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When Can Nations Go to War - Politics and Change in the UN Security System

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WHEN *CAN* NATIONS GO TO WAR? POLITICS AND CHANGE IN THE UN SECURITY SYSTEM

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I. INTRODUCTION

In an appreciation of Harold Jacobson written for the *American Journal of International Law*, I concluded that following the events of September 11, 2001, we would need the kind of gentle wisdom Harold Jacobson brought to his tasks more than ever.[1] I also recalled Harold Jacobson's own observation in *Networks of Interdependence* that his assessment of the global political system was an optimistic, but not a naïve one.[2] These qualities of quiet determination to get to the bottom of an issue and of optimism stemmed from a fundamental belief that individuals, armed with information and the opportunity for debate, could make important decisions wisely. This was at the heart of his interest in politics and sustained his deep commitment to working carefully through information to provide the fullest possible understanding of a problem. The last major project Harold Jacobson worked on was one that he conceived and directed with me to understand how accountability could be maintained when decisions to use military forces are made by international institutions not directly accountable, as are national governments, to citizens in democratic societies.

Our conclusions have been published in *Democratic Accountability and the Use of Force in International Law*, a comparative study of nine

* Executive Vice President and Executive Director of The American Society of International Law since 1994, Dr. Ku received her PhD, M.A.L.D., and M.A. from The Fletcher School of Law and Diplomacy, Tufts University, and B.A. from American University. Dr. Ku is a Past Chair of the Academic Council on the United Nations System and a former member of the faculty of the University of Virginia.

1. Charlotte Ku, *Harold K. Jacobson (1929–2001): An Appreciation*, 95 AM. J. INT'L L. 849 (2001).

2. HAROLD K. JACOBSON, NETWORKS OF INTERDEPENDENCE: INTERNATIONAL ORGANIZATIONS AND THE GLOBAL POLITICAL SYSTEM (2nd ed. 1984).

countries.[3] We found that the post-World War II international security system as provided for in the United Nations Charter has adapted to a variety of new tasks, but that it remains incomplete. We discovered that the UN Charter system as a means *to restrain* the use of force has perhaps developed more fully than the Charter system's ability *to authorize* and *to enable* states to use force in situations other than a clear cross border invasion of a member state. At the same time, we recognized that the existence of an international institution like the United Nations has fundamentally changed the character of international politics in two ways. First, the fact that international institutions are based on assumptions of sovereign equality affects the relative power of states, thereby providing all states (whether small or large) both a voice and a part in the decision-making process. Second, after a half century, international institutions have emerged as new forms of political authority.

Issues of accountability are most pertinent when the decisions of such political authorities affect the lives and well-being of citizens. Through most of the UN's history, scholars have focused on the accountability of the decisions made by international institutions that obligate a member state to contribute resources and soldiers to operations that may not be clearly seen by its own citizens as in a country's national interest. However, since the end of the Cold War, we have been increasingly struggling with the question of what needs to be done when action may appear necessary, particularly to key UN member states, but may not be permitted under the Charter because of the inability to secure the authorization of a UN Security Council resolution and/or because there is no clear case for the exercise of self-defense. The international system struggled with these issues in attempting to respond to the humanitarian emergencies in Rwanda and Kosovo in the 1990s and continues to grapple with them, as demonstrated by the UN Security Council disarray over actions taken by the United States and the United Kingdom that led to war with Iraq in 2003.

On February 14, 2003, U.S. Secretary of State Colin Powell told the UN Security Council: "Force should always be a last resort . . . but it must be a resort."[4] In March 2003, the members of the UN Security Council remained unconvinced that the time to use force to disarm Iraq had arrived, and refused to give the U.S.-led coalition authorization to do so. Those who opposed the U.S. view that the time had come to disarm Iraq through the use of military force argued that UN inspections were

3. DEMOCRATIC ACCOUNTABILITY AND THE USE OF FORCE IN INTERNATIONAL LAW (Charlotte Ku & Harold K. Jacobson eds., 2003) [hereinafter DEMOCRATIC ACCOUNTABILITY].

4. Colin L. Powell, Remarks to the United Nations Security Council, (Feb. 14, 2003) (available at http://www.state.gov.secretary/rm/2003/17763.htm).

working to reveal Iraq's weapons and to destroy them as appropriate. The U.S., however, argued for more decisive action in the face of a changed security environment. In June 2002, President George W. Bush described this new environment to the 200th graduating class of the U.S. Military Academy at West Point: "The gravest danger to freedom lies at the crossroads of radicalism and technology. When the spread of chemical and biological and nuclear weapons, along with ballistic missile technology—when that occurs, even weak states and small groups could attain a catastrophic power to strike great nations."[5]

On March 9, 2003, U.S. National Security Adviser Condoleezza Rice, noted that over the last decade, the UN Security Council had failed to act in such situations as Rwanda (1992) and Kosovo (1999) where numerous lives were lost.[6] In Kosovo, of course, the U.S. eventually acted with its allies in the North Atlantic Treaty Organization (NATO) to end the displacement and slaughter of the Albanian population by the government of Serbia. This operation profoundly shook NATO and the countries that took part in the Kosovo operation and set the stage for the debate that took place over action in Iraq.

Which side of the argument is right? Is it the side that argues the responsibility of power to act, if necessary unilaterally, to protect those who are being victimized? Or is it the side that argues that, however compelling the case, states today cannot act on the basis of their own conclusions and judgment without direct provocation or international authorization? And if the United States acts without Security Council authorization, does that spell the end of the nearly sixty-year-old UN security system? Are we reverting to the unregulated use of force as an instrument of state policy in existence prior to the advent of the League of Nations and the United Nations? We do not yet know, but each step taken outside of the UN framework, particularly by the most powerful member of the United Nations, raises a question about the ongoing relevance of that framework. *How* the question is answered, though, may be more significant in determining the UN's future than *what* the answer is.

A. *The Evolving International Security Framework*

More than eighty years ago, when Woodrow Wilson asked Congress for a declaration of war against Germany on April 2, 1917, he said: "A steadfast concert of peace can never be maintained except by a partnership of democratic nations. No autocratic government could be

5. George W. Bush, Commencement Address at the U.S. Military Academy at West Point (June 1, 2002), *quoted in* THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 13 (2002).

6. *This Week* (ABC News television broadcast, Mar. 9, 2003).

trusted to keep faith within it or observe its covenants. It must be a league of honor, a partnership of opinion."[7] He then intoned that: "The world must be made safe for democracy."[8] As one of the war aims, Wilson provided a specific proposal for the shape of this concert of peace in his Fourteen Points Speech in January 1918. Point XIV provided that: "A general association of nations must be formed under specific covenants for the purposes of affording mutual guarantees of political independence and territorial integrity to great and small states alike."[9]

Though nearly a century has passed since those words were spoken, the U.S. appears to be facing the same set of tensions between creating a secure and stable international system and agreeing on the appropriate international mechanism for doing so. In Wilson's day, the objection to the League of Nations was tied to Article 10 of the League of Nations Covenant that called on League members "to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."[10] The objection was that this obligation would tie the U.S. to commitments that would not be in its national interest, and that appropriate national authorities like Congress would not be consulted prior to acting as a result of a decision from such an international institution.[11]

What is often overlooked is that the concern about acting in a country's national interest is not a problem for the U.S. alone, but is one shared by all members of the UN, particularly when the international decision requires a country to take part in operations that entail deadly force. The deadlier the potential use of force, the more domestic debate and decision-making is required.[12] In this respect, it is important to recall that the UN security system addresses both form and substance. Indeed, the UN Charter does not prohibit the use of force, but it does seek to regulate its use and makes clear that the primary organ for this regulation is the United Nations Security Council. But the question of acting without Security Council authorization has existed since the founding of the United Nations, as has the question of declining to act, despite UN Security Council authorization. Alternatives to Security Council authorization

7. Woodrow Wilson, War Message (April 2, 1917), *at* http://www.usembassy.de/speeches/rhetoric/wwwar.htm.

8. *Id.*

9. Woodrow Wilson, Fourteen Points Speech (January 8, 1918), *at* http://isinfo.state.gov/usa/infousa/democrac/51.htm.

10. LEAGUE OF NATIONS COVENANT art. 10.

11. *See* 59 CONG. REC. 5, 4599 (1920) (U.S. Senate reservations to the Covenant of the League of Nations); Leo Gross, *The Charter of the United Nations and the Lodge Reservations*, 41 AM. J. INT'L L. 531, 531–54 (1947).

12. *See generally* DEMOCRATIC ACCOUNTABILITY, *supra* note 3 (describing the practices of nine countries).

have been sought almost from the beginning of the United Nations. Initially stymied by the Cold War and the threat of vetoes by the Soviet Union, the United States, supported by its close ally, the United Kingdom, promoted the Uniting for Peace Resolution in 1950, enabling the UN General Assembly to act if the Security Council was unable to respond to a threat to the peace.[13] British support for use of the Uniting for Peace resolution waned after the resolution was used against the U.K. following the British-French takeover of the Suez Canal in 1956.

At a time when the U.S. commanded easy majorities in the General Assembly, the Uniting for Peace resolution seemed a reasonable alternative to gain international authorization if the Security Council failed to act. However, as the U.S. lost its ability to command an automatic majority in the General Assembly starting in 1964, this was no longer seen as a viable alternative.[14] It may also be worth noting that the Uniting for Peace Resolution continued to recognize the Security Council's central role in the UN security system, stating that only

> [If] the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.[15]

Through the decades of its existence, the UN Security Council has become the preferred international authority for the use of force. Even when the Security Council did not initially authorize a military operation, states clearly think it important to seek such authorization *post hoc*, as occurred with the operations that took place under the leadership of the Economic Community of West African States (ECOWAS) in Liberia (1992) and of NATO in Kosovo (1999). In this respect, there seems little question that Harold Jacobson's view that international institutions have

13. *See* Eric Stein & Richard C. Morrissey, *Uniting for Peace Resolution*, *in* 4 ENCYCLOPEDIA OF PUBLIC INT'L L. 1232, 1233–34 (2000).

14. Harold K. Jacobson & Andrea M. Lopez, *Changes in the UN General Assembly*, (1999) (unpublished paper) (on file with the Michigan Journal of International Law).

15. G.A. Res. 377, U.N. GAOR, 5th Sess., Supp. No. 20, at 10, U.N. Doc. A/1775 (1950).

taken on a political authority and an importance of their own separate from that of their member states is accurate.[16]

In its design, the United Nations Charter went farther than the League of Nations Covenant in establishing a system of collective security. The Charter was designed to correct perceived weaknesses of the League system and did so in two ways. First, it concentrated in the Security Council decision-making on action to counter threats to the peace under Article 39 of the Charter. Second, it provided for means to carry out the Council's decisions under Article 43. Article 43 called on UN members 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."[17] However, almost from the outset, the Charter's vision of how military force would be used by the UN was substantially modified. Article 43 agreements were never completed, and the Security Council has never had military forces at its call. The result has been that member states decide on a case-by-case basis whether to contribute their military forces to particular operations, what forces to contribute, under what conditions, and for what purpose.[18]

Despite these shortcomings in the UN security system, military forces have been used 79 times for a broad range of purposes under UN authorization from 1946 to 2002. Military forces were used once under a NATO mandate in the former Yugoslavia.[19] In addition to thwarting cross border aggression in Korea and Kuwait, the case for which the doctrine of collective security and the UN security system were designed, these UN operations were based on several purposes that were not envisaged when the League Covenant and UN Charter were signed. Among these were maintaining cease-fire agreements, preventing genocide and serious violations of human rights, and restoring a democratically elected government. A further unanticipated development was that, of the 27 operations authorized by the Security Council under Chapter VII, 21 or 78% were intra-state conflicts.[20]

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16. *See* Harold K. Jacobson, *International Institutions and System Transformation*, 3 ANN. REV. POL. SC. 149, 163 (2000), *available at* http://polisci.annualreviews.org/cgi/reprint/3/1/149.pdf (last visited Sept. 22, 2003).

17. U.N. CHARTER art. 43.

18. Jules Lobel & Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-fires and the Iraqi Inspection Regime*, 93 AM. J. INT'L L. 124 (1999).

19. *See* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, app. A, at 384–95.

20. *See* Jochen Abr. Frowein, *United Nations*, *in* 4 ENCYCLOPEDIA OF PUBLIC INT'L L., at 1039, (2000).

In 55 of the 79 cases (70%), military forces were under UN command.[21] The force commander was appointed by and reported to the Secretary-General. In one case, Operation Allied Force, NATO used its own command structure.[22] In the other 23 cases, the UN authorized individual states or coalitions of states to use military forces to achieve goals specified in resolutions adopted by the Security Council.[23] In these cases, the state or states conducting the operation used their own command structures. The authorizing resolutions requested that they keep the Security Council informed. Where such a delegation or sub-contracting takes place, states have interpreted the broad authorization language of Security Council resolutions to permit a wide range of conduct.[24] A prominent example of where such delegations have been used, particularly where deadly force has been required, is in the enforcement of the no-fly zones in northern and southern Iraq following the first Gulf War through UN Security Council resolution 688. Such delegations are among the most controversial UN actions and are subject to little oversight by the Security Council.[25]

Of the 79 cases, military forces were used 20 times under the auspices of the UN from 1946–1989, and 59 times from 1 January 1990 through 2002.[26] The end of the Cold War brought a dramatic increase in UN involvement in conflicts because of a renewed interest in using international institutions by powerful member states that were previously reluctant or unable to do so. Appendix A lists the cases in which military forces were used under UN and NATO auspices. It gives the name and acronym for the operation, the operation's location, the resolution providing the initial authorization, whether or not the resolution referred to Chapter VII as a basis for its authority, and the command arrangements.

Table 1 below places the 79 cases into five broad categories. These categories are based on: the mandate of the operation, the rules of engagement given to the military forces, whether or not they enter the

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21. *See* U.N. DEP'T OF PUB. INFO., U.N. PEACEKEEPING: 50 YEARS 1948–1998 (1998) [hereinafter UNITED NATIONS].

22. *See* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, app. A, at 384–95.

23. *See* DANESH SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: THE DELEGATION BY THE UN SECURITY COUNCIL OF ITS CHAPTER VII POWERS (1999).

24. For a brief legal analysis of this position, see Frederic L. Kirgis, *The Legal Background on the Use of Force to Induce Iraq to Comply with Security Council Resolutions*, ASIL INSIGHTS (Nov. 1997), *at* http://www.asil.org/insights/insigh12.htm (last visited Sept. 16, 2003).

25. *See* SAROOSHI, *supra* note 23.

26. Updated information as provided in Table A.1 in DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 384–95.

territory of the state where they operate with the consent of that state, and the number and types of military personnel involved.[27]

Monitoring and observation involves the positioning of troops, military observers, and related personnel on one or both sides of a line between entities that are or have been engaged in, or where there is a threat of, armed conflict, with the primary objective of preventing (renewed) hostilities. The observers are stationed with the consent of the host country and are impartial. They carry no arms.

Traditional Peacekeeping involves unarmed or lightly armed military contingents in the monitoring, supervision, and verification of cease-fire, withdrawal, buffer zone, and related agreements, with the consent of the parties. It requires consent of the host country and impartiality; the use of military force, other than in personal or small unit self-defense, is incompatible with the concept.

Peacekeeping plus State-building supplements traditional peacekeeping with activities such as election monitoring or organization, human rights protection, and civil administration functions or assistance during transition to independence or democracy.

Force to Ensure Compliance with International Mandates involves the use of force to ensure the safety of peacekeepers, enable them to carry out a mandate that is being frustrated, and protect international legal principles. Military forces engaged in such operations usually also perform state-building tasks.

Enforcement involves the use of military forces to maintain or restore peace in a conflict or major security crisis. The classic enforcement operation responds to an attack on the territorial integrity of a state. By definition, enforcement does not require the consent of the state deemed to be a threat to the peace.

Table 1 shows that the general character of military operations carried out under international auspices changed substantially after the Cold War. More operations prior to the end of the Cold War were consent-based and involved less war-like operations, such as monitoring and observation functions and consent-based peacekeeping. This changed with the end of the Cold War. More operations received mandates to un-

27. This categorization draws heavily on the concepts developed in GARETH EVANS, COOPERATING FOR PEACE: THE GLOBAL AGENDA FOR THE 1990S AND BEYOND (1993). It is related to but different from the categorization developed by Boutros Boutros-Ghali. *See* BOUTROS BOUTROS-GHALI, AN AGENDA FOR PEACE (1992). More broadly, it draws on the wide literature concerning peacekeeping, including: PAUL F. DIEHL, INTERNATIONAL PEACEKEEPING (1993); UN PEACEKEEPING, AMERICAN POLICY, AND THE UNCIVIL WARS OF THE 1990S (William J. Durch ed., 1996); A CRISIS IN EXPECTATIONS: UN PEACEKEEPING IN THE 1990S (Ramesh Thakur & Carlyle A. Thayer eds., 1995); and, JAMES S. SUTTERLIN, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL SECURITY: A CHALLENGE TO BE MET (1995).

dertake intrusive and non-consent-based activities, to force compliance with existing mandates, to provide conditions for state-building, and to repel aggression. The more complicated an operation is, the higher the cost and risk to those undertaking it. The higher the risk, the more contributing states will need to justify the risk to their soldiers as fulfilling a national interest. There will be greater demands for public accountability.

TABLE 1
USES OF MILITARY FORCES UNDER THE AUSPICES OF THE UN AND NATO[28]

Forms of Use of Military Forces	**Period**	
	1946–1989	*1990–2002*
Monitoring and Observation	9 (45%)	9 (15.2%)
Traditional Peacekeeping	5 (25%)	2 (3.4%)
Peacekeeping plus State-Building	3 (15%)	25 (41%)
Force to Ensure Compliance	2 (10%)	22 (39%)
Enforcement	1 (5%)	1 (1.6%)
Total	20 (100%)	59 (100%)

As Table 1 shows, military forces were used under UN and NATO auspices much more frequently in the decade starting in 1990 than in the preceding four decades. Prior to 1990, the use of force was either unilateral or within the regional frameworks of the Organization of American States or the Warsaw Pact. From 1946–89, with the exception of the Middle East, where its role emerged out of that of the League of Nations in the Palestine mandate, the UN was only called on to undertake actions in places where neither the USSR nor the U.S. could hope to do more than contain each other's influence. UN-commanded operations were deployed 17 times from 1945–89, and 38 times from 1990–2002. The remaining 24 operations took place under national or regional organizations' command.

28. *See* DEMOCRATIC ACCOUNTABILITY, *supra* note 3.

Table 1 also shows clearly that the nature of UN missions using military forces was quite different in the two periods. Monitoring and observation missions constituted 45% of deployments in the first period, and only 15.2% in the second. In sharp contrast to the Cold War period, when missions in the first four categories were deployed only with the consent of the host state, many operations in the 1990s occurred without the consent of the host state, were more intrusive in its affairs, and were involved in intrastate conflicts. What these numbers demonstrate is that when great powers have consensus about operations, as seemed the case immediately following the Cold War, the UN can act more forcefully. But when such consensus is not present, as was the case in the period 1946–1989, the UN may be avoided in situations where maximum force is used.

Time will tell us whether the failure in 2003 to reach a consensus on action in Iraq among the permanent members of the Security Council marks the start of another phase in the operation of the UN security system. This new phase may signal a return to the UN's early history during the Cold War, when states pursued their interests outside of the UN system if there was a chance that such action would be blocked through it. In this context, it may be useful to recall that, where members of the Security Council could reach consensus, as was the case with the Palestine question, the Cold War was not an impediment to action and the UN even provided the umbrella under which opposing sides—the U.S. and the Soviet Union—took part.[29]

In 2000, the Panel on United Nations Peace Operations appointed by the UN Secretary-General concluded "the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing States, with the authorization of the Security Council acting under Chapter VII of the Charter."[30]

This in fact is how the UN was envisaged to work. "Instead of being a substitute for great powers, [the United Nations] was designed to depend on them."[31] This structure was thought to provide the means for the UN to carry out its decisions. But the structure also created a reliance on strong military powers to act and an expectation that these powers would act within the confines of the UN community's interpretation of the

29. An example is the US and USSR troop contributions to the UN Truce Supervision Organization based on a 1973 joint approach by the two countries to the UN Secretary-General. *See* Bakhityar Tuzmukhamedow, *Russian Federation: the Pendulum of Powers and Accountability*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 257–58.

30. *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects*, U.N. GAOR, 55th Sess., Agenda Item 87, at 10, U.N. Doc. A/55/305, SC/2000/809 (2000) [hereinafter *Comprehensive Review*].

31. Anne-Marie Slaughter, *The Will That Makes It Work*, WASH. POST, March 2, 2003, at B3.

scope of an authorization. The effort to institute international control or oversight over use of national military assets has been one of the less developed parts of the UN security system. At the same time, relying on one or two large military powers has caused much of the UN membership concern. The views of an Indian UN scholar are perhaps typical:

> [T]here has been a perceptible undercurrent of unease since the end of the Cold War that the will of the UNSC has been bent too easily and too often to the wishes of the sole superpower. . . . Developing countries fear that in some sections of the west today, the view has gained ground that anyone *but* the legitimate authorities can use force. If this is then used as an alibi to launch UN-authorized humanitarian interventions against the wishes of the legitimate governments of member states, the international organization would quickly be viewed more as a threat to the security of many countries than as a source of protection against major-power predators.[32]

B. *The UN as a Forum for Change*

In the conclusion of *Democratic Accountability and the Use of Force in International Law*, Harold Jacobson and I wrote that:

> [T]he international community has become considerably more sophisticated about using military forces under international institutions than it was when Woodrow Wilson and others first sought to give effect to the doctrine of collective security in the early years of the twentieth century. Practice has demonstrated that there is a range of ways in which military forces can be used under international institutions, from monitoring and observation through enforcement. The doctrine of collective self-defense was developed as a supplement to collective security.
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> In the closing years of the twentieth century, states began to struggle with the question of using military forces to ensure the physical safety of populations within states and the protection of their human rights. In several cases states decided that military forces could be deployed to pacify intra-state as well as inter-state conflicts, thus crossing the barrier of territorial sovereignty.

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32. Ramesh Thakur & Dipankar Banerjee, *India: Democratic, Poor, Internationalist*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 176, 204.

> But this issue is far from settled, and it involves much more than defining the national interests of democracies.[33]

But what if international authorization is not available because of the inability of states to authorize collective action and their unwillingness to contribute troops to an operation? This was the issue raised in the aftermath of the Rwanda massacre in 1992 leading UN Secretary-General Kofi Annan to ask "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity?"[34]

One answer has come from the International Commission on State Sovereignty and Intervention. The Commission concluded that states have a responsibility to protect populations that are being subjected to mass violations of human rights and genocide. The critical threshold for action is that such mass violation must be occurring *before* states can act, and even then states can intervene only if there is a reasonable chance that military action can provide relief and protection to the victim population.[35] The Commission's report states directly that:

> The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, *concerned states may not rule out other means* to meet the gravity and urgency of that situation—and that the stature and credibility of the United Nations may suffer thereby.[36]

To the extent that the United Nations depends on its most powerful members to carry out its decisions and to maintain its effectiveness, a tension exists between decision-making and capacity to act. For decision-making, the UN Security Council requires a nine-member (of fifteen) majority vote consisting of more than just the veto-holding five permanent members. One of the five can block a decision by casting a veto, but no decision can be made without nine members supporting such a decision, the permanent five supporting the majority or abstaining. So although the UN system might not effectively stop the use of force in all cases, it serves as a forum where powers are expected to publicly defend their decisions to use force and as such, to restrain uses of

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33. Charlotte Ku & Harold K. Jacobson, *Toward a Mixed System of Democratic Accountability*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 349, 379.

34. INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY [CANADA], THE RESPONSIBILITY TO PROTECT vii (2001).

35. *Id.* at xii (emphasis added).

36. *Id.* at xiii.

force. But, as we have also seen, the UN may not be able to restrain powerful states from using force even if an international consensus authorizing it cannot be achieved. This will particularly be the case if a state's security appears to be under threat. If the 1990s are remembered for an effort to provide a basis for international action when groups are subjected to mass killing and other brutality by their governments, it is perhaps not a surprise that states now seek to address what are seen as new threats to their own security. If the current structure of international institutions does not effectively address these questions, does this necessarily mean the return to a self-judging and unregulated international security system?

Implicit in that question is the assumption that without international authorization, state behavior is essentially unregulated. Such a conclusion would overlook the considerable number of national constraints and safeguards that exist at the state level to protect against the wanton loss of lives and resources through military operations that do not serve a state's interests. National safeguards are not a substitute for international regulation, but when international regulation fails or proves inadequate, regulation can and does move to the national level. National safeguards further come in two forms—the formal and the informal. Formal safeguards are found in constitutions and national institutions such as legislatures, courts, and budgets.[37] Informal safeguards operate through political culture and public opinion.[38] The effectiveness of these safeguards varies widely depending on the strength of the domestic political system, including whether it is democratic and therefore open to public debate or not.

It may also be useful to recall that even when the international system regulating the use of force is functioning and military forces are used under international auspices, national safeguards and controls over these forces continue to operate. We have already seen that the closer the UN approaches war, the more it must rely on member states to carry out the operations. These military forces remain under national commands and are principally accountable to national authorities. Indeed, until 1999 and the issuance of the UN Secretary-General's Bulletin on "Observance by United Nations Forces of International Humanitarian Law,"[39]

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37. For examples of constitutional restraints, see Lori Fisler Damrosch, *The Interface of National Constitutional Systems with International Law and Institutions on Using Military Forces*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 39.

38. For examples of such political factors, see Karen A. Mingst, *Domestic Political Factors and Decisions to Use Military Forces*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 61.

39. *Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law*, U.N. Secretariat, U.N. Doc. ST/SGB/1999/13 (1999).

the UN did not regard those serving in UN peace support operations as bound by international humanitarian law because it maintained that "the UN is unsuited for carrying out most of the obligations in the [Geneva] [C]onventions, because it lacks the administrative organs with which states are endowed."[40] Soldiers serving in UN operations were assumed to be bound to international humanitarian law through their national systems.

National political and legal processes may also take on more prominent roles in cases when international law appears inadequate to address particular circumstances. When existing international standards and structures are under stress, national debate and political process may have to fill the gap and set the criteria for action, as well as the limits for such operations.[41] We saw an example of this in the debates over humanitarian intervention. The relationship of domestic political debate and the implementation of international obligations is perhaps more frequently regarded as a barrier to the development of an international security system rather than as a force for change.[42] However, as the constituent elements of international institutions in the area of international security, states remain the key force both for carrying out the decisions of the institutions and for initiating change:

> The more sophisticated and complicated forms of using military forces under international auspices require the parallel development of domestic acceptance and practice. This process in turn contributes to shaping both the practice and scope of international action.
>
> This process is not new. Such domestic debates have occurred throughout the development of an international framework for using force. The failure of the League of Nations to be a successful guardian of the peace compelled political leaders in the United States, the United Kingdom, France, and other states to

40. Robert C.R. Siekmann, *The Legal Responsibility of Military Personnel*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 104, 109.

41. *See* Adam Roberts, *NATO's 'Humanitarian War' over Kosovo*, SURVIVAL, Autumn 1999, at 102, 107.

42. See, for example, the views of Senator Jesse Helms as expressed in Senator Jesse Helms, Address Before the United Nations Security Council (Jan. 29, 2000) *available at* http://www.newsmax.com/articles/print.shtml?a=2000/1/28/211810 (last visited Sept. 16, 2003) ("If the United Nations is to survive into the 21st century, it must recognize its limitations. The demands of the United States have not changed much since Henry Cabot Lodge laid out his conditions for joining the League of Nations 80 years ago: Americans want to ensure that the United States of America remains the sole judge of its own internal affairs, that the United Nations is not allowed to restrict the individual rights of U.S. citizens, and that the United States retains sole authority over the deployment of United States forces around the world.").

> seek actively through political consensus the acceptance of the UN Charter's collective security obligations, and later of the North Atlantic Treaty. Debates about fulfilling Article 43 obligations, and then the Korean and Gulf Wars, tested and reshaped this consensus. The deployment of military forces for monitoring and observation and traditional peacekeeping tasks was broadly accepted during the Cold War. As the UN and NATO have since undertaken more complex, more risky, and more costly interventionist operations that do not always have the consent of the receiving state, the consensus has been tested and reshaped again.[43]

Robert Cox and Harold Jacobson concluded in their study of decision-making, *The Anatomy of Influence*, that the significance of international organizations is better judged "according to how far they involve the effective policy-making processes of governments rather than how independent of states they have become."[44] It is in this relationship that we might find some ongoing or residual influence of international institutions even when the mechanisms of international decision-making are blocked. Cox and Jacobson described this as follows:

> International organizations facilitate orderly management of intergovernmental relations without significantly changing the structure of power that governs these relations, at least in the short term and somewhat beyond. Over their longer history, the greatest potential for change from international organizations may lie in the opportunity they give the less powerful to influence the climate of opinion and the accepted values according to which action is determined.[45]

We find examples of such recognition of international institutional views in the legislative and policy debates of some of the world's most important military powers. One example is in the British Parliament's consideration of the legality of the North Atlantic Treaty Organization's intervention in Kosovo in 1999. The House of Commons Foreign Affairs Committee took oral and written statements from a wide range of individuals including government officials, diplomats, academics, and lawyers and concluded that the NATO intervention was "contrary to the specific terms of . . . the UN Charter," but that this might have been

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43. Ku & Jacobson, *supra* note 33, at 380.

44. ROBERT W. COX & HAROLD K. JACOBSON, THE ANATOMY OF INFLUENCE: DECISION MAKING IN INTERNATIONAL ORGANIZATION 428 (1973).

45. *Id.*

avoided if the Allies had attempted to use the Uniting for Peace procedures of the General Assembly."[46]

Another example of the enduring influence of international institutions is the move towards multilateralism as the basis for foreign policy. This view has been most publicly advanced by the principal powers of the European Union, France and Germany. The French view has been described as stemming from:

> its opposition to any kind of domination or hegemony of the world scene by a single state; France has a preference for multipolarity, of which the Security Council is an institutional component and safeguard. The UNSC remains the only international institution able to legitimize the use of force. In the Kosovo crisis . . .France was keen to find a legal basis for action by NATO in the previous resolutions of the Security Council, even if this justification was difficult to sustain. When urgency prevents such authorization beforehand, France still insists on having the Security Council ratify *a posteriori* an intervention. The continuous efforts made by France to get the UNSC involved in the Kosovo crisis, after the military intervention started in the spring of 1999, derived directly from this opposition to *ad hoc* multipolarity.[47]

And even in the United States, poll after poll showed that Americans prefer that their government work under a UN mandate whenever possible.[48] The United Nations is at the apex of the international political and legal structure for security. There is no other organization that has universal membership and a mandate to deal with issues of war and peace. Nearly all states clearly prefer to have the Security Council's authorization when they use military forces. It bestows a legitimacy that cannot be gained in any other way. This legitimacy can be crucial on the international plane, but is also important legally and politically to decision-making within states.

In practice, when military forces have been used under the auspices of international institutions—as they were in about half of the interstate conflicts and a third of the intrastate conflicts that occurred between

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46. UNITED KINGDOM HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, FOURTH REPORT: KOSOVO, HC 28-I, (2000), *reprinted in* 49 INT'L & COMP. L.Q. 877, *available at* http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmfaff/28/2802.htm (last visited Sept. 16, 2003).

47. Yves Boyer et al., *France: Security Council Legitimacy and Executive Primacy, in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 280, 287.

48. CHICAGO COUNCIL ON FOREIGN RELATIONS, AMERICAN PUBLIC OPINION AND FOREIGN POLICY 30 (2002), *available at* http://worldviews.org/detailreports/usreport.pdf (last visited Sept. 16, 2003).

1945 and 2002—the Security Council has largely performed its intended role of authorizing their use. The UNSC authorized 76 of the 79 uses of force considered in this study, or 96% of them.[49] In three of the 79 operations, two recommendations of the UN General Assembly and one North Atlantic Council decision provided the basis for the use of military forces.[50] Whether or not they or any institution other than the Security Council can legitimately provide such authorization, however, remains contested by several states, notably France and China.

Generally, UN Security Council decisions authorizing monitoring and observation missions have not been controversial. The practice became well established in the early years of the UN, and the League of Nations had undertaken similar tasks. Since such missions have the consent of host states, they remain within the standards of non-interference provided for in the Charter under Article 2(7). The UN Security Council authorized all of the 19 monitoring and observation missions between 1945 and 2002, and they were conducted under UN command.[51]

The UNSC authorized 56 of the 59 uses of military forces in the other four categories. The General Assembly, acting under the Uniting for Peace resolution, recommended UNEF I (1956), a traditional peacekeeping operation, and the United Nations Security Force (UNSF, 1962) in West New Guinea (West Irian), a peacekeeping plus state-building operation. NATO's North Atlantic Council (NAC) authorized Operation Allied Force (1999) against Yugoslavia, a force to ensure compliance operation. Although the Security Council authorized the initial deployment of UN forces to Korea in 1950, subsequent decisions about the operation were taken by the General Assembly under the Uniting for Peace Resolution.[52] This was also true in the case of the 1960 UN Operation in the Congo (ONUC).[53]

The legal grounds for the UN Security Council's authorizing military action have included Chapter VI of the UN Charter (pacific settlement of disputes), Chapter VII (threats to the peace), and the necessity of preventing genocide and violations of humanitarian law. Of the 76

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49. *See* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, app. A, at 384–95.

50. *See* G.A. Res. 1000, U.N. GAOR, 1st Emergency Sess., Supp. No. 1, at 2, U.N. Doc. A/3354 (1956) (setting up the first United Nations Emergency Force); G.A. Res. 1752, U.N. GAOR, 17th Sess., Supp No. 17, at 70, U.N. Doc. A/5217 (1962); Press Release, North Atlantic Treaty Organization, Statement by the North Atlantic Council on Kosovo (Jan 30, 1999), *available at* http://www.nato.int/docu/pr/1999/p99-012e.htm (last visited Sept. 16, 2003).

51. *See* UNITED NATIONS, *supra* note 21.

52. *See* Albrecht Randelzhofer, *Use of Force*, *in* 4 ENCYCLOPEDIA OF INT'L L., at 1246, 1252 (2000).

53. *See* UNITED NATIONS, THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING 175–99 (3d ed., 1996).

UNSC resolutions authorizing the use of force, only 31 included a reference to Chapter VII. All but one of those resolutions were voted for after 1990. The one exception is UNSC Resolution 50 that created the UN Truce Supervision Organization (UNTSO) in 1948. Forty-two years later, in 1990, the Security Council acted to authorize the use of force for the second time under Chapter VII to remove Iraqi armed forces from Kuwait. This action marked a dramatic increase in the use of Chapter VII authorization for uses of force throughout the 1990s.[54]

The 30 references to Chapter VII since 1990 constituted 50% of the 59 resolutions authorizing the use of force adopted by the Security Council from 1990–2002. They included one monitoring and observation mission, one traditional peacekeeping operation, seven peacekeeping plus operations, 19 compliance actions, and the Gulf War enforcement action. The Council only authorized two compliance actions without mentioning Chapter VII, Resolution 688 (1990), concerning safe havens for Iraqi civilians, and Resolution 743 (1992), creating UNPROFOR in the former Yugoslavia.[55]

TABLE 2
MENTION OF CHAPTER VII IN UN SECURITY COUNCIL AUTHORIZATIONS 1990–2002

Forms of Use of Military Forces	Total Number of Authorizations (1990–2002)	Number of Security Council Resolutions in which Chapter VII was Mentioned	Percentage of Authorizations that Mentioned Chapter VII (by form of use of force)
Monitoring and Observation	9	1	11%
Traditional Peacekeeping	2	1	50%
Peacekeeping plus State Building	25	7	28%
Force to Ensure Compliance	22	19	86%
Enforcement	1	1	100%
Total	59	30	—

54. *See* Frowein, *supra* note 20, at 1038–39; Charlotte Ku & Harold Jacobson, *Broaching the Issues*, *in* DEMOCRATIC ACCOUNTABILITY, *supra* note 3, at 3, 19–25.

55. *See* S.C. Res. 688, U.N. SCOR, 46th Sess., 2982d mtg., U.N. Doc. S/RES/688v (1991); S.C. Res. 743, U.N. SCOR, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992).

When Article 39 of the UN Charter and Article 5 of the North Atlantic Treaty were drafted in the 1940s, threats to peace were generally conceived as cross border military attacks. The 1950 North Korean attack on South Korea and the 1990 Iraqi attack on Kuwait involved clear violations of Article 2(4) of the Charter. The legal bases of the other 77 uses of force were less clear and occasionally contested. Until March 2003, the deployment on humanitarian grounds of troops to intrastate conflicts without any authorization by the Security Council raised the most difficult questions, as NATO's 1999 Kosovo intervention, Operation Allied Force, demonstrated. In March 2003, the question became one of what happens when a powerful state does not feel it can wait for a threat to materialize before acting.

The Security Council has authorized the use of military forces 30 times based on Chapter VII, but only six of those cases involved a clear interstate conflict.[56] Although Article 2(7) of the Charter states that the principle of non-intervention in "matters essentially within the domestic jurisdiction" of a state "shall not prejudice the application of enforcement measures under Chapter VII,"[57] humanitarian interventions challenge a key assumption of international law—that states are sovereign within their own territory. If we look at the 30 instances where a Chapter VII mandate was available, we find that operations requiring the most deadly force had a high rate of authorization through Chapter VII—90% in the case of force to ensure compliance and 100% in the case of enforcement.[58] The murky area appears to be in that of peacekeeping plus state-building, where the purpose of an operation may not be clear from the start. This fact underscores the recommendation of the Secretary-General's Panel on United Nations Peace Operations that mission leadership be skilled and backed up. This is particularly important in the sometimes volatile conditions under which these operations function. The Report noted that: "The Secretariat should routinely provide the mission leadership with strategic guidance and plans for anticipating and overcoming challenges to mandate implementation and, whenever possible, should formulate such guidance and plans together with the mission leadership."[59]

The controversy surrounding NATO's out of area operations demonstrates the complexities of the problem of intervening on humanitarian grounds. The central question is whether NATO can legitimately take decisions to use military forces in non-Article 5 operations without

56. DEMOCRATIC ACCOUNTABILITY, *supra* note 3, app. A, at 396–98.
57. U.N. CHARTER art. 2(7).
58. *See id.* at 384–95.
59. *Comprehensive Review*, *supra* note 30, at 17.

authorization by the UN Security Council. NATO's deployment of the Implementation Force (IFOR) and the Stabilization Force (SFOR) to Bosnia in 1995 and 1996, and the Kosovo Force (KFOR) in 1999, were all taken within a framework provided by Security Council resolutions. Operation Allied Force, the air war against Yugoslavia, did not have explicit Security Council authorization. Like the UN's enlargement of the concept of "threats to the peace" from repelling cross border aggression to intrastate emergencies, NATO's out of area operations represent a change from its original mandate of defense of the North Atlantic area.[60]

France, Germany, and Italy initially maintained that explicit authorization by the UN Security Council would be required for the NAC to authorize any out of area military operation. Russia, China, India and other non-NATO countries have maintained this consistently.[61] The UK felt that the circumstances warranted action even if the law was unclear.[62] The U.S. assumed adequate authority from UNSC Resolution 1199, in which the Council, acting under Chapter VII, demanded that all parties in Kosovo "cease hostilities." The lack of a common legal basis was reflected in the range of arguments developed in the cases filed against the NATO countries in the International Court of Justice by Yugoslavia.[63]

At its 50th anniversary summit in April 1999, as Operation Allied Force was underway, NATO adopted the Alliance's Strategic Concept. The allies agreed to make "full use of every opportunity to help build an undivided continent by promoting and fostering the vision of a Europe whole and free."[64] This suggested that they might undertake an operation like Allied Force in the future. By the end of the bombing campaign in June 1999, however, it was unclear whether NATO could ever again achieve the political consensus required to repeat such an operation.

In 1999, in the aftermath of Operation Allied Force, UN Secretary-General Kofi Annan wrote:

> To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might say: leave Kosovo aside for a moment, and think about Rwanda. Imagine for one moment that, in

60. Press Release, North Atlantic Treaty Organization, The Alliance's Strategic Concept (Apr. 24, 1999), *available at* http://www.nato.int/docu/pr/1999/p99-065e.htm (last visited Sept. 16, 2003).

61. *See* Ku & Jacobson, *supra* note 33, tbl.15.2, at 360.

62. *See* Roberts, *supra* note 41, at 106.

63. *See* Legality of Use of Force (Yugoslavia v. Belg., Yugoslavia v. Can., Yugoslavia v. Fr., Yugoslavia v. F.R.G., Yugoslavia v. Italy, Yugoslavia v. Neth., Yugoslavia v. Port., Yugoslavia v. Spain, Yugoslavia v. U.K.), 1999 I.C.J. 124, 259, 363, 422, 481, 542, 656, 761, 826 (June 2).

64. Press Release, *supra* note 60.

> those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi population, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?
>
> To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might equally ask: Is there not a danger of such interventions undermining the imperfect, yet resilient, security system created after the second world war, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?[65]

The dilemma the Secretary-General posed is acute. A rigid requirement of Security Council authorization for military forces to be used legitimately could preclude their use when morality and international law would otherwise seem to require it. On the other hand, authorization of the use of military forces on an *ad hoc* basis by bodies other than the UNSC or action taken by a single state puts at risk the constitutional structure of the present world order. New claims to legitimate authorization have already been made, notably in 2000 by the Economic Community of West African States (ECOWAS), which adopted a protocol explicitly stating that the ECOWAS Council could authorize the use of military forces even without a Security Council mandate.[66]

If the Kosovo question had been brought to a vote in the Security Council, and China or the Russian Federation had opposed action, the matter could have been taken up by the General Assembly under the Uniting for Peace resolution. France, the U.K., and the U.S., however, did not choose this course. France has always opposed use of the Uniting for Peace procedures. The U.K. and especially the U.S. were considerably less enthusiastic in 1998 about the General Assembly and its 185 members than they had been in 1950, when it included only 60.

What this history demonstrates is that, when blocked by the Cold War from playing the primary role it was meant for in the maintenance of peace and security, the UN Security Council nevertheless played other important roles in authorizing peacekeeping particularly in areas such as Africa where neither superpower wished the other to gain influence. Following the Cold War, the Security Council appeared to fulfill its

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65. Kofi Annan, *Two Concepts of Sovereignty*, ECONOMIST, Sept. 18, 1999, at 49, 49.

66. *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, reprinted in* 5 J. CONFLICT & SECURITY L. 231 (2000).

founders' expectations by playing an important role in many of the security crises of the 1990s. This ability to use force, however, relied on the military capacities and will of its most powerful members. This has in turn created disquiet among the majority of the UN's members, stemming from concern that each of the privileged powers of the Security Council, the five permanent members, could decide to intervene in the affairs of UN members on its own judgment, assuming it could convince the four other members of the Security Council to agree.

This concern over such possible military action based on the judgment of a small, but powerful number of states, compelled the International Commission on State Sovereignty and Intervention to insist on objective evidence of a conscious-shocking situation and the recognition of a "responsibility to protect" rather than a "right to intervene."[67] The Commission's conceptualization was guided by "a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century."[68] The Commission's report concluded that any new approach needed to meet at least four basic objectives:

- To establish clearer rules, procedures and criteria for determining whether, when and how to intervene;
- To establish the legitimacy of military intervention when necessary and after all other approaches have failed;
- To ensure that military intervention, when it occurs, is carried out only for the purposes proposed, is effective, and is undertaken with adequate efforts to minimize the human costs and institutional damage that will result; and
- To help eliminate, where possible, the causes of conflict while enhancing the prospects for durable and sustainable peace.[69]

It will take time to evaluate the effectiveness of this approach for international humanitarian crises. But this report was able to identify that the UN through its organs—in this case, the UN Secretary-General, the Security Council, and the General Assembly[70]—had proven inadequate

67. THE RESPONSIBILITY TO PROTECT, *supra* note 34, at 11.

68. *Id.*

69. *Id.*

70. *See* Official Records, U.N. GAOR, 54th Sess., 1st plen. mtg., U.N. Doc. A/54/PV.1 (1999); Official Records, U.N. GAOR, 54th Sess., 2d plen. mtg., U.N. Doc. A/54/PV.2 (1999); Official Records, U.N. GAOR, 54th Sess., 3d plen. mtg., U.N. Doc. A/54/PV.3 (1999); Official Records, U.N. GAOR, 54th Sess., 4th plen. mtg., U.N. Doc. A/54/PV.4 (1999); Official Records, U.N. GAOR, 54th Sess., 5th plen. mtg., U.N. Doc. A/54/PV.5 (1999); Official Records, U.N. GAOR, 54th Sess., 6th plen. mtg., U.N. Doc. A/54/PV.6 (1999); Official Records, U.N.

to meet one of its primary objectives-to reduce the toll of war and violence on individuals.[71]

If international law prohibiting genocide and providing for human rights protection appears to overcome, or even requires overcoming, the principle of non-intervention, then new standards and procedures are needed to keep international relations from reverting to the unilateral great power interventions of the nineteenth century. The debates taking place within states on their commitment to humanitarian operations may provide a basis for building an international consensus on the purpose and scope of these operations.[72]

C. *The War in Iraq and a Future UN Security System*

The most recent question to come before the United Nations security framework however, is how to deal with threats that have the potential of widespread deadly effects, but that have not yet materialized. This is the question posed by the 2002 and 2003 debate over whether undertaking "regime change" in Iraq without specific international authorization can be legal. In November 2002, the Legal Adviser of the U.S. Department of State, William H. Taft IV, outlined the changing character of self-defense and the possible need for rethinking the rules governing self-defense. He noted that the question of when self-defense could be exercised was not novel and cited President John F. Kennedy's observation during the Cuban Missile Crisis in 1962: "We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril."[73] But what constitutes necessity and who can be the judge of this in the absence of a determination by the UN Security Council? Who is responsible and

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GAOR, 54th Sess., 7th plen. mtg., U.N. Doc. A/54/PV.7 (1999); Official Records, U.N. GAOR, 54th Sess., 8th plen. mtg., U.N. Doc. A/54/PV.8 (1999); Official Records, U.N. GAOR, 54th Sess., 9th plen. mtg., U.N. Doc. A/54/PV.9 (1999); Official Records, U.N. GAOR, 54th Sess., 10th plen. mtg., U.N. Doc. A/54/PV.10 (1999); Official Records, U.N. GAOR, 54th Sess., 11th plen. mtg., U.N. Doc. A/54/PV.11 (1999); Official Records, U.N. GAOR, 54th Sess., 12th plen. mtg., U.N. Doc. A/54/PV.12 (1999); Official Records, U.N. GAOR, 54th Sess., 13th plen. mtg., U.N. Doc. A/54/PV.13 (1999); Official Records, U.N. GAOR, 54th Sess., 14th plen. mtg., U.N. Doc. A/54/PV.14 (1999); Official Records, U.N. GAOR, 54th Sess., 15th plen. mtg., U.N. Doc. A/54/PV.15 (1999); Official Records, U.N. GAOR, 54th Sess., 16th plen. mtg., U.N. Doc. A/54/PV.16 (1999); Official Records, U.N. GAOR, 54th Sess., 17th plen. mtg., U.N. Doc. A/54/PV.17 (1999); Official Records, U.N. GAOR, 54th Sess., 18th plen. mtg., U.N. Doc. A/54/PV.18 (1999); Official Records, U.N. GAOR, 54th Sess., 19th plen. mtg., U.N. Doc. A/54/PV.19 (1999).

71. *See* U.N. CHARTER, pmbl.

72. *See* Damrosch, *supra* note 37, at 58–60.

73. Memorandum from William H. Taft, IV, Legal Adviser, Department of State to Members of the ASIL-CFR Roundtable, *The Legal Basis for Preemption* (Nov. 18, 2002), *at* http://www.cfr.org/publications.php?id=5250 (last visited Sept. 16, 2003).

accountable for determining the appropriateness of action taken? This is the crux of the problem related to the legality of the war in Iraq.

The answers to the question of who can determine necessity in the specific case of Iraq vary. The differences turn on the amount of reliance placed on UN Security Council resolutions 678 (1991) and 1441 (2002) that were to regulate Iraq's disarmament program.[74] The U.S. Department of State's Legal Adviser argued that these resolutions provided sufficient authority: "Resolution 1441 . . . gave Iraq a final opportunity to comply, but stated specifically that violations of the obligations . . . would constitute a further material breach. . . . Iraq has clearly committed such violations, and accordingly, the authority to use force to address Iraq's material breaches is clear."[75] At the same time, Anne-Marie Slaughter, President of The American Society of International Law and Dean of the Woodrow Wilson School of Public and International Affairs, noted that "a large majority of specialists in international law believe explicit Security Council authorization is required to confer legality on such a military campaign."[76]

Among academics who do not share this view are Christopher Greenwood, who asserts that "limited and proportionate action may be taken in self-defense if and when an armed attack is reasonably believed to be imminent."[77] And Ruth Wedgwood who based her reasoning on existing UN resolutions on Iraq. She wrote:

> The founding legal framework for action against Iraq remains intact and available to those who are willing to use it. Resolution 687 is the mother of all resolutions, setting out the requirements for post-Gulf-war Iraq. This 1991 resolution requires, in perpetuity, that Iraq give up its weapons of mass destruction and permit verification . . . Resolution 687 designates Iraq's acceptance of this requirement as a continuing condition of the Gulf war ceasefire. Teeth are also supplied by resolution 678, authorising the allies to expel Iraq from Kuwait and to use force in

74. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963rd mtg., U.N. Doc. S/RES/678 (1990), S.C. Res. 1441, 58th Sess., 4644th mtg., U.N. Doc. S/RES/1441 (2002).

75. Peter Slevin, *U.S. Says War Has Legal Basis*, WASH. POST, Mar. 21, 2003, at A14.

76. *See id.* This view is also shared by British law academics who declared, "[b]efore military action can lawfully be undertaken against Iraq, the Security Council must have indicated its clearly expressed assent." Ulf Bernitz, et al., Letter, *War Would Be Illegal*, GUARDIAN (London), Mar. 7, 2003, at 29.

77. Joshua Rozenberg, *Why the Sword is Mightier than the Law*, TELEGRAPH (London), Mar. 13, 2003, at 24, 24.

> support of all "subsequent relevant resolutions" needed to restore regional peace and security.[78]

The key point of contention is whether these resolutions authorized the use of force in the case of a failure to comply. Those opposing the war argued first that the resolutions did not authorize the use of force then further argued that the renewed program of arms inspections had begun to meet the objective of disarming Iraq. The U.S. and U.K. position was that short of immediate and complete disarmament, regime change was needed in order to ensure stability and peace in the region and indeed in the world. In his address to the UN General Assembly on September 12, 2002, President George W. Bush said:

> With every step the Iraq regime takes towards gaining and deploying the most terrible weapons, our own options to confront that regime will narrow. And if an emboldened regime were to supply these weapons to terrorist allies, then the attacks of September the 11th would be a prelude to far greater horrors.[79]

Although relying on UN Security Council resolutions 678, 687, and 1441 as the bases for action, President Bush also based his action on the "sovereign authority [of the United States] to use force in assuring its own national security."[80] This latter point coupled with the present power of the U.S. military has caused worldwide concern about whether the U.S. intends to break away from the UN security system that it helped create after World War II in order to counter "deviant states" that it might regard as a threat to its own or the world's security.

As John Lewis Gaddis observes, the policy stated in the National Security Strategy marks a fundamental shift in U.S. strategic thinking since the end of World War II. He wrote:

> It was sufficient, throughout the Cold War, to contain without seeking to reform authoritarian regimes: we left it to the Soviet Union to reform itself. The most important conclusion of the Bush N[ational] S[ecurity] S[trategy] is that this Cold War assumption no longer holds. The intersection of radicalism with technology the world witnessed on that terrible morning

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78. Ruth Wedgwood, *Legal Authority Exists for a Strike on Iraq*, FIN. TIMES, Mar. 14, 2003, at 13.

79. George W. Bush, President's Remarks at the United Nations General Assembly (Sept. 12, 2002), *reprinted in Text of President Bush's Address to the U.N.*, WASH. POST, Sept. 13, 2002, at A31.

80. George W. Bush, President Says Saddam Must Leave Iraq Within 48 Hours (Mar. 17, 2002), *reprinted in Bush's Speech on Iraq: 'Saddam Hussein and His Sons Must Leave,'* N.Y. TIMES, Mar. 18, 2002, at A14.

> [September 11, 2001] means that the persistence of authoritarianism anywhere can breed resentments that can provoke terrorism that can do us grievous harm.[81]

Or to put it more succinctly, Joseph Nye stated that the reason for thinking about preventive war is "... the fear ... that certain deviant states, such as Iraq and North Korea, might become enablers of ... terrorist groups" seeking now to privatize war.[82]

But where does all this lead us in the long term? Does it lead to more wars of the type we now see waged in Iraq? How do we avoid tearing down the UN system of restraining the use of force that has been in place since 1945? How have we dealt with circumstances where the UN Security Council seemed stalled in carrying out its functions? In a controversial opinion essay, Anne-Marie Slaughter argued that: "By giving up on the Security Council, the Bush administration has started on a course that could be called 'illegal but legitimate,' a course that could end up, paradoxically, winning United Nations approval for a military campaign in Iraq—though only after an invasion."[83]

The question remains open on what criteria to justify action when such a situation of imminent danger occurs. In the case of the responsibility to protect, the criterion was that action should be undertaken when there is a likelihood of meeting the desired objectives of protecting a victim population. So that the threshold for an exception to existing practice with regard to the use of force is not easily crossed, the criteria justifying action need to be set high with as many objectively verifiable factors as possible. And the response to any exceptional situation should have a clear and broadly acceptable objective and be exemplary in its implementation. Possible criteria for judging the kind of action taken in Iraq are listed by Joseph Nye:

> We also need a careful checklist of criteria to limit the number of future cases. Iraq meets these criteria. The regime has a history of aggression that has already been condemned by the Security Council. It has used weapons of mass destruction. It has been a state sponsor of terrorism. It lacks a pluralistic political system that allows internal restraints. A war would meet the standard of a just cause. Moreover, the military means we would use can discriminate between combatants and noncombants, and

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81. John Lewis Gaddis, *A Grand Strategy of Transformation*, FOREIGN POL'Y, Nov.–Dec. 2002, at 50, 56.

82. Joseph S. Nye, *Before War*, WASH. POST, Mar. 14, 2003, at A27.

83. Anne-Marie Slaughter, *Good Reasons for Going Around the U.N.*, N.Y. TIMES, Mar. 18, 2003, at A33.

there is a reasonable prospect of success. So far, the missing criterion is a broad coalition of allies.[84]

The importance of establishing the proper authority and legality for actions taken is not just an academic one, but has important policy implications. Establishing authority and legality sets a sufficiently high threshold to ensure that war is the last resort and that alternative means of resolving a dispute have been fully explored. In the UN system, the veto was provided to the permanent members of the Security Council so that actions would not be taken against the vital interests of those powers whose cooperation was regarded as essential to any effective operation. Proper authority provides recognizable and widely accepted operational structures and frameworks in which to wage the war and to deal with its aftermath. These include the law of armed conflict and the means to provide protection and relief for civilian populations and property. Bodies like the UN Security Council further provide an authoritative forum in which questions of appropriate conduct can be raised if existing practice fails to provide adequate guidance. It is therefore important that these frameworks remain available to those conducting the Iraq war, even if the war itself may lack direct Security Council authorization.

The world order concerns raised by the U.S.-led action in Iraq correctly extend beyond the decision to go to war to the potential damage that this action may have done to the underpinnings of the international legal system that are the expression of that order. For this reason, whatever the disagreement over the war in Iraq, those opposing U.S. actions in Iraq should also reflect on the long-term implications of working with the U.S. through multilateral institutions and processes. It will be important to distinguish between rejection of a decision and rejection of an entire framework and institution. Although we have seen the former, we have not yet arrived at the latter, and should work hard to avoid any wholesale rejection of the existing framework, since no alternative presently exists.

Consensus remains that we need multilateral frameworks. We need them to address the broad range of issues and areas that we know have transnational implications. And we need them, perhaps even more importantly, for the areas where the international standard is not yet clear. Even though he has been one of the harshest critics of U.S. policy, the French Foreign Minister, Dominique de Villepin, perhaps said it best when he noted that: "Legitimacy . . . is the key to the effectiveness of international action. If we want to develop the right answers to the challenges of the modern world and to take appropriate measures—including

84. Nye, *supra* note 82. *See also* Roberts, *supra* note 41, at 107.

the use of force—we must do so with the authority of collective decisions."[85]

The present international task of maintaining a structure within which parties can disagree is therefore urgent. As with any political contest, winners and losers in a situation must maintain sufficient common purpose and interest to make working together possible in the future. Power disparities may present a special problem when the disagreement is with the most powerful member or members of the system. Nevertheless, the UN's history during the Cold War demonstrates that this can be done by bypassing those conflicts and interests that may trigger a veto. This sidestepping comes at a price of removing some conflicts from the UN's field of responsibility. But as the end of the Cold War demonstrated, having the institution available and capable when political conditions are right for a more active role is also important and should not be overlooked—not by the U.S. and not by critics of the U.S. And so while there is a serious disagreement among the most important of UN members, all have a stake in maintaining a security role for the UN and they should be careful not to destroy it. Though the present war in Iraq may pose a serious challenge to the UN system, the system thus far still remains. Whether that system will be effective in addressing the security concerns of the future will depend on whether UN members are willing to work with each other to make it so.

In the long run, UN members will determine whether the UN will continue to play an important role in international security by how it deals not only with future security challenges, but also with the aftermath of the present Iraq war. A delicate balance will have to be struck between the U.S. and its interests and the positions and interests of those who opposed its actions in Iraq most vocally. This balance may require assessing the assumptions on which the UN security system was built. The formulation of a responsibility to protect is an example of how, within a short period of time, a possible approach to the problem of armed intervention in cases of gross violations of human rights was developed. In this case, UN organs led by the Secretary-General identified and described the problem, domestic political processes provided a sense of the acceptable range of action, and criteria were drawn up to provide guidance when situations of humanitarian emergencies occur. That process drew on political and legal frameworks that were both inside and outside the UN system to cover an area where the UN Security Council had failed to respond.

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85. M. Dominique de Villepin, Law, Force and Justice, Speech to the International Institute for Strategic Studies (Mar. 27, 2003), *at* http://special.diplomatie.fr/article_gb240.html (last visited Sept. 18, 2003).

Questions raised by the war in Iraq will have to undergo a similar political process that may over time produce new or revised legal standards. Because of the significance of any such change for the present world constitutional order, it is important that the political process take place within the UN framework. To do this, UN members will need to demonstrate a commitment to understanding the new security environment and its requirements, even if these concerns may appear for the moment to be only those of the United States. Members will further need to make a sincere effort to understand the implications of different approaches. A failure to do so may well render the UN sidelined in the international security arena.

II. CONCLUSION: REMEMBERING HAROLD JACOBSON

What U.S. action presently lacks is a broad based collective legitimization by the premier international political institution charged with maintaining peace and security. By acting without specific international authorization, the United States has set a higher standard for its prosecution of the war—in how it wages the war and its objectives, including how it will go about rebuilding Iraq. President George W. Bush declared that the U.S. and its coalition were at war with Iraq to free its people from a dictator. U.S. credibility and long-term influence in the world will depend on the outcome of its efforts in Iraq to create the force for stability and peace in the region that the U.S. President has declared as a war aim. The test for the U.S. will not only be in winning the war in Iraq, but also on how it fights and ends this conflict. The test for the UN will be in how its member states respond to the need for ongoing international support and assistance to ensure a stable peace in the region. If the UN's most important members—the permanent members of the UN Security Council—deny the Security Council an active role, that will only encourage the unilateralist actions that the U.S. is being accused of pursuing now.

The world that George W. Bush is working to make safe for democracy, is a vastly different one from that of Woodrow Wilson's.[86] Today's world includes the political and legal authority of international institutions. It includes technological means and communications systems that may seem to overwhelm the average citizen in the U.S. and other countries with information about the war. Harold Jacobson believed deeply in the ability of the democratic political process to provide

86. George W. Bush, *The National Security Strategy of the United States of America*, (Sept. 17, 2002), *at* http://www.whitehouse.gov/nsc/nss.pdf (last visited Sept. 18, 2003).

ordinary citizens the opportunity to debate issues and to make relevant decisions with regard to the shape and direction of international relations. He also believed in the power and influence of international institutions in shaping that debate. He thought the political process of defending and articulating a position was a beneficial one to developing fully sound and effective policy. And though his preference for seeking peaceful solutions would make the present war a troubling one for him, he would have remained optimistic about the potential of the international system to emerge from this present war and challenge to its existing structures with a system that would more realistically address the threats and elements of instability.

He believed that disciplined study of issues accompanied by conviction and debate through prescribed political processes would ensure careful consideration of difficult and complex issues. He believed in the power of politics because he understood that international relations were far too complicated and unpredictable to yield effectively to a prescribed set of rules. At the same time, he also believed in the ability of the international system to create new structures and centers of political authority to deal with new conditions and issues. His work demonstrated the progress that international institutions have made in contributing to the stable and beneficial international system of the second half of the twentieth century. Although that system may not be able to satisfactorily address every challenge made to international peace and security, that does not mean that the entire system of international law and institutions has lost meaning and relevance. How effective existing laws and institutions will be in addressing the exceptions and changes described in statements like the U.S. National Security Strategy will be an important determining factor to their future relevance. And the search for an answer to this question would have been a task of deep interest to Harold Jacobson.

APPENDIX A
USES OF MILITARY FORCES UNDER THE AUSPICES OF THE UNITED NATIONS AND NATO

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
1	United Nations Truce Supervision Organization (UNTSO)	Palestine, Egypt, Israel, Lebanon, Syria, Jordan	1948	S.C. Res. 50	Yes	UN	M&O
2	United Nations Military Observer Group in India and Pakistan (UNMOGIP)	India, Pakistan	1948	S.C. Res. 47	No	UN	M&O
3	Korean War	Korea	1950	S.C. Res. 83 & 84	No	USA: Coalition of Willing States	Enforcement**[2]
4	First United Nations Emergency Force (UNEF I)	Egypt	1956	G.A. 1000 (ES-I)	No	UN	Peacekeeping
5	United Nations Observer Group in Lebanon (UNOGIL)	Lebanon	1958	S.C. Res. 128	No	UN	M&O
6	United Nations Operation in the Congo (UNOC or ONUC)	Congo	1960	S.C. Res. 143	No	UN	Force to Ensure**[3]
7	United Nations Security Force in West New Guinea (West Irian) (UNSF)	West New Guinea (West Irian)	1962	G.A. 1752	No	UN	PK Plus

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
8	United Nations Yemen Observation Mission (UNYOM)	Yemen	1963	S.C. Res. 179	No	UN	M&O
9	United Nations Peacekeeping Force in Cyprus (UNFICYP)	Cyprus	1964	S.C. Res. 186	No	UN	Peacekeeping
10	Mission of the Representative of the Secretary General in the Dominican Republic (DOMREP)	Dominican Republic	1965	S.C. Res. 203	No		M&O
11	United Nations India-Pakistan Observation Mission (UNIPOM)	India, Pakistan	1965	S.C. Res. 211	No	UN	M&O
12	Southern Rhodesia	Southern Rhodesia (Zimbabwe)	1966	S.C. Res. 221	No*[1]	UK	Force to Ensure
13	Second United Nations Emergency Force (UNEF II)	Suez Canal, Sinai (Egypt)	1973	S.C. Res. 340	No	UN	Peacekeeping
14	United Nations Disengagement Observer Force (UNDOF)	Syria	1974	S.C. Res. 350	No	UN	Peacekeeping
15	United Nations Interim Force in Lebanon (UNIFIL)	Lebanon	1978	S.C. Res. 425	No	UN	Peacekeeping
16	United Nations Iran-Iraq Military Observer Group (UNIIMOG)	Iran, Iraq	1988	S.C. Res. 619	No	UN	M&O
17	United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP)	Afghanistan, Pakistan	1988	S.C. Res. 622	No	UN	M&O

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
18	United Nations Angola Verification Mission I (UNAVEM I)	Angola	1988	S.C. Res. 626	No	UN	M&O
19	United Nations Observer Group in Central America (ONUCA)	Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua)	1989	S.C. Res. 644	No	UN	PK Plus
20	United Nations Transition Assistance Group (UNTAG)	Namibia, Angola	1989	S.C. Res. 632	No	UN	PK Plus
21	Naval interdiction enforcement of economic sanctions of UNSC Res. 661	Persian Gulf (Iraq, Kuwait)	1990	S.C. Res. 665	Yes	Coalition of willing states	Force to Ensure
22	Gulf War—Operation Desert Storm	Iraq, Kuwait	1990	S.C. Res. 678	Yes	USA: Coalition of willing states	Enforcement
23	United Nations Iraq-Kuwait Observation Mission (UNIKOM)	Iraq, Kuwait	1991	S.C. Res. 687	Yes	UN	Peacekeeping
24	Safe havens for Iraqi civilian population—Operation Provide Comfort	Iraq	1991	S.C. Res. 688*	No	Coalition of willing states	Force to Ensure

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
25	United Nations Mission for the Referendum in Western Sahara (MINURSO)	Western Sahara	1991	S.C. Res. 690	No	UN	PK Plus
26	United Nations Observer Mission in El Salvador (ONUSAL)	El Salvador	1991	S.C. Res. 693	No	UN	PK Plus
27	United Nations Angola Verification Mission II (UNAVEM II)	Angola	1991	S.C. Res. 696	No	UN	PK Plus
28	United Nations Advance Mission in Cambodia (UNAMIC)	Cambodia	1991	S.C. Res. 717	No	UN	PK Plus
29	United Nations Protection Force (UNPROFOR)	Socialist Federal Republic of Yugoslavia (Bosnia & Herzegovina, Croatia, Yugoslavia, Macedonia)	1992	S.C. Res. 743	No	UN	Force to Ensure[**4]
30	United Nations Transitional Authority in Cambodia (UNTAC)	Cambodia	1992	S.C. Res. 745	No	UN	PK Plus
31	United Nations Operation in Somalia I (UNOSOM I)	Somalia	1992	S.C. Res. 751	No	UN	PK Plus

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
32	Protection of deliveries of humanitarian assistance	Bosnia & Herzegovina	1992	S.C. Res. 770	Yes	NATO	Force to Ensure
33	Operation Sharp Guard (Enforcement of economic sanctions of UNSC Res. 713 & 757)	Adriatic Sea	1992	S.C. Res. 787	Yes	NATO	Force to Ensure
34	Unified Task Force (UNITAF—Operation Restore Hope)	Somalia	1992	S.C. Res. 794	Yes	USA: Coalition of willing states	Force to Ensure
35	ONUMOZ	Mozambique	1992	S.C. Res. 797	No	UN	PK Plus
36	United Nations Operation in Somalia II (UNOSOM II)	Somalia	1993	S.C. Res. 814	Yes	UN (USA elements under USA)	Force to Ensure**[5]
37	Operation Deny Flight ("No-fly zone" enforcement)	Bosnia & Herzegovina	1993	S.C. Res. 816	Yes	NATO	Force to Ensure
38	Operation Deliberate Force ("Safe areas" support of UNSC Res. 819)	Bosnia & Herzegovina	1993	S.C. Res. 836	Yes	NATO	Force to Ensure
39	United Nations Observer Mission in Uganda-Rwanda (UNOMUR)	Rwanda	1993	S.C. Res. 846	No	UN	M&O
40	United Nations Observer Mission in Georgia (UNOMIG)	Georgia	1993	S.C. Res. 858	No	UN	M&O

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
41	United Nations Observer Mission in Liberia (UNOMIL)	Liberia	1993	S.C. Res. 866	No	UN	M&O
42	United Nations Mission in Haiti (UNMIH)	Haiti	1993	S.C. Res. 867	No	UN	PK Plus
43	United Nations Assistance Mission for Rwanda (UNAMIR)	Rwanda	1993	S.C. Res. 872	No	UN	PK Plus
44	Naval enforcement of oil and arms embargo of UNSC Res. 873	Caribbean Sea (Haiti)	1993	S.C. Res. 875	Yes	Coalition of willing states	Force to Ensure
45	United Nations Aouzou Strip Observer Group (UNASOG)	Aouzou Strip (Chad, Libya)	1994	S.C. Res. 915	Yes	UN	M&O
46	Naval interdiction of all shipping to Haiti	Caribbean Sea (Haiti)	1994	S.C. Res. 917	Yes	Coalition of willing states	Force to Ensure
47	Operation Turquoise	Rwanda	1994	S.C. Res. 929	Yes	France	Force to Ensure
48	Multinational Force in Haiti	Haiti	1994	S.C. Res. 940	Yes	USA, OAS	Force to Ensure
49	United Nations Mission of Observers in Tajikistan (UNMOT)	Tajikistan	1994	S.C. Res. 968	No	UN	M&O

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
50	United Nations Angola Verification Mission III (UNAVEM III)	Angola	1995	S.C. Res. 976	No	UN	PK Plus
51	United Nations Confidence Restoration Operation (UNCRO)	Croatia	1995	S.C. Res. 981	Yes	UN	PK Plus
52	United Nations Preventive Deployment Force (UNPREDEP)	Macedonia	1995	S.C. Res. 983	No	UN	Peacekeeping
53	Implementation Force (IFOR)	Bosnia & Herzegovina	1995	S.C. Res. 1031	Yes	NATO	Force to Ensure
54	United Nations Mission in Bosnia and Herzegovina (UNMIBH)	Bosnia & Herzegovina	1995	S.C. Res. 1035	No	UN	PK Plus
55	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES)	Eastern Slavonia, Baranja, Western Sirmium (Croatia)	1996	S.C. Res. 1037	Yes	UN	PK Plus
56	United Nations Mission of Observers in Prevlaka (UNMOP)	Prevlaka peninsula, Croatia	1996	S.C. Res. 1038	No	UN	M&O
57	United Nations Support Mission in Haiti (UNSMIH)	Haiti	1996	S.C. Res. 1063	No	UN	PK Plus

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
58	Multinational force in Eastern Zaire	Zaire	1996	S.C. Res. 1080	Yes	Coalition of willing OAU states	Force to Ensure
59	Stabilization Force (SFOR)	Bosnia & Herzegovina	1996	S.C. Res. 1088	Yes	NATO	Force to Ensure
60	United Nations Verification Mission in Guatemala (MINUGUA)	Guatemala	1997	S.C. Res. 1094	No	UN	M&O
61	Multinational Protection Force (MPF)	Albania	1997	S.C. Res. 1101	Yes	Italy	Force to Ensure
62	United Nations Observer Mission in Angola (MONUA)	Angola	1997	S.C. Res. 1118	No	UN	PK Plus
63	United Nations Transition Mission in Haiti (UNTMIH)	Haiti	1997	S.C. Res. 1123	No	UN	PK Plus
64	Mission to Monitor the Implementation of the Bangui Agreements (MISAB)	Central African Republic	1997	S.C. Res. 1125	Yes	Coalition of willing African states	Force to Ensure
65	United Nations Civilian Police Mission in Haiti (MIPONUH)	Haiti	1997	S.C. Res. 1141	No	UN	PK Plus
66	United Nations Civilian Police Support Group (UNPSG)	Croatia	1997	S.C. Res. 1145	No	UN	PK Plus

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
67	United Nations Mission in the Central African Republic (MINURCA)	Central Africa Republic	1998	S.C. Res. 1159	Yes	UN	PK Plus
68	United Nations Observer Mission in Sierra Leone (UNOMSIL)	Sierra Leone	1998	S.C. Res. 1181	No	UN	M&O
69	Operation Allied Force	Kosovo	1999	North Atlantic Council	No	NATO	Force to Ensure
70	United Nations Interim Administration Mission in Kosovo (UNMIK)	Kosovo	1999	S.C. Res. 1244	Yes	UN	PK Plus
71	Kosovo Force (KFOR)	Kosovo	1999	S.C. Res. 1244	Yes	NATO	Force to Ensure
72	United Nations Mission in East Timor (UNAMET)	East Timor	1999	S.C. Res. 1246	No	UN	M&O
73	Multinational Force	East Timor	1999	S.C. Res. 1264	Yes	Australia & coalition of willing states	Force to Ensure
74	United Nations Mission in Sierra Leone (UNAMSIL)	Sierra Leone	1999	S.C. Res. 1270	Yes	UN	PK Plus
75	United Nations Transitional Administration in East Timor (UNTAET)	East Timor	1999	S.C. Res. 1272	Yes	UN	Force to Ensure

	Mission Acronym or Name	Location	Start Date	Initial International Authorization (* Authorization contested)	Chapter VII Mentioned in Resolution	Command	Form of Use of Military Forces (** Form or purpose changed during mission)
76	United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)	Congo	1999	S.C. Res. 1279	No	UN	PK Plus
77	United Nations Mission in Ethiopia and Eritrea (UNMEE)	Ethiopia & Eritrea	2000	S.C. Res. 1312	No	UN	PK Plus
78	United Nations Assistance Mission in Afghanistan (UNAMA)	Afghanistan	2002	S.C. Res. 1401	No	UN	PK Plus
79	United Nations Mission of Support to East Timor (UNMISET)	East Timor	2002	S.C. Res. 1410	Yes	UN	PK Plus

Key to Form of Use of Force: M&O: Monitoring and Observation; Peacekeeping; PK Plus: Peacekeeping plus State-building; Force to Ensure: Force to Ensure Compliance; Enforcement.

* In announcing the operation, President George H. W. Bush said that the operation was undertaken under the auspices of U.N. Security Council Resolution 688. S.C. Res. 688, U.N. SCOR, 2982d mtg., U.N. Doc. S/RES/688 (1991). Somewhat later the UK Foreign Office stated that resolution 688 did not specifically mandate Operation Provide Comfort. The UK Foreign Office justified the operation under the customary international law principle of humanitarian intervention. *See* Christopher Greenwood, *International Law and the NATO Intervention in Kosovo*, Memorandum Submitted to the Foreign Affairs Committee of the House of Commons, *reprinted in* 49 INT'L & COMP. L.Q. 926, 929–30 (2000). The military forces of thirteen countries, the UNHCR, and several NGOs participated in Operation Provide Comfort I. Operation Provide Comfort II was primarily a show of force through air power to deter Iraqi attacks on the Kurds. The United States conducted over 60 percent of the sorties. Operation Provide Comfort II had very limited humanitarian aspects.

*1 UNSC Resolution 221 (April 9, 1966) determined "that the resulting situation constitutes a threat to the peace" and was understood to authorize use of force under Chapter VII even though Chapter VII was not explicitly mentioned. S.C. Res. 221 (1996), U.N. SCOR, 127th mtg., U.N. Doc. S/RES/221 (1966). *See* Sally Morphet, *Resolutions and Vetoes in the Security Council: Their Relevance and Significance*, 16 REV. INT'L STUD. 341–59 (1990).

**2 UNSC Resolutions 83 and 84 (June 27, 1950) recommended that member states of the United Nations " . . . furnish such assistance as may be necessary to the Republic of Korea to repel the armed attack and to restore international peace and security to the area . . ." and that members providing such assistance " . . . make such forces and other assistance available to a unified command under the United States of America". S.C. Res. 83, U.N. SCOR, 474th mtg., U.N. Doc. S/PV.474 (1950); S.C. Res. 84, U.N. SCOR, 474th mtg., U.N. Doc. S/PV.474 (1950). United Nations General Assembly Resolution 376 (V) (October 7, 1950) recommended that "[a]ll appropriate steps be taken to ensure conditions of stability throughout Korea;" and that "[a]ll constituent acts be taken, including the holding of elections, under the auspices of the United Nations, for the establishment of a unified, independent and democratic government in the sovereign State of Korea." G.A. Res. 376

(V), U.N. GAOR, 5th Sess., Supp. 20, 294th plen. mtg., U.N. Doc. A/1775 (1950). Both the two Security Council resolutions and the General Assembly resolution provided bases for enforcement actions. The purpose of the two Security Council resolutions, however, was merely to restore the *status quo ante bellum*. The General Assembly resolution recommended using military forces to unify the Korean peninsula. On the same day that the General Assembly resolution passed, United States forces crossed the 38th parallel. The "Uniting for Peace" resolution, 377 (V), which established procedures for the General Assembly taking action when the Security Council because of the lack of unanimity of the permanent members failed to take action to deal with a threat to peace was adopted on November 3, 1950, almost a month after the adoption of resolution 376 (V). G.A. Res. 377 (V), U.N. GAOR, 5th Sess., Supp. No. 20, 302d plen. mtg., U.N. Doc. A/1775 (1950).

**3 UNSC Resolution 143 (July14, 1960) authorized ONUC to help the Congolese government restore law and order to oversee the withdrawal of Belgian Forces. S.C. Res. 143 (1960), U.N. SCOR, 873d mtg., U.N. Doc. S/4387 (1960). UNSC Resolution 161 (February 21, 1961) authorized ONUC to use military force to prevent civil war. S.C. Res. 161 (1961), U.N. SCOR, 942d mtg., U.N. Doc. S/4741 (1961). UNSC Resolution 169 (November 24, 1960) authorized ONUC to use military force to remove from the Congo all foreign military personnel and mercenaries not under U.N. command. S.C. Res. 169 (1961), U.N. SCOR, 892d mtg., U.N. Doc. S/5002 (1960). UNSC Resolution 143 created a peacekeeping plus state-building mission, Resolutions 161 and 169 added force to ensure compliance with international mandates responsibilities.

**4 UNSC Resolution 743 (February 21, 1992) created UNPROFOR as a traditional peacekeeping operation. S.C. Res. 743, U.N. SCOR, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992). Resolution 743 did not mention Chapter VII. The Security Council subsequently adopted several resolutions that substantially expanded the size and mission of UNPROFOR. Resolution 757 (May 30, 1992) determined that the situation in Bosnia and Herzegovina "constitutes a threat to international peace and security" and ordered economic sanctions against Yugoslavia. S.C. Res. 757, U.N. SCOR, 3082d mtg., U.N. Doc. S/RES/757 (1993). In Resolution 761 (June 29, 1992) the Security Council authorized the Secretary-General to deploy UNPROFOR "to ensure the security and functioning of Sarajevo airport and the delivery of humanitarian assistance . . ." S.C. Res. 761, U.N. SCOR, 3087th mtg.,

U.N. Doc. S/RES/761 (1992). Additional tasks for UNPROFOR were added in numerous resolutions adopted thereafter. Perhaps the resolutions relating to safe areas were the most notable of these. Resolution 819 (April 16, 1993) declared Srebrenica a "safe area" and requested the Secretary-General to increase the presence of UNPROFOR to protect Srebrenica. S.C. Res. 819, U.N. SCOR, 3199th mtg., U.N. Doc. S/RES/819 (1993). Resolution 824 (May 6, 1993) declared that Tuzla, Zepa, Goradze, and Bihac and their surroundings would also be safe areas. S.C. Res. 824, U.N. SCOR, 3208th mtg., U.N. Doc. S/RES/824 (1993). Resolution 836 (June 4, 1993) extended UNPROFOR's mandate to enable it "to deter attacks against the safe areas, to monitor the ceasefire, to promote the withdrawal of military units other than those of the Bosnian Government and to occupy some key points on the ground." S.C. Res. 836, U.N. SCOR, 3228th mtg., U.N. Doc. S/RES/836 (1993). It authorized UNPROFOR "to take necessary measures, including the use of force, in reply to bombardment against the safe areas or to armed incursion into them or in the event of any deliberate obstruction to the freedom of movement of UNPROFOR or of protected humanitarian convoys." *Id.*

**5 Although UNSC Resolution 814 creating UNOSOM II placed the operation in our Force to Ensure Compliance with International Mandates, the nature of the mission changed considerably when the Security Council adopted Resolution 837 on June 6, 1993. S.C. Res. 814, U.N. SCOR, 3188th mtg., U.N. Doc. S/RES/814 (1993); S.C. Res. 837, U.N. SCOR, 3229th mtg., U.N. Doc. S/RES/837 (1993). Resolution 814 requested the Secretary-General "to direct the Force Commander of UNOSOM II to assume responsibility for the consolidation, expansion and maintenance of a security environment throughout Somalia, taking into account the particular circumstances in each locality, on an expedited basis . . ." S.C. Res. 814, *supra.* Resolution 837 condemned "premeditated armed attacks launched by forces apparently belonging to the United Somali Congress (USC/SNA) against personnel of the United Nations Operation in Somalia (UNOSOM II) on 5 June 1993). S.C. Res. 837, *supra.* It then stated that the Secretary-General was "authorized under resolution 814 (1993) to take all necessary measures against all those responsible for the armed attacks referred to in paragraph 1 above, including against those responsible for publicly inciting such attacks, to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment." *Id.* Resolution 837 directed UNOSOM II to take action against a specific Somali faction. *Id.*

Sources: UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING (3d ed., 1996); UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, 50 YEARS, 1948–1998, UN PEACEKEEPING (1998); United Nations Peacekeeping Website, *at* http://www.un.org/Depts/dpko (last visited Sept. 15, 2003); SYDNEY D. BAILEY & SAM DAWS, THE PROCEDURE OF THE UN SECURITY COUNCIL (3d ed., 1998); Adam Roberts, *From San Francisco to Sarajevo: The UN and the Use of Force*, 37 SURVIVAL 4, 7–28 (1995); and DANESH SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: THE DELEGATION BY THE UN SECURITY COUNCIL OF ITS CHAPTER VII POWERS (1999).

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