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ARTICLES

WORLD ORDER IN THE POST-COLD WAR ERA: THE RELEVANCE AND ROLE OF THE UNITED NATIONS AFTER FIFTY YEARS

*Ibrahim J. Gassama**

I. INTRODUCTION: THE POST-WORLD WAR II SYSTEM IN CRISIS

The United Nations (UN) will celebrate its fiftieth anniversary on June 26, 1995.¹ This celebration will take place at a time when the world organization is coming under increasing scrutiny because of its perceived failures in resolving post-Cold War conflicts. The end of the Cold War has been accompanied by numerous comparatively minor but deadly disputes which have placed greater and greater demands on the UN structure and resources.² These added demands are to a large extent

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1. The UN Charter was signed on June 26, 1945 in San Francisco by representatives from fifty countries who had met from April 25 to June 26 to draft the Charter. LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS 4-9 (1969). International discussions on the establishment of an international organization had begun even before the United States entered the Second World War in December 1941. *Id.* at 2-4; DANIEL P. MOYNIHAN, ON THE LAW OF NATIONS 73-79 (1990). The basic proposals for the Charter were developed at a conference which met at Dumbarton Oaks in Washington, D.C., from August 21 to October 7, 1944. MOYNIHAN, *supra*, at 73. For more on the negotiations leading to the founding of the United Nations, see ROBERT C. HILDERBRAND, DUMBARTON OAKS: THE ORIGINS OF THE UN AND THE SEARCH FOR POSTWAR SECURITY (1990).

2. The cost of peacekeeping operations during 1992 is estimated at nearly three billion dollars. *An Agenda For Peace: Preventive Diplomacy, Peacemaking and*

being fostered by a recognition that the UN is now a major player—and perhaps ought to be the dominant player—in the resolution of most types of global problems.³

It appears that the world simply expects more from the UN as it prepares to celebrate a milestone that its predecessor, the League of Nations,⁴ did not achieve. New standards are being used to evaluate the organization. No longer can the UN's role in reducing tensions between East and West be a credible response to those who question its continued value and efficacy.⁵

Peace-keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992, U.N. GAOR, 47th Sess., Agenda Item 10, at 14, U.N. Doc. A/47/277 S/24111 (1992) [hereinafter *Agenda for Peace*].

3. Even the United States Congress, which on occasion has provided some of the more virulent anti-UN rhetoric, now routinely calls for the United States to get UN support on issues ranging from Korea's development of nuclear weapons to intervention in Haiti and Rwanda.

4. The League of Nations was established at the end of the First World War by the Treaty of Versailles which came into force on January 10, 1920. BYRON DEXTER, *THE YEARS OF OPPORTUNITY: THE LEAGUE OF NATIONS, 1920-1926*, at 67 (1967). The League was in existence until 1946 when it was dissolved and its property and assets were transferred to the UN. KUMIKO MATSUURA ET AL., *CHRONOLOGY AND FACT BOOK OF THE UNITED NATIONS, 1942-1991*, at 5 (1992). Even though the League Covenant was formulated around a draft by the Wilson administration, the U.S. Senate rejected it and the United States never became a member of the organization. See HILDERBRAND, *supra* note 1; MOYNIHAN, *supra* note 1. For more on the League, see ROBERT GOLDSMITH, *A LEAGUE TO ENFORCE PEACE* (1917); H. WILSON HARRIS, *WHAT THE LEAGUE OF NATIONS IS* (1925); H. ARNOLD NICHOLSON, *PEACEMAKING 1919* (1933); 5 WOODROW WILSON, Address of January 8, 1918, in *WAR AND PEACE: PRESIDENTIAL MESSAGES, ADDRESSES AND PUBLIC PAPERS, (1917-1924)*, at 161 (Ray S. Baker & William E. Dodd eds., 1925).

5. Early Clinton administration policies suggesting increased support for the UN have come under considerable criticism. Senate Minority Leader Bob Dole, for example, accused the administration of "acquiescence in UN inaction in Bosnia-Herzegovina . . ." and urged the Senate not to "put false hope and high expectations into flawed institutions, especially the United Nations." William Claiborne, *Dole Decries U.S. Bosnia Policy*, WASH. POST, Aug. 18, 1993, at A25.

Columnist George Will, on the other hand, decried U.S. collaboration with the UN in Somalia as signaling the Clinton administration's "interventionist foreign policy in the name of multilateralism." George F. Will, *Surrendering the Stars and Stripes*, WASH. POST, Sept. 2, 1993, at A27. Will lamented the implication that "America is nothing special, just another nation, and it should act only in concert with coalitions." *Id.* He predicts the American public "will not forgive subordinating U.S. policy to people who pledge allegiance to the United Nations' pale blue flag." *Id.* Senator Robert Byrd captured anti-UN sentiments in the United States when he asserted in the Senate that "I do not see in the front of this chamber the U.N. flag. I have never saluted the U.N. flag. I salute Old Glory, the American flag." Elaine Sciolino, *The U.N.'s Glow is Gone*, N.Y. TIMES, Oct. 9,

While UN supporters can point with considerable satisfaction to its many accomplishments—the most commendable of which must be its role in avoiding another world war⁶—detractors have criticized its role, or lack thereof, in many post-Cold War crises. The end of the Cold War has enlivened the debate about the proper role and contributions of the UN.

The interplay of these additional demands and new standards has contributed to a serious and growing negative public perception problem for the UN.⁷ In Bosnia and Somalia, UN representatives and peace-keepers have been openly ridiculed and attacked.⁸ In Angola and Cambodia, rebel forces challenged UN authority, and the UN-supervised elections failed to resolve either conflict. In Haiti and Iraq, discredited leaders have scorned and resisted UN demands and sanctions, leaving the victims of state-directed abuses to criticize the organization for insufficient enforcement. The general picture of the UN that emerges is that even as more people want the UN to do more, others have become more critical of the organization's shortcomings.⁹

1993, at A1, A10.

6. The UN Charter begins with the following declaration: "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 . . . have resolved to combine our efforts to accomplish these aims" U.N. CHARTER pmbl. The maintenance of peace and the protection of human rights are considered the two main purposes of the UN. Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 236 (J.N. Moore ed., 1974).

7. "After a brief post-cold war honeymoon, the United Nations is once again suffering from the inability to enforce its decision in critical situations, this time without the excuse of the obstacles created by the Cold War." Paul Lewis, *Reluctant Peacekeepers: Many U.N. Members Reconsider Role in Conflicts*, N.Y. TIMES, Dec. 12, 1993, at A22 (statement by Sir Brian Urquhart, former UN Under Secretary-General in Charge of Peacekeeping).

8. See, e.g., Hella Pick, *Ten Days at the Sharp End*, THE GUARDIAN (London), Jan. 9, 1993, at 10; Carol J. Williams, *The Shadow of a Shield: Amid Deepening Violence, U.N. Forces in Bosnia Have Come to Symbolize Not Hope But Impotence to Those They've Come to Help*, L.A. TIMES, July 25, 1993, (Magazine), at 16.

9. While the UN probably enjoys a higher profile today than ever, its most important peacemaking missions are threatened with collapse in trouble spots as varied as Angola, El Salvador, the former Yugoslavia and Cambodia, raising the possibility of a damaging reversal to its influence. Despite these setbacks, demand for the organization's services remains so strong that Secretary-General Boutros-Boutros Ghali fears it may be unable to cope with the strains. Paul Lewis, *Peacekeeper to Peacemaker: U.N. Confronting New Roles*, N.Y. TIMES, Jan. 25, 1993, at

The UN has begun to respond to these criticisms and the expectations underlying them. Its response has gone beyond an examination of its field operations to include a reexamination of its structure and basic principles.¹⁰ Undoubtedly, the manner in which the organization responds to criticisms and suggested reforms will determine to a major extent whether it survives and prospers into the next century and beyond, or suffers a fate similar to the League of Nations.¹¹

This Article examines the state of the UN as it prepares to celebrate its fiftieth anniversary, and recommends directions for its future. The Article focuses on the UN's work in support of international peace and security; it is the UN's work in this area that now attracts most of the attention and criticism.¹² Part II of this Article begins with a review of the organization's performance in three major post-Cold War conflicts: the conflicts in the Persian Gulf (Iraq-Kuwait), the Balkans (Yugoslavia), and the Horn of Africa (Somalia). These conflicts have severely tested the structure, capacity and meaning of the UN. These case studies best highlight the weaknesses in the organization's structure, and in its traditional orientation and performance.

Following this review, Part III examines the *Agenda for Peace* report, in which the UN administration attempted to respond to many of the criticisms of the organization in the post-Cold War period. This section identifies the inadequacies

A1; see also Sciolino, *supra* note 5.

10. See *Agenda for Peace*, *supra* note 2. See generally Anthony C. Arend, *The United Nations and the New World Order*, 81 GEO. L.J. 491 (1993); John H. Barton & Barry E. Carter, *International Law and Institutions for a New Age*, 81 GEO. L.J. 535 (1993); Paul H. Nitze, *Foreword: International Security in a New World*, 81 GEO. L.J. 481 (1993); Mary Ellen O'Connell, *Continuing Limits on U.N. Intervention in Civil War*, 67 IND. L.J. 903 (1992); Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 452 (1991).

11. Historians tend to place the blame for the League's collapse on the failure of the great powers, and particularly the United States, to cooperate in the arena of international peace. PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS* 334 (1987); HERBERT F. MARGULIES, *THE MILD RESERVATIONISTS AND THE LEAGUE OF NATIONS CONTROVERSY IN THE SENATE* 271-73 (1989); F.S. NORTHEDGE, *THE LEAGUE OF NATIONS, 1920-1946*, at 278-85 (1986); see also MOYNIHAN, *supra* note 1, at 55-68.

12. See, e.g., O'Connell, *supra* note 10; Burns H. Weston, *Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L L. 516 (1991). See generally HIDEMI SUGANAMI, *THE DOMESTIC ANALOGY AND WORLD ORDER PROPOSALS* (1989).

in the *Agenda for Peace* approach and argues that the time has come to revisit and reconsider more visionary proposals for reinvigorating and reinventing the UN.¹³

Part IV discusses the need for fundamental changes in the UN, focusing on the way such changes would affect the three most important organs of the organization: the General Assembly, the Security Council and the International Court of Justice (ICJ).¹⁴ Changes in the structure, orientation and operation of these key organs will enable the UN as an institution to respond better to the increased expectations and growing demand for its services.

In conclusion, this Article argues that these changes are essential not only to achieve the expressed aims of the organization, but also to revitalize faith in a common human desire for peace, security, justice, and social progress. If the UN is to represent more than the temporary compromises of the world's most powerful nations, it must transcend its present structure and narrow vision.

II. LESSONS FROM THE PERSIAN GULF, THE BALKANS AND THE HORN OF AFRICA

The overriding concern of the founders of the UN was to save "succeeding generations from the scourge of war"¹⁵ This objective should still qualify as the primary focus of the

13. Over one hundred years before the founding of the United Nations, Alfred Lord Tennyson captured the essence of the vision offered here as the alternative:

For I dipt into the future, far as the human eye could see,
Saw the Vision of the world, and all the wonder that would be;
Saw the heavens fill with commerce, argosies of magic sails,
Pilots of the purple twilight, dropping down with costly bales;
Heard the heavens fill with shouting, and there rain'd a ghastly dew
From the nations' airy navies grappling in the central blue;
Far along the world-wide whisper of the south-wind rushing warm,
With the standards of the peoples plunging thro' the thunderstorm;
Till the war-drum throbb'd no longer, and the battle-flags were furl'd
In the Parliament of man, the Federation of the world.
There the common sense of most shall hold a fretful realm in awe,
And the kindly earth shall slumber, lapt in universal law.

2 ALFRED TENNYSON, *Locksley Hall*, in *THE POEMS OF TENNYSON* 118, 121 (Longman House 1987) (1842).

14. The other primary organs, the Economic and Social Council, the Trusteeship Council, and the Secretariat are not examined in this paper. See U.N. CHARTER arts. 61-72, 86-91, 97-101.

15. U.N. CHARTER pmb1.

organization. And with regard to it, the UN has succeeded insofar as the world has been spared a global conflagration—a World War III between East and West. However, since the creation of the UN, the world has witnessed more than one hundred major conflicts short of global war. Over forty million people have lost their lives¹⁶ and material losses are beyond quantification.¹⁷ The end of the Cold War has not, unfortunately, led to a reduction in these conflicts. Indeed, it may have actually revived some of them. It is increasingly apparent that the UN system, as it is presently structured and oriented, is inadequate to deal with the drastic changes in the global community that may now be fueling these conflicts. The following case studies will illustrate basic weaknesses in the UN system and serve as practical and dramatic reminders of the necessity for urgent fundamental reform.

A. The UN in the Persian Gulf: The Iraq-Kuwait Dispute and the Gulf War.

The Iraq-Kuwait conflict began as a typical territorial dispute between two neighboring sovereign states and then widened to become the largest multinational military conflict involving the UN as a party since the Korean War.¹⁸ After an enormous expenditure of scarce global resources, the dispute persists today, unresolved and perhaps much more complicated and threatening to international peace and security.¹⁹ As an

16. This is the estimate for the total number of persons killed in the 125 wars since 1945. *Let Them Eat Guns*, THE ECONOMIST, Nov. 2, 1991, at 61.

17. See *Agenda for Peace*, *supra* note 2, at 4.

18. "The Cold War effectively stunted the use of military enforcement by the Security Council, with the one main exception of the UN-authorized operation in Korea in 1950. To fill the vacuum left in the powers of the UN, peacekeeping gradually emerged." N.D. WHITE, KEEPING THE PEACE 199 (1993). Since its founding, the UN has authorized about 25 peacekeeping and observer missions, whose mandate should be properly distinguished from those of the UN forces that engaged in combat in Korea and Iraq. An exception was the UN force in Congo from 1960 to 1964, which went beyond traditional peacekeeping activities into peace-making. This force, however, constituted only a fraction of the UN-authorized forces engaged in the Gulf War. *Id.* at 183-88, 206-08.

19. Despite the overwhelming Allied victory, political and military conditions in the Gulf remain volatile, as evidenced by continued Iraqi repression of its Kurdish and Shiite populations, and occasional military confrontations between Iraqi and Kuwaiti border forces. See Chris Hedges, *In a Remote Southern Marsh, Iraq is Strangling the Shiites*, N.Y. TIMES, Nov. 16, 1993, at A1; *Iraq in Mass Arrests of Kurds, Opposition Group Says*, REUTERS, Oct. 5, 1993, available in

example of how the UN manages international conflicts in the post-Cold War era, the Iraq-Kuwait conflict has been a near total disaster for the UN. The UN can benefit, however, from a thorough examination of its role in the conflict.²⁰

On August 2, 1990, more than forty-five years after the founding of the UN, Iraq, a UN member, invaded and proceeded to annex Kuwait, another member nation, in violation of the core principles of the UN and the appeals of the vast majority of its members.²¹

LEXIS, Nexis Library, Reuter Library Report Files; *Iraqis Shoot at Border Post with Heavy Fire, Kuwait Says*, TIMES-PICAYUNE, Sept. 29, 1993, at A13; *Kuwait Reports Another Clash on Iraq Border*, CHI. TRIB., Nov. 11, 1993, at 6N; Carlyle Murphy, *Buffeted by Hardships in Southern Iraq, 3000 Shiites Flee to Iran*, WASH. POST, July 24, 1993, at A18; *Saddam Foes Say Hundreds Killed in Gas Attack*, REUTERS, Oct. 23, 1993, available in LEXIS, Nexis Library, Reuter Library Report Files; Gareth Smyth, *Kurds Fear Saddam's Ire: Level of Allied Protection Seems Unclear*, FIN. TIMES, July 13, 1993, at 3.

20. The 1992 Summit of the Heads of State invited the Secretary-General to submit his suggestions regarding possible reforms to the organization. U.N. SCOR, 47th Sess., 3046th mtg. at 18, 47, 63, 72, 119, U.N. Doc. S/PV.3046 (prov. ed. 1992), cited in Andrew S. Miller, *Universal Soldiers: U.N. Standing Armies and the Legal Alternatives*, 81 GEO. L.J. 773 n.2 (1993). These suggestions became the *Agenda for Peace* proposals, *supra*, note 2.

21. Iraq invaded Kuwait on August 2, 1990. R.W. Apple, Jr., *Invading Iraqis Seize Kuwait and Its Oil: U.S. Condemns Attack, Urges United Action*, N.Y. TIMES, Aug. 3, 1990, at A1. Later that same day, the Security Council adopted Resolution 660 which condemned the invasion and demanded that Iraq immediately withdraw its military forces from Kuwait. S.C. Res. 660, U.N. SCOR, 45th Sess., 2932d mtg. at 19, U.N. Doc. S/RES/660 (1990). The Resolution further called upon the parties to "begin immediately intensive negotiations for the resolution of their differences" and left open the possibility that the Council would "consider further steps to ensure compliance" with the terms of the Resolution. *Id.*

All five permanent members voted in the affirmative, and the Resolution was adopted by a vote of 14-0 with only Yemen abstaining. However, it is noteworthy that the Resolution nowhere condemns Iraq's conduct as a violation of international law, let alone as contrary to any specific international agreement, to say nothing of the UN Charter, Article 2, ¶¶ 3 and 4. The Resolution speaks merely of a "breach of international peace and security" *Id.*

After four days, during which Iraq did not indicate its willingness to comply, the Council, on August 6, adopted Resolution 661. S.C. Res. 661, U.N. SCOR, 45th Sess., 2933d mtg. at 19, U.N. Doc. S/RES/661 (1990). Again, Article 2, ¶ 4 was not invoked, although this time the Council did invoke Article 51 in support of "the inherent right of individual or collective self-defence . . ." *Id.* See U.N. CHARTER art. 51. Broadly proclaiming its authority under Chapter VII, the Council imposed an embargo on all Iraqi and Kuwaiti imports and exports, but with the proviso that member states should not be prohibited from providing "assistance to the legitimate government of Kuwait . . ." S.C. Res. 661, *supra*, at 20.

Furthermore, all states were directed to freeze all Iraqi and Kuwaiti assets within their territories other than those specifically earmarked for humanitarian

purposes. Resolution 661 was adopted with the required "concurring votes" of the five permanent members as per Article 27 and by a total of 13 yeas and zero nays, Cuba and Yemen abstaining. S.C. Res. 661, *supra*, at 20; see U.N. CHARTER art. 27.

Following the purported annexation of Kuwait by Iraq, the Council adopted Resolution 662 on August 9, declaring such annexation null and void and calling upon all states, members and non-members of the UN alike, to deny the validity of Iraq's pronouncement of annexation and "to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation." S.C. Res. 662, U.N. SCOR, 45th Sess., 2934th mtg. at 20, U.N. Doc. S/RES/662 (1990). This Resolution was adopted unanimously. It is noteworthy that the first U.S. troops had already been sent to Saudi Arabia on August 7, 1990, without any UN involvement whatsoever. UN approval was sought after the fact. See S.C. Res. 665, U.N. SCOR, 45th Sess., 2938th mtg. at 21, U.N. Doc. S/RES/665 (1990) (passed on August 25).

In response to Iraq's harassment of international diplomatic personnel and other third party nationals located within Iraq and Kuwait, the Council, on August 18, adopted Resolution 664 demanding that Iraq allow all third-party nationals safe conduct and to permit the consulates of those third party states access to their nationals within Kuwaiti or Iraqi territory. S.C. Res. 664, U.N. SCOR, 45th Sess., 2937th mtg. at 21, U.N. Doc. S/RES/664 (1990). This Resolution was also passed unanimously. *Id.*

One week later the Council adopted Resolution 665 authorizing Kuwait's allies to impose a blockade on Kuwait and Iraq in order to facilitate the implementation of Resolution 661. See S.C. Res. 665, *supra*. This Resolution further requested "States concerned to co-ordinate their actions in pursuit of the above paragraphs of . . . [this] Resolution using as appropriate mechanisms of the Military Staff Committee . . ." This language is the only such reference in any of the Iraq Resolutions, and is in fact a response to a Russian proposal that such a Committee should wield the authority for any military action against Iraq. Resolution 665 was adopted by a vote of 13-0 with Cuba and Yemen abstaining.

On September 13, 1990, the Council adopted Resolution 666 providing for the supply of emergency foodstuffs to Iraqis and Kuwaitis, especially children, pregnant women, and the sick and elderly, through the offices of the Secretary-General in cooperation with the International Committee of the Red Cross. S.C. Res. 666, U.N. SCOR, 45th Sess., 2938th mtg. at 22, U.N. Doc. S/RES/666 (1990). In Resolution 667, passed on September 16, the Council reiterated its demands that Iraq release all detained third-party nationals, that it comply with the previous Resolutions, and that it take steps to ensure the safety of diplomatic and consular personnel. S.C. Res. 667, U.N. SCOR, 45th Sess., 2940th mtg. at 23, U.N. Doc. S/RES/667 (1990). The Council therein decided "to consult urgently to take further concrete measures as soon as possible, under Chapter VII of the Charter, in response to Iraq's continued violation of the Charter, of resolutions of the Security Council and of international law." *Id.* at 24.

Resolution 669 of September 24 entrusted to a Committee established under Resolution 661 the examination of the "increasing number of requests for assistance" being made pursuant to Article 50 of the UN Charter. S.C. Res. 669, U.N. SCOR, 45th Sess., 2942nd mtg. at 24, U.N. Doc. S/RES/669 (1990). Article 50 entitles aid to third parties suffering special economic hardships resulting from previous preventive or enforcement Security Council measures directed at a party or parties to a given dispute. U.N. CHARTER art. 50. Twenty-one member states had claimed hardships as a result of the economic sanctions levied against Iraq.

As Iraq trampled the most basic concern of the UN—international peace and security—most of the members of the world body watched helplessly. When the UN was finally moved to action, its response, as expected, depended on the raw military power of the global community rather than on the rule of law. The response also confirmed the organization's dependence on the will of its most powerful member—not the collective will—for action.²² The Gulf War was a glorious moment only for those comfortable with a vision of the United States as the imperial center dispatching legions, supplemented by volunteers from the provinces, to quell rebellions in remote corners of the empire.²³

The most distressing lesson from the UN response is that the leaders of Iraq, who plotted and pursued gross violations of

The hardships complained of were mainly oil shortages, stoppages of payments for exports to Iraq and Kuwait and the interruption of financial remittances from migrant workers located in Kuwait. This Resolution was adopted unanimously. S.C. Res. 669, *supra*.

The following day the Council, by a vote of 14-1 with Cuba voting nay, adopted Resolution 670. S.C. Res. 670, U.N. SCOR, 45th Sess., 2951st mtg. at 24, S/RES/670 (1990). It called for "all States to carry out their obligations to ensure strict and complete compliance with Resolution 661" and, affirming that the Resolution applied "to all means of transport, including aircraft," it decided that all States were henceforth to "deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances" *Id.* at 25. The Resolution further decided that all states were to deny overflight permission "to any aircraft destined to land in Iraq or Kuwait" unless previously certified by the UN as a humanitarian mission or unless such aircraft first landed in a state other than Iraq or Kuwait. This was to permit inspection to determine compliance with Resolution 661. *Id.* This Resolution further authorized the detention by all states in their ports of ships of Iraqi registry determined to be in use in violation of Resolution 661. *Id.* Finally, Resolution 670 reaffirmed Iraq's status as a High Contracting Party to the Fourth Geneva Convention, so that Iraq was "bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it" *Id.*

22. "[A] number of senators and representatives . . . expressed anxiety about the failure of most other countries to promise troops so far for the joint military effort." R.W. Apple, Jr., *U.S. May Send Saudis a Force of 50,000; Iraq Proclaims Kuwait's Annexation*, N.Y. TIMES, Aug. 9, 1990, at A1; see also Elaine Sciolino, *Washington Talk: Again, a U.S. Surprise Leaves Nations Upset*, N.Y. TIMES, Aug. 16, 1990, at A20.

23. For an argument that the United States should take the initiative in forming new international security mechanisms rather than continue its role as the world's policeman, see David Boren, *The World Needs an Army on Call*, N.Y. TIMES, Aug. 26, 1992, at A21 (Boren is the chairman of the Senate Intelligence Committee); see also Alan K. Henrikson, *How Can the Vision of a "New World Order" Be Realized?*, 16 FLETCHER F. WORLD AFF. 63 (1992).

international law and UN principles, are still very much in power in Iraq, and have yet to be held personally accountable for their actions and the resulting consequences.²⁴ Now, more than three years after the Iraqi invasion, the people of the region still have not found peace and security; and respect for the rule of law and the integrity of the national borders is still dubious.²⁵

To fully appreciate the extent of the UN's failures in this conflict, and to underscore the necessity for fundamental changes to the UN's structure and orientation, it is necessary to analyze three aspects of the conflict: (1) how the UN pacific dispute settlement machinery failed to resolve the Iraq-Kuwait dispute prior to Iraq's invasion of Kuwait, (2) how the UN responded to the invasion, and (3) how the UN managed the aftermath of the Gulf War.

1. Failures of the UN Pacific Dispute Settlement Machinery

Even though Iraq recognized the Kuwaiti state in 1963,²⁶ various Iraqi regimes had subjected Kuwait to claims against its integrity and sovereignty for decades.²⁷ Despite negotia-

24. See discussion *infra* part II.A.1 on UN capacity for peaceful settlement of disputes. See generally Paul W. Kahn, *Lessons for International Law from the Gulf War*, 45 STAN. L. REV. 425 (1993).

25. Indeed, Iraq has rejected the new UN-drawn border with Kuwait and continues to refer to Kuwait as its nineteenth province. William Maclean, *Kuwaitis Insecure Despite Border Demarcation*, REUTERS, May 23, 1993, available in LEXIS, Nexis Library, Reuters Library Report.

26. It is somewhat ironic that it was a Ba'athist regime—the ideological fore-runner of the Hussein regime—in Iraq that eventually recognized Kuwait.

Iraqi exiles allege Kuwait bankrolled the coup that overthrew [Iraqi leader] Qassim and paid the Ba'athists £30 million pounds, and that in exchange the Ba'ath renounced Iraqi claims.

It is also alleged that Kuwait secretly lent the new Ba'ath regime a further \$85 million when it formally acknowledged its neighbor's sovereignty and independence. Kuwaiti officials deny both allegations. Baghdad says its 1963 agreement recognizing Kuwait's independence was invalid because it was never placed before the [sic] Iraq's Revolutionary Council.

Jason Becker, *Nation Was Al-Sabah Family Business*, THE GUARDIAN (London), Feb. 26, 1991, at 4.

27. Iraq, for example, objected, with Soviet support, when Kuwait was granted independence by the British in 1961. Six days after Kuwait gained independence Iraqi Prime Minister, General Kassem (or Qassim) laid claim to all of Kuwait. The claim was not recognized by the international community as valid and in 1963, after the overthrow of General Kassem and the accession of President Aref, Iraq relinquished its claim and recognized Kuwait as a sovereign state. BORDER AND

tions going back to the early part of this century, Iraq steadfastly refused to ratify any border agreement between the two countries.²⁸ Neither Iraq nor Kuwait, however, brought their disputes before any organ of the UN.

When Iraq sent its forces into Kuwait on August 2, 1990, it is reasonable to suppose that the Saddam Hussein regime had reached two conclusions: first, that the expected benefits from invading and annexing Kuwait would outweigh the expected international costs of the actions; second, that there was no more effective way other than the use of force to satisfy Iraq's claims against Kuwait. While the American-led UN response confirmed the error of the former conclusion, the latter has yet to be rebutted.

The UN Charter imposes an obligation on all members to settle their international disputes by peaceful means²⁹ and the Security Council is assigned the dominant role in ensuring compliance with this obligation.³⁰ Article 33 of the UN Charter calls for the peaceful resolution of disputes which are likely "to endanger the maintenance of international peace and security." The Article explicitly encourages negotiation, mediation, arbitration, judicial settlement and other such peaceful dispute resolution methods. Article 34 of the UN Charter gives the Security Council the power to investigate, on its own initiative, any such disputes or any situation which could give rise to such disputes. Article 35 encourages all members—including

TERRITORIAL DISPUTES 244-45 (Alan J. Day ed., 2d ed. 1987).

28. From 1963 through 1973 Iraq claimed two islands owned by Kuwait, namely Warba and Bubiyan. The possession of these islands, situated just south of the Iraq-Kuwait border in the northeast Persian Gulf, would give improved access to the Gulf. Iraq and Kuwait began a series of negotiations in 1973 to settle the border question but agreement on the demarcation of their common border was not reached, and Iraq revived its claim to Warba and Bubiyan in 1981. *Id.*

29. U.N. CHARTER art. 2, ¶ 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."); *id.* ¶ 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 . . .").

30. The UN Charter Article 24, ¶ 1 confers upon the Security Council "primary responsibility for the maintenance of international peace and security," and authorizes the Council in advance to act on behalf of the member states in this area. *Id.* art. 24, ¶ 1. The UN Charter Article 24, ¶ 2, however, qualifies the powers of the Security Council in carrying out its duties in this area by requiring it "[to] act in accordance with the Purposes and Principles of the United Nations." *Id.* ¶ 2.

those not immediately affected—to bring these disputes to the attention of the Security Council.

One basic weakness in the UN's dispute settlement procedure is that it affords the Security Council no practical means to compel orderly resolution of disputes that could endanger international peace but which have not yet matured into actual "threats to the peace."³¹ This weakness derives more from traditional interpretation and practice than from an inherent flaw in the UN Charter. Chapter VII of the UN Charter, and in particular Article 39, could be construed liberally to allow the Security Council the right to treat practically any dispute as a threat to the peace.³² Under this interpretation of Article 39, the Security Council always has the power to "decide what measures shall be taken—in accordance with Articles 41 and 42—to maintain or restore international peace and security."³³ However, this broad interpretation of Article 39 is undercut by Chapter VI of the Charter, which presupposes that there are some disputes that do not rise to the level of threats to international peace and security.³⁴

Under the guidelines for the pacific settlement of disputes outlined in Chapter VI, the Security Council can "call upon" parties to pursue peaceful solutions or "recommend such terms of settlement as it may consider appropriate."³⁵ While the Security Council's powers under Chapter VII are more extensive than its Chapter VI powers, the Chapter VII powers must

31. U.N. CHARTER arts. 33-38.

32. As professors McDougal and Reisman saw it, "the framers . . . deliberately conferred upon the Security Council, in the provisions of Chapter VII, a very broad competence" to make such determinations and to decide upon the steps necessary to bring about international peace and security. McDougal and Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, 62 AM. J. INT'L L. 1, 6 (1968).

33. U.N. CHARTER art. 39.

34. See *id.* art. 33, ¶ 1 ("The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution by [various peaceful means] . . . of their own choice"); *id.* art. 34 ("The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute . . .").

35. See *id.* arts. 33-38. Under Article 36, for example, the Security Council can only recommend, not mandate, appropriate ways of resolving such disputes. *Id.* art. 36. Additionally, under UN Charter Article 37, ¶ 2, the Security Council again can take action under Article 36 or "recommend such terms of settlement as it may consider appropriate." *Id.* art. 37, ¶ 2. Note that the Secretary-General also "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." *Id.* art. 99.

properly be seen as limited by the traditional interpretation of "threats to the peace, breaches of the peace, and acts of aggression." There is therefore, in essence, a "power gap" between the Security Council acting in a Chapter VI, "peaceful settlement of disputes" mode, and its acting in a Chapter VII "acts of aggression" mode. Thus, Security Council actions aimed at resolving international disputes such as Iraq-Kuwait are credible only to the degree that it acts pursuant to Chapter VII.³⁶

The judicial organ of the UN also lacked the means to intervene in the Iraq-Kuwait dispute because of the deliberately constricted role that it has been given in international conflict resolution. In addition to the primary role assigned to the Security Council for the peaceful settlement of international disputes, the UN provides a complementary role for the International Court of Justice—the principal judicial organ of the UN.³⁷ Article 38 of the Statute of the International Court of Justice states that the main function of the court is "to decide in accordance with international law such disputes as are submitted to it"³⁸ Generally, the ICJ can consider disputes only if the parties accept its jurisdiction and submit the disputes to it for resolution.³⁹ Thus, the Court, at present, is in no position to assist with the resolution of many disputes which actually threaten or possess the potential to threaten

36. This lack of credibility for Security Council actions under Chapter VI as opposed to actions under Chapter VII is the direct result of delegates to the San Francisco conference rejecting language in a draft of the Chapter that left open the possibility that the Security Council would have the power to impose a settlement upon parties where a failure to reach a settlement could be interpreted as a threat to the peace. GOODRICH ET AL., *supra* note 1, at 257-59. Indeed, language linking the Security Council's actions in the two areas—Chapter VI and Chapter VII—was deleted, in effect, weakening the Council's powers under Chapter VI. GOODRICH ET AL., *supra* note 1, at 258.

37. U.N. CHARTER art. 92; STATUTE OF THE INTERNATIONAL COURT OF JUSTICE.

38. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38.

39. "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." *Id.* art. 36, ¶ 1. Consent may be made by declaration in advance of any disputes. *Id.* ¶ 2. At the San Francisco Conference, the members unanimously recommended that all members make such declarations recognizing ICJ jurisdiction. Many members did so, but with such extensive reservations as to render the effect nugatory. The United States, for example, took a reservation excluding any dispute determined by the United States to be "essentially within its domestic jurisdiction." GOODRICH ET AL., *supra* note 1, at 549-52.

international peace. In any case, the court has never been provided with the means to compel compliance with its decisions.⁴⁰ Enforcement was left to the discretion of the Security Council.⁴¹

The failure of the UN machinery for the pacific settlement of disputes contributed to the Iraqi invasion, the Gulf War, and the continuation of instability in the region. Unfortunately, the UN's conduct during the Gulf War and its aftermath have provided no useful new guidelines for settling disputes such as the one between Iraq and Kuwait in a peaceful manner.

2. The UN Response to the Iraqi Invasion

Iraq's resort to invasion to settle its claims against Kuwait highlighted the weaknesses in the UN's peaceful dispute settlement machinery. The UN response to the invasion, however, underlined the fundamental weaknesses of the whole UN structure and confirmed the extent to which the organization is beholden to the will and resources of the sole surviving superpower.⁴² The Security Council did not invoke Chapter VII un-

40. This problem has not escaped the notice of the current Secretary-General. In his *Agenda for Peace*, he recommends that all members accept "general jurisdiction" without reservation per Article 36, ¶ 3, or, in the alternative, at least binding jurisdiction of the court in explicit categories of disputes. *Agenda for Peace*, *supra* note 2, at 11. In the *Corfu Channel* case, for the only time in the organization's history, the Security Council made a recommendation that the parties submit their dispute immediately to the ICJ. The United Kingdom argued that this recommendation constituted grounds to compel jurisdiction, but seven of the judges found this conclusion "improper." *Corfu Channel Case (U.K. v. Alb.)*, 1947-1948 I.C.J. 31-32 (Mar. 25, 1948), *cited in* GOODRICH ET AL., *supra* note 1, at 282.

41. The UN Charter, Article 94 provides: "Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." U.N. CHARTER art. 94, ¶ 1. Additionally, under Article 94, ¶ 2, the Security Council is granted the power to enforce the Court's judgment provided one of the parties to a case so requests. *Id.* ¶ 2. This power is purely optional. The Security Council arguably could also invoke its Chapter VII powers and enforce an ICJ judgment that was being ignored by the losing state, if the Council determines that such non-compliance poses a threat to international peace and security. *See id.* arts. 39-51.

42. The United States was able to get UN imprimatur for the war against Iraq without ceding control of the conduct of the war or putting U.S. troops under UN command. Security Council Resolution 678 vaguely authorized the use of "all necessary means" to uphold and implement UN Security Council decisions, and transferred this authority to others. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg. at 27-28, U.N. Doc. S/RES/678 (1990). While this action does not appear to be consistent with much of Chapter VII of the UN Charter, it has been justified

til after the Iraqi invasion. Even this may never have occurred had the United States not convinced the other members of the Council that it was determined to escalate the conflict and take responsibility for ensuring compliance with the Council's decisions in this case.⁴³ The fact that the Council acted in this instance says little about the ability or potential of the Council to encourage peaceful resolution of conflicts. Aspiring international rogues—following the example of Iraqi leaders—can expect that the Council will act only if the interests of the United States become sufficiently threatened and the United States brings along or purchases the acquiescence of others on the Council.

The UN's acquiescence in what was in essence an American war against Iraq raises serious concerns.⁴⁴ The organi-

under Article 51 ("the inherent right of individual or collective self-defence"). U.N. CHARTER art. 51. This Resolution, however, was adopted arguably in violation of Article 27, ¶ 3 of the Charter, which requires that non-procedural decisions of the Council "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members" U.N. CHARTER art. 27, ¶ 3. China's abstention on Resolution 678 raised questions about the validity of the substantive provisions of the Resolution. S.C. Res. 678, *supra*, at 28. Apparently, however, UN practice does not consider a voluntary abstention a veto. See GOODRICH ET AL., *supra* note 1, at 230-31. Security Council Resolution 678 was adopted by a vote of 12-2-1, Cuba and Yemen voting nay and China abstaining. Cuba and Yemen objected on the ground that the Council had not yet determined the nonmilitary sanctions to be inadequate. S.C. Res. 678, *supra*, at 28. Such a determination is, under Articles 41 and 42 of the UN Charter, a prerequisite to the use of force. U.N. CHARTER arts. 41, 42.

43. The Bush administration took total leadership over the efforts to gain Iraqi withdrawal, from calling the Security Council into session just hours after the Iraqi invasion, to, a few days later, sending tens of thousands of American troops to Saudi Arabia. See Elaine Sciolino, *Putting Teeth in an Embargo: How U.S. Convinced the U.N.*, N.Y. TIMES, Aug. 30, 1990, at A1; *Excerpts from President Bush's Address from the Oval Office*, N.Y. TIMES, Aug. 9, 1990, at A15.

44. On January 25, 1991, the Washington Post, relying on Department of Defense announcements, reckoned the total number of United States troops deployed in the Gulf to be 475,000. James Schwartz, *Footing the Bill for Desert Storm*, WASH. POST, Jan. 25, 1991, at A28. On January 17, 1991, the *Financial Times* counted a total of 35,000 British troops. David White, *One Million Troops . . . Face to Face Across the Kuwaiti Border*, FIN. TIMES, Jan. 17, 1991, at 5. The *Daily Telegraph* reported on January 11, 1991 that France had committed a total of 16,000 troops, that Egypt had sent 35,000 troops, Syria 19,000, and that Canada, Italy, Pakistan, Bangladesh, Morocco, Honduras and Nigeria had each contributed small contingents to the war. Poland sent one hospital ship and Czechoslovakia a chemical decontamination unit. Australia and Argentina sent a few frigates. Peter Almond, *How the Forces Compare: Two Huge Armies Face Each Other in the Gulf*, DAILY TELEGRAPH, Jan. 11, 1991, at 17, available in LEXIS, Nexis Library, TELEGR. File. Resolution 678, which authorized the war, was apparently drafted

zation's credibility as a true world body has been severely damaged by the perception that it was manipulated and then discarded by the United States.⁴⁵ The haste with which the Security Council went from imposing economic sanctions beginning in early August to authorizing force to expel Iraq in late November 1990⁴⁶ has led to strong criticism of the lack of con-

in large measure by the United States Department of State's Office of the Legal Advisor. See Weston, *supra* note 12, at 519.

Weston argues that the Security Council's Article 42 authority does not *ex proprio vigore* confer on that body the power to cede unilateral jurisdiction to any single member state, but rather conditions any use of force on the pre-existence of a "special agreement or agreements . . . necessary for the purpose of maintaining international peace and security," pursuant to Article 43. See U.N. CHARTER art. 42. Note that no reference to either of these all-important Charter Articles is found in the text of Resolution 678. See S.C. Res. 678, *supra* note 42. An examination of Article 106 makes clear the enabling relationship between such special Article 43 agreements and the Council's exercise of Article 42 enforcement powers. See U.N. CHARTER art. 106. The drafters of the Charter foresaw emergencies not covered by Article 43 arrangements, and so required, under Article 106, that the five permanent members consult with one another and on occasion with other members of the United Nations with a view to such joint action on behalf of the organization as may be necessary for the purpose of maintaining international peace and security.

Though arguably the incorporation by reference of Resolution 661 affords Resolution 678 legitimacy via Article 51, any individual or collective self-defense measures taken by a member state or states under Article 51 authority is by the terms of that Article legitimate only "until the Security Council has taken measures necessary to maintain international peace and security." U.N. CHARTER art. 51. More to the point, had the Council in adopting Resolution 678 truly relied on the emergency Article 51 powers of members to defend themselves, it could easily have said so. Lastly, when one takes into account the fact that no dire emergency existed on the day Resolution 678 was adopted, and in fact many weeks elapsed between adoption on November 29, 1990 and the allied invasion on January 17, 1991, reliance on Article 51 becomes all the more suspect.

45.

[T]here is not a little apprehension that the United Nations, financially dependent upon the United States and stripped of the prior check and balance of Cold War rivalry, has become a venue for imposing upon the world a *lex* or *pax americana*, apprehension that the 'new world order' of which President Bush speaks will in fact be a unipolar world of unbridled American power

Weston, *supra* note 12, at 535.

46. Miller, *supra* note 20. Resolution 678, adopted by the Council on November 29, 1990, ostensibly pursuant to the Security Council's Chapter VII authority, authorizes the following:

Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements . . . [the previous resolutions dealing with the conflict], to use *all necessary means* to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.

sistency in the organization's procedures and standards for action. The UN usually does not act with such dispatch either in approving sanctions or in taking measures beyond sanctions.⁴⁷ The seeming impatience of the Council with the operation of sanctions in this instance has been defended rather unconvincingly, on grounds that sanctions would not have accomplished the goal of forcing Iraq out of Kuwait.⁴⁸

The United States ability to manipulate the UN could be significantly limited by clear and credible standards for using sanctions or force. To build greater institutional credibility and reduce the likelihood of it being manipulated in the future, the UN must develop standards which would lead to some consistency in the application of sanctions and other measures beyond sanctions.⁴⁹

Such standards would also have been valuable in ensuring that the U.S.-led coalition used proportionate force in the attacks on Iraq. International law requires some measure of proportionality in the conduct of warfare.⁵⁰ This concept, how-

S.C. Res. 678, *supra* note 42 (emphasis added).

47. For example, in the 1948 Arab-Israeli dispute, in the 1960 Congo rebellion, during the 1963 embargo against South Africa, and in the dispute over the secession of Southern Rhodesia, the Security Council acted to apply sanctions only after the repeated urging of the General Assembly. GOODRICH ET AL., *supra* note 1, at 312-13.

48. In Congressional testimony on December 5, 1990, Director of the CIA, William H. Webster, suggested that sanctions were generally working and that the Iraqi military would begin losing combat readiness in about nine months. Michael Wines, *Standoff in the Gulf; Head of CIA Sees Iraqis Weakening in 3 to 9 Months*, N.Y. TIMES, Dec. 6, 1990, at A1. Many noted American analysts supported giving sanctions more time, including Zbigniew Brzezinski, Harold Brown, William J. Crowe, James R. Schlesinger, Casper W. Weinberger, and Congressional Democrats such as Sam Nunn, Carl Levin, and Robert Kerry. Schlesinger, a former Secretary of Defense and Director of the CIA, said it was "illogical" for the Bush Administration to feel "impatience with [sanctions] because they will not have produced . . . results in six months' time."; see also William J. Crowe, Jr., *On Jan. 15, We Must Stand United When the Balloon Goes Up, The Time for Second Guessing Stops*, ST. LOUIS POST-DISPATCH, Jan. 10, 1991, at 3C; Michael R. Gordon, *Cracking the Whip*, N.Y. TIMES, Jan. 27, 1991, (Magazine), at 16; Michael Ross, *Democrats Put Line in the Sand on Bush Policy*, L.A. TIMES, Nov. 28, 1990, at A1; R. Jeffery Smith, *CIA Says Sanctions Would Need at Least a Year to Succeed*, WASH. POST, Jan. 11, 1991, at A24; Eric Schmitt, *Use Force in the Gulf, 14 Ex-Aides Urge*, N.Y. TIMES, Dec. 18, 1990, at A9.

49. In his *Agenda for Peace*, the Secretary-General recommends the revival of the Military Staff Committee per Article 43, whose members, as professional soldiers representing UN members, would in each Chapter VII situation have the authority to take decisions on the use of force by the organization. *Agenda for Peace*, *supra* note 2, at 13.

50. Under the international law principle of proportionality, responsive uses of

ever, is rather undeveloped and lacks definite criteria. It is to be expected that a nation at war would place a lesser value on the life or property of the enemy than on its own. A state that finds its vital interests threatened may well see a justification in using all means necessary to defend itself and to destroy its enemy without due consideration to the concept of proportionality. The UN, however, ought to be held to a higher standard. It is not unreasonable to expect that in conducting or sanctioning a war, the UN should demonstrate greater concern about enemy losses that are vastly disproportionate and, indeed, about total global human cost, than was exhibited by the coalition forces against Iraq.⁵¹ Looking just at the disproportionately high casualties on the Iraqi side compared to those incurred by the UN, one must indeed wonder about the value the coalition placed on Iraqi life.⁵² This ought to be

force "must not exceed in manner or aim the necessity provoking them." Kahn, *supra* note 24, at 435 (quoting Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1637 (1984)). Also termed the principle of military necessity, so-called customary international law provides that "a belligerent is justified in applying the amount and kind of force necessary to achieve the complete submission of the enemy at the earliest possible moment and with the least expenditure of time, life, and resources." DOCUMENTS ON THE LAW OF WAR 5 (Adam Roberts & Richard Guelff eds., 1982).

51. The conduct of UN armed forces is governed by the humanitarian rules of armed conflict according to the 1949 Geneva Conventions. See 1971 Zagreb Resolution of the Institute of International Law on Conditions of Application of Humanitarian Rules of Armed Conflict to Hostilities in Which United Nations Forces May Be Engaged, 66 AM. J. INT'L L. 465, 465-66 (1972).

The rules of warfare and respect for international legal principles apply a fortiori to the organs of the organization charged with maintaining international peace and security, an organization that presumably occupies the moral high ground in military matters. The UN "should take the greatest care to ensure that resolutions authorizing or ordering measures involving the use of force should be clearly and firmly based on the provisions of the Charter, since the Organization as well as members is bound by [the] principles [of the Charter] . . . powers in respect of the use of force should be used with circumspection." IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 336 (1963).

52. At a Riyadh press conference on February 27, 1991, General Norman Schwarzkopf reported a "very, very, large number of dead in the [Iraqi forward] units—a very, very large number of dead." John G. Heidenrich, *The Gulf War: How Many Iraqis Died?*, 90 FOREIGN POL'Y 108 (1993). Greenpeace estimated casualty figures for Iraq of between 100,000 and 120,000 troops killed, and the American Defense Intelligence Agency reports released in the first week of June 1991 (in response to a Freedom Of Information Act request by the Natural Resources Defense Council) gave Iraqis killed at 100,000 and wounded at 300,000, plus or minus 50%. *Numbers Still Hazy on Iraqi Casualties from Gulf War*, AGENCE FRANCE PRESSE, Mar. 10, 1993, available in LEXIS, Nexis Library, AFP File. When a U.S. Census Bureau demographer, Beth Osborne Daponte, released figures

a particularly appropriate concern in this case given the ruthless control exercised by the tyrannical Iraqi regime over its people, and the fact that most Iraqi soldiers are conscripts.

Another aspect of the proportionality issue is whether any consideration was given to the view that, at some point, the cost of restoring Kuwaiti sovereignty by war might be unjustifiably high in terms of total casualties and material destruction. Surely the UN has not ranked the defense of state sovereignty so high among its core principles that no evaluation of casualties and material destruction is made when sovereignty is violated.⁵³ The issue here is not whether the UN must ever acquiesce to such violations of international law but whether the means chosen to rectify such violations, and the costs of such rectification, should be more directly proportionate to the interests at stake. How many more Iraqi dead or wounded, or, for that matter, Coalition casualties, would the Coalition have been prepared to tolerate in the interest of restoring the sovereignty of Kuwait? When nations fight amongst each other, such a question might be deemed unrealistic. It should not be out of place in deciding whether the UN should go to war. At a minimum, the UN can be said to have missed a good opportunity during the Persian Gulf conflict to teach some lessons about the value of human life and the conduct of war in the resolution of international disputes.

indicating that about 150,000 Iraqis, many of them women and children, had been killed, including 40,000 troops, she was fired. She was subsequently reinstated after the ACLU threatened to sue. A 1300-page April 1992 Pentagon report made no mention at all of Iraqi casualties; the Melbourne Age of May 15, 1992, reported that a draft chapter on Iraqi casualties had been deleted prior to publication. Mark Baker, *U.S. Buries the Human Cost of Victory over Iraq*, THE AGE (Melbourne), May 15, 1992, available in LEXIS, World Library, ALLWLD File. The same Australian newspaper reported an Oxfam estimate that attributed more than 200,000 infant deaths to malnutrition and the unavailability of health services following the war. *Id.* Up until the war began, American figures for Iraqi troops totalled 550,000, and a House Armed Services Committee report immediately following the cessation of hostilities announced that aerial bombardment had reduced the Iraqi army to about 183,000. These Congressional figures were based on interviews with 1000 combatants. *Id.*

53. "In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civil population." 1923 Hague Rules of Aerial Warfare, art. 24, § 4, 17 AM. J. INT'L L. 245, 250 (Supp. 1923), reprinted in DOCUMENTS ON THE LAW OF WAR, *supra* note 50, at 126-27.

3. The UN Management of the Gulf War's Aftermath: Peace, Security, and Human Rights After the War

The conditions imposed by the UN on Iraq at the end of the war appear to be extraordinarily onerous at first glance.⁵⁴ In operation, however, the post-war sanctions imposed upon Iraq by the UN show extraordinary solicitude to the Hussein regime while imposing severe hardship on the Iraqi people. These sanctions appear to affect Saddam Hussein only in thwarting his megalomania. Although his enemies outside of Iraq are to some significant extent safer, the same cannot be said about the Iraqi people.

The people of Iraq, particularly the Kurds and Shiites, have paid dearly for the way the war was concluded. The adoption of Resolution 688⁵⁵ by the Security Council on April 5,

54. Security Council Resolution 686 demanded in effect that Iraq comply with the following conditions: accept in principle its liability under international law for any loss, damage or injury arising in regard to Kuwait and third states and their nationals and corporations as a result of the invasion and illegal occupation of Kuwait by Iraq; immediately begin to return all Kuwaiti property seized by Iraq, to be completed in the shortest possible period; cease hostile or provocative actions by its forces against all member states, including missile attacks and flights of combat aircraft; arrange for immediate access to and release of all prisoners of war under the auspices of the International Committee of the Red Cross, Red Cross Societies, or Red Crescent Societies, and return the remains of any deceased personnel of the forces of Kuwait and the member states cooperating with Kuwait pursuant to Resolution 678; and provide all information and assistance in identifying Iraqi mines, booby traps and other explosives as well as any chemical and biological weapons and material in Kuwait, in areas of Iraq where forces of member states cooperating with Kuwait pursuant to Resolution 678 are present temporarily, and in the adjacent waters. See S.C. Res. 686, U.N. SCOR, 46th Sess., 2978th mtg. at 8-9, U.N. Doc. S/RES/686 (1991).

55. Resolution 688, in part, states the following:

The Security Council,

Mindful of its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Recalling the provisions Article 2, paragraph 7 of the Charter,

Gravely Concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region,

Deeply Disturbed by the magnitude of the human suffering involved, . . .

1. *Condemns* the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in

1991, was a belated recognition of the peril faced by the Kurds and Shiites. The Resolution condemned the Iraqi force's brutal treatment of the two groups by defining such treatment as a threat to international security and requiring the Iraqi government to allow the group access to international humanitarian assistance.⁵⁶ The UN, to its credit, rejected Iraq's attempt to seek protection from the Resolution under Article 2 Section 7

the region;

2. *Demands* that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression, and in the same context expresses the hope that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;

3. *Insists* that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and make available all necessary facilities for their operations;

4. *Requests* the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities;

5. *Also requests* the Secretary-General to use all the resources at his disposal, including those of the relevant United Nations agencies, to address urgently the critical needs of the refugees and displaced Iraqi population

S.C. Res. 688, U.N. SCOR, 46th Sess., 2982nd mtg. at 31-32, U.N. Doc. S/RES/688 (1991).

56. The UN was forced to act when the repression of the Shiites and Kurdish rebels, whose help the American-led coalition had enlisted in the war, became an international *cause celebre*. Hundreds of thousands of Kurds—who as a tribe number 20 million and who range over the territories of five countries—were dying of starvation and exposure. Iraq was refusing to permit deliveries of aid to the northern, predominantly Kurdish provinces of Dahuk, Erbil and Sulaymaniyah. No food or fuel was being permitted to cross the Turkish border, and Iraq was accused of bombarding UN relief convoys entering Iraq from Turkey.

Though the Security Council discussed the conflict between the Iraqi government and the rebels in terms of its threat to international peace and security, hence implicating its Chapter VII powers, and provided for a team of observers to monitor Iraq's compliance with the new border terms and the demilitarized zone, it did not resolve to establish protective areas for the rebels. Such enclaves were not part of the terms of the cease-fire agreements. France had already tried and failed to tie some guarantee of Kurdish freedom from persecution to the lifting of UN trade embargoes. China and the Soviets, leery of the precedent such a condition might present in Tibet or the Baltics, respectively, along with Britain and the United States, would not agree to any such intrusive measures.

On the other hand, the close relationship between the civil conflicts and the international war that had just ended made it unseemly for the UN simply to wash its hands of the affair. Clearly the international community had some responsibility to the embattled Iraqi rebels by dint of its earlier commitments in the region.

of the UN Charter which prohibits UN intervention in "matters essentially within the domestic jurisdiction of any state."⁵⁷

After the Second World War, the victorious forces occupied Germany and Japan, and prosecuted surviving leaders of both countries who were responsible for initiating and pursuing the war.⁵⁸ The people of both nations, and indeed the world, are surely the better for this insistence upon personal accountability for war crimes. The failure to remove the Hussein regime from power, to try him and his advisers for war crimes and crimes against the peace and to provide the people of Iraq with a new opportunity for democratic governance must rank among the major failures of the UN in the modern era. There is no question that the cost of prosecuting the war all the way to Baghdad would have been enormous and that assuredly, an occupied Iraq would have been difficult to administer. Such costs and difficulties, however, ought to be considered in light of the resources that already had been expended by the Coalition forces at the time of Iraq's surrender and the continuing cost to the region and the world of an aggrieved renegade regime bent on international mischief.⁵⁹

As long as the Hussein regime remains in power the UN will have ample evidence of the mistakes it made in dealing with the Iraq-Kuwait conflict and its aftermath. The other salutary step that the UN has yet to take is to recognize its responsibility to the various minorities within Kuwait who have been victimized by the UN-installed Kuwaiti regime and Kuwaiti citizens bent on revenge. It should not be too much to ask a government that owes its existence to the UN to live up to some of the organization's basic principles.

57. There is precedent for the rejection of Iraq's claim. In the case of South Africa's apartheid policies, the General Assembly has acted where it has found violations of obligations under the Charter. GOODRICH ET AL., *supra* note 1, at 71; see also U.N. CHARTER arts. 55, 56; M.S. RAJAN, UNITED NATIONS AND DOMESTIC JURISDICTION (2d ed. 1961).

58. See generally DONALD A. WELLS, WAR CRIMES AND LAWS OF WAR (2d ed. 1991).

59. The United States, for example, has repeatedly accused Iraq of sheltering and aiding terrorist organizations such as the Muhahedin-E Khalq (MEK), the Abu Nidal Organization (ANO), Abu Abbas' Palestinian Liberation Front (PLF), and the May 15th Organizations' explosives expert Abu Ibrahim. Status Report on Iraqi Non-Compliance with U.N. Resolutions, in DEP'T ST. DISPATCH, Apr. 5, 1993, at 194.

B. The United Nations in The Balkans: The Breakup of Yugoslavia

The break-up of the Socialist Federal Republic of Yugoslavia has presented the UN with a set of problems significantly different from and far more complicated than those presented by the dispute between Iraq and Kuwait. In fact, the nature of the Yugoslavian conflicts brought several of the UN's core principles into conflict. In particular, the UN guarantee of non-intervention in matters "essentially within the domestic jurisdiction of any state"⁶⁰ came into direct conflict with the principle of "equal rights and self-determination of peoples."⁶¹ The Yugoslavian conflicts were essentially about the rights of organized groups in a defined geographic area within a sovereign UN member state to secede and become independent sovereign states in their own right.

Unlike the relatively clear-cut problem of aggression by one UN member state against another, the breakup of Yugoslavia has spawned a multitude of territorial disputes fueled by centuries-old religious and cultural hatred, ethnic insecurity, and political miscalculations.⁶² The territorial claims are

60. The UN Charter states the following:

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.

U.N. CHARTER art. 2, ¶ 7.

The Dumbarton Oaks proposal relating to this section used the word "solely" rather than the considerably looser "essentially" and the proposal was included in the "Pacific Settlement of Disputes" section. At the San Francisco conference, as part of the effort to balance the broad powers and effectiveness of the United Nations with the interests of sovereign nations, the proposal was placed in the chapter on "Principles," and "essentially" was substituted for "solely." GOODRICH ET AL., *supra* note 1, at 61-62.

61. U.N. CHARTER art. 1, ¶ 2.

62. Until its breakup, Yugoslavia—formally the Socialist Federal Republic of Yugoslavia—consisted of six republics (Serbia, Slovenia, Croatia, Bosnia-Herzegovina, Montenegro, and Macedonia) and two provinces (Kosovo and Vojvodina), with a total population of 23.5 million (1990 estimate). FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *YUGOSLAVIA: A COUNTRY STUDY*, xv-xvi, 200-210 (Glenn E. Curtis, ed., 3d ed. 1992). Serbia was the largest of the political divisions in terms of population and territory. Serbs were also the largest ethnic group in Yugoslavia and "saw themselves as the basis of whatever Yugoslav federation existed because of their central role in 19th century liberation struggles and in both world wars." *Id.* at 202. Slovenia was the most ethnically homogenous

virtually impossible to resolve due to the presence of established minority enclaves within many of the disputed areas. The poorly defined principle of "self-determination of peoples"—grandly endorsed by the UN Charter—has provided a convenient rationale for the claims of all the parties.⁶³ Compared to Yugoslavia, the Iraq-Kuwait dispute was an issue in black and white, at least from the moment Iraq moved to annex Kuwait.⁶⁴ Yugoslavia was never black and white from an

republic and the richest per capita. *Id.* at 200. Croatia had a substantial Serbian minority population within its borders and a history of anti-Serbian agitation. *Id.* at 207. Bosnia-Herzegovina was a multiethnic republic, with a population of nearly 40% Muslim Slavs, living among Serbs and Croats. *Id.* at 210.

Beginning in late 1989 and escalating in 1990, Slovenia, and then Croatia, began to limit the powers of the federal government in their affairs. Serbia was opposed to these developments, and after negotiations for a looser relationship among the republics failed in 1991, Slovenia and Croatia declared their independence on June 25, 1991. War began shortly thereafter. Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569 (1992) (discussing the history and politics of the conflict and an examination of initial international response).

63. The origination of the principle of self-determination in modern international usage is credited to Woodrow Wilson's campaign on behalf of the League of Nations in the aftermath of the First World War. *See, e.g.*, Woodrow Wilson, Address Before the League to Enforce Peace (May 27, 1916), reprinted in 53 CONG. REC. 8854 (daily ed. May 29, 1916) ("We believe these fundamental things: First, that every people has a right to choose the sovereignty under which they shall live."); 54 CONG. REC. 1742 (daily ed. Jan. 22, 1917) (statement of President Wilson Before the Senate), quoted in Claudia Saladin, *Self-Determination, Minority Rights, and Constitutional Accommodation: The Example of the Czech and Slovak Federal Republic*, 13 MICH. J. INT'L L. 172, 180 n.47 (1991) ("No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just power from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.").

Wilson saw self-determination of peoples as essential to the stability and reliability of the international community in its quest for world peace:

Only the free peoples of the world can join the League of Nations. No nation is admitted to the league that cannot show that it has the institutions which we call free. No autocratic government can come into its membership, no government which is not controlled by the will and vote of its people. Nobody is admitted except the self-governing nations, because it was the instinctive judgment of every man who sat around that board that only a nation whose government was its servant and not its master could be trusted to preserve the peace of the world.

WOODROW WILSON'S CASE FOR THE LEAGUE OF NATIONS 64 (Hamilton Foley ed., 1923).

64. Professor Kahn suggests that had Iraq, instead of purporting to annex Kuwait, merely seized those territories, namely the border strip containing the Rumaila oil field and the offshore islands of Warba and Bubiyan, which had been the subject of a historic dispute, military action by the United States with its UN

international law perspective. The UN Charter not only lacks clear guidelines for dealing with the sort of hybrid civil-international conflicts that arose within the Yugoslav federation, but several of its core principles provide conflicting directions for addressing this type of dispute.

1. The Principle of Non-Intervention in Matters Essentially Within the Domestic Jurisdiction of any State

Traditionally, the Security Council has been reluctant to take action which would infringe on the domestic jurisdiction of a sovereign member even when the rights of individuals and groups within the sovereign state have been severely violated.⁶⁵ Although the Security Council could have justified early intervention in the Yugoslavian conflicts by finding a threat to peace, even though the conflicts were wholly contained within the borders of the then sovereign state,⁶⁶ this would have been a bold departure from the organization's traditional practice of seeking and obtaining the consent of the recognized state authorities before intervening in such disputes.⁶⁷ The

seal of approval would have been "inconceivable." Kahn, *supra* note 24, at 429-30 (emphasis added).

65. This reluctance comes from the traditional interpretation of Article 2(7) of the UN Charter. GOODRICH ET AL., *supra*, note 1, at 66-72. What has often obscured the lack of action by the Council has been the extensive discussions that have usually substituted for concrete actions, especially in the Cold War era.

66. All that is required to confer Security Council jurisdiction over a given dispute is a "determination" of "the existence of any threat to the peace, breach of the peace, or act of aggression." U.N. CHARTER art. 39. But "a measure of discretion is always involved in evaluating the facts of a situation, and the lack of any definition or consensus concerning the meaning of the terms used in Article 39 leaves considerable room for subjective political judgment." GOODRICH ET AL., *supra* note 1, at 293. Increasingly the argument is that in certain circumstances the international community has not only the right but the duty to intervene, regardless of the principle of sovereignty. When the organization intervened to aid the Kurds in Iraq, "the needs of a people took precedence over the wishes of a state." Henrikson, *supra* note 23, at 70. Henrikson sees the developing "case law" of justifiable international intervention in three areas: human rights violations, the stockpiling of weapons of mass destruction, and environmental disasters or hazards. He cites the incorporation, by reference, of the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War of 1949 into the Iraq Security Council Resolutions 670 and 674, and argues that the UN Declaration of Human Rights, the international nuclear non-proliferation agreements and IAEA safeguards and the 1972 Stockholm Declaration of Environmental Principles should likewise support the "bold doctrine" of UN intervention in areas previously deemed "domestic." Henrikson, *supra* note 23, at 71-73.

67. For instance, in the Congo conflict, UN intervention pursuant to its power

Security Council's adherence to the principle of non-intervention in sovereign affairs was a major barrier to timely UN intervention in Yugoslavia. As noted earlier, in the Iraq case, the UN was able to transcend or finesse this doctrinal hurdle when it passed Resolution 688.⁶⁸ In the Yugoslavia case, the UN was faced with the desires of several ethnic minorities to secede from the jurisdiction of a recognized sovereign member—which had not committed international aggression—and become recognized as independent sovereign entities of their own right.

The UN policy toward the Yugoslavian dispute was driven by the usual worries about setting a precedent for UN involvement in conflicts which are essentially contained within the borders of sovereign members. The reality is that many UN member nations are similarly susceptible to the internal schisms that have torn Yugoslavia apart and many are deeply suspicious of any reading of the UN Charter that could expand the right of the UN to intervene in such conflicts. This fear is especially high in an age when the UN appears to be increasingly dependent on American direction and support. For many countries, the UN could not properly address the disputes and conflicts without the agreement of the central government of Yugoslavia.⁶⁹ Consequently, the Yugoslavian government's as-

under Article 40 was explicitly at the behest of the newly independent government. See GOODRICH ET AL., *supra* note 1, at 71-72. On the other hand, the Security Council denied such a request for intervention by the Czechoslovak representative in 1948 to counter what the government perceived as a threat to international peace and security, on the ground that the request could not be treated as a request by the government of a member state. M.S. RAJAN, *supra* note 57, at 122.

Obviously, such governmental requests will not be made where the claim is the violation of human rights. Both the Security Council and the General Assembly have, on at least one occasion, officially rejected the argument that it does not have competence to deal with allegations of human rights violations by a government of a member state, because such allegations implicate Charter provisions. G.A. Res. 39 (I), Dec. 12, 1946, *cited in* GOODRICH ET AL., *supra* note 1, at 69 (The Assembly's recommendation of collective measures to secure a change of government in the Spanish case on the basis that the Franco regime itself posed a threat to international peace and security). It however does "illustrate the willingness of United Nations organs to encroach on traditional concepts of domestic jurisdiction in the discharge of their responsibilities under the Charter, the limitation of Article 2 (7) notwithstanding." GOODRICH ET AL., *supra* note 1, at 69.

68. See *supra* notes 55-57 and accompanying text.

69. Zimbabwe, India and China, for example, expressed strong reservations about involvement in a country's internal affairs. See Weller, *supra* note 62, at

sent was obtained before the Security Council first took up the matter.⁷⁰

The Security Council initially hid behind Chapter VIII of the UN Charter, which governs the UN relationship with regional organizations, and left it up to the European Community (EC) and the Conference on Security and Cooperation in Europe (CSCE) to mediate the conflicts among the Yugoslav ethnic groups.⁷¹ There was considerable support inside and outside Europe for this policy of treating Yugoslavia as a primarily European problem. Today, there is widespread agreement that the Europeans at best did not improve an already bad situation.

There is nothing intrinsically wrong with the UN deferring to highly capable regional organizations like the EC and CSCE on matters that are essentially within their purview. This posture is supportable under the UN Charter which urges members to pursue peaceful settlement of local disputes through regional agencies, and calls on the Security Council to encourage such regional peaceful dispute settlement processes.⁷² Moreover, given growing demand for its intervention in other parts of the world, the UN can hardly be criticized for relying on European institutions to deal with a regional problem. However, once it reached the decision to become more engaged in the conflicts, the UN can be chastised for both a too-narrow vision of its capacity to act and for a woeful inability to accomplish even its limited objectives.⁷³

578-79.

70. Apparently the explicit Yugoslav request that the Council convene to discuss the crisis was "elicited from the central authorities in Belgrade at the very last minute, when it appeared that some members of the Council would have otherwise raised objections under Article 2, ¶ 7." Weller, *supra* note 62, at 578. In a very odd move, the Yugoslav delegate invoked his country's right to self-determination while urging a UN embargo on weapons shipments to all Yugoslav parties—including the government he represented. Weller, *supra* note 62, at 578.

71. For a detailed discussion of the EC's and the CSCE's response to the Yugoslavian crisis, see Weller, *supra* note 62, at 569. The UN waited until the bloodshed in the Balkans was well under way before even convening a meeting of the Council to discuss the matter. See Weller, *supra* note 62, at 577. It was not until September, 1991, nearly three months after federal Yugoslav troops began their attacks on the seceding republics that the Council passed Resolution 713 implementing the embargo by the members against weapons shipments to the federal Yugoslav government. See Weller, *supra* note 62, at 579.

72. See U.N. CHARTER art. 52.

73. As of late 1994, heavy fighting continues in the Bosnia region of the for-

2. The Principle of Equal Rights and Self-Determination of Peoples

The Security Council debate on Yugoslavia centered on how the organization could accommodate the competing legal and political principles of self-determination of peoples and of non-interference in domestic affairs of members. Opponents of UN intervention in the Bosnian conflicts emphasized the "civil" nature of the conflicts and the importance of maintaining the jurisdictional line between what is international and what is domestic. The supporters of UN intervention in the conflicts accepted this basic characterization, but argued for intervention by emphasizing the threat the conflicts posed to international peace. Supporters of intervention also argued that UN involvement would actually support the principle of self-determination.⁷⁴

mer Yugoslavia, primarily between forces of the Bosnian Serbs and those of the Muslim-led Bosnian government. The Bosnian Serbs have rejected the latest of a series of UN plans for partitioning the region. A UN protection force of about 24,000 military and civilian personnel is deployed throughout the former Federation. While stability has been achieved in many parts of the former Federation, the situation in Bosnia continues to deteriorate and there have been calls from within the U.S. Congress for the U.S. to ignore a UN arms embargo and supply arms to the Bosnian Muslims. The U.N. Chronicle has regular features on developments in the former Yugoslavia. See, e.g., *Return to 'Normal Life' in Sarajevo Urged*, 31 U.N. CHRON., 22 (1994); *Tragedy Continues with 'No Sign of Abatement': Internal Tribunal Established*, 30 U.N. CHRON., 10, 40 (1993); see also Eric Schmitt, *Bosnia Peace Move May Bring U.S. Commitment*, N.Y. TIMES, July 18, 1994, at A2; Chuck Sudetic, *Bosnian Army and Serbs Agree to End Sniper Fire in Sarajevo*, N.Y. TIMES, Aug. 15, 1994, at A3.

74. The prevailing modern view of the principle of national self-determination seems to be that "[i]t is for people to determine the destiny of the territory and not the territory the destiny of the people." *Western Sahara Case* (Morocco v. Mauritania), 1975 I.C.J. 116, 122 (Oct. 16) (separate opinion of Judge Dillard). One view reconciles the apparent conflict between the UN Charter's Article 1, ¶ 2 espousal of the right of peoples to self-determination with the Article 2, ¶ 7 prohibition on intervention in the domestic affairs of states in favor of the first principle, so that the right of self-determination supersedes the rights of states to be free from intervention. See GOODRICH ET AL., *supra* note 1, at 31. Commentators—not to mention great powers—point out the difficulty with taking such a position literally. The 140-plus ethnic groups which comprise the former Soviet Union would be hard-pressed to justify tribal squabbling over their nuclear weapons. See Deborah Z. Cass, *Re-Thinking Self-Determination: A Critical Analysis of Current International Law Theories*, 18 SYRACUSE J. INT'L L. & COM. 21, 23 (1992). The UN has on several occasions announced its commitment to the principle of self-determination. See, e.g., International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; U.N. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N.

Neither the principle of self-determination nor that of non-interference in domestic affairs assist in developing a practical basis for UN involvement in conflicts of the sort the organization faces in Yugoslavia. The pressures for international intervention today are as much a consequence of the sights and sounds of media coverage as they are a result of international insecurity deriving from a state versus state conflict. The UN cannot maintain its credibility among "the peoples of the United Nations" if it continues to promote such a narrow reading of its powers to aid oppressed people anywhere in the world. But by focusing on the scale of human suffering in a conflict—rather than on the sensibilities of particular governments—as the basis for its jurisdiction to intervene, the UN should be better able to bring more attention to destructive conflicts even where international peace, strictly speaking, has not been threatened.

Now is also the moment for the UN to reconsider the meaning and value of the principle of self-determination. Regarding the situation in Yugoslavia, it is clear that the principle is being used to justify doing tremendous damage to a world that has just begun to emerge from over four decades of an all-consuming ideological conflict. Enough consideration was not given to the full implication for the world of the early stirrings of secessionist longings in Slovenia, Croatia, and Macedonia and other regions of Yugoslavia. It was relatively simple to identify the "self" in the self-determination claims of those who were lucky enough to inhabit homogenous regions of the country. But in heterogeneous regions like Croatia and Bosnia, the definition of the "self" has become problematical. While Croats and Bosnian Muslims saw themselves as persecuted minorities within a Serbian-dominated Yugoslavia, they

GAOR, 15th Sess., Supp. No. 16A, at 188, U.N. Doc. A/4684/Add.I (1960) (purpose of the Charter is to develop friendly international relations based on respect for equal rights and popular self-determination); *see also* the Aaland Islands Case, LEAGUE OF NATIONS O.J. Spec. Supp. 1, at 3 (1920) (opinions refusing to recognize positive law right of national groups to secede from political authority). *But cf.* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, S.C. Res. 276, U.N. SCOR, 25th Sess., 1529th mtg. at 1, U.N. Doc. S/RES/276 (1970), 1971 I.C.J. 16 (June 21); *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, 183d plen. mtg., U.N. Doc. A/772 (1948), reprinted in UNIFO, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS, 1948-1982, at 5 (1983).

failed to anticipate or appreciate that Serbian minorities within Croatia and Bosnia could have similar fears in contemplating an independent Croat-dominated Croatia, or an independent Muslim-dominated Bosnia.

Much has been made of the history of hatred and violence among these groups to explain the inevitability and, in a sense, the unique nature of brutal conflicts among them. But in truth much, if not most, of the world is Yugoslavia-in-waiting. The ties that bind some of the ethnic or religious groups in India, Nigeria, South Africa, the United Kingdom, Spain, Belgium, and Russia for example, are arguably no stronger than those that once seemed to bind Croats, Slovenes, Serbs and Bosnian Muslims in a unified Yugoslavia.⁷⁵ Whatever the solution may be to the tensions that exist among groups in diverse societies throughout the world, it cannot be the case that every identifiable ethnic group should have a UN-cognizable claim to self-determination that translates automatically into sovereign nationhood.

To the extent that the principle of self-determination as expressed in the UN Charter provides any sort of encouragement to various ethnic groups contemplating non-amicable secession, it must be re-examined. The UN may properly insist upon the protection of individual human rights, and indeed group rights, without encouraging the expectation that it will come to the aid of every identifiable aggrieved minority group in the world that sees salvation only in sovereign self-governance.

75. For example, since independence in 1947, India has had to contend with religious and ethnic strife which has claimed the lives of three Indian leaders—Mahatma Gandhi, Prime Minister Indira Gandhi, and her son and successor, Rajiv Gandhi. See RICHARD F. NYROP ET AL., *INDIA: A COUNTRY STUDY* 66, 377-78 (1985). Nigeria is made up of over 200 ethnic groups; roughly half are Muslims and the other half practice Christianity and other religions. WILLIAM D. GRAF, *THE NIGERIAN STATE* 5-6 (1988). Even modern Western countries like Spain and Belgium face varying degrees of ethnic or similar divisions. On Spain, see FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *SPAIN: A COUNTRY STUDY* 334-37 (1990). For recent developments in Belgium, see Alistair Brutton, *Belgium: Who Needs A Europe of the Regions*, *THE GUARDIAN* (London), Jan. 7, 1994, at 16; John Carvel, *Belgium: Constitutional Changes Will Not Split Belgium*, *THE GUARDIAN* (London), Feb. 18, 1993, at 8; John Palmer, *Flemish Leader Calls for Split*, *THE GUARDIAN* (London), July 14, 1994, at 12.

C. The UN in the Horn of Africa

The tragedy in Somalia,⁷⁶ in all likelihood, would not have occurred if the era of superpower conflict between the East and the West had continued. Somalia, more precisely the port of Berbera, located in the Gulf of Aden and overlooking key oil shipping routes, was an attractive strategic asset to both the Soviet Union and the United States, both of which competed for nearly three decades to gain influence in the Eastern African country.⁷⁷ When the East-West rivalry ended in the late eighties, Somalia, like many other client states in the Third World, was no longer of much value to any of the major powers.⁷⁸

Consequently, neither the embattled Barre regime nor its various opponents could attract enough outside support to gain

76. Somalia, which became independent in 1960, initially attracted Soviet support. This support continued after civilian rule was replaced by a military dictatorship under General Mohammed Siad Barre in 1969. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *SOMALIA: A COUNTRY STUDY* 30, 39 (Helen C. Metz ed., 4th ed. 1993). The Barre regime adopted "scientific socialism" as the national ideology in part to ensure communist support and also to reduce the influence of traditional Somali clan elders. *Id.* at xxiv-xxv, 39-42. In 1977, while still a recipient of Soviet aid, Somalia invaded neighboring Ethiopia seeking to seize the Ogaden, a largely barren Ethiopian-controlled territory, inhabited by nomadic Somalis. The Soviets eventually abandoned Somalia and supported Ethiopia in the war. Somali forces were routed and hundreds of thousands of Somalis were displaced. *Id.* at 182-84. At that point, the Barre regime decided to abandon socialism and offered its service to the United States. *Id.* at xxvi, 176.

The Somali military defeat encouraged opposition to General Barre. In turn the state became more repressive, with the regime actively promoting interclan rivalry in order to divide the opposition. *Id.* at 45, 48-50. Foreign economic and military assistance gave the Barre regime the means to placate and as necessary, repress opposition for a time. By the late 1980s, the country was engulfed in an increasingly brutal civil war which combined with a persistent drought to devastate the country. *Id.* at 176-77, 210-13.

77. DAVID D. LAITIN & SAID S. SAMATAR, *SOMALIA: A NATION IN SEARCH OF A STATE* 144-45 (1987); see also Andrew Fields & Louisa Smith, *Somalia: United States Response to Human Rights Abuses*, 3 HARV. HUM. RTS. J. 205 (1990).

78. During a site visit to Somalia in January of 1993 the ever frank Secretary-General Boutros-Ghali explained that part of the problems with negotiations was "[t]he factions don't realize that the cold war is over. They still think they can play countries off against each other." Hella Pick, *supra* note 8. Several days later, while attending reconciliation talks in Addis Ababa with 14 of the Somali factions in attendance, Boutros-Ghali responded to concerns over possible UN colonial interests in the region by further clarifying the lack of strategic considerations: "Nobody wants to take on a trusteeship, or to have military bases in Somalia. Nobody has a strategic interest in your poor country." Hella Pick, *supra* note 8.

a decisive edge in the increasingly violent struggle to seize state power.⁷⁹ And with the opposition groups in agreement only on the goal of removing the ruling Siad Barre regime, the result for Somalia was a gradual descent into anarchy and mass starvation.

For a country that was once considered one of the most homogeneous societies in Africa,⁸⁰ the scale of violence, especially the combatants' callous disregard for the welfare of the general population, was shocking. The civil war coupled with the drought to fuel the famine. Hungry and desperate fighters, increasingly without central control, turned against the international relief agencies, targeting the food supplies and convoys.⁸¹ By late 1992, the combination of war and drought had created about a million Somali refugees outside the country. The famine, virtually ignored by the Somali leaders as they fought for control of state government, reached new heights. An estimated twenty-five percent of Somali children under the age of five were dead and up to one-third of the remaining Somalis—about 1.5 million people—faced imminent starvation.⁸² It was only at this point that the UN decided that Somalia was a "unique situation" warranting extraordinary efforts by the global institution.⁸³

At the time the Barre regime fled Mogadishu in late 1991, the Cold War no longer presented a barrier to UN action in Somalia. The UN response to the Somali situation from that point on is less evidence of difficulties traceable to the Cold War than it is indicative of an institution that lacks the capacity or will to respond to increased global demands and expectations.⁸⁴

79. See Neil Henry, *From Angola to Ethiopia, End of Cold War Transforms Africa*, WASH. POST, May 31, 1991, at A1.

80. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, *supra* note 76, at 57-118; see also LAITIN & SAMATAR, *supra* note 77, at 21.

81. See *Letter Dated 24 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24859 (1992) [hereinafter *Letter from the Secretary-General to the Security Council*].

82. See Mort Rosenblum, *Somalia Famine Avoidable, Aid Workers Say*, L.A. TIMES, Oct. 4, 1992, at A16; *U.N. Boosts Somalia Aid, Blue Berets Due to Go in*, AGENCE FRANCE PRESSE, Sept. 12, 1992, available in LEXIS, Nexis Library, AFP File.

83. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg. at 63, U.N. Doc. S/RES/794 (1992).

84. During the Cold War, the UN was in no position to change the direction

Undoubtedly, as in the case of Yugoslavia, the fear of setting the wrong precedent regarding UN intervention was at the heart of the Security Council's reluctance to take charge of the situation in Somalia. Again, Article 2, Section 7 of the UN Charter provided the convenient crutch for those who would like to hold on to whatever remnants of protection are still afforded by discredited notions of sovereignty and non-interference in domestic affairs. As with the conflicts in the Persian Gulf and the Balkans, it was only after a considerable loss of human life that the UN overcame its narrow vision and began to respond to the grave tragedy of Somalia.⁸⁵

The UN's failures in Somalia show the need for improvement in three areas to prevent similar tragedies from recurring in other countries in the future: (1) the provision of humanitarian assistance, (2) the management of a deteriorating society, and (3) the process of intervention after the decision to intervene has been reached.

of Somalia. Like Angola, Afghanistan, Cambodia, Cuba, Grenada, Nicaragua, and many other Third World countries, Somalia, in the age of East-West competition, was largely a testing ground for strategic doctrines and deadly new weapons. While one could point to particular policies or priorities of the various UN agencies involved in famine relief, or refugee affairs in Somalia, the fact is that in the context of Cold War reality, superpower competition created enormous difficulties for the UN. LATTIN & SAMATAR, *supra* note 77, at 129-52. Fair and legitimate criticisms of the organization's role in Somalia should therefore focus on the post-Cold War period.

85. The UN response to another tragedy of similar scale in Rwanda, underscores the need for the UN to overcome its narrow vision and improve its intervention capabilities. As tribal killings mounted in the country, the UN first voted to cut the peacekeeping force that was already in place in the country from about 1700 to about 270. Later, as international public opinion mounted for the UN to act, the UN began the laborious process of negotiating with the United States—which had ruled out sending American troops—over the training, equipment, and deployment of the UN force. During the period of UN inaction, hundreds of thousands of Rwandans are estimated to have perished from attacks and disease. Millions of Rwandans have become refugees inside and outside their country. Michael Gordon, *U.N.'s Rwanda Deployment Slowed by Lack of Vehicles*, N.Y. TIMES, June 9, 1994, at A10; Paul Lewis, *Security Council Votes to Cut Rwanda Peacekeeping Force*, N.Y. TIMES, Apr. 22, 1994, at A1; Keith B. Richburg, *Tutsis fear Transfer of Foreign Troops in Rwandan Safe Zone*, WASH. POST, Aug. 18, 1994, at A23; Steve Vogel, *New Exodus Underway in Rwanda*, WASH. POST, Aug. 14, 1994, at A1.

1. The UN Humanitarian Assistance in Somalia

Even in terms of the acknowledged poor history of UN humanitarian assistance operations generally, UN relief operations in Somalia were particularly troubled.⁸⁶ Many of the problems resulted from an inadequate humanitarian budget, absence of cooperation among UN agencies, and a growing workload for the UN, as conflict in the region and elsewhere worsened during the late eighties. Somali refugees had to compete for scarce funds with refugees from Ethiopia and the Sudan fleeing from equally violent conflicts in those neighboring countries. The difficulties in Somalia were compounded when the UN agencies, including the World Food Program and the UN High Commission for Refugees, pulled out of the country for security reasons in January 1991.⁸⁷ These agencies returned in early 1992 but the UN operation was still characterized by ineffectiveness and a lack of coordination.

An overall UN coordinator, Ambassador Mohamed Sahnoun, was finally appointed in April 1992. Within seven months, however, this highly-respected Algerian diplomat who had brought credibility to the UN operations in the country was gone, forced to resign after he publicly noted that the UN had failed to react to the Somalia crisis in a timely manner.⁸⁸ A new coordinator was appointed but the problems afflicting UN operations persisted. At one point, Secretary-General Boutros-Ghali himself was reported to have bitterly criticized the Security Council for paying more attention to the problems of Yugoslavia than to those of Somalia.⁸⁹

86. See Ana Puga, *Somalia: A Nation at the Abyss*, HOUS. CHRON., Nov. 16-17, 1992, at A1.

87. *Id.*

88. "The greatest difficulty is we did not try to cope with the situation earlier . . . the divisions and antagonisms have deepened and have taken on dimensions that are almost inextricable." Jane Perlez, *A Diplomat Matches Wits with Chaos in Somalia*, N.Y. TIMES, Sept. 20, 1992, at D4 (a profile of Mohammed Sahnoun). Sahnoun also criticized the UN for being "totally absent" from Somalia for over a year. Keith Richburg, *U.N. Envoy for Somalia Resigns Post, Blames Bureaucracy*, WASH. POST, Oct. 30, 1992, at A31. "It was a very, very long delay, and a tragic delay . . . we are now paying the price." *Id.* Specifically, Sahnoun believed the delay had increased the difficulty of later operations.

89. The Secretary-General reportedly accused the Security Council of putting more resources into "the rich man's war" in Yugoslavia, while ignoring places like Somalia. See, e.g., Trevor Rowe, *Aid to Somalia Stymied; U.N. Votes Relief, but Clan Blocks Effort*, WASH. POST, July 29, 1992, at A1. Secretary-General Boutros-

International media coverage finally forced the UN in late 1992 to acknowledge the true scale of the human suffering in Somalia. Still, a comprehensive UN response was hampered by the lack of an adequate organizational structure, necessary expertise among personnel, sufficient material resources, and quite critically, a proper vision of the UN's role in responding to such global crises. The UN and its supporters have been eloquent in pointing out the myriad reasons behind these appalling shortcomings.⁹⁰ The UN system cannot, however, continue to offer only excuses, no matter how valid, and expect to be taken seriously in the post Cold War world. The capacity to provide humanitarian assistance efficiently in deteriorating societies like Somalia ought to be one of the central capabilities of the UN in this age.⁹¹

2. The UN Reluctance to Take Charge in Somalia

It should have been evident to the UN by early 1992 that the Somalis were past the capacity to organize their own affairs.⁹² Most, if not all of the warring factions made no distinction between their political struggle and banditry; the starving population, together with the personnel of the relief agencies, were their preferred targets.⁹³ The most accom-

Ghali later denied making such a statement. Alan Ferguson, *U.N. Leader Says Disarming Warlords Vital to Peace Plan*, TORONTO STAR, Dec. 15, 1992, at A3.

90. See, e.g., Statement of John R. Bolton, Assistant Secretary of State for International Organization Affairs, Before the Subcommittee on Africa of the Senate Foreign Relations Committee, in DEPT. ST. DISPATCH, Oct. 5, 1992, at 752 [hereinafter Statement of John R. Bolton].

91. "[T]he United Nations must lead the world community in humanitarian efforts to confront disasters on the scale of Somalia's . . ." *Id.* at 754.

92. The UN persisted until late 1992 with the policy of trying to get the Somali groups to work together, with the UN playing no more than a supportive role. Jonathan Clayton, *U.N. May Get Tough With Somali Barons*, REUTERS, Nov. 26, 1992, available in LEXIS, Nexis Library, Reuters Library Report File. As part of this strategy, the UN turned to the Organization of African Unity (OAU) and the Arab League—two regional organizations that have never lived up to their potential—for assistance. The earliest Security Council consideration of Somalia evidenced this attitude. Security Council Resolution 733 of January 1992, while expressing "grave alarm" and "concern" at the "situation" in Somalia, merely called on these Somali "parties" to work with the UN to increase humanitarian assistance and to promote reconciliation. S.C. Res. 733, U.N. SCOR, 47th Sess., 3039th mtg. at 55, U.N. Doc. S/RES/732 (1992). Fortunately, the Security Council decided to remain "seized of the matter." *Id.* at 56.

93. See *Letter from the Secretary-General to the Security Council*, *supra* note 81.

plished of the bandits became known internationally as warlords, who, among other outrages, extorted payments from UN and other relief agencies in exchange for not attacking food suppliers. The UN, however, saw these warlords as necessary partners in its efforts to reverse the deterioration in Somalia.

In a sense, what the UN was given by the breakdown of civil society in Somalia beginning in late 1991 was a propitious opportunity to develop novel structures and methods of dealing with the problems posed by the degeneration of governmental authority in a post colonial, post-Cold War nation-state.⁹⁴ Unfortunately, the UN was neither ready nor inclined to consider this responsibility. It was not until late 1992, and then only with great reluctance, that it did. Thus, until then, the world community witnessed the confusing spectacle of the UN refusing to intervene in Somalia without the approval of the very people who had worked assiduously to destroy the country and, in many cases, to deliberately starve hundreds of thousands of people.

Eventually, in September 1992, the UN took tentative steps toward a comprehensive management of the Somalia tragedy. Five hundred Pakistani troops were deployed—with the agreement of all the Somali parties—to guard UN humanitarian operations in the country.⁹⁵ The Pakistani troops were promptly confined to their quarters due to threats from the parties the UN had so diligently courted.⁹⁶

By late November 1992, as attacks on UN personnel and relief workers mounted, the Secretary-General pleaded with the Security Council to expand UN intervention in the country.⁹⁷ UN members were then convinced of the unique charac-

94. A reporter described the situation this way: "Just over 30 years after it officially became an independent nation, Somalia essentially has ceased to exist. The land mass . . . is now a dangerous and chaotic place of clan-based warfare, feudal fiefdoms, marauding free-lance gunmen and widespread famine that kills thousands each day." Keith B. Richburg, *Can Battered Somalia Be Pieced Back Together?*, WASH. POST, Sept. 24, 1992, at A20.

95. See S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg. ¶¶ 4, 5 (1992); *Letter Dated 12 August 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24451 (1992).

96. Jonathan Clayton, *U.N. May Get Tough With Somali Barons*, REUTERS, Nov. 26, 1992, available in LEXIS, Nexis Library, Reuters Library Report File.

97. In a letter of the Secretary-General to the UN Security Council, the Secretary-General said: "The cycle of extortion and blackmail must . . . be broken and security conditions established that will permit the distribution of relief supplies."

ter of the Somalia situation.⁹⁸ At that point, the United States expressed a willingness to lead a UN-sanctioned, but U.S.-controlled military intervention in Somalia with up to 30,000 United States troops.⁹⁹ The Secretary-General presented the Security Council with an alternative plan for a UN-controlled military force to intervene in Somalia.¹⁰⁰ On December 3, the Security Council adopted Resolution 794, which sanctioned a U.S.-led forcible intervention—not the Secretary-General's plan—under chapter VII of the UN Charter.¹⁰¹

The pronounced UN reluctance to intervene in a comprehensive fashion in Somalia until late 1992 was particularly disturbing because it occurred during the same period that the UN intervened in Iraq on behalf of the Kurds and Shiites. The case for a much more timely forcible UN intervention in Somalia was probably stronger than the case for the UN military intervention in aid of the Kurds and Shiites in Iraq. Unlike the UN action in Iraq, which took place against the vociferous objections of the recognized government of Iraq, there was no such government or like authority in Somalia to object to UN intervention.¹⁰² The objections in the Somalia case came

See *Letter from the Secretary-General to the Security Council*, *supra* note 81.

98. See *Provisional Verbatim Record of the Three Thousand One Hundred and Forty-Fifth Meeting*, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/PV.3145 (1992) [hereinafter *Provisional Verbatim Record*]. The debate shows that there was a deep division between those who saw UN intervention as essentially a short-term venture to open up the delivery of relief and those who contemplated a longer term commitment to help rebuild civil society in Somalia.

99. President George Bush, Humanitarian Mission to Somalia, Address to the Nation (Dec. 4, 1992), in DEP'T ST. DISPATCH, Dec. 4, 1992, at 865; see also *Security Council Mulling Large Multinational Force to Somalia*, AGENCE FRANCE PRESSE, Nov. 26, 1992, available in LEXIS, Nexis Library, AFP File.

100. *Letter Dated 29 November 1992 from Secretary General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24868 (1992) [hereinafter *Letter Dated 29 November 1992*]. The Secretary-General would later argue that the United States changed the nature of the Somalia intervention after the Security Council accepted the United States offer. The Secretary-General supported immediate disarmament of the Somali factions while the United States preferred a more limited approach at the time. See, e.g., Ferguson, *supra* note 89.

101. S.C. Res. 794, *supra* note 83. During the Security Council deliberation preceding the adoption of the Resolution, representatives from many countries that would ordinarily oppose any UN intervention that hinted at interference in domestic affairs acknowledged that Somalia was a unique situation. China made it clear that it had reservations about UN authorized unilateral intervention by the United States and to a long term military operation. See *Provisional Verbatim Record*, *supra* note 98.

102. See *Provisional Verbatim Report*, *supra* note 98; Statement of John R.

largely from others in the UN, who were unwilling to commit to the view that the ideal of sovereignty should never be a barrier to a comprehensive global response to mass starvation, especially in a situation where no responsible civil authority exists.

3. The UN and the Process of Intervention in Somalia

Once the UN decided to intervene in Somalia, its process of forcible intervention was flawed in at least three very important aspects. First, the decision to proceed initially with an American intervention, instead of one entirely within UN control and structure, served to underline the organization's dependence on United States military power.¹⁰³ Second, the decision to pursue cooperation with the various factions after the military intervention, to the point of allowing them to retain much of their weaponry, weakened the authority of the intervening forces and encouraged continued resistance to UN authority.¹⁰⁴ Finally, the UN intervention unwisely centered around the task of facilitating humanitarian relief rather than pacifying the country.

a. An American Operation

Supporters have argued that the initial American military intervention, followed weeks later by a UN operation, was the most efficient operation that could have been undertaken given the meager resources and limited expertise of the UN. This argument however, ignores the fact that the UN is as capable as its members wish it to be. The UN clearly would have possessed the personnel and other resources to mount such an operation if the American personnel who initially performed so credibly in Somalia had been placed under UN control.

Bolton, *supra* note 90.

103. The differing perspectives were captured in a news report at the time. *U.N. Says Force Alone Can Ensure Aid Shipment to Somalia*, AGENCE FRANCE PRESSE, Dec. 1, 1992, available in LEXIS, Nexis Library, AFP File.

104. In a December 8, 1992 letter to President Bush, Secretary-General Boutros Ghali had urged that "any forceful action . . . must have the objective of ensuring that at least the heavy weapons of the organized factions are neutralized and brought under international control." *Excerpts From Letter of U.N. Chief to President Bush*, REUTERS, Dec. 22, 1992, available in LEXIS, Nexis Library, Reuters Library Report file. His plea was ignored until it was too late.

By invoking its powers under Chapter VII of the UN Charter and then authorizing an operation outside its control, the Security Council—as in the Gulf War case—lost an opportunity to institutionalize the process of UN military intervention. The Security Council could indeed have utilized the opportunity presented in Somalia to give substance to the process outlined in the UN Charter for such interventions.¹⁰⁵ Under Article 43, Section 1, of the UN Charter, the Security Council is to reach “special agreements” with all members concerning the armed units which they would make available for use by the UN in maintaining international peace and security.¹⁰⁶ Under Article 45, members also are to “hold immediately available national air-force contingents for combined international enforcement action.”

To assist and advise the Security Council on the use of these forces, Article 47 authorized the creation of a Military Staff Committee, consisting of the Chiefs of Staff or representatives of the Chiefs of Staff of the permanent members.¹⁰⁷ None of these requirements or procedures were followed in the Somalia intervention. Instead, the long-standing preference of American military leaders to control the deployment of American troops won out over the need to institutionalize and strengthen UN authority and power.

In the short term, the United States preference to work largely outside the UN structure may have allowed UN military intervention in Somalia to be performed more readily and efficiently. And, under present realities, the UN may well have no practical alternative to going along with the United States desires in this regard. But this is a disservice not only to the institution but to broader United States interests. Inevitably, interventions that are perceived to be U.S.-in-fact, even when authorized by the UN, are open to greater suspicion, criticisms, and opposition on anti-imperialist grounds by foreign leaders and people. More importantly, the American people have demonstrated a decreasing tolerance for what they see as the disproportionately large burden placed on the United States by the UN system. Finally, for major powers like Germany and

105. U.N. CHARTER, ch. VII. *See generally id.* arts. 43-47.

106. U.N. CHARTER art. 43, ¶ 1.

107. U.N. CHARTER art. 47.

Japan with powerful domestic opposition to foreign deployment of their armed forces, the development and utilization of truly multilateral UN forces could have served to relieve some of the anxiety that feeds their domestic opposition, thus enabling these countries to contribute much more to the global community.

b. Bitter Harvest

The intervention forces have paid a huge price for the initial policy of cooperation with armed Somali factions that included allowing them to retain much of their weapons. Complete disarmament of the Somali factions, which had presided over the starvation of hundreds of thousands of innocent citizens, should have been the top priority of the unauthorized American and UN forces. Given the absence of any recognizable form of government, such disarmament policy could hardly have raised concerns about violations of state sovereignty. Nevertheless, disarming these forces did not become a priority until months after the UN had pursued a policy of cooperating with them. The subsequent and continuing attacks on UN forces can be traced directly to this policy of cooperation, which clearly served to foster a sense of legitimacy and importance among these factions.¹⁰⁸ Their violence and intransigent orientation had been, in effect, rewarded. Of even greater concern is the confusing signal the policy of cooperation with the factions sent to the outside world about their legitimacy. The policy of cooperation made explanations of subsequent UN military operations aimed at disarming the factions much more difficult and less convincing.¹⁰⁹

The thrust of the U.S.-led and controlled UN intervention was not to bring violators of gross human rights to justice or

108. See Jennifer Parmelee, *Somalis at Peace Parley Jockey for Power*, WASH. POST, Jan. 14, 1993, at A24.

109. President Clinton's comments at a June 1993 news conference illustrated the difficulty. He stated that "the United Nations and the United States never listed getting rid of Aidid as one of our objectives. In fact, as long as he was willing to cooperate with the United Nations, he was able to live and work in peace right there in Mogadishu." *Text of President Clinton's News Conference*, WASH. PQST, June 18, 1993, at A10. A few minutes earlier, he had accused General Aidid, leader of the most intransigent Somali faction of murdering 23 UN peacekeepers and of responsibility "for the deaths of countless Somalis from starvation, from disease and from killing." *Id.*

even to deprive them of their means to continue in their criminal behavior. Further, the UN was unprepared and deeply reluctant to acknowledge the absence of civil authority in the country. Although the UN appeared to have counted on the Somali combatants developing sufficient humanitarian concern and political maturity and to cease fighting and turn to the task of rebuilding their country, such hopes were not rewarded. On the contrary, after a short interval following the intervention, the UN forces came under devastating and sustained assault from one of the factions led by General Mohammed Farah Aidid.¹¹⁰

By the time the attacks convinced the UN of the need to disarm the factions, it was much too late. Security Council Resolution 814 of March 1993 officially conceded the "fundamental importance of a comprehensive and effective program for disarming Somali parties"¹¹¹ It should have come as no surprise that the factions vigorously resisted the efforts to disarm them, causing significant casualties among UN troops and Somalis in the process. Another major casualty was the image and legitimacy of the UN.

c. Humanitarian Focus of Intervention

The policy of cooperating with the armed factions was directly tied to the view that the Somali intervention was essentially a large scale humanitarian relief operation. The UN realized rather belatedly that its mission in Somalia had to go beyond merely facilitating the delivery of food to starving people and mediating among combatants. Under tremendous pressure from global public opinion, the UN began to consider

110. In one clash, eighteen American soldiers and about 300 Somalis died when American forces were ambushed as they raided an Aidid stronghold in an effort to arrest faction members, pursuant to a UN order. This raid turned American leaders and the public against the American role in Somalia and led to the withdrawal of most of the American troops a few months later. Dozens of UN troops from other nations have died in carrying out the UN mission in Somalia. John M. Cushman, Jr., *Death Toll About 300 in October 3 U.S.-Somali Battle*, N.Y. TIMES, Oct. 14, 1993, at A12; Elaine Sciolino, *A Truce is Offered by Somali General to U.N.-U.S. Forces*, N.Y. TIMES, October 10, 1993, at A1; *U.N. Forces Hunt Killers of Indian Peacekeepers*, REUTERS, August 23, 1994, available in LEXIS, Nexis Library, Reuters Library Report File.

111. S.C. Res 814, U.N. SCOR, 48th Sess., 3138th mtg., at 1, U.N. Doc. S/RES/814 (1993).

directly supervising the administration of Somalia for an interim period.¹¹² This shift from an essentially humanitarian relief orientation to a more comprehensive intervention in Somalia meant emphasizing the gradual development of responsible governmental and quasi-governmental institutions and structures in the country.

The original Security Council mandate for the intervention was actually broad enough to cover such UN involvement in Somalia.¹¹³ This was consistent with the view of the UN Secretary-General, who had urged a mandate for intervention that was broad enough to include the disarmament of all the combatants.¹¹⁴ Unfortunately, in the initial implementation of the mandate, the U.S.-led intervening forces limited their role largely to facilitating relief assistance.¹¹⁵

Within six months of the start of the intervention, however, UN and United States forces were engaged in a bloody conflict with one of the principal armed groups in Somalia. The policy of cooperation with the armed factions—including allowing them to retain much of their weaponry—had proved a failure. Not until this point was the mission of the UN forces broadened beyond primarily supporting humanitarian relief operations. Security Council Resolution 814 of March 1993 noted the “general absence of the rule of law in Somalia,” and acknowledged the “fundamental importance of a comprehensive and effective program for disarming Somali parties, in-

112. From late 1992 through the first half of 1993, there were many calls for the establishment of an international trusteeship over Somalia. See, e.g., Paul Johnson, *Colonialism's Back—and Not a Moment Too Soon*, N.Y. TIMES, Apr. 18, 1993, (Magazine), at 22; Jane Perlez, *Trusteeship Idea Floated*, N.Y. TIMES, Nov. 30, 1992, at A9; Elaine Sciolino, *U.N. Council Essentially Agrees to U.S. Command in Somalia; Doubts at the C.I.A.*, N.Y. TIMES, Dec. 2, 1992, at A18; Robert I. Rothberg, *Struggling Nations Need Guidance*, CHRISTIAN SCI. MONITOR., May 14, 1993, at 19. After the Somalia intervention came under severe criticism in late 1993, the calls for deeper UN involvement ended.

113. Even though Security Council Resolution 794 emphasized the establishment of a secure environment for humanitarian relief operations, it clearly acknowledged the need “to restore peace, stability and law and order with a view to facilitating the process of a political settlement . . .” S.C. Res. 794, *supra* note 83, at 64.

114. See *Letter Dated 29 November 1992*, *supra* note 100.

115. Text of Letter to the Speaker of the House and President Pro Tempore of the Senate, Washington, D.C., (Dec. 10, 1992), in DEPT ST. DISPATCH, Dec. 14, 1992, at 877.

cluding movements and factions"¹¹⁶

III. THE UNITED NATIONS AGENDA FOR PEACE

On January 31, 1992, the Security Council asked the UN Secretary-General to prepare a special report on how the UN's international peace and security work could be enhanced within the framework established by the UN Charter.¹¹⁷ Less than six months later on June 17, Secretary-General Boutros-Ghali issued a report in which he discussed in broad terms the problems facing the UN and outlined several ways in which the UN's legitimacy and effectiveness could be strengthened in light of the supposedly improved international climate of the post-Cold War era.¹¹⁸

A. Agenda for Peace Generally

The Secretary-General's *Agenda for Peace* report actually says little that is new in terms of an analysis of critical issues or ideas for reform. The Report is valuable, however, for at least two reasons: (1) it is the first comprehensive official study of the UN in the post-Cold War period, and (2) it puts the imprimatur of the administrative branch of the UN—albeit timidly—on ideas that could improve the organization's legitimacy and effectiveness in responding to problems of international peace and security.

The first substantive section of the Report discusses the changing global context. The next five sections define and discuss UN operations in terms of four concepts: preventive diplomacy, peacemaking, peacekeeping, and post-conflict peacebuilding.¹¹⁹ In the last three substantive sections, the Report

116. S.C. Res. 794, *supra* note 83.

117. *Agenda for Peace*, *supra* note 2.

118. *Agenda for Peace*, *supra* note 2.

119. "Peacekeeping" usually refers to limited UN activities in the area of ceasefire defense; ordinarily UN peacekeeping forces may engage only if attacked, and their presence is invariably by consent of all parties to the dispute. Alan K. Henrikson, *Defining A New World Order: The Fletcher Roundtable*, 43-46 (May 2-3, 1991) (discussion paper, The Fletcher School of Law and Diplomacy, on file with the *Georgetown Law Journal*), cited in Miller, *supra* note 20, at 774 n.5. The usual term for full Chapter VII UN military involvement is "peace-enforcement." See D.W. BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 37-41 (4th ed. 1982). Apparently the Secretary-General uses the term "peace enforcement" to mean some type of intermediate force between the two. See Miller, *supra* note 20, at 789 n.82.

briefly covers regional relationships, the safety of UN personnel,¹²⁰ and institutional financing.

The Report's introduction acknowledges the restricted scope of the Security Council's charge, which pointedly limited the Secretary-General to a study "within the framework and provisions of the Charter . . ." dealing with the capacity of the organization for "preventive diplomacy, for peacemaking and for peacekeeping."¹²¹ The Secretary-General broadened the mandate to some extent by recognizing that problems of international peace and insecurity are directly connected to problems of global economic and social inequality and problems of environmental degradation.¹²²

The Report notes the changing international context that made the commissioning of the Report and the serious consideration of the reform ideas possible.¹²³ It also notes the irony that the end of the Cold War, which made contemplation of an increased UN role realistic, has also contributed to the unleashing of destructive global forces that now threaten the UN's existence.¹²⁴ The Report sees these destructive forces as part of "uniquely contradictory trends," the most notable being that popular demands for self-determination and national sovereignty are increasing even as technology, trade, and environmental concerns move the nations of the world closer together.

120. This section's inclusion in the report served no practical purpose. The fact that UN personnel serve in circumstances of great danger is well-known and undisputed. So is their courage. It is difficult to see what the Secretary-General proposes to do to better ensure their safety given the growing need for their services. There is the danger here that concern for the safety of UN personnel would become paramount, thus reducing their effectiveness or their special quality and consequently, the UN's legitimacy. The Pakistani troops under UN command that remained confined to their quarters for months while anarchy reigned in Mogadishu were safe but thoroughly ineffective and discredited in the eyes of the Somali people. *Agenda for Peace*, *supra* note 2, at 17-21.

121. Note by the President of the Security Council, U.N. SCOR, 47th Sess., U.N. Doc. S/23500 (1992).

122. Specifically, the Report stated:

The sources of conflict and war are pervasive and deep. To reach them will require our utmost effort to enhance respect for human rights and fundamental freedoms, to promote sustainable economic and social development for wider prosperity, to alleviate distress and to curtail the existence and use of massively destructive weapons.

Agenda for Peace, *supra* note 2, at 2.

123. *Agenda for Peace*, *supra* note 2, at 3.

124. *Agenda for Peace*, *supra* note 2, at 3.

er.¹²⁵ The Report describes the dilemma facing the UN in this manner: "The United Nations has not closed its doors. Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve."¹²⁶ The Report offers no resolution to this dilemma. It does, however, suggest that the concept of self-determination needs to be redefined to emphasize global standards and guarantees for individual and group rights, rather than statehood for every group that is, or considers itself to be, aggrieved.¹²⁷

The Report recommends five ways to improve the UN's capability in preventing and resolving conflicts: (1) identify as early as possible the sources of conflicts and employ preventive diplomacy¹²⁸ to remove them; (2) resolve conflicts that have erupted through peacemaking; (3) preserve the peace, achieved by the peacemakers, through peacekeeping; (4) assist in peace-building¹²⁹ once peace has been achieved, and (5) address the

125. *Agenda for Peace*, *supra* note 2, at 3.

126. *Agenda for Peace*, *supra* note 2, at 5.

127. As of September, 1993, there were 184 members of the UN. Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Eritrea, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Macedonia, Marshall Islands, Micronesia, Moldova, Monaco, Namibia, North Korea, San Marino, Slovak Republic, Slovenia, South Korea, Tajikistan, Turkmenistan, and Uzbekistan became members between 1990 and 1993. 30 U.N. CHRON. at i (1993).

128. The Report's description of how preventive diplomacy would work is unfortunately quite unimaginative. The focus is on such well-tried and unremarkable measures as building confidence, fact-finding and early warning. *Agenda for Peace*, *supra* note 2, at 7-8. The Report, however, does endorse increased UN resort to preventive deployment and the establishment of demilitarized zones prior to the start of a conflict. *Agenda for Peace*, *supra* note 2, at 8, 9-10. But even these relatively new departures were in general predicated upon the UN first gaining the agreement of the parties to the conflict. *Agenda for Peace*, *supra* note 2, at 8, 9. Traditionally, these measures have been pursued by the UN only after conflicts have erupted and, very often, only upon their conclusion. *Agenda for Peace*, *supra* note 2, at 8, 9. These suggestions definitely need to be considered and developed further. It would be a tragedy if they were used only in those instances cited in the Report.

129. Peace-building is defined as a comprehensive process of consolidating peace and fostering a return to normalcy in order to enable the peacekeeping forces to leave as quickly as possible. It involves not only the rebuilding of tangible structures and institutions destroyed by war, but also the reinventing of a "sense of confidence and well-being among people." The ability to repatriate and resettle refugees, clear landmines, reconstruct an economy for peacetime production, rebuild or strengthen governmental and social institutions, retrain security personnel, promote links between former enemies and perform all the other tasks essential to

underlying causes of conflict which the report identifies generally as economic despair, social injustice and political oppression.

The Report clearly reflects the contradictory desires and expectations confronting the UN in the post-Cold War world. The world expects the UN to help provide the hundreds of thousands of people who are dying in an escalating number of local and regional conflicts at a time when the members of the organization, with sufficient resources to intervene, are increasingly reluctant to do so. The Report makes only a few tentative suggestions; its drafters, eschewing any bold departure, were more concerned with retaining some consensus than providing global leadership. Such an ostensibly pragmatic attitude might be defensible if the UN was able to gain support for its modest proposals. This has not been the case. As such, an historic opportunity to provide a vision of the future and address the underlying structural weaknesses of the UN was wasted on reform proposals that were, in the main, timid and uninspiring. A closer examination of the key sections on peacemaking, peacekeeping, regional cooperation, and financing will buttress this criticism.

B. Key Aspects

1. Peacemaking

In discussing how the UN could improve its role in peacemaking, the Report proposed a more activist role for the organization than it had previously observed in the past. Still, the Report was careful not to go beyond the current understanding of the boundaries set by the UN Charter. Essentially, the Report saw the main peacemaking task currently facing the UN to be reviving and institutionalizing the powers and responsibilities described in Chapter VII of the UN Charter.¹³⁰

prevent a recurrence of conflict is what dictates success or failure in post-conflict peace-building. These measures are also very costly to the United Nations system.

The Report confirmed these realities and made the standard pleas for more contributions from members. It also broached two ideas for reducing conflict: preventive demilitarization and promoting the rule of law and other democratic practices. Surprisingly, the Report failed to develop these ideas which lately have attracted considerable support in the international community. *Agenda for Peace*, *supra* note 2, at 6-9.

130. Chapter VII of the UN Charter deals with threats to peace, breaches of

The Report observed that the Security Council had not seized the opportunities presented by the conflict in the Persian Gulf to give life and credibility to these measures. In particular, the Report argued that it was essential to the legitimacy and effectiveness of the Security Council that it develop and institutionalize the option granted by Article 42 of the Charter to use force to restore international peace and security when peaceful means fail. The Report noted that use of force by the Security Council in this context does "require bringing into being, through negotiations, the special agreements foreseen in Article 43" ¹³¹

Article 43 brings up perhaps the most controversial provision of the UN Charter today. Both supporters and opponents of UN authority recognize the symbolic and real importance of this provision under which all members of the UN "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."¹³² Such forces and facilities would provide the Security Council with considerably greater independence, freedom and flexibility to act in response to a breach of the peace than it currently possesses. Many commentators have expressed concern—and some, bitter opposition—to the idea of a UN with this much independence and power.¹³³ The Report forthrightly urged members to conclude the required special

bilities given to the organization under this Chapter probably would have been realized for some time now were it not for the Cold War.

131. The drafters of the Charter had three choices with respect to the organization's capacity to use force. First was the choice of a unitary international force; however, because of the encroachment upon national sovereignty such a force would represent, this option was rejected at the San Francisco Conference. Second was an ad hoc coalition, as envisaged by the League Covenant, and which was likely to be largely ineffective. Third was the ratification of advance agreements, proposed by the United States at the Dumbarton Oaks Conference. Members would agree to keep international peacekeeping forces at the disposal of the organization subject to Security Council approval. Unfortunately, the major powers disagreed on questions of location, size and jurisdiction. The insurmountable issue, of course, was whether such forces could ever be deployed against a major power. The Soviet Union understandably opposed such use of Article 43 forces, as well as any use of the forces absent unanimous agreement of the permanent members. GOODRICH ET AL., *supra* note 1, at 321-24.

132. U.N. CHARTER art. 43, ¶ 1.

133. See *supra* note 5 and accompanying text. But see Boren, *supra* note 23.

agreements that would open the way to the designation of national forces available to the UN—Article 43 forces—and their ready availability for use on a permanent basis by the Security Council to deter and combat aggression.

As envisaged by the Secretary-General, these forces would be sufficiently large and equipped to meet threats from any quarter except "a major army equipped with sophisticated weapons."¹³⁴ The conclusion of these agreements and the designation of these forces would undoubtedly encourage those who have championed a supranational entity that would have an independently controlled force, recruited, trained, and equipped to serve either as a supplement to, or as a replacement for, all national armies.

Unfortunately, the Report may have undermined the timely realization of the Article 43 agreements by suggesting that an interim force, named "peace-enforcement units," be created since the proposed Article 43 forces, the Report concedes, "are not likely to be available for some time to come."¹³⁵ These peace-enforcement units would consist of volunteers and would be "more heavily armed" versions of the traditional UN peace-keeping forces. However, it is somewhat unclear from the Report how these provisional forces would be distinguished from the true Article 43 forces. Both would be available on call, both would come under the control of the Security Council and the Secretary-General, and both would be capable of responding with force to international aggression.¹³⁶ It seems that the Secretary-General contemplated that the Article 43 forces would be used to respond to acts of aggression, while the interim peace-enforcement units would be deployed only where traditional peacekeeping troops have proven inadequate to the task of peacekeeping and there is a need to use force to restore and maintain a cease-fire. Thus, as conceived by the Report, the reformed UN would have at least three types of forces at its disposal: (1) traditional peace-keepers, (2) peace-enforcement units, and (3) Article 43 forces.

Without challenging the role of the Security Council as the

134. *Agenda for Peace*, *supra* note 2, at 13.

135. *Agenda for Peace*, *supra* note 2, at 13.

136. The Secretary-General asserts that this type of volunteer force would primarily be responsible for enforcing ceasefire agreements, and that its terms of reference would be defined in advance. *Agenda for Peace*, *supra* note 2, at 13.

dominant organ in peacemaking, the Report called for an expanded role for the ICJ in this area. Its key recommendation in this regard, however, echoed the oft-stated goal of having all UN members accept the general jurisdiction of the World Court under Article 36 of its statute,¹³⁷ "without any reservation, before the end of the United Nations Decade of International Law in the year 2000."¹³⁸ The Report noted that the Security Council presently has the "power" to recommend that members submit disputes to the ICJ.¹³⁹ The Report could have been improved by a discussion of how this power to recommend could be strengthened, perhaps by changing it into a power of the Security Council to require that members submit certain types of disputes—especially disputes over territories—to the Court before they escalate into violent conflicts.

2. Peacekeeping

Turning to the organization's role in global peacekeeping, the Report adopted what may be an overly generous assessment of the organization's contributions to international peace and stability. The authors of the Report interpreted the growing demand for UN peacekeeping operations—only thirteen from 1945 to 1987, but thirteen others from 1987 to 1992—as evidence not of the failure of the UN efforts to promote peace, but of its contribution to global stability. The Report cited the many problems plaguing UN peacekeeping work and blamed them on three factors: (1) lack of adequate funding, (2) inadequate logistical support, and (3) insufficiently trained personnel. However, the Secretary-General's recommendations for dealing with these problems were disappointingly modest. To deal with the growing cost of peacekeeping—estimated at about \$3 billion for 1992—the Report called for the consider-

137. The Statute of the International Court of Justice outlines the two basic methods by which the court gets jurisdiction to decide contentious cases. Both methods require the consent of the parties. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36. The first is by the parties specifically agreeing to refer a case to the court. *Id.* ¶ 2. The second method allows for a so-called compulsory jurisdiction where a party has either agreed in advance in a bilateral or multilateral instrument that it accepts the court's jurisdiction or has made a unilateral declaration in advance—usually with reservations—that the court has jurisdiction over it with regard to certain classes of disputes. *Id.*

138. *Agenda for Peace*, *supra* note 2, at 11.

139. *Agenda for Peace*, *supra* note 2, at 11.

ation of new means of financing peacekeeping assessments. Yet the only specific proposal endorsed by the Report is for peacekeeping contributions to be taken out of members' defense budgets, as opposed to their foreign affairs budgets. It is difficult to see the improvement this proposal would make since it would still leave the financing of this critical UN activity under the control of individual countries.

On the issue of logistical support, the Report called for either pre-positioned stocks of basic peacekeeping equipment or commitments from governments to keep certain kinds of equipment on stand-by for use by the UN when needed. The Report also sought pledges from members with the necessary capabilities to transport UN forces free of charge or at low cost.

To increase the number of competent military, police and civilian personnel available for peacekeeping work, the Report vaguely asked members to work with the UN to train personnel who could serve with the organization. It also urged states to cooperate with the organization in developing a register of trained personnel and in improving the quality of the military staff serving in the Secretariat.¹⁴⁰ Recent difficulties getting trained UN personnel to serve in Rwanda affirm that improvement in this area is unlikely under the present orientation of the UN.¹⁴¹

3. Regional Cooperation

The Report's examination of the UN's relationship to regional entities focused on the potential for expanded collaboration in the post-Cold War period. The Report noted that Chapter VIII of the UN Charter allowed a role for regional bodies provided that they worked on matters "appropriate for regional action" and their work was "consistent with the Purposes and Principles of the United Nations."¹⁴² The Cold War had fostered regional groupings that frustrated UN purposes and principles. The Report touted recent instances in which the UN had worked with regional organizations such as the Organization of African Unity (OAU) and the EC to promote peace and security.

140. *Agenda for Peace*, *supra* note 2, at 15.

141. *See supra* note 85 and accompanying text.

142. *Agenda for Peace*, *supra* note 2, at 17.

The Report endorsed the continuation and deepening of such cooperation in the future under the leadership of the UN Security Council. The Report expressly refused to provide more detailed guidelines for such future relationships and supported continued flexibility and creativity "as no two regions or situations are the same"¹⁴³

This assessment of the potential for UN cooperation with regional arrangements is probably too optimistic. None of the regional organizations can be credited with much success in dealing with current crises in their respective areas. The OAU has had very little impact in Somalia, and the EC has been criticized for its role in the Balkans conflict. Indeed, on an issue such as international trade, existing and developing regional groupings such as the EC and NAFTA have the potential to exacerbate international tensions. On the whole though, it is probably wise for the UN not to attempt to impose rigid guidelines on its relationships with these regional groups at a time when its own legitimacy and effectiveness are being questioned.

4. Financing

The Report's financing section outlined several funding proposals including a few that were already before the UN General Assembly for consideration.¹⁴⁴ The proposals before the General Assembly were generally modest ideas for improving the organization's cash flow and money management problems. One of these proposals would create a Peace Endowment Fund with an initial target of \$1 billion that would be invested to provide funding for UN peacekeeping activities. If this proposal were to come to fruition, it could begin to give the UN the stability and independence it so badly needs in obtaining funding for its operations.¹⁴⁵

143. *Agenda for Peace*, *supra* note 2, at 17.

144. *Agenda for Peace*, *supra* note 2, at 20.

145. The Secretary-General reckoned the 1992 peacekeeping operations costs to be three billion dollars, in addition to an outstanding UN debt to troop-contributing countries of eight million dollars for past operations. Against this figure the Report measured an estimated world defense outlay of nearly one trillion dollars, and the even greater costs of international war. *Agenda for Peace*, *supra* note 2, at 14. The proposed one billion dollar Peace Endowment Fund would be raised through "a combination of assessed and voluntary contributions," the latter coming from members, individuals and private sources. *Agenda for Peace*, *supra* note 2, at

Other more imaginative and controversial funding ideas mentioned in the Report included levies on global arms sales and international air travel and general tax exemptions for "charitable" contributions made to the UN by individuals, corporations and foundations. The specific recommendations of the Secretary-General, however, did not stray far from the realm of realism and modesty. Apart from a request for the immediate creation of a fifty million dollars revolving peace-keeping reserve fund, the specific recommendations dealt only with ways to improve money management and cash flow. Showing a keen appreciation of widespread negative views of UN bureaucracy, the Secretary-General embraced longstanding criticisms of the organization's management practices and highlighted the steps already taken to streamline the bureaucracy and improve productivity.

IV. BEYOND THE AGENDA FOR PEACE: RESTRUCTURING THE UNITED NATIONS FOR THE POST-COLD WAR ERA

The Secretary-General's *Agenda for Peace* report concluded with a strong appeal for continued and increased support of the UN. Recalling the fate of the League of Nations, he suggested that the UN had been given a second chance with the end of the Cold War and that the world must celebrate its "restored possibilities," mindful of the lessons of the past.¹⁴⁶ The Report praised the new-found collegiality of the Security Council and urged the promotion of democracy within and among nations. Democracy in this sense, according to the Report, would encompass respect for the fundamental freedoms in the UN Charter and respect for the rights and needs of minorities and other "more vulnerable" groups in society.¹⁴⁷ This vision of democracy, the Report suggested, ought to govern the policies of individual members within their own societies and also in their relationships with each other if the ideals of the organization are to be realized.

It would be quite difficult to come up with a better way to end any report—even one as cautious as this—that speaks to

through "a combination of assessed and voluntary contributions," the latter coming from members, individuals and private sources. *Agenda for Peace*, *supra* note 2, at 20-21.

146. *Agenda for Peace*, *supra* note 2, at 22.

147. *Agenda for Peace*, *supra* note 2, at 23.

the future of an institution that is the repository of the hopes of so much of humanity. The paean to democracy is a recognition of the fact that the organization needs an organizing philosophy. The UN, like the peoples of the world it was created to represent, needs faith as well as technical competence and abundant resources. Democracy is the new organizing principle—an ideology of sorts—on which the UN could build its legitimacy and effectiveness. How it can better do this is the subject of the final section of this article.

The narrow scope of the *Agenda For Peace* study does an injustice to a world community which for too long has had to define international relations in terms of conflicts between groups. An alternative plan for UN revitalization would contain at least four elements, each designed to improve both the image and substance of the UN and make the organization a more legitimate and effective global institution.

The first element would require a change in institutional philosophy. The UN would issue an explicit pledge or guaranty that it would promote democratic governance for all members by initiating a system for establishing the credentials of national representatives to the UN and rejecting the credentials of those from non-democratic governments. The second element would entail a restructuring of the UN General Assembly. The current system of equal representation in the General Assembly would be replaced by one that is based on national population of members and their financial contribution to the total UN budget. It would also require that national representatives to the UN be directly elected by the citizens of each member country. The third element would also be structural. It would provide greater legitimacy and effectiveness to the UN by replacing the UN Security Council with two bodies: a new UN Executive Committee, chosen by the elected representatives to the UN, and charged "with primary responsibility for the maintenance of international peace and security,"¹⁴⁸ and a new International Security Council that would represent the interests of the world governments and be empowered to delay or block certain specified actions by the new Executive Committee.

The final element would promote human rights and the

148. U.N. CHARTER art. 24.

rule of law in international affairs by expanding the powers of the global judiciary. All members would be required to accept, without reservations, the general jurisdiction of the ICJ over all international legal disputes. Furthermore, individuals would be given access to the Court through a right of appeal whenever rights protected under a Global Bill of Rights¹⁴⁹ are implicated and the individuals have exhausted the legal process under their national legal systems.

A. Promoting Democratic Governance

A UN pledge to support and promote democratic governance for each member state would entail granting a UN committee the power to review the credentials of representatives of new governments claiming to exercise authority on behalf of UN members. This measure would not affect a country's membership¹⁵⁰ in the organization; only the authority of the representatives of new governments would be at issue. The "Credentials Committee" would have the power to recommend to the UN that representatives of governments that accede to power

149. *The Universal Declaration of Human Rights*, and the International Covenant on Civil and Political Rights, *supra* note 74, would provide a basic starting point for the elaboration of a Global Bill of Rights.

150. Membership in the UN has never been a matter of right to every state. While it was recognized from the beginning that the organization's success would depend on its ability to attract the vast majority of countries to membership, the leaders of the UN movement recognized that there would have to be some conditions to admission. The Charter established two types of membership. The original members were those who participated in the San Francisco Conference, signed the UN Declaration and took the other steps necessary for membership. U.N. CHARTER art. 3. Additionally, membership was open to "all other peace-loving states which accept the obligations contained in the present Charter" subject to a recommendation of approval by the Security Council and actual approval by the General Assembly. *Id.* art. 4, ¶ 2. Although arguably a non-democratic government would, as a practical matter, be unable to meet many of the obligations created by the Charter, there is in fact no textual Charter requirement that members be democracies, nor has the imposition of such a requirement been the traditional practice of the organization. In fact, early efforts to include as a condition that members maintain "democratic institutions" were rejected. *See generally* RUTH B. RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER (1958) (UN practice generally has been to treat the issue of membership in purely political terms with little attention paid to the character of the national government or to its treatment of its citizens. In the first two decades of the UN's existence, during which membership applications were sharply contested, few of the disputes centered on the question of the applying government's commitment to democratic principles. Objections to membership were largely grounded in the traditional *quid pro quo* of international politics.).

undemocratically be rejected. The Committee members would be guided in their judgment by a set of criteria approved by the members of the revitalized UN. The UN Charter, the Universal Declaration of Human Rights (especially Article 21), and the International Covenant on Civil and Political Rights (especially Article 25), would serve as the primary sources of these standards.¹⁵¹

A democratic guaranty would not constitute a major philosophical departure for the UN. The Secretary-General and representatives from many member nations have, on multiple occasions, spoken directly and eloquently about democracy being an essential ingredient for international peace and security.¹⁵² The guaranty would be a major shift only in how the organization has treated the issue of the representation of its members.

The UN Charter does not speak directly to the issue of representation and each of the principal organs of the UN has been free to develop its own rules regarding the credentials of representatives.¹⁵³ The last time the organization had a substantive debate on the criteria that should be used for passing on the credentials of representatives to the organization was in 1950, just prior to the great expansion in membership,¹⁵⁴ and it failed then to resolve the matter. At that time, the Secretary-General took the position that the key factors for consideration were a government's effective authority over a territory and the extent of its control over the population in the territory.¹⁵⁵ The British view was similar to this "objective ap-

151. U.N. CHARTER; *The Universal Declaration of Human Rights*, *supra* note 74, art. 21; International Covenant on Civil and Political Rights, *supra* note 74, art. 25.

152. In an "exclusive interview" in the Russian *Nezavisimaya Gazeta* Secretary-General Boutros-Ghali was quoted as advocating the advancement of democracy and human rights through the offices of the organization. TASS, Sept. 17, 1993, available in LEXIS, World Library, Txtline File. "Democracy is not a model which can be copied from some countries. It is a goal which all nations should seek to attain. The same as human rights, it is of universal nature." *Id.* The Secretary-General was further quoted in praise of the role of democracy in facilitating implementation of UN human rights policy and international peace. *Id.*

153. See generally BROWNIE, *supra* note 51; GOODRICH ET AL., *supra* note 1; RUSSELL, *supra* note 150.

154. Between 1945 and 1965 the organization grew from 51 original members to 117 members. GOODRICH ET AL., *supra* note 1, at 86.

155. Secretary-General Trygve Lie's memorandum on the credentials issue advocated the adoption of the "effective control" standard because the "United Nations

proach" favored by the Secretary-General. Its aim was to divorce the question of the recognition of representatives from that of the approval of a particular government.¹⁵⁶ Other proposals urged consideration of more subjective factors such as consent of the governed and respect for human rights and fundamental freedoms before the representatives of a government are recognized.¹⁵⁷ The General Assembly eventually de-

is not an association limited to like-minded States and governments of similar ideological persuasion (as in the case of certain regional associations). As an organization which aspires to universality, it must of necessity include States of varying and even conflicting ideologies." *Letter Dated 8 March 1950 from the Secretary-General to the President of the Security Council Transmitting a Memorandum on the Legal Aspects of the Problem of Representation in the United Nations*, U.N. SCOR, 5th Sess., at 5, U.N. Doc. S/1466 (1950), cited in Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539, 602 n.323 (1992). Additionally, he cited UN Charter Article 4: "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations." *Id.* at 602 n.324.

The original text of Article 4 as debated at the Dumbarton Oaks Conference required only that prospective members be "peace-loving states." At San Francisco the additional requirements of adherence to the Charter were imposed, although the suggestion by the Chilean and French delegations that members also be required to prove their internal support of "democratic institutions" was rejected as a "breach of the principle of non-intervention" in the affairs of sovereign states." GOODRICH ET AL., *supra* note 1, at 88, (citing RUSSELL, *supra* note 150, at 844).

156. It was the British proposal to separate the peace-lovingness of an applicant state from the ad hoc authority of the organization to determine the applicant's ability to fulfill the state's UN obligations which eventually became Article 4. RUSSELL, *supra* note 150, at 844.

157. At the time of the 1950 dispute over the admission of China, the Cuban delegation's proposal listed the following as criteria for a government's membership in the organization: "a) effective authority over the national territory; b) the general consent of the population; c) ability and willingness to achieve the Purposes of the Charter, to observe its Principles, and to fulfill the international obligations of the state; and d) respect for human rights and international freedoms." *Recognition by the United Nations of the Representation of a Member State*, U.N. GAOR Ad Hoc Political Comm., 5th Sess., Agenda Item 61, at 1, U.N. Doc. A/AC.38/L.6 (1950), cited in Fox, *supra* note 155, at 601 n.318.

Another proposal was the British variation on the "effective control" test, requiring in addition that the applicant government enjoy "the obedience of the bulk of the population of that territory, in such a way that this control, authority and obedience appear to be of a permanent character." *Id.*, cited in Fox, *supra* note 155, at 601 n.318.

The final resolution, following a proposal by the Egyptian delegation, required:

[W]henver more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations, it should be considered in light of the Purposes and Principles of the Charter and the

cided to leave the issue open for future resolution. The traditional UN practice ever since has been to routinely approve the credentials of representatives of new governments whether it be Idi Amin's, Pol Pot's or Pinochet's.

This practice was probably defensible in the Cold War era when enough organizational energy was being expended on other issues. Most of the struggle then was over admission to membership.¹⁵⁸ Today, with some flexibility, the consideration of a subjective criterion such as democratic governance in deciding upon the credentials of national representatives should be made a standard UN practice. Support for democracy by the UN need not, at this time, include affirmative acts by the organization to remove non-democratic regimes from power. For practical political reasons, existing non-democratic regimes may have to be grandfathered. Individual members should decide whether to sanction such regimes further.

Grandfathering would help deal with one of the principal obstacles to the success of this proposal at present—China. China's membership and positive participation in the UN are vital to the success of the organization. By postponing judgments about credentials until there is a change of government, it might be possible to obtain the acquiescence of the current ruling group in China. Hopefully, the ongoing internal and external democratic pressures for change on the country would eventually resolve the difficulties posed to a revitalized UN by a non-democratic China.

Although this proposal may raise uncomfortable echoes of cultural imperialism, recent events in the Third World show that support for democracy—the so-called western variety—has been overwhelming where people have been allowed a voice and a choice.¹⁵⁹ UN actions to restore or promote democracy have been greeted with popular enthusiasm.¹⁶⁰ Thomas Franck has noted the clear global consensus that has developed

circumstances of each case.

Id., cited in Fox, *supra* note 155, at 602 n.320; see also U.N. GAOR Ad Hoc Political Comm., 5th Sess., 57th mtg., Agenda Item 61, at 364-67, U.N. Doc. A/1292, A/1308, A/1344, A/AC.38/L.45 (1950), cited in Fox, *supra* note 155, at 601 n.319.

158. RUSSELL, *supra* note 150.

159. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 63 (1992).

160. *Id.* at 47.

over the core elements of democracy:

Only a few, usually military or theocratic, regimes still resist the trend [toward democracy]. Very few argue that parliamentary democracy is a western illusion and a neocolonialist trap for unwary Third World peoples. This almost-complete triumph of the democratic notions of Hume, Locke, Jefferson and Madison . . . may well prove to be the most profound event of the twentieth century¹⁶¹

Professor Franck identified more than 110 governments which, as of late 1991, were legally committed in various degrees to "open, multiparty, secret-ballot elections with a universal franchise."¹⁶² This commitment by governments—often obtained after a sustained struggle by ordinary citizens—is evidence of the growing acceptance, according to Professor Franck, of the view that a government's legitimacy comes from gaining the consent of the governed and the acknowledgment of the community of nations.¹⁶³ Nowhere has this view received greater acceptance than in Africa, where pro-democracy movements have spread throughout the continent, capturing domestic and international imagination with their unabashed faith in, and promotion of, democracy.

Although there will be some disagreement over the specific criteria to be applied, the benefits to the international community of having such standards openly debated and explicitly adopted must include raising the hopes of politically oppressed people and discouraging aspiring dictators. It should also improve the image of the UN which, in spite of its recent efforts in Iraq, has for too long associated with representatives of some of the world's most ignoble regimes. No one should underestimate how much legitimacy an association with the UN has provided to assorted tyrants. Affirmatively rejecting such relationships should elevate the stature of the organization which must begin to emphasize that it stands for something beyond providing humanitarian assistance to the oppressed and dispossessed. The UN should embrace the organizing force of the ideology of democracy.

161. *Id.* at 49.

162. *Id.* at 47.

163. *Id.* at 46.

B. Empowering the General Assembly

Two proposals aimed primarily at the composition of the General Assembly would empower the organization and help make it a more legitimate and effective force for international peace and security. The proposals are: (1) to replace the current one-country-one-vote system of equal representation with one that apportions representatives and voting power on the basis of each country's population and financial contributions to the UN, and (2) to require that all representatives to the UN be elected by direct universal suffrage.

1. Replacing the One-Country-One-Vote System

No single change to the UN structure could have a more positive impact on the future of the organization than replacing the current system of one-country-one-vote with one based on the relative populations of members and their financial contributions to the organization. A change from the current one-country-one-vote system to one that factors in both national population and financial contributions to the UN system would also reward those members that have found responsible solutions to their political problems within their established national frameworks and decrease the incentives to create new sovereignties.

In 1966, a well-developed set of proposals to revise the U.N. Charter and, among other things, to tie the composition and voting rights of members in the General Assembly to national population was advanced by professors Grenville Clark and Louis Sohn.¹⁶⁴ Unlike professors Clark and Sohn, I believe that a change that considers only the population of members—but not their financial contributions—would continue to reward the present culture of unreality, hypocrisy, and irresponsibility that permeates so much of the UN today. A system based exclusively on population, provides no incentives to the major countries, who currently bear most of the organization's costs, to support an expansion of the organization's powers to the degree necessary for its revitalization. Moreover, a change based only on population would serve to reward those nations

164. GRENVILLE CLARK & LOUIS SOHN, *INTRODUCTION TO WORLD PEACE THROUGH WORLD LAW* (1973).

that have not been able or willing to pursue rational population management policies even when they lack the capacity to provide for their rapidly increasing populations.

Taking population into account in deciding the composition and voting power of UN members in the General Assembly would of course require a change in the original scheme of the UN which clearly gives primacy to the principle of the sovereign equality of all of its members.¹⁶⁵ The principle of sovereign equality is, however, an increasingly dangerous fiction. When the world was split into two unrelenting rival camps, it was a fiction that was perhaps worth tolerating. Today, however, we need a system that encourages countries to assume the responsibility that should come with size and wealth. This is, after all, a major justification for the establishment of the Security Council with its five permanent members imbued with veto powers.

The most tragic aspect of the myth of the sovereign equality of nations has been the way it has served to insulate the more powerful nations from their greater responsibility to the rest of the world. The principle of sovereign equality has enabled these nations to alienate themselves from human suffering occurring in other parts of the world, providing a ready excuse not to act, or to act in only a limited manner. Thus, the Idi Amins, the Pol Pots, and numerous other generals and presidents-for-life, have all been accorded the privilege of recognition as sovereign heads of state and have been treated as the equals of the leaders of long established democracies by the UN system, even as they presided over brutalized and impoverished nations that were often totally dependent on international aid. And of course being leaders of sovereign nations, there was not much the rest of the world could do beyond periodically providing relief or asylum to their victims. If we cannot, at this time, end this farce, we must at least expose it.

A key motivation behind the Clark-Sohn proposals was to make the major nations more willing to accept a more powerful UN.¹⁶⁶ But Clark and Sohn also believed that even the smallest nation should have a voice in the General Assembly and that the smaller nations would be more likely to support the

165. See U.N. CHARTER art. 2(1).

166. CLARK & SOHN, *supra* note 164, at 3-5.

proposal if an upper limit was placed on the number of representatives any member would have. Thus, they qualified their proposals by insisting that "no nation, however large, shall have more than thirty representatives and even the smallest nation shall have one representative."¹⁶⁷

The Clark-Sohn proposals make sense only up to a point. There is no overwhelming reason to have all the so-called sovereign entities in the world represented in the world body regardless of their size or wealth. A floor should therefore be added to the ceiling advocated by Clark and Sohn. As such, the very small nations whose populations do not reach the minimum number needed to entitle them to elect a representative would have the option of joining with other nations in order to satisfy this requirement. Furthermore, they may also qualify to elect one or more representatives depending on their financial contributions to the organization. This minimum population requirement would reward international or intergroup cooperation. It would also help to discourage the ethnic separatism now sweeping the globe.

The Clark-Sohn proposals established seven categories of representation based on population. All nations within the same category were allocated the same number of representatives. Thus, the four largest nations at the time were grouped into the first category and each nation was allocated thirty representatives. The second category was made up of the ten next largest nations, each receiving twelve delegates. In all, the proposals provided for a total of 744 representatives divided among the 143 nations then in the world.¹⁶⁸

It is not necessary to create categories today to accomplish the main object of this proposal. Clearly, an important reason for the adoption of these categories was the fact that the United States, the Soviet Union and China were then conveniently captured within the first category. Today, with the end of the Cold War, there is less of an imperative for these nations to have an equal number of representatives. A much simpler scheme would allocate one representative to every nation or group of nations that satisfies the established minimum population size but that has no more than five to ten million people.

167. CLARK & SOHN, *supra* note 164, at 17.

168. CLARK & SOHN, *supra* note 164, at 17.

Nations with more than five to ten million people but no more than ten to twenty million would receive an additional representative. Thereafter, a member would get one representative for every additional five to ten million people with an upper limit set as high as thirty representatives. These numbers would be adjusted to ensure that the UN is able to function in an efficient manner.

In addition to the number of representatives assigned according to population, a member would receive additional representatives allocated on the basis of its financial contribution. A representative could be awarded for every 0.25 percent of the UN budget contributed by a member or group of countries. In addition to establishing this one quarter of one percent floor, an upper limit of thirty representatives per country could be established in this case, similar to the limit set for representatives awarded according to population. Thus, a nation like the United States with a population of over 250 million people, and contributing about twenty-five percent of the UN budget, would receive the maximum of sixty delegates. A country like Grenada with a population of just over 100,000, and contributing virtually nothing to the UN budget would get no representation unless it joined with other similarly situated nations to reach the floor in either population or financial contribution.

2. Direct Universal Suffrage for UN Representatives

The Clark-Sohn proposals called for the gradual introduction of a "system of full popular election."¹⁶⁹ This was to be done in three stages: In the first stage, all representatives were to be chosen by the respective national legislatures. In the second stage, at least half the representatives would be chosen by popular vote. In the third stage, all representatives would be chosen by popular vote. Each of the first two stages, according to the proposals, would last a minimum of twelve years. Clark-Sohn also proposed a four-year term of service for each representative. Save for the second stage, this system should be adopted.

When Professors Clark and Sohn proposed full popular elections for representatives to the revised UN General Assem-

169. CLARK & SOHN, *supra* note 164, at 19.

bly, they did not have the benefit of the experience of the EC.¹⁷⁰ Even though the 1957 Treaty of Rome called for the direct popular election of members of the European Parliament, it took more than twenty years before this was accomplished.¹⁷¹ Since 1979, however, when the first popular European Parliamentary elections were held, the influence of the European Parliament has increased markedly. Direct universal suffrage has given the Parliament, which has 518 members who are elected every five years, "greater moral and political authority."¹⁷² As a result, it is generally expected that the powers and prestige of the Parliament will continue to grow even though the other less democratic institutions of the EC are facing increasing criticism from many segments of the Community.¹⁷³ The positive experience from the European

170. The European Community of today is the result of over four decades of sustained efforts at European economic and political integration beginning with the Treaty of Paris establishing the European Coal and Steel community in 1951. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [ECSC TREATY]. The foundation document of the Community, however, is the much broader 1957 Rome Treaty establishing the European Economic Community. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY]. The Rome Treaty has been modified and expanded by the 1987 Single European Act (SEA) and the 1993 Treaty on European Union (TEU). TREATY OF EUROPEAN UNION [TEU TREATY]. The European Community has four major institutions: the European Court of Justice, which is the Community's judicial arm; the Council, which is made up of representatives of the governments of member states and has a mixture of executive, legislative and administrative powers; the Commission, which is composed of seventeen appointed "bureaucrats" and performs most of the executive functions of the community; and the Parliament, whose 518 members have been directly elected by universal suffrage since 1979. GEORGE A. BERMANN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 51-72 (1993). For more on the European Community generally, see WILLIAM NICOL AND TREVOR C. SALMON, UNDERSTANDING THE EUROPEAN COMMUNITIES (1990). For more on the Parliament, see FRANCIS JACOBS ET AL., THE EUROPEAN PARLIAMENT (1990).

171. Treaty of Rome, Article 138 provides that "the representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage." EEC TREATY art. 138. For a brief discussion of how the direct election of members of the European Parliament evolved, see JACOBS ET AL., *supra* note 170, at 12-15.

172. BERMANN ET AL., *supra* note 170, at 12.

173. The growth in Parliament's powers is in response to what is seen as a "democracy deficit" in Community decision-making. "Increased powers to the Parliament, directly elected by universal suffrage, would, so it is claimed, substantially reduce the Democracy Deficit and restore legitimacy to the Community decisionmaking process." J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2467 (1991). Professor Weiler, however, goes on to challenge the notion that increasing Parliament's powers would solve the legitimacy problem. *Id.* at 2472.

Community, with a Parliament representing over 340 million people in twelve nations, provides powerful support for accelerating the Clark-Sohn proposal and beginning with a process in which national legislatures would elect the representatives, then moving to direct elections of all representatives to the global legislature. It is time national leaders trust their citizens to make democracy work on a global scale.

C. Reinventing the UN Security Council

The UN Charter gives the Security Council "primary responsibility for the maintenance of international peace and security" and Chapters VI, VII, and VIII provide the fifteen-member Council with specific powers to accomplish this task. Recent Security Council actions—particularly against Iraq and Libya and General Aidid in Somalia—confirm the breadth and potency of these powers.¹⁷⁴

During the Cold War, the potential for abuse of these powers and their essentially undemocratic nature was not at issue. Indeed, the key concern then was the Council's inability to act on controversial matters since the hostility between East and West virtually assured institutional paralysis. Permanent members on the Council routinely frustrated the resolution of most major global issues.¹⁷⁵ This institutional paralysis, however also meant that the Security Council did not interfere in the affairs of the smaller members of the organization. Today, with the Security Council increasingly disposed to following U.S. leadership, smaller nations are becoming more concerned about the Council's powers, independence, and accountability. Many of these nations now advocate changes to the Council that would make it more representative of the membership of

174. For a discussion of Security Council actions against Iraq and General Aidid in Somalia, see *supra* parts II.A, II.C. The Security Council also has imposed tough sanctions upon Libya with the aim of getting it to do the following: (a) surrender two men suspected of involvement in the destruction of Pan American Airlines Flight 103; and, (b) cooperate with France in the investigation of Libyan involvement in the bombing of a French airliner. S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg. at 57, U.N. Doc. S/RES/751 (1992). Sanctions were imposed after Libya failed to comply with an earlier resolution requiring accession to American, British and French demands. S.C. Res. 731, U.N. SCOR, 47th Sess., 3033rd mtg. at 51, U.N. Doc. S/RES/731 (1992).

175. Between 1945 and 1990, there were 279 vetoes cast in the Security Council. *Agenda For Peace*, *supra* note 2, at 4.

the UN. Similar demands—albeit in more muted tones—have been made by Germany and Japan who argue for greater recognition and powers that are commensurate with the leading roles they are playing in international affairs.¹⁷⁶

The changes to the General Assembly proposed above would undermine the logic of the current Security Council. A UN General Assembly with a more equitable representational and voting system, and one in which the representatives are popularly elected, would be incompatible with a Security Council that gives permanent membership to, and reserves special veto powers for, a few countries.

Recognizing this, Professors Clark and Sohn had also proposed to replace the present Security Council with an Executive Council composed of representatives elected by a reformed General Assembly.¹⁷⁷ Under their scheme, the Executive Council would be a seventeen person body responsible to the General Assembly and its representatives would serve the same four-year terms as the representatives in the General Assembly.

The Clark-Sohn proposals made special provisions for representing the interests of the larger nations within this new

176. Widespread dissatisfaction with the present Security Council's structure has led to concrete suggestions that would make it a more legitimate and effective body. One suggestion would replace the British and French seats on the Council with a common European Community seat. Another suggestion calls for the appointment of one or more advanced developing countries like Brazil or India to a permanent Third World seat on the Council. Still another idea would create a class of rotating or semi-permanent members. Except for the proposal to give Japan and Germany permanent seats on the Council, none of these ideas have been seriously considered by the current permanent members of the Security Council, whose unanimous support would be needed for any successful reform effort. *Czech Leader Supports India on Security Council Membership*, U.P.I., Feb. 7, 1994, available in LEXIS, Nexis Library, UPI File; Ian Davidson, *Germany Seeks to Join Enlarged Security Council*, THE FIN. TIMES, Sept. 30, 1993, at 4; Pascal Fletcher, *Brazil Backs Expanded Security Council Membership*, REUTERS, Mar. 8, 1994, available in LEXIS, Nexis Library, Reuter Library Report File; *News Conference by President Clinton and Italian Prime Minister Berlusconi*, FED. NEWS SERV., June 2, 1994, at 8, available in LEXIS, Nexis Library, Fednew File; *Thailand Backs More Members for U.N. Security Council*, THE XINHUA NEWS AGENCY, Mar. 31, 1994, available in LEXIS, Nexis Library, XINHUA File; *U.S. Senate Cautious on Security Council Expansions*, REUTERS, Jan. 28, 1994, available in LEXIS, Nexis Library, Reuter Library Report File; *NZ Proposes U.N. Security Council Seating Reform*, THE XINHUA NEWS AGENCY, Nov. 9, 1993, available in LEXIS, Nexis Library, XINHUA File.

177. CLARK & SOHN, *supra* note 164, at 20.

Executive Council. This meant devising a very complicated voting procedure in the new Council. Under their scheme, decisions of the Executive Council on "important matters" would require the support of at least twelve of the seventeen representatives on the Council, provided that those twelve included both a majority of the representatives from the larger nations and a majority of the representatives from the other nations on the Council.¹⁷⁸ Such a complicated system of representation and voting may not be needed for the new executive structure of the reformed General Assembly. A revitalized and more democratic UN needs to move away from the idea that a few nations ought to be able to frustrate the work of the organization even when the organization is operating clearly within its jurisdiction. While it may be acceptable to insist upon a super majority within the Executive Committee before it acts on some matters, it is not acceptable that permanent memberships or veto powers be retained for some nations within a revitalized UN structure.

To ease the transition to this new system, the UN should expand and transform the present Security Council into an International Security Council (ISC), whose principal responsibility would be to delay or, in the extreme case, halt actions of the new Executive Committee. The ISC would increase the permanent membership of the current Security Council, Japan, Germany and at least two large, advanced, developing countries. Though dominated by the major powers in the same way the present Security Council is dominated, the ISC would continue to have a cross section of the lesser powers as members.

In the ISC, each country would have one vote to be exercised, as is presently the case, by a representative chosen by its government. Unlike the present Security Council, however, the ISC would not be an "activist" body and no country would have a veto. Nor would the ISC purport to act on behalf of the world community. Its primary function would be to serve as a brake on the actions of the new Executive Committee where such actions contravene the interests of several major powers. The ISC could be empowered to overturn any Executive Committee action by a simple majority vote of its members.

The world's dominant powers undoubtedly would have

178. CLARK & SOHN, *supra* note 164, at 20.

considerable difficulty accepting the replacement of the current UN executive structure with one constituted without regard to individual national concerns. The new ISC would help alleviate these concerns. This hybrid structure—with the Executive Committee representing the concerns and aspirations of the peoples of the world, and the ISC, dominated by the major powers, serving as a watchdog for the concerns of the world's governments—would help revitalize the UN while giving due recognition to the concerns of the governments that will provide the bulk of the financing and other resources for the organization.

D. Revitalizing the International Court of Justice

In establishing the International Court of Justice, the UN held before a war-stricken world the beacons of law and justice, and offered the possibility of orderly judicial processes as a replacement for the vicissitudes of war and the reign of brute force.¹⁷⁹

Now, nearly fifty years after it was created, the ICJ's contributions to the rule of law in international affairs has been only slightly better than disappointing. Established in 1945 as the principal judicial organ of the UN,¹⁸⁰ the ICJ was expected to play a leading role in ensuring one of the UN's fundamental principles—the peaceful settlement of disputes among members.¹⁸¹ The ICJ has not had notable success, however, in resolving the numerous violent conflicts that have plagued the world since its founding.

It is now generally conceded that the ICJ's potential was oversold by its supporters, many of whom had expectations that, in the words of Richard Falk, are “now relevant mainly as an exhibition of naive optimism.”¹⁸² The deep reluctance of the principal actors in a sovereignty-based world system to rely

179. U.N. Doc. 913, IV/1/74(1), 13 U.N.C.I.O. Docs. 393 (1945), *quoted in* RICHARD FALK, *REVIVING THE WORLD COURT* 1 (1986).

180. U.N. CHARTER art. 92; STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 1; *see also* U.N. CHARTER art. 7 (identifying the Court as a principal organ of the UN system); art. 93 (declaring all UN members ipso facto parties to the Statute of the International Court of Justice); art. 94 (requiring each UN member to comply with a decision of the Court “in any case to which it is a party”).

181. U.N. CHARTER art. 2, ¶ 3.

182. FALK, *supra* note 179, at 8.

on judicial settlement or third-party adjudication of matters of vital importance has not been eased by the passage of time or by the end of the Cold War. The attraction for other methods such as diplomacy and war remains too powerful.

Virtually every commentator on the limitations of the ICJ has focussed on the limited acceptance of the Court's jurisdiction—especially on the part of the permanent members of the Security Council—as the principal source of the Court's difficulties.¹⁸³

Any effort to improve the legitimacy and effectiveness of the UN must give priority to revitalizing the ICJ. While judicial settlement is by no means the only way to foster the peaceful settlement of international disputes—diplomacy, mediation and arbitration among others are well established means¹⁸⁴—it is clear that any effort to ban the use of force in the resolution of international disputes would suffer without provisions for obligatory settlement of disputes.

A project to revitalize the ICJ would benefit from the numerous suggestions for improvement that have accompanied much of the discussions of its failures. Unfortunately, many of those suggestions were made outside the context of a system-wide revitalization of the UN. A better approach would integrate the changes needed to revitalize the ICJ with those required for the other main UN organs. The legitimacy and effectiveness of the UN as a political body would be enhanced by the legitimacy and effectiveness of the UN as a judicial body and vice versa.

While the expanded acceptance of compulsory jurisdiction

183. The reasons behind the reluctance of states to be more supportive of judicial settlement of international disputes have received extensive treatment. For example, some commentators have pointed to the judicial philosophy and style of the Court, highlighting a Western legal tradition or orientation that may have been unattractive to "Third World" or Marxist perspectives. Commentators have also identified the selection process and composition of the Court as either insufficiently sensitive to the representational needs of the global community or too heavily politicized. See Barton & Carter, *supra* note 10, at 559-62. See generally FALK, *supra* note 179.

184. The UN Charter, while creating a judicial body as one of the principal organs of the organization, is careful to preserve the option of states to choose other means of peaceful dispute settlement. Article 33 lists various peaceful dispute settlement methods in no particular order of preference, and Article 95 affirmatively preserves the right of members to use other tribunals to settle international disputes. U.N. CHARTER arts. 33, 95.

among UN members is generally regarded as the most important single change that should be made to improve international dispute settlement, one other change would contribute to this goal: allowing individuals direct access to the Court when certain globally protected rights are at issue.

1. Expanding Compulsory Jurisdiction

The ICJ currently exercises jurisdiction only with the consent of the state parties who bring disputes before it. No independent authority or international law principle requires any state to accede to the jurisdiction of the Court. Neither membership in the UN nor accession to the Statute of the International Court of Justice translates into an acceptance of the jurisdiction of the Court without some additional independent and affirmative action on the part of a state. However, once a state consents to the Court's jurisdiction, international law requires that it comply with the Court's decision.¹⁸⁵

The statute of the ICJ provides two general means by which the Court obtains jurisdiction over an international dispute. The first covers "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."¹⁸⁶ The second method—which is often inaccurately referred to as the general compulsory jurisdiction of the Court—is in truth a means by which a state may consent in advance, through a unilateral declaration, to the Court's jurisdiction with regard to a range of legal disputes.¹⁸⁷ Under this latter method, states making unilateral jurisdictional declarations may do so unconditionally or with reservations. This optional means of conferring jurisdiction was adopted as a compromise position between those who wanted true general compulsory jurisdiction for the Court and those who wanted the Court's jurisdiction to be at all times dependent upon the consent of the parties. The traditional reference to this second means as compulsory jurisdiction is thus more a statement of aspirations than of reality by those who support a strong, independent global judicia-

185. U.N. CHARTER art. 94, ¶ 1; see SHABTAI ROSENNE, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* 81 (1989).

186. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, ¶ 1.

187. *Id.* ¶ 2.

ry.¹⁸⁸

The ineffectiveness of this second method is demonstrated by the small number of states that have made the requisite unilateral declarations, the generally restricted scope of such declarations, and the frequency with which states have renege on their declarations whenever the Court has relied on such declarations for jurisdiction over disputes. Of the permanent members of the Security Council, only the United Kingdom today has an effective declaration granting the ICJ "compulsory jurisdiction." Fewer than 50 states out of a total UN membership of 184 nations have availed themselves of this method.¹⁸⁹

The ideal of true compulsory jurisdiction did not die with the compromise represented by Article 36, section 2. International law scholars and world leaders have made frequent pleas for acceptance of the general compulsory jurisdiction of the Court. Many of the appeals have been directed specifically at the permanent members of the Security Council. A breakthrough of a sort was achieved in 1987 when former Soviet President Mikhail Gorbachev called for the recognition of the Court's "mandatory jurisdiction . . . by all on mutually agreed upon conditions."¹⁹⁰ A recent proposal by former State De-

188. Former ICJ President Nagendra Singh has described the Statute of the International Court of Justice Article 36, ¶ 2 as creating "a more limited class of States who accepted compulsory jurisdiction as between themselves." NAGENDRA SINGH, *THE ROLE AND RECORD OF THE INTERNATIONAL COURT OF JUSTICE* 17 (1989). He saw each state as providing the court with a series of "blank cheques" with no state able to cash such a cheque "unless it had itself deposited a similar one with the Court." *Id.*

189. A number of states which may have made unilateral declarations have simultaneously reduced the value of their declarations by including severe jurisdiction-limiting reservations. This practice is usually traced to the infamous Connally Reservation contained in the United States jurisdictional declaration, effective from 1946 to 1986. This reservation had excluded from the United States' acceptance of the ICJ's jurisdiction disputes which were "essentially within the domestic jurisdiction of the United States, as determined by the United States." *Recognition of Compulsory Jurisdiction of the International Court of Justice*, Aug. 14, 1946, DEPT ST. BULL., Sept. 1946, at 452-53.

When this reservation later proved inadequate to limit the ICJ's jurisdiction in the Nicaragua Case, the United States—following the practice of several other states under similar circumstances—simply withdrew its acceptance of the so-called compulsory jurisdiction. DEPT ST. BULL., Jan. 1986, at 67.

190. SINGH, *supra* note 188, at 233 (quoting statements made by Mikhail Gorbachev in an article published by PRAVDA & IZVESTIYA on Sept. 17, 1987, available in LEXIS, World Library, Allwld File).

partment Counsellor Abraham Sofaer appears to be the U.S. response to this call.¹⁹¹ The Sofaer proposal would expand acceptance of the World Court's jurisdiction by means of a new treaty in which parties would specify in advance the treaties and the subject matter over which the Court may exercise jurisdiction.

In the present global climate, the barrier once posed by the East-West conflict to the development of a strong, independent global judiciary has been replaced by the more traditional reluctance of sovereign states to have their vital interests put in the hands of an independent non-political body. There can be no reasonable expectation that states under the present system would voluntarily and unconditionally accept the general compulsory jurisdiction of the ICJ. True compulsory jurisdiction—an essential ingredient for a global community where the rule of law is predominate—must be accompanied by the structural changes to the political bodies of the UN outlined above.

2. Providing Access to Individuals

The Statute of the International Court of Justice provides that "only states may be parties in cases before the Court."¹⁹² International organizations, non-governmental organizations, and individuals are thus excluded from direct participation in cases before the Court. The Statute demonstrates some consideration for the interests of "public international organizations" by allowing the Court to receive relevant information from them either at the request of the Court or on their initiative.¹⁹³ The Statute evinces no such concern for the interests of the individual.

Under traditional understanding of international law, this lack of concern was easily defended since only sovereign states were regarded as possessing an international personality.¹⁹⁴ Traditional international law focused on the interests of sovereign states, not on those of individuals. It was up to an indi-

191. Abraham D. Sofaer, *Adjudication in the International Court of Justice: Progress Through Realism*, 44 REC. B. CITY N.Y. 462, 477-83 (1989); see Lizzi, Note, *Delimiting the World Court's Jurisdiction: Realism in the Interest Of Progress*, 12 N.Y.L. SCH. J. INT'L & COMP. L. 203 (1992).

192. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 34, ¶ 1.

193. *Id.* ¶¶ 2, 3.

194. ROSENNE, *supra* note 185, at 83.

vidual's own state to decide whether to defend the interests of that individual in the international sphere. While this provided some measure of protection when an individual's interests were violated by a foreign state, it left the individual virtually defenseless when the violator was that individual's own government. As Professor Buergenthal describes it, "This state of international law invited a conspiracy of silence. A country could violate human rights with impunity because it knew that other governments would not speak out in protest."¹⁹⁵

The Second World War, and the Holocaust in particular, accelerated a change in the conception of the individual's status in international society. No one today argues seriously against the idea and reality of the individual as a proper subject of international law. The UN Charter began a process of constitutionalizing individual rights on a global basis. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and numerous other global and regional human rights instruments have contributed to this process. Unfortunately, the UN system has not given individuals direct access to the ICJ to further this changed conception of the individual under international law. At the San Francisco Conference, the major powers rejected individual access to the World Court and prevented the creation of a United Nations Court of Human Rights.¹⁹⁶ The Cold War ensured that any progress in this area would have to await its resolution.

In the post-Cold War era, the UN's search for legitimacy and effectiveness would receive an incalculable boost from a change that would allow individuals access to the ICJ where fundamental, globally recognized human rights are at issue. Nothing could give the peoples of the world a greater stake in the success of the UN system than the knowledge that it would vindicate their vital individual interests where domestic institutions have failed. While this development would probably be of most value to those who live in the more politically unstable societies of the world—that is, the majority of the world's population—its value to those in developed democratic societies

195. Thomas Buergenthal, *The Human Rights Revolution*, 23 ST. MARY'S L.J. 4, 5 (1991).

196. W. PAUL GORMLEY, *THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS* 45-49 (1966).

should not be underestimated.

The experience of the Europeans, who have developed the most comprehensive supranational judicial system for the protection of individual rights, provides strong support for changing the UN Charter and the International Court of Justice's Statute to allow individual access to the Court. The 1950 European Human Rights Convention¹⁹⁷ created a European Commission of Human Rights that can receive petitions from individuals claiming to be the victims of state violations, provided that the state charged has agreed in advance to recognize the competence of the Commission.¹⁹⁸ The Commission was in turn empowered to bring a case that it cannot resolve before a European Court of Human Rights, again provided that the state party has recognized the jurisdiction of the Court. Twenty seven nations are parties to the European Human Rights Convention.¹⁹⁹

The EC, composed of only twelve nations, all of whom are parties to the European Human Rights Convention, has a separate judicial system—the European Court of Justice—with even stronger protection for individual rights.²⁰⁰ The European Court of Justice has actively expanded the rights of individuals under Community laws using several legal devices. For example, under the doctrine of directly effective Community law, litigants in domestic forums are able to raise certain rights guaranteed by the Community.²⁰¹ Thus, certain Com-

197. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5; see also Protocol [No. I] to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, Europ. T.S. No. 9; Protocol [No. IV] to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 16, 1963, Europ. T.S. No. 46.

198. For an overview of the European human rights system, see Burns H. Weston et al., *Regional Human Rights Regimes: A Comparison and Appraisal*, 20 VAND. J. TRANSNAT'L L. 585 (1987).

199. As of December 1992 the countries that had ratified or acceded to the Convention were Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. European Convention for the Protection of Human Rights and Fundamental Freedoms, March 20, 1959, Europ. T.S. No. 5.

200. On the European Community generally, see *supra* note 170. On the European Court of Justice in particular, see L. NEVILLE BROWN, *THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES* (3d ed. 1989).

201. Case 26/62, *Van Gend en Loos v. Nederlandse Administratie der*

munity rights, held to be directly effective by the European Court of Justice, are enforceable in national courts. To ensure that these rights are vindicated, the Court requires national courts of last resort to refer questions concerning the interpretation of Community laws or actions to it for final and binding interpretation.²⁰² In this way, individuals who have exhausted their national remedies are generally able to gain access to the Court when Community-protected rights are at issue.

The viability of these regional supranational judicial schemes should provide sufficient support for embarking on a course to provide individuals all over the world with access to the ICJ to vindicate globally protected interests.

V. CONCLUSION

It is difficult to maintain an optimistic view of the future of the UN given current popular perceptions of the organization's performance in recent post-Cold War civil and international conflicts. In the Persian Gulf, Yugoslavia, and Somalia, the UN has been asked to undertake inordinately difficult tasks without the material or moral support necessary for success. In none of those places has the UN involvement contributed to a better perception of the organization's role in global affairs. The initial success of the Gulf War to expel Iraqi forces from Kuwait has been followed by a seemingly never-ending war of nerves and attrition between Saddam Hussein and the allied forces. Sanctions and "no fly zones" have failed to mute Iraqi intransigence, to improve human rights or to reduce tension in the region. In Yugoslavia, initial UN reluctance to intervene gave way to an intervention that has in no way improved the lot of the people or the image of the organization. In Somalia, a cantankerous warlord contemptuously took on the UN and its principal benefactor, the United States, and defeated them both on the battlefield and in the world of public opinion.

Evidence of the UN's perceived failures in responding to these and other similar conflicts has been used to stave off any

Belastingen, 1963 E.C.R. 1, 2 C.M.L.R. 105 (1963).

202. The Court derived this power from the Treaty of Rome, Article 177. EEC TREATY art. 177. The Article also serves as one of the sources for the direct effects doctrine. *Id.*

improvement in its capabilities, and indeed, to justify its marginalization and demise. So what are supporters of the UN to do in the present climate and in light of current trends? Should they proceed in the cautious step-by-step manner preferred by the UN administration and reflected in the *Agenda For Peace* report, or should they seek some other way to repair the organization's deficiencies?

This article has argued for a decidedly more challenging direction because of a recognition that the problems facing the UN are not simply performance problems resulting from inadequate resources, but are more correctly problems of orientation, principles and faith. This article urges a return to the foundation principles of the UN in an effort to breathe life into the organization.

The Cold War did not extinguish the heroic desires of post-Second World War thinkers for universal human rights and the rule of law. Nor did the Cold War enervate the UN Charter, which, perhaps for very good reasons, was allowed to sleep this past forty plus years, but not to lapse or die.

The end of the Cold War provides an opportunity to awaken this glorious document and give true effect not only to its text but also to its aspirations. The *Agenda For Peace* report offers a good bureaucratic compromise but it tarries too long near the past. The world must move resolutely toward the future envisaged in the UN Charter. Professors Sohn and Clark aided the task immeasurably over thirty years ago with their suggestions for revitalizing the UN. This article has adopted and expanded upon many of their ideas in order to deal with the underlying problems confronting the UN in the post-Cold War world.

If the UN is to survive and prosper in a meaningful capacity, it must be revitalized in terms of its orientation and structure. This Article has focused on the three most important organs of the United Nations: the General Assembly, the Security Council, and the International Court of Justice. All three must be significantly altered to meet the challenges of today. The General Assembly should directly recognize its responsibilities to individuals and moderate the myth of sovereign equality by replacing the one-country-one-vote system with one that takes population and wealth into account. The General Assembly should also encourage a closer connection between the UN and individuals by providing for the direct election of General

Assembly representatives.

The Security Council should move beyond its present archaic structure to provide for swifter and surer actions in defense of global peace and security. To deal with conflicting national and universal concerns, an interim hybrid structure which begins to democratize executive decision-making, while providing some security for national interests, is recommended.

A revitalized and more powerful World Court is also essential. It would, at a minimum, have true compulsory jurisdiction and provide for access by individuals under circumstances where national courts have failed to protect rights recognized under a global bill of rights.

These structural changes need one other ingredient to aid the process of revitalizing the UN—a democratic guaranty. Under this guaranty, the UN would reserve the right to reject the credentials of governments that have attained or maintained power undemocratically, as defined by universally agreed upon standards. People suffering under repressive regimes should no longer have doubts as to how the global community—as represented by the UN—views their plight.

The fact that many of the changes suggested in this paper would be viewed as unrealistic at the moment or even in the near future is no excuse for not considering them. There are numerous realistic proposals in existence. So far there is no evidence that such realism has improved the capacity of the UN to ensure global peace and security, or that it would do so in the future. The world cannot afford the continuing decline of the UN at a time when it is expected to play a central role in ensuring global peace and security. Priority must be given to arresting its decline. The proposals outlined in this Article recognize the seriousness of the situation and the need for fundamental change by challenging the global community to live up to the ideals that gave birth to the UN nearly fifty years ago.