

THE SECURITY COUNCIL IN THE POST-COLD WAR ERA: A STUDY IN THE CREATIVE INTERPRETATION OF THE U.N. CHARTER

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My central thesis on the recent performance of the U.N. Security Council will be that, through its decisions over the past ten years, largely improvised and inconsistent though they may be, the Council has, for good or ill, eroded the foundations of absolute conceptions of state sovereignty and fundamentally altered the way in which many of us see the relationship between state and citizen the world over. This thesis strongly supports the view of Professor Thomas M. Franck that the U.N. Charter needs to be seen, and is seen by most U.N. actors, as a “living tree.”¹ Interpretation of what developments may constitute “threats to the peace,” interpretation of the terms of Chapter VII of the Charter,² and practice under Chapter VII all have evolved significantly in the post-Cold War era without Charter amendment or a clear break with earlier interpretations.

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1. Professor Franck outlines his view most recently in a chapter drafted for a *Festschrift*, edited by Jochen Frowein, to celebrate Tono Eitel’s seventieth birthday. The volume will be forthcoming in 2003. Professor Franck’s “living tree” approach to the U.N. Charter was extensively discussed during the conference of which this chapter constituted one presentation.

2. U.N. CHARTER art. 39.

I. INTRODUCTION

One important signal of the thaw in the Cold War was a noticeable improvement in the climate among the Permanent Five (P-5) members of the U.N. Security Council. The first evidence of the relaxation in East-West tensions within the Council was the cooperative manner in which these countries discussed options for the position of U.N. Secretary-General as Javier Perez de Cuellar's first term drew to a close in 1986. As it turned out, the P-5 agreed without much difficulty to a second term for the incumbent, who, in January 1987, publicly challenged them to tackle resolution of the murderous Iran-Iraq war.³ As of mid-1987, Security Council proposals for a cease-fire, monitored by a small U.N. observer mission, were making serious headway. The post-Cold War era, initially such a hopeful one, had started at the United Nations.

The ability and disposition of the five permanent members—those holding veto power—to cooperate with each other diminished seriously the margin for maneuver of other Council members. Some of them had in earlier times developed skills and occupied political space as “helpful fixers” or, in the case of some developing nations, had learned how to play the permanent members off against each other, greatly amplifying the voice and enhancing the apparent influence of the Nonaligned Movement within the Council. Now nonpermanent members were grumbling that they were systematically marginalized, a complaint lent more weight by a tendency of the Secretariat to consult privately with some or all of the P-5 before advancing recommendations to the Council as a whole. The tacit collusion between the P-5 and the Secretariat was aggravated, from the perspective of other members, by the growing resort to “informal consultations” for decision-making purposes rather than to the open Council meetings that had served as the principal forum for Council decision making in earlier decades.⁴

3. See John Kifner, *Iran Reports Breaking Through Iraqi Defensive Line East of Basra*, N.Y. TIMES, Jan. 14, 1987, at A6 (reporting that the Secretary-General had called for “a meeting of minds at the highest political level”).

4. For an account of the evolving dynamics within the Security Council, see CAMERON R. HUME, *THE UNITED NATIONS, IRAN, AND IRAQ: HOW PEACE-MAKING CHANGED* (1994); C.S.R. Murthy, *Change and Continuity in the Func-*

This Article attempts to assess the Council's objectives and performance during the turbulent, frequently hyperactive years it has experienced since 1987. This period has been marked by the Council's disposition to tackle many more conflicts than it had been able to tackle earlier, when it was stymied by Cold War animosities and the plethora of vetoes (cast and threatened) by the permanent members. Since 1990 there has been a sharp drop in the use of the veto, accompanying the introduction of a culture of accommodation among the P-5, and momentous shifts in the Council's approach to conflict and its resolution. Situations held by the Council to constitute threats to international peace expanded to include a coup against a democratically elected regime (in Haiti); a range of humanitarian catastrophes, particularly those generating large exoduses of displaced persons and refugees, internally and internationally; and acts of terrorism.⁵ This, in turn, allowed the Council to address a range of conflicts, mostly internal in nature, that it most likely would have avoided in the past when the Cold War antagonists often played out their hostility through regional proxies and were prepared to frustrate Council involvement. The Council's decisions in the 1990s proved highly innovative in shaping the normative framework

tioning of the Security Council Since the End of the Cold War, 32 INT'L STUD. 423, 423-28 (1995).

5. How far the Council's agenda has opened up to nontraditional issues can be gauged from its refusal in 1989 to accede to U.K. pressure to discuss international narcotrafficking and environmental issues as potential threats to peace. See Paul Lewis, *Security Council Bars Drug Fight*, N.Y. TIMES, Oct. 11, 1989, at A12. In contrast, on January 10, 2000, under a U.S. presidency (in the person of Vice-President Al Gore), the Council engaged in a debate about the implications of the AIDS pandemic in Africa for stability and peace on that continent in the twenty-first century. See *UN Security Council Holds Historic Session on AIDS in Africa*, AFR. NEWS SERVICE, Jan. 11, 2000, LEXIS, Nexis Library, Afr. News Service File. This development struck some observers as ironic given long-standing U.S. skepticism of Security Council debates on "thematic" issues. To the irritation of some Security Council members, accustomed to—and comfortable with—an increasingly stodgy and defensive U.S. stance in the Council, the new U.S. Permanent Representative to the United Nations, Richard Holbrooke, was seizing with more imagination than some of his predecessors on the opportunities the Council presents for debates of wide public interest. See *Africa's Moment Under the UN's Gaze*, ECONOMIST, Feb. 5, 2000, at 41; Barbara Crossette, *Chief American U.N. Delegate Charts Course for His Month at the Helm*, N.Y. TIMES, Dec. 21, 1999, at A20.

for international relations and stimulated several radical legal developments at the international level, notably the creation of International Criminal Tribunals for the former Yugoslavia in 1993⁶ and Rwanda in 1994.⁷ This, in turn, greatly intensified pressure for a more universal international criminal court, a statute for which was adopted at a diplomatic conference in Rome in 1998.⁸

Nevertheless, late in the decade, serious tensions resurfaced in the Council over issues relating to state sovereignty, legitimation of the use of force, and the growing incidence of unilateralism by some major U.N. members. Differences crystallized in 1998 and 1999 over conflicting objectives and approaches among the P-5 to Iraq and Kosovo. In the fall of 2002, Iraq once again highlighted differences in approach among Council members to the promotion of global security.

A number of characteristics mark the Council's record in the 1990s, under several broad headings.

II. THE NATURE OF THE CONFLICTS ADDRESSED BY THE COUNCIL AND OF ITS DECISIONS

The Council's willingness to involve itself in a broad range of internal conflicts, encompassing intercommunal strife; crises of democracy; fighting marked by a fierce struggle for control of national resources and wealth; and several other precipitating causes or incentives for continuation of war, forced it to confront hostilities of a much more complex nature than the interstate disputes with which it had greater experience. International efforts to mitigate and resolve these conflicts required complex mandates significantly more ambitious than the modalities of "classic" peacekeeping were designed to meet.⁹ The most striking features of "new generation" peacekeeping operations launched by the Council in the 1990s were not so much the large numbers of military personnel involved—several ear-

6. See S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

7. See S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994).

8. See Alessandra Stanley, *U.S. Dissents, but Accord Is Reached on War-Crime Court*, N.Y. TIMES, July 18, 1998, at A3.

9. For a discussion of the evolution of peacekeeping, see THOMAS G. WEISS ET AL., *THE UNITED NATIONS AND CHANGING WORLD POLITICS* 21-137 (3d ed. 2001).

lier peacekeeping operations, for example, in Sinai, the Congo, and Cyprus had featured large deployments of Blue Helmets—as the important role and substantive diversity of their civilian and police components.¹⁰ Civilian functions discharged by peacekeeping operations or otherwise mandated by the Council included civil administration (most notably in Namibia, Cambodia, the former Yugoslavia, East Timor, and Kosovo); humanitarian assistance (a major feature of the current U.N. mission in Afghanistan deployed alongside a coalition peacekeeping operation, the International Security Assistance Force (ISAF)); human rights monitoring and training; police and judicial support, training, and reform; and even a degree of leadership on economic revival and development.¹¹ Civilian leadership of recent large U.N. peacekeeping operations was initiated with great success in Namibia in 1989–90 by Martti Ahtisaari, later President of Finland. The ambitious objectives served by these activities proved significantly more difficult to attain in many circumstances than the Council seems to have anticipated. Even Council-mandated military activities encountered significant resistance by frequently shadowy belligerents, leading to incidents involving heavy loss of life of peacekeepers (in Rwanda, Somalia, and the former Yugoslavia). The U.N. Security Council's inability to induce compliance with its decisions fueled two apparently contradictory, but all too frequently complementary, responses: On the one hand, it moved to enforce decisions that had failed to generate consent in the field, notably in the former Yugoslavia,¹² Somalia,¹³ and Haiti;¹⁴ on the other, in the face of significant

10. See MICHAEL C. WILLIAMS, *CIVIL-MILITARY RELATIONS AND PEACEKEEPING* (Adelphi Papers, No. 321, 1998).

11. See generally STEVEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* (1995).

12. There is a plethora of literature regarding the former Yugoslavia and constraints and obstacles encountered in the field. See, e.g., Adam Roberts, *Communal Conflict as a Challenge to International Organization: The Case of Former Yugoslavia*, 21 REV. OF INT'L STUD. 389, 389-410 (1995); *Kosovo: Let's Learn from Bosnia*, ICG BALKANS REP. NO. 66 (Int'l Crisis Group, Brussels, Belg.), May 17, 1999, at http://www.intl-crisis-group.org/projects/balkans/kosovo/reports/A400197_17051999.pdf.

13. See JOHN L. HIRSCH & ROBERT B. OAKLEY, *SOMALIA AND OPERATION RESTORE HOPE: REFLECTIONS ON PEACEMAKING AND PEACEKEEPING* 111, 116-17 (1995); see also MARK BOWDEN, *BLACK HAWK DOWN: A STORY OF MODERN*

casualties, it cut and ran, as in Somalia and at the outset of genocide in Rwanda.¹⁵

III. ENFORCEMENT OF CHAPTER VII OF THE U.N. CHARTER

Resort to the provisions of Chapter VII of the U.N. Charter and to enforcement of Council decisions was not new: Council decisions were enforced in Korea and to a much lesser extent in the Congo during the early years of the United Nations. Nevertheless, the extent to which the Council adopted decisions under Chapter VII since 1990 has been wholly unprecedented. At first, it was hoped that the United Nations would prove capable of launching and managing enforcement operations. In the face of disappointing, occasionally catastrophic results in the former Yugoslavia and Somalia, it became clear to member states that—as many within the Secretariat, notably Under-Secretary-General Marrack Goulding, had argued all along—transition from peacekeeping to peace enforcement represented more than “mission creep.” The two types of operations were, in fact, fundamentally different, one requiring consent and impartiality, the other requiring international personnel to confront one or several belligerent groups, even if in defense of a Council mandate conceived as neutral relative to the parties to the conflict. U.N. Secretary-General Boutros Boutros-Ghali concluded by 1994 that the United Nations should not itself seek to conduct large-scale enforcement activities. Consequently, the Security Council increasingly resorted for enforcement of its decisions to “coalitions of the willing,” such as Operation Uphold Democracy in Haiti (1994), IFOR and then SFOR in Bosnia

WAR 71, 344 (1999) (describing how initially positive Somali perceptions of the U.N. mission turned sour).

14. See DAVID M. MALONE, DECISION-MAKING IN THE UN SECURITY COUNCIL: THE CASE OF HAITI, 1990–1997 (1998). On Haiti and Somalia, see David Bentley & Robert Oakley, *Peace Operations: A Comparison of Somalia and Haiti*, STRATEGIC F. (Nat'l Def. Univ., Inst. for Nat'l Strategic Studies, Occasional Paper No. 30, 1995), at <http://www.ndu.edu/inss/strforum/forum30.html>.

15. See GÉRARD PRUNIER, THE RWANDA CRISIS: HISTORY OF A GENOCIDE (1995); Michael N. Barnett, *The UN Security Council: Indifference and Genocide in Rwanda*, 12 CULTURAL ANTHROPOLOGY 551 (1997); J. Matthew Vaccaro, *The Politics of Genocide: Peacekeeping and Disaster Relief in Rwanda*, in UN PEACEKEEPING, AMERICAN POLITICS, AND THE UNCIVIL WARS OF THE 1990s, at 367, 367-68 (William J. Durch ed., 1996).

(1995), MISAB in the Central African Republic (1997), INTERFET in East Timor (1999), and most recently ISAF in Afghanistan (2002).¹⁶ It also alternately both worried about and supported in qualified terms enforcement activities by regional bodies, notably ECOMOG, the military arm of the West-African economic cooperation arrangement ECOWAS, in Liberia and Sierra Leone. One enforcement technique, employed only once previously by the Council, against Rhodesia, was the resort to naval blockades to control access of prohibited goods to regions of conflict. Such blockades were mandated and occurred with varying success against Iraq in the Persian Gulf and the Gulf of Aqaba, against various parties in the former Yugoslavia on the Danube and in the Adriatic Sea, and against Haiti.¹⁷

More common than military enforcement decisions by the Council was the resort to mandatory economic (and, increasingly, diplomatic) sanctions under Chapter VII of the Charter.¹⁸ While arms embargoes remained in vogue, imposition of comprehensive trade and other economic sanctions, seen as more gentle than the resort to force, faded noticeably once the humanitarian costs of sanctions regimes against Haiti and Iraq became widely known late in the decade. The ability of government regimes in countries struck by sanctions to enrich themselves greatly by controlling black markets in prohibited products also took some time to sink in. By then, more targeted sanctions, such as the ban on air flights to and from

16. For an excellent reference work covering U.N. peacekeeping operations from 1947 to the present, see generally OLIVER RAMSBOTHAM & TOM WOODHOUSE, *ENCYCLOPEDIA OF INTERNATIONAL PEACEKEEPING OPERATIONS* (1999).

17. See U.N. Dept. of Political Affairs, *A Brief Overview of Security Council Applied Sanctions* (Mar. 1999) (informal background paper prepared for the Second Interlaken Seminar on Targeting United Nations Financial Sanctions), at <http://www.smartsanctions.ch/Papers/I2/2unoverview.pdf>.

18. The Security Council had used economic sanctions as an enforcement tool only twice prior to 1990: against Southern Rhodesia in 1966 and against South Africa in 1967. See Office of the Spokesman of the Secretary-General, *The Use of Sanctions Under Chapter VII*, at <http://www.un.org/News/oss/sanction.htm>. For an in-depth discussion of the Council's experience with sanctions regimes since 1990, see DAVID CORTRIGHT & GEORGE A. LOPEZ, *THE SANCTIONS DECADE: ASSESSING UN STRATEGIES IN THE 1990s* (2000); see also their followup volume, DAVID CORTRIGHT & GEORGE A. LOPEZ, *SANCTIONS AND THE SEARCH FOR SECURITY: CHALLENGES TO UN ACTION* (2002).

Libya aimed at inducing Libyan cooperation with Council efforts to address several terrorist aircraft bombings, and diplomatic sanctions, such as the reduction in the level of diplomatic representation mandated by the Council against the Sudan further to an assassination attempt in Addis Ababa against Egyptian President Hosni Mubarak, were more in favor.¹⁹ Another example of targeted sanctions (addressing financial transactions and air links) went into effect on November 14, 1999, against the Taleban in Afghanistan over the protection they have provided to the alleged terrorist Osama bin Laden.²⁰ Not only some advantages but also the difficulty of designing and implementing effective financial sanctions were brought to light by a useful research and dialogue initiative, the Interlaken process, sponsored by the Swiss government in 1998–99.²¹ The German government launched a similar project on arms embargoes and other forms of targeted sanctions in 1999,²² while Canada that same year focused attention within the Security Council more broadly on the need for more effective, less counterproductive sanctions regimes.²³ Canada also provided creative and energetic leadership to the Council's Sanctions Committee for Angola, pressing for more rigorous application of its mandate to suffocate UNITA's ability to fund its war effort through the sale of diamonds. This has resulted, *inter alia*, in the decision of the De Beers corporation to close down its operations in Angola.²⁴ Under Canadian Ambassador Fowler's pressure, a commission of experts on sanctions in Angola, chaired by Ambassador Anders Möllander (of Swe-

19. For a recent general discussion of sanctions, see DANIEL W. DREZNER, *THE SANCTIONS PARADOX: ECONOMIC STATECRAFT AND INTERNATIONAL RELATIONS* 4-6 (1999).

20. See S.C. Res. 1267, U.N. SCOR, 54th Sess., 4051st mtg., U.N. Doc. S/RES/1267 (1999).

21. See Claude Bruderlein, *The UN Security Council at the Crossroads: Toward More Humane and Better Targeted Sanctions*, at 7 & nn.26-27 (U.C. Berkeley, Inst. of Gov't Stud., Working Paper No. 15, 1999) available at <http://www.igs.berkeley.edu/publications/workingpapers/99-15B.pdf>.

22. See generally Bonn International Center for Conversion, *Design and Implementation of Arms Embargoes and Travel- and Aviation-Related Sanctions: Results of the 'Bonn-Berlin Process'*, available at <http://www.smartsanctions.de>.

23. See J. Tuyet Nguyen, 'Smart Sanctions' Needed, *Axworthy Tells U.N. Body*, TORONTO STAR, Apr. 18, 2000, LEXIS, Nexis Library, Toronto Star File.

24. See *UN Welcomes De Beers Embargo on Angolan Diamonds*, AGENCE FRANCE-PRESSE, Oct. 7, 1999, available at DIALOG, File No. 614.

den), was established. It published a highly praised report in March 2000 that was groundbreaking in that it, for the first time, engaged in "naming and shaming" third countries as "sanction busters."²⁵

Beyond issues of enforcement, the Council in the 1990s increasingly confronted, shaped, and adapted to the role of regional organizations in seeking to prevent and resolve conflict.

IV. ROLE OF REGIONAL ORGANIZATIONS

The Council initially did not seek a leading role on crises in the Western Hemisphere, such as those of Central America and of Haiti, preferring to leave the Organization of American States (OAS) in the driver's seat.²⁶ Nevertheless, in circumstances in which the OAS proved incapable of achieving a negotiated settlement alone or in which parties to conflict and affected regional powers displayed greater confidence in the United Nations, the Council, sometimes reluctantly, did move to center stage, generally continuing to reserve some place for the OAS in its strategies.²⁷

The Organization of African Unity (OAU) experienced a disappointing decade, sometimes claiming the leading role in addressing the many conflicts bedeviling the continent, but unable in the end to deliver any major settlements. The weakness of the organization was due not so much to its Secretariat, led by the widely respected Salim Salim, as to the difficulty its member states had in agreeing on political strategies to favor conflict resolution, this despite the creation of OAU conflict-prevention "mechanisms" middecade.²⁸ Its relations with the United Nations were characterized by resentment over its own

25. *Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA*, U.N. SCOR, U.N. Doc. S/2000/203 (2000).

26. See David M. Malone, *Haiti and the International Community: A Case Study*, SURVIVAL, Summer 1997, at 126, 129.

27. See William G. O'Neill, *Human Rights Monitoring vs. Political Expediency: The Experience of the OAS/U.N. Mission in Haiti*, 8 HARV. HUM. RTS. J. 101, 104 (1995).

28. For a firsthand account of this, see Salim Ahmed Salim, *The OAU Role in Conflict Management*, in PEACEMAKING AND PEACEKEEPING FOR THE NEW CENTURY 245, 247 (Olara A. Otunnu & Michael W. Doyle eds., 1996); see also, in the same volume, Ali A. Mazrui, *The Failed State and Political Collapse in Africa*, in PEACEMAKING AND PEACEKEEPING FOR THE NEW CENTURY 233, 233-43, *supra*.

lack of resources and political support from member states and by justifiable demands that the world body not slough off responsibility for some of the worst conflicts of the decade onto an underresourced and divided regional body. It remains to be seen whether the OAU's successor organization, the African Union, will perform better. Many experts believe that subregional organizations such as ECOWAS, SADC, and IGAD hold out more hope for Africa in the security field. They are seen as potentially more cohesive and effective, sometimes benefiting from the leadership of a regional hegemon such as Nigeria within ECOWAS.²⁹

In a rather different vein, the Council and U.N. staff found themselves contending with an array of regional actors in the former Yugoslavia, including European Community monitors, European Union civil administrators in Mostar, OSCE negotiators, and NATO enforcement units in the skies and subsequently on the ground. The United Nations, with Council support and jointly with the European Community, led negotiations with various parties to the conflicts in the former Yugoslavia (most memorably in the Vance-Owen configuration). In other conflicts, such as those in Georgia³⁰ and several in West Africa,³¹ U.N. missions mandated by the Council monitored the activities of regional organizations purportedly keeping or promoting the peace. This proved particularly delicate in Georgia, where peacekeeping forces of the Commonwealth of Independent States (CIS) were seen by a number of

29. For a detailed discussion of the potential of SADC and ECOWAS respectively in the security field, see FROM CAPE TO CONGO: SOUTHERN AFRICA'S EVOLVING SECURITY CHALLENGES (Mwesiga Baregu & Christopher Landsberg eds., 2003); TOWARD A PAX WEST AFRICANA: BUILDING PEACE IN A TROUBLED SUB-REGION (Adekeye Adebajo & Ismail Rashid eds.) (forthcoming 2003).

30. The U.N. Observer Mission in Georgia (UNOMIG) was established by U.N. Security Council Resolution 853 in 1993 with the task of observing the operation of the peacekeeping force of the Commonwealth of Independent States (CIS), among others. See S.C. Res. 853, U.N. SCOR, 48th Sess., 3268th mtg., U.N. Doc. S/RES/853 (1993).

31. The U.N. Observer Mission in Liberia (UNOMIL) is a pertinent example of the United Nations' working closely with regional organizations: Established in September 1993 under U.N. Security Council Resolution 866, its mandate was to exercise its good offices to support the efforts of ECOWAS and the Liberian transitional government. See S.C. Res. 866, U.N. SCOR, 48th Sess., 3281st mtg., U.N. Doc. S/RES/866 (1993).

Western powers as neither markedly impartial nor as deserving of treatment that might imply or confer recognition on the CIS as a respectable regional organization.

Late in the decade, with the Council stymied by several conflicts and disunited in facing major international challenges, regional organizations came to be seen by some as a possible if not particularly desirable substitute for the United Nations. However, with the exception of NATO, regional bodies generally commanded even scarcer resources and offered even more limited capacities than the United Nations. Furthermore, a system of international security founded on regional organizations begged the question of who would arbitrate differences between them and how this would be done. The U.N. Charter, for all of the many failures of U.N. member states to live up to it, continued to serve as a beacon from this perspective, and the Council's authority, even if respected too often in the breach, remained indispensable.

The shifts in the nature and scope of Council decisions, many setting precedents even where the Council asserted that they did not, arose from evolving interpretations of the Charter and deeply affected understanding of sovereignty at the international level, both shaped by, and influencing, the Council.

V. CONSIDERATIONS DRIVING COUNCIL DECISION MAKING

A. *Humanitarian Assistance*

An innovative feature of the Council's decisions on a number of crises was its concern over the humanitarian plight of civilian victims of conflicts, particularly refugees. Refugees were hardly a new topic of concern for the Council.³² The miserable fate of Palestinian refugees proved a spur (at least nominally) to the Arab-Israeli dispute following Israel's war of independence in 1947–48, leading also to the creation of a U.N. agency, UNRWA, exclusively dedicated to their welfare.³³ Those displaced by war, particularly where mass exoduses of the population occurred, had long been seen as deserving the care of the international community and were among the

32. See WEISS, *supra* note 9, at 188.

33. See *Assistance to Palestine Refugees*, G.A. Res. 302 (IV), U.N. GAOR, 4th Sess., U.N. Doc. A/RES/302 (IV) (1949).

prime "clients" of both the Red Cross system (ICRC and the Federation of World Red Cross and Red Crescent Societies) and the U.N. High Commissioner for Refugees. Nevertheless, in the 1990s as never before, the Security Council invoked the plight of refugees and their implied destabilizing effect on neighboring states as grounds for its own involvement in conflict. Early Council resolutions on the former Yugoslavia³⁴ and on Somalia³⁵ illustrate this development. Any threat that the Haitian crisis of democracy in 1991–94 may actually have posed to international peace and security could only have arisen from the outflow of Haitian boat-people, which might have threatened to engulf a number of Caribbean countries had the shores of Florida not been their preferred destination. (As it was, the burden on several Caribbean countries and dependencies arising from inflows of Haitians should not be minimized.) The widespread acceptance that refugee flows could actually be a major catalyst to conflict, rather than merely an outcome of it, was new.

Furthermore, the intense, if highly selective, media scrutiny (the so-called "CNN effect") of horrendous conditions endured by victims of war impelled populations worldwide to press their governments to alleviate extreme suffering arising from a variety of conflicts. Several factors conspired to focus attention on the United Nations to act on behalf of the international community: the limited impact of most bilateral assistance in these dramatic circumstances; the existence of several specialized U.N. agencies with the skills and "critical mass" required; and the possibility for the United Nations to deploy peace missions of various types and sizes with mandates focused on, or at least including, humanitarian objectives. The

34. See *Letter Dated 24 September 1991 from the Permanent Representative of Yugoslavia to the United Nations Addressed to the President of the Security Council*, U.N. S.C., 46th Sess., U.N. Doc. S/23069 (1991); S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., U.N. Doc. S/RES/713 (1991) (declaring that the "heavy loss of human life and material damage" were "a threat to international peace and security," largely due to the spillover of refugees on neighboring countries).

35. See *Letter Dated 20 January 1992 from the Charge D'Affaires A.I. of the Permanent Mission of Somalia to the United Nations Addressed to the President of the Security Council*, U.N. S.C., 46th Sess., U.N. Doc. S/23445 (1992); S.C. Res. 733, U.N. SCOR, 47th Sess., 3039th mtg., U.N. Doc. S/RES/733 (1992) (discussing similar concerns regarding the spillover of refugees on the safety and security of bordering countries).

most important consideration for many governments was that, in delegating to the United Nations the responsibility to act, mostly in situations where few vital national interests were at stake, the costs and risks of response nationally were usefully curtailed. In the early 1990s, at the peak of media and public fervor for humanitarian initiative, a lively debate unfolded over not only the international right to intervene in the internal affairs of countries to save civilian lives, but also a purported duty to do so.³⁶ By the bleaker end of the decade, with millions, mainly in Africa, suffering untold horrors unassisted, this debate rang hollow in the absence of any actual desire to intervene on the part of those governments with the capacities to do so. Indeed, efforts by the United Nations to administer Kosovo (alongside the NATO-dominated military deployment of KFOR) have proved once again how difficult ambitious humanitarian action can be.

B. *Human Rights*

Human rights, long cloistered within intergovernmental machinery and Secretariat bureaucracy designed in part to keep the topic at a safe distance from those responsible for international peace and security at the United Nations, burst onto the Security Council's agenda with the realization that civil strife was not amenable to negotiated solutions as long as human rights continued to be massively violated. For this reason, the protection, promotion, and monitoring of human rights formed an important and uncontroversial part of the mandates of several U.N. peacekeeping operations, notably in El Salvador³⁷ and Guatemala.³⁸ Where this was not the case, as in Rwanda and Haiti, the U.N. General Assembly, as part of the broader U.N. strategy, often deployed parallel human rights missions. This tendency to address human rights objectives in Security Council debates and decisions was reinforced by the appointment of a U.N. High Commissioner for Human

36. See generally *HARD CHOICES: MORAL DILEMMAS IN HUMANITARIAN INTERVENTION* (Jonathan Moore ed., 1998) (debating whether there is a moral duty to intervene in another state's affairs in order to protect human rights).

37. On El Salvador, see generally Ian Johnstone, *Rights and Reconciliation in El Salvador, in KEEPING THE PEACE: MULTIDIMENSIONAL UN OPERATIONS IN CAMBODIA AND EL SALVADOR* 312 (Michael W. Doyle et al. eds., 1997).

38. On Guatemala, see HILDE HEY, *GROSS HUMAN RIGHTS VIOLATIONS: A SEARCH FOR CAUSES* 183-88.

Rights in 1994. Although the first incumbent, an accomplished Ecuadorian politician and diplomat, proved lackluster in this role, his successor, Mary Robinson, a former President of Eire, adopted a more assertive approach to her responsibilities, putting pressure on the Council (even while her performance underscored a frequent lack of coordination and identity of view within the U.N. system). Sergio Vieira de Mello, appointed to this position in mid-2002, is expected to adopt less confrontational strategies while maintaining Robinson's strong defense of human rights. The quandaries faced by the Council in factoring human rights considerations into its decisions were highlighted when the parties to Sierra Leone's civil war reached a peace agreement in mid-1999 including sweeping amnesty provisions against which Ms. Robinson sharply protested (and over which the U.N. Secretary-General's representative at the peace pact's signing ceremony had registered a formal reservation). On the one hand, Sierra Leone's population was clearly eager for peace on virtually any terms; on the other, the agreement's amnesty provisions patently ran against long-standing and emerging human rights norms. The saw-off seemed to be that those requiring and benefiting from the amnesty need not expect to do so unimpeded beyond Sierra Leone's borders.

C. *Democracy*

The Council also appeared to be increasingly engaged in the promotion of democracy, *inter alia* by mandating the organization and monitoring of elections, a trend as unlikely during the Cold War as would have been the driving force of humanitarian considerations and the Council's role on human rights in the 1990s.³⁹ Nevertheless, the Council favored electoral processes not as an end in themselves, but as a means of effecting a "new deal" in countries emerging from civil war in which power could, in some cases, be shared with former combatants in rough proportion to electoral results. Such elections proved an unreliable indicator of the extent to which genuinely democratic cultures would take root. The stilted, power-driven, and unstable coalition arrangements resulting from Cambodia's U.N.-monitored elections of 1993 and 1998

39. See generally RATNER, *supra* note 11, at 117-34.

contrast with the more natural, relaxed electoral rhythms apparently achieved in El Salvador, where an alternation of power between rival parties seems more likely in the long run.

The mushrooming of U.N. electoral activities, very much driven by demand rather than supply of the personnel and other resources required for effectiveness in this field, presented multiple dangers for the organization. Countries having required electoral assistance once were likely to require it again, due to the high level of political tension and the limited degree of administrative and security capacity. In addition, many of the elections observed by U.N. teams were conducted in adverse circumstances, often contributing to results that could barely be described as having been attained freely and fairly. Short of massive fraud, U.N. electoral missions were loath to risk igniting or reigniting civil strife by contesting the results of polling and, consequently, were seen as willing to compromise on principle and to be less than the impartial arbiters local parties had a right to expect. Losers were rarely gracious, and the United Nations was little thanked for its prominent role in such electoral processes, frequently alongside regional organizations and nongovernmental teams of eminent persons, such as those associated with former U.S. President Jimmy Carter.⁴⁰ And, as demonstrated by the experience of East Timor, where the outcome of a U.N.-implemented referendum on independence led to a murderous rampage by militias in 1999, the United Nations needs to be careful not to promote elections in the absence of adequate measures to protect the civilian population against the wrath of those that end up with the short end of the stick.⁴¹

D. *Terrorism*

The Council was much more active in addressing terrorism throughout this period than is widely believed.⁴² At the conclusion of their first summit meeting on January 31, 1992,

40. For an excellent work dealing with elections in postconflict situations, see generally POSTCONFLICT ELECTIONS, DEMOCRATIZATION, AND INTERNATIONAL ASSISTANCE (Krishna Kumar ed., 1998).

41. See IAN MARTIN, SELF-DETERMINATION IN EAST TIMOR: THE UNITED NATIONS, THE BALLOT, AND INTERNATIONAL INTERVENTION 87-102 (2001).

42. For an excellent account of the Council's involvement in the fight against terrorism, see generally Chantal de Jonge Oudraat, *The UN and Terrorism: The Role of the UN Security Council*, in TERRORISM AND THE UN: BEFORE

Security Council leaders “express[ed] their deep concern over acts of international terrorism and emphasize[d] the need for the international community to deal effectively with all such acts.”⁴³ Soon thereafter, the Council adopted sanctions against Libya because of its noncooperation with an investigation into two airline-bombing incidents,⁴⁴ a course of action that ultimately brought about a trial of Libyan suspects by a Scottish tribunal in the Netherlands.⁴⁵ Its sanctions against Sudan,⁴⁶ following an assassination attempt against Egyptian President Mubarak, were only of a diplomatic type but seem to have been somewhat effective in persuading the Khartoum regime to expel a number of foreigners and to impose more stringent visa requirements. However, the sanctions the Council imposed against the Taleban regime in 1999 in the wake of devastating bombings at U.S. embassies in Kenya and Tanzania proved ineffective against a regime almost completely isolated from the international community, even after the sanctions measures were strengthened in 2000.⁴⁷

The attacks against U.S. targets on September 11, 2001, brought home to the Council as a whole how serious terrorist threats can be. The Council moved into a new phase of actively combatting the financial networks supporting terrorism and safe havens for terrorists under the terms of its resolution 1373 of September 18, 2001.⁴⁸ It created a Counter-Terrorism Committee (CTC) to monitor compliance of all states with its decision.⁴⁹ While it is too early to tell whether this mechanism

AND AFTER SEPTEMBER 11TH (Jane Boulden & Thomas G. Weiss eds.) (forthcoming 2004).

43. See *Note by the President of the Security Council*, U.N. SCOR, 47th Sess., 3046th mtg. at 3, U.N. Doc. S/23500 (1992).

44. See S.C. Res. 748, U.N. SCOR, 47th Sess., 3063d mtg., U.N. Doc. S/RES/748 (1992).

45. In January 2001, the court found one suspect guilty and acquitted the other. See David Johnson, *Courts a Limited Anti-Terror Weapon*, N.Y. TIMES, Jan. 31, 2001, at A12.

46. See S.C. Res. 1054, U.N. SCOR, 51st Sess., 3660th mtg., U.N. Doc. S/RES/1054 (1996).

47. See S.C. Res. 1267, U.N. SCOR, 54th Sess., 4051st mtg., U.N. Doc. S/RES/1267 (1999); S.C. Res. 1333, U.N. SCOR, 55th Sess., 4251st mtg., U.N. Doc. S/RES/1333 (2000).

48. See S.C. Res. 1373, U.N. SCOR, 55th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001).

49. See *id.* ¶ 6.

will prove effective, its work got off to a brisk start under the energetic leadership of Sir Jeremy Greenstock, the U.K. Ambassador to the United Nations. One test will be how the CTC deals with states clearly not in compliance with its decisions.

VI. INSTITUTIONAL DEVELOPMENTS

A. *The Working Methods of the Security Council*

Under intense pressure from member states not serving on the Council—particularly the “Troop Contributing Nations” (TCNs), which provided personnel and materiel to the United Nations for peacekeeping operations, and which were intensely irritated by the Council’s working methods—the Council, quite reluctantly, allowed some light to shine on its autocratic and opaque proceedings in the early 1990s.⁵⁰ The origins of the problem were quite recent. Council members, and the P-5 in particular, had always needed to consult privately among themselves. However, with active cooperation among the permanent members increasingly the norm by 1990, the P-5 saw little value in continuing to conduct much of the Council’s business in open, public meetings. “Informal consultations” or “informals,” closed to all non-Security Council members and most secretariat staff and leaving no formal record, became the norm. Nonmembers were in the dark on the agenda of upcoming informals and had to scramble for information, feeding off scraps provided in the antechamber by those emerging from the consultations, a humiliating experience for the supplicants. By 1992, leading non-Security Council TCNs such as Canada, the Netherlands, Malaysia, India, Argentina, Pakistan, and some Scandinavian countries were making it clear that, if the Council expected them to provide national assets in support of Council decisions, often in risky circumstances, at a minimum their consultation was required, at least in some formal, face-saving sense. As a result, a number of measures were adopted to introduce greater clarity into the Council’s program of work, and meetings between the

50. For the benchmark volume on the working methods of the Security Council and a splendid achievement, see SYDNEY D. BAILEY & SAM DAWS, *THE PROCEDURE OF THE UN SECURITY COUNCIL* (3d ed. 1998). To gauge how these working methods have changed over time, see generally Michael Wood, *Security Council Working Methods and Procedure: Recent Developments*, 45 INT’L & COMP. L.Q. 150 (1996).

Council and TCNs (long resisted by the P-5, which preferred TCNs to meet merely with the Secretariat) started occurring in 1994.⁵¹

B. *Groups of Friends*

A somewhat related development was the emergence of "groups of friends," composed of countries influential in a given crisis.⁵² Some of these groups, such as that on Haiti, were convened at the invitation of the Secretary-General, while others constituted themselves, with several hybrid varieties emerging. They generally featured one or several permanent members, either formally or in the wings (as was the case with the United States vis-à-vis the group on El Salvador). Their purpose was not only to advise the Secretary-General and Council on strategies to promote settlement of the conflict and implementation of a peace agreement, but also to serve as a potent lobby group vis-à-vis parties to the conflict, regional actors, and the General Assembly (from which decisions relating to Council strategies were required sometimes in such areas as human rights monitoring and always on the financing of its initiatives). Often, representatives in the field of such groups, or of Security Council members, helped support locally the efforts of the Secretary-General's Special Representatives, as was the case in Cambodia, Mozambique, and Haiti.⁵³ Complaints were sometimes heard that such groups usurped the role of the full Council, and the secretariat occasionally voiced concern that the Secretary-General was sometimes un-

51. Previously, the Security Council considered TCN interests to be confined to the implementation of mandates by the Secretariat rather than the formulation of these by the Council. Subsequently, TCN meetings came to be cochaired in many instances by the Secretariat and the Council presidency. See *Statement by the President of the Security Council*, U.N. SCOR, 48th Sess., 3372d mtg., at 3, U.N. Doc. S/PRST/1994/22 (1994); *Statement by the President of the Security Council*, U.N. SCOR, 48th Sess., 3448th mtg. at 1, U.N. Doc. S/PRST/1994/62 (1994). In March of 1996, the Council established a more structured approach to consultations with TCNs. See *Statement by the President of the Security Council*, U.N. SCOR, 50th Sess., 3645th mtg. at 1-2, U.N. Doc. S/PRST/1996/13 (1996).

52. For an interesting first-person account of a group of friends, see Diego Arria, *Diplomacy and the Four Friends of Haiti*, in *HAITIAN FRUSTRATIONS: DILEMMAS FOR U.S. POLICY* 90, 96-97 (Georges Fauriol ed., 1995).

53. For an illustration of the workings of the groups-of-friends mechanism, see generally *id.*

helpfully constrained by them. However, given the vastly increased pressure for action within this body, most members saw groups of friends as a useful clearinghouse for consideration of options by the Council as a whole.⁵⁴

C. *Secretaries-General and the Council*

The relationship of the three Secretaries-General of the 1990s with the Council varied. Javier Perez de Cuellar of Peru completed his distinguished, quietly creative, but somewhat understated stewardship in 1991. He had done much to encourage the Council to play a more active role and was highly regarded by most of its members.

Boutros Boutros-Ghali of Egypt, who took office in early 1992, proved himself a passionate and well-reasoned advocate of a stronger U.N. role in conflict resolution and postconflict peacebuilding, launching his seminal *An Agenda For Peace* in mid-1992,⁵⁵ following the only Security Council summit of leaders in the body's history. However, he was damaged by U.N. reverses in the former Yugoslavia and Somalia. His brittle personality and tone-deafness relative to the U.S. domestic political scene brought him into conflict with the Washington administration. The latter, in spite of superficially strong support for Boutros-Ghali by the rest of the U.N. membership, vetoed his reelection and ensured the election of Kofi Annan of Ghana in late 1995.

On assuming his new responsibilities in 1996, Annan, the first career U.N. official to hold the position of Secretary-General, staked out new ground in championing human rights and concern for civilians in war as key themes. His advocacy of humanitarian intervention was articulated most unambiguously in a speech to the U.N. General Assembly on September

54. Less formal and often less visible groups play an important role at the United Nations on some security issues. For example, it was the lusophone countries (and, to a lesser extent, the European Union) that kept the East Timor issue alive at the United Nations during the Indonesian occupation. Portugal and Brazil, working with other lusophone countries like Mozambique and Angola, have significant mobilizing capacity at the United Nations and have used it to excellent effect where the interests of lusophone countries have been in play.

55. See *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping, Report of the Secretary-General*, U.N. GAOR/SCOR, 47th Sess., Preliminary List Item 10, ¶ 55, U.N. Docs. A/47/277-S/24111 (1992).

20, 1999.⁵⁶ In spite of his commitment to these and other values held dear in Washington, the United States clashed with him in 1998 and again, in a more muted way, in 2002 over his handling of the Iraqi regime and sought to limit his role in addressing the Kosovo crisis in 1999. Nevertheless, Annan remains *persona grata* in Washington, including in Congress. In 2001, he was awarded the Millennium Nobel Peace Prize. He was reelected Secretary-General without opposition that same year. He remains, in the view of many seasoned observers of the U.N., the only other Secretary-General enjoying the esteem accorded the legendary Dag Hammarskjöld (who was admired most fully after his untimely demise in 1961).⁵⁷

D. *Judicial Review*

The Council's expanding role in the early 1990s and both the number and the sweeping scope of its resolutions gave rise to growing calls for judicial review of its decisions by the World Court.⁵⁸ Libya contested the Council's decisions targeting it, clearly embarrassing the court, which prudently awaited the 1999 diplomatic solution to the impasse pitting the Council against Tripoli throughout most of the decade before addressing the merits of the case (over which it did accept jurisdiction, much to the annoyance of some of the P-5).⁵⁹ Pressure for judicial review, as well as for access to advisory opinions from the court on peace and security issues by the Secretary-General (a proposal advanced by Boutros Boutros-Ghali in *An Agenda for Peace*) was resisted by the P-5, but a sense of inevita-

56. See Kofi Annan, *Two Concepts of Sovereignty*, *Economist*, Sept. 18, 1999, at 49 (essay that was delivered as a speech on Sept. 20, 1999, at the U.N. General Assembly).

57. Kofi Annan enhanced his standing with some observers while undermining it with others by unreservedly accepting personal responsibility for his role (while U.N. Under-Secretary-General for Peacekeeping Operations) in the lamentable U.N. performance in dealing with the slaughter of civilians at Srebrenica in 1995 and the genocide in Rwanda in 1994. See Barbara Crossette, *Kofi Annan Unsettles People, As He Believes U.N. Should Do*, *N.Y. Times*, Dec. 31, 1999, at A1.

58. See, e.g., Dapo Akande, *The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?*, 46 *INT'L & COMP. L.Q.* 309 (1997).

59. See David Ott, *Libya and the ICJ: Clipping the Security Council's Wings*, *MIDDLE EAST INT'L*, Mar. 13, 1998, at 18.

bility developed over growing involvement of the court in the Council's institutional life.

E. *International Criminal Law*

The Council in the 1990s may be remembered in part for its contribution to radical innovation in international criminal law, notably through its creation of *ad hoc* International Criminal Tribunals for the former Yugoslavia in 1993 and Rwanda in 1994 to bring to justice those responsible for war crimes, crimes against humanity, and genocide.⁶⁰ The foremost champion of these tribunals was the United States (possibly because of frustration over its own inability at the time to influence the course of events on the ground in the former Yugoslavia due to sharp policy differences with European allies and guilt over its refusal to confront genocide in Rwanda). The creation of the tribunals greatly intensified pressures for a permanent International Criminal Court with universal jurisdiction, but when a statute for this court was adopted in Rome in 1998,⁶¹ the United States, along with six other countries of varying respectability, voted against the text out of concern for its potential implications for U.S. citizens, particularly U.S. troops serving abroad. Negotiations have continued on institutional modalities for the court, which will become operational in 2003. Sadly, the U.S. position on the court hardened under the Bush administration, which withdrew the U.S. signature of the statute that the Clinton administration had effected as one of its last acts. By mid-2002, Washington had launched a campaign to undermine the court under the guise of efforts to protect U.S. service personnel (and other citizens) from prosecution.

60. On the former Yugoslavia, see S.C. Res. 808, U.N. SCOR, 48th Sess., 3175th mtg., U.N. Doc. S/RES/808 (1993); S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993). On Rwanda, see S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994). In 2000, the Security Council requested that the Secretary-General negotiate an agreement with the Sierra Leone government to establish a special court to prosecute war crimes committed during the ongoing war. See S.C. Res. 1334, U.N. SCOR, 55th Sess., 4253d mtg., U.N. Doc. S/RES/1334 (2000). However, the resulting court, which has not become operational at the time of this writing, is not a U.N. body along the lines of the tribunals in the former Yugoslavia and Rwanda, and it will be jointly administered by the United Nations and the Sierra Leone government.

61. See Stanley, *supra* note 8, at A3.

Thus, it is too early to conclude how successful the court is likely to prove.

F. *Nongovernmental Organizations*

The role and interaction of nongovernmental organizations (NGOs) with respect to the Security Council both grew significantly and evolved in nature during the 1990s. NGOs have for many years been accredited by the U.N. Economic and Social Council to monitor and contribute to U.N. activity in a broad range of fields. The name of the accrediting body itself suggests the extent to which NGOs were traditionally viewed as focused on economic and social issues such as environmental, human rights, humanitarian, health, labor, education, and population issues. In the 1990s, conflicts, particularly of an internal nature, were increasingly seen as featuring economic and social causes as well as effects. For this reason, inter alia, relevant NGOs clamored for access to the Council, for which the Charter and the Council's long established working methods made no provision. The role of NGOs as major partners for the United Nations in humanitarian operations, the success of many NGO programs in the field, the mandate for the Secretariat's Department of Humanitarian Affairs to offer coordination services to NGOs as well as official agencies, the mediagenic nature of some NGO activity, and a rapidly spreading fad late in the decade in favor of interaction with "civil society" (a term never satisfactorily defined) all conspired to encourage the Council to display greater openness to NGO views and more generous recognition of NGO achievements.⁶² Within the Council, a number of governments, including Portugal, the Netherlands, Germany, and Canada, advocated greater access for NGOs (while the Secretary-General lavishly praised them). This was achieved in two ways: In a breakthrough of sorts, the Council met informally with a small group of NGOs in 1998 and since then has been meeting frequently if informally and on an ad hoc basis with NGO representatives under the so-called *Arria Formula*.⁶³ More meaning-

62. See Francis Kofi Abiew & Tom Keating, *NGO's and UN Peacekeeping Operations: Strange Bedfellows*, INT'L PEACEKEEPING, Summer 1999, at 89, 89-111 (1999).

63. The format for these meetings was devised in the early 1990s by Ambassador Diego Arria, Permanent Representative of Venezuela, to allow the

fully, although less visibly, Council members increasingly met with NGOs on their own and in groups not only to brief them on recent developments and upcoming debates in the informals, but also to seek their input for Council decision making.⁶⁴ While the sincerity of some Council members in engaging in these exchanges might be questioned, the achievement of genuine access and the growing recognition of NGOs as significant and mostly constructive contributors to international peace and security marked a new departure for the Council in its relations with the “outside” world.

VII. CUMULATIVE IMPACT OF COUNCIL DECISIONS ON NATIONAL SOVEREIGNTY

Arguably the most important, although perhaps the least noticed, consequence of Council decisions in the 1990s, taken as a whole, has been to erode and shift at the international level the understanding of national sovereignty. By 1999, it was widely although not universally accepted that tyrants could no longer seek refuge behind the walls of sovereignty to shield themselves from international concern and even action over massive human rights violations and humanitarian catastrophes. The Council repeatedly intervened to address humanitarian consequences of mostly civil wars (often authorizing coercive measures) and designed increasingly complex and intrusive mandates for international actors within member countries, sometimes without their consent. With these two developments, the Council did not override article 2(7) of the U.N. Charter⁶⁵ (which exempts Chapter VII decisions from the Charter’s nonintervention provisions); rather, it sharply redefined in practice the conception of what can constitute a

Council to hear from experts on a range of agenda items in informal, off-the-record, closed sessions.

64. These consultations, arranged by the Global Policy Forum and involving approximately thirty NGOs (in the fields of humanitarian relief, human rights, disarmament, faith, global governance, and development) are conducted through a working group founded in 1995. This group receives remarkably frank off-the-record briefings from the Security Council presidency and other individual delegations on Council deliberations. See Global Policy Forum, *NGO Working Group on the Security Council Information Statement* (Dec. 2000), at <http://www.globalpolicy.org/security/ngowkgrp/statements/current.htm>.

65. U.N. CHARTER art. 2, para. 7.

threat to international peace and security and a proper topic for international intervention. The degree of intrusiveness the Council was prepared to mandate throughout the 1990s was striking even though its own members were not always helpful in implementing decisions involving risks to their nationals, for example, in the arrest of those indicted by the International Criminal Tribunals for the former Yugoslavia and Rwanda.

VIII. THE PATH AHEAD

A. *The United States and the United Nations*

The major challenge facing the Council by 2002 was the parlous state of relations between the United States and the United Nations.⁶⁶ The Clinton administration's instinctive penchant for U.N.-bashing whenever in a tight spot from which blame might be delegated, first on view following the Mogadishu fiasco of October 4, 1993, was displayed repeatedly in subsequent years. This was most tellingly the case when leaks from Washington in early 1999 suggested that the United States had used the U.N. expert body charged with overseeing and monitoring Iraq's compliance with Security Council decisions on its weapons programs, UNSCOM, as a cover to spy on Iraq for its own, rather than U.N., purposes.⁶⁷ Seeming to decide that the best defense was a strong offense, the Clinton administration roundly attacked former U.N. arms inspectors through the U.S. media for purported appeasement of the Iraqi regime.⁶⁸ Legislative strictures introduced in the mid-1990s had required the administration to consult Congress prior to the launch or significant expansion of any U.N. peacekeeping operations, which, with both the House of Representatives and the Senate in the hands of the Republican

66. For a firsthand if self-pitying account of this, see BOUTROS BOUTROSGHALI, *UNVANQUISHED: A U.S.-U.N. SAGA* (1999). See also David M. Malone, *Goodbye UNSCOM: A Sorry Tale in US-UN Relations*, 30 *SECURITY DIALOGUE* 393, 393-411 (1999) (detailing the breakdown of relations between the U.N. Secretariat and the United States, which led to the demise of the U.N. Special Commission for Iraq (UNSCOM) in early 1999).

67. See Philip Shenon, *Ex-Inspector Cites Early Role of C.I.A. on U.N. Arms Team*, N.Y. TIMES, Feb. 23, 1999, at A1.

68. See Philip Shenon, *Former U.N. Arms Inspector Is Criticized by State Dept.*, N.Y. TIMES, Feb. 24, 1999, at A6.

majorities, produced a deadening effect on the administration's willingness to advocate or countenance large new U.N. peace missions. (The administration was less explicitly constrained on its leadership of, or participation in, multinational coalitions not under the U.N. flag.) Indeed, so nervous was the administration of an engagement with Congress on this front that it fretted endlessly in 1998 and 1999 over approval of tiny U.N. missions in the Central African Republic and in Sierra Leone involving little U.S. staff or money. In 2000, largely through the energetic efforts of then U.S. Permanent Representative Richard Holbrooke, most of the U.S. quarrels with the United Nations over funding were resolved, and many of its arrears were repaid in 2001.⁶⁹

Implementation of Security Council resolutions on Iraq remains the most contentious issue today between the United Nations and the United States. After criticizing Kofi Annan's attempt in February 1998 to negotiate a return by Iraq to compliance with U.N. resolutions, the United States failed to gain the support of most U.N. member states for its policy of punitive bombing (with the United Kingdom) of Iraq since December 1998. Its insistence on maintaining in place a sanctions regime to encourage Iraqi compliance with U.N. efforts to prevent further development of weapons of mass destruction has also suffered decreasing support at the United Nations. U.K. efforts to broker compromises between the U.S. position and that of countries no longer willing to support the sanctions regime (although, in some cases, still prepared to adopt other measures to contain Iraq) led to Pyrrhic modification of the sanctions regime in 1999 and again in 2002, but there was a

69. The repayment of a significant portion of U.S. arrears to the United Nations, by U.N. accounts amounting to roughly \$1.7 billion in late 1999, was conditionally authorized by Congress in November 1999, but the range and scope of congressional demands needing to be met before much of the repayment could be disbursed represented a major challenge for the United States administration in its relations with other member states. See Betsy Pisik, *U.S. Carries Too Big a Financial Burden*, WASH. POST, Oct. 3, 2000, at A13 (discussing the U.S. share of the U.N. budget); Barbara Crossette, *On U.N. Dues, No U.S. Cover from Europe*, N.Y. TIMES, Dec. 8, 2000, at A12 (discussing the reluctance of European nations to offset reduced payments from the United States).

sense at the United Nations and in U.S. political circles that the policy now lacked momentum and credibility.⁷⁰

Following the events of September 11, 2001, and in the wake of successful U.S. military action against the Taleban regime in Afghanistan, the attention of the Bush administration focused rapidly, as of early 2002, on Iraq. Even though (perhaps because) postconflict peacebuilding efforts in Afghanistan were disappointing and the U.S. role therein widely viewed as underwhelming, Washington moved on to regime change in Iraq as its primary foreign policy objective, arguing that the likely build-up in Iraq of weapons of mass destruction since the departure of U.N. inspectors from that country in late 1998 made preemption of its capacities central to the U.S. goal of ensuring "homeland" security. Other Security Council members, supportive of the goal of disarming Iraq, were opposed to regime change as a new U.N. objective. On September 12, 2002, President Bush delivered a strong speech to the U.N. General Assembly drawing attention to Iraq's repeated violations of existing U.N. Security Council resolutions.⁷¹ Back in Washington, he made clear that the United States would act alone if the United Nations was not able and willing to ensure that the Iraqis comply with all terms of Council decisions. At the time of this writing, the outcome of this test of wills was not yet clear. The Council appeared torn between resentment of U.S. bullying and fear that the United States might conclude, as President Bush threatened it could, that the United Nations had become irrelevant to the conduct of its foreign and defense policies. It prudently accommodated the United States to a very large degree, but a military confrontation still loomed as a distinct possibility between the United States (perhaps with some NATO and local allies) and Iraq.

B. *Africa*

Africa remained the other sore point on the Council's agenda. The failing U.N. peacekeeping operation in Angola

70. See S.C. Res. 1284, U.N. SCOR, 54th Sess., 4084th mtg., U.N. Doc. S/RES/1284 (1999) (establishing a new U.N. monitoring operation, UNMOVIC, to replace a discredited and paralyzed UNSCOM).

71. See *In Bush's Words: On Iraq, U.N. Must Face Up to Its Founding Purpose*, N.Y. TIMES, Sept. 13, 2002, at A10.

was withdrawn in February 1999.⁷² The U.N. Security Council did little to solve the acute problems of tiny Guinea-Bissau.⁷³ The conflict in Eastern Congo continued to draw in numerous neighboring countries, although, following negotiations in mid-2002, some of them initiated a withdrawal of their troops in September 2002. This conflict split SADC, the subregional organization of Southern Africa, placing Zimbabwe and South Africa, its two most powerful members, at loggerheads. The situation in Sierra Leone was improving by early 2002: A parallel deployment of U.K. troops stabilized the U.N. peacekeeping operation there, which had suffered a catastrophic start with five hundred of its members taken hostage by rebel forces. A largely pointless but deadly war between Ethiopia and Eritrea was brought to a tenuous close through OAU mediation, and the United Nations, as of 2000, deployed a significant and, to date, successful peacekeeping operation along the disputed border of the two countries. In spite of efforts by France, the United Kingdom, and the United States to equip and train a number of African armed forces to lead regional peacekeeping efforts, active U.N. involvement continued to be sought by the Africans. Response from the countries of the North was at best ambivalent. The U.N. peacekeeping operation in the Congo, for example, attracted no sizeable Western participation.

This pattern raises major ethical and operational questions.⁷⁴ The industrialized countries need to think hard about their attitudes towards Africa and offer more assistance in conflict prevention, peace implementation, and postwar reconstruction in years ahead. For their part, African leaders and societies need to provide stronger support to the African Union and subregional organizations and move from rhetoric

72. See S.C. Res. 1229, U.N. SCOR, 54th Sess., 3983d mtg., U.N. Doc. S/RES/1229 (1999).

73. Security Council Resolution 1233 of April 6, 1999, weakly emphasizes that "the primary responsibility for achieving lasting peace in Guinea-Bissau rests with the parties and *strongly calls upon* them to implement fully all the provisions of the Abuja Agreement and subsequent undertakings." See S.C. Res. 1233, U.N. SCOR, 54th Sess., 3991st mtg. ¶ 1, U.N. Doc. S/RES/1233 (1999) (emphasis in original).

74. See *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects*, U.N. GAOR, 55th Sess., Provisional Agenda Item 87, at 17-20, U.N. Docs. A/55/305-S/2000/809 (2000).

to action on improved governance, as Nigeria has been trying to do, and as the New Economic Program for African Development promises in the economic and social spheres.

C. *Reform of the Security Council*

Reform of the Security Council remained a live issue in 2002, but one exhibiting little energy. Pressure for reform had sprung from several sources.⁷⁵ The Council's activism in the early 1990s made it a more valuable place to sit. The hermetic nature of its working methods excited greater attention at a time when its decisions were proving genuinely important. In an era marked by P-5 cooperation and a P-5 tendency to impose decisions on the remainder of the Council, resentment of the permanent members grew, and the resentment focused largely on their possession of the veto, paradoxically since the veto was so little used during the 1990s. Indeed, only twelve vetoes have been cast since January 1990, compared to 193 previous ones in the years 1946–1989.

In 1993, consultations hosted by Singapore were launched by key member states on how to proceed with a reform agenda encompassing working methods, the veto, and composition of the Council, it being recognized that any modification in the latter could only lead to expansion of its membership. Under intense pressure from TCNs, the Council's working methods became more transparent and the Council itself somewhat more accessible to nonmember states (and NGOs), but its reliance on informal consultations rather than open meetings as the locus for decision making remained marked. Discussion of the veto revealed not only broad understanding of why it had been necessary during the Cold War, but also confirmation that it was now widely seen by most delegations as undesirable. It was clear, however, that the existing P-5 members would not willingly give up their vetoes and could not be compelled to do so under Charter provisions. For this reason, debate focused more on whether any new permanent members should be granted vetoes, rather than on veto suppression. The proposal that vetoes only stand when two or more perma-

75. For a review of the options that have been bandied regarding the reform of the Security Council, see REPORT OF THE THIRTY-FIRST UNITED NATIONS OF THE NEXT DECADE CONFERENCE, THE UNITED NATIONS AND THE TWENTY-FIRST CENTURY: THE IMPERATIVE FOR CHANGE 32-33 (1996).

ment members cast them seemed highly unlikely to be accepted by the United States and the other P-5 members. Voluntary agreement among permanent members to use the veto only in relation to decisions under Chapter VII of the Charter (which would, for example, eliminate vetoes on the selection of the U.N. Secretary-General) seemed only slightly less unrealistic.

Expansion of the Security Council proved by far the most difficult element of the package. Germany and Japan early on signaled their wish to be allocated permanent seats. They alternately demanded and waffled on their wish for a veto, emphasizing at times that the Council should not feature "second-class" permanent members. (This proved sufficiently unpopular among small member states as to encourage the fudging of this demand in hopes of securing greater support for their candidacy to a permanent seat.) Developing countries made clear that any expansion of the permanent membership of the Council would have to include the allocation of several new permanent seats to the developing world, notionally a new seat each for developing countries in Asia, Africa, and Latin America. However, there was little agreement among them on which countries should be granted these permanent seats. While Brazil seemed an obvious candidate for Latin America, the issue generated a squall in Brazilian bilateral relations with Argentina middecade. In Africa, none of Egypt (more Arab than African), South Africa (under new and very busy management), and Nigeria (oppressed by a highly reprehensible military regime for most of the 1990s) seemed an entirely satisfactory candidate. In Asia, India, the obvious contender, was violently opposed by Pakistan, while Indonesia quietly registered a claim of its own. Meanwhile, a range of "middle powers" strongly opposed any allocation of new permanent seats, instead proposing a variety of schemes including the rotation of several countries through new nonpermanent seats. At times, the only likely outcome seemed a limited expansion of the Council's nonpermanent seats, weighted to accommodate the developing countries so clearly underrepresented in existing seat distribution arrangements.⁷⁶

76. For an eclectic discussion of reform and issues facing the United Nations today, see generally *MULTILATERAL DIPLOMACY AND THE UNITED NATIONS TODAY* (James P. Muldoon et al. eds., 1999).

Nearly ten years after serious discussion of Council reform was initiated, no progress had been registered, except for limited gains in transparency in the Council's *modus operandi*. Nevertheless, the issue continues to arouse bitter resentments and promises to remain controversial well into the new millennium.

IX. CONCLUSION

The early 1990s showed the Council at its most optimistic and activist, leading to some notable successes, as in El Salvador and Mozambique. Wishful thinking on resources, increasing risk, poor planning, the dilution of responsibility inevitable in committee decision making, and the absence of a powerful and consistently engaged leader among its members all contributed to the Council's subsequent decline into recrimination, risk aversion, and flight from reality. Its pretense of busyness, underscored by myriad resolutions and presidential statements of barely passing interest, failed to disguise a sense of disorientation late in the decade. Nevertheless, often *faute de mieux*, particularly given the limited capacities of most regional organizations, the United Nations was again called upon in 1999 to deploy large peace operations in Kosovo, East Timor, and Sierra Leone. Two more large operations were deployed subsequently (to the Congo and in Ethiopia and Eritrea), as was an ambitious U.N. civilian mission in Afghanistan. After several years during which U.S. domestic political factors seriously constrained its capacity to act, the role of the Security Council, not only in conferring legitimacy on certain forms of international intervention, but also in providing a mechanism for burden-sharing of expenses and risk, in an era averse to both, is once again proving indispensable. It is worth recalling that, at the height of war fever in Washington in September 2002, the Bush administration, in need of international company, engaged with the Council in the hope of being able to elicit a degree of U.N. support for its objectives in Iraq.

Even in its darkest hours middecade, no alternative international institution was mooted to supplant the Council. Indeed, the degree of consensus that would be required to create a different multilateral structure to promote collective security is inconceivable in the absence of a global cataclysm. Thus, the Council is fated to muster on. Stronger, more sym-

pathetic U.S. leadership in the Council is urgently required. While all is not for the best in the best of all possible Councils, its permanent members are stuck with each other, and the rest of the member states with them. In years ahead, through decisions taken on a case-by-case basis, they will continue to chart the course of international relations on such sensitive and important issues as humanitarian intervention. Study of the Security Council has never been more interesting. Professor Franck's view of the United Nations as a flexible instrument for the prevention of war and the resolution of conflict has been very largely vindicated, however disappointing the Council's failures can be. Its successes, so rarely heralded in the media, deserve more attention, and receive it in Professor Franck's magisterial contributions to the field of international law.⁷⁷

77. See THOMAS M. FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS*, 1-19 (2002), for a cogent presentation of Professor Franck's assessment of evolving U.N. standing in and contributions to international law on issues of security.

