual practice, however, the Security Council has not played a very significant oversight role. It has received periodic reports and briefings by the Secretary-General and his special representatives with respect to the activities of the various territorial administrations in its charge but the Council has been concerned chiefly with establishing broad strategic direction and not with the more particular aspects of administration.[34] What oversight there has been has tended to be performed by the Secretariat and, in particular, its Office of Legal Affairs (OLA), which in Kosovo, for example, has reviewed UNMIK's regulations to ensure that they do not exceed the administration's mandate.

[33] In the latter case the reporting requirement extends to the High Representative as stipulated by the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 10, Art. II(f) and SC Res. 1031 of 15 Dec. 1995. The Secretary General has been required to report only on the activities of the UN Mission in Bosnia and Herzegovina (UNMIBH).

[34] There are partial exceptions. In April 2002, for instance, the Security Council discussed the issue of privatization of 'socially owned' assets in Kosovo but took no action (see UN doc. S/PV.4518 of 24 Apr. 2002). Similarly, at a meeting of the Council in November 2005, the High Representative urged the Council to set up a review of the UN's International Police Task Force (IPTF) certification scheme to deal with 'unfair' dismissals of Bosnian police officers, but again the Council took no action (see UN doc. S/PV.5306 of 15 Nov. 2005).

Comparisons with the League's Mandate System and the UN's Trusteeship System are instructive in this regard because both institutions contained more effective oversight and accountability mechanisms. As with transitional administrators today, the mandatory powers and trustees were required to submit regular reports (annually as it happens) and to give oral testimony in Geneva or New York, but one important difference is that there was a dedicated supervisory body – the Permanent Mandates Commission (PMC) in the case of the League, and the Trusteeship Council in the case of the United Nations – whose responsibility it was to review these reports and to oversee the administration of the territories more generally.

The existence of a dedicated body made oversight somewhat more rigorous. If nothing else, these bodies had more time than the Security Council ever could to enquire into details about the workings of the territorial administrations. Greater oversight was also warranted arguably as the mandatory powers and trustees were independent states whereas transitional administrators are representatives of the UN Secretary-General. The reports from the mandatory powers were fairly detailed as they consisted of responses to a series of specific questions that the PMC posed (the number of questions expanded from 60 to 275 over the lifetime of the PMC). It is interesting to reflect on what this more focused form of scrutiny, as opposed to general oversight, may have achieved: some suggest that it encouraged the mandatory powers to carry out the principles of the mandate in a more consistent and more reliable manner. Certainly in the case of South African-administered South West Africa, the PMC made South Africa accountable in ways that would not otherwise have been the case, as evidenced by the 'Bondelswarts affair', when in 1922 South African forces massacred some 100 Bondelswarts rebels, using rifles, machine guns, and even strategic bombing. The PMC inquiry brought international attention to bear on South Africa's conduct, which appears to have improved its administration of the territory as a result.[35]

The Trusteeship Council has had even more accountability mechanisms at its disposal: in addition to reporting, it can and has made periodic visits to the trust territories; something the PMC did not do. Moreover, the Trusteeship Council could accept petitions from inhabitants of the territories. (There is no provision for individual petition in the context of UN territorial administrations.) The oversight capacity that the Trusteeship Council has is one reason why there have been calls from time to time for the revival of the Trusteeship System to supervise UN territorial administrations.[36] However, that would require Charter revision, as the UN Charter does not allow the application of the Trusteeship System to

[35] Neta C. Crawford, *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge: Cambridge University Press, 2002), 276–81.

[36] See, for instance, Edward Mortimer, 'International Administration of War Torn Societies', *Global Governance* 10, no. 1 (2002), 7–14.

member state territories.[37] Moreover, the Trusteeship Council has strong associations with colonialism. It is hard to see how the idea would be acceptable, especially among states that were formerly colonies themselves and in the light of the recommendation put forward by the 2005 World Summit to abolish the Trusteeship Council altogether.

The notion of reviving the Trusteeship Council points to a dilemma for the UN – something that the Panel on United Nations Peace Operations, chaired by Lakhdar Brahimi, noted in its report in August 2000: while on the one hand, some greater institutionalization of UN responsibility in this area – a dedicated and distinct responsibility centre – could strengthen the capacity of the UN to administer territories more effectively, institutionalization would also create expectations that the UN should be employed to undertake more and more operations of this kind, something that the Secretariat and many UN member states are not particularly keen for the organization to do.[38] Failure to institutionalize responsibility, however, means that the UN may always find itself responding to these situations in an ad hoc fashion, although by now at least it has built up rather considerable experience.

There are other ways in which oversight could be enhanced, not all of them necessarily involving the Security Council. One is to enlarge the institution of the ombudsperson. All international territorial administrations have ombudspersons, whose remit is normally concerned with human rights violations. The ombudsperson could, however, be empowered to receive and investigate complaints from citizens about the process of international administration – for instance, procedural improprieties, bias, or the lack of due process – and make recommendations to the transitional authority on the basis of his or her findings. The ombudsperson would not be able to strike down the decisions of international authorities but the recommendations might carry some weight. There is a precedent for such an enlargement of responsibilities: elsewhere ombudspersons deal with complaints across the whole spectrum of governmental activities.[39] The more fundamental problem is that too often international administrators view the ombudsperson as an irritant rather than as a vital institution. A high-profile appointment may help to enhance the stature of the office but the problem is not an easy one to resolve.

A second mechanism for strengthening accountability is expanded jurisdiction of the local high courts. As these courts demonstrate that they are capable of deciding issues in a fair and impartial manner, they could be given authority to review international authorities' exercise of powers if and when these seem to be incompatible with locally enacted legislation. The Bosnian Constitutional Court, for instance,

[37] Art. 78.

[38] Report of the Panel on United Nations Peace Operations, UN doc. A/55/305 and S/2000/809 of 21 Aug. 2000, para. 78.

[39] Roy Gregory and Philip Giddings, 'The Ombudsman Institution: Growth and Development', in Roy Gregory and Philip Giddings (eds.), *Righting Wrongs: The Ombudsman in Six Continents* (Amsterdam: ISO Press, 2000), 8.

has jurisdiction over issues concerning whether a law is compatible with the constitution, international human rights law, and general rules of public international law.[40] In November 2000, for the first time, the Court reviewed a decision of the High Representative (regarding the creation of a unified border service for Bosnia and Herzegovina), which, although the legislation was found to be in conformity with the constitution, established a precedent for a local institution (or, more accurately, a mixed local–international institution) to challenge the legality of an international act.[41] Before local courts can assume more authority, however, it may be necessary to amend the international legislation defining the powers of international administrators to allow for some form of judicial review.

Finally, there may be some scope for the newly established UN Peacebuilding Commission to exercise oversight of territorial administrations. The Commission, an intergovernmental body established in December 2005, is charged with advising and proposing strategies for post-conflict recovery and focusing attention on reconstruction, institution-building, and sustainable development in countries emerging from conflict.[42] The enabling legislation allows for representatives from the countries in question to participate in country-specific meetings of the Commission. In future, the Commission might also consider accepting petitions from local residents, in the manner of the UN Trusteeship Council.

Diffusion of norms

The third function of the Security Council is to promote the diffusion of norms with regard to human rights, minority rights, democratic governance, the rule of law, market-oriented economics, and gender equality, among other political, social, and economic objectives. This is a function that the Permanent Mandates Commission and the Trusteeship Council also performed, in their own and more modest ways, which Neta Crawford has documented in her book, *Argument and Change in World Politics*.[43]

Sometimes these norms are specified by the Security Council: Resolution 1244, for instance, which authorized the establishment of UNMIK in Kosovo, mandates the development of democratic institutions of self-government, the protection and promotion of human rights, and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), among other rule of law measures. Other norms may be articulated by the Secretary-General, in his concept of operations, or by the transitional administrator in his implementation of the concept. The norms may also be promoted by international agencies working

[40] Constitution of Bosnia and Herzegovina, Article VI.

[41] Constitutional Court of Bosnia and Herzegovina, Decision U 9/00, 3 Nov. 2000.

[42] The Peacebuilding Commission was established through concurrent resolutions by the Security Council and the General Assembly: SC Res. 1645 of 20 Dec. 2005, and GA Res. 60/180 of 20 Dec. 2005.

[43] Crawford, *Argument and Change in World Politics*, 265 73, 312 14.

alongside the UN. The World Bank and the International Monetary Fund (IMF), for instance, have chief responsibility for the formulation of reconstruction and development strategies in which tend to be embedded liberal economic values that favour deregulation, privatization, and foreign investment as opposed to less market-oriented approaches that would allow greater scope for, say, industrial policy and employment protection measures.[44] This function is not unique to the international administration of territories: the UN and other third parties have been active before in the promotion of norms in particular territories in the context of complex peacekeeping operations, or in the case of donors and international financial institutions (IFIs), through the use of aid conditionality. What is different about international territorial administrations, however, is the scope of the potential influence of the UN and other third parties, seeking as they do in some cases utterly to transform the society which they are administering.

These norms may not always be a reflection of the preferences of the local population. The question therefore arises: how much should the UN and other third parties respect local norms and values? For instance, traditional tribal structures and practices may be inimical to liberal democratic practices. 'Gender mainstreaming' in UN parlance, which has resulted in the setting of quotas for women in public office, may, for example, be at odds with traditional views about a woman's place in society. But sometimes it is the UN that is behind the curve: in East Timor the World Bank required equal numbers of men and women on its development councils (the councils had authority to allocate limited development funds made available to them) but the UN objected to strict gender balance on the councils, arguing that it was culturally inappropriate. The UN then had to yield under lobbying and pressure from none other than East Timorese women themselves.[45]

Nevertheless, a notion as fundamental as that of the democratic state – an entity made up of citizens enjoying equal rights and who are governed by popularly elected officials – may not necessarily be compatible with traditional concepts of governance, which in some places may be predicated on ideas of sacred and ancestral authority. How sustainable internationally designed institutions and practices may be under these circumstances is not clear. As one anthropologist working for the UN administration in East Timor has written: it is 'impossible to create instant trust in [non-traditional] state bodies. . . . The population's trust in state bodies has to be fostered and the puzzle of how to overcome paradigmatic differences in terms of local governance has to be solved.'[46] Yet it is also true that the

[44] See Michael Pugh, 'Postwar Political Economy in Bosnia and Herzegovina: The Spoils of Peace', *Global Governance* 8, no. 4 (2002), 467 82.

[45] Milena Pires, 'East Timor and the Debate on Quotas', paper presented at a workshop hosted by the International Institute for Democracy and Electoral Assistance (IDEA), Jakarta, 25 Sep. 2002, available at www.quotaproject.org/CS/CS East Timor.pdf

[46] Tanja Hohe, 'The Clash of Paradigms: International Administration and Local Political Legit imacy in East Timor', *Contemporary Southeast Asia* 24, no. 3 (2002), 585, 586.

structural and other factors that contribute to a conflict dynamic may need to be transformed if a given society is to transcend the chronic violence that plagues it. While Kimberly Zisk Marten and others maintain that outsiders are seldom able to control the process of political development and should therefore restrict themselves to the more minimal objective of providing a secure environment,[47] the more recent experience of Bosnia and Herzegovina suggests that even seemingly intractable conflict dynamics can in some cases be transformed under international tutelage. How sustainable and how transferable this experience may be, however, is an open question.

The 'clash of cultures' – if that is what it is – that may occur is compounded by the fact that to some extent a transitional administrator's hands are tied because he or she cannot easily ignore Security Council resolutions and commitments contained in other UN documents that urge the organization and its member states to promote particular norms. Resolution 1325, for example, 'On Women and Peace and Security', adopted in October 2000, among other things stresses the importance of equal participation of women in the maintenance of peace and security and affirms the need to increase their role in decision-making with regard to conflict prevention and resolution. Some of these same issues arise in the context of discussions about the universality of human rights but in many ways the problem is more immediate for the UN in the administration of territories because the UN is the surrogate state sovereign.

Conclusion

Even without an explicit Charter basis for the administration of war-torn or contested territories, the UN Security Council has played an important role in the initiation, legitimization, and (potential) oversight of these administrations as well as in the promotion of political, social, and economic norms. It remains to be seen, however, how much, if at all, this particular instrument of conflict management is likely to be employed in the future. Much will depend on how effective international administrations are seen to be – a question that will be debated for some time, especially given how recent these experiences have been. Yet whatever the shortcomings of these administrations, it is fair to say that Security Council authorization and management of them have at least helped to dispel fears that they represent a latter-day imperialism. After all, what kind of imperialism is it that attracts the support and participation of large numbers of states, whose costs

[47] Kimberly Zisk Marten, *Enforcing the Peace: Learning from the Imperial Past* (New York: Columbia University Press, 2004).

greatly outweigh any obvious material or strategic gains, and that does not aspire to more than the temporary exercise of control over a territory? (Indeed, in the cases of Eastern Slavonia and East Timor, the international administrations put themselves out of business in very short order.) Transitional administrations may sometimes govern using the methods of empire but that does not make them instruments of imperialism.

Even if some success can be claimed for international administrations, the utility of this approach may be very limited beyond the few instances where it has been applied. The territories in question are likely to be small; external parties must be willing to expend considerable resources over an extended period of time; and, ideally, the local population must be willing to work with the international authorities to achieve agreed-upon aims. The UN's 'light footprint' approach in Afghanistan suggests for many, inside and outside the organization, a preferred model.[48] Thus while there may be many candidates for Security Council-mandated international administrations in the future, it is not obvious that in many of those cases this option will be either appropriate or available.[49]

[48] See, for instance, statement by Lakhdar Brahimi, Special Adviser to the UN Secretary General, delivered at the conference on 'Beyond Cold Peace: Strategies for Economic Reconstruction and Post Conflict Management', German Federal Foreign Office, Berlin, 27 Oct. 2004, available at www.auswaertiges amt.de/www/de/infoservice/download/pdf/publikationen/beyond cold peace.pdf

[49] See Richard Caplan, 'From Collapsing States to Neo trusteeship: The Limits to Solving the Problem of "Precarious Statehood" in the 21st Century', *Third World Quarterly* 28, no. 2 (2007), 231 44.

CHAPTER 26

THE SECURITY COUNCIL AND INTERNATIONAL LAW ON MILITARY OCCUPATIONS

DAVID SCHEFFER*

Military occupation law is an ancient set of rules that have long been considered to be an important part of international law.[1] This body of law, a main purpose of which is to limit the amount of change that an occupier can impose on an occupied society, remains valid and useful. However, its application can be problematical in certain occupations in which an outside force seeks to transform the laws, institutions, and customs of a society. Such transformation is arguably inconsistent with

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[1] 'Occupation law' is the international law of military occupation of foreign sovereign territory (often accompanied by civilian administration), governed in large part by relevant portions of 1949 Geneva Conv. IV, 1907 Hague Regulations, 1977 Additional Protocol I, and by customary international law, which has evolved in recent decades. See Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton University Press, 1993), 7 31, 98 106, 209 16; Adam Roberts, 'What is a Military Occupation?', *British Yearbook of International Law* 66 (1984). See also David Scheffer, 'A Legal Minefield for Iraq's Occupiers', *Financial Times*, 24 Jul. 2003, 17.

traditional occupation law. Since the end of the Cold War, an obvious question has arisen. In those occupations which incorporate a degree of control by, or recognition from, the UN Security Council, does the Council have the legal right to set aside certain provisions of occupation law in the interest of transforming the political, legal, and social order within a state? And should it do so?

Until May 2003, when it undertook a highly unusual role in relation to the US-led occupation of Iraq, the UN Security Council had not been involved in managing or overseeing territories administered under occupation law. It had never authorized or deployed a military force that was explicitly intended to operate under the rules relating to military occupations. What the Security Council had done on certain previous occasions, and has continued to do, was to authorize certain peacekeeping and peace enforcement operations to undertake, or assist in, the administration of territories, including transformation of their laws and institutions, but without making specific reference to the law on occupation. There was thus some degree of divergence between UN law and military occupation law, but the divergence had raised few concerns. This was because, while all UN-authorized forces in the field (whether under direct UN control, or authorized forces under national/alliance command) have long been assumed to be under a general obligation to observe the laws of war, the specific idea that a force acting under UN auspices might have the character of an occupying army had not been addressed in any Security Council resolution. This was not surprising, as many (but not all) UN involvements were by consent of the host state, and hence were from the start distinct from the typical case of occupation.

This lack of reference to occupation law changed with the Anglo-American military occupation of Iraq. The invasion of Iraq, carried out in March–April 2003 without a specific UN Security Council mandate, created a perplexing interplay of occupation law and practice that should *not* become the model for the future. The occupation resulting from that war was subject to the law on occupation. In May 2003, the Security Council (with the two occupying powers voting as Permanent Members of the Council) set out a legal framework for the administration of a conquered Iraq.[2] The Council recognized that the occupation was administered by the armed forces of the US and the UK under international occupation law, a legal framework that the leaders of those two countries publicly acknowledged. The Council passed an authorizing resolution only some weeks after the commencement of the occupation. That same resolution of May 2003 referred briefly to certain ambitious goals for the occupation – goals which arguably went beyond the bounds of what is normally permissible under occupation law. It is this apparent tension between legitimate and internationally approved transformative goals, and the long-established framework of the law on occupation that this chapter seeks to explore. It looks at several Security Council-mandated administrations, including the military occupation of Iraq, and considers the question of the application of occupation law in them.

[2] SC Res. 1483 of 22 May 2003. This is discussed further below, text at fnn. 45 to 49 ff.

The fact that the occupation of Iraq has run into such terrible difficulties raises questions about the validity of the idea of transformative intervention that was applied there. The causes of the failures are deep and numerous, and are beyond the scope of this chapter. They include an over-ambitious destruction of the Iraqi state structure before there was anything to put in its place. It is even possible that the US-led coalition would have done well to follow at least some of those rules of occupation law that militate against sudden and radical transformation.

This does not mean that the basic question addressed in this chapter – the question of whether the rules of occupation law need to be varied in particular cases – is discredited or out of date. Iraq is far from being the only case of a massive UN-authorized military and administrative presence in a damaged society: other cases are mentioned below, and more will occur in future. So the issue of whether existing rules are adequate, or need to be overridden in particular cases or even fundamentally revised – and the role of the Security Council in these processes – will continue to be important.

Unique Aspects of Modern Transformative Interventions

Many situations in which armed forces exercise control over foreign territory involve unique elements and circumstances. The application of a single set of rules to such situations raises difficulties. One possible reason for the reluctance of many states to accept the full *de jure* application of occupation law to occupations in which they are involved may be a belief, whether or not justified, that the situation differs significantly from the typical case of military occupation.[3] This has been especially the case in the post-Cold War era.

The occupation of Iraq in 2003, for example, quickly became a transformational process to overcome the legal and institutional legacy of a despotic and criminal regime, and therefore required strained interpretations of occupation law in order to suit modern requirements. As I suggested at the time, such unique circumstances would be far better addressed by a tailored nation-building mandate of the Security Council. Ideally, that mandate would implement (1) those principles of occupation law (particularly humanitarian and due process norms) that remain relevant to the circumstances (including *jus cogens* and *erga omnes* obligations);[4]

[3] See generally Roberts, 'What is Military Occupation?'; Benvenisti, *International Law of Occupation.*

[4] *Jus cogens* describes peremptory norms of general international law, and *erga omnes* obligations are obligations owed to all states.

and (2) other principles of modern international law pertaining to human rights, self-determination, democratization, the environment, and economic development so as to create a legal regime uniquely suitable for the territory in question.

A UN Security Council authorization, pursuant to Chapter VII of the UN Charter, of a peace operation resulting in de facto military occupation could significantly modify the range of responsibilities under occupation law, except perhaps those of a *jus cogens* character, that would otherwise require strict adherence by the occupying power(s).[5] The modern law of occupation should accommodate twin realities: first, the legitimating impact of Security Council authorization and delegation of responsibilities to military forces deployed into a territory, and, second, the fact that it is now commonly the international community's intent to transform a society under military occupation. In most cases, multilateral military interventions, particularly Security Council-authorized missions that are followed by prolonged and widely supported multilateral deployment of military forces and civilian administrators aimed at transforming societies, will require a far more pragmatic body of rules and procedures than occupation law currently affords.

Historic scope of occupation law

Military occupation law has a well-recorded history of development and is a largely codified, if under-implemented, field of international humanitarian law.[6] The poor level of implementation can be attributed in part to the considerable difficulty that can arise in coordinating a strict reading of codified occupation law with its practical application to the variety of circumstances that may arise.

The occupying power must fulfil a range of humanitarian responsibilities that require it to be proactive, and must also adhere to explicit prohibitions in the administration of the occupied territory and in the enforcement of law. The major principles of occupation law are codified in the 1907 Hague Regulations, 1949

[5] It would be a mistake to regard the totality of occupation law as reflecting *jus cogens* or *erga omnes* obligations in the context of Security Council authorized military interventions and occupations. The significance of hierarchic categories of international law, particularly in relation to Article 103 of the UN Charter, is discussed in Jordan J. Paust, Jon M. Van Dyke, and Linda A. Malone, *International Law and Litigation in the US*, 2nd edn. (St. Paul: Thomson/West, 2005), 57 64. It has never been conclusively established which principles of occupation law have the status of *jus cogens* or *erga omnes*, but one would expect them to include the overarching principle of humane treatment and judicial due process that appear in various codified provisions of occupation law. How those principles are implemented, however, in the context of modern transformational occupation is by no means firmly established in international law.

[6] 1907 Hague Regulations; 1949 Geneva Conv. IV; 1977 Additional Protocol I; Benvenisti, *International Law of Occupation*; Francoise Bouchet Saulnier, *The Practical Guide to Humanitarian Law* (Oxford: Rowman and Littlefield, 202), 260 63; Ardi Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territory', *Harvard International Law Journal* 44 (2003), 86 92; Roberts, 'What is Military Occupation?'.

Geneva Convention IV, and 1977 Additional Protocol I, which require the occupying power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. The elements of occupation law that may become inconsistent with the goals of a transformational exercise include Article 43 of the Hague Regulations requiring respect, unless absolutely prevented, of the laws in force in the country. Other potentially inconsistent elements are found in Geneva IV, including provisions

- requiring that any individual protected person who is actively hostile to the security of the occupying power shall not be deprived of the rights of fair and regular trial prescribed by Geneva IV (Art. 5);
- preventing the inhabitants being deprived of any of the benefits of Geneva IV by any change introduced into the institutions or government of the occupied territory or by any agreement between local authorities and the occupying power (Art. 47);
- prohibiting individual or mass forcible transfers (Art. 49);
- requiring work only under special conditions (Art. 51);
- prohibiting creation of unemployment (Art. 52);
- prohibiting destruction of real or personal property unless absolutely necessary by military operations (Art. 53);
- forbidding alteration of the status of public officials or judges (Art. 54);
- requiring that the penal laws of the occupied territory be maintained in force unless a designated exception in the law applies (Art. 64);
- prohibiting the creation of retroactive penal provisions (Art. 65);
- allowing the constitution only of non-political military courts sitting in the occupied country (Art. 66);
- prohibiting the arrest, prosecution or conviction of any inhabitant for acts committed or opinions expressed prior to the occupation except for violations of the laws and customs of war (Art. 70) and ensuring certain due process rights of accused persons (Arts. 72–6).

Additional Protocol I requires the occupying power to provide for the physical welfare of the population through the provision of, inter alia, food, shelter, and clothing (Art. 69).[7]

Occupation law was not designed to transform society.[8] It permits tinkering on the edges of societal reform, but it is not a licence to transform. If it were, then the

[7] For more details on the content of occupation law, and the relevant articles in the 1907 Hague Regulations and 1949 Geneva Conv. IV, see Scheffer, 'Beyond Occupation Law', n. 24.

[8] 1949 Geneva Conv. IV; Jean S. Pictet, *The Geneva Conventions of 12 August 1949: Commentaries* (Geneva: International Committee of the Red Cross, 1958); Maxine Marcus, 'Humanitarian Interven tion without Borders: Belligerent Occupation or Colonization?' *Houston Journal of International Law* 25 (2002), 109 15; John Embry Parkerson, Jr, 'United States Compliance with Humanitarian Law: Respecting Civilians During Operation Just Cause', *Military Law Review* 133 (1991); Roberts, 'What is a Military Occupation?', 31.

door would be wide open for abuse by aggressive and benevolent armies alike. The fundamental premise of occupation law was traditionally to confine the occupying power to humanitarian objectives that essentially preserved the status quo, and denied the occupying force the power to transform the territory it held (often illegally). The consequence is that, at least in some circumstances, strict compliance with occupation law could have the perverse effect of harming the population in a way that a Security Council-authorized deployment operating under rules tailored for the specific needs of the target society would not.

Responsibilities and constraints thus define the corpus of traditional occupation law, which then must be adjusted to apply to the particular type of occupation at issue. The end result can be anything but clear. This is because the dominant premise of occupation law has been that regulation is required for the temporary military occupation of foreign territory, but not necessarily for its transformation.[9] The law's main objective has been to address the humanitarian and penal law requirements of a society both during and in the immediate aftermath of a conflict when a military force remains on foreign territory on a provisional basis.

Certainly, occupation law should not be construed to encourage or facilitate prolonged occupation, even though it is acknowledged that many modern occupations (denied as such by their sponsors) have lasted for years.[10] The law has been designed to encourage temporary occupation and to establish rules for that temporary occupation. The alternative of a prolonged occupation (although quite common) can be far too tempting an objective for an aggressor force or even a benevolent force inclined to use its military might to achieve strategic goals that, as a matter of international law, should be pursued without resort to force.[11]

The Allied occupations of Germany and Japan after the Second World War offer little guidance. The Allies claimed exemption from the 1907 Hague Regulations, which proved critical since the plans for occupation would not have complied with the then-existing occupation law. Indeed, the unconditional surrender of Germany (but not necessarily of Japan) seemed to fortify the Allied argument at the time that the *debellatio* doctrine applied rather than occupation law.[12] The applicability of the *debellatio* doctrine was contested, however, and has little if any place in contemporary

[9] Benvenisti, *International Law of Occupation*, 182 3, 209 16; Pictet, *Commentaries to Geneva Conventions*; Marcus, 'Humanitarian Intervention without Borders', 115 16; Parkerson, 'US Compli ance with Humanitarian Law', 36 40.

[10] Benvenisti, *International Law of Occupation*, 27, 107 83; see also 1949 Geneva Conv. IV, Art. 6.

[11] Benvenisti, *International Law of Occupation*, 26 31, 211 16.

[12] 'As it is generally understood, "*deballatio*," also called "subjugation," refers to a situation in which a party to a conflict has been totally defeated in war, its national institutions have disintegrated, and none of its allies continue militarily to challenge the enemy on its behalf": ibid., 92 (for full discussion, see ibid. 91 6). For an evaluation of the legal character of the US occupation of Japan after the Second World War, see Nisuke Ando, *Surrender, Occupation, and Private Property in International Law: An Evaluation of US Practice in Japan* (Oxford: Oxford University Press, 1991); and Roberts, 'What is Military Occupation?', 262.

practice, particularly following adoption of the 1949 Geneva Conventions. Nonetheless, the underlying idea – that certain foreign military presences should not be constrained by all the rules of occupation law – re-emerged in the post-Cold War era, largely under the auspices of the UN Security Council.

Movement to multilateral and humanitarian interventions

The importance of UN legitimation of the use of force since the end of the Second World War, reflected in UN peacekeeping operations and Security Council-authorized military campaigns, renders a full application of occupation law inappropriate and even undesirable in many situations. A category of occupation law that strives to embrace such operations can be created, as Adam Roberts has skilfully shown.[13] But the exercise is increasingly artificial and begs for an alternative legal framework that recognizes, as Roberts has demonstrated, the political realities of modern practice.[14] Occupation law remains an important regime in the context of military force leading to belligerent occupation both during and after an armed conflict. Even if an occupying force chooses not to comply with or even recognize occupation law, at least the government and relevant officials executing the action are on notice and can be held to account for violations during a belligerent occupation.

In recent years, multilateral or humanitarian occupations, particularly those aimed at enforcing international human rights law and atrocity law, have become a more common form of occupation. Occupation law was never designed for such transforming exercises.[15] A society in political, judicial, and economic collapse or a society that has overthrown a repressive leader and seeks radical transformation requires far more latitude for transformational development than would be anticipated under existing occupation law. The society may require revolutionary changes in its economy (including a leap into robust capitalism), rigorous implementation of international human rights standards, a new constitution and judiciary, and a new political structure (most likely consistent with principles of democracy) never contemplated by occupation law or the domestic law of the occupied territory. As just one example, the requirement in Article 64 of the 1949 Geneva Convention IV that the penal laws of the occupied territory are to remain in force served little, if any, purpose in areas such as Kosovo in 1999, Iraq in 2003, Darfur in Sudan in 2006, or, had it been in force at the time, in Germany after the Second World War, where the Nazi-era national penal system failed to protect individual and collective rights.

[13] Roberts, 'What is Military Occupation?', 302 5.

[14] Ibid.

[15] Benvenisti, *International Law of Occupation*, 166 7; Marcus, 'Humanitarian Intervention without Borders', 109 15.

Role of occupation law in Security Council-mandated occupations

Normative and operational progress, however, has been made, some of which is outlined in this chapter. The general burden of the argument here is that existing occupation law should of course continue to apply, albeit with qualified interpretations if necessary, even to the 'transformative' occupier unless either (1) in a particular case, the UN Security Council has called for certain modifications in the application of occupation law obligations consistent with a Council mandate governing the deployment of military forces in a country; or (2) the general international law governing military occupations evolves to accommodate modern transformational occupations.

A basic starting point is that relevant principles of international humanitarian law apply to an occupied territory even if the Security Council has not specified this.[16] However, the presumption that applying the entire body of occupation law is the best means of protecting the civilian population, because that is what it was originally designed to accomplish, probably would not hold up under the circumstances of a liberation sanctioned by the UN Security Council. The law as it stands may be too restrictive a framework for the subsequent challenge of transforming a society deeply scarred by the repressive government that ruled prior to the military intervention that ended it. Understandable concern to ensure that the occupying power upholds human rights standards and the economic survival of the occupied society must not become the premise for preserving a traditional reading of occupation law as the means to achieve those ends.

The growing acceptance of a 'responsibility to protect',[17] the requirements of the burgeoning principle of humanitarian intervention,[18] and the desire to enable well-intentioned governments to rescue civilian populations at risk, do not and should not point to some new incarnation or even reaffirmation of occupation law. There is good reason to apply occupation law in shorter occupations in the course of a war, and hold occupying powers accountable under that law for their actions on foreign territory. But armies that operate with international authority (particularly

[16] Brian D. Tittemore, 'Belligerents in Blue Helmets: Applying International Humanitarian Law to United Nations Peace Operations', *Stanford Journal of International Law* 33 (1997).

[17] SC Res. 1674 of 28 Apr. 2006; '2005 World Summit Outcome', GA Res. 60/1 of 16 Sep. 2005; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001); Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect', *Foreign Affairs* 81 (Nov./Dec. 2002), 99.

[18] See Kofi Annan, 'Address at the Hague Appeal for Peace', 15 May 1999; Alton Frye, *Humanitarian Intervention: Crafting a Workable Doctrine* (New York: Council on Foreign Relations, 2000); Lori F. Damrosch et al., *International Law: Cases and Materials*, 4th edn. (St. Paul, MN: West, 2001), 990 1005; Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996); David J. Scheffer, 'Toward A Modern Doctrine of Humanitarian Intervention', *University of Toledo Law Review* 23 (1992).

that of the UN Security Council), and set out to advance democracy and save civilian populations from atrocities, should be regulated by a modern occupation regime that can be created by Security Council resolutions under the UN Charter. This would put those forces, their commanders, and the states deploying them at far less risk of legal liability, and could attract broader participation in Council-authorized interventions and subsequent occupations.

UN forces conducting operations under UN command and control must operate in accordance with international humanitarian law.[19] Crimes committed by UN peacekeepers are typically handled through status of forces agreements entered into by the UN or by the nations deploying forces pursuant to a Security Council authorization.[20] UN Security Council-authorized deployments of national forces remain subject to the laws and customs of war and international humanitarian law in their capacity as national forces.[21] But the precise responsibilities of UN forces and Security Council-authorized deployments of national forces are shaped by the Council mandate or authorization, not strictly or only by occupation law. The latter can be greatly modified by the former pursuant to the compulsory authority of the Security Council under Chapter VII of the UN Charter and the general principle of Charter supremacy arising from Article 103.[22]

It is highly unlikely that the Security Council would approve responsibilities that contradict overarching principles of occupation law regarded as *jus cogens* norms. Given the widely varying circumstances that may trigger and even justify military occupation, it would be a mistake to regard many of the codified provisions of occupation law as peremptory norms of international law applicable in all situations of military occupation without deviation or qualification. Relevant fundamental principles requiring provision of humanitarian relief and protection of the civilian populations' basic human rights would require adherence by any occupying power under any circumstance. But there is normally no explicit recognition in Security Council-authorized operations (peacekeeping or enforcement) that occupation law applies in its totality, or in any substantial respect, to the mission

[19] Secretary General's Bulletin, 'Observance by United Nations Forces of International Humani tarian Law', UN doc. ST/SGB/1999/13 of 6 Aug. 1999, s 1.1. See also Adam Roberts and Richard Guelff, *Documents on the Law of War*, 3rd edn. (Oxford: Oxford University Press, 2000), 721 5. Although guidelines for strictly non combat peacekeeping operations were long anticipated, they have never been promulgated by the UN Secretary General. See also Tittemore, 'Belligerents in Blue Helmets'.

[20] See Glenn Bowens, *Legal Guide to Peace Operations* (Carlisle: US Army Peacekeeping Institute, 1998), 140 56; Tittemore, 'Belligerents in Blue Helmets', 78 80; Dieter Fleck, 'Legal Issues of Multi national Military Units, Tasks and Mission, Stationing Law, Command and Control, International Law Across the Spectrum of Conflict', in Michael N. Schmitt (ed.), *International Law Across the Spectrum of Conflict* (Newport: Naval War College, 2000), 161.

[21] See 1994 Conv. on the Safety of United Nations and Associated Personnel, Art. 2(2). See also Roberts and Guelff, *Documents on the Law of War*, 624 6; Tittemore, 'Belligerents in Blue Helmets', 92.

[22] UN Charter, Art. 103. ('In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.')

mandated by the Security Council. Iraq in 2003 proved to be the exception to this rule. A possible reason for application of occupation law in this case was that the occupation was by states acting originally outside a Security Council framework, and the Council was thus responding to a fait accompli rather than having initiated the plan for occupation.

Security Council Practice in Cases other than Iraq

In the practice of the Security Council during the 1990s and the early twenty-first century, excluding Iraq, the deployment of UN peacekeeping forces and multinational forces authorized by Council resolution has never explicitly required compliance with occupation law as a legal requirement for such actions. None of the Security Council resolutions or international agreements governing these deployments invokes occupation law. Rather, the mandates set out specific tasks for the military forces and civilian administration in the relevant territories. Occupation law was never invoked in any meaningful way during the various Security Council-authorized deployments of military forces into Haiti in 1994, into Bosnia prior to and after the Dayton Peace Accords of 1995, into Kosovo in 1999, into East Timor in 1999, into the Democratic Republic of Congo in 1999, into Kabul, Afghanistan, in 2002, or into southern Sudan in 2005.[23] The authorizing resolutions for these operations are silent about occupation law obligations. So are the periodic reports of the UN Secretary-General about each operation. At most there are general references to compliance with international humanitarian law. A brief survey of what the Council did, and did not, mandate in four key deployments is illustrative of this general practice.

Haiti

When the Security Council authorized the introduction of primarily US military forces into Haiti in 1994 as part of a multinational force (MNF), it did not establish any compliance criteria under occupation law. Rather, Security Council Resolution 940 of 31 July 1994 set forth the mandate of the MNF as follows:

4. Acting under Chapter VII of the Charter of the United Nations, [the Security Council] authorizes Member States to form a multinational force under unified command and control

[23] See Appendices 1 and 3 for Security Council resolutions authorizing these deployments.

and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States.[24]

In the event, the US-led MNF intervened on 19 September 1994 with a degree of last-minute consent from the Haitian authorities. The situation was therefore not a clear case of occupation. Subsequent Security Council resolutions on Haiti reiterated the original tasks outlined in Resolution 940, as well as additional assignments. Security Council Resolution 948 of 15 October 1994 cast the MNF's duties in specific transitional terms by recognizing 'in particular the efforts of the multinational force, authorized under resolution 940 (1994), and those of the Member States participating in the multinational force on behalf of the international community in creating the conditions necessary for the return of democracy to the people of Haiti'.[25] In Security Council Resolution 975 of 30 January 1995, the successor peacekeeping operation, UNMIH (United Nations Mission in Haiti), assumed the MNF's functions as specified in Resolution 940[26] and took on the further responsibility of helping 'establish without delay an effective national police force and to improve the functioning of its justice system'.[27] UNMIH's mandate, which was hardly that of a conventional occupying force, aimed, along with UN civilian administrators, to assist 'the Haitian people in their quest for strong and lasting democracy, constitutional order, economic prosperity and national reconciliation'.[28] This included professionalizing the Haitian National Police.[29] Thus the US and UN presences in Haiti had transformative purposes, which continued after May 2004 with the new UN Stabilization Mission in Haiti (MINUSTAH). This multinational force was deployed under Chapter VII enforcement authority with security and 'political process' duties aimed at assisting the transitional government in Haiti to evolve democratically and promote good governance.[30]

Throughout all of this there was never any attempt by the Security Council to impose occupation law requirements on the multinational forces deployed in UNMIH or MINUSTAH or any other UN deployments occurring between these two in Haiti. The actual performances of these forces in Haiti do not provide evidence of any explicit concerns for or focus on occupation law requirements.

[24] SC Res. 940 of 31 Jul. 1994.
[25] SC Res. 948 of 15 Oct. 1994, para. 5.
[26] SC Res. 975 of 30 Jan. 1995, para. 6.
[27] Ibid., para. 11.
[28] SC Res. 1007 of 31 Jul. 1995, para. 12.
[29] SC Res. 1048 of 29 Feb. 1996, para. 5; SC Res. 1063 of 28 Jun. 1996, para. 2.
[30] SC Res. 1542 of 30 Apr. 2004, para. 7.

Kosovo

In the voluminous record of Security Council resolutions, Secretary-General reports, and other documents pertaining to the UN-authorized military deployment in Kosovo since 1999, occupation law is given no role whatsoever. In fact, the Kosovo mission constituted one of the most significant transformational mandates in UN history. Security Council Resolution 1244 of 10 June 1999, which was adopted under Chapter VII authority, demonstrates from the very outset of the deployment of the multinational force how comprehensive and intrusive the mission's occupation of Kosovo was intended to be. Many of the tasks were compatible with an occupying army's responsibilities under occupation law in relation to internal security and public safety. Among other things, the Security Council authorized the NATO-led Kosovo Force (KFOR) to

- enforce and maintain a ceasefire and ensure the withdrawal of Serb and Yugoslav military, paramilitary, and police forces;
- demilitarize the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups;
- establish a safe and secure environment for refugee return, the provision of humanitarian aid, and international administration;
- ensure public safety until the international civilian police can assume this task;
- supervise demining activities;
- support and coordinate closely with the international civilian presence.[31]

However, beyond these strictly military tasks, the Security Council further developed its own methodology of post-conflict occupation by pairing an authorized military deployment (in this case, KFOR) with the establishment of a UN civilian administrative capability in the form of the UN Interim Administration Mission in Kosovo (UNMIK). To that end, Security Council Resolution 1244 of 10 June 1999 authorized

> the Secretary General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.[32]

In Resolution 1244, the wide-ranging mandate of the 'international civil presence', which included establishment of provisional democratic institutions of self-government, interim civil administration of the territory, reconstruction of the physical infrastructure and economic development, provision of humanitarian aid, promotion of refugee return, maintenance of civil law and order, protection and

[31] SC Res. 1244 of 10 Jun. 1999, para. 9. [32] Ibid., para. 10.

promotion of human rights, and work towards the resolution of Kosovo's status,[33] could only be undertaken because of the parallel military mandate working hand in glove with it.

The combined deployments of UNMIK and KFOR did carry out not only the responsibilities detailed above, but also a body of responsibilities broadly extrapolated from Resolution 1244. By 2004, the UN Secretary-General reported that eight 'standards for Kosovo' were being implemented by UNMIK with the security support of KFOR. These eight standards, which would be very difficult to legitimize as a mandate for an occupying force under occupation law, but which are derived from Resolution 1244, include actions relating to the development of functioning democratic institutions, the rule of law (including creation of new courts and police services), freedom of movement, sustainable returns and rights of communities and their members, economic legislation (including privatization), initiatives to protect property rights, political dialogue between Pristina and Belgrade, and development of the Kosovo Protection Corps (a professional civilian emergency agency).[34] By 2007, Kosovo was facing the real prospect of independence from Serbia, a development that would bring UNMIK's jurisdictional and functional roles to an end, perhaps following an interim period of continued engagement in the governance of Kosovo by the international community.

The uncertainty of Kosovo's final status constituted a further divergence from occupations as traditionally understood under occupation law. Normally, the military occupying power would be required to restore the pre-existing sovereign status of the occupied territory. Final status would not be in question. But an anomaly emerged in Kosovo, where some of the complexities known to occupation law crept into the prolonged UN politico-military presence on the ground as final status preparatory steps and negotiations dragged on. Protecting the rights of minorities within the basket of human rights responsibilities of an occupying power can be as difficult for a UN-authorized force and administrative entity as it is for some national governments. This was particularly true in relation to the Serb minority in Kosovo. KFOR and UNMIK were severely challenged in ensuring that the entire population of Kosovo was protected and humanely treated. In rebuilding the court system in Kosovo – a necessary endeavour – UN authorities encountered difficulties that would have vexed any occupying power there. By operating under a Security Council mandate, UNMIK was able to create criminal courts with international judges and prosecutors that would not have been permitted under occupation law. As essential as it was, the judicial reform project became a difficult and highly controversial undertaking, perhaps revealing why occupation law, which contemplates occupations of quite limited duration, only permits the creation of military courts with narrow jurisdiction.

[33] Ibid., para. 11.

[34] UN doc. S/2004/907 of 17 Nov. 2004; UN doc. S/2005/335 of 23 May 2005.

East Timor

Following the 30 August 1999 referendum in East Timor, in which the population voted for independence from Indonesia, and the subsequent massacres by pro-Indonesian elements in September 1999, the Security Council authorized the deployment of an Australian-led multinational force (INTERFET) to East Timor to restore peace and security, protect and support the UN Mission in East Timor, and to facilitate humanitarian assistance operations.[35] But the Council did not invoke occupation law to guide the behaviour and performance of INTERFET, which deployed throughout East Timor and established a de facto occupation of East Timorese territory. In Security Council Resolution 1272 of 25 October 1999, the UN Transitional Administration in East Timor (UNTAET) was 'endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice'.[36] UNTAET incorporated a sizable UN military component of up to 8,950 troops and maintained close cooperation with INTERFET while it remained in East Timor. The tasks assigned to UNTAET included the following responsibilities that transformed, or sought to transform, the governmental, judicial, and economic landscape of the emerging country: to provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure the coordination and delivery of humanitarian assistance, rehabilitation, and development assistance; to support capacity-building for self-government; and to assist in the establishment of conditions for sustainable development.[37] Hence there were democracy-building, economic transformation, and court-building objectives wrapped up in the UNTAET mandate.

UNTAET was succeeded in 2002 by the United Nations Mission of Support in East Timor (UNMISET), which existed until 20 May 2005. The Security Council authorized UNMISET under Chapter VII authority to undertake an ambitious mandate to develop in East Timor democracy, stability, justice, public security, law enforcement, and external security and border control.[38] These transformational objectives in the long-suffering post-conflict society of East Timor ran parallel with the country's independence in 2002.

An occupying military force under occupation law would not exercise such far-reaching responsibilities. But they are integral components of a UN-authorized operation that must address a wide range of security and development needs in order literally to change the society into which the military forces have been deployed. Remarkably, with one exception, no discernible body of law, such as occupation law, is referenced by the Security Council to govern the operations of

[35] SC Res. 1264 of 15 Sep. 1999. [36] SC Res. 1272 of 25 Oct. 1999, para. 1.
[37] Ibid., para. 2. [38] SC Res. 1410 of 17 May 2002, paras. 4 and 6.

INTERFET or the military components of UNTAET or UNMISET deployed under UN command. The exception arose with INTERFET's acknowledged use of the Geneva Conventions to manage the detention in the Detainee Management Unit of suspected criminals arrested by troops before UNTAET was established.[39] UNTAET (followed by UNMISET) quickly became a primary vehicle by which to assist the transition of East Timor to independence. This would normally have been difficult to justify under occupation law. However, the population's exercise of the right of self-determination through the referendum, and the Security Council's endorsement of that outcome, provided an underpinning for the intervening force's actions, in what amounted to a de facto occupation, to facilitate the territory's acquisition of independence in 2002 and its early development through May 2005.

Afghanistan

Another example of a de facto military occupation occurring under the authority of the Security Council is Afghanistan, where multinational military operations have been underway ever since the US-led intervention in October 2001. At no point during the entire Afghan operation has the Security Council sought to impose occupation law constraints on the various military forces that have been fully authorized or acquiesced in by the Council (the latter being the US military operations primarily aimed against the Taliban and al-Qaida fighters within Afghanistan). To have done so would have undermined, indeed prohibited, the transformational objectives of the international community in that country. The entire UN-authorized exercise has been transformational in character, initially guided by the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed in Bonn on 5 December 2001 (the 'Bonn Agreement').[40] Each relevant Security Council resolution has served to further those transitional objectives. Security Council Resolution 1386 of 20 December 2001 authorized the establishment of the International Security Assistance Force (ISAF) 'to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas' and referred to the 'inalienable rights' to be enjoyed by all Afghans. However, the Council's authorization imposed no explicit occupation law constraints on ISAF's actions anywhere in Afghanistan. Since

[39] Detainee Ordinance of 21 October 1999 creating the Detainee Management Unit (establishing that Indonesian law would continue to apply within a procedural framework based on international humanitarian law principles, in particular Geneva Conv IV). See also B. M. Oswald, 'INTERFET Detainee Management Unit in East Timor' (2000) 3 *Yearbook of International Humanitarian Law*, 347 61; Michael Kelly, 'INTERFET Detainee Management Unit in East Timor' (2000), available at www.jsmp.minihub.org Justice Len Roberts Smith, 'Reconstruction of the Rule of Law in Disrupted or Collapsed States', Australian Red Cross Humanitarian Conference, Perth, 21 3 Aug. 2003, available at www.defence.gov.au/jag/docs/200308 redcross.pdf

[40] UN doc. S/2001/1154 of 5 Dec. 2001.

August 2006, ISAF has been under NATO command and continues to operate without any explicit regulation under occupation law. A separate force under US command, called Operation Enduring Freedom, continued to focus on hunting down Taliban and al-Qaida terrorists and, not surprisingly, operated without any explicit resort to the law of occupation.

In March 2002, Security Council Resolution 1401 established the United Nations Assistance Mission in Afghanistan (UNAMA), the mandate of which was the full-scale implementation of the Bonn Agreement. It also requested ISAF to continue to work closely with the UN.[41] The UNAMA mandate, as it developed over time, included constitutional reform, elections, security sector reform, police training, significant judicial sector reform, reconstruction, initiatives on gender issues, and new human rights institutions.[42] In March 2007, the Security Council extended the mandate of UNAMA for another year, stressing the laundry list of transformational objectives that UNAMA had long sought to implement with only some degree of success in Afghanistan.[43] The Council, however, stated a formulation that, with a broad interpretation, could invoke aspects of the law of occupation:

> *Calls upon* the Afghan Government, with the assistance of the international community, including the International Security Assistance Force and Operation Enduring Freedom coalition, in accordance with their respective designated responsibilities as they evolve, to continue to address the threat to the security and stability of Afghanistan posed by the Taliban, Al Qaida, other extremist groups and criminal activities, welcomes the completion of ISAF's expansion throughout Afghanistan and *calls upon* all parties *to uphold inter national humanitarian and human rights law and to ensure the protection of civilian life.*[44]

If, for example, a question were to arise as to whether ISAF or Operating Enduring Freedom was a de facto occupying military power in, say, a particular region of Afghanistan over a specific period of time and for certain military operations, then this provision in Security Council Resolution 1746 would assume greater importance in determining the full scope of legal responsibilities on the ground for such forces.

All of this has been to enable, however imperfectly, the transformation of Afghanistan politically, judicially, and to some degree socially and economically following the rule of the Taliban and the post-9/11 intervention by primarily US forces in late 2001. Had it not been for a Security Council mandate authorizing constructive change, occupation law, if applied rigidly, would have crippled such goals if it had been imposed upon the multinational and UN-authorized military deployments in Afghanistan. However, the deteriorating security situation in Afghanistan by 2007

[41] SC Res. 1401 of 28 Mar. 2002.

[42] See UN doc. S/2001/1157 of 6 Dec. 2001; UN doc. S/2002/737 of 11 Jul. 2002; UN doc. S/2003/333 of 18 Mar. 2003; UN doc. S/2003/754 of 23 Jul. 2003; UN doc. A/58/616 of 3 Dec. 2003; UN doc. S/2004/230 of 19 Mar. 2004; UN doc. S/2004/634 of 12 Aug. 2004; UN doc. S/2004/925 of 26 Nov. 2004; UN doc. S/2005/183 of 18 Mar. 2005; and UN doc. S/2005/525 of 12 Aug. 2005.

[43] SC Res 1746 of 23 Mar. 2007.

[44] Ibid., para. 25 (emphasis added).

may lead to reassessments as to the strategy and tactics endorsed by the Security Council to mandate the transformation of the country.

Common features of these four cases

The introduction of varying degrees of UN civilian administration into the four territories and countries considered above did not lead to any assumption that obligations under occupation law were somehow triggered. One can argue that traditional occupation law applied or should have applied in some or all of these cases, but the engaged parties (state and institutional) never described their military and administrative actions as subject to this body of law. In all four instances the path to genuine democratic self-determination continued for years to prove difficult and the role of multinational forces, acting under a UN mandate, remained controversial. An essential truth remained firm, namely that foreign military forces must operate within a credible legal framework. Whatever the measure of UN engagement, part of that legal framework may need to draw upon occupation law. But the contrast between these UN-authorized deployments and the machinations of the Iraq adventure of 2003 could not have been sharper.

Occupation and Security Council Action in Iraq: An Unprecedented Formula

When the armed forces of the US and the UK invaded Iraq in March 2003 and exercised control over its territory, the law of occupation immediately began to apply to their actions, and the two governments soon recognized such obligations.[45] By late May 2003, following the completion of the main combat operations of Operation Iraqi Freedom, the American and British governments and the UN Security Council publicly confirmed the application of the law of occupation in Iraq.[46] While this resolution proclaimed certain transformative objectives for the occupation, it did not establish a full UN legal and administrative framework to govern the foreign military deployment and civilian administration in Iraq.

[45] SC Res. 1472 of 28 Mar. 2003.

[46] SC Res. 1483 of 22 May 2003; George W. Bush, 'Statement on UN Vote Lifting Sanctions on Iraq', 22 May 2003, available at www.whitehouse.gov/news/releases/2003/05/iraq/20030522 11.html Jack Straw, 'We Can Now Move Forward Together in Support of the Iraqi People', Press Release, 22 May 2003, available at www.fco.gov.uk

The US and the UK, though embarked on a uniquely designed operation to change Iraqi society in 2003, acknowledged their respective obligations to adhere to the 1907 Hague Regulations and the 1949 Geneva Convention IV,[47] and the Security Council (guided by them) required that they comply with such law.[48] The methodology that should have been invoked, however, is a Security Council mandate establishing the transformational tasks of a military deployment and civilian administration of a liberated society (whatever the judgment on the legality or illegality of Operation Iraqi Freedom) that explicitly or implicitly implemented only the provisions of occupation law relevant to the particular situation.[49]

Why did Washington and London choose to accept the law on occupation as the framework for their actions in Iraq? Within the US government, several different factors were involved. In the first few months of 2003, several of the Bush administration's spokesmen had denied that the US presence in Iraq could be characterized as an occupation. However, others in the government recognized that the law on occupation would apply to their actions in Iraq. In the end, it appears that the administration wanted to maintain the complete control over Iraq that formal military occupation would afford, minimizing the involvement of, and accountability to, the Security Council. The Bush administration's well-known aversion to the UN, and its commitment to the Bush doctrine of pre-emptive intervention in the aftermath of 9/11, made it implausible that the US would use the Security Council to create a UN administrative and military presence in Iraq such as to take over the management of the occupation.

As for the UK, it seems from the start to have accepted the view expressed by the Attorney-General in a memorandum presented to the Cabinet on 26 March 2003:

> In short, my view is that a further Security Council resolution is needed to authorise imposing reform and restructuring of Iraq and its Government. In the absence of a further resolution, the UK (and U.S.) would be bound by the provisions of international law governing belligerent occupation, notably the Fourth Geneva Convention and the 1907 Hague Regulations.[50]

[47] See 'Letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council', UN doc. S/2003/538 of 8 May 2003 (recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command); see also 'Comments made by UK Permanent Representative Sir Jeremy Greenstock after UK US Presentation of Joint Draft of Security Council Resolution on Iraq', United Nations, New York, 9 May 2003; Assistant Secretary of State for International Organizations, Kim Holmes, 'New Resolution Defines "Vital Role" for U.N. in Iraq', 23 May 2003, available at www.usembassy.it/file2003_05/alia/A3052306.htm

[48] See SC Res. 1483 of 22 May 2003, para. 5.

[49] See Roger Hardy, 'Struggle for Power in Iraq', *BBC News*, 13 Apr. 2003; Jane Perlez, 'US Team Arrives in Iraq to Establish Post war Base', *New York Times*, 9 Apr. 2003, B10; Richard W. Stevenson, 'Bush Sees Aid Role of UN as Limited in Rebuilding Iraq', *New York Times*, 9 Apr. 2003, A1; 'U.S. Rejects UN Influence in Post war Iraq Governance', *Associated Press*, 7 Apr. 2003.

[50] Lord Goldsmith, 'Iraq: Authorisation for an Interim Administration', Memorandum of 26 Mar. 2003, *New Statesman* (22 May 2003), available at www.informationclearinghouse.info/article3505.htm

Furthermore, the opposition of much of the Security Council to Operation Iraqi Freedom in March 2003 worked against any proposal in May of that year to turn the entire Iraq situation over to a Security Council-mandated occupation requiring other governments and the Council essentially to assume full responsibility for the future of Iraq. It is not surprising that governments which had opposed the Anglo-American intervention into Iraq, and even those which acquiesced in it, had no interest in validating the intervention by engaging in full-scale occupation of the country and mopping up the mess.

Whether Washington and London appreciated at the time the serious implications of embracing occupation law in Iraq remains uncertain. The potential for American and British liability for the consequences of the military occupation of Iraq will remain for years, perhaps with greater impact following the withdrawal of their troops and the end of the intimidating power they exercise over Iraqi society. If there had been an explicit UN-authorized military deployment in the immediate aftermath of the US-led military intervention, and if there had been the early establishment of a formal UN civilian administration in post-Saddam Iraq, then the wide array of responsibilities and potential liabilities that have arisen under occupation law for the American and British governments would have been narrowed in scope as a consequence of the UN mandate. The fact that on 16 October 2003, Security Council Resolution 1511 '*authorize[d]* a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq' under Chapter VII of the UN Charter extinguished neither the Anglo-American military occupation nor all liability that may arise from it. Resolution 1511 created an additional legal framework under which the occupying forces would operate, one that could, depending on the 'necessary measures' at play in any particular circumstance, trump occupation law. But the Security Council did not revoke its earlier judgment in Resolution 1483 that the United States and the United Kingdom were occupying powers, and would remain so.

The experience of Iraq in 2003–4 demonstrated some of the difficulties inherent in traditional occupation law. These difficulties have rarely been formally acknowledged and typically require, at least in scholarly works, lengthy explanations and qualified rationales to explain how occupation law is to be applied in the unique circumstances of particular military occupations.[51] Regardless of the issue of the legality of Operation Iraqi Freedom,[52] the occupation of Iraq demonstrated how much traditional

[51] See generally Adam Roberts, 'What is a Military Occupation?'; Benvenisti, *International Law of Occupation*.

[52] In 1970, the General Assembly adopted without a vote the general principle that, '[t]he territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter': GA Res. 2625 of 24 Oct. 1970. If it were to be concluded that the military intervention into Iraq in March 2003 contravened the UN Charter, then the subsequent military occupation presumably would be illegal under that principle, although the obligations of the intervening powers under occupation law would persist. Subsequent Security Council action (such as SC Res. 1483) that has embraced the occupation might render the charge of earlier illegality moot for purposes of occupation law.

occupation law would have to be reinterpreted to suit modern requirements. Iraq's unique circumstances were far better suited to this type of tailored nation-building mandate that can be devised by the Security Council. Ideally, that mandate would enforce those principles (particularly humanitarian) of occupation law that remain relevant or are *jus cogens*; would advance principles under modern international law pertaining, for example, to human rights, self-determination, the environment, and economic development; and in general would create a legal regime uniquely tailored for the territory in question. The recognition that certain principles of occupation law are *jus cogens* may require the application of those principles in the circumstances of a UN-approved deployment of troops. In Iraq, the Anglo-American occupying forces and the Coalition Provisional Authority far exceeded the conservationist principles of the law on occupation, thereby profoundly disrupting Iraqi society and contributing to the growth of militias and sectarianism, the deterioration of living standards, the flight of millions of refugees, and very high civilian death tolls for years following the 2003 intervention.

What precisely happened in Iraq? On 22 May 2003, the UN Security Council adopted Resolution 1483, which seized headlines with its six-month plan for the conclusion of the 'Oil-for-Food' Programme, the UN's most widespread project in Iraq.[53] But Resolution 1483 also established an unprecedented basis for American and British occupation of Iraq. In the preambular clauses of the resolution, the Security Council declared its understanding of the status of foreign military powers in Iraq. The Council recognized 'the specific authorities, responsibilities, and obligations under applicable international law' of the US and the UK 'as occupying powers under unified command (the "Authority")'.[54] The Council further noted 'that other States that are not occupying powers are working now or in the future may work under the Authority'.[55] The two occupying powers were thus designated to shoulder primary responsibility. The Council, acting under Chapter VII of the UN Charter, called 'upon all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907'.[56] The extent to which any states other than the US and the UK would be held legally liable for strict performance of occupation law responsibilities was left unclear. Such obligations would probably be limited in light of the Security Council's recognition of the dominant occupying status of the US and the UK and by explicit American and British acceptance of that role (whereas no other state, including Poland, with military forces deployed in Iraq explicitly identified itself as an occupying power).

[53] See UN doc. S/2003/640 of 11 Jun. 2003; Edmund L. Andrews, 'Lifting of Iraq Sanctions Ends 13 Years of Isolation', *New York Times*, 24 May 2003, A9; Colum Lynch, 'Security Council Ends Iraq Sanctions', *Washington Post*, 23 May 2003, A16.

[54] See SC Res. 1483 of 22 May 2003, Preamble.

[55] Ibid.

[56] Ibid., para. 5. Regarding the collective use of force under the Charter, see Damrosch et al., *International Law*, 1005 43.

The Security Council also called upon 'the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future'.[57] The 'relevant international law' must include, in this instance, occupation law. Coupled with the Council's recognition of the Authority's occupation of Iraq, the task of promoting the welfare of the Iraqi people may be laudable, but that goal cannot be guided by occupation law alone, regardless of how liberally it may be construed. The Authority had to employ aggressively international human rights law, principles of democratization (as the engine of self-determination), economic initiatives, and perhaps controversial use of force principles in the name of domestic security in order to pull Iraq out of its repressive past and return it to the community of civilized nations. Many of the principles advanced by the Authority did not have traditional occupation law as their source – some had their own *jus cogens* identity or were deeply rooted in the normative principles of the UN Charter. Indeed, conflicts emerged between advancing the welfare of the Iraqi people as the Authority was mandated to do, and adhering to the more narrow constraints of occupation law as the Authority was required to do. During the military occupation of Iraq, the occupying powers consistently failed to meet their occupation law responsibilities and failed to achieve the ambitious, and often conflicting, goals set by the Coalition Provisional Authority.[58] The risk can emerge that, unless occupation law is enforced strictly, it may be reinterpreted so liberally as to become ill-suited as a legal framework within which a society can function. If occupation law fails to meet the needs of the situation, then its relevance and legitimacy will be questioned.

In Resolution 1483, the Security Council required the appointment of a Special Representative for Iraq who reported to the Council and cooperated with the Authority in relation to a wide range of responsibilities.[59] It also set out a number of objectives for the occupation, some of which had a transformative character that was not easily reconciled with the obligation to observe occupation law. The Security Council delegated to the Coalition Provisional Authority substantial responsibilities, including the establishment of the Development Fund for Iraq, a fund which was disbursed by the Authority,[60] and facilitation by the Authority of food assistance tied to the production of oil.[61] The Council imposed specific obligations not required by occupation law, and in doing so invited the Authority to act beyond restrictions imposed by such law. Examples include the management of petroleum, petroleum

[57] SC Res. 1483 of 22 May 2003, para. 4.

[58] See for example Scheffer, 'Beyond Occupation Law,' 853 9; Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (New York: Penguin Press, 2006).

[59] SC Res. 1483 of 22 May 2003, para. 8.

[60] See ibid., paras. 12 14, 17.

[61] Ibid., para. 16.

products, and natural gas, and the formation of an Iraqi interim administration as a transitional administration run by Iraqis. In each of these areas of responsibility, a strict reading of traditional occupation law likely would prohibit such bold and transformational control of Iraqi society and economy. It is possible to view the Security Council's decisions as legitimately overriding conflicting norms of occupation law, but if such is the case, then the Council's insistence elsewhere in Resolution 1483 on compliance with occupation law breeds confusion.[62]

Some of these mandated tasks could be seen as consistent with the responsibilities of an occupying power. But when occupying powers are given additional resources such as the Iraq Development Fund or when they expend any large grants from donor nations, including from either occupying power, and then fail to apply such funds properly within the constraints of occupation law, potential liability could be even greater in the event of any misuse of additional resources. Such synthesis of Security Council authority and the obligations that flow from occupation law was both unique and exceptionally risky.

These difficulties may point to a simple conclusion, namely that the Security Council has the power to override conservationist principles of occupation law. Perhaps such power should be interpreted in the actions of the Security Council when it adopted Resolution 1483. After all, the thesis of this chapter is that the Security Council should exercise its authority to create a mandate that effectively supplants occupation law from the very beginning of a Council-authorized military intervention. But the wording of Resolution 1483 acknowledges the reality of occupation and then authorizes certain activities that challenge traditional principles of occupation. How those two realities would coexist in Iraq following adoption of Resolution 1483 proved exceptionally difficult and arguably became the slippery slope on which Iraq descended into a bloody civil war with the prolonged engagement of the US and UK military forces, which continued as de facto occupiers. In the end, the Iraqi people might have fared better if the occupying powers had more strictly observed and implemented conservationist principles of the law of occupation and shown more restraint with their ideology of liberation.

Under Resolution 1483, the Security Council supported 'the formation, by the people of Iraq and with the help of the Authority and working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority'.[63] This mandate, fully subscribed to in the early stages by the occupying powers,[64] sat

[62] See 1949 Geneva Conv. IV, Arts. 50, 53 4, 64 7. Cf. also SC Res. 1483 of 22 May 2003, paras. 9, 12 14, 20 2.

[63] See SC Res. 1483 of 22 May 2003, para. 9.

[64] See James Harding et al., 'White House prepares to install regime of "free Iraqis"', *Financial Times*, 4 Apr. 2003, 4; Douglas Jehl, 'U.S. Reported to Push for Iraqi Government, With Pentagon Prevailing', *New York Times*, 30 Apr. 2003, A13. L. Paul Bremer, Head of the Coalition Provisional

uncomfortably with traditional occupation law. Moreover, Resolution 1483 did not attempt to reconcile any conflict between what the Authority might decide is appropriate and what the Special Representative might determine is necessary other than to require both to act in coordination.

In Resolution 1500, the Security Council established a more substantial institutional structure, namely 'the United Nations Assistance Mission for Iraq to support the Secretary-General in the fulfilment of his mandate under resolution 1483 . . . for an initial period of twelve months'.[65] Tragically, Sergio Vieira de Mello, the UN High Commissioner for Human Rights who was appointed as the first Special Representative for Iraq in late May 2003 and who was struggling to set the new UN mission on a dynamic course of action, died in the bombing of the UN Headquarters in Baghdad on 19 August 2003. The fact that the UN mission lent greater legitimacy to the Anglo-American occupation may have been the primary reason why it was targeted, causing fatalities and destruction of such magnitude that the UN was forced to withdraw from Iraq precipitously, leaving the field solely to the military occupiers and their opponents.

In subsequent months there was no change in the basic status of the US and UK as occupying powers. In October 2003, during the debate over Resolution 1511, Council members were presented with a choice between ending the occupation very soon or effectively validating a longer (albeit 'temporary') occupation. They chose the latter option. On 16 October 2003 the Security Council determined in Resolution 1511 that 'the Governing Council and its ministers are the principal bodies of the Iraqi interim administration, which, without prejudice to its further evolution, embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognized, representative government is established and assumes the responsibilities of the Authority', and invited the Governing Council to provide the Council by 15 December 2003 with 'a timetable and a programme for the drafting of a new constitution for Iraq and for the holding of democratic elections under that constitution'.[66] The Council also authorized 'a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq' but left unclear whether such a force would be regarded as part of the occupation regime and occupation law or would stand apart from the occupying armies as a smaller UN-authorized deployment with its far more narrow mandate to

Authority, quickly retreated from rapid political transformation and by Jul. 2003 had opted for the creation of a hand picked 25 member 'Governing Council', including some individuals who had lived in exile during Saddam Hussein's rule, which would exercise broad executive powers. See Rajiv Chandrasekaran, 'Former Exiles Given Majority on Iraqi Council; U.S. and Britain Revise Plans in Choosing 25 Member Governing Body', *Washington Post*, 13 Jul. 2003, A23. The Security Council then welcomed (but chose not to recognize formally) the establishment of the Governing Council of Iraq 'as an important step towards the formation by the people of Iraq of an internationally recognized, representative government that will exercise the sovereignty of Iraq': see SC Res. 1500 of 14 Aug. 2003.

[65] SC Res. 1500 of 14 Aug. 2003, para. 2.

[66] SC Res. 1511 of 16 Oct. 2003, paras. 4 and 7.

contribute to security for 'the United Nations Assistance Mission for Iraq, the Governing Council of Iraq and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure'.[67]

Typically, governments have sought to deny their legal status as occupying powers on foreign territory, the Israeli occupation of the West Bank and Gaza being a case in point.[68] But in the case of Iraq, the Security Council declared occupation status and the two major occupying powers embraced it, while other countries deploying troops or other personnel to Iraq were left with the ambiguous status of being non-occupying states arguably subject to occupation law.

The position of these 'non-occupying states' merits consideration. Other contributing governments must have pondered about what responsibilities and risks under traditional occupation law pertained to their troop commitments in Iraq due to the Security Council's requirement of full compliance with international law obligations.[69] Each coalition partner would be bound under Common Article 1 of the Geneva Conventions to 'respect and ensure respect for' the Conventions. Certainly, each government would accept they were bound by those principles of traditional occupation law that are *jus cogens*. But no such government would read Common Article 1 as requiring strict observance of all occupation-related provisions of the 1949 Geneva Convention IV in Iraq where the transformational objectives of the Authority, the Security Council, and even the Governing Council established by the Authority reached far beyond the constraints of such law

The UK probably would have implemented an occupation of Iraq utilizing far greater UN management and tasking of the process if there had been the political will in Washington.[70] Largely lost in the divisive debate among Council members about the legitimacy of Operation Iraqi Freedom were the legal and political advantages that could be gained with a Security Council mandate authorizing the transformational tasks of a military deployment and civilian administration of a liberated society in Iraq. If the Security Council had thus acted, it would have unburdened the US and the UK at the outset from many of the constraints of an occupation law ill-suited to the

[67] Ibid., para. 13.

[68] See Benvenisti, *International Law of Occupation*, 6, 107, 149 90, 211 12; Roberts and Guelff, *Documents on the Law of War*, 300; Imseis, 'On the Fourth Geneva Convention', 92 3; Hussein A. Hassouna, 'The Enforcement of the Fourth Geneva Convention in the Occupied Palestinian Territory, including Jerusalem', *Journal of International and Comparative Law* 7 (2001), 464; Adam Roberts, 'Prolonged Military Occupation: The Israeli Occupied Territories since 1967', *American Journal of International Law.* 84 (1990), 98. But see Jordan J. Paust, Gerhard von Glahn, and Günter Waratsch, 'Report of the ICJ Mission of Inquiry into the Israeli Military Court System in the Occupied West Bank and Gaza', *Hastings International and Comparative Law Review* 14 (1990), 5 9.

[69] See SC Res. 1483 of 22 May 2003, para. 5.

[70] See Christopher Adams and Mark Turner, 'Washington's Stance over UN Raises Concern', *Financial Times*, 26 Apr. 2003, 8. The British continued to pursue a UN mandate after the occupation of Iraq began. See for example James Blitz, 'Britain Looks to Back UN Iraq Move', *Financial Times*, 4 Aug. 2003, 1; Steven R. Weisman and Felicity Barringer, 'US Abandons Idea of Bigger UN Role in Iraq Occupation', *New York Times*, 14 Aug. 2003, A1.

situation in Iraq and it would have mandated a more realistic treatment of Iraqi society by the foreign powers operating on Iraqi soil. But the political opposition among some Council members to Operation Iraqi Freedom, and American insistence on control of post-war Iraq dictated the outcome reflected in Resolution 1483.

If the Security Council had acted under its enforcement authority in a timely manner to replace the occupying powers with an alternative force structure mandated by the Council to perform designated responsibilities, or to task the occupying powers with explicit transformational responsibilities under UN command and control (even if American or British commanders were the designated individuals), then the implementation of occupation law and the liabilities that arise under it could have been reasonably adjusted. Indeed, the Council's objective could have been to enhance the humanitarian, political, and economic well-being of the people in the occupied nation of Iraq through a fresh mandate that would have removed the unrealistic constraints of occupation law while advancing the more relevant principles and nation-building practices that other fields of international law now compel. But any such mandate would have required a very different scenario for the intervention into Iraq (in other words, one of unquestioned legality and legitimacy) and a very different level of support for the UN by the occupying powers in 2003 and 2004.

On 28 June 2004, the formal Anglo-American occupation of Iraq came to an end, achieving what had been established as an objective on 15 November 2003 in an agreement between the Authority and the Iraqi Governing Council. That agreement had set 30 June 2004 as the date when the Governing Council and the Authority would be dissolved and stipulated that, '[t]his will end the responsibilities of the Coalition as an occupying power as specified in the United Nations resolutions.'[71] On 8 June 2004, the Security Council passed Resolution 1546, providing the legal authority for the continued presence of the multinational force (MNF) in Iraq once the formal occupation had ended. Under Chapter VII authority, the Council acknowledged that 'by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and . . . Iraq will reassert its full sovereignty.'[72] It welcomed the continued presence of the MNF and, acting under Chapter VII authority, made the following determinations:

10. *Decides* that the multinational force shall have the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution expressing, inter alia, the Iraqi request for the continued presence of the multinational force

. . .

[71] For an excellent discussion about issues concerning whether military occupation can end at a particular moment along with 'all the responsibilities of an occupying power as laid down in the laws of war', with particular focus on the Iraqi experience, see Adam Roberts, 'The End of Occupation: Iraq 2004', *International and Comparative Law Quarterly* 45 (2005), 27 48.

[72] SC Res. 1546 of 8 Jun. 2004, para. 2.

12. *Decides further* that the mandate for the multinational force shall be reviewed at the request of the Government of Iraq or twelve months from the date of this resolution, and that this mandate shall expire upon the completion of the political process set out in paragraph four above [a constitutionally elected government by 31 December 2005], and *declares* that it will terminate this mandate earlier if requested by the Government of Iraq.[73]

Both resolution 1546 and the letters annexed to it, in which the US Secretary of State, Colin L. Powell, confirmed the status and mandate of the MNF and its relationship to the Government of Iraq, provided a more coherent and legally sound basis for the presence of the MNF in Iraq than did occupation law and the Security Council's endorsement of the occupying powers in Resolution 1483. Powell nonetheless hinted in his letter of 5 June 2004 about precisely how the MNF would function under the law, and left the impression that vestiges of the legal framework under which the original occupying powers operated would persist:

> In order to continue to contribute to security, the MNF must continue to function under a framework that affords the force and its personnel the status that they need to accomplish their mission, and in which the contributing states have responsibility for exercising jurisdiction over their personnel and which will ensure arrangements for, and use of assets by, the MNF. The existing framework governing these matters is sufficient for these purposes. In addition, the forces that make up the MNF are and will remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.[74]

The Security Council renewed the mandate of the MNF on 11 November 2005 until 31 December 2006, and left open the possibility of yet more renewals.[75] Although the legal status of the MNF in Iraq had been adjusted by the Security Council, the question remained as to whether in its new guise the MNF continued to act as a de facto occupying force and hence whether any occupation law lingered to govern its continued presence in Iraq.[76]

Conclusion

Iraq was a clear example of a country in which the Anglo-American intervention of 2003 set up a major transformation over a number of years, but in a manner largely inconsistent with occupation law. Regardless of the issue of whether the intervention complied with international law, Iraq would have been an appropriate subject of a Security Council mandate setting out clear responsibilities for deployed forces

[73] Ibid., paras. 10 and 12.
[74] Ibid., Annex. See also the preamble to SC Res. 1546.
[75] SC Res. 1637 of 11 Nov. 2005, paras. 1 and 2.
[76] See Roberts, 'The End of Occupation'.

and a UN-supervised civilian administrative structure that would help govern Iraq until such time as a permanent government could be established and begin functioning as such. Under a Security Council mandate, strict adherence to the technical requirements of many codified occupation law provisions would be unnecessary. Of course, some of the responsibilities under occupation law (particularly those of a *jus cogens* character) could be explicitly or implicitly adopted by the Security Council within the structure of its mandate, and in such a way as to trigger liability for non-performance.

A model approach by the Security Council to a situation requiring military occupation would be a Council mandate setting forth the responsibilities and mission objectives of military powers operating in the occupied territory, and establishing UN civilian administrative functions. If, as in Iraq, the military occupying powers are establishing a civilian authority (such as the Coalition Provisional Authority), there should be a clear Security Council *delegation* of administrative responsibilities to the civilian authority, so that it acts on behalf of the Security Council and not as an occupying power. The Council could also establish in the text of the authorizing resolution practical parameters setting out the relevant principles of occupation law to be complied with, including provisions from the 1949 Geneva Convention IV and the 1907 Hague Regulations. More generally, the Council could require that interested governments fully comply with applicable international law in the performance of the Council's mandated mission in the occupied territory. This would leave room for continued compliance with those provisions of occupation law that are *jus cogens* or *erga omnes* or that otherwise remain relevant, but put aside those provisions that are clearly irrelevant or that retard the transformational objectives confirmed by the Security Council.

In a larger sense, occupation law should be returned to the box from which it came. It is an extremely important body of law to regulate belligerent occupation occurring outside Security Council-authorized action, and in situations where wholesale transformation of the occupied territory is not a desirable international objective. But in recent years, the Security Council has established a new dynamic for so-called 'occupations' that goes beyond anything that was contemplated during the original drafting of the relevant conventions. If not fully learned, a growing body of lessons from past UN peace operations and civilian administrative missions at least are being recorded for study and reflection.[77] The recorded lessons, however, reflect very little evidence of any application of occupation law, until Iraq in 2003.

Finally, there is a critical need in world affairs and international law to develop a more effective and legally acceptable means to respond to civilian populations that are at risk or that desire participation in their country's political transformation into a more democratic form of government. The end result can become what

[77] 'Report of the Panel on Peace Operations', UN doc. A/55/305 S/2000/809 of 21 Aug. 2000.

might be called a 'transformational occupation' by one or more military powers acting under the authority of the Security Council.

International society is becoming increasingly intolerant of atrocity crimes[78] committed on a scale that imperils whole societies, and of rulers who deny their own people, typically with repressive measures, the right to fair and representative government. The means by which to address these challenges cannot be found in traditional occupation law. But neither is the solution to reject the UN and the constructive role that the Security Council can play in establishing the basis for a lawful deployment of military forces on foreign territory with the mission to confront an unacceptable criminal threat, advance a collective aspiration for democratic governance, and thus transform a society in dire need of change. The UN General Assembly[79] and Security Council[80] have endorsed the 'responsibility to protect' principle, which in the future may compel greater military engagement by the Security Council in protecting civilian populations at risk of atrocity crimes. Such deployments will raise the issue of occupation law, particularly if rescue, stabilization, and transformational goals compete during the UN-authorized military missions. The UN Peacebuilding Commission,[81] which became operative in October 2006, will play a major role in how the UN confronts post-conflict challenges of political, military, humanitarian, rule of law, and economic development character. Much of what the Security Council mandates will become tasks to be undertaken by the Peacebuilding Commission. The personnel deployed by the Peacebuilding Commission and the responsibilities it performs on the ground in post-conflict societies will involve governance issues and may need to take into account (and adapt where appropriate) the principles of the law on military occupations. There thus remains an important need to examine the full scope of occupation law, with the goal of crafting a modern application of these principles with revisions reflecting the realities of the twenty-first century, so that the protection or transformation of societies at risk can be achieved within a realistic and acceptable framework of law.

[78] For a discussion of atrocity crimes, see David J. Scheffer, 'The Future of Atrocity Law', *Suffolk Transitional Law Review* 25, no. 3 (Summer 2002), 389 432; Scheffer, 'Genocide and Atrocity Crimes', *Genocide Studies and Prevention* 1, no. 3 (Dec. 2006), 229 50; and Scheffer, 'The Merits of Unifying Terms: "Atrocity Crimes" and "Atrocity Law"', *Genocide Studies and Prevention* 2, no. 1 (Apr. 2007), 91 6.

[79] '2005 World Summit Outcome', GA Res. 60/1 of 16 Sep. 2005, paras. 138 9.

[80] SC Res. 1674 of 28 Apr. 2006, para. 4.

[81] GA Res. 60/180 of 30 Dec. 2005.

CHAPTER 27

THE SECURITY COUNCIL AND TERRORISM

JANE BOULDEN

At the United Nations Security Council it is sometimes difficult to determine whether agreement on action is a product of a truly collective understanding on the need for action or a reflection of the interests of one or more of the Permanent Members. Terrorism, unlike many, even most, international peace and security issues that surface on the Council's agenda, has the rare quality of generating an apparent universality in perception of the threat, and a consequently consistently united response. What has this meant in terms of the nature of Security Council action on terrorism? The purpose of this chapter is to address that question.

The chapter proceeds in two sections. The first section provides an outline of the Security Council's approach to terrorism, tracing the evolution of its response from almost no activity at all during the Cold War to a much more active role thereafter. In addition to the increase in Council activity the paper outlines the shifting nature of the Council role. From a case-specific posture the Council has expanded its approach to include measures that treat terrorism as a general phenomenon. The result has been the development of a framework of action that has brought new levels of innovation and institutionalization in Security Council activity. The second section outlines issues and questions that arise as a consequence of the way in which the Security Council's response has evolved. This includes a discussion of the implications of the structures established by the Council and the questions left unaddressed in this

process. By definition, the focus on the Security Council means that the chapter does not address the efforts undertaken by a number of other actors in the UN system, most particularly the Secretary-General and the General Assembly. The relationship between the Assembly and the Council is discussed but only to the extent that it pertains to an understanding of the Security Council's role.

In analysing the Council's role in this way the chapter ultimately argues that the Council has established new roles for itself and entered into new territory of action in the way in which it has responded to the terrorism threat. Whether that activity can be read as a major step that will ultimately have a constraining impact on terrorism remains an open question.

The Security Council Reacts

Context

Security Council activity on terrorism prior to the end of the Cold War was limited at best. The first mention of terrorism at the UN is a 1948 Security Council condemnation of the assassination of Count Bernadotte, the UN mediator in Palestine, as appearing to have been committed by 'a criminal group of terrorists'.[1] This passing mention can hardly be construed as action. In the context of the Cold War, terrorism was not a pressing high priority issue on the agendas of the major powers. This began to change in the early 1970s when an upsurge of terrorist activity prompted a commensurate upsurge in concern on the part of major states, especially the Permanent Members of the Council. The attack on Israeli athletes at the Munich Olympics in September 1972 provides a vivid symbol of the arrival of terrorism as an issue of international attention. The depth of the impact of the Cold War on Council activity, however, extended to terrorism, and was compounded by the connection to Middle East politics.

As a consequence, even when terrorism activity surged, the response of the Council was limited to one resolution in 1970, which calls on member states to take measures to prevent hijackings.[2] The Security Council was more active in considering member states' own reactions to terrorism, although with inconsistent results. The Council condemned the Israeli interception of an Iraqi airliner in August 1973, for example, but could not agree on a reaction to the Israeli raid on Entebbe in 1976.[3] The Security Council was not the only channel for concern about terrorism at the international level. The G7, for example, in 1978 and 1986 agreed to

[1] SC Res. 57 of 18 Sep. 1948. [2] SC Res. 286 of 9 Sep. 1970.

[3] For more on this side of the equation see, Edward C. Luck, 'Tackling Terrorism', in David Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner,

undertake various measures against states supporting terrorists or not taking sufficient action against terrorists. The absence of China and the Soviet Union from this grouping probably facilitated agreement, but the absence of the institutional weight and structure of the Security Council meant that while the G7 agreement on action was significant, it was not necessarily effective.[4]

The lack of action at the Security Council meant that the bulk of the substantive work on terrorism that occurred at the United Nations during the Cold War was carried out in the General Assembly. Although the issue had its own political baggage in that forum, over time, primarily through the Sixth Committee, the General Assembly has worked to develop a series of international conventions, now numbering thirteen, whose goal is to prohibit and limit particular manifestations of terrorist activity. The conventions deal with a range of activity, responding to new terrorist tactics and new thinking on counter terrorism generally. These conventions work to prohibit, inter alia, hijacking, attacks on public spaces, hostage taking, attacks on diplomatic personnel, terrorist bombings, and nuclear terrorism. The General Assembly's approach – dealing with the nature of attacks – is a product of the inability of member states to agree on an overall definition of terrorism. For a number of policy makers, themselves the product of independence struggles or wars against repressive regimes, the idea of a blanket criminalization of terrorist activity, regardless of the context of the situation, was unacceptable. Unable, even now, to overcome this obstacle, the General Assembly focuses on limiting the method of attack rather than addressing its motive.

In 1996, the General Assembly established a new ad hoc committee on terrorism. Initially tasked to negotiate the convention on nuclear terrorism, the ad hoc committee is now mandated to develop a comprehensive convention on international terrorism. The ad hoc committee has been working on the convention since 1996, but progress continues to be subject to a debate on definitions.

Evolution: From specific to general

The Council's post-Cold War willingness to deal with issues of international peace and security broadly defined extended to terrorism. Beginning with action in response to two late-1980s bombings of airliners, the Council took an increasingly active approach to the issue. Sanctions were the initial tool used, aimed at pressuring a member state to comply with ongoing investigations into the incidents by handing over suspects to the appropriate authorities.[5]

2004), 85 100, and Chantal de Jonge Oudraat, 'The Role of the Security Council', in Jane Boulden and Thomas Weiss (eds.), *Terrorism and the UN*: *Before and After September 11* (Bloomington: Indiana University Press, 2004), 151 72.

[4] G7, Statement on Air Hijacking, 17 Jul. 1978; G7, Statement on International Terrorism, 5 May 1986.

[5] So, for example, the Council sought to compel Libyan compliance with the criminal investigation relating to the bombings of the Pan Am and UTA flights, and end Libyan support of terrorism more

The use of sanctions had a double purpose. On the one hand they served to induce compliance by the targeted state or states. In this respect it can be argued that the Council experienced some success in that Libya eventually handed over the individuals in question, and Sudan increasingly cooperated with counterterrorism efforts. On the other hand, sanctions were also used to send a signal of disapproval, working to delegitimize state support of such activities. In fact, while the Council's decisions can be characterized as an effort to respond to terrorism, their focus is the non-compliance of member states with specific legal requirements.

The use of sanctions against states formed the basis of the Security Council's response to terrorist events for the rest of the decade. In response to the bombings of US embassies in East Africa, Council members imposed sanctions against the Taliban regime in Afghanistan, increasing their strength and scope over time.[6] In this last instance, in order to oversee the sanctions process and ensure that it was being adequately implemented, the Council created a committee to monitor it.[7]

It is here, as the Council begins to come to terms with the implications of terrorism in the form of al-Qaeda, that it begins to shift from a case-specific approach to terrorist incidents to one that is more broadly based. In 1999, within a few days of establishing sanctions against Afghanistan, the Council unanimously adopted Resolution 1269, condemning 'all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation'.[8] The resolution went on to call on states to take a series of measures to prevent and suppress terrorist acts and deny safe haven to those planning them; to fully implement existing terrorism conventions; to prevent and suppress financing and preparation for terrorist attacks within their territory; and to cooperate with one another to prevent terrorism. In moving to deal with terrorism as a general phenomenon the Council begins to parallel, if not to overstep, the General Assembly's role. And in doing so it also sends a signal on the question of definition by stating that such acts are unjustifiable regardless of motivation.

Neither terrorism nor its manifestation in the form of al-Qaeda, therefore, were unfamiliar territory when the attacks of 11 September 2001 occurred. The Council's response took form in two parts. The day after the attacks the Council passed a resolution condemning the attacks and recognizing the right to self-defence.[9]

generally. In the absence of Tripoli's cooperation, the Security Council moved, in March 1992, to impose economic sanctions on Libya, strengthening them later that year in the face of the country's intransigence. SC Res. 731 of 21 Jan. 1992; SC Res. 748 of 31 Mar. 1992; SC Res. 883 of 11 Nov. 1993. The Council responded in the same way with respect to the Sudan in 1996, calling on the government to extradite the suspects in an assassination attempt on Egyptian President Hosni Mubarak, and then imposing sanctions when Khartoum failed to do so. SC Res. 1044 of 31 Jan. 1996; SC Res. 1054 of 26 Apr. 1996; and SC Res. 1070 of 16 Aug. 1996. A more detailed examination of the Security Council's role is provided by de Jonge Oudraat, 'The Role of the Security Council'.

[6] SC Res. 1267 of 15 Oct. 1999; SC Res. 1333 of 19 Dec. 2000.

[7] SC Res. 1363 of 30 Jul. 2001.

[8] SC Res. 1269 of 19 Oct. 1999.

[9] SC Res. 1368 of 12 Sep. 2001.

Roughly a fortnight later, the Council passed a second resolution (SC Res. 1373), this one more substantive and comprehensive in scope.

Resolution 1373 requires states to undertake three main types of action:

- a variety of measures relating to suppressing terrorist financing, including the criminalization of provision or collection of funds for terrorist acts, the freezing of financial assets of people who commit or seek to commit terrorist acts, and the prohibition of nationals from making funds and assets available for such people or purposes;
- national measures to ensure non-support of terrorist activity, including the denial of safe haven, bringing those involved to justice, assisting other states in criminal investigations, and maintaining adequate border controls to prevent the movement of terrorists;
- cooperative measures with each other, such as exchanges of information and early warning, ensuring terrorists are not abusing or using the refugee and asylum seekers system, and full implementation of all the relevant international conventions.[10]

The resolution is important in a number of ways. Whereas the Council could previously have been said to be looming on the outskirts of what was the General Assembly's purview, it was now firmly within it. Resolution 1373 was not only binding on all member states – in contrast to the Assembly-generated conventions which many member states had yet to sign – but also departed from the usual Council language that calls on states or requests that states undertake certain measures, to indicate that the Council 'decides that states shall' implement the following measures. The nature of state requirements are notable more for the fact that they clearly establish a minimum baseline for member state counter terrorist action than in their specifics, although the specifics are not insignificant. The Council took this approach again when, primarily at the instigation of the UK in the aftermath of the 7 July 2005 London bombings, it called on states (rather than requiring them) to take whatever legal measures might be necessary to prohibit the incitement to commit terrorism, to prevent such conduct, and to deny safe haven to those guilty of it.[11]

Weapons of mass destruction: Resolution 1540

A growing concern about the possibility that terrorists might seek to or acquire biological, chemical, or nuclear weapons or material was compounded by the events of 11 September and the revelations relating to the proliferation of nuclear-related knowledge and equipment that occurred under A. Q. Khan in Pakistan. The combined effects of the extent to which knowledge and equipment was more readily available than previously understood and the perception that what some call 'new

[10] SC Res. 1373 of 28 Sep. 2001. [11] SC Res. 1624 of 14 Sep. 2005.

terrorism' would seek destruction for destruction's sake were sufficient to generate a Council response.

In April 2004, these concerns brought about Security Council Resolution 1540. Resolution 1540 follows the 1373 model quite closely although its text was subject to a more lengthy negotiation that included states outside the Council.[12] It requires state action by using language stating that the Council decides that states shall undertake action rather than calling upon them to do so, and like 1373 it invokes Chapter VII. The resolution requires that states

- refrain from supporting non-state actors attempting to acquire, manufacture, possess, transport, transfer or use such weapons and their means of delivery;
- adopt effective laws to prohibit such activities;
- take effective domestic measures to prevent proliferation of such weapons, including adequate accounting procedures, physical protection measures for such materials, effective border controls and national export and trans-shipment controls.[13]

The resolution is difficult to characterize as either fully about weapons of mass destruction or about terrorism in that it addresses both individually as well as the potential of their combined effects. In establishing requirements for action at the same level of determination as for Resolution 1373, and in agreeing on a resolution directly addressing the proliferation of weapons of mass destruction for the first time, the Council signalled the high level of its concern about all three of these possibilities.

Innovation: The committees

In each of the three cases, the Council called for monitoring of member state progress in meeting the requirements outlined in the resolutions. The result has been a new structure of committee activity working to monitor and assist state counter terrorism efforts as required by the Security Council.

The 1267 Committee

The first of these committees is the committee established by Resolution 1267 to oversee the sanctions imposed on the Taliban regime in October 1999. The Council has adjusted the sanctions regime a number of times since then, moving to include individuals and groups associated with al-Qaeda along with the Taliban and to expand the scope of the sanctions.[14] In an effort to improve its efficacy, the Council authorized the creation of a monitoring team and a sanctions enforcement team

[12] Roberto Lavalle, 'A Novel, if Awkward, Exercise in International Law Making: Security Council Resolution 1540 (2004)', *Netherlands International Law Review* LI, no. 3, 411 37.

[13] SC Res. 1540 of 28 Apr. 2004.

[14] See Annex 4.

early on in the process.[15] The 1267 Committee is, however, quite different from those that followed in significant ways, all of which derive from the fact that the sanctions regime is a function of the case-specific counter terrorism efforts of the Council. The sanctions regime has specific targets and desired outcomes. There will come a point in time when the sanctions regime may be ended. This stands in contrast to the requirements of the Council's general counter terrorism approach where states are asked to undertake measures at the national level that affect their own citizens and will be in place indefinitely.

The Council has been particularly innovative with respect to this sanctions regime, expanding it beyond its usual focus on the member state by listing groups and individuals as the target for sanctions, taking the Council into new, not uncontroversial, territory. The 1267 Committee is arguably the most hands-on element of the Council's work on terrorism. To be effective, the sanctions committee must be continually up to date on the individuals and groups involved in al-Qaeda as well as specific state efforts to control their assets and movements. This is quite a different enterprise from monitoring state legislative activity. The Committee's work is intensive, and it is constantly working to adapt to the changing nature of the situation on the ground. Drawing on its own monitoring group as well as outside experts, the Committee has worked to develop techniques and principles for action that will be invaluable to the ongoing debate about the desirability for targeted sanctions. Those same characteristics have put the Committee's activity and the sanctions regime at the forefront of the increasing awareness of the impact of counter terrorist measures on questions of human rights.[16]

The Counter Terrorism Committee

The Counter Terrorism Committee (CTC), created under Resolution 1373, has become the core of the Council's broad based counter terrorism strategy. All fifteen Security Council members are members of the CTC. The Committee operates with three sub-committees that are each responsible for monitoring the reports of a specific group of member states.

In an effort to clarify and categorize member state reporting requirements, the CTC established three phases of work and reporting. In the first phase, states should ensure that they have the appropriate legislation in place for implementing Resolution 1373, be working on acceding to all of the conventions, and have 'effective executive machinery' to prevent and suppress terrorist financing.[17] In the second phase, states should have in place effective executive machinery for all aspects of Resolution 1373, but particularly those relating to police and intelligence structures, customs, immigration and border controls, and measures to prevent

[15] SC Res. 1363.

[16] For more on this see, Rosemary Foot, 'The United Nations, Counter Terrorism and Human Rights: Institutional Adaptation and Embedded Ideas', *Human Rights Quarterly* 29, no. 2 (May 2007).

[17] These documents can be found on the CTC website at www.un.org/Security Council/ctc

access to weapons. In the third phase, the CTC will consider the cooperative and other requirements of 1373. The initial phase of the Committee's work, however, revealed that the three stages of work were inextricably interconnected, making monitoring of separate stages difficult, or at least artificial.

The CTC mandate is no small undertaking. Monitoring and tracking reports from member states is itself a major enterprise. As of 30 September 2005, all states had submitted their initial reports, 169 had submitted second reports, and a diminishing number had submitted third, fourth, and fifth reports, for a total of 622 reports submitted to the CTC since its creation.[18]

From the start the CTC recognized that the reporting requirements, as well as the legislative and institutional requirements, would stretch the capabilities of some member states. A ministerial declaration adopted by the Security Council[19] recognized this need and invited the CTC to explore ways in which assistance to such states could be given. As a result, the facilitation of assistance and capacity-building became part of the CTC's tasks. To this end, the CTC has established a database that outlines various assistance options for member states[20] along with a matrix of state assistance needs, so that states or organizations offering assistance can be matched with states in need. The CTC has also undertaken field visits to fifteen states. Ten of these visits occurred in 2006, representing a significant increase in the rate of this part of the assistance process.[21] These visits give the CTC a chance to get a much more comprehensive sense of state capacity, which in turn facilitates their ability to help determine which other states can provide the most effective assistance.

A key aspect of the CTC's work is cooperation and liaison with regional organizations and international organizations. Regional organizations are undertaking counter terrorism programmes and/or the strengthening and development of programmes in member states. Cooperation between these organizations and the CTC helps to prevent redundancy but also is a form of burden sharing. Regional organizations often have a much better sense of the measures being undertaken by member states and their capabilities, or lack thereof, for instituting new ones, thus saving the CTC a number of steps in the evaluation process. Similarly, links to international organizations with functional expertise in areas of interest to the CTC can also strengthen and facilitate the Committee's efforts. Organizations such as the UN Office on Drugs and Crime (UNODC) or the International Civil Aviation Organization (ICAO), only two such examples

[18] The numbers can be found in the CTC report to the Security Council , UN doc. S/2005/663 of 21 Oct. 2005: 130 states had submitted their third report, 101 their fourth, and 22 had submitted five reports. In her 2006 report to the Security Council the Chair of the CTC did not provide an update on these numbers.

[19] SC Res. 1377 of 12 Nov. 2001.

[20] CTC Directory of Counter Terrorism Information and Sources of Assistance, www.un.org/Docs/sc/committees/1373/ctc da/index.html

[21] S/2006/989, 18 Dec. 2006, 6.

among many, bring both information and expertise to the process. To give momentum to, and strengthen, these relationships, the CTC has engaged in five special meetings with a variety of regional and international organizations.[22]

Part monitoring mechanism, part clearing house, part middleman, the CTC can be seen, therefore, as the hub for a number of spokes along which information and assistance flows. This was its intended role. The CTC is not about initiating policy; it is about ensuring that state policy is implemented to a certain level.

By 2003, the CTC determined that it needed greater resources and stronger institutional structures in order to fulfil its mandate adequately. It submitted two reports to the Security Council in early 2004, proposing a series of changes to the CTC structure.[23] In March 2004, the Security Council approved a new structure, establishing a Counter Terrorism Executive Directorate (CTED) whose executive director is appointed by the Secretary-General and is based in the Secretariat.[24] The revitalization also involved the creation of an Assessment and Technical Assistance Office and an Information and Administrative Office. The changes signal an acceptance both of the scale of the work being undertaken and the need for institutional stability and support for the Committee in carrying out its tasks.

A year after these changes were approved by the Council progress has been made, though slowly. The CTED only became fully operational in September 2005,[25] just in time to see an additional task added to the CTC list when the Council directed it to include the requirement to take measures against incitement in its dialogue and assistance plans with member states. A mandated review of CTED's work at the end of 2005, therefore, had limited usefulness in that there was only a short period in which it could be said to be operating in the way the Council envisaged. CTED has the potential to be an important and innovative element in the Council's work. There is equal potential, however, for problems. The establishment of a team of in-house experts, for example, will make it possible for the CTC to be more effective in its work. But such effectiveness is contingent on a clear plan for action. While great strides have been made at the functional level, it remains the case that the prioritization of goals and tasks remains amorphous. Indeed, by the end of 2006, officials were becoming more outspoken about the slow pace of CTED's work. In reporting to the Security Council in December 2006, the head of the CTC expressed frustration with the CTED's work with respect to technical assistance. '[This] is an

[22] The first special meeting was held in Mar. 2003. The CTC met with fifty seven international, regional, and sub regional organizations in New York. The second meeting was hosted by the Organization of American States in Washington in Oct. 2003. In Mar. of the following year, UNODC and the OSCE sponsored a meeting in Vienna. The fourth meeting was hosted by the Commonwealth of Independent States (CIS) in Kazhkstan in Jan. 2005. Reports of all the meetings are available on the CTC website. A fifth meeting, in cooperation with African Regional Organizations, occurred in Oct. 2007. See UN doc. S/PV.5779 of 14 Nov. 2007, 6.

[23] UN doc. S/2004/70 of 26 Jan. 2004; UN doc. S/2004/124 of 19 Feb. 2004.

[24] SC Res. 1535 of 26 Mar. 2004.

[25] Briefing by the Chairman of the CTC to the Security Council, UN doc. S/PV.5293 of 26 Oct. 2005.

area regarding which the Committee is aware that more can and should be done. Personally, I am not pleased that requests from Member States for assistance remain unanswered and that there are so few concrete results to report.'[26]

The 1540 Committee

The structure of Resolution 1540 mirrors that of 1373 in that the Council requires states to take various measures at the national level and establishes a committee to which states must report on their existing measures and progress in implementing further measures as required by the resolution. By April 2006, the committee had 8 experts on its team, and had received 129 reports from member states. It has also established a process for facilitating assistance through a clearing-house function to those states that request it.[27]

The 1566 Working Group

As part of its reaction to the Beslan attacks, the Council established a working group with a mandate to consider practical measures 'to be imposed on individuals, groups or entities' involved in terrorist activities other than those already listed with the al-Qaeda/Taliban committee, including more effective ways to bring them to justice. The working group was also tasked with considering the possibility of an international fund to provide compensation to victims of terrorism.[28]

The working group consulted with member states as well as outside experts in its deliberations. In its 2005 report it called for continued and stronger efforts on freezing financial assets, preventing the movement of terrorists, curbing the supply of arms, ending public provocation to terrorism, and bringing terrorists to justice.[29] Such efforts require action by member states, and the working group noted the need to consider the differing capacity of member states in this regard and also recommended stronger engagement with regional, sub-regional, and international organizations. All of these recommendations work to reaffirm the approach already being taken by the Security Council. Agreement could not be reached, however, on the core of the group's mandate: how to identify individuals or groups that might be placed on a list extending beyond the existing al-Qaeda list. Agreement was also lacking on how or whether to establish a victims compensation fund. This latter is probably primarily a function of a recognition that compensation is most effectively and logically dealt with by individual member states. Lack of a consensus on

[26] S/PV.5601 of 20 Dec. 2006, 4.

[27] UN doc. S/2006/257 of 25 Apr. 2006; UN doc. S/PV.5538 of 28 Sep. 2006, 7 8. Documents and information relating to the Committee's work can be found at disarmament2.un.org/Committee1540/ As with the implementation of Resolution 1373, issues concerning the implementation of Resolution 1540, including the question of state assistance have been the subject of debate. See, UN doc. S/PV. 5635 of 23 Feb. 2007.

[28] SC Res. 1566 of 8 Oct. 2004.

[29] SC Res. S/2005/789 of 16 Dec. 2005.

identifying non-al-Qaeda individuals or groups is more indicative of differing priorities on the part of Council members, as well as the inherent difficulties in determining on the nature of the criteria to be used in such identification, and the source and strength of the information required to make such a determination.

Issues and Questions

The committee trend

Inevitably, the creation of three committees and a working group relating to terrorism has prompted calls for coordination and consultation.[30] While there are similarities in the monitoring and reporting requirements of the various resolutions, there is a clear difference between the 1267 Committee and the other committees. The primary objective of these committees is to monitor reporting by member states as they fulfil the domestic requirements of the resolutions, and to facilitate assistance for states that need it. In contrast, 1267 is primarily punitive in its intent, seeking to limit al-Qaeda's ability to manoeuvre and finance its activities. The 1540 resolution and its committee are really about weapons of mass destruction and the need to safeguard associated facilities and materiel rather than terrorism as such, while the 1566 Working Group's focus is on measures that ultimately support the CTC process. In total then, the work falls into two streams: the hub and spoke process of the CTC committee, based on Resolution 1373 with additional issue areas added on by other resolutions; and the sanctions regime, initially established under Resolution 1267, expanded and amended over time.

The likelihood and desirability of formal linkage and coordination, therefore, is relatively low. Matching the punitive, controlling nature of sanctions with the state support oriented efforts of the CTC might actually be more of a hindrance than a help to both. In any case, a process of ongoing consultation has developed among the committees over time. Avoidance of redundancy and exchange of information when needed often occurs of its own accord given that committee membership is consistent in each instance, with only the chairs being different. There is, however, some logic in considering greater coordination and cooperation at the level of process. Resolutions 1373 and 1540, and Resolution 1624 of 14 September 2005 require member states to submit reports on a number of related issues. Consolidating these requirements into a single reporting process could streamline UN efforts as well as making the process more efficient for member states, helping to

[30] See, for example, the Security Council debate in response to the most recent submission of committee reports, UN doc. S/PV. 5168 of 25 Apr. 2005.

counteract an apparent trend towards reporting fatigue on their part. Indeed, the need to move beyond reporting to a more substantively driven agenda is evident in the push to improve implementation through CTED and the use of experts. Briefing the Council for the last time, the outgoing chair of the CTC Ambassador Loj stated that one of the biggest challenges was the need to get away from 'seemingly endless reporting'. She notes that 'the reality was the states felt less inclined to work with the committee because it was not clear how the information they provided was used. It appeared as if providing information only led to requests for more information.'[31]

The committee trend has brought with it a new level of institutionalization within Council procedures, especially with the 1267 Monitoring Group and the creation of the CTED. An associated development is the use of experts to strengthen and support the Committee's ability to adequately carry out its tasks. This reflects a recognition of the level of detail and expertise required to deal with the tasks at hand. The use of outside experts is an important development in a broader sense. As the range of issues on the Council's agenda has expanded (from traditional peacekeeping to ongoing conflict, to post-conflict peace-building, for example), the need for information gathering and analytical support has risen. In terms of the evolution of the Security Council procedure, therefore, this development may act as an important precedent that may be used in other issue areas.

The concept of terrorism

Inherent in the Security Council's efforts are some implicit assumptions about the nature of terrorism, at least the nature of the terrorism they are seeking to address. The first is that terrorists have money and that they need money to maintain themselves and to plan and carry out attacks; thus the use of sanctions, and the emphasis on financial control and regulation in 1373. The second, which informs resolution 1540, is that terrorists seek destruction, possibly on a massive scale. The third assumption is that terrorists need to use states in order to achieve both of these things. The use of states as the lens through which the Council views terrorism as well as the mechanism most suited to respond to it flows from these assumptions.

This is not a strategy based on an assumption that terrorism can be dealt with head-on. There is no sense in the Council's response that terrorists and their organizations can be deterred. While there is much discussion of addressing 'root causes' there is little Council effort on this side of the equation. Security Council work on terrorism does not contain within it any stated sense of a need to deal with specific conflicts or political grievances. Rather the structure of the Council's

[31] UN doc. S/PV. 5601 of 20 Dec. 2006, 3.

response is geared entirely at supporting and strengthening the ability of member states to counter terrorism through measures that will constrain terrorist activity.

Implicit in this strategy is a determination that strong states are key in the counter terrorism struggle. Council resolutions emphasize the need for steps to strengthen and control borders, and to exercise adequate monitoring and control of citizens and non-citizens within those borders, along with the financial and material assets of potential terrorists. This has taken the Council into unprecedented territory, involving it in support of, if not active engagement in, state capacity-building.

In doing so the Council has, almost unnoticed, become the centre of a significant information-gathering exercise. A CTC report recognizes this fact in making the argument for greater resources:

> Since the establishment of the CTC, its work and accumulated data have developed and increased to include not only numerous reports comprising various information and legislative measures undertaken by Member States to implement the Resolution, but also liaison activities with international and regional organizations which evolved into collect ing information regarding their own anti terrorism work, agenda, measures, and concerns. Thus, today the CTC is in possession of and has an accelerating access to a vast amount of measures and information that are all interrelated in the fight against terrorism.[32]

That said, those member states who have things to hide – in effect the ones who most need to comply – will likely continue to maintain the cloak of secrecy. While the CTC and CTED represent a new role for the Security Council, it remains the case that the CTC and other anti-terrorism measures do not as yet contain any kind of enforcement mechanisms or threat of enforcement. Nor is the Council able to pass independent judgement on the information being offered by member states. This leaves room for error, which the Council's speedy and fatally flawed condemnation of ETA in relation to the March 2004 Madrid bombings demonstrates.[33] The Council's contribution towards combating terrorism must be weighed in this context.

General Assembly/Security Council division of labour

The evolution of the Security Council approach to terrorism touches on an underlying tension between it and the General Assembly. The Council's move to deal with terrorism as a phenomenon rather than just in response to specific events, beginning with Resolution 1269 but then taking full form after 11 September, has not been greeted with overwhelming enthusiasm by the General Assembly. The Assembly sees the Council as encroaching on its territory, both in terms of approach – addressing terrorism as a general phenomenon – and function – in providing overall legal requirements for states. Indeed, the use of Chapter VII, and the language that the Council 'decides that all states shall' in contrast to the

[32] UN doc. S/2004/70 of 26 Feb. 2004, 4.

[33] SC Res. 1550 of 11 Mar. 2004.

traditional 'calls upon states' has prompted some commentators to identify a new legislative role of the Council.[34]

The requirements of Resolution 1373 draw on the provisions of the most recent conventions established by the General Assembly but in doing so, the Council moved those provisions from the realm of a convention to which a small number of states had acceded to a binding requirement on all states. The Council is, therefore, encroaching if not overstepping the General Assembly's traditional role. There is little the General Assembly can do about this beyond calling for care in Security Council action.[35] The existing division of labour is a function of the evolution of terrorism in the UN context. Terrorism clearly falls within the realm of the Council's mandate on international peace and security. In the absence of Council action during the Cold War the General Assembly filled the gap. The scope and extent of Council activity on this issue has now shifted the balance. The Council is clearly actively seized of the issue and the lead player in the UN context.

The level of Council activity is significant, and has expanded across the issue area. All of this has occurred with a remarkable degree of consensus within the Council even while the drama of the divisive debate about Iraq and its aftermath has been carried out. The sustained unanimity that the Council has demonstrated on this issue speaks to the shared sense of threat that extends to all members of the Council, not just the Permanent Five.

A shared sense of threat, however widely felt, has not translated into the General Assembly's work in a way sufficiently pervasive or significant to overcome the longest-standing obstacle to progress there: the question of a definition. The way in which the General Assembly and Security Council have dealt with the question of how to define terrorism is a further indication of the different approaches and political contexts of the two bodies. In contrast to the General Assembly, the Security Council has spent little time worrying about how to define terrorism. The Council proceeded, as did the G7 in its early statements on the issue, on the assumption that the concept was self-evident, and from the beginning its resolutions made clear that motivation was not a justification for such acts.[36] As the Council proceeded with its work it did, in fact, establish at least the parameters of a definition, if not a definition itself, thereby moving itself further into General Assembly territory. In Security Council Resolution 1566, for example, the Council 'recalls'

that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in

[34] See, for example, Paul C. Szasz, 'The Security Council starts Legislating', *American Journal of International Law*, vol. 96/4, 901 5, and Lavalle, 'A Novel, if Awkward, Exercise in International Law Making'.

[35] See, for example, the comments of Brazil in response to the briefings from the 1267, 1373, and 1540 committees in Apr. 2005, UN doc. S/PV. 5168 of 25 Apr. 2005, 8 10.

[36] See, for example, SC Res. 1269, which unequivocally condemns 'acts of terrorism, irrespective of motive, wherever and by whomever committed'.

the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, and all other acts which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The High-level Panel, established by the Secretary-General in 2003 to consider the future of the organization, picked up on the Security Council's approach and used it in its own outline of the basic elements of a definition.[37] The Secretary-General endorsed this approach in his report, *In Larger Freedom*.[38] In spite of this foundation, leaders gathered at the world summit meeting in September 2005 were able to agree to condemn terrorism – echoing the language of 1566 in stating simply that they condemned terrorism 'in all its forms and manifestations' – but could still not reach agreement on a definition.[39]

A potential shift in the balance between Security Council and General Assembly activity may occur as a result of the General Assembly's adoption of a global counter terrorism strategy in September 2006.[40] While the strategy has the benefit of providing an overarching framework for action it is unlikely to bring about a fundamental shift in the division of labour between the Assembly and the Council if for no other reason than the power the Charter gives the Council to pursue issues of international peace and security according to criteria and in ways of their own choosing.

The use of force and human rights

The shifting of the balance of action into the realm of the Security Council has implications for two other areas of concern relating to terrorism: the use of force and human rights. As this discussion demonstrates, even though the Council has moved in some significant ways to deal with terrorism, it has done so primarily at the level of process. The recognition of the right to self-defence after 11 September represented the equivalent of a handover to the United States to engage in its 'war on terrorism' without any form of Council oversight. There are a number of complex questions involved here. What sorts of responses qualify as self-defence, and at what point does the use of force become something other than self-defence over time? In using force to respond to terrorist attacks what targets are acceptable or provide utility in the struggle to combat terrorism? As the London and Madrid bombings

[37] High level Panel, *A More Secure World: Our Shared Responsibility Report of the High level Panel on Threats, Challenges and Change*, UN doc. A/59/565 of 2 Dec. 2004, 45.

[38] *In Larger Freedom: Towards Security, Development and Human Rights for All Report of the Secretary General*, UN doc. A/59/2005 of 21 Mar. 2005, 26.

[39] *2005 World Summit Outcome*, UN doc. A/60/L.1 of 15 Sep. 2005, 23.

[40] UN doc. A/RES/60/288 of 8 Sep. 2006.

demonstrate, the use of force is not always a viable option. Like the debate around the use of force in pursuit of humanitarian goals, a debate about the meaning and implications of self-defence, especially as it relates to efforts to deal with terrorism, needs to occur.

In contrast, Council actions demonstrate a consistent concern about the implications of counter terrorism efforts for human rights. This is an issue that receives attention in a number of other UN agencies and actors yet the Council has at least demonstrated an awareness of its importance by including statements about the need to maintain observance of international human rights standards in all member state and international action.[41] Although human rights are not traditionally a key factor in Security Council activities, terrorism has brought the issue to the forefront in a new way. This is especially the case in relation to Council activity under the 1267 sanctions regime, as it involves taking action against individuals. The 1267 Committee has developed procedures for ensuring that the rights of individuals who are on the list or considered for listing are protected, but this has taken time and is a process that is subject to the provision of accurate, detailed, and highly sensitive information from member states. This is where the Council must find the delicate balance between the need to address a serious threat to international peace and security and the maintenance of key provisions of the Charter.

Impact?

For all the preceding discussion of the Council's role as a unit, this process is US-driven, and was so even before the attacks of 11 September. While the US is a key actor at the Council, it is not the only one. It is not difficult to find an explanation for the strength of support for Council activity on this issue. Other leading member states have themselves been targets of terrorist activity, including the United Kingdom, Spain, Jordan, Egypt, Kenya, to name just a few. But the pervasiveness of the perception of threat is also an indication of the difficulty of the task at hand. However important and innovative Security Council activity may be, no one is arguing that the Council is or will be the primary actor on this issue on the world stage. As with other issues of international peace and security, Security Council action on terrorism ultimately works as a facilitator and supporter of state action, not as a substitute or alternative to it. As such, its ability to have an impact on terrorism is inextricably tied to the ability of member states to develop an effective, functional counter terrorism strategy based on an accurate, in-depth understanding of its causes and nature.

[41] For more on this see Foot, 'The United Nations, Counter Terrorism and Human Rights'.

CHAPTER 28

THE SECURITY COUNCIL AND THE USE OF PRIVATE FORCE

SARAH V. PERCY

The United Nations has taken an active role in commenting upon and seeking to regulate private force since mercenaries first made modern headlines in the Congo in the 1960s. The more recent appearance of private companies which provide military services to foreign states or other entities has again brought the mercenary question into the spotlight. Private military companies (PMCs), such as Executive Outcomes and Sandline, and private security companies (PSCs) such as ArmorGroup, Aegis, and Triple Canopy in Iraq, have grabbed international headlines since the 1990s. Much of the attention that PSCs, PMCs, and mercenaries receive is negative. Moreover, the former UN Special Rapporteur on the mercenaries question, Enrique Bernales Ballesteros, argues that the threat posed by private force remains the same whether it is provided by private firms or by mercenaries.[1] He argues that 'as a general rule, the contracts they [private firms] sign constitute acts of intervention in the internal affairs of a State, although consented to by the Government, where an essential military function is carried out in exchange for a

[1] UN doc. A/53/338 of 4 Sep. 1998, 8.

handsome recompense. There is a clear association between such conduct and mercenary acts.'[2]

Ballesteros has been a particularly fierce critic of mercenaries. In a typical statement, Ballesteros wrote:

> mercenaries are involved in the following: internal and international armed conflict; assassination attempts against political leaders; acts of sabotage and creation of internal disorder; covert operations on behalf of their paymasters or in the service of Powers which in this way cover up their intervention in States whose Governments they wish to desta bilize; activities undermining the constitutional order of States; participation in terrorist attacks; participation in all kinds of illicit trafficking, particularly in people, arms, drugs, gems and minerals ... [and] acts undermining the security and economies of States.[3]

If what Ballesteros says about mercenaries (and according to his rubric, PMCs and PSCs) were true, then this chapter would be straightforward: it would examine how the Security Council (SC) actively responds to the clear threat to international peace and security posed by mercenaries. Indeed, the General Assembly (GA) and its related bodies have taken an active, if not actively hostile, approach to the control of mercenaries that treats all types of private force as very serious threats to states. However, the Security Council has paid only minimal attention to individual mercenaries, and no attention to private security companies, and has only once directly referred to a private military company: in the case of Côte d'Ivoire in 2003. The question for analysis is thus not 'what is the relationship between the UN Security Council and mercenaries', but rather 'why is there no relationship between the Security Council and mercenaries?' and 'what does it mean (or matter) if the GA and the Security Council have taken different approaches?'

I argue that in fact mercenaries in the 1960s, 1970s, and 1980s posed very little threat to international peace and security and so were justifiably ignored by the Security Council, and that the implications of devolving military functions to the private sector have not yet posed such a threat, even if they might in the future. The GA response reflects a strong negative perception of mercenaries which did not correspond to the reality of mercenary actions between the 1960s and 1980s, but became so strongly institutionalized that PMCs and PSCs were treated inappropriately as mercenaries when they appeared on the international stage in the 1990s. The GA has unquestionably taken the leading role in relation to private force, but its approach may no longer suit the challenges posed by the modern spectrum of private actors selling military services on the international stage, and has closed off potential options for the Security Council.

[2] UN doc. E/C.N 4/1998/31 of 27 Jan. 1998, 22. Ballesteros also argues that mercenaries and private companies are the same in UN doc. E/CN.4.2004/15 of 24 Dec. 2003, at 10 11. Ballesteros was replaced in July 2004 by Shaista Shameem, who acknowledges that there may be a difference between mercenaries and PSCs but also indicates that companies which engage in combat ought to be included within the scope of any new international law created to regulate mercenaries. UN doc. A/60/263 of 27 Sep. 2005, 17.

[3] UN doc. E/CN.4.2003/16 of 29 Nov. 2002, 8.

I make this argument in four steps. First, I provide brief definitions of 'mercenaries', 'PMCs', and 'PSCs'. In the second and third sections I outline the approach taken towards mercenaries in the General Assembly and in the Security Council. In the third section, I argue that the lack of Security Council attention to issues surrounding private force has had two main effects: first, the dominance of the GA approach has constrained the range of possibilities open to the Security Council by closing off the possibility of engaging private force for peacekeeping, and secondly, it has placed the UN on shaky ground as a potential source of regulation for all types of private force.

Definitions

The three different manifestations of private force addressed in this chapter form a continuum, with individual mercenaries who will sell to the highest bidder at one extreme, and companies formed with very close ties to their home state (and who, indeed, will only sell to their home state) at the other. Most types of private force can be placed along this continuum, but the opposite ends are related only in the sense that they both involve the sale of military services for private gain. Mercenaries, private military companies, and private security companies thus require careful definition to make sure that their differences and similarities are clear.

A mercenary can be defined as an individual soldier who fights for a state other than his own, or for a non-state entity to which he has no direct tie, in exchange for financial gain. Private military companies (PMCs) are tightly organized companies with a clear corporate structure, that provide military services, including combat, in exchange for payment for states or other actors. Private security companies (PSCs) are similarly organized companies which provide military services stopping short of combat, in exchange for payment. These services include translation, close protection, interrogation, logistics and training, as well as security services for NGOs and corporations. PSCs, unlike PMCs, will not engage in combat except in self-defence; the two types of company are similar in that they will work for a variety of states, including, in some cases, the state in which they are based.

Since the United Nations was formed, all three types of private force have played a role in international politics. Mercenaries were most prevalent in the 1960s and 1970s, but are still active today, as the 2004 coup attempt in Equatorial Guinea demonstrates. The PMCs Sandline and Executive Outcomes (EO) received a great deal of international attention for their operations in Sierra Leone, Angola, and Papua New Guinea in the mid- to late-1990s. Both EO and Sandline have since closed their doors, and there is currently no major company which will provide combat services.

PSCs have received international attention since the conflict in Afghanistan in 2001, but especially because of their use during and after the war in Iraq.[4] In 2003, one in ten American personnel in Iraq was a private contractor, compared with an estimated one in fifty during the first Gulf War,[5] demonstrating the significant growth in the industry. Examples of PSCs include the American companies Dyncorp, Blackwater, MPRI, and Triple Canopy; their British counterparts include ArmorGroup, Control Risks Group, Aegis, and Olive Security.

The United Nations has been involved with all three of these variants. The General Assembly and its related bodies (particularly the United Nations High Commission on Human Rights) have dealt with mercenaries, PMCs, and PSCs; whereas the Security Council has focused on mercenaries and PMCs only when they posed a specific threat to international peace and security.

The General Assembly's Approach to Mercenaries

There have been over one hundred GA resolutions touching on the question of mercenaries, beginning in the late 1960s. The two best known are the Definition of Aggression,[6] which states that the use of mercenaries constitutes an act of aggression, and the resolution on the 'Importance of the universal realization of the right of peoples to self-determination and the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights', which states that using mercenaries against national liberation groups is a criminal act and that mercenaries themselves are criminals.[7]

There have been two other streams of attention concerning mercenaries, from bodies related to or directed by the GA. In 1979, the GA decided to consider the drafting of an international convention against mercenaries.[8] The following year, the Assembly established an ad hoc committee charged with the elaboration of such a convention.[9] The committee met from 1980 until 1989, and its proceedings provide a clear picture of how member states viewed the mercenary problem.

[4] Precursors to these companies existed, but not on the same scale.

[5] Deborah Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005), 1.

[6] GA Res. 3314 (XXIX) of 14 Dec. 1974.

[7] GA Res. 31/34 of 30 Nov. 1976. This resolution has been reaffirmed annually and '*Reaffirms* that the practice of using mercenaries against national liberation movements and sovereign States constitutes a criminal act and that the mercenaries themselves are criminals' and calls for legislation to be enacted by states.

[8] GA Res. 34/140 of 14 Dec. 1979.

[9] GA Res. 35/48 of 4 Dec. 1980.

The committee's main concerns can be divided into three categories. First, states were concerned that mercenaries threatened human rights, specifically national self-determination, and threatened the independence and territorial integrity of emerging states. Secondly, the committee was worried that mercenaries complicated and intensified internal disputes by bringing in external interests. Finally, the committee was agreed that there could be no such thing as a 'good' mercenary or a mercenary who fights for the right reasons: all mercenaries are dangerous simply because they are mercenaries. The ad hoc committee's deliberations resulted in the drafting of the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries, which came into force in 2001 but still only has 27 parties, none of whom are Permanent Members of the Security Council.[10]

In 1987, the GA created the office of Special Rapporteur to deal with the mercenary question. Enrique Ballesteros was the first officeholder and served until 2004, when he was replaced by Shaista Shameem. In August, 2005, it was decided that the Special Rapporteur should be replaced by a working group. Ballesteros' reports had a consistent character and condemned mercenaries on two central grounds. First, he argued that mercenaries violated and threatened human rights, especially the right to self-determination. Secondly, Ballesteros was concerned that mercenaries were particularly dangerous actors because they lacked accountability. Ballesteros saw no real difference between PMCs, PSCs, and mercenaries.[11] As he was the Rapporteur when PMCs and PSCs were making international waves, during the 1990s, he was able to help shape the view that all private force is mercenary, and that mercenaries are dangerous actors.

Mercenary Action 1960–89: General Assembly Overreaction?

A person unacquainted with the history of the use of mercenaries, presented with the General Assembly's resolutions, the UN Special Rapporteur's reports, the ad hoc committee's deliberations, and the UN Convention itself, might reasonably conclude that mercenaries had posed a grave threat to international peace and in particular to the self-determination of new states. That same individual might well be surprised to find out that mercenaries during this period were generally ineffective and, except in one or two cases, did not have any significant effect on the wars of national liberation or their outcomes. This section provides a brief synopsis of the six major cases of mercenary action between 1960 and 1989, and argues that the GA's reaction was out of step with reality because of the particular threat mercenaries were seen to pose to national self-determination.

[10] As of early 2006. The text is annexed to GA Res. 44/34 of 4 Dec. 1989.

[11] See UN doc. A/53/338 of 4 Sep. 1998, 7.

Mercenaries were involved in conflicts in the Congo between 1960 and 1968; in the Biafran civil war, mainly in 1970; in Angola in 1976; in Benin in 1977; in the Seychelles in 1981; and in Comoros on several occasions between the late 1970s and 1995.

Mercenary intervention in the Congo was perhaps the most problematic of all the cases mentioned.[12] Shortly after Congolese independence was declared in 1960, the country fell into civil war and the province of Katanga seceded. Katanga's mineral wealth meant that its secession was a significant problem for the new state, and interference by Belgian colonial and financial interests was widely assumed to have taken place.[13] Katanga hired mercenaries to assist it in the increasingly complicated civil war. By June 1962 there were at least 300 mercenaries in Katanga.[14] Many were Belgian, but they came from a variety of European states, as well as South Africa and Rhodesia. Mercenaries inconvenienced the UN Operation in the Congo (ONUC) and in August 1962, the ONUC command launched an operation to capture mercenaries in Katanga, successfully seizing 338 of them.[15] Most of the captured mercenaries were deported; but their return to the Congo caused problems for ONUC until its operations ended in 1964.[16]

ONUC did not leave behind peace in the Congo. Mobutu Sese Seko, who had ultimately come to power, hired the mercenaries Mike Hoare and Jacques Schramme. In 1966 they successfully defended Mobutu's regime from a coup attempt, but the unit they commanded was disbanded soon after under pressure from the Organization for African Unity.[17] In 1967, Schramme and his compatriot, Bob Denard, launched a mercenary rebellion against Mobutu from neighbouring Angola, thereby internationalizing the Congo's problems. The rebellion caused serious problems for Mobutu – at one stage Schramme was in a strong enough position to deliver an ultimatum demanding negotiations – and took nearly six months to quash.[18]

Despite the problems caused during the mercenary rebellion of 1967, mercenaries in the Congo were generally regarded as ineffective. Ralph Bunche, who held several UN offices relating to ONUC, complimented a French article on mercenaries 'since it shows that they are a group of incompetent and fanatical psychopaths

[12] See Wilfrid Burchett and Derek Roebuck, *The Whores of War: Mercenaries Today* (Harmonds worth: Penguin Books, 1977); Smith Hempstone, *Rebels, Dividends and Mercenaries: The Katanga Story* (New York: Frederick A. Praeger, 1962); Anthony Mockler, *The Mercenaries* (London: Macdo nald, 1969); Anthony Mockler, *The New Mercenaries* (London: Sidgwick and Jackson, 1985); Peter Tickler, *The Modern Mercenary: Dog of War or Soldier of Honour* (Wellingborough. Patrick Stephens, 1987).

[13] S. A. G Clarke, *The Congo Mercenary: A History and Analysis* (Johannesburg: South African Institute of International Affairs, 1968), 4.

[14] Ernest W. Lafever, *Uncertain Mandate: Politics of the UN Congo Operation* (Baltimore: Johns Hopkins University Press, 1967), 51.

[15] Ibid., 53.

[16] Mockler, *New Mercenaries*, 127 n.

[17] Mockler, *Mercenaries*, 180 1.

[18] For details see ibid., 182 91.

who completely failed in what they were trying to do and did an immense amount of damage to Katanga in the process', and went on to suggest that the article demonstrated the 'depths of silliness, destructiveness, and sheer irresponsibility' of the Congo mercenaries.[19] Brian Urquhart holds a similar opinion, and believes that the mercenary soldiers fighting for Katanga in 1960–1 were ineffective soldiers. Despite a 'flamboyant' approach, they were essentially a 'complete fraud'.[20] Tickler argues that the assistance provided by mercenaries to Mobutu in 1966 was not helpful and 'the mercenary side of the operation had been a total failure.'[21] The presence of mercenaries, however, was a blow to the Congo's identity as well as a problem for its political progress, because the presence of white mercenaries symbolized the state's continued reliance on external assistance.[22]

Mercenaries fought on both the Biafran and, in much smaller numbers, Nigerian sides during the 1967–70 civil war. Their actions proved to be largely ineffective,[23] despite all the attention paid to them by the international media. De St Jorre argues that mercenaries in Biafra performed 'one useful service in destroying what remained of the legendary invincibility of the white soldier of fortune in Africa'.[24]

In 1975 and 1976, mercenaries made a dramatic, but again less than effective, appearance in the Angolan civil war which erupted between UNITA, the FNLA, and the MPLA. A previously court-martialled, Cypriot-British, ex-paratrooper named Costas Georgiou, or 'Callan', was selected as the leader of an operation to assist the FNLA. Recruiting went on in London through advertisements in newspapers, and a small number of men were recruited, some of whom had 'positively unmilitary' backgrounds.[25] The mercenaries were only active between 20 January and 17 February 1976, and only faced action for part of that time.[26] Some of the recruits from London refused to fight and deserted; some of these men were executed, and the mission deteriorated into a bloodbath among the mercenaries without having much military effect. The mission was 'a shambles, a text-book [sic] of military bungling and inefficiency which no ruthlessness of method could offset'.[27]

[19] Letter dated 15 Mar. 1963 from Ralph Bunche to Mr. Jean Beck. UN Archive. Office for Special Political Affairs, UN Operation in the Congo (ONUC) Box S 0219 006 13.

[20] Telephone interview with Brian Urquhart, 17 Jul. 2003.

[21] Tickler, *Modern Mercenary*, 26 7.

[22] J. M. Lee, *African Armies and Civil Order* (London: Chatto and Windus, 1969), 6.

[23] John de St Jorre, *The Nigerian Civil War* (London: Hodder and Stoughton, 1972), 312. See also Guy Arnold, *Mercenaries: The Scourge of the Third World* (London: Macmillan, 1999), 21; Mockler, *New Mercenaries*, 123.

[24] De St Jorre, *Nigerian Civil War*, 313. There was one notable exception to this record of incompetence. Count Carl Gustav von Rosen, a Swede, flew planes for the Biafrans; however, his intense belief in the Biafran cause differentiates him from the other foreigners involved in the conflict. De St Jorre, *Nigerian Civil War*, 338; Mockler, *New Mercenaries*, 33 138.

[25] Mockler, *New Mercenaries*, 172.

[26] Ibid.

[27] Burchett and Roebuck, *Whores of War*, 83. See also Gerry Thomas, *Mercenary Troops in Modern Africa* (Boulder, CO: Westview Press, 1984), xi.

Thirteen mercenaries were captured by the MPLA and put on trial, charged with the crime of being a mercenary. Arguably, only two of these soldiers had committed any criminal acts,[28] apart from the crime of being a mercenary, which did not even exist under Angolan law.[29] The mercenaries in Angola had made no military gains and succeeded in killing only each other. The Angolans, however, responded swiftly and severely. The Angolan government not only prepared an elaborate trial, but also invited experts from around the world to form an International Commission of Experts on Mercenaries to observe the trial and make recommendations, which included a draft convention against the use of mercenaries.[30] The Angolan response to these foreign troops, caught before they had even begun intervening in the civil war, is a clear illustration of how states overreacted to mercenary action.

Mercenaries were next involved in a coup attempt in Benin in 1977, led by Bob Denard. The coup attempt failed when Denard and his men were driven away by a machete-wielding crowd.[31] Denard was also involved in a series of coups in Comoros between 1975 and 1995. The islands are so remote that it took the outside world some time to realize that Denard had organized a counter-coup against his former employers in 1978 and taken on the name of Colonel Said Mustapha M'Hadju, and become the Minister of Defence.[32] He made one last coup attempt in 1995, and was removed with French intervention.[33]

The final major mercenary episode of the 1960–89 period occurred in the Seychelles. In 1981, the mercenary Mike Hoare, who had been entangled in mercenary operations in the Congo, headed a botched coup attempt. Disguised as a rugby team known as the Ancient Order of Frothblowers, the mercenaries were meant to carry their weapons, hidden inside Christmas gifts for local children, in their 'kit bags'. One of the mercenaries accidentally went through the 'Something to Declare' line at customs, his gun was discovered, and the mercenaries seized the airport, where they remained essentially trapped. They ultimately escaped to South Africa in a hijacked plane. The South African authorities tried and imprisoned Hoare for the hijacking.[34]

[28] Robert E. Cesner and John W. Brant, 'Law of the Mercenary: An International Dilemma', *Capital University Law Review* 6 (1977), 346. The mercenaries Callan and McKenzie were charged with homicide, the other eleven with offences relating to mercenarism. All thirteen were found guilty; four were sentenced to death, including Callan and McKenzie, and executed, and nine were given prison sentences. Tickler, *Modern Mercenary*, 95.

[29] Mike J. Hoover, 'The Laws of War and the Angolan Trial of Mercenaries: Death to the Dogs of War', *Case Western Reserve Journal of International Law* 9 (1977), 338.

[30] See Cesner and Brant, 'Law of the Mercenary', Hoover, 'Laws of War', George H. Lockwood, 'Report on the Trial of Mercenaries: Luanda, Angola, June 1976', *Manitoba Law Journal* 7 (1976). The resulting convention was the Luanda Draft Convention for the Prevention and Suppression of Mercenarism, the text of which can be found in Cesner and Brant, 'Law of the Mercenary', 29.

[31] Mockler, *New Mercenaries*, 246.

[32] Ibid., 253, 56.

[33] In 2000, the *Guardian* exposed Denard's latest exploit, the apparent takeover attempt of a nudist colony in the South of France. Jon Henley, 'Dogs of War in Nudist Camp', *Guardian*, 19 Aug. 2000.

[34] Mockler, *New Mercenaries*, 297 309; Tickler, *Modern Mercenary*, 100 16.

Of the six main cases of mercenary intervention, it is worth noting that all were in Africa, none was successful, and only two caused serious problems for the state concerned. Mercenary action in Comoros was undeniably serious, but it occurred in a location so peripheral that it took some time for the outside world to become aware of events. Given Comoros' remote location, tiny population, and economic unimportance it is hardly surprising that coup attempts were possible and very unlikely that such coups would lead to regional instability. The Congo remains as the only other case where mercenaries were, at some stages, effective enough to cause serious problems.

Of course, even though mercenaries in Africa were ineffective and perhaps not particularly threatening on the ground, the fact that they demonstrated that it was possible for a crack Western team of mercenaries to intervene in African conflicts might have been considered to be threatening enough. The most compelling explanation for the overreaction to mercenaries no doubt comes from the political context of decolonization and national self-determination. The presence of white mercenaries (even not very good ones) in a decolonizing Africa, seeking to demonstrate its independence and self-reliance, signalled significant weakness and the persistence of colonialism. However, even the threat to the project of decolonization (or the appearance of such a threat) must be put into context; the failure of one operation may be regarded as a misfortune, but the failure of six looks like incompetence.

As a result, the reaction in the General Assembly, with its vocal and growing majority of newly independent states, was far more political than it was practical. The GA was far less concerned with what mercenaries actually *did* then with what the presence of mercenaries might *mean*. The presence of white mercenaries visibly undermined African claims to independence and self-reliance, and strong feelings about mercenaries in the context of national self-determination were the initial impetus for regulating and controlling mercenaries.

The central difficulty with overreacting to the practical threat posed by mercenaries, and with associating mercenaries with threats to national self-determination, is that it prevented the GA and its associated bodies from responding sensibly to the appearance of private military companies in the 1990s. When PMCs first appeared they were dealt with according to the existing, national self-determination based, rubric already used in the GA and by the Special Rapporteur.[35]

PMCs were active in Angola, Sierra Leone, and Papua New Guinea. While each instance of private military company activity had its flaws, it is hard to see how they challenged national self-determination. In Sierra Leone, for example, the private military company Executive Outcomes (EO) was hired by the state to help it resist a particularly violent rebel movement. Ballesteros argued that EO 'had no qualms about recruiting mercenary elements . . . a factor which would undermine the internal stability of any country'.[36] This judgment seems odd, given that Sierra

[35] UN doc. A/53/338 of 4 Sep. 1998, 6. [36] Ibid., 7.

Leone was already suffering grave internal instability and that EO brought a measure of peace significant enough to allow the holding of elections. However, the Special Rapporteur continued to condemn private military companies, no matter what the substance of their actions, until his last report in 2004. In this report, he summarizes his activities since 1987 and states that 'whether individually, or in the employ of contemporary multi-purpose security companies, the mercenary is generally present as a violator of human rights.'[37] He goes on to say, without providing evidence, that 'military security companies' have gone unpunished for murders, rapes and kidnappings of children.'[38] Ballesteros' deeply negative view of private force coloured the UN response to new private military and security companies, and has led to the institutionalization of hostility to private force within the UN, the implications of which will be addressed below.

Approaches to Private Force in the Security Council

While the General Assembly has dealt with mercenaries in terms of the threat they pose to national liberation, and has opposed all three types of private force, the Security Council has dealt with mercenaries only in terms of the threat they pose to international security, and only dealt once with a private military company. This is, of course, not surprising given the SC's institutional focus on peace and security; but it has resulted in a series of resolutions which more accurately reflect the reality of mercenary action. Looking at mercenaries purely in terms of their activities, as opposed to their impact on national self-determination, the Security Council dealt with mercenaries rarely.

There are four sets of Security Council resolutions dealing with mercenaries: on the Congo in the 1960s, Benin in the 1970s, the Seychelles in the 1980s, and in West Africa after 2000. The first series called for the removal of mercenaries from the situation in the Congo during the ONUC peacekeeping mission between 1960 and 1964.[39] By 1964, the Security Council called for the removal of mercenaries as a 'matter of urgency'.[40] There were also resolutions seeking to control mercenaries in the 1966–8 coup attempts. The first resolution, in 1966, was especially concerned with the use of Angola (then under Portuguese control) as a base for mercenary operations, and called for all states, especially Portugal, to refrain from assisting

[37] UN doc. E/Cn.4/2004/15 of 24 Dec. 2003, 11. [38] Ibid.
[39] SC Res. 161 of 21 Feb. 1961; SC Res. 169 of 24 Nov. 1961. [40] SC Res. 199 of 30 Dec. 1964.

mercenaries.[41] In 1967, the Council adopted two further resolutions in relation to the Angola/Congo situation, declaring its concern at the threat posed by mercenaries to the 'territorial integrity and independence of states' and condemning Portugal's failure to prevent the use of Angola as a mercenary base.[42]

The next Security Council resolution on mercenaries dealt with the situation in Benin.[43] The resolution reaffirmed the condemnation of mercenaries first mentioned in Security Council Resolution 241 of 1967, and then made a stronger condemnation. The resolution on Benin further called upon states to 'to exercise the utmost vigilance against the danger posed by international mercenaries and to ensure that their territory and other territories under their control, as well as their nationals, are not used for the planning of subversion and recruitment, training and transit of mercenaries designed to overthrow the Government of any Member State'.[44]

The Security Council adopted further resolutions dealing with the mercenary coup attempt in the Seychelles. The hijacking of an aircraft during the coup attempt brought special attention. The Council stated that it was 'deeply concerned at the danger mercenaries represent for all States, particularly the small and weak ones'.[45] The Council reiterated its resolution of 1967 and went on to condemn 'all forms of external interference in the internal affairs of member states including the use of mercenaries to destabilize states and/or to violate the territorial integrity, sovereignty and independence of states'.[46]

Between the mid-1980s and mid-1990s, the Security Council did not comment on mercenary action, and, perhaps more tellingly, made no comment on the actions of PMCs in Sierra Leone, Angola, and Papua New Guinea during this period. However, the Security Council has made a number of resolutions relating to the use of mercenaries in West Africa since 2000.

The Security Council raised special concerns in relation to Côte d'Ivoire, where mercenaries were actively working and where the government had considered hiring the private military company, Northbridge Security Services.[47] The Council urged 'all Ivorian parties to refrain from any recruitment or use of mercenaries or foreign military units and [expressed] its intention to consider possible actions to address this issue'.[48]

The Council has also made resolutions relating to the problems caused by mercenaries in Liberia and in West Africa more generally. In 2005, the Council

[41] SC Res. 226 of 14 Oct. 1966.

[42] SC Res. 239 of 19 Jun. 1967; SC Res. 241 of 15 Nov. 1967.

[43] SC Res. 405 of 14 Apr. 1977.

[44] Ibid.; and reiterated in SC Res. 419 of 24 Nov. 1977.

[45] SC Res. 507 of 28 May 1982; and SC Res. 496 of 15 Dec. 1981 made similar condemnations and despatched a Committee of Inquiry to the Seychelles.

[46] SC Res. 507 of 28 May 1982.

[47] Jack Straw, the UK Foreign Secretary, decried the potential use of mercenaries and said it would threaten the peace process. Rebecca Allison, 'Mercenary Warning for UK Firm,' *Guardian*, 2 Apr. 2003.

[48] SC Res. 1479 of 13 May 2003. This resolution clearly refers to the Northbridge offer as well as the mercenaries already active in Côte d'Ivoire.

recognized 'the linkage between the illegal exploitation of natural resources such as diamonds and timber, illicit trade in such resources, and the proliferation and trafficking of arms and the recruitment and use of mercenaries as one of the sources fuelling and exacerbating conflicts in West Africa, particularly in Liberia'.[49] Security Council Resolution 1467 of 18 March 2003 explicitly asserted that the proliferation of small arms and mercenary activity is a threat to West Africa.

The Security Council's approach reveals that mercenaries were seen as threats to international peace and security far less often than they were perceived as danger to national liberation. The lack of Security Council attention to the questions posed by PMCs and PSCs suggests that these actors have not presented the same threat to international peace and security as their more mercenary forebears, but that old-fashioned mercenaries operating in West Africa today are still a significant security problem for the region.

The Council's approach provides us with clues about how new forms of private force ought to be treated today. Matters involving mercenaries came to the Council's attention for three main reasons. First, the Security Council became involved when there was a threat to the territorial integrity or existence of a particular state, as it did in all the cases outlined above. Secondly, the Council was concerned when mercenaries internationalized a conflict by operating within one country from a base in another, or with another country's support. This was the case in both phases of mercenary involvement in the Congo, and again in the Seychelles. Finally, the Council has recognized that the flow of African mercenaries between West African conflicts poses a threat to the security of West African states and the region as a whole. These issues are a more realistic threat to the international system than the threats that mercenaries posed to national self-determination more generally in the 1960s.

Conversely, the General Assembly has treated private forces as *inherently* threatening, regardless of their employer and regardless of their behaviour on the ground. The difficulty with the GA approach is that a belief in that private uses of force are wrong by nature, regardless of what private fighters do and how they do it, is singularly unsuited to dealing with PMCs and PSCs.

Implications

The different approaches of the GA and the Security Council to the mercenary question have two important implications. First, while the Security Council's approach to mercenaries has been cautious, the more radical GA approach has

[49] SC Res. 1607 of 21 Jun. 2005. An earlier resolution, SC Res. 1478 of 6 May 2003, called upon member states to curb the movement of mercenaries and small arms fuelling the conflict in Liberia.

become firmly entrenched within the wider UN system and the GA has taken the lead in dealing with new manifestations of private force. This hostility has closed off one potential avenue for the Council: the use of private force in peacekeeping operations in combat. Secondly, the GA's more vocal response has meant that its approach has become dominant within the UN, making regulation of the private security industry and the continued legal control of mercenaries more difficult. There are, however, considerable merits in the idea of mitigating the negative effects of private force on the basis of what private fighters do, rather than attempting to make a blanket condemnation of all types of private force. Moreover, focusing on private force only when it poses a threat to national self-determination obscures the scope and nature of threats posed by private actors in the international system more generally.

Institutionalized dislike of private force within the General Assembly and its constraints on the Security Council

The GA's negative response to mercenaries has been deeply institutionalized within parts of the United Nations, with the result that new instances of private force have been treated negatively by the extensive network of bodies associated with the General Assembly.

The early response to mercenaries by the GA was reinforced by swift action to create law outside the UN system. In 1974–6, the Diplomatic Conference on International Humanitarian Law, under Nigerian and American leadership, began to draft what would become Article 47 of Protocol I additional to the Geneva Conventions, which deprives mercenaries of combatant status. The early adoption of laws to control mercenaries leaves many with a sense that mercenaries, PMCs, and PSCs are illegal, even though in reality no such explicit ban exists.[50] Article 47 does not criminalize mercenaries, it merely removes from them the protection of combatant status.

The association between anti-mercenarism and national liberation also reinforced hostility towards private force and ensured that such hostility stayed active even when mercenaries and other manifestations of private force were not common, as they were not through much of the 1980s. The inclusion of anti-mercenary provisions in GA resolutions promoting or protecting self-determination extended the life of the former by attaching them to the latter. As long as the debate over national

[50] P. W. Singer, 'War, Profits and the Vacuum of Law: Privatized Military Firms and International Law', *Colombia Journal of Transnational Law* 42, no. 2 (2004), 531. Moreover, it seems clear that neither PMCs nor PSCs fall under the definition of Article 47, which requires that mercenaries actively engage in hostilities (excluding most PSCs) and that the mercenary be a member of the armed forces of a party to the conflict. Even if companies wished to engage in hostilities, they could avoid Article 47 by enlisting in the armed forces of their employers, a tactic that was taken by Executive Outcomes in Sierra Leone.

self-determination gained speed, it did not matter if concerns about mercenaries lost steam, because the two were associated both in the public eye and in the letter of UN documents. An excellent example of this is the series of repeated resolutions declaring the practice of mercenarism to be a criminal act, alongside other acts which threatened national self-determination discussed earlier.

During the 1980s, when mercenaries and other types of private force were relatively rare on the international stage, the GA kept anti-mercenary feeling alive. For example, the inclusion of a draft article on mercenaries in the Draft Code of Crimes against the Peace and Security of Mankind[51] alongside genocide and slavery demonstrates how, even during a period where mercenaries were inactive, hostility towards them persisted.

The repeated mention of anti-mercenarism in UN documents and in documents of international law, including the Draft Code of Crimes against the Peace and Security of Mankind, had a further institutionalizing effect. Those working *within* international institutions, in particular the International Law Commission and various other organs of the UN, were left with a constant impression that mercenaries were illegal actors needing eradication. Those 'in the know' knew that mercenaries were dangerous, and these individuals were responsible for making policy in the event that any mercenary action causes problems. Thus, it is not surprising that when PMCs and PSCs emerged in the 1990s, they were dealt with within the parameters of existing international law and of the UN's traditional approach, even though PMCs were quite different from mercenaries in that they would only work for states, and PSCs are more different still.

The institutionalization of hostility towards private force might make the regulation of the complex world of private security more difficult. When actors pose a threat to international peace and security, or to territorial integrity, it makes sense to ensure that they are regulated. In other words, it makes sense to regulate private force on the basis of what private fighters do, not on their status as private fighters. One way to do this is to set out strict rules about when and how private fighters can be hired. Given that PSCs have actively sought regulation and are currently employed by many states around the world, it seems counterproductive to work from the starting point that PSCs are mercenaries and that there is something inherently problematic with actors who sell military services. The genie of private force is firmly out of the bottle, and treating the decision of many states, NGOs, and even the UN itself to use private force as an incidence of mercenarism will do nothing to regulate the situation. Persisting in treating these actors as mercenaries will only serve to alienate them.

[51] See Timothy L. H. McCormack and Gerry J. Simpson, 'The International Law Commission's Draft Code of Crimes against the Peace and Security of Mankind: An Appraisal of the Substantive Provisions', *Criminal Law Forum* 5, no. 1 (1994), for a draft of the code. Mercenaries were ultimately left out of the 1996 Draft Code submitted by the International Law Commission to the General Assembly, but their inclusion in the original draft still reflects hostility towards private force.

A statement from PSCs is appended to the final (2005) Special Rapporteur's report. In the statement, PSCs argue:

> in light of the fact that PSCs are frequently employed by UN member states and the UN own [sic] entities, we strongly recommend that the UN re examine the relevance of the term 'mercenary'. This derogatory term is completely unacceptable and is too often used to describe fully legal and legitimate companies engaged in vital support operations for humanitarian peace and stability operations.[52]

There is no question, however, that as PMCs and PSCs have the capacity to use lethal force, some regulation ought to be in place which deals with such agents, and the UN ought to be the starting point for regulation of an internationally active industry providing military and security services. The current approach of the United Nations Working Group on Mercenaries is, however, more likely to alienate these companies, which themselves advocate regulation, than it is to bring them into a regulatory framework which will benefit the international system.

The institutionalized hostility towards mercenaries in the General Assembly and its related bodies has had a direct impact upon the range of choices available to the Security Council. If mercenaries have not been as dangerous as the GA response would lead us to believe, does this mean that private force might be a useful tool for the SC? It has been suggested that PMCs could 'fill a void' left by problems with UN peacekeeping,[53] and it has been widely recognized that the private force option might be cheaper than peacekeeping,[54] and that in some circumstances (particularly where conventional aid no longer works, where intervention by states is politically or economically impossible, or situations where aggressive peace-enforcement is required) private force might provide better or more feasible assistance than a UN mission.[55] Indeed, Brian Urquhart has argued that the UN could be well served by private assistance during peacekeeping missions.[56] However, although officials inside the UN and commentators outside it have recognized that private military force might play a useful role, either replacing or complementing existing UN peacekeeping missions in a combat capacity, they firmly indicate that it is unlikely ever to happen.

Interviews with UN officials indicate that the negative image of mercenaries reflected by the GA would prevent the UN from ever using private force in a peacekeeping capacity, no matter how useful it might be. David Harland, the chief

[52] UN doc. A/60/263 of 17 Aug. 2005, 21.

[53] Juan Carlos Zarate, 'The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder', *Stanford Journal of International Law* 34 (1998), 161.

[54] Christopher Coker, 'Outsourcing War', *Cambridge Review of International Affairs* XIII, no. 1 (1999), 108; David Shearer, 'Outsourcing War', *Foreign Policy* (1998), 90.

[55] Herbert M. Howe, 'Private Security Forces and African Stability: The Case of Executive Out comes', *Journal of Modern African Studies* 36, no. 2 (1998), 309; William Reno, 'Internal Wars, Private Enterprise and the Shift in Strong State Weak State Relations', *International Politics* 37, no. 1 (2000), 68.

[56] Brian Urquhart, 'For a UN Volunteer Military Force', *New York Review of Books*, 10 Jun. 1993.

of the Best Practices Unit in the Department of Peacekeeping Operations (DPKO) believes that the potential use of private military companies faces a very serious obstacle in the form of political liabilities created by the negative images of mercenaries.[57] Michael Møller, the Director of the Executive Office of the Secretary-General, believes that the stigma of mercenaries, arising from their image as 'roughnecks' interested only in 'greed and profit', would make it impossible for PMCs to be used in a peacekeeping context, even though their staff might be superior to some of the peacekeeping contingents currently provided to the UN.[58] While UN officials can see the merits of private force privately, they believe that member states' dislike of mercenaries would prevent the option from ever being seriously mooted.[59]

The only exception to this dislike appears to be the use of private security forces, in a strictly non-combat capacity, to assist the UN in humanitarian tasks or to train state militaries as part of security sector reform. However, even when private force is used in these less controversial roles, UN officials are reluctant to speak openly about it. When asked about the use of PMCs in peacekeeping during a press conference, Kofi Annan 'bristled'[60] at the suggestion that the UN would ever consider working with the companies, saying 'first of all, I don't know how one makes a distinction between respectable and non-respectable mercenaries.' Annan went on to remark that he was not aware that he had made any statements implying that he would accept the use of mercenaries in tasks associated with peacekeeping, but that he had looked at 'the possibility of bringing in other elements – not necessarily troops from governments – who might be able to provide security, assist the aid workers in the United Nations High Commissioner for Refugees (UNHCR) and protect them' when no aid from governments was forthcoming to separate armed fighters from refugees on the Rwanda–Zaire border.[61] The Secretary-General reiterated these remarks in the Ditchley Foundation lecture, which he delivered in 1998, pointing out that

> Some have even suggested that private security firms, like the one which recently helped restore the elected President to power in Sierra Leone, might play a role in providing the United Nations with the rapid reaction capacity it needs. When we had need of skilled soldiers to separate fighters from refugees in the Rwandan refugee camps in Goma, I even considered the possibility of engaging a private firm. But the world may not be ready to privatize peace.[62]

[57] Interview with David Harland, 10 Jul. 2003.

[58] Interview with Michael Møller, 31 Jul. 2003.

[59] The exception here is the use of PSCs to guard humanitarian aid or UN personnel, which occurs without much comment. The distinction here is the combat/non combat distinction outlined above; forces which do not fight are deemed to be more palatable than those which do.

[60] Shearer, 'Outsourcing', 68.

[61] Transcript of a press conference with Secretary General Kofi Annan, 12 Jul. 1997, available at www.un.org/News/Press/docs/1997/19970612.sgsm6255.html

[62] Text of thirty fifth annual Ditchley Foundation Lecture, given by Secretary General Kofi Annan, 26 Jun. 1998. United Nations Press Release SG/SM/6613, available at www.un.org/News/Press/docs/1998/19980626.sgsm6613.html

Member states undoubtedly disapprove of the idea that private forces might be used in UN peace operations. It is said that many 'member states and staff at the UN take the view that PMCs are immoral organisations, who have traditionally served autocratic and unpopular governments and whose operations are littered with human rights abuses. There is also a perception amongst staff and Member States from the Third World that they are also inherently racist.'[63]

Institutionalized dislike of private force within the General Assembly and among member states thus constrains the Security Council by closing off a potential course of action.

Conclusion

To conclude, it is helpful to answer the questions posed at the beginning. The Security Council has had minimal interaction with private force because private force has rarely had a significant impact on international peace and security; and the General Assembly has had a much stronger reaction in part for normative reasons. The GA has taken a strong moral position which closely associates the use of mercenaries with a threat to national self-determination. This has caused the Assembly and some of its associated bodies to perceive mercenaries, PMCs, and PSCs as far more threatening than they really were and perhaps are. In terms of what this difference in approach *means*, it seems clear that the strongly institutionalized hostility towards private force within the General Assembly constrains the Security Council. The hostility towards mercenaries engendered by the GA, and its equal discomfort with PMCs and PSCs has, for the moment, closed the doors on the use of private force by the SC. The GA has the capacity to shape international opinion on an issue in a way which limits the Council's freedom of action. Moreover, a history of hostility has alienated the private security industry and perhaps made the UN a less likely venue for regulation of the world of private force today.

[63] Cranfield University Study, submitted as a memorandum to the House of Commons Foreign Affairs Committee. Quoted in House of Commons Foreign Affairs Committee, *Private Military Companies* (London: The Stationery Office Ltd, 2001 2), 26.

APPENDICES

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APPENDIX 1: UN PEACEKEEPING OPERATIONS, 1945–2006

This is a chronological list of all the bodies that have been classified by the UN Secretariat as UN peacekeeping operations. All of them were authorized by a principal organ of the UN mostly the Security Council, but in a few cases the General Assembly. All of them have been under UN command and control. They have normally been financed collectively through assessed contributions to the UN peacekeeping budget. Their functions have included peacekeeping, peace enforcement, observation in a conflict, and post conflict peace building. For certain other peacekeeping activities linked to the UN, see Appendices 2 and 3.

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
1	*UN Truce Supervision Organization (UNTSO)*	Middle East	May 1948–	SC Res. 50 of 29 May 1948, SC Res. 54 of 15 Jul. 1948	Initially established to supervise the 1948 truce. Monitored ceasefire borders after 1949.		*151 military observers (Nov. 2006)*
2	*UN Military Observer Group in India and Pakistan (UNMOGIP)*	Jammu and Kashmir	1949–	SC Res. 47 of 21 Apr. 1948	Supervises ceasefire line between India and Pakistan.		*44 military observers (Nov. 2006)*
3	*UN Emergency Force (UNEF I)*	Suez Canal, Sinai Peninsula, Gaza	Nov. 1956–Jun. 1967	GA Res. 1000 (ES–I) of 5 Nov. 1956, GA Res. 1001 (ES–I) of 7 Nov. 1956	Deployed along Egypt–Israel border to supervise cessation of hostilities and facilitate Anglo-French and Israeli troop withdrawals after the Suez Crisis. After withdrawal, supervised ceasefire. Ordered to leave by Egypt in 1967.		6,073 military personnel (Feb. 1957)
4	*UN Observation Group in Lebanon (UNOGIL)*	Lebanese–Syrian border	June–Dec. 1958	SC Res. 128 of 11 June 1958	Established to monitor Lebanon's border with Syria, to prevent infiltration. Lacked credibility and effectiveness.		591 military personnel (Nov. 1958)
5	*UN Operation in the Congo (Opération des Nations Unies pour le Congo = ONUC)*	Republic of the Congo	1960–4	SC Res. 143 of 14 Jul. 1960, SC Res. 161 of 21 Feb. 1961, SC Res. 169 of 24 Nov. 1961.	Mandated to facilitate withdrawal of Belgian forces, maintain law and order, and assist post-colonial government. Mandate extended to maintain territorial integrity of Congo, and in particular to remove foreign mercenaries supporting the secession of Katanga province. Initially successful, but fighting resumed by the time ONUC left.		19,828 troops (Jul. 1961)

6	*UN Security Force in West New Guinea (UNSF)*	West New Guinea (West Irian)	Oct. 1962–Apr. 1963	GA Res. 1752 (XVII) of 21 Sep. 1962	Established to assist the UN Temporary Executive Authority (UNTEA) facilitating the withdrawal of Dutch colonial administration. Also monitored the ceasefire, supervised the build-up of a viable local police force, and supported organization of local 'consultation', which led to incorporation of the territory into Indonesia. The operation was preceded by a small observer mission deployed by the Secretary-General in August 1961 for one month, without explicit authorization by either the Security Council or the General Assembly.	1,576 military personnel
7	*UN Yemen Observation Mission (UNYOM)*	Yemen	Jul. 1963–Sept. 1964	SC Res. 179 of 11 Jun. 1963	Established – but failed – to monitor and certify the disengagement agreement between Saudi Arabia and the United Arab Republic.	189 military personnel, including 25 military observers
8	*UN Peacekeeping Force in Cyprus (UNFICYP)*	Cyprus	Mar. 1964–	SC Res. 186 of 4 Mar. 1964	Established to prevent the recurrence of fighting between the Greek Cypriot and Turkish Cypriot communities. Following Turkish military intervention and partition in 1974, the mandate expanded to include supervising a de facto ceasefire and maintaining a buffer zone. A UN settlement plan was rejected by the Greek Cypriot electorate in 2004.	*851 military personnel, 65 civilian police (Nov. 2006)*

(*645; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
9	*Mission of the Representative of the Secretary-General in the Dominican Republic (DOMREP)*	Dominican Republic	May 1965–Oct. 1966	SC Res. 203 of 14 May 1965	Observing and reporting on breaches of the ceasefire between two de facto authorities.		2 military observers
10	*UN India–Pakistan Observation Mission (UNIPOM)*	India–Pakistan border	Sep. 1965–Mar. 1966	SC Res. 211 of 20 Sep. 1965	Successfully supervised ceasefire along India–Pakistan border and the withdrawal of all armed personnel to positions held by them before 5 Aug. 1965.		96 military observers (Oct. 1965)
11	*UN Emergency Force II (UNEF II)*	Suez Canal, Sinai Peninsula	Oct. 1973–Jul. 1979	SC Res. 340 of 25 Oct. 1973	Successfully supervised ceasefire and redeployment of Egyptian and Israeli forces, and controlled buffer zone. UN deployment after the 1978 Camp David Accords was blocked by Arab states and the USSR. UNEF II was replaced by a multinational force not authorized by the UN.		6,973 military personnel (Feb. 1974)
12	*UN Disengagement Observer Force (UNDOF)*	Syrian Golan Heights	May 1974–	SC Res. 350 of 31 May 1974	Mandated to maintain ceasefire between Israel and Syria on the Golan Heights, to supervise disengagement of Israeli and Syrian forces, and to supervise the lines of separation and limitation.	1,450 military personnel	*1,047 military personnel, 57 military observers from UNTSO (Nov. 2006)*

13	*UN Interim Force in Lebanon (UNIFIL)*	Southern Lebanon	Mar. 1978–	SC Res. 425 and 426 of 19 Mar. 1978, SC Res. 1701 of 11 Aug. 2006	Established to facilitate and confirm withdrawal of Israeli forces from Southern Lebanon. Following the violence between Israel and Hezbollah in Jul./Aug. 2006, the size and mandate of UNIFIL were extended to support the Lebanese army in establishing security in Southern Lebanon and disarm Hezbollah.	15,000 military personnel	*10,480 military personnel and 53 military observers from UNTSO (Nov. 2006)*
14	*UN Good Offices Mission in Afghanistan and Pakistan (UNGOMAP)*	Afghanistan and Pakistan	May 1988–Mar. 1990	SC Res. 622 of 31 Oct. 1988, GA Res. 43/20 of 3 Nov. 1988	Mandated to support the implementation of the Geneva Accords; monitor non–involvement of Afghanistan and Pakistan in each other's affairs; monitor the Soviet withdrawal from Afghanistan; and monitor the voluntary return of refugees.	50 military observers	50 military observers (May 1988)
15	*UN Iran–Iraq Military Observer Group (UNIIMOG)*	Iran and Iraq	Aug. 1988–Feb. 1991	SC Res. 598 of 20 Jul. 1987, SC Res. 619 of 9 Aug. 1988	Established to verify, confirm, and supervise the ceasefire and withdrawal of all forces, pending a final settlement.		399 military personnel (Jun. 1990)
16	*UN Angola Verification Mission (UNAVEM I)*	Angola	Dec. 1988–May 1991	SC Res. 626 of 20 Dec. 1988	Mandated to verify the redeployment and withdrawal of Cuban troops from Angola.		70 military personnel (Apr.–Dec. 1989)
17	*UN Transition Assistance Group (UNTAG)*	Namibia	Apr. 1989–Mar. 1990	SC Res. 435 of 29 Sep. 1978, SC Res. 632 of 16 Feb. 1989	Mandated to support Special Representative of the Secretary-General in organization of free and fair elections, and transition to independence of Namibia.	7,500 military personnel	4,493 military personnel and 1,500 civilian police (Nov. 1989)

(*647; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
18	*UN Observer Group in Central America (ONUCA)*	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua	Nov. 1989–Jan. 1992	SC Res. 644 of 7 Nov. 1989, SC Res. 650 of 27 Mar. 1990, SC Res. 653 of 20 Apr. 1990	Mandated to verify that Central American governments ceased supporting paramilitary and insurrectionist forces in neighbouring countries, and not to allow the use of their territory for attacks. The mandate was later expanded to include monitoring the ceasefire and separation of forces and the demobilization process in Nicaragua.	Initial authorization of 260 military observers; subsequent authorization of 800 military personnel	1,098 military personnel and observers (May 1990)
19	*UN Iraq–Kuwait Observation Mission (UNIKOM)*	Kuwait–Iraq de-militarized zone (DMZ)	Apr. 1991–Oct. 2003	SC Res. 689 of 9 Apr. 1991, SC Res. 806 of 5 Feb. 1993	Monitored the demilitarized zone along the border between Iraq and Kuwait, to deter violations. Mandated in Feb. 1993 to take action to prevent violations of DMZ and newly demarcated boundary between Iraq and Kuwait. Suspended on 17 Mar. 2003 in advance of the US-led intervention in Iraq. The SC ended the demilitarized zone and the mission in Oct. 2003.	Initial authorization of 300 military observers; subsequent authorization of 3,645 military personnel (incl. 300 military observers).	1,187 military personnel, incl. 254 military observers (Feb. 1995)
20	*UN Angola Verification Mission II (UNAVEM II)*	Angola	May 1991–Feb. 1995	SC Res. 696 of 30 May 1991	Mandated to monitor the ceasefire and the Angolan police, and observe and verify elections. Failed as UNITA resumed violence after election		350 military observers, 126 police monitors, 400 electoral observers (Sep. 1992)

					defeat. In late 1994, mandate adjusted to verify the initial stages of Peace Agreement between government of Angola and UNITA forces. Succeeded by enlarged UNAVEM III operation.		
21	*UN Observer Mission in El Salvador (ONUSAL)*	El Salvador	Jul. 1991–Apr. 1995	SC Res. 693 of 20 May 1991	Established to verify the implementation of the agreements between the government of El Salvador and the *Frente Farabundo Marti para la Liberacion Nacional*, relating to a ceasefire and political and institutional reforms.	380 mil. observers; 8 medical officers; and 631 police observers	368 military observers (Feb. 1992) and 315 civilian police (May 1992)
22	*UN Mission for the Referendum in Western Sahara (MINURSO)*	Western Sahara	Apr. 1991–	SC Res. 690 of 29 Apr. 1991	Monitor ceasefire between Morocco and Frente POLISARIO movement, and conduct referendum. The referendum has not been held.	1,695 military observers and troops, 300 police	*28 military personnel, 190 military observers, 6 civilian police (Nov. 2006)*
23	*UN Advance Mission in Cambodia (UNAMIC)*	Cambodia	Oct. 1991–Mar. 1992	SC Res. 717 of 16 Oct. 1991	Mandated to assist with maintenance of ceasefire between the four Cambodian parties before the establishment of UNTAC. Engaged in mine clearance and awareness training.	Initially 116 military personnel, subsequent further authorization for 1,090 military personnel	1,090 military personnel (Mar. 1992)
24	*UN Protection Force (UNPROFOR)*	Former Yugoslavia	Feb. 1992–Dec. 1995	SC Res. 743 of 21 Feb. 1992, SC Res. 761 of 29 June. 1992, SC Res. 776 of 14 Sep. 1992, SC Res. 795 of 11 Dec. 1992, SC Res. 836 of	Initially established in Croatia to ensure demilitarization in designated areas. Expanded in 1992 to include Bosnia, mandated to protect delivery of humanitarian aid, enforce 'no-fly' zone, and protect 'safe	Strength gradually increased through successive SC reports and resolutions	39,789 military and civilian police personnel (Dec. 1994)

(*649; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
				4 June 1993, SC Res. 982 of 31 Mar. 1995	areas'. Mandate extended to Macedonia in Dec. 1992, including for preventive border monitoring. With effect from Apr. 1995 UNPROFOR was divided into three separate missions, with the forces in Croatia and Macedonia being renamed UNCRO and UNPREDEP respectively. In Bosnia in Dec. 1995, UNPROFOR was replaced by the NATO-led Implementation Force (IFOR).		
25	*UN Transitional Authority in Cambodia (UNTAC)*	Cambodia	Feb. 1992–Sep. 1993	SC Res. 745 of 28 Feb. 1992	Replaced and absorbed UNAMIC, and ensured the implementation of the Paris Peace Accords, in particular the organization of elections.	13,547 military personnel, 893 military observers, and 3,500 civilian personnel	15,991 military component, 3,359 civilian police component (June 1993)
26	*UN Operation in Somalia I (UNOSOM I)*	Somalia	Apr. 1992–Mar. 1993	SC Res. 751 of 24 Apr. 1992, SC Res. 775 of 28 Aug. 1992	Mandated to monitor a ceasefire in Mogadishu and protect delivery of humanitarian aid. Difficulties in achieving these objectives led to the SC's authorization of a US-led force, UNITAF, to intervene in Somalia in Dec. 1992. UNOSOM I was transformed into UNOSOM II in Mar. 1993.	3,500 security personnel, 719 military support personnel, 50 military observers	893 military personnel and 54 military observers (Mar. 1993)

27	*UN Operation in Mozambique (ONUMOZ)*	Mozambique	Dec. 1992–Dec. 1994	SC Res. 797 of 16 Dec. 1992	Mandated to support implementation of the peace agreement and ceasefire, monitor and verify the withdrawal of foreign troops, disarm local forces, monitor elections, and coordinate and monitor humanitarian assistance.	6,625 military personnel, 354 military observers, 1,144 civilian police	6,576 military personnel, 1,087 civilian police (Nov. 1993)
28	*UN Operation in Somalia II (UNOSOM II)*	Somalia	Mar. 1993–Mar. 1995	SC Res. 814 of 26 Mar. 1993, SC Res. 837 of 6 Jun. 1993	Expansion of UNOSOM I, took over tasks of the US-led UNITAF. Mandated to take appropriate action, including enforcement measures, to establish throughout Somalia a secure environment for humanitarian assistance. In Jun. 1993, mandate expanded to arrest those responsible for attacks on UNOSOM II, esp. General Aidid.	Up to 28,000 military and civilian police personnel	14,968 military personnel (Nov. 1994)
29	*UN Observer Mission Uganda–Rwanda (UNOMUR)*	Ugandan side of Uganda–Rwanda border	Jun. 1993–Sep. 1994	SC Res. 846 of 22 Jun. 1993	Monitor Rwanda–Ugandan border and prevent cross-border military support.	81 military observers	81 military observers
30	*UN Observer Mission in Georgia (UNOMIG)*	Georgia	Aug. 1993–	SC Res. 858 of 24 Aug. 1993, SC Res. 937 of 27 Jul. 1994	Monitor successive ceasefire agreements between Georgian government and authorities of breakaway province of Abkhazia.	136 military observers, plus 139 int. and local staff	*121 military observers,12 police, 100 int. civilian personnel (Nov. 2006)*

(*651; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
31	*UN Observer Mission in Liberia (UNOMIL)*	Liberia	Sep. 1993–Sep. 1997	SC Res. 866 of 22 Sep. 1993, SC Res. 1020 of 10 Nov. 1995	Initially mandated to monitor compliance with peace agreement and ceasefire, observe and verify electoral process, assist in coordination of humanitarian assistance and mine-clearance training. In 1995, mandate was adjusted to support ECOWAS to implement peace agreement, monitor ceasefire, assist in demobilization and humanitarian assistance, and investigate human rights violations. Took secondary role to ECOMOG. Only the 1995 Arusha peace accord ended fighting.	303 military observers, 65 other military personnel, 90 int. staff. Reduced in 1995 and 1996	303 military observers, 65 other military personnel (Sep. 1993)
32	*UN Mission in Haiti (UNMIH)*	Haiti	Sep. 1993–Jun. 1996	SC Res. 867 of 23 Sep. 1993, SC Res. 975 of 30 Jan. 1995	Mandated to support implementation of Governor's Island agreement, to assist in modernizing the armed forces of Haiti and establish a new police force. Mandate later revised to support democratic government, police and military reform, and the holding of free elections.	Initially 700 military, 567 civilian police. Expanded to 6,000 troops, 900 civilian police in 1995	6,065 military personnel, 847 civilian police (Jun. 1995)
33	*UN Assistance Mission for Rwanda (UNAMIR)*	Rwanda	Oct. 1993–Mar. 1996	SC Res. 872 of 5 Oct. 1993, SC Res, 912 of 21 Apr. 1994, SC Res. 918 of 17 May 1994	Originally established to help implement the Arusha Peace Agreement signed by the Rwandan parties, including monitoring ceasefire, establishing an expanded	Strength increased by staged deployment, up to 5,500 military personnel in May	

					demilitarized zone, and assisting with mine-clearance and humanitarian assistance activities. Following attacks on UNAMIR troops during the genocide, Belgium withdrew its contingent, and the SC significantly reduced the size of mission on 21 Apr. 1994. The presence of the mission did not prevent the genocide in Rwanda.	1994. Subsequently declined to 1,200 in Dec. 1995	
34	*UN Aouzou Strip Observer Group (UNASOG)*	Aouzou Strip, Republic of Chad	May–Jun. 1994	SC Res. 915 of 4 May 1994	Successfully verified the withdrawal of Libyan administration and forces from the Aouzou Strip in accordance with an ICJ decision.	9 military observers	
35	*UN Mission of Observers in Tajikistan (UNMOT)*	Tajikistan	Dec. 1994–May 2000	SC Res. 968 of 16 Dec. 1994	Successfully helped to monitor the ceasefire agreement between the government of Tajikistan and the United Tajik opposition, and later the implementation of the general 1997 peace agreement.	Initially 40 military observers, increased to 120 in Sep. 1997	81 military observers (Jun. 1998)
36	*UN Angola Verification Mission III (UNAVEM III)*	Angola	Feb. 1995–Jun. 1997	SC Res. 976 of 8 Feb. 1995	Mandated to assist in implementation of peace agreement, but failed as UNITA returned to violence until defeated in Feb. 2001. Its mandate was continued from Jun. 1997 to Feb. 1999, on a similar basis by MONUA.	7,000 military personnel, plus 350 military observers and 260 police observers	7,138 military personnel and observers (Dec. 1996)

(*653; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
37	*UN Confidence Restoration Operation in Croatia (UNCRO)*	Croatia	Mar. 1995–Jan. 1996	SC Res. 981 of 31 Mar. 1995	Modified continuation of the role of UNPROFOR in Croatia. Role proved limited during and after Croat conquest of Western Slavonia (Apr.–May 1995) and Krajina (Aug. 1995). Residual role in Eastern Slavonia transferred to a new UN authority (UNTAES) in Jan. 1996		6,581 military personnel, 194 military observers, 296 civilian police (Nov. 1995)
38	*UN Preventive Deployment Force (UNPREDEP)*	Former Yugoslav Republic of Macedonia (FYROM)	Mar. 1995–Feb. 1999	SC Res. 983 of 31 Mar. 1995	Continuation of role of UNPROFOR in Macedonia. Monitored border to maintain stability in FYROM.		1,087 military personnel (Nov. 1996)
39	*UN Mission in Bosnia and Herzegovina (UNMIBH)*	Bosnia and Herzegovina	Dec. 1995–Dec. 2002	SC Res. 1035 of 21 Dec. 1995	Incorporated the International Police Task Force (IPTF) and a UN civilian office. Main tasks of IPTF included monitoring, advising, and training Bosnian police forces. On 31 Dec. 2002 its duties were transferred to the European Union Police Mission.	2,057 civilian police and 5 military liaison officers	2,047 civilian police and military liaison personnel (Nov. 1997)
40	*UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES)*	Croatia	Jan. 1996–Jan. 1998	SC Res. 1037 of 15 Jan. 1996	Mandate was to supervise and facilitate demilitarization, monitor return of refugees, and organize elections. Administered and transferred Eastern Slavonia, Baranja, and Western Sirmium back to Croatia. Succeeded by UNPSG.	5,000 military personnel, 100 military observers, 600 civilian police	5,009 military personnel, 95 military observers, and 457 civilian police (Oct. 1996)

41	*UN Mission of Observers in Prevlaka (UNMOP)*	Prevlaka Peninsula, southern border between Croatia and former Fed. Rep. of Yugoslavia	Feb. 1996–Dec. 2002	SC Res. 1038 of 15 Jan. 1996	A continuation of the deployment of UN military observers in the Prevlaka Peninsula which had been authorized originally in SC Res. 779 of 6 Oct. 1992. At first the observers had been under UNPROFOR and then from Mar. 1995 under UNCRO until the latter ceased operations at the end of Jan. 1996	28 military observers	27 military observers (Jun. 2000)
42	*UN Support Mission in Haiti (UNSMIH)*	Haiti	Jul. 1996–Jul. 1997	SC Res. 1063 of 28 Jun. 1996	Continuation of activities of UNMIH with reduced force levels. Assisted with police training.	600 military and 300 civilian police personnel	1,297 military personnel (incl. approx. 800 Canadian and Pakistani military financed by additional voluntary US and Canadian contributions), 291 civilian police (Nov. 1996)
43	*UN Verification Mission in Guatemala (MINUGUA)*	Guatemala	Jan.–May 1997	GA Res. 48/267 of 19 Sep. 1994, SC Res. 1094 of 20 Jan. 1997.	Mandated to verify the ceasefire agreement between Guatemalan government and the URNG, including observation of formal cessation of hostilities, separation of respective forces, and disarmament and demobilization of URNG.	155 military observers and requisite medical personnel	132 military observers and 13 medical personnel

(*655; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
44	*UN Observer Mission in Angola (MONUA)*	Angola	Jul. 1997–Feb. 1999	SC Res. 1118 of 30 Jun. 1997	Continued UNAVEM III's mandate.		3,026 military personnel, 253 military observers, and 289 civilian police observers (Jul. 1997)
45	*UN Transition Mission in Haiti (UNTMIH)*	Haiti	Aug.–Nov. 1997	SC Res. 1123 of 30 Jul. 1997	Succeeded UNSMIH, assisting the government of Haiti by supporting and contributing to the professionalization of the Haitian National Police.	250 police, 50 military personnel	1,175 military personnel (50 UN financed, 1,125 financed through voluntary contributions), 242 civilian police (Oct. 1997)
46	*UN Civilian Police Mission in Haiti (MIPONUH)*	Haiti	Dec. 1997–Mar. 2000	SC Res. 1141 of 28 Nov. 1997	Succeeded UNTMIH, and continued its training and assistance mandate.		300 civilian police
47	*UN Civilian Police Support Group (UNPSG)*	Croatia	Jan.–Oct. 1998	SC Res. 1145 of 19 Dec. 1997	Succeeded UNTAES after transition of Eastern Slavonia to Croat rule. Monitored police performance, particularly to protect returned refugees and the Serb minority.	180 civilian police monitors	114 civilian police monitors
48	*UN Mission in the Central African Republic (MINURCA)*	Central African Republic	Apr. 1998–Feb. 2000	SC Res. 1159 of 27 Mar. 1998	Successor mission to the UN-authorized MISAB, mandated to maintain security, train police, and assist with elections.	1,350 military personnel, 24 civilian police	1,342 military personnel, 22 civilian police monitors

49	*UN Mission of Observers in Sierra Leone (UNOMSIL)*	Sierra Leone	Jul. 1998–Oct. 1999	SC Res. 1181 of 13 Jul. 1998	Established as an observer mission to monitor security situation in Sierra Leone, and the disarmament and demobilization of former combatants. UNOMSIL observers relied on the protection of the ECOMOG peacekeeping troops.	70 military observers, 15 medical personnel, and 5 civilian police advisers. Expanded in Aug. 1999 to 210 military observers and 35 medical personnel	192 military observers, 17 other military personnel (Oct. 1999)
50	*UN Interim Administration Mission in Kosovo (UNMIK)*	Kosovo	Jun. 1999–	SC Res. 1244 of 10 Jun. 1999	Established by the SC after NATO's war against Yugoslavia, to provide interim administration for Kosovo, build political institutions of self-governance, and facilitate the resolution of Kosovo's final status.	4,718 civilian police, 38 military personnel	*1,895 civilian police, 557 int. civilian staff, 37 military personnel (Nov. 2006)*
51	*UN Mission in Sierra Leone (UNAMSIL)*	Sierra Leone	Oct. 1999–Dec. 2005	SC Res. 1270 of 22 Oct. 1999, SC Res. 1289 of 7 Feb. 2000	Expansion of UNOMSIL to replace the peace-enforcing ECOMOG troops in implementing the Lomé peace accord. Fighting continued and, in and after Feb. 2000, UNAMSIL's mandate was expanded to include general provision of security and support for the Sierra Leone government.	17,500 military personnel, including 260 military observers and 170 civilian police	17,368 military personnel, 87 civilian police, 322 int. civilian staff (Mar. 2002)

(657; *Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
					After the kidnapping of 500 UN peacekeepers and the dispatch of 1,000 British troops in 2000 to restore peace, UNAMSIL was expanded to 17,500 troops. The mission was successfully concluded in Dec. 2005.		
52	*UN Transitional Administration in East Timor (UNTAET)*	East Timor	Oct. 1999–May 2002	SC Res. 1272 of 25 Oct. 1999	Established as the supreme legislative, executive, and judicial authority in East Timor, mandated to build institutions of self-government, and lead East Timor to independence, as endorsed by the referendum on 30 Aug. 1999. In Feb. 2000, it absorbed the INTERFET.	9,150 military personnel, 1,640 civilian police	8,561 military, 1,213 civilian police, 716 int. civilian personnel (Jun. 2000)
53	*UN Organization Mission in the Democratic Republic of Congo (MONUC)*	Democratic Republic of Congo	Nov. 1999–	SC Res. 1279 of 30 Nov. 1999, SC Res. 1291 of 24 Feb. 2000	Established to monitor the ceasefire agreement, supervise the disengagement and redeployment of the parties' forces, facilitate humanitarian assistance and monitor human rights situation. Supplemented by *Opération Artémis* in May to Sept. 2003 to address fighting	16,700 military personnel and 475 police	*16,627 troops, 763 military observers, 1,107 police (Nov. 2006)*

					and humanitarian abuses in Bania. Has been heavily criticized for reported criminal activity and sexual abuses by peacekeepers.		
54	*UN Mission in Ethiopia and Eritrea (UNMEE)*	Ethiopia and Eritrea	Jul. 2000–	SC Res. 1320 of 15 Sep. 2000, SC Res. 1430 of 14 Aug. 2002	Mandated to establish mechanism for verification of the Jun. 2000 ceasefire. Mandate extended after the Dec. 2000 Algiers Accords to include monitoring of the cessation of hostilities and helping to ensure the observance of boundary commitments.	Initially 4,200 troops, including 230 military observers. Reduced to 2,300 in May 2006	*2,064 troops, 205 military observers (Nov. 2005)*
55	*UN Mission of Support in East Timor (UNMISET)*	East Timor	May 2002–May 2005	SC Res. 1410 of 17 May 2002	Succeeded UNTAET after independence of East Timor. Provided administrative assistance to the East Timorese government, and maintained responsibility for security and public order.	5,000 military personnel, including 120 military observers, and 1,250 civilian police	4,776 military personnel and 771 civilian police (from 1,250 in May 2002) (Aug. 2002)
56	*UN Mission in Liberia (UNMIL)*	Liberia	Sep. 2003–	SC Res. 1509 of 19 Sep. 2003	Took over peacekeeping duties from the Multinational Force in Liberia authorized by ECOWAS. Mandated to support implementation of the ceasefire agreement, protect UN staff and facilities, facilitate provision of humanitarian assistance, and assist restructuring of police force.	15,000 military personnel, including up to 250 military observers and 160 staff officers, and up to 1,115 police officers	*14,570 troops, 200 military observers, 1,076 police (Nov. 2006)*

(*659; Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
57	*UN Operation in Côte d'Ivoire (UNOCI)*	Côte d'Ivoire	Apr. 2004–	SC Res. 1528 of 27 Feb. 2004	Replaced the UN Mission in Côte d'Ivoire (MINUCI), a political mission set up by the Security Council in May 2003. Mandated to monitor the cessation of hostilities; assist with disarmament, demobilization, and reintegration measures; support the organization of elections; facilitate humanitarian assistance; and monitor the arms embargo.	Up to 7,090 military personnel and up to 725 police officers, including three formed police units, and the necessary additional civilian personnel	*7,843 troops, 194 military observers, 949 civilian police (Nov. 2006)*
58	*UN Stabilization Mission in Haiti (MINUSTAH)*	Haiti	Jun. 2004–	SC Res. 1542 of 30 Apr. 2004	Replaced the Multinational Interim Force (MIF), which had been authorized by the Security Council in Feb. 2004. Mandated to ensure a secure and stable environment in Haiti through reforming the Haitian National Police, support for constitutional and political process, support for and monitoring of human rights protection.	7,500 military personnel, 1,897 civilian police, amended to 7,200 military personnel and 1,951 civilian police officers	*6,642 military personnel and 1,700 civilian police (Nov. 2006)*

59	*UN Operation in Burundi (ONUB)*	Burundi	Jun. 2004–31 Dec. 2006	SC Res. 1545 of 21 May 2004	Mandated to ensure respect for ceasefire agreements, carry out disarmament and demobilization, monitor illegal flow of arms across national borders, contribute to successful completion of electoral process in Arusha Agreement, and assist transitional government and authorities. Succeeded by the United Nations Integrated Office in Burundi (BINUB).	5,650 military personnel, including 200 military observers; 120 police personnel	*2,353 troops, 87 military observers, and 14 police (Nov. 2006)*
60	*UN Mission in the Sudan (UNMIS)*	Sudan	Mar. 2005–	SC Res. 1590 of 24 Mar. 2005, SC Res. 1706 of 31 Aug. 2006	Established to work alongside SC-authorized AMIS and support the implementation of the peace agreement, facilitate the return of refugees, support the provision of humanitarian aid, and protect in particular civilians against gross human rights violations. SC Res. 1706 expanded mandate to include deployment in Darfur, but in 2006 deployment there was prevented by Sudanese opposition.	27,300 military personnel including some 750 military observers, 9,015 police, and a civilian component	*8,914 troops, 705 military observers, 665 police (Nov. 2006)*

(661; *Continued*)

Appendix 1 (*continued*)

	Name of the Mission	Location	Duration	Principal Authorizing Resolutions	Comments	Authorized Strength	Maximum Strength, or *Strength at End of 2006 (if applic.)*
61	*UN Integrated Mission in East Timor (UNMIT)*	East Timor	Aug. 2006–	SC Res. 1704 of 25 Aug. 2006	Established to succeed the Australian-led 'Operation Astute' to consolidate stability in the country following collapse of public order in the spring of 2006, and support the organization of elections in 2007. Replaced the United Nations Office in Timor Leste (UNOTIL).	1608 police personnel, 34 military liaison and staff officers	*463 police, 18 military observers (Nov. 2006)*

APPENDIX 2: UN MISSIONS, INSTITUTIONS, AND FORCES NOT CLASSIFIED AS PEACEKEEPING OPERATIONS, 1945–2006

This appendix lists certain UN missions, institutions, and forces addressing various problems of international peace and security. They have many different purposes and forms: political missions, peace building offices, advisory groups, international tribunals, monitoring mis sions, and small special missions. The list is illustrative rather than complete. A key criterion for inclusion in this list is that all these bodies have been run by the UN but are not classified as peacekeeping operations. However, in many cases they operated before, after, or in conjunc tion with UN peacekeeping forces, and in some cases they have been administered by the UN Department of Peacekeeping Operations. The forces and missions listed here were authorized variously by the Security Council, the General Assembly, and the Secretary General.

In addition to the various bodies listed here, there has been a large number of Security Council missions to particular countries and crisis areas, generally with the function of reporting to the Security Council on complex situations that might require Council action. For a list of reports of the many such missions since 1992, see www.un.org/Docs/sc/missionreports.html

Name of Mission/ Institution	Location	Duration	Principal Authorizing Resolution/UN Doc.	Comments	Strength (if applic.)
UNSCOB (United Nations Special Committee on the Balkans)	Greece	1947–51	GA Res. 109 (II) of 21 Oct. 1947	Established to investigate alleged support from Yugoslavia, Albania, and Bulgaria for Greek communist guerrillas, and to assist countries to normalize their diplomatic relations with each other.	9 (representatives from all SC members but Poland and the USSR, which refused to participate)
UNCIP (United Nations Commission for India and Pakistan)	India and Pakistan	1948–51	SC Res. 39 of 20 Jan. 1948, SC Res. 49 of 21 Apr. 1948	Established to investigate and mediate the dispute between India and Pakistan over Kashmir. Its observers formed the nucleus of the UN Military Observer Group for India and Pakistan (UNMOGIP), established in 1949, which is classified by the UN as a peacekeeping force, and whose mandate has continued ever since.	5
Observation Commission to Hungary, followed by *Special Committee on the Problem of Hungary*	Austria	1956–7	GA Res. 1004 (ES–II) of 4 Nov. 1956, GA Res. 1132 (XI) of 10 Jan. 1957	Mandated to investigate the situation caused by the Soviet intervention in Hungary in Nov. 1956. These bodies were never granted access to Hungary, but the Special Committee produced a detailed report based on interviews with Hungarians who had fled the country (UN doc. A/3592 of 12 Jul. 1957).	

UNTEA (United Nations Temporary Executive Authority)	West New Guinea (West Irian)	1962–3	GA Res. 1752 (XVII) of 21 Dec. 1962	Established to exercise transitional authority until the territory was transferred from Dutch control to Indonesia.	
Mission to Investigate Allegations of the Use of Chemical Weapons in the Iran–Iraq Conflict	Iran	1984–8	UN docs. S/16337 and S/16338 of 10 Feb. 1984	Established by the Secretary-General to investigate the use of chemical weapons by Iraq. Produced seven reports, the last being UN doc. S/20134 of 19 Aug. 1988.	4 chemical weapons experts
ONUVEN (United Nations Observer Mission to Verify the Electoral Process in Nicaragua)	Nicaragua	1989–90	UN doc. S/20491 of 27 Feb. 1989. Endorsed by SC Res. 637 of 27 Jul. 1989	Deployed by the SG with the agreement of the Nicaraguan government to verify the Nicaraguan elections. Endorsed by the Council.	
UNSCOM (United Nations Special Commission)	Iraq	1991–9	SC Res. 687 of 3 Apr. 1991	Established after the 1991 Iraq war to oversee the elimination of weapons of mass destruction and ballistic missiles in Iraq.	
UNCC (United Nations Compensation Commission)	Iraq	1991–	SC Res. 692 of 20 May 1991	Established to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's invasion and occupation of Kuwait. It received c.2.7 million claims seeking approximately US$352.5 billion in compensation for death, injury, loss of or damage to property, commercial claims, and claims for environmental damage. By June 2005, awards of more than US$52 billion had been approved.	

(665; *Continued*)

Appendix 2 (*continued*)

Name of Mission/ Institution	Location	Duration	Principal Authorizing Resolution/UN Doc.	Comments	Strength (if applic.)
UNGCI (United Nations Guards Contingent in Iraq)	Iraq	1991–2003	UN doc. S/22663 of 31 May 1991	Deployed to protect United Nations personnel, assets, and operations linked to United Nations humanitarian programmes in Iraq.	Up to 500 int. personnel
ICTY (International Criminal Tribunal for the former Yugoslavia)	The Hague (Netherlands)	1993–	SC Res. 827 of 25 May 1993	Established to bring to justice persons allegedly involved in war crimes and crimes against humanity in the wars in the former Yugoslavia.	
MICIVIH (International Civilian Mission in Haiti)	Haiti	1993–2000	GA Res. 47/20B of 20 Apr. 1993	Joint OAS–UN mission, established on request of the exiled Aristide government to monitor human rights violations in Haiti.	Up to 200 int. personnel, incl. 102 human rights monitors
UNSMA (United Nations Special Mission to Afghanistan)	Afghanistan	1993–2002	GA Res. 48/208 of 21 Dec. 1993	Established to solicit views on how the UN can best facilitate national rapprochement and reconstruction. Replaced by UNAMA after the 2001 Bonn Agreement.	29 int. civilian; 1 mil. advisor
UNOB (United Nations Office in Burundi)	Burundi	1993–2004	UN doc. S/26631 of 25 Oct. 1993 and UN doc. S/1999/425 of 12 Apr. 1999	Established to facilitate reconciliation and the peace process in Burundi. Replaced by ONUB peacekeeping operation.	
UNSCO (Office of the United Nations Special Coordinator for the Middle East)	Middle East	1994–	GA Res. 48/213 of 21 Dec. 1993	Established after the signing of the Oslo Accords to coordinate the UN presence, and to mobilize economic assistance to the Palestinians. The	25 int. civilian; 18 local civilian

				mandate was changed in 1999 to enhance UN development and humanitarian assistance in support of the peace process, and to support political negotiations.	
ICTR (International Criminal Tribunal for Rwanda)	Arusha (Tanzania)	1994–	SC Res. 955 of 8 Nov. 1994	Established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 Jan. 1994 and 31 Dec. 1994.	
MINUGUA (United Nations Verification Mission in Guatemala)	Guatemala	1994–2004	GA Res. 48/267 of 28 Sep. 1994	Established to verify implementation of the human rights and peace agreement between the government of Guatemala and the URNG. (For the period Jan.–May 1997 MINUGUA is classified as a UN peacekeeping operation.)	56 int. civilian; 136 local civilian; 4 mil. liaison officers; 9 civilian police observers
UNPOS (United Nations Political Office for Somalia)	Somalia	1995–	UN doc. S/PRST/ 1995/15 of 6 Apr. 1995, and UN doc. S/1995/322 of 21 Apr. 1995	Established to advance peace and reconciliation through contacts with Somali leaders, civic organizations, and the states and organizations concerned.	
Office of the Special Representative of the Secretary-General for the Great Lakes Region	Nairobi (Kenya)	1997–	UN doc. S/1997/994 of 12 Dec. 1997	Appointed to monitor regional developments and support peace-making and peace-building activities in the region.	

(667; *Continued*)

Appendix 2 (*continued*)

Name of Mission/ Institution	Location	Duration	Principal Authorizing Resolution/UN Doc.	Comments	Strength (if applic.)
UNOL (United Nations Peace-building Support Office in Liberia)	Liberia	1997–2003	UN doc. S/1997/817 of 22 Oct. 1997	Established to support peace consolidation after 1997 elections. With the deterioration of the security situation, UNOL was replaced by UNMIL peacekeeping mission in 2003.	10 int. civilian; 5 local civilian
UNPOB (United Nations Political Office in Bougainville) (also known as UNOMB (United Nations Observer Mission in Bougainville))	Bougainville, Papua New Guinea	1998–2005	UN doc. S/1998/506 of 2 Jun. 1998	Established to support the peace process between the autonomous region of Bougainville and Papua New Guinea.	6 int. civilian; 3 local civilian
UNOGBIS (United Nations Peace-building Support Office in Guinea-Bissau)	Guinea-Bissau	1999–	UN doc. S/1999/232 of 8 Jan. 1999, SC Res. 1580 of 22 Dec. 2004.	Established in 1999 to support peace-building after civil war. After the 2003 military coup, its mandate has been to support transition to and consolidation of civilian government.	15 int. civilian; 2 mil. advisors; 1 civilian police advisor; 13 local civilian
UNAMET (United Nations Mission in East Timor)	East Timor	Jun 1999–Oct. 1999	SC Res. 1246 of 11 Jun 1999	Mandated to organize the 'popular consultation' on independence in East Timor, following the 5 May agreement between Indonesia and Portugal. After the post-ballot violence in Sep. 1999, it was succeeded by UNTAET peacekeeping operation.	50 military observers and 271 civilian police; 631 international civilian staff (9 Aug. 1999)

UNOA (United Nations Office in Angola)	Angola	1999–2002	SC Res. 1268 of 15 Oct. 1999	Established to assist Angola in the area of capacity-building, humanitarian assistance, and the promotion of human rights.	41 int. civilian; 1 civilian police; 72 local civilian
BONUCA (United Nations Peace-building Office in the Central African Republic)	Central African Republic	2000–	UN doc. S/1999/1235 of 3 Dec. 1999	Established to monitor the situation in the country and support democratization, capacity-building, security sector reform, and development.	18 int. civilian; 3 mil. advisors; 4 civilian police; 2 UN Volunteers; 24 local civilian
UNMOVIC (United Nations Monitoring, Verification and Inspection Commission)	Iraq	1999–2007	SC Res. 1284 of 17 Dec. 1999 SC Res. 1441 of 8 Nov. 2002.	Established to verify Iraq's destruction of its weapons of mass destruction and ballistic missiles. After the American-led occupation of Iraq in 2003, UNMOVIC had no substantial functions.	
UNTOP (United Nations Tajikistan Office of Peace-building)	Tajikistan	2000–7	UN docs. S/2000/518 and S/2000/519 of 1 Jun. 2000	Succeeded UNMOT peacekeeping operation, to support implementation of the peace process.	7 int. civilian; 19 local civilian
UNOWA (*Office of the Special Representative of the Secretary-General for West Africa*)	Senegal	2001–	UN docs. S/2001/1128 and S/2001/1129 of 29 Nov. 2001	Mandated to harmonize UN peace-building efforts across the region, and cooperating with ECOWAS on regional security issues.	
Special Court for Sierra Leone	Freetown, Sierra Leone	2002–	Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court, 16 Jan. 2002	SC Res. 1315 of 14 Aug. 2000 called for establishment of Special Court to prosecute persons responsible for serious violations of international humanitarian law in Sierra Leone since 30 Nov. 1996.	

(669; *Continued*)

Appendix 2 (*continued*)

Name of Mission/ Institution	Location	Duration	Principal Authorizing Resolution/UN Doc.	Comments	Strength (if applic.)
UNAMA (United Nations Assistance Mission in Afghanistan)	Afghanistan	2002–	SC Res. 1401 of 28 Mar. 2002	Established to support the implementation of the 2001 Bonn Agreement and assist in peace-building.	*c.*200 int. civilian; *c.*800 local staff (Oct. 2006)
UNMA (United Nations Mission in Angola)	Angola	2002–3	SC Res. 1433 of 15 Aug. 2002	Established to facilitate provision of economic assistance and humanitarian aid, support demobilization, and promote the protection of human rights.	
MINUCI (United Nations Mission in Côte d'Ivoire)	Côte d'Ivoire	2003–4	SC Res. 1479 of 13 May 2003	Established by the Security Council to complement ECOWAS and French peacekeeping forces and facilitate implementation of the peace agreement. Replaced by UNOCI peacekeeping mission.	75 mil. observers, supported by 54 int. civilian and 55 local staff
UNAMI (United Nations Assistance Mission for Iraq)	Amman (Jordan)	Aug. 2003–	SC Res. 1500 of 14 Aug. 2003	Established to assist with peace-building after 2003 war. Left Iraq after the attacks on the UN compound and death of SRSG Vieira de Mello on 19 Aug. 2003.	
Mehlis Inquiry	Lebanon	Apr. 2005–	SC Res. 1595 of 7 Apr. 2005	Inquiry into the killing of Lebanese President Rafiq	

				Hariri.	
UNOTIL (*United Nations Office in Timor Leste)*	Timor Leste	May 2005–Aug. 2006	SC Res. 1599 of 28 Apr. 2005	Established to continue the peace-building activities of UNMISET, and supporting capacity development of key state institutions. Replaced by UNMIT peacekeeping operation.	55 int. civilian staff; 20 civilian police trainers; and 15 mil. trainers
UNOSEK (*Special Envoy for the Future Status Process of Kosovo)*	Vienna (Austria)	Nov. 2005–	UN doc. S/2005/635 of 7 Oct. 2005, endorsed by SC in UN doc. S/PRST/ 2005/51 of 24 Oct. 2005.	Lead political process to resolve Kosovo's legal and political status, in the context of SC Res. 1244 of 12 Jun. 1999.	
UNIOSIL (*United Nations Integrated Office in Sierra Leone*)	Sierra Leone	Jan. 2006–	SC Res. 1620 of 31 Aug. 2005	Established to support government to organize elections in 2007, the promotion and protection of human rights, and improving governance.	Up to 298 int. and local civilian staff (incl. UN Volunteers)

APPENDIX 3: UN-AUTHORIZED MILITARY OPERATIONS, 1945–2006

This appendix is a chronological list of military operations that have been explicitly authorized by the Security Council, but were not under UN command and control. These operations have been authorized under Chapter VII of the UN Charter. None of these missions is listed by the UN Secretariat as a peacekeeping operation, but a range of them have operated concurrently with, or were succeeded by, peacekeeping operations.

It is difficult to compose a complete list of authorized missions. Certain operations are not included:

- Operations that have been endorsed by the Security Council only after they commenced on the basis of authorization by a regional body (such as the ECOWAS intervention in Liberia in 1990) or a state.
- Operations that the Security Council has only endorsed but not formally authorized, for example through a presidential statement rather than a resolution. One example is the Australian led deployment of troops and police to Timor Leste in May 2006 (Operation Astute), welcomed by a statement by the President of the Security Council on 25 May 2006, and welcomed by SC Res. 1690 only on 20 June 2006, after the deployment.
- Operations that have been authorized, welcomed, or endorsed by the Security Council, but were not deployed, such as the Multinational Force in Zaire, authorized by SC Res. 1080 of 15 November 1996, or the IGAD peacekeeping mission in Somalia in 2006 (IGASOM), authorized by SC Res. 1725 of 6 December 2006.
- The US led intervention in Afghanistan, following the attacks on 11 September 2001, which was based on the explicit recognition by the Security Council of the US right to self defence under Art. 51 of the Charter in SC Res. 1368 of 12 September 2001, but not on any specific authorization by the Council.

	Name of the Operation	Location	Duration	Authorizing Resolutions	Comments	Maximum Strength/*Strength at end of 2006 (if applic.)*
1	*The US-led military coalition in Korea*	Korea	1950–3	SC Res. 83 of 27 June 1950, SC Res. 84 of 7 Jul. 1950	The SC (in Soviet absence) authorized the military coalition to assist South Korea 'to repel the armed [North Korean] attack and restore international peace and security in the area'.	750,000 military personnel (incl. 340,000 from the Republic of Korea)
2	*The UK naval action in connection with economic sanctions against Rhodesia*	Rhodesia	1966–75	SC Res. 221 of 9 Apr. 1966	The SC called on the UK to use force to prevent the delivery of oil for Rhodesia to the port of Beira (Portuguese Mozambique). The British Beira patrol had been in place for several months before it was explicitly authorized by the SC.	
3	*The US-led naval blockade of Iraq, following the Iraqi occupation of Kuwait*	Iraq	1990–1	SC Res. 665 of 25 Aug. 1990	The SC called on member states to monitor and control shipping in the Persian Gulf to enforce sanctions on Iraq.	
4	*Gulf War Coalition*	Iraq	1990–1	SC Res. 678 of 29 Nov. 1990	The US-led military coalition in the Gulf tasked with ending the Iraqi occupation of Kuwait and restoring international peace and security in the area.	c.540,000 military personnel
5	*Sharp Guard*	Adriatic Sea	16 Jul. 1992–1 Oct. 1996	SC Res. 787 of 16 Nov. 1992	NATO naval forces tasked to implement the embargo of arms deliveries to the former Yugoslavia, and the economic sanctions.	

(673; *Continued*)

Appendix 3 (*continued*)

	Name of the Operation	Location	Duration	Authorizing Resolutions	Comments	Maximum Strength/*Strength at end of 2006 (if applic.)*
6	*US-led Unified Task Force (UNITAF)*	Somalia	Dec. 1992–May 1993	SC Res. 794 of 3 Dec. 1992	Tasked to establish secure environment for humanitarian deliveries, operated concurrently with UNOSOM I to secure delivery of humanitarian aid. Subsequently, the task force was partially absorbed into UNOSOM II.	37,000 military personnel
7	*Operation Deny Flight*	Bosnia and Herzegovina	Apr. 1993–Dec. 1995	SC Res. 816 of 31 Mar. 1993	NATO-led enforcement of no-fly zone; operated concurrently with UNPROFOR and its successor peacekeeping forces in the former Yugoslavia.	
8	*Opération Turquoise*	Rwanda	22 Jun.–30 Sep. 1994	SC Res. 929 of 22 Jun. 1994	French-led military intervention, operated concurrently with the UNAMIR peacekeeping force. Tasked to provide security for refugees and civilians.	3,060 military personnel
9	*Multinational Force (MNF)*	Haiti	1994–5	SC Res. 940 of 31 Jul. 1994	Followed, and operated concurrently with, UNMIH peacekeeping operation. Created conditions for the return of the elected government to Haiti.	7,412 military personnel, 717 civilian police.
10	*The NATO-led Implementation Force (IFOR)*	Bosnia and Herzegovina	Dec. 1995–Dec. 1996	SC Res. 1031 of 15 Dec. 1995	Established after the Dayton Peace Agreement to bring an end to hostilities, separate forces, provide a safe and secure environment, and support civilian	*c.*60,000 military personnel

					implementation of the Dayton Peace Agreement.	
11	*The NATO-led Stabilization Force (SFOR)*	Bosnia and Herzegovina	1996–2004	SC Res. 1088 of 12 Dec. 1996	Followed IFOR, tasked to provide safe and secure environment in Bosnia, and support the ICTY and OHR.	c.32,000 military personnel (1996)
12	*Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB)*	Central African Republic	Feb. 1997–Apr. 1998	SC Res. 1125 of 6 Aug. 1997	Set up on request of the Central African Republic following army rebellions. Tasked to restore peace and security, in particular to disarm former rebels and the militia. MISAB includes forces from Burkina Faso, Chad, Gabon, Mali, Senegal, and Togo.	c.800 military personnel
13	*The Italian-led Multinational Protection Force (MPF)*	Albania	Apr.–Aug. 1997	SC Res. 1101 of 28 Mar. 1997	Authorized Italy to stabilize the situation in Albania after the collapse of the state institutions, to allow for elections, distribute humanitarian aid, and control Adriatic ports used for mass emigration to Italy.	6,294 military personnel
14	*The NATO-led Kosovo Force (KFOR)*	Kosovo	Jun. 1999–	SC Res. 1244 of 10 Jun. 1999	Mandated to establish and maintain a safe and secure environment in Kosovo, and assist UNMIK.	c.42,700 military personnel (1999) *c.16,000 military personnel (May 2006)*
15	*The Australian-led International Force for East Timor (INTERFET)*	East Timor	Sep. 1999–Feb. 2000	SC Res. 1264 of 15 Sep. 1999	Preceded the establishment of, and operated concurrently with, and was later absorbed by, the UNTAET peacekeeping operation.	11,000 military personnel

(675; *Continued*)

Appendix 3 (*continued*)

	Name of the Operation	Location	Duration	Authorizing Resolutions	Comments	Maximum Strength/*Strength at end of 2006 (if applic.)*
16	*Task Force Fox*	FYROM	Sep. 2001–Dec. 2002	SC Res. 1371 of 26 Sep. 2001	SC endorsed NATO mission, established upon invitation by the FYROM government, to monitor the implementation of the peace agreement and disarm insurgents.	*c.*1,000 military personnel
17	*International Security Assistance Force (ISAF)*	Afghanistan	Jan. 2002–	SC Res. 1386 of 20 Dec. 2001	Established to assist the Afghan Transitional Authority and later the Afghan government to maintain security within its area of responsibility. Was first led by individual NATO members, and later by NATO.	*c.31,000 military personnel (Nov. 2006)*
18	*Operation Licorne*/ ECOWAS Mission in Côte d'Ivoire *(MICECI)*	Côte d'Ivoire	Feb. 2003–Apr. 2004	SC Res. 1464 of 4 Feb. 2003	Authorized ECOWAS and French forces to guarantee the security and freedom of movement of their personnel and to ensure the protection of civilians within their zones of operation. Was followed in 2004 by the UNOCI peacekeeping operation.	*c.*5,300 military personnel
19	*Opération Artémis*	Ituri region of the Democratic Republic of Congo	15 Jun.–1 Sep. 2003	SC Res. 1484 of 30 May 2003	French-led European Union force in support of MONUC, the UN peacekeeping operation in Congo; prepared the way for the Ituri Brigade, deployed by MONUC.	*c.*1,400 military personnel
20	*Multinational Force in Liberia*	Liberia	4 Aug.–1 Oct. 2003	SC Res. 1497 of 1 Aug. 2003	ECOWAS force (ECOMIL) to support implementation of the Liberian ceasefire agreement, signed in Accra on 17 Jun.	*c.*3,500–4,000 ECOWAS military personnel. The US positioned 2,000 Marines off the Liberian coast. (Aug. 2003)

					2003; paved way for deployment of UNMIL peacekeeping force.	
21	*Multinational Force (MNF)*	Iraq	2003–	SC Res. 1511 of 16 Oct. 2003	SC '*authorizes* a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq'. Re-labelled US-led occupation force as MNF.	180,000 military personnel (Feb. 2005)/ *147,000 military personnel (Jul. 2006)*
22	*The US-led Multinational Interim Force (MIF)*	Haiti	Mar.–Jun. 2004	SC Res. 1529 of 29 Feb. 2004	Paved way for MINUSTAH peacekeeping operation, transferring authority to it on 1 Jun. 2004; certain MIF forces continued in operation in Haiti until 30 Jun. 2004.	c.3,800 military personnel
23	*African Union Mission in the Sudan (Operation AMIS)*	Darfur, Sudan	20 Oct. 2004–	SC Res. 1556 of 30 Jul. 2004	SC '*endorses* the deployment of international monitors, including the protection force envisioned by the African Union, to the Darfur region of Sudan under the leadership of the African Union'.	*4,657 military personnel, 608 military observers, 1,425 civilian police (Nov. 2006)*
24	*European Union Force EUFOR/ Operation Althea*	Bosnia and Herzegovina	Dec. 2004–	SC Res. 1575 of 22 Nov. 2004	Succeeded SFOR in Bosnia and Herzegovina.	*5,949 military personnel (Sep. 2006)*
25	*European Union Force EUFOR R.D.Congo*	Democratic Republic of Congo	Apr.–Nov. 2006	SC Res. 1671 of 25 Apr. 2006	EU military mission in support of ONUC during the first democratic elections in the Republic of Congo in July/Aug. 2006. Authorized for four months.	*2,400 military personnel (Aug. 2006)*

APPENDIX 4: UN-AUTHORIZED SANCTIONS, 1945–2006

This appendix was prepared by David Cortright, George A. Lopez, and Linda Gerber-Stellingwerf

	Sanctioned Country or Entity	Authorizing Resolutions	Type of Sanction	Security Council's Stated Reasons for Authorizing/ Extending Sanctions	Impact of Sanctions
1	Rhodesia	SC Res. 221 of 9 Apr. 1966	Oil embargo	To end the illegal racist regime in Southern Rhodesia.	Little impact on the regime.
		SC Res. 232 of 16 Dec. 1966	Arms embargo, trade sanctions		
		SC Res. 253 of 29 May 1968	Travel sanctions		
		SC Res. 277 of 18 Mar. 1970	Diplomatic sanctions		
		SC Res. 409 of 27 May 1977	Financial sanctions		
		SC Res. 460 of 21 Dec. 1979	Sanctions lifted		
2	South Africa	SC Res. 418 of 4 Nov. 1977	Arms embargo	To eliminate apartheid and racial discrimination.	Little impact.
		SC Res. 919 of 26 May 1994	Arms embargo lifted		
3	Iraq	SC Res. 661 of 6 Aug. 1990	Comprehensive sanctions[1]	Originally authorized to achieve immediate and unconditional withdrawal of occupying troops from Kuwait and restore legitimate government of Kuwait. Following the liberation of Kuwait, sanctions were upheld until Iraq would unconditionally accept obligation to disarm, and accept long-term monitoring of its weapons programme; recognize newly demarcated border with Kuwait (SC Res. 687 of 3 Apr. 1991).	Significant impact. Aided the success of the UN disarmament mission; helped convince the regime to accept redrawn border with Kuwait; contributed to military containment of the Baghdad government. Associated with severe humanitarian problems.

(679; *Continued*)

Appendix 4 (*continued*)

	Sanctioned Country or Entity	Authorizing Resolutions	Type of Sanction	Security Council's Stated Reasons for Authorizing/ Extending Sanctions	Impact of Sanctions
		SC Res. 1483 of 22 May 2003	Sanctions lifted, but arms embargo continued. Assets freeze imposed on former regime members.		
4	Yugoslavia	SC Res. 713 of 25 Sep. 1991	Arms embargo on all of Yugoslavia	To end the fighting in Yugoslavia; secure compliance with cease–fire agreements; achieve a peaceful solution of the conflicts	Significant impact, though the arms embargo was widely ignored. May have contributed to the pressure on the Belgrade government to accept the Dayton Accords.
		SC Res. 757 of 30 May 1992	Comprehensive sanctions on FRY		
		SC Res. 1021 of 22 Nov. 1995	Arms embargo lifted		
		SC Res. 1022 of 22 Nov. 1995	Sanctions suspended indefinitely, though suspension did not apply to Bosnian Serbs		
		SC Res. 1074 of 1 Oct. 1996	Sanctions on Bosnian Serbs lifted		
5	Somalia	SC Res. 733 of 23 Jan. 1992	Arms embargo	To end the conflict in Somalia and to provide conditions for increased humanitarian assistance.	No impact. Poorly enforced.
		SC Res. 1725 of 6 Dec. 2006	Arms embargo partly suspended – does not apply to protection and training mission in Somalia.		
6	Libya	SC Res. 748 of 31 Mar. 1992	Aviation, arms embargo, travel, diplomatic sanctions	To commit the Libyan government to cease all forms of terrorist action and	Significant impact. Helped to convince regime to extradite terrorist suspects and to

				all assistance to terrorist groups. Requested that the government promptly, by concrete action, demonstrates its renunciation of terrorism, and fulfils demands made in SC Res. 731 of 21 Jan. 1991, in particular extraditing the two suspects of the Lockerbie bombing to the UK.	reduce support for international terrorism.
		SC Res. 883 of 11 Nov. 1993	Assets freeze, ban on provision of petroleum equipment to Libya		
		SC Res. 1506 of 12 Sep. 2003	Sanctions lifted		
7	Liberia	SC Res. 788 of 19 Nov. 1992	Arms embargo	To end the fighting in Liberia; secure compliance with the ceasefire agreement, and achieve implementation of the Yamoussoukro IV Accords.	Some impact. Helped to weaken and isolate Charles Taylor regime.
		SC Res. 1343 of 7 Mar. 2001	Arms embargo under SC Res. 788 lifted. Imposed new arms embargo, assets freeze, travel/aviation ban, diamond embargo, called for establishment of Certificate of Origin scheme for diamonds.	To end financial and military support for RUF rebels in Sierra Leone by the Liberian government, expel RUF rebels from Liberian territory, cease import of non-certified Sierra Leonean diamonds; and cease support by the government for other armed rebel groups in the region.	
		SC Res. 1478 of 6 May 2003	Timber embargo		
		SC Res. 1521 of 22 Dec. 2003	Terminated SC Res. 1343 and 1478 sanctions. Imposed arms embargo, travel	To ensure that the ceasefire in Liberia is being fully respected and maintained,	

(681; *Continued*)

Appendix 4 (*continued*)

	Sanctioned Country or Entity	Authorizing Resolutions	Type of Sanction	Security Council's Stated Reasons for Authorizing/ Extending Sanctions	Impact of Sanctions
			ban, ban on diamond and timber exports from Liberia, called for establishment of Certificate of Origin scheme for diamonds.	disarmament, demobilization, reintegration, repatriation, and restructuring of the security sector have been completed, the provisions of the Comprehensive Peace Agreement are being fully implemented, and significant progress has been made in establishing and maintaining stability in Liberia and the sub-region.	
		SC Res. 1532 of 12 Mar. 2004	Assets freeze on Charles Taylor and other designated individuals		
		SC Res. 1689 of 20 Jun. 2006	Timber embargo suspended		
8	Haiti	SC Res. 841 of 16 Jun. 1993	Fuel and arms embargo, funds freeze	To bring about the restoration of the legitimate government of Haiti and the return of the elected President Aristide.	Considerable impact. Effective in convincing military junta to negotiate the return of civilian power, but the resulting Governors Island accord was not enforced and gave way to military intervention.
		SC Res. 917 of 6 May 1994 SC Res. 944 of 29 Sep. 1994	Comprehensive sanctions. Sanctions terminated upon Aristide's return to power		
9	Angola (UNITA Rebel Movement)	SC Res. 864 of 15 Sep. 1993	Arms embargo, petroleum embargo	To establish a ceasefire; full implementation by UNITA of the Acordos de Paz and provisions of the relevant	Considerable impact. Initial limited sanctions replaced by more comprehensive and better-enforced measures, which

				Security Council resolutions.	contributed to the isolation and weakening of UNITA.
		SC Res. 1127 of 28 Aug. 1997	Travel, aviation, diplomatic sanctions		
		SC Res. 1173 of 12 Jun. 1998	Assets freeze, financial, diamond imports not certified by Angolan government, travel		
		SC Res. 1448 of 9 Dec. 2002	Lifted all sanctions		
10	Rwanda	SC Res. 918 of 17 May 1994	Arms embargo	To end violence and violations of human rights and international humanitarian law.	No impact.
		SC Res. 1011 of 16 Aug. 1995	Arms embargo terminated in relation to Rwandan government.	Arms embargo against non-governmental forces in Rwanda was maintained, to end the uncontrolled circulation of arms, including to civilians and refugees, which the SC considered the major cause of destabilization in the Great Lakes subregion.	
11	Sudan	SC Res. 1054 of 26 Apr. 1996	Diplomatic, travel restrictions	To bring about the extradition from Sudan of terrorist suspects for attempted assassination of Egyptian President; and to end Sudan supporting terrorist activities and sheltering terrorist elements.	Little direct impact, although Osama bin Laden was expelled from the country soon after sanctions were imposed, and the regime subsequently took steps to improve counter-terrorism cooperation with the West.

(683; *Continued*)

Appendix 4 (*continued*)

	Sanctioned Country or Entity	Authorizing Resolutions	Type of Sanction	Security Council's Stated Reasons for Authorizing/ Extending Sanctions	Impact of Sanctions
		SC Res. 1070 of 16 Aug. 1996	Travel, aviation (never went into effect), terminated in September 2001		
		SC Res. 1372 of 28 Sep. 2001	Terminated all 1054 and 1070 measures		
12	Sierra Leone	SC Res. 1132 of 8 Oct. 1997	Oil embargo, arms embargo, travel restrictions	To end violence by the military junta and its interference with the delivery of humanitarian aid, and to bring about relinquishing of power by the junta and the restoration of the democratically elected government.	Little impact, but contributed to the weakening of the Revolutionary United Front.
		SC Res. 1171 of 5 Jun. 1998	Arms embargo and travel ban reinforced	Sanctions against former junta and RUF rebels to bring about end of their resistance to the legitimate government.	
		SC Res. 1306 of 5 Jul. 2000	Diamond exports prohibited (except under Certificate of Origin scheme)		
13	Yugoslavia	SC Res. 1160 of 31 Mar. 1998	Arms embargo	To end violence by KLA and Serb police and paramilitary forces in Kosovo, bring about political settlement, and to prevent the use of funds in violation of the arms embargo.	Limited impact, but in combination with US and EU measures contributed to regime's isolation.
		SC Res. 1199 of 23 Sep. 1998			
		SC Res. 1367 of 10 Sep. 2001	Sanctions terminated		

14	Afghanistan, al-Qaeda and the Taliban	SC Res. 1267 of 15 Oct. 1999	Aviation, financial	To suppress international terrorism; required Taliban to turn over Osama bin Laden and cease training and harbouring terrorists.	Little impact.
		SC Res. 1333 of 19 Dec. 2000	Arms embargo, travel, assets freeze, diplomatic, aviation		
		SC Res. 1390 of 16 Jan. 2002	Aviation ban lifted. Financial, travel, arms measures imposed against designated individuals.		
		SC Res. 1526 of 30 Jan. 2004	Assets, travel, arms embargo		
15	Ethiopia and Eritrea	SC Res. 1298 of 17 May 2000	Arms embargo (sunset clause of one year)	Ethiopia and Eritrea to cease military action and conclude peaceful definitive settlement of the conflict.	Little impact.
		UN doc. S/PRST/2001/14 of 15 May 2001	Arms embargo expired		
16	Democratic Republic of Congo	SC Res. 1493 of 28 Jul. 2003	Arms embargo	To end the violence in North and South Kivu and Ituri, to achieve significant progress in the peace process, in particular an end to support for armed groups, an effective ceasefire and progress in the disarmament of foreign and Congolese non-government armed groups.	Little impact. Arms embargo poorly enforced.
		SC Res. 1596 of 18 Apr. 2005	Travel, assets freeze, aviation		

(685; *Continued*)

Appendix 4 (*continued*)

	Sanctioned Country or Entity	Authorizing Resolutions	Type of Sanction	Security Council's Stated Reasons for Authorizing/ Extending Sanctions	Impact of Sanctions
17	Sudanese rebel groups (including Janjaweed)	SC Res. 1556 of 30 Jul. 2004	Arms embargo on Janjaweed	To bring about disarming of the Janjaweed by the Sudanese government, and bring to justice those who have carried out human rights and humanitarian law violations.	Little impact.
		SC Res. 1591 of 29 Mar. 2005	Travel restrictions, assets freeze on designated Sudanese and Janjaweed leaders	To end offensive military flights by the Sudanese government, to bring about implementation of the ceasefire agreement, and disarmament of Janjaweed.	
18	Côte d'Ivoire	SC Res. 1572 of 15 Nov. 2004	Arms embargo, travel, assets freeze	To implement all commitments under the Accra III Agreement, requiring full implementation of Linas–Marcoussis Agreement.	Moderate impact.
		SC Res. 1643 of 15 Dec. 2005	Diamond embargo		
19	Syria	SC Res. 1636 of 31 Oct. 2005	Travel ban and assets freeze on designated individuals	To complete investigative and judicial proceedings relating to February 2005 killing of prime minister Hariri in Beirut, Lebanon.	
20	North Korea	SC Res. 1718 of 14 Oct. 2006	Arms embargo, embargo on luxury goods, travel	North Korea to desist from further nuclear tests, abandon WMD weapons and programmes and retract its	Potential impact. Feb. 2007 denuclearization agreement.

				announcement of withdrawal from Non-Proliferation Treaty.
21	Iran	SC Res. 1737 of 23 Dec. 2006	Trade embargo on all items, materials, equipment, goods and technology which could contribute to Iranian uranium enrichment programme, assets freeze on selected Iranian individuals and entities.	Iran to suspend all enrichment-related and reprocessing activities, including research and development, as verified by the IAEA, to allow for negotiations; and meet requirements of IAEA Board of Governors.

Note: In previous publications,[2] we listed Cambodia as a case of mandatory sanctions imposed by the Security Council. After additional research and consultations with UN officials, we have determined that Cambodia does not fully qualify as a case of mandatory Security Council sanctions. These measures were not adopted under Chapter VII of the UN Charter and thus were not mandatory on member states. SC Res. 792 of 30 Nov. 1992 employed advisory language such as 'calls' or 'requests', rather than the legally binding term 'decides'. The resolution did not create a sanctions committee, and the UN made no effort to monitor or encourage member state compliance.

[1] In the cases of Iraq, Yugoslavia, and Haiti comprehensive sanctions included a broad range of measures including trade, financial, assets, travel/aviation, arms embargos, diplomatic, and commodity restrictions.

[2] See, for example, David Cortright, George A. Lopez, and Linda Gerber Stellingwerf, *Sanctions and the Search for Security: Challenges to UN Action* (Boulder, CO: Lynne Rienner Publishers, 2002).

APPENDIX 5: VETOED RESOLUTIONS IN THE UN SECURITY COUNCIL, 1945–2006

These tables include all vetoes cast against full draft resolutions and parts of draft resolu tions in the Security Council from 1946 (when the Security Council held its first meeting, in London) to the end of 2006. The first compares the number of resolutions vetoed with the number of resolutions passed each year. The second comprises the number of vetoes, as well as the number of resolutions vetoed the former being higher, as some resolutions have been vetoed by more than one Permanent Member of the Security Council. The third table provides a detailed breakdown of all resolutions vetoed and all vetoes cast.

The information here excludes vetoes against parts of resolutions and amendments to resolutions which were subsequently vetoed as a whole. It also excludes draft resolutions that failed to get sufficient votes to be passed (7 votes out of 11 before the end of 1965, and 9 votes out of 15 since then). For example, the draft resolution tabled by Russia on 26 March 1999, calling for an immediate cessation of the use of force against Yugoslavia (UN doc. S/1999/328), failed to obtain the necessary number of votes, and does not count as a veto by France, the UK, and the US. Vetoes made in closed sessions, in particular on the appoint ment of a new Secretary General, have usually not been made public, and are therefore not included in the table.

Table 1. Resolutions passed and vetoed

Resolutions passed	Resolutions vetoed
87	2
71	0
59	3
67	2
68	2
52	2
50	0
65	1
73	0
54	3
57	0
66	1
77	1
93	1
74	0
42	0
37	2
20	5
20	6
13	2
13	8
21	7
14	3
17	3
29	8
15	5
23	3
18	2
21	0
20	3
18	7
18	6
22	2
20	3
17	5
16	4
16	2
13	0
18	1
12	0
13	1
20	0
14	2
8	2
7	1
10	7
28	0
1	5
5	5
5	3
11	4
5	18
2	4
5	0
2	8
7	0
11	3
12	14
29	7
22	14
15	9

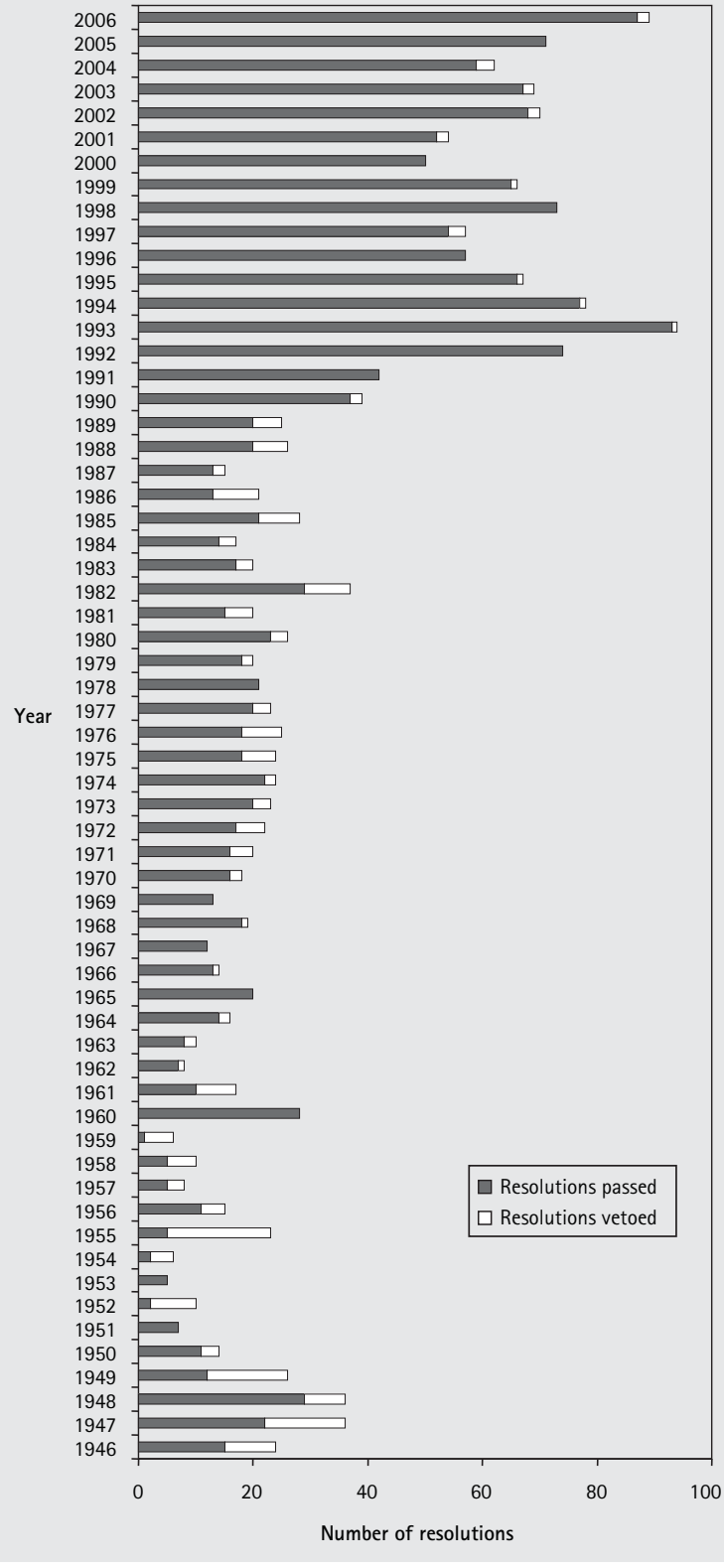

Table 2 Number of vetoes (and vetoed resolutions)

Years	China	France	USSR/ Russia	United Kingdom	United States	Total number of vetoes cast	(Total number of vetoed resolutions)
1946–55	1	2	75	0	0	**78**	(77)
1956–65	0	2	26	3	0	**31**	(29)
1966–75	2	2	7	8	12	**31**	(24)
1976–85	0	9	6	11	34	**60**	(41)
1986–95	0	3	2	8	24	**37**	(26)
1996–2006[1]	2	0	1	0	12	**15**	(15)
TOTAL	**5**	**18**	**117**	**30**	**82**	**252**	(212)

Sources: UK Foreign and Commonwealth Office; UN.
[1] Eleven year period.

Table 3 Resolutions vetoed and vetoes cast

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
1	16 Feb. 1946	7,1,1	S/PV.23	S/PV.22	French and British troops in Syria and Lebanon (France and the UK, as parties to the dispute, did not participate in vote)	USSR	1
2	18 Jun. 1946	9,1,1	S/PV.47	S/PV.45	Spanish Question	USSR	2
3	26 Jun. 1946	9,2,0	S/PV.49	S/PV.49	Spanish Question	USSR	3
4	26 Jun. 1946	8,2,1	S/PV.49	S/PV.49	Spanish Question	France	4
						USSR	5
5	26 Jun. 1946	9,2,0	S/PV.49	S/PV.49	Spanish Question	USSR	6
6	29 Aug. 1946	8,2,1	S/PV.57	S/PV.57	Application for Membership (Transjordan)	USSR	7
7	29 Aug. 1946	9,1,1	S/PV.57	S/PV.57	Application for Membership (Ireland)	USSR	8
8	29 Aug. 1946	8,2,1	S/PV.57	S/PV.57	Application for Membership (Portugal)	USSR	9
9	20 Sep. 1946	8,2,1	S/PV.70	S/PV.70	Ukrainian Complaint against Greece	USSR	10
10	25 Mar. 1947	7,2,1	S/PV.122	S/PV.122	Incidents in the Corfu Channel (the UK, as party to the dispute, did not participate in the vote)	USSR	11
11	29 Jul. 1947	9,2,0	S/PV.170	S/PV.170	Greek Frontier Incidents	USSR	12
12	18 Aug. 1947	9,1,1	S/PV.186	S/PV.186	Application for Membership (Transjordan)	USSR	13
13	18 Aug. 1947	9,1,1	S/PV.186	S/PV.186	Application for Membership (Ireland)	USSR	14
14	18 Aug. 1947	9,2,0	S/PV.186	S/PV.186	Application for Membership (Portugal)	USSR	15
15	19 Aug. 1947	9,2,0	S/PV.188	S/471+ Add.1 and S/PV.188	Greek Frontier Incidents	USSR	16

(691; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
16	19 Aug. 1947	9,2,0	S/PV.188	S/486 and S/PV.188	Greek Frontier Incidents	USSR	17
17	21 Aug. 1947	9,1,1	S/PV.190	S/PV.190	Application for Membership (Italy)	USSR	18
18	21 Aug. 1947	8,1,2	S/PV.190	S/PV.190	Application for Membership (Austria)	USSR	19
19	25 Aug. 1947	7,2,2	S/PV.194	S/514	Indonesian Question	France	20
20	15 Sep. 1947	9,2,0	S/PV.202	S/552	Greek Frontier Incidents (requested GA to consider the dispute)	USSR	21
21	15 Sep. 1947	8,2,1	S/PV.202	S/552	Greek Frontier Incidents (declared this proposal to be procedural)	USSR	22
22	01 Oct. 1947	9,2,0	S/PV.206	S/PV.206	Application for Membership (Italy)	USSR	23
23	01 Oct. 1947	9,2,0	S/PV.206	S/PV.206	Application for Membership (Finland)	USSR	24
24	10 Apr. 1948	9,2,0	S/PV.279	S/PV.279	Application for Membership (Italy)	USSR	25
25	24 May 1948	8,2,1	S/PV.303	S/PV.303	Question of Czechoslovakia	USSR	26
26	24 May 1948	9,2,0	S/PV.303	S/PV.303	Question of Czechoslovakia	USSR	27
27	22 Jun. 1948	9,2,0	S/PV.325	S/836	Reports from the Atomic Energy Committee	USSR	28
28	18 Aug. 1948	9,2,0	S/PV.351	S/PV.351	Application for Membership (Ceylon)	USSR	29
29	25 Oct. 1948	9,2,0	S/PV.372	S/1048	Berlin Blockade	USSR	30
30	15 Dec. 1948	9,2,0	S/PV.384	S/PV.384	Application for Membership (Ceylon)	USSR	31
31	08 Apr. 1949	9,2,0	S/PV.423	S/1305	Application for Membership (Republic of Korea)	USSR	32

32	07 Sep. 1949	9,2,0	S/PV.439	S/1385	Application for Membership (Nepal)	USSR	33
33	13 Sep. 1949	9,2,0	S/PV.443	S/1331	Application for Membership (Portugal)	USSR	34
34	13 Sep. 1949	9,2,0	S/PV.443	S/1332	Application for Membership (Transjordan)	USSR	35
35	13 Sep. 1949	9,2,0	S/PV.443	S/1333	Application for Membership (Italy)	USSR	36
36	13 Sep. 1949	9,2,0	S/PV.443	S/1334	Application for Membership (Finland)	USSR	37
37	13 Sep. 1949	9,2,0	S/PV.443	S/1335	Application for Membership (Ireland)	USSR	38
38	13 Sep. 1949	9,2,0	S/PV.443	S/1336	Application for Membership (Austria)	USSR	39
39	13 Sep. 1949	9,2,0	S/PV.443	S/1337	Application for Membership (Ceylon)	USSR	40
40	11 Oct. 1949	9,2,0	S/PV.450	S/1398	Proposal of the Commission on Conventional Armaments	USSR	41
41	18 Oct. 1949	9,2,0	S/PV.452	S/1399/Rev.1	Proposal of the Commission on Conventional Armaments	USSR	42
42	18 Oct. 1949	8,2,1	S/PV.452	S/1408/Rev.1	Regulation and Reduction of Armaments	USSR	43
43	13 Dec. 1949	9,2,0	S/PV.456	S/1431	Indonesian Question	USSR	44
44	13 Dec. 1949	8,2,1	S/PV.456	S/1431	Indonesian Question	USSR	45
45	06 Sep. 1950	9,1,1	S/PV.496	S/1653	Complaint of Aggression against the Republic of Korea	USSR	46
46	12 Sep. 1950	7,1,2	S/PV.501	S/1752	Complaint of alleged bombing of Chinese Airstrip by UN forces in Korea (China did not participate in the vote)	USSR	47
47	30 Nov. 1950	8,1,1	S/PV.530	S/1894	Complaint of Aggression against the Republic of Korea (India did not participate in the vote)	USSR	48

(693; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
48	06 Feb. 1952	10,1,0	S/PV.573	S/2443	Application for Membership (Italy)	USSR	49
49	03 Jul. 1952	10,1,0	S/PV.587	S/2671	Request for Investigation of Alleged Bacterial Warfare	USSR	50
50	09 Jul. 1952	9,1,1	S/PV.590	S/2688	Request for Investigation of Alleged Bacterial Warfare	USSR	51
51	16 Sep. 1952	10,1,0	S/PV.600	S/2483	Application for Membership (Libya)	USSR	52
52	18 Sep. 1952	10,1,0	S/PV.603	S/2754	Application for Membership (Japan)	USSR	53
53	19 Sep. 1952	10,1,0	S/PV.603	S/2760	Application for Membership (Vietnam)	USSR	54
54	19 Sep. 1952	10,1,0	S/PV.603	S/2759	Application for Membership (Laos)	USSR	55
55	19 Sep. 1952	10,1,0	S/PV.603	S/2758	Application for Membership (Cambodia)	USSR	56
56	22 Jan. 1954	7,2,2	S/PV.656	S/3151/Rev.2	Palestinian Question (Jordan River)	USSR	57
57	29 Mar. 1954	8,2,1	S/PV.664	S/3188 + Corr.1	The Arab–Israeli Dispute (Suez Canal)	USSR	58
58	18 Jun. 1954	9,1,1	S/PV.674	S/3229	Situation in Thailand (Request for Peace Observation Commission)	USSR	59
59	20 Jun. 1954	10,1,0	S/PV.675	S/3236/Rev.1	Central America (Guatemala)	USSR	60
60	13 Dec. 1955	9,1,1	S/PV.704	S/3506	Application for Membership (Republic of Korea)	USSR	61
61	13 Dec. 1955	9,1,1	S/PV.704	S/3506	Application for Membership (South Vietnam)	USSR	62
62	13 Dec. 1955	8,1,2	S/PV.704	S/3502	Application for Membership (Mongolia)	China	63

63	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Jordan)	USSR	64
64	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Ireland)	USSR	65
65	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Portugal)	USSR	66
66	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Italy)	USSR	67
67	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Austria)	USSR	68
68	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Finland)	USSR	69
69	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Ceylon)	USSR	70
70	13 Dec. 1955	10.1.0	S/PV.704	S/3502	Application for Membership (Nepal)	USSR	71
71	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Libya)	USSR	72
72	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Cambodia)	USSR	73
73	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Japan)	USSR	74
74	13 Dec. 1955	10,1,0	S/PV.704	S/3502	Application for Membership (Laos)	USSR	75
75	13 Dec. 1955	9,1,1	S/PV.704	S/3502	Application for Membership (Spain)	USSR	76
76	14 Dec. 1955	10,1,0	S/PV.705	S/3509	Application for Membership (Japan)	USSR	77
77	15 Dec. 1955	10,1,0	S/PV.706	S/3510	Application for Membership (Japan)	USSR	78
78	13 Oct. 1956	9,2,0	S/PV.743	S/3671/Rev.1, Second Part	Complaint by UK and France (Suez Canal)	USSR	79
79	30 Oct. 1956	7,2,2	S/PV.749	S/3710 + Corr.1 S/PV.749 and footnote 2	Question of Palestine: Steps for the Immediate Cessation of the Military Action of Israel in Egypt	UK	80
						France	81

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
80	30 Oct. 1956	7,2,2	S/PV.750/ Rev.1	S/3713/Rev.1	Question of Palestine: Steps for the Immediate Cessation of the Military Action of Israel in Egypt	UK	82
						France	83
81	04 Nov. 1956	9,1,0	S/PV.754	S/3730/Rev.1	Situation in Hungary (Yugoslavia did not participate in the vote)	USSR	84
82	20 Feb. 1957	9,1,1	S/PV.773	S/3787	India–Pakistan Question (Kashmir and Jammu)	USSR	85
83	09 Sep. 1957	10,1,0	S/PV.790	S/3884	Application for Membership (Republic of Korea)	USSR	86
84	09 Sep. 1957	10,1,0	S/PV.790	S/3885	Application for Membership (Vietnam)	USSR	87
85	02 May 1958	10,1,0	S/PV.817	S/3995	Soviet Complaint (Overflights by the US)	USSR	88
86	18 Jul. 1958	9,1,1	S/PV.834	S/4050/Rev.1	Complaint by Lebanon of Interference by United Arab Republic (UAR)	USSR	89
87	22 Jul. 1958	10.1.0	S/PV.837	S/4055/Rev.1	Complaint by Lebanon of Interference by UAR	USSR	90
88	09 Dec. 1958	9,1,1	S/PV.843	S/4129/Rev.1	Application for Membership (Republic of Korea)	USSR	91
89	09 Dec. 1958	8,1,2	S/PV.843	S/4130/Rev.1	Application for Membership (South Vietnam)	USSR	92
90	26 Jul. 1960	9,2,0	S/PV.883	S/4409/Rev.1	Alleged incursion of US bomber into Soviet airspace (RB–47 incident)	USSR	93
91	26 Jul. 1960	9,2,0	S/PV.883	S/4411	RB–47 incident	USSR	94
92	17 Sep. 1960	8,2,1	S/PV.906	S/4523	Congo Question	USSR	95
93	04 Dec. 1960	8,2,1	S/PV.911	S/4567/Rev.1	Application for Membership (Mauritania)	USSR	96

94	13 Dec. 1960	7,3,1	S/PV.920	S/4578/Rev.1	Congo Question	USSR	97
95	20 Feb. 1961	8,3,0	S/PV.942	Amendment to S/4733/Rev.1	Congo Question	USSR	98
96	20 Feb. 1961	7,3,1	S/PV.942	S/4733/Rev.1, as amended	Congo Question	USSR	99
97	07 Jul. 1961	7,1,3	S/PV.960	S/4855	Complaint by Kuwait against Iraq	USSR	100
98	24 Nov. 1961	9,1,1	S/PV.982	S/4989/Rev.2 (third US amendment)	Congo Question	USSR	101
99	24 Nov. 1961	9,1,1	S/PV.982	S/4989/Rev.2 (US amendment)	Congo Question	USSR	102
100	30 Nov. 1961	10,1,0	S/PV.985	S/5006	Application for Membership (Kuwait)	USSR	103
101	18 Dec. 1961	10,1,0	S/PV.988	S/5033	Complaint by Portugal (Indian Forces in Goa)	USSR	104
102	22 Jun. 1962	7,2,2	S/PV.1016	S/5134	India–Pakistan Question (Kashmir and Jammu)	USSR	105
103	03 Sep. 1963	8,2,1	S/PV.1063	S/5407	Situation in the Middle East (Israeli-Syrian Conflict)	USSR	106
104	13 Sep. 1963	8,1,2	S/PV.1069	S/5425/Rev.1	Situation in Rhodesia	UK	107
105	17 Sep. 1964	9,2,0	S/PV.1152	S/5973	Relationship between Malaysia and Indonesia	USSR	108
106	21 Dec. 1964	8,3,0	S/PV.1182	S/6113 as amended	Armistice Agreement (Syria–Israel)	USSR	109
107	04 Nov. 1966	10,4,1	S/PV.1319	S/7575/Rev.1	Armistice Agreement (Syria–Israel) (First vote of enlarged SC)	USSR	110
108	22 Aug. 1968	10,2,3	S/PV.1443	S/8761	Complaint by Czechoslovakia	USSR	111
109	17 Mar. 1970	9,2,4	S/PV.1534	S/9696 + Corr.1, 2	Situation in Rhodesia	UK	112
						US	113
110	10 Nov. 1970	12,1,2	S/PV.1556	S/9976	Situation in Rhodesia	UK	114
111	04 Dec. 1971	11,2,2	S/PV.1606	S/10416	India–Pakistan Question (Bangladesh)	USSR	115
112	05 Dec. 1971	11,2,2	S/PV.1607	S/10423	India–Pakistan Question (Bangladesh)	USSR	116

(697; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
113	13 Dec. 1971	11,2,2	S/PV.1613	S/10446/Rev.1	India–Pakistan Question (Bangladesh)	USSR	117
114	30 Dec. 1971	9,1,5	S/PV.1623	S/10489	Situation in Rhodesia	UK	118
115	04 Feb. 1972	9,1,5	S/PV.1639	S/10606	Situation in Rhodesia	UK	119
116	25 Aug. 1972	11,1,3	S/PV.1660	S/10771	Application for Membership (Bangladesh)	China	120
117	10 Sep. 1972	13,1,1	S/PV.1662	S/10784	Situation in the Middle East (Ceasefire 1967 Violation)	US	121
118	10 Sep. 1972	9,6,0	S/PV.1662	S/10786, para. 2	Situation in the Middle East (Ceasefire 1967 Violation)	USSR	122
						China	123
119	29 Sep. 1972	10,1,4	S/PV.1666	S/10805/Rev.1, para. 1	Situation in Rhodesia	UK	124
120	21 Mar. 1973	13,1,1	S/PV.1704	S/10931/Rev.1	Panama Canal Question	US	125
121	22 May 1973	11,2,2	S/PV.1716	S/10928	Situation in Rhodesia	US	126
						UK	127
122	26 Jul. 1973	13,1,0	S/PV.1735	S/10974	Situation in the Middle East (Palestinian Question) (China did not participate in the vote)	US	128
123	31 Jul. 1974	12,2,0	S/PV.1788	S/11400/Rev.1	Situation in Cyprus (China did not participate in the vote)	USSR	129
124	30 Oct. 1974	10,3,2	S/PV.1808	S/11543	South Africa (Representation in the UN)	France	130
						UK	131
						US	132
125	06 Jun. 1975	10,3,2	S/PV.1829	S/11713	Namibia Question	France	133
						UK	134
						US	135
126	11 Aug. 1975	13,1,1	S/PV.1836	S/11795	Application for Membership (South Vietnam)	US	136
127	11 Aug. 1975	13,1,1	S/PV.1836	S/11796	Application for Membership (North Vietnam)	US	137

128	30 Sep. 1975	14,1,0	S/PV.1846	S/11832	Application for Membership (South Vietnam)	US	138
129	30 Sep. 1975	14,1,0	S/PV.1846	S/11833	Application for Membership (North Vietnam)	US	139
130	08 Dec. 1975	13,1,1	S/PV.1862	S/11898	Situation in the Middle East (Israel–Lebanon)	US	140
131	26 Jan. 1976	9,1,3	S/PV.1879	S/11940	Middle East Question including the Palestinian Question (China and Libya did not participate in the vote)	US	141
132	06 Feb. 1976	11,1,3	S/PV.1888	S/11967	Dispute between the Comoros and France on Mayotte	France	142
133	25 Mar. 1976	14,1,0	S/PV.1899	S/12022	Jerusalem Status	US	143
134	23 Jun. 1976	13,1,0	S/PV.1932	S/12110	Application for Membership (Angola) (China did not participate in the vote)	US	144
135	29 Jun. 1976	10,1,4	S/PV.1938	S/12119	Question of the Exercise by the Palestinian People of their Inalienable Rights	US	145
136	19 Oct. 1976	10,3,2	S/PV.1963	S/12211	Situation in Namibia	France	146
						UK	147
						US	148
137	15 Nov. 1976	14,1,0	S/PV.1972	S/12226	Application for Membership (Socialist Republic of Vietnam)	US	149
138	31 Oct. 1977	10,5,0	S/PV.2045	S/12310/Rev.1	Situation in South Africa	France	150
						UK	151
						US	152
139	31 Oct. 1977	10,5,0	S/PV.2045	S/12311/Rev.1	Situation in South Africa	France	153
						UK	154
						US	155
140	31 Oct. 1977	10,5,0	S/PV.2045	S/12312/Rev.1	Situation in South Africa	France	156
						UK	157
						US	158

(699; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
141	15 Jan. 1979	13,2,0	S/PV.2112	S/13027	Vietnam Intervention in Kampuchea (Cambodia)	USSR	159
142	16 Mar. 1979	13,2,0	S/PV.2129	S/13162	Border Dispute in South East Asia (China and Vietnam)	USSR	160
143	07 Jan. 1980	13,2,0	S/PV.2190	S/13729	Soviet Invasion of Afghanistan	USSR	161
144	13 Jan. 1980	10,2,2	S/PV.2191 and Add.1	S/13735	US and Islamic Republic of Iran (Hostage Question) (China did not participate in the vote)	USSR	162
145	30 Apr. 1980	10,1,4	S/PV.2220	S/13911	Situation in the Middle East (Palestinian Rights)	US	163
146	30 Apr. 1981	9,3,3	S/PV.2277	S/14459	Question of Namibia	France	164
						UK	165
						US	166
147	30 Apr. 1981	9,3,3	S/PV.2277	S/14460/Rev.1	Question of Namibia	France	167
						UK	168
						US	169
148	30 Apr. 1981	11,3,1	S/PV.2277	S/14461	Question of Namibia	France	170
						UK	171
						US	172
149	30 Apr. 1981	12,3,0	S/PV.2277	S/14462	Question of Namibia	France	173
						UK	174
						US	175
150	31 Aug. 1981	13,1,1	S/PV.2300	S/14664/Rev.2	Complaint by Angola against South Africa	US	176
151	20 Jan. 1982	9,1,5	S/PV.2329	S/14832/Rev.1	Situation in the Middle East (Golan Heights)	US	177
152	02 Apr. 1982	12,1,2	S/PV.2347	S/14941	Situation in Central America (Nicaragua)	US	178
153	02 Apr. 1982	13,1,1	S/PV.2348	S/14943	Situation in the Middle East (Israel's Dismissal of Mayors of Nablus and Ramallah)	US	179

154	20 Apr. 1982	14,1,0	S/PV.2357	S/14985	Situation in the Middle East (Al-Aqsa Mosque in Jerusalem Attack)	US	180
155	04 Jun. 1982	9,2,4	S/PV.2373	S/15156/Rev.2	Falkland Islands (Malvinas) Question	UK	181
						US	182
156	08 Jun. 1982	14,1,0	S/PV.2377	S/15185	Situation in the Middle East (Lebanon)	US	183
157	26 Jun. 1982	14,1,0	S/PV.2381	S/15255/Rev.2	Situation in the Middle East (Lebanon)	US	184
158	06 Aug. 1982	11,1,3	S/PV.2391	S/15347/Rev.1	Situation in the Middle East (Lebanon)	US	185
159	02 Aug. 1983	13,1,1	S/PV.2461	S/15895	Situation in the Middle East (Occupied Arab Territories)	US	186
160	12 Sep. 1983	9,2,4	S/PV.2476	S/15966/Rev.1	Shooting down of South Korean Airliner by USSR	USSR	187
161	27 Oct. 1983	11,1,3	S/PV.2491	S/16077/Rev.1	Invasion of the Republic of Grenada by US Troops	US	188
162	29 Feb. 1984	13,2,0	S/PV.2519	S/16351/Rev.2	Situation in the Middle East (Lebanon)	USSR	189
163	04 Apr. 1984	13,1,1	S/PV.2529	S/16463	Complaint of Nicaragua against USA	US	190
164	06 Sep. 1984	14,1,0	S/PV.2556	S/16732	Situation in the Middle East (Lebanon)	US	191
165	12 Mar. 1985	11,1,3	S/PV.2573	S/17000	Situation in the Middle East (Lebanon)	US	192
166	10 May 1985	13,1,1	S/PV.2580	S/17172, Preamble	US Economic Sanctions against Nicaragua	US	193
167	10 May 1985	11,1,3	S/PV.2580	S/17172, para. 1	US Economic Sanctions against Nicaragua	US	194
168	10 May 1985	13,1,1	S/PV.2580	S/17172, para. 2	US Economic Sanctions against Nicaragua	US	195
169	26 Jul. 1985	12,2,1	S/PV.2602	S/17354/Rev.1	South Africa Questions	UK	196
						US	197
170	13 Sep. 1985	10,1,4	S/PV.2605	S/17459	Situation in the Middle East (Occupied Territories)	US	198

(701; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
171	15 Nov. 1985	12,2,1	S/PV.2629	S/17633	Situation in Namibia	UK	199
						US	200
172	17 Jan. 1986	11,1,3	S/PV.2642	S/17730/Rev.2	Complaint by Lebanon against Israeli Aggression	US	201
173	30 Jan. 1986	13,1,1	S/PV.2650	S/17769/Rev.1	Violation of Haram Al-Sharif (Jerusalem)	US	202
174	06 Feb. 1986	10,1,4	S/PV.2655	S/17796/Rev.1	Syrian Complaint against Israeli Interception of Libyan Civilian Aircraft	US	203
175	21 Apr. 1986	9,5,1	S/PV.2682	S/18016/Rev.1	Libyan Complaint against US attack	France	204
						UK	205
						US	206
176	23 May 1986	12,2,1	S/PV.2686	S/18087/Rev.1	Complaint of Botswana, Zambia, and Zimbabwe against South Africa	UK	207
						US	208
177	18 Jun. 1986	12,2,1	S/PV.2693	S/18163	Complaint of Angola against South Africa	UK	209
						US	210
178	31 Jul. 1986	11,1,3	S/PV.2693	S/18250	Complaint of Nicaragua against USA (ICJ Judgment)	US	211
179	28 Oct. 1986	11,1,3	S/PV.2718	S/18428	Complaint of Nicaragua against USA (ICJ Judgment)	US	212
180	20 Feb. 1987	10,3,2	S/PV.2738	S/18705	South Africa (Sanctions)	UK	213
						US	214
181	09 Apr. 1987	9,3,3	S/PV.2747	S/18785	Namibia Question	UK	215
						US	216
182	18 Jan. 1988	13,1,1	S/PV.2784	S/19434	Complaint of Lebanon against Israel	US	217

183	01 Feb. 1988	14,1,0	S/PV.2790	S/19466	Situation in the Occupied Arab Territories	US	218
184	08 Mar. 1988	10,2,3	S/PV.2797	S/19585	South Africa (Sanctions)	UK	219
						US	220
185	15 Apr. 1988	14,1,0	S/PV.2806	S/19780	Situation in the Occupied Arab Territories	US	221
186	10 May 1988	14,1,0	S/PV.2814	S/19868	Complaint of Lebanon against Israel	US	222
187	14 Dec. 1988	14,1,0	S/PV.2832	S/20322	Complaint of Lebanon against Israel	US	223
188	11 Jan. 1989	9,4,2	S/PV.2841	S/20378	Complaint by Libya against US downing of aircraft	France	224
						UK	225
						US	226
189	17 Feb. 1989	14,1,0	S/PV.2850	S/20463	Situation in the Occupied Arab Territories	US	227
190	09 Jun. 1989	14,1,0	S/PV.2867	S/20677	Situation in the Occupied Arab Territories	US	228
191	07 Nov. 1989	14,1,0	S/PV.2889	S/20945/Rev.1	Situation in the Occupied Arab Territories	US	229
192	23 Dec. 1989	10,4,1	S/PV.2902	S/21048	Situation in Panama	France	230
						UK	231
						US	232
193	17 Jan. 1990	13,1,1	S/PV.2905	S/21084	Violation of Diplomatic Immunities in Panama	US	233
194	31 May 1990	14,1,0	S/PV.2926	S/21326	Situation in the Occupied Arab Territories	US	234
195	11 May 1993	14,1,0	S/PV.3211	S/25693	on Cyprus (finances)	Russia	235
196	02 Dec. 1994	13,1,1	S/PV.3475	S/1994/1358	The Situation in the former Yugoslavia	Russia	236
197	17 May 1995	14,1,0	S/PV.3538	S/1995/394	Situation in the Occupied Arab Territories (East Jerusalem)	US	237
198	10 Jan. 1997	14,1,0	S/PV.3730	S/1997/18	Peace Efforts in Guatemala	China	238
199	7 Mar. 1997	14,1,0	S/PV.3747	S/1997/199	The Situation in the Occupied Arab Territories	US	239

(703; *Continued*)

Table 3 (*continued*)

Cumulative Number of Vetoed Resolutions	Date of Vote	Vote (yes, no, abstain)	SC Official Records	Draft Resolution No.	Subject	Vetoing Member State	Cumulative Number of Vetoes Cast
200	21 Mar. 1997	13,1,1	S/PV.3756	S/1997/241	The Situation in the Occupied Arab Territories	US	240
201	25 Feb. 1999	13,1,1	S/PV.3982	S/1999/201	The Former Yugoslav Republic of Macedonia	China	241
202	27 Mar. 2001	9,1,4	S/PV.4305	S/2001/270	Middle East Situation, including the Palestinian Question (Ukraine did not participate in the vote)	US	242
203	14 Dec. 2001	12,1,2	S/PV.4438	S/2001/1199	Middle East Situation, including the Palestinian Question	US	243
204	30 Jun. 2002	13,1,1	S/PV.4563	S/2002/712	Situation in Bosnia and Herzegovina	US	244
205	20 Dec. 2002	12,1,2	S/PV.4681	S/2002/1385	Middle East Situation, including the Palestinian Question	US	245
206	16 Sep. 2003	11,1,3	S/PV.4828	S/2003/891	Middle East Situation, including the Palestinian Question	US	246
207	14 Oct. 2003	10,1,4	S/PV.4842	S/2003/980	Middle East Situation, including the Palestinian Question	US	247
208	25 Mar. 2004	11,1,3	S/PV.4934	S/2004/240	Middle East Situation, including the Palestinian Question	US	248
209	21 Apr. 2004	14,1,0	S/PV.4947	S/2004/313	Situation in Cyprus	Russia	249

210	05 Oct. 2004	11,1,3	S/PV.5051	S/2004/783	Middle East Situation, including the Palestinian Question	US	250
211	13 Jul. 2006	10,1,4	S/PV.5488	S/2006/508	Middle East Situation, including the Palestinian Question	US	251
212	11 Nov. 2006	10,1,4	S/PV.5565	S/2006/878	Middle East Situation, including the Palestinian Question	US	252

Sources: UK Foreign and Commonwealth Office; United Nations.

APPENDIX 6: USES OF THE UNITING FOR PEACE RESOLUTION, 1950–2006

This table lists all the uses of the Uniting for Peace procedure, under which the Security Council or the majority of UN member states can call for an emergency special session of the General Assembly, '[i]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression',[1] to consider the matter. In the Security Council, the call for an emergency session is considered a procedural decision and therefore not subject to the veto. If a member state, rather than the Council, calls for an emergency special session and the General Assembly is not in regular session at the time, the Secretary General canvasses all member states to ascertain that a majority of states is in favour of convening an emergency special session.

[1] GA Res. 377(V) of 3 Nov. 1950.

Date	Issue (Veto)	Requested by	Measures taken by General Assembly
1 Feb. 1951	Chinese Aggression in Korea (Soviet veto)	Security Council (UN doc. A/1618 of 4 Dec. 1950)	Handed issue to regular session of General Assembly. General Assembly confirmed mandate of US-led troops in Korea.[2]
1–10 Nov. 1956 **1st Emergency Special Session**	Suez (French and British veto)	Security Council (SC Res. 119 of 31 Oct. 1956)	Called for ceasefire and established the first UNEF.
4–10 Nov. 1956 **2nd Emergency Special Session**	Hungary (Soviet veto)	Security Council (SC. Res. 120 of 4 Nov. 1956)	Demanded end of Soviet intervention in Hungary and withdrawal of troops. Requested investigation by Secretary-General, but Hungary denied access.
8–21 Aug. 1958 **3rd Emergency Special Session**	Middle East (Jordan and Lebanon) (Soviet veto)	Security Council (SC Res. 129 of 7 Aug. 1958 – adopted unanimously)	Called upon states to accept the principle of non-interference in the domestic affairs of other states.
17–20 Sep. 1960 **4th Emergency Special Session**	Congo (Soviet veto)	Security Council (SC Res. 157 of 17 Sep. 1960)	Confirmed the mandate of ONUC, authorized actions to establish law and order in the Congo.
17–18 Sep. 1967 **5th Emergency Special Session**	Middle East (6-day war) (no veto)	USSR – requested session because of 'Israel's defiance of Security Council demands' for ceasefire (UN doc. A/6717 of 13 Jun. 1967). The USSR had previously failed to obtain a majority for its draft resolution.	Considered Israeli measures to change status of East Jerusalem invalid, and called on Israel to protect population in the occupied territories and allow for refugee return.
7 Dec. 1971	India–Pakistan conflict (Bangladesh) (Soviet veto)	Security Council (SC Res. 303 of 6 Dec. 1971)	Security Council handed issue to regular session of GA. GA called for ceasefire and refugee return.
10–14 Jan. 1980 **6th Emergency Special Session**	Afghanistan (Soviet veto)	Security Council (SC Res. 462 of 9 Jan. 1980)	Deplored Soviet intervention and called for withdrawal of troops.

[2] No formal use of the Uniting for Peace procedure, as the SC took the issue off its agenda, thus allowing the GA to discuss it without reference to 'Uniting for Peace'. However, the GA in its resolution makes clear reference to the Uniting for Peace procedure. See GA Res. 498 (V) of 1 Feb. 1951.

(707; *Continued*)

Appendix 6 (*continued*)

Date	Issue (Veto)	Requested by	Measures taken by General Assembly
22–9 Jul. 1980; 20–8 Apr. 1982; 25–6 Jun. 1982; 16–19 Aug. 1982; 24 Sep. 1982 **7th Emergency Special Session**	Palestine (US veto)	Senegal (Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People) (UN doc. A/ES–7/1 of 21 July 1980)	Called for Israeli withdrawal from the occupied territories (and later Lebanon), condemned the settlement policy, and branded Israel as 'not a peace-loving state'.
3–14 Sep. 1981 **8th Emergency Special Session**	Namibia (US, French, and British veto)	Zimbabwe (UN doc. A/ES–8/1 of 12 Aug. 1981)	Condemned South African occupation of Namibia, called on member states to give military and financial assistance to SWAPO and 'front-line states' against South Africa. Urged SC to impose sanctions on South Africa.
29 Jan.–5 Feb. 1982 **9th Emergency Special Session**	Middle East (Golan Heights) (US veto)	Security Council (SC Res. 500 of 28 Jan. 1982)	Demanded end of annexation of the Golan Heights, and called upon members to stop supplying Israel with military material, not to buy military goods from Israel, to sever trade, diplomatic, and cultural relations with Israel.
24–5 Apr. 1997; 15 Jul. 1997; 13 Nov. 1997; 17 Mar. 1998; 5, 8, 9 Feb. 1999; 18 and 20 Oct. 2000; 20 Dec. 2001; 7 May 2002; 5 Aug. 2002; 19 Sep. 2003; 20–1 Oct. 2003; 3 Dec. 2003, 20 Jul. 2004, 17 Nov. 2006, 15 Dec. 2006. **10th Emergency Special Session**	The Situation in East Jerusalem and the Occupied Territories (US vetoes)	Qatar (Chair of the Arab group in the UN) (UN Doc. A/ES–10/1 of 22 Apr. 1997)	Condemns settlement policy of Israel, calls for right of Palestinians to return, calls for negotiated solution to the question of Jerusalem. GA Res. ES–10/14 of 8 Dec. 2003 requested advisory opinion from ICJ on the legal consequences of the construction of a wall in the occupied territories. The advisory opinion of 4 Jul. 2004 stated that the construction of the wall was unlawful.

APPENDIX 7: LIST OF ARMED CONFLICTS AND CRISES, 1945–2006

This table aims to give a general overview of Security Council involvement (or otherwise) in a wide range of events relating to international peace and security since 1945. It seeks to be inclusive rather than definitionally narrow, but makes no claim to completeness. First and foremost, it encompasses a wide range of armed conflicts (including international wars, civil wars, and internationalized civil wars). It is notoriously difficult to establish clear criteria of what constitutes a war and what does not: numerical criteria for wars, such as 1,000 battle deaths as used by some studies, would exclude certain armed conflicts which we have included in this list.

We have also included in this list some examples of certain other types of event, especially in cases where they had significant implications for international security: (a) military conquests of territory even if there was no fighting and no casualties; (b) international crises with few or no casualties but with a high potential of escalation into war or even nuclear war, such as the Berlin crises in 1948 and 1958 62 and the Cuban Missile Crisis in 1962; (c) certain crises or episodes that had a predominantly peaceful character, but nonetheless involved major change, such as the events contributing to the end of communist rule in certain European countries in 1989; (d) certain cases of internal violence within a state falling well short of civil war; and (e) certain major international terrorist events.

Three limitations of this table should be noted. (1) The starting and ending years of conflicts or crises are frequently difficult to determine, especially in the case of civil wars: consequently, some of the dates might differ from other compilations of conflicts. (2) Our assessments of the degree of Security Council involvement are subjective, and the com ments provide additional information we consider useful to understanding the conflict and the Council's role. In the comments we have only occasionally mentioned the involvement of other bodies including the UN General Assembly and various regional organizations even when in some cases it was considerable. (3) While very approximate figures for deaths are offered, this table does not include any figures for the number of wounded, or for the number of people displaced by conflicts figures which affect any assessment of the scale and intensity of a conflict. Estimates of deaths in past as well as ongoing conflicts need to be revised periodically in light of new information. They are our best estimates, based on a number of widely available sources, including the list by Marshall mentioned below. In addition, certain other sources, mainly for estimated deaths, are stated in footnotes.

The table is based on a wide range of printed and web based sources. Printed sources include *Keesing's Record of World Events* and its predecessors and, for the years since 1966, *Strategic Survey*, published by the International Institute for Strategic Studies, London (IISS). Some of the web sources are: Monty G. Marshall, 'Major Episodes of Political Violence 1946 2006', available at the website of the Center for Systemic Peace at members.aol.com/CSPmgm/warlist.htm (which also refers to other key sources); the various websites listed in the SIPRI FIRST database: first.sipri.org/index.php; the Nobel Foundation's Conflict Map at nobelprize.org/educational games/peace/conflictmap/ and, for armed conflicts since *c.*2000, the IISS Armed Conflict Database, available at acd.iiss.org/armedconflict.

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
1945				
	Indonesia/Dutch East Indies, disturbances preceding independence (1945–6; 1946–9). See also 1950 – Indonesia	5,000–100,000	high	Continued, and often effective, SC calls for Dutch restraint; arrangement of Dutch-Indonesian negotiations.
	French Indochina/Vietnam, wars of independence (1945–6; 1946–54)	500,000	none	Ended in 1954 following agreement at Geneva Conference of great powers and participants at which temporary division of Vietnam into a Communist North and a non-Communist South was accepted. This conference was not a UN conference as such.
	USSR, repression of resistance movements in Ukraine and the Baltic states (1945–9)	n.a.	none	
	Greece, civil war involving the Greek government, assisted by British forces, v. communist rebels (1944–9)	150,000	low	In Oct. 1947 UNGA established UNSCOB (United Nations Special Committee on the Balkans) to investigate alleged outside support for Greek communist guerrillas, and to assist normalization of diplomatic relations.
	Iran, crisis over Soviet reluctance to withdraw troops from Iranian territory	none	high	Iran's appeal to the SC helped induce the USSR to reconsider. In 1946 Iran suppressed the autonomous regimes the USSR had installed, resulting in c. 2,000 deaths.
	Thailand, border clashes with French forces over Indochina/Cambodian provinces	n.a.	high	Thailand accepted SC border arbitration, which went in favour of France.
1946				
	Chinese Civil War, between Communists and Nationalists, resumed 1946–50	1 million–2 million	none	The Communists won the civil war, proclaiming the People's Republic of China (PRC) in 1949. The Nationalists (i.e. the Kuomintang), having retreated to Taiwan, continued to represent China at the UN, including on the SC, until GA Res. 2758 (XXVI) of 25 Oct. 1971 recognized the PRC as 'the only legitimate representative of China'.

	Albania, 'Corfu Channel' incident with Britain	45	low	Two British destroyers struck mines in Albanian waters with damage and loss of life. Thereupon the Royal Navy mineswept the channel. Following a Soviet veto, SC transferred the issue to the ICJ (the court's first case). The court recognized the principles of right of passage of foreign naval vessels through straits, and of due diligence (duty to warn if a state knows of some danger), but it did not accept the UK justification for its unilateral action in minesweeping the channel.
	Philippines, rebellion by the Hukbalahap, led by the Communist Party of the Philippines, against the government (1946–54)	10,000	none	Insurgency defeated by the Filipino government with US assistance.
1947				
	China/Taiwan, suppression of Taiwan rebellion by the Kuomintang Government.	20,000	none	
	Madagascar, French suppression of rebellion	40,000	none	Madagascar remained a French colony until 1960. SC Res. 140 of 29 Jun. 1960 recommended admission to UN membership.
	India–Pakistan, communal violence at time of partition	1 million	very low	SC Res. 29 of 12 Aug. 1947 recommended admission of Pakistan to UN membership.
	India–Pakistan, clashes over Kashmir (1947–9)	2,000–10,000	medium	SC Res. 39 of 20 Jan. 1948 initiated a UN Commission for India and Pakistan (UNCIP) to investigate status of Jammu and Kashmir. SC Res. 47 of 21 Apr. 1948 sought an end to the fighting and offered assistance in implementing a truce. This led to establishment of UNMOGIP in 1949. SC failed to achieve Kashmir's demilitarization and the holding of a plebiscite.
	Paraguay, civil war	1,000–28,000	none	

(711; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
1948				
	Arab–Israeli War (1948–9)	14,000	high	Two armistices arranged in 1948, though they did not last. Establishment of UNTSO to monitor ceasefire. SC Res. 69 of 4 Mar. 1949 recommended admission of Israel to UN membership.
	Colombia, undeclared civil war known as *la violencia* (the bloodiest period occurred in 1948–58, but hostilities recurred until the early 1960s)	80,000–200,000	none	
	Costa Rica, civil war with the participation of neighbouring Guatemala and Nicaragua (1948–9)	2,000	none	Costa Rica's government dissuaded by the US from taking the matter to the UN.[1] Resolved by the OAS instead.
	Burma (Myanmar), endemic rebellions by minority tribes (1948–)	40,000–100,000	none	SC Res. 45 of 10 Apr. 1948 recommended admission of Burma to UN membership.
	India, takeover of Hyderabad	200	none	Takeover completed while SC discussed Hyderabad's appeal; appeal then withdrawn.
	Malaya, 'Emergency', communist insurgency against British colonial rule and successive governments of Malaya (1948–60)	15,000–28,000	very low	SC Res. 125 of 5 Sep. 1957 recommended admission of the Federation of Malaya to UN membership. In 1963, following the admission of certain territories to the new federation, Malaya changed its name to Malaysia.
	Kingdom of Yemen (North Yemen), internal disturbances	5,000	none	SC Res. 29 of 12 Aug. 1947 had recommended admission of Yemen to UN membership.
	Germany, Berlin Blockade (1948–9)	none	low	Referred to SC, but USSR vetoed a compromise proposal by 'disinterested' SC members that had secured Western votes. Further mediation failed.
1949				
	no *new* war/major crisis			

1950				
	Korean War following intervention in South Korea by forces of North Korea (1950–3)	1,654,000	high	SC Res. 83 of 27 Jun. 1950 and SC Res. 84 of 7 Jul. 1950 authorized US-led coalition against North Korea.
	China, takeover of Tibet	2,000	none	No SC member supported Tibetan appeals addressed to the UN in Nov. 1950. In 1959–65, GA passed 3 resolutions on violations of fundamental rights and freedoms in Tibet.
	Indonesia, local wars, esp. in the South Moluccas, following Dutch withdrawal	5,000	very low	SC Res. 86 of 26 Sep. 1950 recommended admission of Indonesia to UN membership.
1951				
	Egypt, guerrilla resistance to British military presence in the Suez Canal Zone (1951–4)	1,000	none	No direct SC involvement. A 1951 SC resolution called on Egypt to admit Israeli shipping to the Canal. This was rejected by Egypt.
1952				
	Kenya, suppression of Mau Mau risings against British colonial rule (1952–7)	20,000	none	
	Tunisia, disturbances leading to independence from France on 20 Mar. 1956	3,000	very low	Conflict was concentrated in the 1952–4 period, with a negotiated agreement for independence signed in 1955. SC Res. 116 of 26 Jul. 1956 recommended admission to UN membership.
	Bolivia, rebellion leading up to regime change (also known as the Bolivian National Revolution, 1952–64)	2,000	none	
	India, ethnic (secessionist) violence in the north-east (1952–)	25,000	none	
1953				
	Morocco, disturbances leading to independence from France (1953–6)	3,000	very low	GA rejected Afro-Asia plea to consider issue of Morocco in 1953. SC Res. 115 of 20 Jul. 1956 recommended admission to UN membership.
	Indonesia, 'Darul Islam' disturbances in Aceh	1,000–4,000	none	

(713; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
1954				
	Algeria, war of independence (1954–62)	100,000	none	Regular GA discussion, but SC did not consider the issue. SC Res. 176 of 4 Oct. 1962 recommended admission to UN membership.
	Guatemala, government displaced by US-backed coup	<1,000	none	SC deferred action pending OAS inquiry, during which the Arbenz government fell.
	China, first 'offshore islands' crisis (1954–5)	n.a.	none	
	Taiwan, internal disturbances (1954–5)	10,000	none	
1955				
	(French) Cameroon, hostilities leading to independence (1955–60)	30,000	very low	SC Res. 133 of 26 Jan. 1960 recommended admission of Cameroon to UN membership.
	Cyprus, EOKA campaign v. British, and demanding unification of Cyprus with Greece (1955–9)	<700	low–medium	Greece raised issue in the GA. Declining support there for Greece in 1958 was a factor in leading to the direct Greek-Turkish negotiations from which the 1959 settlement derived. SC Res. 155 of 24 Aug. 1960 recommended admission of Cyprus to UN membership.
	Argentina, military coup	3,000	none	
	'Buraimi Oasis' (a contested region in SE Arabia) British reoccupation following failure of the arbitration arranged in 1954 outside the UN	none	none	Saudi Arabia reserved, but did not exercise, the right to call on the SC to discuss the reoccupation.
	Costa Rica, civil violence	1,000	none	
	Sudan, secessionist warfare between North and South started in 1955, lasting until 1972 (also known as the First Sudanese Civil War)	500,000	very low	SC Res. 112 of 6 Feb. 1956 recommended admission of Sudan to UN membership. 1972 peace agreement followed talks sponsored by the World Council of Churches. UNHCR mandated to help refugee return after this settlement.
1956				
	Hungary, revolution suppressed by Soviet	10,000–	low	Following a Soviet veto, SC passed the issue to the

	intervention	30,000		GA, which established commission of investigation and called for Soviet withdrawal.
	Egypt, Suez crisis. Israel, UK, and France intervene	3,200–10,000	medium	UK and France vetoed ceasefire resolution in SC. GA authorized UNEF I peacekeeping force to cover invaders' withdrawal; UNEF I remained in Sinai till 1967, when Nasser demanded withdrawal.
	China, suppression of Tibetan rising (1956–9)	60,000–100,000	none	On 21 Oct. 1959, with many abstentions, GA Res. 1353 (XIV) called 'for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life'.
	Indonesia, regional secessionist rebellions with external support (1956–8)	30,000	none	
	Kingdom of Yemen (North Yemen), civil violence (1956–60)	1,000	none	
	Haiti, civil violence (1956–8)	n.a.	none	
	Cuba, Fidel Castro's successful insurrection, leading to regime change in Jan. 1959	5,000	none	
1957				
	Honduras, border dispute with **Nicaragua**	1,000	none	Resolution facilitated by the OAS, and case referred to the ICJ.
	Morocco–(French) Mauritania, border raids	1,000	none	
	Morocco, 'Ifni War' – irregulars clash with Spanish troops in the context of a (suppressed) rising in Spanish Ifni	n.a.	none	
	Oman, armed revolt suppressed by the Sultan's regime with British assistance	n.a.	none	SC declined Arab League request to debate.
1958				
	Middle East, British intervention (by invitation) in Jordan, continuing Lebanese crisis and US intervention (by Presidential invitation) in Lebanon. Both actions aimed to protect vulnerable pro-Western governments from internal and external challenges	>2,000	medium	UN Observation Group (UNOGIL) established in Lebanon in 1958 but largely ineffective. GA Emergency Special Session passed GA Res. 1237 (ES-III) of 21 Aug. 1958 calling for diplomacy by SG leading to withdrawal of foreign troops from Lebanon and Jordan.

(715; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Tunisia, French bombing of Sakiet on the grounds that it was a sanctuary of the Algerian FLN movement	69–75	low	Appeal to SC withdrawn in favour of US–UK mediation.
	China, second 'offshore islands' crisis	n.a.	none	
	Germany, crisis over status of Berlin (1958–62), Berlin Wall built in Aug. 1961	very low	none	
1959				
	Vietnam, civil war in South Vietnam, with involvement (later open intervention) of North Vietnam and of USA (1959–75)	2 million	none	Unsuccessful attempts to supervise the implementation of the 1954 Geneva Agreements were made by the International Commission for Supervision and Control in Vietnam, a non-UN body. SC Res. 413 of 20 Jul. 1977 recommended admission of Vietnam to UN membership.
	Laos, externally supported civil war (1959–62). See also 1963 – Laos.	>5,000	low	Resolved, briefly, through revival of Geneva Conference outside formal UN framework (see 1945 – French Indochina).
	Iraq, suppression of Shammar Tribes' rebellion	2,000	none	
1960				
	Congo, former colony of Belgium, collapse of state after independence (1960–5)	100,000	high	SC Res. 142 of 14 Jul. 1960 recommended admission of Congo to UN membership. SC established a peacekeeping force (ONUC) which sought to operate amid continuing violence, and helped to end the secession by Katanga.
	South Africa, 1960 Sharpeville shootings (83 dead), leading to riots	n.a.	medium	Strong condemnation by GA of Apartheid regime. Later (1977) imposition of arms embargo by SC.
	Pakistan, Pushtun ethnic violence (1960–1)	1,000	none	
1961				
	Iraq, Kurdish risings and repression (periodic, 1961–70)	150,000	none	

	Kuwait, claimed by Iraq on independence, protected by dispatch of British troops	none	very low	SC unable to agree: USSR vetoed Kuwait's complaint against Iraq and also a proposal for Kuwait's UN membership. Arab League supported Kuwaiti membership of the League and provided protection by a multinational Arab force to replace UK troops. On 7 May 1963, but not in a formal numbered resolution, SC voted unanimously to admit Kuwait to UN membership.
	Tunisia, clash with French troops in Bizerta	>1,000	low	SC calls for ceasefire and SG mediation attempts were disregarded. Negotiations between parties lasted until after Algerian independence. French evacuation of base at Bizerta, 1963.
	India, seizure of Goa from Portugal	<50	none	SC Res. calling for ceasefire vetoed by USSR.
	Angola, repression by Portugal of movements fighting for independence (1961–75). See also 1975 – Angola	50,000–90,000	low	From 1963 onwards, numerous SC (and also GA) resolutions called for decolonization of Portuguese territories. SC Res. 397 of 22 Nov. 1976 recommended admission of Angola to UN membership.
	Cuba, 'Bay of Pigs' invasion by US-backed exile Cubans	100–1,000	none	SC discussion only.
	Indonesia, confrontation with the Netherlands over West Papua (Irian Jaya or West Irian) (1961–2)	1,000	low	Most activity was in GA, which authorized UNTEA and UNSF to facilitate decolonization, and later transfer of Irian Jaya from Dutch to Indonesian control after flawed consultation in 1969.
1962				
	Kingdom of Yemen (North Yemen), civil war with Egyptian and Saudi intervention (1962–7)	40,000	low	Small and ineffective observation mission (UNYOM), 1963–4.
	China–India, border war	2,000	none	Following disputes and clashes concerning a section of the border in the Himalayas, Chinese forces moved briefly into Assam, then declared a ceasefire.

(717; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Guinea–Bissau, war of independence from Portugal, with Cuban involvement (1962–74). See also 1961 – Angola	15,000	low	From 1963 onwards, numerous SC (and also GA) resolutions called for decolonization of Portuguese territories. SC Res. 356 of 12 Aug. 1974 recommended admission of Guinea-Bissau to UN membership.
	Algeria, fighting between factions of the victorious FLN (1962–3)	2,000	very low	SC Res. 176 of 4 Oct. 1962 recommended admission to UN membership.
	Cuban Missile Crisis	no direct casualties	low	During a televised meeting of the SC the US delegation, using reconnaissance photos, proved the existence of Soviet missiles in the island. Throughout the crisis the SG was instrumental in facilitating negotiations between Washington and Moscow. However, for the authority to impose a quarantine on ships to Cuba, the US turned to the OAS.
1963				
	Laos, resumption of civil war, with extensive North Vietnamese and US involvement in support of rival pro-Communist and anti-Communist factions (1963–75)	25,000–100,000	none	This war, conducted largely in secret, involved North Vietnamese use of Laotian territory for military supply routes to South Vietnam, and extensive US bombing of Laotian territory. War ended with advent to power of the pro-Communist Pathet Lao in 1975.
	Indonesia, suppression of West Papua/Irian Jaya rebellions (1963–93). See also 1961 – Indonesia	15,000	none	
	Cyprus, collapse of independence constitution; Greek-Turkish riots (esp. 1963–4, 1967)	2,000	high	SC passed numerous resolutions on Cyprus and authorized establishment of UNFICYP in 1964.
	Rwanda, cross-border Tutsi incursion, retaliatory killings, and flight of refugees (1963–4)	<14,000	low	Investigation by representative of SG following Rwanda's appeal; assistance for refugees.
	Algeria–Morocco, border confrontation	1,000	none	Mediation by Ethiopia leading to reference to OAU.
	Iran, suppression of resistance to land reform (at	<1,000	none	

	launch of the Shah's 'White Revolution')			
	Malaysia–Indonesia, 'confrontation'. UK involved in supporting Malaysia against guerrilla incursions from Indonesia (1963–6)	1,500	medium	In 1963, a mission sent by the UN SG certified the wish of Sarawak and North Borneo to 'accede' to the new federation of Malaysia, which continued the UN membership of the Federation of Malaya. A Malaysian complaint to SC about Indonesia's military action drew a Soviet veto in 1964. In 1965, Malaysia's election to SC led to Indonesian (temporary) 'withdrawal' from UN.
	Aden, disturbances in this British Protectorate in run-up to independence and incorporation in Federation of South Arabia (Dec. 1963–7)	n.a.	low	SC Res. 243 of 12 Dec. 1967 recommended admission of the People's Republic of Southern Yemen, of which Aden formed part, to UN membership. (In 1970–90 South Yemen was named the People's Democratic Republic of Yemen.)
1964				
	Mozambique, war of independence against Portugal (1964–75). See also 1961 – Angola	30,000	low	From 1963 onwards, numerous SC (and also GA) resolutions called for decolonization of Portuguese territories. SC Res. 374 of 18 Aug. 1975 recommended admission of Mozambique to UN membership.
	Kenya, Uganda, and Tanganyika, army mutinies, suppressed (on invitation) by the UK	n.a.	none	
	Zanzibar, overthrow of regime; subsequent merger with Tanganyika to form United Republic of Tanzania	>5,000	very low	SC Res. 184 of 16 Dec. 1963 had recommended Zanzibar's admission to UN membership.
1965				
	India–Pakistan, second war over Kashmir	20,000	high	SC demand for ceasefire acceded to. Subsequent more detailed agreement was negotiated through Soviet mediation at Tashkent.

(719; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Burundi, repression of the Hutu insurrection	5,000	none	
	Southern Rhodesia (Zimbabwe), 'Unilateral Declaration of Independence' by white minority regime. Initially bloodless, but serious conflict developed, esp. 1978–9 (1965–79)	>20,000	low	At British request, SC Res. 232 of 16 Dec. 1966 imposed mandatory sanctions on Southern Rhodesia. These were transparently bypassed across the South African border. All negotiations for a solution took place outside the UN. SC Res. 477 of 30 July 1980 recommended admission of Zimbabwe to UN membership.
	Chad, civil war (1965–90) with French and Libyan interventions (1978–87)	75,000	originally none, then low after Libyan intervention	SC Presidential Statement on 6 Apr. 1983 requested settlement of the Chad–Libyan conflict, and called on both parties to use OAU good offices to resolve the conflict.
	Dominican Republic, internal coups/fighting, US and later OAS intervention	3,000–10,000	low	Peace was pursued during the crisis by the OAS SG, an OAS special committee, the papal nuncio, and a special envoy, DOMREP, from the UN SG (as specified in the call for a ceasefire in SC Res. 203 of 14 May 1965).
	Indonesia, failed leftist coup, followed by massacres of communists/ethnic Chinese (1965–6)	500,000	none	
1966				
	Namibia, war of independence (1966–90)	20,000–40,000	medium, high after 1989	GA cancelled South Africa's mandate (1966). SC demanded South African withdrawal in SC Res. 264 of 20 Mar. 1969, but sanctions vetoed (1976). UNTAG facilitated transition to democracy and independence in 1989–90. SC Res. 652 of 17 Apr. 1990 recommended admission of Namibia to UN membership.
	Uganda, suppression of Buganda	2,000	none	
	China, 'cultural revolution' and related violence	500,000	none	

	(1966–75)			
	Guatemala, killings by paramilitary groups, guerrilla warfare and counter-insurgency leading to massacres in the countryside, especially of indigenous groups (1966–96)	150,000	initially none; from 1989, high	In 1989–92, part of the area of concern of UN Observer Group in Central America (ONUCA). In 1994–2004 SC was involved in assisting the implementation of the 1996 agreement between government and insurgents through the UN Verification Mission for Guatemala (MINUGUA).
	Colombia, endemic internal violence, often political and/or drug related (1966–)	>50,000	none	Successive peace talks outside the UN.
	Bolivia, suppression (with CIA assistance) of campaign led by Che Guevara	<500	none	
1967				
	Nigeria, suppression of Biafran secession (1967–70)	200,000–2 million	none	
	Arab States and Israel, 6-Day War	19,600	high	UNEF's withdrawal from Egypt preceded war. During war, UN ceasefire calls disregarded. Afterwards, SC Res. 242 of 22 Nov. 1967 helped to shape international perceptions of the legal position and possible future settlement.
1968				
	Eritrea, war of independence from Ethiopia, some external involvement (1968–91)	50,000–2 million	low	SC Res. 828 of 26 May 1993 recommended admission of Eritrea to UN membership.
	Czechoslovakia, Warsaw Pact intervention to reverse the progress of the 'Prague Spring' reforms that had been introduced by the Czechoslovak Communist Party	<100	low	Invasion was met with strikes and civil resistance of the population. Draft SC resolution vetoed by USSR. The Czechoslovak government, under pressure from USSR, asked that the issue be dropped.
	Egypt–Israel, fighting across Suez Canal (1968–75), with Egypt announcing a 'war of attrition' in 1970	5,000–50,000	medium	SC repeatedly called for ceasefire; in 1973 established UN Emergency Force II (UNEF II).
	Lebanon, Israeli destruction of planes at Beirut airport	n.a.	low	SC Res 262 of 31 Dec. 1968 unanimously condemned this action.

(721; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	India, Naxalite attacks and their repression (1968–82)	2,000	none	
	Spain, Basque secessionist violence (1968–)	>1,500	very low	SC Res. 1530 of 11 Mar. 2004 incorrectly attributed the Madrid bomb attacks of that day to the Basque terrorist group ETA.
1969				
	China–USSR, Ussuri River and other border clashes, and serious (possibly nuclear) Soviet threats	1,000	none	Disagreements over the border between China and Russia were eventually addressed in the May 1991 Sino-Russian border agreement and the Oct 2004 agreement on the eastern section of the border.
	El Salvador–Honduras, 'Soccer War'	2,000–4,000	none	Messages were circulated at UN, but ceasefire negotiated at the OAS, and border settlement at the ICJ.
	UK (Northern Ireland), 'Troubles', nationalist/communal disturbances and terrorist incidents (1969–2005)	3,500	none	Negotiations took place in the Anglo-Irish framework, with, in the 1990s, US assistance, leading to the 1998 'Good Friday' agreement of 10 Apr. 1998 providing for a political settlement. A landmark in the reduction of violence was the 2005 announcement by the Provisional Irish Republican Army of the end of its campaign.
1970				
	Jordan, 'Black September' expulsion of the PLO, following three coordinated hijackings of aircraft and several attempts to undermine King Hussein's regime incl. invasion from Syria (1970–1)	3,000–10,000	none	Hussein and Arafat signed a temporary ceasefire under the auspices of an Arab summit (they were prompted to do so by Israeli-US early responses to a perceived Syrian-backed attack).
	Thailand, communist disturbances	4,000	none	
	Cambodia, civil war, with South Vietnamese, North Vietnamese, and US involvement. Early rebellions started in 1967, but the bulk of fighting took place in 1970–5	150,000	none	

	Honduras, peasant disturbances (1970–90)	1,000	none	
1971				
	Straits of Hormuz, Iranian occupation of strategic Tumbs islets as UK treaty of guarantee expired	none	none	SC shelved complaint by some Arab States.
	Pakistan–India, repression of East Pakistan (Bangladesh) by Pakistan, major refugee flow to India, independence of Bangladesh after Indian intervention and victory	1 million	very low	The Indian military intervention was discussed in the SC, but Soviet use of the veto in the SC prevented further consideration. GA called for ceasefire (but not for Indian withdrawal). India waited until victory in East Pakistan was achieved. SC Res. 351 of 10 Jun. 1974 recommended admission of Bangladesh to UN membership.
	Sri Lanka, failed rebellion by the Sinhalese group called People's Liberation Front	10,000	none	
	Uganda, repression by President Idi Amin (1971–9). See also 1978 – Uganda–Tanzania.	250,000	none	
	Oman, defeat (with UK, Iranian, Jordanian assistance) of insurgents backed by People's Democratic Republic of Yemen (1971–5)	3,000	very low	SC Res. 299 of 30 Sep. 1971 recommended admission of Oman to UN membership.
1972				
	Yemen Arab Republic–People's Democratic Republic of Yemen (i.e. North v. South Yemen), minor border fighting	n.a.	none	Crisis defused by Arab League.
	Burundi, repression of Hutu rising	100,000	none	
	Philippines, endemic Muslim/secessionist insurgencies in Mindanao (1972–)	100,000	none	A peace agreement in 1996 stalled, leading to renewed violence.
1973				
	Israel v. Egypt and Syria, 'Yom Kippur War'	16,000	high	Superpower concerns for their clients delayed SC's ceasefire call. Israel accepted, but in practice evaded, this call. Egypt sought superpower intervention, but was persuaded instead to accept UNEF II. In 1974, following negotiations under US auspices, UNDOF was deployed on the Golan Heights as part of the Israeli-Syrian disengagement agreement.

(723; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Iraq, Kurdish revolts and their suppression (1973–92)	>200,000	none	
	Chile, coup and repression by General Pinochet (1973–6)	3,000	none	The SC passed no resolution concerning the Pinochet regime (1973–89). However, this case of governmental repression, along with Argentina's, assisted the emergence of an international regime for the protection of human rights.
	Pakistan, rebellions, with some Afghan support in Baluchistan (1973–7)	12,000	none	
1974				
	Cyprus, coup, then Turkish military intervention leading to a Turkish zone in the north and de facto partition of the island. See also 1963 – Cyprus	5,000	medium	UK offered to attempt forceful deterrence (of Turkish advance) through the UN, but only with US support. In the absence of this, SC and UNFICYP had to accommodate to the situation Turkey had created. UN plan for reunification rejected in 2004 by Greek Cypriots.
	Iran–Iraq, border clashes, and Iranian support for Iraqi Kurds (1974–5)	1,000	none	
	Turkey, domestic disturbances involving anti-government actions by several distinct groups (1974–85)	8,000–13,000	none	
	Thailand, communist/leftist/minority insurgencies, with some external support (1974–82)	<5,000	none	
1975				
	Cambodia, Khmer Rouge genocide, and deaths due to starvation and forced labour (1975–9). See also 1978 – Cambodia	1,500,000	none	SC took no action during the period of mass killings, but became involved in subsequent action in Cambodia in the 1990s.
	Laos, communist takeover, and repression of dissidents (1975–90)	10,000	none	
	Indonesia, independence struggle in the special	20,000	none	Peace agreement, signed on 15 Aug. 2005 between

territory of Aceh (1975–2006)			Indonesian Government and the Free Aceh Movement, provided for a system of government of the Acehnese people within the Republic of Indonesia. Monitoring was provided by the European Union, not UN. Elections were held in Dec. 2006.
East Timor, Indonesian annexation and ensuing resistance (1975–99). See also 1999 – East Timor	100,000–200,000	low, then high	After Indonesia intervened and then in 1976 declared the territory an Indonesian province, its nominal status in SC resolutions remained that of a 'non-self-governing territory under Portuguese administration'. SC supported the agreements leading to the independence referendum of 1999, and established the UN Mission in East Timor (UNAMET) to assist the process.
Morocco, takeover (following confrontation) of Spanish Western Sahara; conflict with Algerian-backed POLISARIO liberation movement (1975–)	>15,000	medium	UN-mediated ceasefire, 1988, providing for UN-supervised referendum. Referendum not yet held.
Lebanon, civil war with foreign interventions (1975–90)	100,000	low, later medium	SC issued a range of presidential statements and resolutions calling for a settlement to the conflict, and deploring the treatment of civilians by different parties. Also it extended and renewed UNIFIL mandate in southern Lebanon. Settlement ultimately mediated by Arab League and enforced by Syria.
Bangladesh, ethnic war (Chittagong hills) (1975–92)	25,000	none	
Angola, civil war, with external involvements, between government and UNITA (1975–2002), with continuing violence in Cabinda. See also 1977, 1978, 1997, and 1998 entries for Congo.	150,000–1 million	medium, then high	In Mar. 1976, SC resolution condemned South Africa's military attacks on Angola. SC Res. 397 of 22 Nov. 1976 recommended admission of Angola to UN membership. UN peacekeepers were in Angola from 1988 onwards. The main warring parties were pushed to hold UN-monitored elections in 1992. When UNITA lost and resumed fighting, it attracted UN-mandated sanctions, initially ineffective, but tightened in 1999–2000. The death of UNITA leader Jonas Savimbi in 2002 led to renewed ceasefire.

(725; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	India, takeover of Sikkim	low	none	
1976				
	Ethiopia, widespread repression and insurrections, in particular in Tigray Province/Region of Ethiopia, leading to Tigrayan People's Liberation Front victory (1976–91). See also 1968 – Eritrea; 1977 – Ethiopia–Somalia; 1998 – Eritrea–Ethiopia; 1999 – Ethiopia	25,000–750,000	none	
	South Africa, Soweto Rebellion. See also 1960 – South Africa	1,000	medium	Led to SC arms embargo in 1977.
	Argentina, 'dirty war' repression (1976–83)	30,000	none	
1977				
	Congo (Zaire), Shaba I incursion from Angola	1,000	none	Situation stabilized by Moroccan troops.
	Ethiopia–Somalia, war over Ogaden, Ethiopia repulsed attack with Soviet/Cuban aid (1977–8, with revival of hostilities in 2006)	10,000	none	
	Mozambique, civil war, with external support for Renamo insurgents (1977–94)	500,000	none at first, then high	Peace agreement negotiated outside UN, 1990–2. ONUMOZ supported and monitored its implementation, as well as demobilization, and elections from 1992–4.
1978				
	Congo (Zaire), Shaba II incursion from Angola	1,000	none	Situation stabilized by French and Belgian troops.
	Cambodia–Vietnam, Vietnamese invasion and defeat of Khmer Rouge regime, pro-Vietnamese government installed. Khmer Rouge and royalist resistance, esp. across Thai border (1978–91)	66,000	high	After the Khmer Rouge regime was ousted by the Vietnamese in Jan. 1979, Cambodia continued to be represented at the UN by entities that included the Khmer Rouge, including, from 1982, the 'Coalition Government of Democratic Kampuchea'. SC Res. 668 of 20 Sep. 1990 ended this situation when, as part of the framework for a settlement in Cambodia, it noted the formation of the 'Supreme National Council' and stated that the SNC would

				designate its representatives to occupy the seat of Cambodia at the UN. The UN joined in eventual negotiations for a ceasefire in Paris. In 1991–3, UN peacekeeping forces monitored implementation of the agreement and organized elections.
	People's Democratic Republic of Yemen (South Yemen), military coup	n.a.	none	
	Lebanon, Israeli incursion to the Litani river	5,000	high	SC demanded and substantially secured Israeli withdrawal, established UN peacekeeping force (UNIFIL) on border.
	Uganda–Tanzania, border war (1978–9), overthrowing Ugandan President Idi Amin	3,000	none	
	Nicaragua, civil war leading to victory of Sandinista insurgents in 1979	40,000–50,000	none	
	Argentina–Chile, 'Beagle Channel' crisis; near-war manoeuvres after Argentina rejected adverse boundary award on the strategic islets	none	none	Mediation by the Vatican (on US instigation) in 1979–84, leading to Argentinean-Chilean Declaration of Peace and Friendship.
1979				
	China–Vietnam, Chinese attack on Vietnam following Vietnamese intervention in Cambodia. Chinese withdrew in 1979 but border skirmishes continued in the 1980s.	30,000	none	China and Vietnam signed the Sino-Vietnamese Land Border Treaty in Dec. 1999.
	Iran, popular demonstrations, overthrow of the Shah, establishment of a religious state, repression of dissidents (1979–93)	50,000	none	
	Iran, Kurdish uprisings (1979–85)	40,000	none	
	Yemen Arab Republic – People's Democratic Republic of Yemen (i.e. North v. South Yemen), brief border skirmishes	n.a.	none	War halted by Arab League mediation.

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Afghanistan, Soviet intervention, and resistance to Soviet-installed government (1979–89). See also 1989 and 2001 – Afghanistan	1 million	low	SC Res. 462 of 9 Jan. 1980 referred issue to GA Special Session. UNGOMAP established in 1988 by SC and GA to monitor inter alia Soviet withdrawal, which was completed in Feb. 1989.
1980				
	Iran–Iraq, war (1980–8)	<1 million	none/high	SC initially passed resolutions, which proved ineffective, calling on parties to stop using force. From 1984 the UN investigated use of chemical weapons in the conflict. SC Res. 598 of 20 Jul. 1987 accorded Iran an honourable exit when, in 1988, the conflict had turned against it. A UN mission (UNIIMOG) was established to observe the ceasefire.
	El Salvador, civil war, with Nicaraguan and US support for conflict parties (1980–92)	30,000–75,000	none/high	In 1989 the SC endorsed the Central American states' efforts to resolve the conflict. Increasing UN involvement in the negotiations, with the eventual 1992 agreement made under UN auspices and the implementation overseen by ONUSAL (in 1995).
	Peru, 'Sendero Luminoso' or 'Shining Path' insurgency (1980–93, then winding down)	30,000	none	
	China, ethnic disturbances (Uighurs, Kazakhs)	10,000	none	
	Philippines, communist insurgency (1980–93, then winding down)	40,000	none	
1981				
	Uganda, civil war leading to overthrow of regime (1981–6)	100,000	none	
	Ghana, civil violence	1,000	none	
	Peru–Ecuador, Paquisha Incident (minor border war)	n.a.	none	Disengagement mediated by guarantor powers of the 1942 Rio Protocol.

1982				
	Nicaragua, insurrection by US-backed 'Contras' (1982–8)	30,000	low	US vetoed draft resolution in the SC in 1986 calling on it to comply with adverse ICJ judgment to pay damages. Little UN involvement in ending conflict, but UN supported demilitarization of 'Contra' rebels through ONUCA.
	Falklands/Malvinas, Argentine invasion and British defeat of Argentine forces	1,000	medium	SC condemned Argentine invasion, thus denying it legitimacy. UK offered supervision by a UN administrator in the event of an Argentine withdrawal. Unsuccessful mediation by SG, subsequent SC ceasefire resolution vetoed by UK and US.
	Syria, suppression of Islamists in Hama	25,000	none	
	Lebanon, Israeli intervention (1982) and expulsion of PLO. Israeli withdrawal by 2000. See also 1975 and 1978 – Lebanon	51,000	low	UN largely irrelevant until Israeli troops came under increasing pressure in South Lebanon in the later 1990s, which enhanced the importance of UNIFIL. Israel's final withdrawal, 1999–2000, coordinated with UN.
1983				
	Sri Lanka, secessionist Tamil insurrection (1983–2002), renewed fighting since 2005	70,000	none	Unsuccessful Indian peacekeeping force deployed in 1987–90. Norwegian-mediated ceasefire in 2002, unravelled in 2005–6.
	Pakistan, violence with sectarian and ethnic overtones (1983–98)	5,000	none	
	Sudan, insurrection and civil war in southern Sudan (1983–2005)	1 million	initially none; in 2004 medium; from 2005 high	2005 settlement chiefly negotiated by US, with African and UN assistance. From 2005 provision of UNMIS force to oversee implementation of the agreement in the South.

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Zimbabwe, repression of Matabele disturbances (1983–7)	3,000	none	
	Turkey, repression of Kurdish insurgency led mainly by the Kurdish Workers' Party (PKK) with external involvements (c.1983–)	<40,000	none	Following the arrest of the PKK leader Abdullah Öcalan in 1999 there was a PKK-proclaimed ceasefire that was increasingly fragile and was formally ended in 2004.
	Grenada, US intervention	n.a.	none	US vetoed SC resolution. Intervention requested by Organisation of Eastern Caribbean States (OECS). GA Res. 38/7 of 2 Nov. 1983 deplored invasion.
1984				
	South Africa, township riots (1984–5)	n.a.	none	Led to 1985–6 freezing of foreign bank accounts, and US sanctions in 1986; but in 1987, UK and US vetoed mandatory sanctions in the SC.
	India, secessionist Sikh disturbances (1984–92)	25,000	none	From 1986 onward a main aim of the Sikh rebels was the creation of a Sikh-majority state of Khalistan. There were also a number of incidents abroad, including one in 1985 in which Sikh militants planted a bomb on an Air India transatlantic flight, killing all on board.
1985				
	Liberia, failed coup	5,000	none	
	Burkina Faso–Mali, Agacher Strip war (Dec. 1985)	60–300	none	Ceasefire and reference of issue to ICJ rapidly secured by neighbouring states.
	South Africa, anti-ANC raids on Angola, Botswana, Zimbabwe, Zambia (1985–6). See also 1984 – South Africa	n.a.	medium	SC strongly condemned South African actions in several resolutions, but failed to secure payment of compensation; UK and US veto of sanctions, 1987.
1986				
	People's Republic of Yemen (South Yemen), coup/ civil war (1986–7)	10,000	none	

	Uganda, insurgencies/resistance to Musaveni regime, often with cross-border support (1986–)	12,000	low	From 2004 onwards, the International Criminal Court investigated war crimes and crimes against humanity by the Lord's Resistance Army in Uganda.
	Nigeria, religious violence (1986–93)	10,000	none	
	Libya, US airstrikes against Libya following terrorist attacks sponsored by Libya on Berlin discotheque used by US military personnel	200	none	
1987				
	Occupied Palestinian Territories, first intifada (1987– *c.*1990)	n.a.	low	Limited involvement of the UN in negotiations. US vetoed numerous draft SC resolutions.
	India–Pakistan, crisis, troop concentrations on border	none	none	
	Chad–Libya, Chadian forces drive Libya out of the Aouzu strip (1987–8)	n.a.	none	In 1988 Chad and Libya agreed to submit dispute to mediation; 1991, Libya accepted adverse ICJ judgment and withdrew, with monitoring in 1994 by UN Aouzou Strip Observer Group (UNASOG).
1988				
	Somalia, internal collapse and factional fighting (1988–)	100,000–300,000	none till 1992, high (1992–5), then low	1992 peacekeeping mission UNOSOM to monitor ceasefire and assist famine relief; 1992–5 SC-authorized US-led enforcement operations against warlords to ensure relief delivery; local resistance esp. in Mogadishu led to US pull-out of troops, and eventual termination of the operation in 1995. In 2006 Ethiopia intervened militarily in Somalia.
	Burundi, suppression of Hutu resistance	10,000	none	
	Papua New Guinea, secessionist struggle and civil war in Bougainville Island (1988–98)	5,000–20,000	low	Conflict wound down in 1997–8 following peace negotiations brokered by New Zealand. The settlement was supported by the Australian-led multinational Peace Monitoring Group (1998–2003), and by the UN Political Office in Bougainville (later called UN Observer Mission in Bougainville), which was a small UN mission to

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
				support peace-building (1998–2005). In 2001 the Bougainville Peace Agreement was reached between the secessionists and the government, calling for Bougainville and nearby islands to form an autonomous region. SC noted the development of the peace process in Presidential Statements on 22 Apr. 1998 and 15 Jun. 2005.
	Burma (Myanmar), suppression of pro-democracy demonstrations	3,000	none	
1989				
	Afghanistan, following Soviet withdrawal, continuation of civil war (1989–2001). See also 1979 and 2001 – Afghanistan.	>20,000	low	This particular phase of Afghanistan's long-running war began with the withdrawal of the last Soviet forces in Jan. 1989 (partly facilitated by the small UNGOMAP operation), and could be viewed as having partially concluded in 1996 when Kabul fell to the Taliban, who established a theocratic style of government throughout the areas under their control, in 1997 renaming the country 'Islamic Emirate of Afghanistan'. The 'Northern Alliance' continued to control an area of northern Afghanistan and to challenge Taliban rule. Throughout this period the UN Special Mission to Afghanistan tried to broker a ceasefire between the Taliban and the Northern Alliance.
	India, insurrections in Kashmir (1989–)	> 65,000	none	
	China, Tiananmen protests, and subsequent repression (1989–90)	300–3,000	none	
	Liberia, civil war (1989–97)	40,000–200,000	low	UN diplomatic support for ECOWAS interventions; ineffective UN arms embargo.

	Mauritania–Senegal, conflict over grazing rights led to closing of border and extensive looting and violence in both countries (1989–90)	500	none	Failed OAU mediation attempt.
	Panama, US intervention and arrest of President	1,000	none	US vetoed SC resolutions demanding immediate US withdrawal. GA Res. 44/240 of 29 Dec. 1989 deplored invasion.
	Poland, Czechoslovakia, Hungary, end of communist rule following campaigns of civil resistance	very low	none	
	East Germany, demonstrations and refugee flows, opening of Berlin Wall and fall of communist government, leading to unification in 1990	none	none	
	Bulgaria, end of communist rule	none	none	
	Romania, overthrow of communist government, short internal war involving diehard elements of former regime	1,000	none	
1990				
	USSR, inter-ethnic conflict between Armenian and Azerbaijani groups over the status of Nagorno-Karabakh (unofficial ceasefire reached in 1994). See also 1992 – Armenia–Azerbaijan	5,000	low	Talks mediated by Russia and the OSCE Minsk Group. SC resolutions 735 of 29 Jan. and 742 of 14 Feb. 1992 recommended the admission of Armenia and Azerbaijan to UN membership.
	Kuwait, occupation and subsequent purported annexation by Iraq. See also 1991 – Kuwait	>5000	high	SC immediately demanded unconditional Iraqi withdrawal, then ordered sanctions against Iraq, and later authorized US-led military force to liberate Kuwait.
	Rwanda, fighting between government and Rwanda Patriotic Front (1991–3). See also 1994 – Rwanda	15,000	medium	SC established UN Observer Mission Uganda-Rwanda (UNOMUR) in June 1993. In Aug. 1993 the Arusha accords, intended to end the war in Rwanda, were concluded under UN auspices; and in Oct. 1993 SC established the UN Assistance Mission for Rwanda (UNAMIR), a peacekeeping force mandated to oversee implementation of Arusha accords and supervise elections. This peace process definitively broke down in 1994, leading to the genocide.

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Mali, Tuareg risings (1990–4)	1,000	none	
	Niger, ethnic violence (1990–7)	1,000	none	
1991				
	Kuwait–Iraq, liberation of Kuwait (occupied in 1990 by Iraq) by US-led, UN-authorized coalition, defeat of Iraq. See also 1990 – Kuwait and 1991 – Iraq	between 2,500 and 100,000[2]	high	After the main hostilities of Jan.–Feb. 1991, SC maintained sanctions regime against Iraq, and established a weapons inspection regime, the UN Iraq–Kuwait Observation Mission (UNIKOM) and the UN Compensation Commission (UNCC).
	Estonia, Latvia, Lithuania, secession from USSR	very low	low	SC resolutions of 12 Sep. 1991 recommended that all three states be admitted to UN membership.
	Slovenia, secession from Yugoslavia in very short war	very low	low	SC Res. 754 of 18 May 1992 recommended admission of Slovenia to UN membership.
	Croatia, secession from Yugoslavia; fighting between Croat forces and Yugoslav Army; internal Serb risings establishing 'Serb Republic of Krajina' (1991–5). See also 1995 – Croatia	<50,000	initially low, then high	SC Res. 753 of 18 May 1992 recommended admission of Croatia to UN membership. UN arranged ceasefire, and deployed UNPROFOR peacekeeping force, actions criticized as effectively confirming territorial control by the Croatian-Serb forces.
	Iraq, repression of Shia and Kurd risings that followed Iraq's 1991 defeat by the US-led coalition	n.a.	low	The Iraqi action and consequent refugee flows to Turkey and Iran led SC in Apr. 1991 to demand an end to the repression of Kurds in Iraq, but SC did not explicitly authorize the 'safe havens' that were subsequently established in northern Iraq by US, UK, and French forces. UN Guard force of 500 and no-fly zones.
	Sierra Leone, civil war (1991–2002)	25,000–50,000	low to 1999, high 1999–2002	Oil and arms embargo from 1997 with little impact. Following Nigerian- and UK-brokered peace agreement, UNAMSIL replaces ECOMOG troops in 1999; UK military intervention in support of UNAMSIL in 2000; peace agreement in 2001 leads to elections in 2002. UNAMSIL mission ended in 2005.

	Congo (Zaire), army mutiny and extensive rioting	>100	none	2,000 French and Belgian troops evacuated foreign nationals.
	Kenya, ethnic violence (1991–3)	2,000	none	
	Djibouti, unsuccessful rebellion (1991–4)	1,000	none	
	Senegal, ethnic violence (1991–9)	3,000	none	
	Burundi, civil violence	1,000	none	
	Georgia, South Ossetia, internal disturbances and separatist war by Ossetians opposed to Georgian moves towards independence (1991–2, with recurrences from 1994). See also 1992 – Georgia.	1,000	very low	SC Res. 763 of 6 July 1992 recommended admission of Georgia to UN membership, but negotiation and peacekeeping in this conflict was under non-UN auspices. Under a 1992 peace agreement, which Georgia accepted to avoid a larger war with Russia, a peacekeeping force of Ossetians, Russians, and Georgians was set up. From Nov. 1992 the OSCE Mission to Georgia had a role of monitoring the peacekeeping operation.
1992				
	Armenia–Azerbaijan. Following unrest which started in 1988, open conflict broke out resulting in the occupation of territory within Azerbaijan by Armenian forces, and the establishment of Nagorno-Karabakh (which has an Armenian majority) as an autonomous entity. See also 1990 – USSR.	15,000–25,000	low	SC Res. 735 of 29 Jan. and 742 of 14 Feb. 1992 recommended the admission of Armenia and Azerbaijan to UN membership. SC resolutions 853 of 29 Jul. 1993, 874 of 14 Oct. 1993 and 884 of 12 Nov. 1993 referred to Nagorno-Karabakh as a region of Azerbaijan. Unofficial ceasefire reached in 1994, but settlement process still ongoing under the aegis of the OSCE Minsk group (US, Russia, and France).
	Georgia, Abkhazia internal disturbances and separatist war by Abkhaz opposed to separation from the USSR/Russia (1992–4)	>10,000	medium	Ceasefire agreements concluded in July 1993 and May 1994 under non-UN auspices. A CIS peacekeeping operation was established, comprising Georgians, Abkhaz, and Russians. From Aug. 1993 a small UN Observer Mission in Georgia (UNOMIG) was deployed to verify compliance with the ceasefires and cooperate with CIS peacekeeping force.

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	Moldova, separatist conflict in Transnistria, ended by Jul. 1992 ceasefire	2,000	low	SC Res. 739 of 5 Feb. 1992 recommended admission of Moldova to UN membership.
	Tajikistan, civil war (1992–7)	25,000–100,000	medium	SC Res. 738 of 29 Jan. 1992 recommended admission to UN membership. Substantial Russian/CIS intervention 1992–3; from 1995 UN assisted Russia in brokering peace deals. SC helped monitor their implementation through the UN Mission of Observers in Tajikistan (UNMOT). Also – with OSCE – helped monitor elections.
	Bosnia, civil war with interventions from Serbia and Croatia (1992–5)	200,000	high	SC Res. 755 of 20 May 1992 recommended admission to UN membership. Presence of UNPROFOR peacekeeping mission, several UN-sponsored attempts to negotiate political settlement, which all failed. In 1995 US-led peace talks at Dayton led to agreement, implemented by UN-authorized IFOR (later SFOR and EUFOR) peacekeeping force. UN largely marginalized in implementation of the agreement.
	Zaire, general civil unrest as President Mobutu's control declines (1992–6)	10,000	none	
	Egypt, repression of Islamist disturbances (1992–9)	2,000	none	
	India, destruction of mosque at Ayodhya (1992); sporadic outbreaks of Hindu–Muslim violence (1991–2002)	2,500–3,500	none	
	Algeria, civil war between Islamists and government (1992–*c.*2001)	60,000–100,000	none	
1993				
	Burundi, Tutsi–Hutu civil war (1993–2004)	100,000–250,000	initially none, high since 2004	Following the achievement of peace accords by African mediation, UN mission in Burundi (ONUB) in 2004 took over from AU peacekeeping force (AMIB) and supervised elections.

	South Africa, ANC–Inkatha fighting in Kwazulu; clashes in townships (1993–4)	12,000–20,000	none	
1994				
	Russia, Chechen war in pursuit of independence (1994–6), also called the 'First Chechen War'	40,000–70,000	none	
	Yemen, unsuccessful revolt of former South Yemen following 1990 merger of North and South Yemen	3,000	none	
	Rwanda, genocide of Tutsi by (Hutu) Interahamwe. Ended with military advance of Rwanda Patriotic Front (RPF), which captured Kigali on 4 Jul.. See also 1990 – Rwanda.	800,000–1 million	medium	Small size of UNAMIR, and further reduction following attacks on it, made it unable to intervene effectively. In May SC expanded UNAMIR's mandate, but UN member states were unwilling to provide forces to stop killings. After RPF victory, UN authorized French-led Chapter VII intervention (*Opération Turquoise*) in the south-west of Rwanda.
	Rwanda, Hutu resistance/cross-border raids following victory of the RPF (1994–8)	15,000	none	
	Ghana, ethnic violence	1,000	none	
	Haiti, forcible return to power of elected President Aristide through US-led intervention	none	high	SC Res. 940 of 31 Jul. 1994 authorized US-led multinational force to restore legitimate authorities in Haiti. Involvement of UNMIH peacekeeping force both before and after US-led intervention.
1995				
	Croatia, expulsion of Serbs from *de facto* autonomous 'Serb Republic of Krajina'. See also 1991 – Croatia	n.a.	high	SC Res. 1009 of 10 Aug. 1995 demanded that the Croatian government cease immediately all military actions. Subsequently, in 1996–8, UNTAES administered reintegration of certain remaining Serb-held areas, including Eastern Slavonia, into Croatia.
	Peru–Ecuador, Alto-Cenepa war	1,000	none	Resolved through mediation by US, Brazil, Argentina, and Chile.

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
1996				
	Iraq, Kurdistan civil war, with Iraqi involvement upon invitation by KDP leader Barzani	2,000	none	
	Nepal, Maoist insurrection (1996–2006)	8,000		SG appoints Representative to Nepal in 2006.
	Central African Republic, mutinies against the government, suppressed with French assistance	n.a. (low)	eventually high	1997 Franco-African mediated Bangui Agreement, buttressed by Inter-African Mission (MISAB); UN's MINURCA (1998–2000) took over from MISAB and monitored elections.
	Congo (Zaire), Rwandan invasion, fall of Mobutu; 'First Congo War' (1996–7)	n.a.	medium	SC passed several resolutions calling for an end to the fighting. SC Res. 1080 of 15 Nov. 1996 authorized establishment of MNF to facilitate provision of humanitarian aid. The MNF was never established.
1997				
	Congo, Brazzaville, internal disturbances, Angolan intervention (1997–9, then winding down)	12,500	low	SC issued several presidential statements in 1997, calling for a political settlement and expressing its support for the joint UN/OAU Special Representative's efforts to mediate.
	Nigeria, communal violence in Delta province (1997–)	1,500	none	
	Indonesia, Aceh, separatist insurgency (1997–2005)	3,000	none	
	Albania, government overthrown following collapse of 'Pyramid' investment scheme	2,000	high	In response to new government's appeal, SC Res. 1101 of 28 Mar. 1997 authorized Italian-led force to restore order and provide security for OSCE-monitored elections.
1998				
	Yugoslavia, military and police action against Kosovar Albanian insurgency. See also 1999 – Yugoslavia	<15,000	medium/ high	1998 SC call for ceasefire backed by NATO, effective for several months.

	Georgia, renewed disturbances in and with Abkhazia. See also 1992 – Georgia.	1,000	none	
	Iraq, US–UK air-strikes (1998–2003) including to enforce 'no-fly zones' and degrade Iraqi air defences	1,000	low	US-led military action was claimed as in support of SC resolutions, but did not have specific authorization in a new resolution.
	Indonesia, fall of Suharto regime; ethnic/religious violence in South Moluccas, Borneo (1998–2002)	6,500	none	
	Eritrea–Ethiopia, war over border dispute (1998–2000). See also 1968 – Eritrea	100,000	low, then high	In 1998 and 1999 several SC resolutions called on both parties to exercise restraint. Following ceasefire in 2000, SC authorized peacekeeping force (UNMEE) to demarcate and patrol border, and help implement the award of the Hague Boundary Commission, to which the dispute was referred. Ethiopia has not implemented the adverse 2002 award.
	Guinea-Bissau, civil war, with external backing for government (1998–9)	6,000	medium	Following African-negotiated ceasefire, UNOGBIS set up in 1999 to support peace-building.
	Congo, 'Second Congo War', with continuing violence in the east to date. Rwandan and Ugandan repetition of anti-Hutu intervention of 1996; Angola, Zimbabwe and Namibia intervene on opposite side. General looting of Congolese resources. (1998–2002)	1.5 million–4 million	low till 2002, then high	Negotiations in 2001–2 after President Kabila's death, facilitated by South Africa with UN support, produced peace agreement and promises of withdrawal of foreign forces. Deployment of MONUC peacekeeping force, which was unable prevent massacres in the east following Ugandan withdrawal. Deployment of EU Mission in 2006 to support MONUC during elections.
	Solomon Islands, communal violence (1998–2003)	500	very low	Deployment in 2003 of Australian-led RAMSI to maintain law and order.
1999				
	Yugoslavia, NATO air campaign against Yugoslavia over Kosovo (Mar.–June 1999). See also 1998 – Yugoslavia	<1,000	high	SC sidelined by NATO because of Russian and Chinese objection to use of force over Kosovo. SC Res. 1244 of 10 Jun. 1999 authorized UNMIK to administer Kosovo temporarily and work towards resolution of the territory's political and legal status (ongoing).

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Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
	India–Pakistan, 'Kargil War' in the Kargil district of Kashmir (May–Jul. 1999)	1,500	none	The first land war fought directly between two nuclear powers. The operations, conducted in high mountain terrain, resulted in defeat for Pakistan. This may have contributed to the events leading to the military *coup d'état* in Pakistan in Oct. 1999.
	East Timor, violence by pro-Indonesian militias following referendum vote in favour of East Timorese independence. (Sep. 1999.) See also 1975 and 2006 – East Timor	3,000	high	After UNAMET-conducted referendum on 30 Aug. 1999, SC authorized Australian-led INTERFET troops to end the post-ballot violence by militias. UNTAET administered East Timor until independence in May 2002. SC Res. 1414 of 23 May 2002 recommended admission of East Timor to UN membership.
	Russia, fighting between Russian troops and Chechen fighters in Chechnya and region (1999–2005), also called the 'Second Chechen War'. See also 1994 – Russia	>30,000	none	War gradually wound down, with the introduction of new constitutional arrangements in 2003 and the subsequent holding of a controversial referendum and elections. Residual violence in the North Caucasus as a whole continued.
	Ethiopia, separatist violence by supporters of independence of the Oromo people (1999–2000)	2,000	none	
2000				
	Israel and Palestinian Territories, 'second intifada' (ongoing)	>5,500	low	Extensive discussion in SC and frequent US use of veto. Much UN activity outside SC.
	Côte d'Ivoire, political tensions culminating in coup by officers from the north of the country, and emergence of rebel movements (2000–3)	3,000	initially none, 2003 medium, from 2004 high	France and ECOWAS forces deployed to provide security. UN political mission to support peace accord in 2003; in 2004 ECOWAS forces 're-hatted' as UNOCI peacekeeping force.
2001				
	Macedonia, civil unrest among minority Albanian population.	low	initially none, then high	Continuation of UNPREDEP vetoed by China in 1999. NATO presence, supporting forces in Kosovo, damped disturbances and facilitated conclusion in 2001 of Ohrid power-sharing agreement. UN authorized NATO-led Task Force Fox to implement the agreement.

	USA, 9/11 al-Qaeda attacks in New York and Washington, DC	<3,000[3]	high	SC Res. 1368 of 12 Sep. 2001 condemned terrorist acts and recognized right to self-defence. Wide-ranging counter-terrorism measures under SC Res. 1373 of 28 Sep. 2001.
	Afghanistan, Taliban regime, supported by al-Qaeda, toppled by US intervention and by the military campaign of the Northern Alliance; continuing/reviving Taliban (and other) resistance to new regime (2001–). See also 1979 and 1989 – Afghanistan	>15,000 in 2001	medium/high	US intervention in the war in Afghanistan followed al-Qaeda attacks in US. UN did not explicitly authorize US-led overthrow of the Taliban regime, but had earlier (see above) endorsed right to individual and collective self-defence against terrorist acts. UN assistance to subsequent peace-process and return of refugees; authorization of the ISAF multilateral security force, originally covering only Kabul, but gradually extended across Afghanistan, and by 2006 comprising troops from 32 countries led by NATO.
	Nigeria, ethnic violence, mainly Muslim v. Christian (ongoing)	55,000	none	
	Rwanda, continued Hutu cross-border attacks, especially from Dem. Rep. Congo (2001 onwards)	2,500	very low	SC Res. 1355 of 15 Jun. 2001 included appeal for restraint by governments of Rwanda and Congo.
2002				
	Liberia, 'Second Civil War', successful LURD insurgency (2002–3)	150,000	medium/high	ECOWAS intervention and brokerage of peace agreement following LURD successes; under SC Res. 1509 of 19 Sep. 2003 ECOWAS forces 're-hatted' as UNMIL, which disarmed militias. Elections held in 2006.
2003				
	Iraq, invaded/occupied by a US-led coalition with UK as main partner; resistance to the international presence and widespread internal violence (2003–ongoing)	60,000–600,000[4]	medium/high	SC approval of invasion withheld. In subsequent resolutions the occupation was recognized, terms of its formal ending (Jun. 2004) were outlined, and roles of external forces were defined.

(741; *Continued*)

Appendix 7 (*continued*)

Starting year of conflict	Conflict	Estimated deaths	Security Council involvement	Comments
				Following a bomb attack on the UN headquarters in Aug. 2003 in which SG's representative was killed, UN presence largely withdrawn. In Feb.–June 2004, UN envoy played a role in constituting interim Iraqi government; but UN involvement within Iraq remained relatively minor.
	Sudan, rebellion, internal conflict and massive repression in Darfur. (For 2004–05 conclusion of southern Sudan civil wars see 1983 – Sudan.)	>180,000[5]	medium	SC Res. 1556 of 30 July. 2004 endorsed the African Union Mission in Sudan (AMIS). SC Res. 1706 of 31 Aug. 2006 sought to insert UNMIS peacekeeping force into Darfur, but problems encountered in raising the forces and securing consent of Sudan government. UN active in raising awareness; and providing relief, esp. to refugees in Chad.
2004				
	Haiti, 2004 violent protests against President Aristide (restored to power by US in 1994); US and French forces escorted him into exile. Continued militia clashes to date. See also 1994 – Haiti	2,000	high	SC Res. 1529 of 29 Feb. 2004 endorsed OAS/ CARICOM arranged Feb. 2004 'Plan of Action', authorized US-led interim stabilization force, succeeded later in 2004 by MINUSTAH. Elections, delayed four consecutive times, were held in Feb. 2006.
	Pakistan, major operations in Tribal Areas (Waziristan) against al-Qaeda/Taliban forces regrouped from Afghanistan	n.a.	none	
2005				
	Uzbekistan, killings of protestors in the city of Andijan by troops of the Interior Ministry and National Service after a crowd had stormed a local prison and freed prisoners whom they believed had been unjustly imprisoned. (13 May)	>200	none	

	Chad–Sudan, cross-border violence and mutual allegations of continued support for insurgency movements resulting from conflict in Darfur region (2005–)	n.a.	low	SC issued Presidential Statements on 25 Apr. and 15 Dec. 2006 demanding end to violence and supporting the mediation of the African Union.
2006				
	East Timor, communal violence following desertion (and later dismissal) of a third of the army over claims of discrimination in the military. See also 1999 – East Timor	n.a. (low)	medium	SC welcomed Australian-led intervention to restore order, authorized extension of UNOTIL, and established UNMIT to consolidate stability through a UN police mission.
	Israel–Hezbollah–Lebanon, Israeli air strikes, artillery fire, air and naval blockade, and ground invasion of southern Lebanon following Hezbollah's killing of three and abduction of two Israeli soldiers, as well as engagement in guerrilla warfare	c.1,300	high	SC called for ceasefire and authorized strengthening of UNIFIL to facilitate Israeli withdrawal.

[1] Davis to Secretary of State, 6 Apr. 1948, *Foreign Relations of the United States 1948*, vol. 9, 504 5 and Memorandum of Conversation, 13 Apr. 1948, idem, 508 9, cited in Walter LaFeber, *Inevitable Revolutions: The United States in Central America* (New York: Norton, 1993), 103.

[2] For information on the very different estimates of the deaths in the gulf war of Jan. Feb. 1991, see Adam Roberts, 'The Laws of War in the 1990 91 Gulf Conflict', *International Security*, 18, no. 3 (Winter 1993/94), 170 2.

[3] See National Commission on Terrorist Attacks upon the United States, *9/11 Commission Report*, 22 Jul. 2004, 311 and 552 n. 188.

[4] A figure of over 600,000 excess Iraqi deaths during the war and occupation is given in Gilbert Burnham, Riyadh Lafta, Shannon Doocy, and Les Roberts, 'Mortality after the 2003 invasion of Iraq: A cross sectional cluster sample survey', *The Lancet,* 11 Oct. 2006. A lower figure of 151,000 violence related deaths in Iraq in the same period (Mar. 2003 to Jun. 2006) was given in Iraq Family Health Survey Study Group, 'Violence related Mortality in Iraq from 2002 to 2006', *New England Journal of Medicine*, 31 Jan. 2008, available at www.nejm.org. The differences between figures are due to different methodologies and criteria. For further (generally lower) figures, see Brookings Institution Iraq Index, available at www.brookings.edu/saban/iraq index.aspx and also the Iraq Body Count website at www.iraqbodycount.org

[5] Nick Wadhams, 'UN Backed Court Documents Darfur Deaths', *Guardian* (London), 15 Jun. 2006.

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Index

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Security Council (and General Assembly) resolutions are indexed both under 'SC resolutions' (or 'GA resolutions') and under the specific subject area of each resolution usually a country or a war.

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