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## Collective Security and the United Nations Charter: Problems and Prospects of Judicial Execution and Peace Enforcement Under International Law (The U.N. and the Gulf War)

Frederic W. Hotz

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COLLECTIVE SECURITY AND THE UNITED NATIONS CHARTER:

PROBLEMS AND PROSPECTS  
OF  
JUDICIAL EXECUTION AND PEACE ENFORCEMENT  
UNDER INTERNATIONAL LAW

(THE U.N. AND THE GULF WAR)

HONORS THESIS

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"ALL COLLEGE HONORS"  
AND  
THE DEGREE BACHELOR OF ARTS IN THE DEPARTMENTS OF  
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BY  
FREDERIC W. HOTZ  
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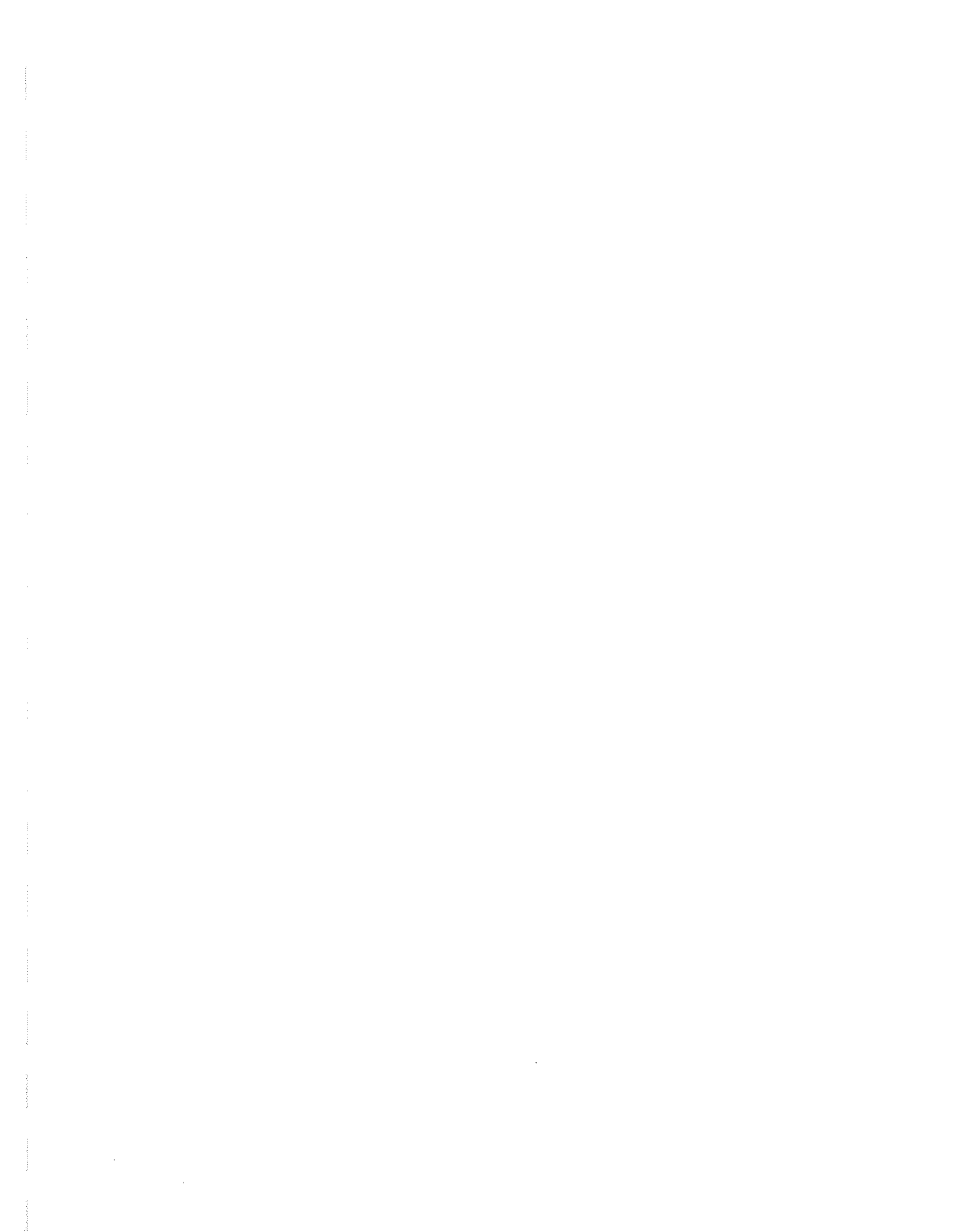
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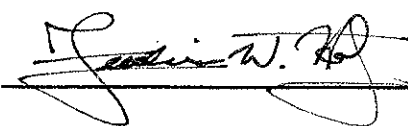
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Introduction:  
A Thesis Proposal

BY  
Frederic W. Hotz  
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COLLECTIVE SECURITY AND THE UN CHARTER:  
  
PROBLEMS AND PROSPECTS  
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(THE U.N. AND THE GULF WAR)

## INTRODUCTION:

### A Thesis Proposal

The 1991 Gulf War and its aftermath have greatly intensified U.S. foreign policy interest and influence upon the collective security actions authorized by the United Nations Security Council. Until recently, the powers of the Council have largely been unused; yet, in the aftermath of the Cold War, continual cooperation and sustained relations among the members of the Security Council is becoming, perhaps for the first time in U.N. history, a distinct political possibility. Nevertheless, with this resurgence in the Council's potential, the system of collective security and peace enforcement, as envisioned in Chapter VII of the U.N. Charter, may still remain dormant beyond the use of economic sanctions authorized under Article 41. Explicitly, the unilateral use of military force by individual member-states or by military led coalitions outside the organizations (United Nations) accountability and direction, remain the course of enforcement action by the Security Council in order to maintain or restore international peace and security. Since no special agreements have ever been concluded between the Security Council and member states under Article 43, no standing multilateral force has ever been available to the Security Council. Therefore, the Security Council has resorted only to authorize the use of ad hoc coalition forces to restore international peace and security, as was the case in the Persian Gulf. There is yet to be seen the use of a collective security system that truly adheres to the legal principle of *et sequencia*; a prosesion which follows the use of Article 42 and subsequent articles of Chapter VII. Still, the use of military force outside the Charter framework of the international organization, especially that of the United Nations, is persistently being employed. This is a dangerous policy to pursue for the future and yet continues to violate international law. Collective security, as defined in the U.N. Charter, embodies a most valuable principle, a proactive system for peace-building. Unilateral military force cannot be supported in pursuit of the purposes and principles of the United Nations Charter, nor can it be supported again by contemporary international practice.

Yet, as Shakespeare stated, "The law has slept; it has not died." This aphorism accurately describes the long dormant concept of collective security embodied in the U.N. Charter. Chapter VII contains several articles, such as Articles 43 and 45, that have never been implemented. The framers vision of a security system that would collectively protect the well being of all peoples and restrain acts of aggression may still remain on the verge of actual application. Yet, it has not been applied. Left largely unused during the Cold War, and then even in the war with Iraq, the system of collective security now contains a promise of reordering traditional state-centered defense and security. This is especially true since individual nation-state governments can no longer unilaterally protect their people from a host of increasingly complex and potentially global threats to the peace. Regardless of this fact, the enforcement of the chartered principles of collective security beyond Article 41, still remain an act for the future.

Thus, a primary purpose of this study is to re-examine critically the evolution and the current concept of collective security in the enforcement of the principles undertaken under Chapter VII.

In view of this, the first part of the proposed thesis intends to re-examine the definition of collective security itself within its evolutionary and historical context. Specifically, the evolution of the international organization and collective security over the past 135 years, beginning with the Concert of Europe, and the post-Napoleonic period in Europe. There is also the need to study the operational and judicial capacity of the international organization at the same time as rethinking its potential influence upon collective security. In short, Chapter One analyzes the inherent interrelationship between the latent legal basis and actual operational capacity of the international organization's system of collective security.

Chapter Two analyzes the concept of collective security and, in particular, the long dormant articles in Chapter VII of the U.N. Charter. This chapter will also include

analyzing the legal obligations, inherent to U.N. membership, by following a commentary of the purpose and principles of the U.N. Charter, and then of collective security under Chapter VII. If actually observed, Chapter VII involves fundamental legal obligations concerning a member-state's relationship to the Security Council, and then to a viable system of collective security as a whole.

Chapter Three introduces in a case study, the legal problems of Chapter VII and the legal debate concerning the use of force against Iraq, in accordance with Resolution 678, for the restoration of international peace and security. The purpose of the chapter is also to clarify and focus U.N. Security Council policy at the time of the Gulf Crisis, and to find if that policy was consistent under international law.

Chapter Four, the last chapter, studies in depth the constitutional conflict between the United States Congress and the Executive in regard to U.S. foreign policy against Iraq and the general outlook of the gulf crisis as seen within the United States government, especially within reference to the U.N. Security Council's policy against Iraq.

Dealing with the ultimate issues of war and peace in the "new world order" is our last outlook to collective security in this thesis. It is briefly stated in the conclusion the potential dangers concerning the retraction of the Security Council's control over military actions. We also speak about the new revolution in collective activity and the future threats to international peace and security. As such, it is my hope that the system of U.N. collective security can now potentially become an integral aspect of the realpolitik in international affairs.

[NOTE: I am highly indebted to Dr. Thomas E. Boudreau Ph. D., for his contribution to this Introduction.]

## Chapter 1:

# Collective Security and the Approach to Peace Enforcement Under International Law: A Historical Perspective of a True Legal System

- \*Introduction
- \* Towards a Theory of Collective Security
- \*The Evolution of Collective Security in the International Organization
- \*International Law and Collective Security
- \*The Development of the International Organization
  - The Concert of Europe System
  - Public International Unons
  - The Hague System
- \*Collective Security &The Covenant of the League of Nations
- \*Conclusion
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**Chapter: 1**  
**Collective Security and the Approach to Peace**  
**Enforcement Under International Law:**  
**A Historical Perspective of a True Legal System**

**Introduction:**

**Towards a Theory of Collective Security**

The evolutionary development of the Charter of the United Nations, signed and enacted at San Francisco on June 26, 1945, was a product of the common desire of Nations to maintain international peace and security in a world devastated by centuries of war. Undoubtedly, this common purpose between the nations of the world evolved long before the point where war threatened the continued existence of human civilization. But it was not until the cooperative unity, born from the experiences of the war which, in the last analysis, produced a common structural and legalistic approach to the issues of collective security and peace enforcement. Most recently in the 20th Century, the evolution of an established collective security system, as a scheme to prevent international conflicts, proceeded from the exposure of the devastation inflicted upon humanity by both World Wars. Specifically envisioned in the creation of the Covenant of the League of Nations and later inherited by the Charter of the United Nations, the significant institutional developments to the approach of collective security and peace enforcement under international law was then alone conceived.

In this chapter, our aim will consist of exploring the evolution of collective security within the structural formation of the international organization during the 20th Century. Thereafter, we will study the legitimacy vested within the structure to act accordingly with the evolution of international law. Subsequently, our aim will be to analyze the earlier foundation of collective security and peace enforcement which later evolved within the functional and judicial parameters of the 20th Century international organizations, especially within the Covenant of the League of Nations.



## **The Evolution of Collective Security in the International Organization**

It is of great value to consider the chronological developments in the creation of the international organization, for they lay down the legal and operational components for the concept of collective security. Our aim here will be to analyse the establishment of collective security and peace enforcement within the functional and judicial parameters of the 20th Century international organization; an evolution that legitimized the use force for the preservation of international peace and security.

The concept of collective security assumes the existence of several prerequisites; the satisfaction of several basic conditions. First, that collective security must assume a balance of power that is structurally comprehensive and functional; second, collective security must provide an enforcement mechanism fundamentally rooted within the body of international law.

In accordance with the essentials of a collective security system, it is a fundamental requirement that the system operate within an organizational structure. This structure must form a balance of power within the international community, which is bound by the authority vested in it, to be impartial and consistent in its application of the collective security measures. The fact that collective security is set out as something different from an alliance system, the concept is incompatible with a policy of alliance or the use of a coalition force outside the organizational framework. Thus, central to the use of a collective security system, is an arrangement that transcends the use of unilateral state action, to the exercise of the collective use of force.

Collective security functions within the framework of the international organization in that it demands the universality of membership rather than the creation of separate camps. Collective security facilitates the objective or principal that, "in the relations of states, everyone is his brothers' keeper; it is an international translation of the slogan, 'one for all and all for one'; it is the proposition that

aggressive and unlawful use of force by any nation against any other nation will be met by the combined force of all other nations."<sup>1</sup> "All this adds up to the fundamental subjective requirement that all states be willing to entrust their destinies to collective security" within the operative structure of the international organization.<sup>2</sup>

The basic importance of the international organization, as a condition for the effective role of collective security, lies in the assumption that in the existence of an imbalance of power, brought upon by the unification of the universal membership's resources, the organization would become powerful enough to deter aggression or make potential aggression an unfeasible objective. Yet, in the absence of peaceful settlements, it is undesirable to warrant in the actions of collective security, an exchange of military force due to the destructive nature of modern warfare. Therefore, as the first vanguard in the settlements of international disputes, the effective development of collective security as an organized system requires a power relationship in which economic sanctions defer the need for military intervention. A collective security system "recognizes the vital importance of holding the military weapon in reserve, but it offers to its participating members the reassuring possibility that they may be able to discharge their responsibilities by the relatively painless and humane method of denying to aggressors the benefits of normal intercourse, rather than by running the risk involved in the resort to arms."<sup>3</sup>

When all other means have been exhausted, the international organization, in fulfillment of its functional obligations in action with respect to acts of aggression and threats to the peace, recognizes the use of military force within the concept of collective security. "Hence, the creators of the League of Nations and the United Nations have sought to combine the techniques of moral inducement and coercive threat for the preservation of peace."<sup>4</sup> In summary, the performance of those responsibilities by the organizational structure need the establishment of consistent

procedures and enforcement mechanisms. Therefore, that the institutional mechanisms resort to the implementation of international law as a guiding principle in the use of collective security and peace enforcement for the preservation of international peace and security, is thus imperative.

The objective of collective security is designed for a system of world order. Thus, the need for enforcement measures arise. In the management of the collective effort and system of order, the international organization is accountable for upholding the principals of international law and those of its charter, together with the procedural and enforcement measures that those principals entail. "Collective security requires the creation of a legal and structural apparatus capable of giving institutional expression to its basic principles. This involves the legal establishment of the prohibition of aggression, the commitment of states to collaborate in the suppression of aggression, and the endowment of an international organization with authority to determine when and against what state sanctions are to be initiated, to decide upon the nature of the inhibitory measures, to evoke the performance of duties to which states have committed themselves, and to plan and direct the joint action which it deems necessary for the implementation of collective security. The meaningfulness of the system is dependent upon the capacity of the organizational mechanism to exercise these vital functions without obstruction."<sup>5</sup>

#### **International Law and Collective Security:**

As a code of principals and regulations, international law is a formulation describing the relationships among the international organization and many sovereign nations, as well as to the way nations deal with each other independently, might this be economically, socially, culturally, militaristically or diplomatically. The criteria which international law is based upon comes about "as a result of the common consent and

general acceptance of many nations" to draw up a legal system in conjunction with the international organization for the maintenance of international peace and security.<sup>6</sup> As specified in Article 2, Paragraph 3 of the U.N. Charter:

"All Members shall settle their international disputes by peaceful means in such manner that international peace and security, and justice, are not endangered."<sup>7</sup>

"Since there is no power in the international system standing above sovereign states, norms of international law are guaranteed by the subject of that system of law themselves, above all by states through agreements whose essence is a coordination of the wills of states and other subjects of international law.

"Just as internal law, international law provides for the possibility of applying enforcement measures to ensure compliance with international legal norms. But that enforcement is carried out by the subjects of law themselves, namely, by the states, individually or collectively; by international organisations that are organs of co-operation among states and that function on the basis of agreements among them."<sup>8</sup>

Because international law draws its authority to exist and to exert power from the fact that many nations recognize it as a legal entity within an international structure, [such as the judicial branch of the U.N. (the International Court of Justice-ICJ)], no single nation can alone alter, modify or create international law without the consent of other nations. There exist a number of sources, which are generally practiced, that enable all nations involved within the international organization to participate in the decision making process of international law. Such sources are: treaties, international customs, the general principles of law recognized by civilized nations, judicial decisions, scholarly writings, and International Organizations.<sup>9</sup>

Treaties are the most valuable source of international law because they draw up an agreement between nations in written form, which makes it proof of an existing relationship with rights and obligations between nations.<sup>10</sup>

International customs are a form of dealing with certain situations that have no appropriate form of jurisdiction set by the international courts. Therefore disputes are resolved by reviewing past customs of several countries dealing with similar situations. "The variables or elements for establishing an international custom . . . must be considered in the search for proof of whether a particular custom actually exists. They are (1) duration or passage of time; (2) substantial uniformity or consistency of usage by the affected nations; (3) generality of the practice, or degree of abstention; and (4) *opinio juris et necessitati*'s, or international consensus about and recognition of the particular custom."<sup>11</sup>

"The general principals of law recognized by civilized nations", such as moral-legal values as fairness, justice, equity and Jus Cogens, are sources of determining international law.<sup>12</sup> These sources underline the principal values of governments and therefore it is possible that individual countries have integrated international laws as part of their judicial organizations process of dealing with international affairs.

Judicial decisions within particular domestic courts or the International Court of Justice show evidence that international law is indeed part of their domestic process of dealing with international disputes. Therefore, many domestic laws are drawn from international law and visa-versa. This provides evidence that domestic law is indeed subject to the interpretation of international law for the settlements of international disputes. Judicial decisions provide authority for the international system of law to function and operate.<sup>13</sup>

Scholarly writing help influence the evolution of international law and hence may even challenge the present method of dealing in international affairs. Although

scholarly writings are not decisive in determining the practice of nations, they keep statesman and lawyers informed of current developments in the profession.<sup>14</sup>

The management of state behavior in the conduct of international relations is the prime objective of the functional and judicial parameters of international law. The primary contribution of the international organization to the evolution of international law is that it provides the enforcement and regulation principles of collective security. Because such organizations facilitate the management and settlements of international disputes, collective security draws its authority from international law in the enforcement mechanisms embodied within the organizational structure of the international organization.

#### **The Development of the International Organization:**

In its original context, three major phases in the development of collective security may be traced back to the nineteenth century: The Concert of Europe System, The Public International Unions, and The Hague System. In the twentieth century, preceding the founding of the United Nations, the League of Nations was the first international organization to envision a functional and judicial system for the use of collective security. We will now focus our attention to the earlier foundations of collective security and peace enforcement within the structural formation of the international organization, a formation that contributed to the United Nations system of collective security.

#### **The Concert of Europe System:**

The Concert of Europe System was an initial expression for a European Community. It called for periodic meetings of the signatories to consult on common interests, to ensure the prosperity of the member Nations, and to maintain the peace of Europe.

Hugo Grotius, the so-called "father of International Law", stated in 1625 that:

"It would be advantageous, indeed in a degree necessary, to hold certain conferences of Christian powers, where those who have no interest at stake may settle the disputes of others, and where, in fact, steps may be taken to compel parties to accept peace on fair terms."<sup>15</sup>

The Concert of Europe constituted a rudimentary conference system of international governance with a bases on cooperation, restraint, and an international policy code for great powers: "It created a system of multilateral, high-level political conferences. Diplomacy, the traditional technique for conduct of international affairs, was essentially a bilateral phenomenon, involving occasional consultation and negotiation between two sovereigns or their representatives".<sup>16</sup>

However, it was not until the 19th century when Napoleon's attempt to conquer the Continent shook Europe's state system, and in his defeat, that the first notion of collective power and security was envisaged at the Congress of Vienna in 1815 for the establishment of a new European system of order . Attended by twenty six states, "it was conceived by its leading participants as the forerunner of a series of regular consultations among the great powers which would serve as board meetings for the European community of nations."<sup>17</sup> The great peace congress set new boundaries, re-created the balance of power under the notion of a supper-European-power structure, and guarded against future predominance.<sup>18</sup> Thereafter, congresses met in response to crisis some thirty times in the course of the century, but after 1822 they ceased for nearly a century, being reinstated only by short, limited wars, one of which led in the 1860's to the creation of the International Red Cross as a recognized nongovernmental international agency.<sup>19</sup> "The numerous conferences which were held in the decades after the Congress of Vienna were concerned with the maintenance of existing peaceful conditions, the substitution of

pacific for violent methods of manipulating the distribution of power, the agreement upon ground rules for planning the competitive game of imperialism, and the formulation of general international legislation applicable to the ordinary relations of states. The Concert system gave Europe, for the first time since the rise of national states, something imperfectly resembling an international parliament, which undertook to deal by collective action with current problems . . . "20

Although confronted with a growing sense of interdependence and of the common interest among the European states for peaceful relations, pressing political concerns, such as the sovereignty of the nation state, made it impossible for any sort of institutional management (the establishment an international organization). Yet, the true advancement of this system is recognized by the fact that diplomacy by conference, as then the official means of conducting settlements, became the first significant technique in the conduct of collective power and security in international affairs. Still, in the absence of an institutionalized system, the Concert of Europe had created no legal foundation or framework in order to make decisions, or the mechanism to enforce those decisions, that would compel states to comply to peaceful resolutions of international disputes. "The conference system did not inaugurate a rule of law, or produced an impartial agency politically superior to national states and capable of upholding the moral standards of a larger community. It was a system of *de facto* great power hegemony, and the fact that its arrangements frequently resulted in collective or international decisions did not mean that those decisions were necessarily wise or just."21

### Public International Unions

In the 19th century, specifically after 1850, Public International Unions--agencies concerned with problems in various essentially nonpolitical fields--represented at most the inception, not the consummation, of the international organization. Henceforth,



the development and progression of the international organization centered around the "manifestation of the increasing complexity of the economic, social, technical, and cultural interconnections of the peoples of the modern world."<sup>22</sup> Yet, the Unions' most significant contribution to international affairs was the evolution of international management; "a trend towards international control of subjects" which were of common concern to states, with a cooperative interest and towards a common endeavor.<sup>23</sup> "The process of international organization, thus began, quickly resulted in the establishment of a profusion of agencies whose terms of reference touched upon such diverse fields as health, agriculture, tariffs, railroads, standards of weight and measurements, patents and copyrights, narcotic drugs, and prison conditions."<sup>24</sup>

Public International Unions were not built into the operations of governments. They were classified as non-governmental agencies. Thus, the Unions were recognized as having no legal base construction upon which to claim functional jurisdiction. On the other hand, "drawing power from the circuits of a pre-established dynamo of sovereignty, . . . dependent for their operation upon such power as could be generated in the newly and drastically incomplete plant of international authority," the Unions radical shifted the balance of power relations over from national policies and practices to intergovernmental collaboration; they served as the center points for achieving the collection, coordination and promotion of cooperative relations among governments, not "the management of affairs or the government of people."<sup>25</sup>

### **The Hague System:**

In Europe, power shifted from royal courts to cabinets; kings disappeared from international meetings, to be replaced by ministers, and foreign policy became a matter of increasingly democratized politics. The Hague Peace Conferences of 1899 and 1907, with their slant toward disarmament, were also precursors of change.

Proposed topics for consideration were the limitation on the expansion of armed forces and a reduction in the deployment of new armaments; the application of the principles of the Geneva Convention of 1864 to naval warfare; and a revision of the unratified Brussels Declaration of 1874 regarding the laws and customs of land warfare.<sup>26</sup> Though these and other topics characterized the Hague Conferences as unique in its development, the Hague Conference System is emphasized here by the attention that was given by it to the tasks of institution-building and to its distinct rationalistic and legal approach to the problems of war and peace. "The adorative system of the Hague called attention to the emerging realities of a global, rather than a merely European, state system, the demand of small states for participation in the management of the system, and the need for institutionalized procedures, as well as improved settlements, in the conduct of international relations."<sup>27</sup>

As one of the major contributors to the establishment of international organizations, the Hague System adopted as one of its principle features the approach towards a universal system of equal representation; a composition of European and American (North and South) republics, where some forty-four states were represented.<sup>28</sup> Marked also by a new peak in the development of collective activity, the purpose of the system distinguished itself from the Concert of Europe as concerned with international problems in the abstract, rather than in the immediate conflicts raised by specific wars or disputes.<sup>29</sup> The Hague System was "devoted to building a peaceful system and preventing or controlling war in general, rather than to maintaining peace in a particular crisis or liquidating a specific war. Such an emphasis, in some degree, must characterize any system of international organization. It marks the inherent differences between systems and organizations" and their role within the collective activities of nations."<sup>30</sup>

The need for institutionalized procedures in the conduct of international affairs "contributed to the establishment of the precedent that collective diplomacy should be oriented toward such matters as the codification and further development of important branches of international law, (and) the formulation of standing procedures for the peaceful settlement of disputes . . . ."31

The Hague System also provided valuable service to the establishment of international organizations by upholding a distinct rationalistic and legal approach to the realm of international relations.<sup>32</sup> As a leading characteristic of the Hague system, the Hague Conference on Private International Law when first convened in 1893, granted the system with a "reliance upon rational prudence and the judicial temper . . . which was transmitted to subsequent conferences on international organizations and is today a significant element in the operative theory of international organization."<sup>33</sup> In short, the system stood for the regulation of international affairs, which in turn, elevated the most fundamental norm in international law: the prohibition against the unilateral use of force in international relations.<sup>34</sup> Yet, much to its regret, the Hague System came to a stand still all too soon due to the outbreak of the First World War, but its characteristic influence permeated all too far as to change the course of international relations well into the 20th Century.

### **Collective Security & The Covenant of the League of Nations**

The Hague system was interrupted all too soon by the great trauma of World War I; in the aftermath of that war, statesmen lead by President Woodrow Wilson of the United States sought to establish a newer and more powerful system of collective security upon the earlier foundations provided by the Concert of Europe, the International Unions and the Hague System.

Thus, the first institutional step in the evolution of collective security, (the legitimizes use of force from an unilateral state action, to the exercise of the collective use of force), was specifically envisioned in the creation of the League of Nations System.

In short, the creation of the League came from the realization of the vital need to prevent war and the revelation that international unity and cooperation was hence needed for the preservation of international peace and security. The First World War had "produced a fresh awareness of the horrors of war, a rather bewildered admission that modern European civilization was not immune from the destructive forces of military conflict, and a distressed feeling that 'it must not happen again.'"<sup>35</sup> "World War I served to convince men that there existed great resources of international cooperation which had not previously been tapped."<sup>36</sup> The League system became the consolidation of all previous organizational developments; an organization for international cooperation established upon the initiative of the victorious Allied Powers at the end of the First World War for the purposes of preventing aggression, and to preserve the status quo as established by the post-World War I peace treaties. "The League was a composite of the institutional descendants of nineteenth-century agencies; it pulled the separate lines of development into a coherent system" based under the principals of law.<sup>37</sup>

"Clearly, the establishment of the League of Nations was an event of fundamental importance, worthy of being considered a decisive forward step in that evolutionary process. To change the figure, nineteenth-century institutions provided the ancestry, but the League of Nations provided the parentage, of international organizations as we know it today."<sup>38</sup>

As the first formal legal international structure (created in the institutionalization of the Covenant of the League of Nations when it became an

integral part of the Treaty of Versailles, and assumed formal effectiveness on January 10, 1920), the League Covenant embodied the principals of arbitration of international disputes, reduction of armaments, open diplomacy, and of collective security. It established the League's operational structure and directing organs: a secretariat (executive), presided over by the secretary general; a council composed of permanent members of the leading Allied Powers; and an assembly composed of representatives of all members.

For the purpose of our study, our aim will be to analyze the functional and judicial application of collective security by the League of Nations system, as prescribed under Article 16 of the Covenant. Subsequently, as an eventful consequence of the outbreak of the Second World War, we will elaborate upon the League's inherent inability, as a collective security system, to prevent war and in preserving international peace and security. (For Covenant reference, see appendix one)

"It is perhaps unavoidable that international organizations should focus attention upon the legal, constitutional, and structural aspects of the problem of establishing collective security. . . .

"The League Covenant represented a great stride toward the formal establishment of the elements of a collective security system. It incorporated, in Article 10, a classic statement of the fundamental legal concepts: the obligation of every state joining the system 'to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.' Thus, in one stroke, it accomplished the prohibition of aggression, providing the basis for legal action against defaulting states, and the obligation of assistance to victims of aggression, providing the basis for the mobilization of positive support of the system. In Article 11, it stated the ideological premise of the new regime: the proposition that 'Any war or threat of war, whether immediately affecting any of the

Members of the League or not, is hereby declared a matter of concern to the whole League. . . .

"This affirmation of the community's involvement in all the 'private' conflicts of its members led inexorably to the provisions of Article 16, which spelled out the positive responsibilities of participating states."<sup>39</sup>

Although it was assumed that all member states, in acting out their responsibilities under the Covenant, specifically Article 16, would impose economic and military sanctions in their attempt of reestablishing international peace and security, in reality, the call to action by the permanent Council was limited only to a system of collective security that "recommended to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."<sup>40</sup> Thus, that one of the greatest inherent functional and judicial weaknesses of the Covenant was its enforcement clause, the procedure was unsatisfactory for two reasons: "it left it open to member states to respond, or not to respond, to the call for military aid, and it provided no machinery or system for organized League forces in advance, or indeed even for co-ordinating such responses as members might make."<sup>41</sup>

In light of the provision that nation states held as members under Article 16, League members were left to respond to an act of aggression on a voluntary basis, with no League direction or accountability and by asserting all independent control over the military actions authorized by the League. Thus, in essence as in principle, the League's collective security system was dependent upon the willingness of member states forming an alliance or a coalition force outside the organizational framework of the League to accomplish the League's mission. The fact that collective security is set out as something different from an alliance system, the League system became

incompatible with the collective security system envisioned by the Covenant forefathers.

"The Covenant was far from a perfect design for collective security. It imposed inadequate legal restrictions upon potential aggressors and exacted insufficient commitment for enforcement action from member states. The League which it created was deficient in legal authority and practical competence for making international decisions required for the management of a collective security system. . . .

"The history of the League was a record of constant efforts to strengthen and to weaken the collective security provisions of the Covenant. This was not so much a contest between friends and enemies of the principle of collective security, as a vacillation between the desire to enjoy the benefits and the urge to avoid paying the price of collective security. The League could neither take collective security nor leave it alone."<sup>42</sup>

The League's inherent inability, as a collective security system, to prevent war and in preserving international peace and security, is evident due to the eruption of World War II on September 1, 1939. Preceding the Second World War, "the membership problem of the League was recognized as the problem of the empty chair. The great experiment could work only if virtually universal support, and certainly the support of all the great powers, could be enlisted. This condition was never fulfilled. The United States never joined the League; Germany was a member, practically speaking, only from 1926 to 1933; the USSR joined in 1934 and was expelled five years later; Japan announced withdrawal in 1933 and Italy in 1937."<sup>43</sup>

In the case of Japan, the League of Nations revealed for the first time its weakness against a modernized aggressor, for already by 1931 Japan's invasion of Manchuria had provoked a crisis at the League; Japan was feared by the West for its great military and economic might and for its exclusive retirement from the international community, given its geographical location. Any attempt on behalf of the

League to impose economic and later military sanctions under Article 16, found little commitment from the European community due to the fact that Japan's geographical position made any enforcement action a near impossible logistical feat. Inclusive, the Covenant did not provide machinery for curbing open preparations for war over a long period of time by a state obviously bent on aggression; the League, by its very constitution, was tied to inaction until the aggression actually occurred and therefore at the brink of the Japanese aggression against Manchuria, the League was ill-prepared and its community unwilling to act upon the enforcement actions called for under Article 16.

In the case of Italy, "in 1935, the League powers overcame their misgivings about the burdens of collective security long enough to stigmatize Italian aggression in Ethiopia and to organize economic sanctions against Italy. However, this surprising initiative did not represent a genuine rededication to the principles of collective security enshrined in the Covenant; the spirit of irresolution quickly returned, and the spark of determination to make the League an effective bulwark against aggression sputtered and died. Mussolini was permitted to triumph in contempt of the League, and the first great attempt to create a collective security organization was for all practical purposes terminated. In the final analysis, the members of the League could never bring themselves to adopt in policy the collective security system which they had ratified in the Covenant. Instead, they sought to find security in the League era through the traditional devices of national policy and diplomacy. True, the League engaged in a half-hearted effort to suppress Italian aggression in Ethiopia, . . . (but) if the League's actions in the former case was a failure, it was certainly not an unqualified failure, for it proved if anything the possible effectiveness of collective sanctions. . . ."44

The eventful creation of two coalition forces, an allied and the axis powers, at the brink of World War II, was a direct response to the League's inability to conduct



collective enforcement measures before and against Germany's violations of the Treaty of Versailles and subsequent annexation of Austria, Czechoslovakia and Poland into the Third Reich. "The League, established to prevent the accidental war, was unable to cope with Hitler's deliberately plotted campaign of conquest. . . ."45 The polarization of two military camps of equal force and strength, therefore, set the stage for World War Two. Thus, the possibility of a military confrontation against a formidable opponent or coalition, in the absence of an enforceable, self-directed, institutionalized and accountable international collective security system, is evident of either a legal and structural malfunction, and the incompetence or the abuse of an international organization for the preservation of international peace and security. This alone does not stand without saying that such an approach can be inherently dangerous.

"Like the League, the United Nations has in practice refrained from following the pattern laid down in its basic document, and has instead improvised policies related to the general problem of collective security. In the case of the United Nations, however, there has been little evidence of the urge to patch up the legal and structural system to make it conform more closely to the requirements of a full-fledged collective security system."46 Inclusive, this also does not stand alone without saying that such an approach can be inherently dangerous for the future preservation of international peace and security.

**CONCLUSION:**

To characterize collective security as a true and functional legal system would be too idealistic to claim due to the natural boundaries of the organizational structures which limit its power. Because collective security has based its authority upon its general acceptance by many nations, it does not ensure that all nations shall consider this system applicable to their mutual relations with other nations. International law provides the only enforcement mechanisms required by the organizational structure in the adoption of a collective security system.

Furthermore, the international organization alone has the legal authority to implement collective sanctions in respect to the unlawful way a country carries out its foreign policies and the collective enforcement power to bind any state in the course of its actions. Yet, authority is limited at times to the adoption of peaceful resolutions through diplomatic means or in the enforcement of those resolutions by collective measures against a breach of international peace and security. Collective security draws its power to act on behalf of the international organization, in order to safeguard against an attempt by any state to overmind their obligations to international law and the charter.

Although a variety of functional, judicial and structural flaws permeate the collective security system, it is a system that is in continuous evolution. Therefore, that an international security system will still prove to be a reliable system of authority in the conduct of international affairs, it requires the assistance of all or most nations of the world. Lastly, it requires that it function in cooperation with a dependable organizational structure which is ultimately in control of all the collective enforcement measures used, provided that those measures be in the best interest for the true preservation of international peace and collective security.

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## Chapter 2:

**The United Nations Charter:**

**Commentary and Documents  
on  
Collective Security**

- \*Introduction
- \*The U.N. Charter: Purpose and Principles
- \*Chapter VII: The New Collective Security System
- \*Conclusion
- \*End Notes

## CHAPTER 2:

### The United Nations Charter: Commentary and Documents on Collective Security

#### Introduction:

"At the conclusion of the First World War an attempt was made, under the leadership of Woodrow Wilson, to organize the vital forces of the world in support of peace, security and human welfare. The Covenant of the League of Nations was the product of this great effort. The League experienced had an initial setback when the United States failed to become a member. Yet for a decade and a half people throughout the world looked to the League as the instrument by which it might be possible to establish peace and stability in the world and to assist mankind in its uneven progress toward greater freedom and happiness. The world-wide economic collapse of the late twenties and thirties, the rise in popularity of anti-democratic and nationalistic doctrines, and the unwillingness of peace-loving peoples to assume necessary responsibilities for the maintenance of peace resulted in the disintegration and collapse of the League system. Into the vacuum produced by the lack of vision and power of decision of the peace-loving peoples of the world stepped the confident and aggressive forces of Italian Fascism, German Nazism and Japanese Militarism.

"The failure of the League sanctions against Italy in 1935 and 1936, accompanied by the rearmament of Germany, and particularly by the remilitarization of the Rhineland in 1936, made it morally certain, that the peace-loving peoples of the world, unless they were to surrender to the forces of aggression without resistance, would sooner or later have to take up the challenge again, with bloodshed and wanton destruction as the inevitable consequences. The challenge was accepted in September 1939, and by the end of 1941 the war had spread to all continents and all the major powers of the world were involved. The final alignment of forces had taken place."<sup>1</sup>

The break down of collective security in the latter parts of the 1930's, and the eventful eruption of World War II, lead to the failure of the League system. Specifically, the failure of the League to confront Japan's invasion of Manchuria in 1931, as well as its failure to act against Italy's invasion of Ethiopia, encouraged the fascist powers and thus set the stage for World War II, the bloodiest war in human history. Later after the war, in fulfillment of the need for a truly effective system of international peace and security, statesmen drafted the Charter of the United Nations; its purpose was to be the supreme mechanism "to make a peace which will command the goodwill of the overwhelming mass of peoples of the world and banish the scourge and terror of war for many generations." It meant to "seek the 'cooperation and active participation of all nations, large and small, whose peoples in heart and mind are dedicated . . . to the elimination of tyranny and slavery, oppression and intolerance, . . . as they may choose to come, into a world family of Democratic Nations.'"<sup>2</sup> For the purpose of our study at this time, we will now analyse in chapter two the specific points under the Charter of the United Nations that deal with the issue of administering collective security and peace enforcement mechanisms under international law.

### The U.N. Charter: Purpose and Principles

The purposes of the U.N. Charter constitute the *raison d'etre* of the entire Organization. They are the aggregation of the common ends on which member states agree; hence the cause and object of the Charter to which member states collectively and severally subscribe. The purposes of the Charter provide the first key to the new system of Collective Security under the United Nations.

As Leland Goodrich states, "the chapter on 'Principles' sets, in the same order of ideas, the methods and regulating norms according to which the Organization and its members shall do their duty and endeavor to achieve the common ends. Their understandings should serve as actual standards of international conduct."<sup>3</sup>

"The United Nations Charter is both a binding agreement to preserve peace and to advance human progress and a constitutional document creating the international machinery by which nations can cooperate to realize these purposes in fact.

"The purposes of the United Nations are: the maintenance of international peace and security; the development of friendly relations among nations based on respect for the equal rights and self-determination of peoples; cooperation in solving international problems of an economic, social, cultural, and humanitarian character and in promoting respect for human rights and fundamental freedoms for all.

"Members of the Organization are pledged to carry out in good faith the obligations of the Charter. They are pledged: to settle their disputes peacefully in such a way that international peace and security, and justice are not endangered; not to use force or the threat of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purposes of the United Nations; to give the organization every assistance in any action it takes under the Charter; and to refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action."<sup>4</sup>



The Charter provides several principal instruments for the realization of its purposes and principles, in conjunction with the ideals of collective security. Article one, paragraph one, explicitly states one of the main purposes of the United Nations for the preservation of international peace and security. It states:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

To maintain international peace and security, "effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace," must be taken. Thus, in the above rule of purpose, the role of the collective security principle is put into working as an integral part of the international organization. The detailed implementation of this principle is left to Chapter VII.<sup>5</sup>

Bringing about international peace and security is also proposed in the Charter by other means than the use of collective action, rather "by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." Specifically, these principles are implemented by Chapters VI and XIV. It is to be understood that it is not the Organizations objective to undertake the "adjustment or settlement" of all "international disputes or situations," but only those situations that "might lead to a breach of the peace." Thus the Charter makes explicit its role for maintaining international peace and security by making it a matter of concern to the entire membership of the United Nations, all those situations that "might lead to a

breach of the peace," rather than minor international situations or disputes that require little attention. The call for the use of all peaceful means are subject to such provisional measures as provided in Chapter VI, Article 33, Paragraph one. (See: Appendix Two for reference) These provisional measures will be later discussed in Chapter 3 of this thesis. In short, the use of "peaceful means" are all those measures falling short of any armed reprisal or threat to the use of force. Furthermore, under Chapter VI, the Security Council cannot impose an obligatory settlement upon the parties against their will; it can only act as an agency of conciliation for the pacific settlements of disputes.<sup>6</sup>

However, if a situation should arise other than called for under Chapter VI, once the Security Council has determined the existence of a situation that "might lead to a breach of the peace," Chapter VII of the Charter authorizes the Security Council to take up the enforcement measures of the collective security system, "in conformity with the principles of justice and international law," for the continued preservation of international peace and security.<sup>7</sup>

### **Chapter VII: The New Collective Security System**

The Charter provides under Chapter VII, a system of collective action that further guarantees the effectiveness of such enforcement measures as may be undertaken by the Security Council with respect to threats to the peace, breaches of peace, and acts of aggression. Furthermore, it is made clear that actions required by the decisions of the Security Council are to be carried out by all the membership of the United Nations, or by some, as the council may decide. As such, Chapter VII represents quite different and new approach to the problem of collective security and peace enforcement from that adopted in Article 16 of the Covenant of the League of Nations, which we discussed in the previous chapter.

For the immediate application of the enforcement measures provided to the Security Council in the use of the collective security system under Chapter VII, we must first take a look at Article 24 of the Charter. Under the U.N. Charter, Chapter V, Article 24 states that only the United Nations Security Council may authorize the use of the enforcement measures when necessary under Chapter VII to maintain international peace and security. Article 24 of the Charter states:

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

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII."<sup>8</sup>

The permanent members of the Security Council hold the authority to veto any resolution put forward by that body, making it otherwise impossible to discharge the duties laid down in Chapters VI, VII, VIII, XII. Notwithstanding any other consideration, the veto power was not an issue in the Gulf Crisis, and therefore we will go on to analyze Chapter VII.

Chapter VII holds true to the fact that, in conjunction with Article 24, the use of the enforcement measures employed by the Security Council are subject only to the control of that body, and then enforced by the entire membership of the United Nations. In closer examination of the powers granted to the Security Council by the Charter, we find that "the thirteen articles of Chapter VII . . . fall into four groups. Articles 39 - 42 endow the Security Council with the powers necessary to deal effectively with threats to the peace and with breaches of the peace and acts of aggression. The next five articles contain all the provisions designated to enable the

Council to employ military measures swiftly and effectively. Then follow in Articles 48, 49, and 50, the obligation of the Members in respect of enforcement actions and a provision designated to assist Member states which encounter special economic problems in fulfilling these obligations. The last Article, 51, is the new 'self-defence' provision," which will be discussed to some detail in our case study of the Gulf War in Chapter 3 of this thesis.<sup>9</sup> A brief over view here would be useful in so far as to clarify the actual principle of Article 51. Article 51 states that: Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. [emphases mine]

For the purpose of analysing the critical role of the Security Council in the enforcement of the collective security system, our study of Chapter VII will revolve primarily around the first two groups mentioned above.

#### Articles 39 - 42:

The powers bestowed upon the Security Council in the first group, Articles 39 - 42, provide it with the authority to determine the existence of any threat to the peace, breaches of the peace, or acts of aggression, and can either make recommendations for the pacific settlement of disputes under Articles 39 and 40, and then make reference to Chapter VI, or decide what measures shall be taken in accordance with the collective security mechanisms under Articles 41 and 42. Because Articles 39 and 40 explicitly state the use of recommendations by the Security Council and "call upon the parties concerned to comply with such provisional measures. . . without prejudice to the rights, claims, or position of the parties concerned," the settlements of international disputes fall primarily under the

jurisdiction of the parties concerned, or, if referred by the parties in consideration of their legal disputes to the International Court of Justice.<sup>10</sup> Such provisional measures are made in reference to Chapter VI, Article 33 and "shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>11</sup> Thus, the settlement regarding international disputes strictly fall under the jurisdiction of the parties concerned.

Nevertheless, under Article 41, the failure to comply with such provisional measures later takes account for the actions taken by the Security Council, not involving the use of armed forces. Specifically, Article 41 provides for the use of economic sanctions. It is the first of a series of collective measures used for the restoration of international peace and security. Article 41, "together with the preceding Article, leaves the Security Council a wide measure of discretion in the exercise of the power that is given to it. The Security Council may decide in a particular case that measures not involving the use of armed forces will be adequate. In that case it will be only such measures have been tried and have been proven by experience to be inadequate that the Security Council will decide to use military measures under" Article 42.<sup>12</sup> Interpreted as such, Article 41, though inherited from the League of Nations system, provides for a new enforcement principle in which it calls upon the membership of the United Nations to apply such measures as undertaken by the Security Council. Unlike the League's non-binding of all members nature, specific obligations under the Charter provides that all members of the United Nations, acting under the jurisdiction of the Security Council, enforce the measures undertaken by that body. "The words 'called upon' appear to be used in this Article in the same mandatory sense as in Article 40. The basic principle of the security provisions of the Charter, as distinguished from the Covenant of the League of Nations would be nullified if, after the Security Council had reached a decision

regarding the application of measures not involving the use of armed forces, discretion were left to Members of the Organization as to whether they should carry out those measures or not. This interpretation is also supported by the fact that this Article is a special application of the general principle of Article 39, which empowers the Security Council to 'decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'"13

This same principle applies to Article 42 and subsequent articles of Chapter VII. Thus, once necessary measures have been taken by the Security Council for the maintenance of international peace and security under Article 41, as a chartered principle of international law, if needed, Article 42 follows in *prosequo* or *et sequencia* to Article 41's application of economic sanctions, for the use of military measures for the preservation of international peace and security.

The collective security system under Charter VII, specifically under Article 42, goes beyond the League system in two respects. "In the first place, it empowers the Security Council to take a decision with regard to the use of air, sea or land forces to maintain or restore international peace and security by less than a unanimous vote. Under the provisions of Article 27, paragraph 2, this decision may be taken by a vote of seven members of the Security Council with the concurrence of all the permanent members. In the second place, such a decision taken by the Security Council creates obligations for Members of the Organization which these Members are required faithfully to carry out according to the express provision of Article 25."14

Article 25:

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

Thus, the use of military force under Article 42, in conformity with the U.N. Charter and international law, must be assumed within the functional and judicial framework of the international system, where the organization is upmost accountable

for the direction and use of military measures. Therefore, the Security Council must invoke, whenever an international crisis merits the use or need for military intervention, Article 42 in accordance with its statutory proclamation of its purposes and principles.

Articles 43 - 47:

Article 42 however, must be read upon its dependent relationship with Articles 43 - 47, which contain all the provisions designated to enable the Council to employ military measures swiftly and effectively.

Under Article 43, "no Member of the Organization is obligated under Article 42 to employ 'armed forces, assistance, and facilities' in excess of those specifically provided for in the 'special agreement or agreements'" negotiated with the Security Council.<sup>15</sup> "Such agreement or agreements shall govern the number and types of force, their degree of readiness and general location, and the nature of the facilities and assistance to be provided."<sup>16</sup> Furthermore, Articles 43 - 45 establish a collective security system by which national contingents are made "available to the Security Council," which in turn, in fulfillment of the obligations assumed in Article 43, the Security Council invites those members, if they so desire under Article 44, "to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces," and to strengthen the degree of readiness of such forces by having some discretionary power over national air force contingents as established in Article 45.<sup>17</sup>

Because it is assumed "that the Security Council has a capacity for entering into international commitments apart from that of its members, it represents an important advance in the development of an international authority."<sup>18</sup> That the Security Council is empowered by the Charter to undertake sustained international

commitments, it is representative of a new collective security system that goes far and beyond that of the League of Nations system. Thus, it is inconsistent to make such power available to the direction of any leading national government or coalition in the enforcement of collective security. Therefore, when the Security Council had determined the use of force as the principle enforcement mechanism available for the restoration of international peace and security, the need for a Military Staff Committee (MSC) arises.

Envisioned within Articles 46 and 47, "plans for the application of armed forces shall be made by the Security Council with the assistance of the Military Staff Committee." The MSC is to serve as the general staff responsible to the Security Council for that bodies over-all strategic planning.<sup>19</sup>

The functions of the MSC are threefold: (1) to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, . . . ; (2) to advise and assist the Security Council in the strategic direction of the forces placed at its command under the provisions of Article 43; and (3) to advise and assist the Security Council in connection with the preparation of plans for "the establishment of a system for the regulation of armaments" under the terms of Article 26, and the exercise of any powers which may be conferred upon the Security Council in connection with the enforcement of any such system.<sup>20</sup>

In short, Chapter VII provides the Security Council with the enforcement measures required for the successful application of the collective security mechanisms when determining the existence of any threat to the peace, breaches of the peace, and acts of aggression. Yet, the Charter provides further guarantees, other than those under Chapters VI and VII, for the effective roles undertaken by the Security Council in the preservation of international peace and security. The Secretary-General of the United Nations, as "the first citizen of the world, the first citizen of the



international community," leads the establishment of the international collective security system by serving as an effective instrument of crisis management and international cooperation in the capacity of his obligation under Article 99. 21

Article 99 states:

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

As Thomas Boudreau mentions in his book Sheathing the Sword, "Article 99 says nothing about the Secretary-General having the authority to bring to the attention of the Security Council a matter that may 'restore' international peace and security. In short, Article 99 clearly does not give the Secretary-General any rights or responsibilities to take steps to enforce international peace and security; this is the explicit role of the Security Council under Chapter VII of the Charter. His authority in this area is carefully constrained and limited to functions that the Security Council might explicitly give him under Article 98 in enforcement action that it must initiate. Thus, Article 99 defines and limits the Secretary-General's role to conflict prevention. Because of this Article, the Secretary-General is, in a very real sense, an international watchman of the peace."<sup>22</sup>

Certain political discretion is given to the Secretary-General in performing his responsibility under Article 99. Because of his alternate role in the overall management of the collective security system, he may wish to bring a certain matter to the attention of the Security Council if no member state may wish to do so. This allows for greater surveillance of developing international conflicts and thus contributes significantly to the effective use of the collective security system, though in principle, the enforcement measures are then only the priority of the Security Council.

**Conclusion:**

Under Chapter VII, the Charter provides a fresh and new approach to the enforcement measures of the Collective Security System. Unlike Article 16 of the Covenant of the League of Nations, Chapter VII represents one of the greatest advancements in the application of peace enforcement and collective security. It provides for a system that is indicative of the authority vested in an international organization to resolve international disputes and to maintain or restore international peace and security. The Security Council, in its enforcement action under Chapter VII, is representative of an entire organization that has advanced enormously throughout the years since its conception. Yet on the other hand, today a new revolution in international relations, politics, and law is in procession. With the invasion of Kuwait by Iraq on August 2, 1990, the international community had come together with the international organization and condemned such action. Because of international cooperation and good will between nations, especially that of the super-powers, appropriate collective action (U.N. trade embargo) was first attempted; then, the U.S. led military invasion of Iraq occurred on January 15, 1991. Most importantly, such military action was not conducted through the correct functional and judicial channels, to ensure a peaceful solution to the conflict in the gulf.

As circumstances prevailed, Iraq, by international decree, had force used against her in order to re-establish the peace. Via an inconsistent interpretation of international law and collective order, a disaccordant situation, something other than that originally envisioned within the functional and judicial authority vested within the international organization, took place in the adoption and application of Resolution 678 for the subsequent use of force against Iraq. A 'new world order' had been established in the presence of the international organization, but in manipulation and then in exclusion of it. Chapter 3 introduces in a case study, the legal problems of Chapter VII, raised by the Security Council's response to the invasion of Kuwait, and

the legal debate concerning the use of force against Iraq, in accordance with Resolution 678, for the restoration of international peace and security. The purpose of the chapter is also to clarify and focus U.N. Security Council policy at the time of the Gulf Crisis, and to find whether that policy was consistent under international law.

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**Chapter 3:**

**Chapter VII  
and  
the Legal Debate:**

**Introducing the Legal Problem**

- \*Introduction
- \*Arguments: The Legal Debate
- \*Conclusion
- \*End Notes

**CHAPTER 3:**  
**Chapter VII & The Legal Debate:**  
**Introducing the Legal Problem**

**Introduction:**

On August 2nd, 1990, Iraq invaded Kuwait. As a statement of fact, Iraq's aggression and subsequent annexation of Kuwait, which violated all principals of international law, was an infringement of the solemn obligation of all member states under the U.N. Charter. Specifically, Article 2.4 of the Charter states:

"All members shall refrain in their international relations from the threat or use of force against the territory integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."<sup>1</sup>

As a result, the United States of America sent to Saudi Arabia the largest deployment of military personnel and equipment since the Vietnam War. Furthermore, the United States of America, with much international, national and thereof Congressional support, was at the head of the most significant post-Cold War diplomatic dispute in the history of the United Nations.

In an effort to secure economic and political interests in the area, as well as reverse the annexation of Kuwait by Iraq, the United Nations Security Council had pursued the purposes for which the United Nations was originally created. Specifically, Article 1.1 of the Charter states:

"To maintain international peace and security, and to that end: take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity to international law, adjustment or settlements of international disputes or situations which might lead to the breach of the peace."<sup>2</sup>

As leader and guardian of the Gulf crisis, the United States of America had defined common international foreign policy objectives that concerned its own national security. With a shared international concern for a peaceful solution to the conflict in the Persian gulf, the "United Nations Security Council approved for the first time in twenty-three years mandatory sanctions under Chapter VII (Actions with respect to threats to the peace, breaches of the peace, and acts of Aggression) of the United Nations Charter."<sup>3</sup>

The purpose of this chapter is to clarify and focus the United Nations Security Council policy at the time of the Gulf Crisis. It is the ambition of this Chapter to specifically investigate if this policy was consistent under international law, describing the limitations under the U.N. Charter. The goal is to find proof, wether or not the methods used for the resolution of the Persian Gulf crisis were legitimate and just, as prescribed under the law. The specific purpose of my argument is to answer the following questions:

A) Did the United Nations Resolution 678 authorizing the use of "all necessary means" to uphold previous Security Council resolutions demanding that Iraq withdraw from Kuwait, permit the use of force under International Law to maintain international peace and security?

B) Did the United States of America together with the international community, acting under Chapter VII of the United Nations Charter, act in accord with International Law and to what extent? If so, did or did not the use of force by the United states of America and the international community act in an unilateral military strike against Iraq?



### ARGUMENTS: The Legal Debate

The use of military force outside the framework of the international organization (United Nations) violates International Law. It cannot be supported, as seen in chapters one and two, as established in pursuit of the purposes and principles of the Charter of the United Nations, by contemporary international practice.

Specifically, under international law, Article 2.4 of the U.N. Charter forbids the use of force as a means of conducting international relations between all member states. "All Members shall refrain in their international relations from the threat or use of force [armed attack] against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."<sup>4</sup> Furthermore, under the U.N. Charter, Chapter V, Article 24 states that only the United Nations Security Council may authorize use force when necessary under Chapter VII to maintain international peace and security. Article 24 of the Charter states:

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

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII."<sup>5</sup>

Article 2.4 and Article 24 must also be considered in concurrence with article 51, under chapter VII of the U.N. Charter. Article 51 states that: "Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security

Council has taken measures necessary to maintain international peace and security."<sup>6</sup>  
[emphases mine]

"Because Article 51 refers solely to situations where armed attack has actually occurred, it has been argued that the Charter only reserves the right of self-defense to this limited extent. . . . It has already been pointed out that [under] Article 51 [a state] retains the 'inherent right of self defense' independently of other provisions of the Charter in cases of armed attack. In cases where there is no armed attack but where, under traditional [customary] rules of international law, there exists a wider right of action in self-defense . . . [it] still continues to exist, though made subject to the restrictions contained in the Charter [prohibiting the use of force]."<sup>7</sup>

"Article 51 thus provides an exception to article's 2.4 prohibition against the national or international use of force", and then only in self-defense. 'A state may then use defensive forces for the solemn purpose of self-defense'; and this then only before the Security Council has taken such measures as provided under Chapter VII of the Charter.<sup>8</sup>

What kind of provocation, if any then, could the United States of America have cited to uphold on whether the U.S. was to fight the war in self-defense, and make a subsequent peace? Specifically, what justification could it had found under international law to go to war on its own initiative?

As presented in the above rules of law, the United States of America, under international law, could had acted unilaterally only in self-defense to an armed attack, and then only before the Security Council has taken such measures as provided under the U.N. Charter (Art. 51). U.S. officials had designated a series of acts that the Iraqi dictator might had taken to spark an American strike of aggression that could be presented as legitimate self-defense. The most obvious, an armed attack by Iraq on the "wholly defensive" U.S. military forces deployed to Saudi Arabia on and after August 7, 1990. This did not occur previous to January 15, 1991.

Preparations for an attack might have also sufficed under U.S. criteria and interpretation of Article 51 of the Charter. The justification for self-defense would have invoked what might have been characterized as "anticipatory self-defense".<sup>9</sup> For example, if satellites detected enemy troop buildup on the borders or fueling of Iraqi missiles, the U.S., in invoking Article 51, could and most likely would have struck without delay. Yet, this also did not occur previous to January 15, 1991.

Mistreatment of hostages by Iraqis--killing or injuring American citizens or even physically imprisoning them--would have justified invasion, not by self-defense, but by a principle of international law known as "humanitarian Intervention".<sup>10</sup> This states that a nation has the right to use force to protect its citizens abroad. This could have been thought to apply to the diplomats held inside their embassies in Kuwait City. Nevertheless, as of December 6, 1990, Iraq had called for the unconditional release of all foreign hostages.

Thus, approving the use of force in self-defense or humanitarian intervention, under Article 51 of the U.N. Charter, was then void previous to January 15, 1991 in the absence of any acts of belligerence upon U.S. troops by Iraq and the release of all foreign hostages on December 6, 1990.

Most importantly, and in accordance with Article 51, measures taken by the Security Council under Chapter VII of the United Nations Charter on August 2, 1990, [acting under Article 39 and 40 (Resolution 660)] meant that "the inherent right of individual or collective self-defense" to an armed attack by Iraq on the U. S. troops, was then void in the actions of the Security Council on and then after August 2, 1990.<sup>11</sup> Thus in this view, the time for invoking Article 51 had well elapsed. There was absolutely no justification under international law for the use of armed force in self-defense under Article 51 after August 2, 1991.

Because Articles 39 and 40 explicitly state the use of recommendations by the Security Council to "call upon the parties concerned to comply with such provisional

measures. . . without prejudice to the rights, claims, or position of the parties concerned," the settlements of international disputes fall primarily under the jurisdiction of the parties concerned, or, if referred by the parties in consideration of their legal disputes to the International Court of Justice.<sup>12</sup> Such provisional measures "shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>13</sup> Thus, the settlement of disputes regarding the Iraqi annexation of Kuwait strictly fell under the jurisdiction of the parties concerned.

Nevertheless, the failure to comply with such provisional measures take account for the actions taken by the Security Council, not involving the use of armed forces, under Article 41. Therefore, in the presence of economic sanctions under Article 41 (Resolution 661) on August 6, 1990, such latter measures moved the crisis settlement of disputes under the jurisdiction of the Security Council. Up until and before the air assault by the U.S.-led military coalition on January 16, 1991, which was authorized by the Security Council on November 29, 1990 in Resolution 678, the Security Council had passed thirteen resolutions (excluding Resolution 678) asserting its jurisdiction by condemning and setting up an international embargo against Iraq. [All Security Council Resolutions, in exception of Resolution 677 (1990) may be located in Appendix Three]

"During the period under review (between August 2 and November 29, 1990), the Security Council took action of extraordinary consequence to reverse the invasion of Kuwait by Iraq and to deter aggression in future. The considerations that arise from some of the aspects of this action are plainly central to the maintenance of international peace and security. I believe they will need to be carefully borne in mind in future" said Javier Perez de Cuellar, Secretary-General of the United Nations on September 6, 1991, at the forty-sixth session of the General Assembly.

"Once the invasion occurred, the response of the Security Council was not only swift but systematic; in adopting 14 resolutions regarding the situation, the Council followed a step-by-step and considered approach to the use of its powers under Chapter VII of the Charter. Far from acting in haste, the Council afforded ample time - from 2 August 1990 to 15 January 1991- for the Government of Iraq to comply with the Council's demands. It was only when all warnings - including my own pleading to Iraq to correct a manifest wrong - went unheeded and all friendly advice was rejected that armed force was finally employed to restore the independence of Kuwait. This is the factual side of that fateful occurrence, which no balanced assessment, now or in the future, can ignore."<sup>14</sup>

In order to implement the principles and responsibilities of Article 24, Article 24, and then some other justification (other than that intended for under Article 51) for military intervention under international law once the Security Council had determined that the sanctions provided for in Article 41 (economic sanctions) had proven to be inadequate for the preservation of international peace and security, the U.N. Security Council must have then authorized the measures provided under Article 42 in accordance to the fundamental or chartered principle of *et sequentia*. This was not the case. The "important aspect is that the enforcement action was not carried out exactly in the form foreseen by Article 42 *et sequentia* of the Chapter VII. Instead, the Council authorized the use of force on a national and coalition basis. . . . However, the experience of operations in the Gulf suggests the need for a collective reflection on questions relating to the future use of the powers vested in the Security Council under Chapter VII."<sup>15</sup> Article 42 of the Charter states:

"Should the Security Council consider that measures provided for article 41 would be inadequate or have proven to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other

operations by air, sea, or land forces of members of the United Nations."<sup>16</sup> [emphases mine]

Article 42, "which authorizes the Security Council to take military action when economic sanctions 'would be inadequate or have proven to be inadequate,' was not, it appears, the legal basis for" Resolution 678. "Why? Because the article's dependent relationship with Article 43, pursuant to which the UN membership consent to provide the Security Council, 'on its call and in accordance with a special agreement or agreements,' with armed forces, assistance, and facilities to effectuate Article 42."<sup>17</sup> Therefore, authorization could then only be granted by the United Nations under Article 42 and in conjunction with Articles 43, 44, 45, 46, and 47 for a guided military strike against Iraq in account to the leadership of the Security council and the Military Staff Committee under international law. [A copy of the U.N. Charter, specifically Chapter VII is available in Appendix Two for reference]

Rather, the Security Council adopted in Resolution 678 to authorized "'member states cooperating with the government of Kuwait, unless Iraq on or before 15 January 1991 fully implements (previous resolutions), to use all necessary means to uphold and implement' the previous resolutions 'and to restore international peace and security in the area.'"<sup>18</sup> "At the behest of the United States and to assure exclusive U.S. command and control over Persian Gulf operations, it (the Security Council) turned down a Soviet proposal to activate the Military Staff Committee (MSC) provided for in Charter Articles 45-47 to unify the strategic direction of Security Council police actions."<sup>19</sup> [emphases mine]

This resolution did not specifically cite military force nor the section of the U.N. Charter in Chapter VII that permits it (Articles 42, and subsequent Articles). The failure of Resolution 678 to cite Article 42, and subsequent Articles, was aimed at allowing the United States of America and her allies to launch hostilities against Iraq

on 16 January 1991 without putting their forces under U.N. direction. "It eschewed direct UN responsibility *and* accountability for the military force that ultimately was deployed, favoring, instead, a delegated, essentially unilateralist determination and orchestration of world policy, coordinated and controlled almost exclusively by the United States. And, in so doing, it encouraged a too-hasty retreat from the preeminently peaceful and humanitarian purposes and principles of the United Nations. As a consequence, it set a dubious precedent, both for the United Nations as it stands today and for the 'new world order' that is claimed for tomorrow."<sup>20</sup>

In view of Resolution 678, such action brought about hostilities by military forces without explicit U.N. authority or accountability as prescribed under international law. "After pronouncing its blessing on military force--the blank check of the Gulf War--the Security Council and the secretary general merely watched from the sidelines as the United States did what it wanted without accountability to the Council. As a result, Washington was free to inflict 'near-apocalyptic' destruction on Iraq and bomb it into a 'pre-industrial age,' according to one U.N. survey conducted after the war."<sup>21</sup> Therefore, regardless of Resolution 678, without specific authorization by the Security Council under Article 42 and subsequent Articles under Chapter VII of the U.N. Charter for the lawful and justified use of force, the U.S.-led military coalition did not have the legal nor legitimate authority to conduct independent military operations separate and apart from an unified U.N. Command.

"In order to preclude controversy, . . . the mechanisms required for the Council to satisfy itself that the rule of proportionality in the employment of armed forces is observed and the rules of humanitarian law applicable in armed conflicts are complied with; (these mechanisms must be refined in light of the rule of international law). Moreover, careful thought will have to be given to ensuring that the application of Chapter VII measures is not perceived to be overextended."<sup>22</sup>

"The conduct of the Gulf War--the third stage of the Gulf crisis--clearly demonstrated the weaknesses of U.N. enforcement capabilities and drew into question the process by which decisions relating to enforcement are made. Having given its blessing to the use of force, the Security Council then stepped aside and the United States was free to initiate and conduct the war as it saw fit.

"The magnitude of human suffering and material destruction that U.S.-led forces inflicted on Iraq makes evident the need for the Council to do more to ensure that it does not bless unnecessarily bloody wars when carrying out its legitimate responsibilities for enforcing the nonaggression principle. In the future, therefore, U.N. decisions for enforcement should follow a strictly evenhanded multilateral process.

". . . Even when U.N. coercion may be required, enforcement as destructive as the recent Gulf War is very likely to be counterproductive."<sup>23</sup>

Therefore, as demonstrated in fact and as in principle of international law, the United States of America and allies may still be held accountable under Resolution 678 for the unilateral and illegal act of 16 January 1991, in respect to the breach of the international peace and security under international law. This hostile act of belligerence may then hold the U.S.-led military coalition responsible to a similar act of aggression under international law as that of Iraq's initial violation of international law of the invasion of Kuwait on August 2nd, 1991.

"With Resolution 678 evidencing no explicit or clearly implicit authorization in the text of Chapter VII, its *travaux preparatoires* or pertinent state practice, one is left to conclude that the Security Council created an entirely new precedent, seemingly on the basis of some assumed penumbra of power available to the Council under chapter VII--an 'Article 42 1/2' authorization, as some UN watchers have called it. . . . It is analogous to the judicially developed penumbra of powers available to the President of the United States in the conduct of foreign relations under the U.S. Constitution."<sup>24</sup> [emphases mine] In continuation of this study, we will analysis in Chapter 4 the



internal conflict brought about between the U.S. Congress and the Executive in respect to United States foreign Policy and the Gulf war.

### CONCLUSION:

In this view, the United States of America together with the international community, under International Law, were unable to legally initiate armed hostilities on the grounds of self-defense under Article 51 of the U.N. Charter.

Furthermore, lacking United Nations authority and accountability to do so under Resolution 678, the United States of America and allies were restricted under international law and the United Nations Charter to initiate armed hostilities after 15 January 1991 without implementing Article 42 and subsequent Articles of the Charter beforehand, to restore international peace and security.

With all disregard to a history in the development of the international organization, the guiding principles and regulations of the U.N. establishment, the U.N. Charter and of international law, the U.S.-led military coalition launched on 16 January 1991, an illegal military intervention against Iraq. There were proper channels to go about resolving this conflict peacefully and diplomatically; greater patience was needed. It was the international community as well as the United States' obligation to adhere to these principals of international law. How can it be justified, when an illicit attempt by the community of nations permit the unnecessary lose of life and prolonged suffering of one people: The Kurdish people!?

"When human life (especially innocent human life) and other fundamental values are being put greatly and severely at risk, as surely they were when Resolution 678 was adopted, it seems not inappropriate to insist upon unambiguously articulated war-making authority as a *de minimis* requirement of 'right process.'"<sup>25</sup> The U.N.

Charter makes the Security Council the primary entity under international law for initiating and monitoring the use of force necessary to maintain international peace and security, not a coalition of states. Enforcement under Chapter VII through the use of force is a system requiring the collective engagement of all nations, a system that requires a discipline all its own. A new revolution in international order is at hand, and the prospect of a legal system that can then truly institute proper and adequate peace enforcement and collective security mechanisms in our world, is but disappointing. "A 'new world order' deserves better."<sup>26</sup>

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## Chapter 4:

### U. S. Foreign Policy and the Gulf Crisis:

#### A Conflict Between the Congress and the Executive

##### \*Introduction

A Conflict between the Congress and the Executive.  
U.S. Foreign Policy, U.N. Security Council Resolution 678,  
and the International Community.

##### \*Conclusion

##### \*End Notes

**Chapter 4:**  
**U.S. Foreign Policy and Gulf Crisis:**  
**The Conflict Between the Congress and The Executive**

**Introduction:**

U.S. foreign policy in the Middle East had received an overwhelming, but a short of full, domestic and international support both in the operations and management of the Persian Gulf Crisis. On the domestic front, in the weeks of early to mid November 1990, there was a growing controversy concerning the options on how to go about dealing with Iraq between the Legislative and Executive branches of government. Specifically, President Bush's decision to almost double the U.S. military deployment to the Persian Gulf on November 8, 1990, with the interest of moving from a defensive strategy to creating an "adequate offensive military option," had moved members of Congress to debate the prospects of war with Iraq. "The new deployment, which will include heavy armor and three more aircraft carrier groups, could double the number of U.S. military personnel deployed in the region to nearly 500,000, approaching the maximum deployment in Vietnam two decades ago. . . . The deployment will include half of all U.S. troops in Europe, a full mechanized division from the United States, the equivalent of a division from the National Guard and four Marine expeditionary brigades totaling roughly 60,000."<sup>1</sup> It was not surprising then that our very same "Congress [was] cheering [the president] with one hand and sitting on the other."<sup>2</sup>

On the international front, we had seen also a conflicting view in the management of the Gulf crisis. Particularly in respect to the Security Council vote for the adoption of the use-of-force resolution #678 on November 29, 1990, two countries out of fourteen, Cuba and Yemen voted against the resolution, with China abstaining as the fifteenth member; considering the abstention as a no vote without veto power, the success of passing Resolution 678 became part of the U.S. diplomatic

efforts to reverse the annexation of Kuwait by Iraq and to restore Kuwait's legitimate government through the use of force. Yet, it is important to recognize that U.S. foreign policy against Iraq, was not unanimously favored by the international community in respect to the means employed by the United States, via the Security Council, in the adoption of Resolution 678 which eventually led to the eventful consequences of war with Iraq.

The purpose of this chapter is to clarify and to focus what was United States foreign policy objectives against Iraq in the later parts of 1990, particularly before and after November 8, 1990; here should be noted the date of U.S. policy transition with regard to the Gulf Crisis. It is also to investigate whether these policies were consistent with the United Nations policy in the Gulf, specifically in consideration of the Security Council Resolutions under Chapter VII before November 8, 1990; later to resolve if the U.S. policy shift after November 8, 1990 was consistent with the United Nations policy. It is also the ambition of this chapter to explore the limitations under the United States Constitution for the preservation of international peace and security; to explore the difficulties and conflicts faced by United States government while conducting policy against Iraq.

**Arguments:**

**The Conflict Between Congress and the Executive**

In an effort to secure economic and political interests in the Persian Gulf, as well as to reverse the annexation of Kuwait, the United States of America had defined common foreign policy objectives with concern to its own national security and in correlation with the United Nations Security Council Resolutions 660, 661, 662, 664, 665, 667, 669, 670, 674, and 677. [All Security Council Resolutions, in exception of Resolution 677 (1990) may be located in Appendix One] By upholding all previous U.N. Security Council resolutions under Chapter VII (Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) of the U.N. Charter, specifically Articles 39 - 41(economic sanctions), the United States of America had committed itself to the legitimate role as leader of the most significant post-cold war international dispute in the history of the United Nations. Furthermore, U.S. policy objectives before November 8, 1990, in conformity with United Nations policy in the Gulf (and then only before November 29, 1990 as analysed as the case study in Chapter Two), had found broad national and international support all around the board. Specifically, the United States of America had committed itself to four policy guiding principals; these were:

    "One, the immediate, complete, and unconditional withdrawal of all Iraqi forces from Kuwait as mandated in the United Nations Security Council Resolution 660;

    Two, the restoration of Kuwait's legitimate government;

    Three, the protection of the lives of American citizens held hostage by Iraq, both in Iraq and Kuwait, (this had no longer applied due to the release of all hostages on December 7); and

    Four, a commitment to the security and stability of the Persian Gulf."<sup>3</sup>



Upon establishing an offensive military option against Iraq, initiated only after November 8, 1990, Congressional concern over the gulf buildup (a situation of relative stasis having developed after August 8, 1990, when the U.S. began to deploy "wholly defensive" forces "to deter further Iraqi aggression") promptly moved members of Congress to debate the prospects of war with Iraq.<sup>4</sup> "Most members saw that the buildup conflicted with the policy of pursuing U.N.-mandated sanctions." "Yet it was no less cynical than the suggestion that Congress had any real choice to approve or disapprove war after more than 400,000 troops were already placed in the Saudi desert. . . . The alternative of substantially downsizing American forces while sanctions were tested was not seen by most in Congress as a plausible option."<sup>5</sup>

"In general, there was broad support that there needed to be an international response to the Iraqi movement into Kuwait and the potential for invasion of Saudi Arabia," said Rep. Martin Sobo, D-Minn. "I think everyone thought that the president did extremely well in terms of gathering international support for his initial response. I think that where you have a growing (national and international) concern is over the sense that the president is changing policy. . . that he is moving away from patience to the potential of offensive action. That is where you see very substantial congressional concern."<sup>6</sup>

As the President's policy in the gulf changed, members of Congress continuously asserted their constitutional role in fear that the president would commit the United States to another Vietnam. "The first stirrings of restlessness on Capital Hill have begun to surface. About 80 members of Congress, led by Rep. Ron Dellums, D-Calif., wrote to Bush over the weekend opposing any move to open hostilities without congressional approval."<sup>7</sup> Responding, Bush had appeared ambivalent whether he would seek congressional authorization as prescribed under the War Powers Act, if he ultimately had decided to go to war with Iraq. Referring to the U.S. invasion of

Panama, Bush said, "'I've done this in the past, would have no hesitancy at all' about doing so again. . . . History is replete with examples when the president would have to take action' without congressional approval."<sup>8</sup>

Debates over the president's war-making authority and inherent power as commander in chief have often become entangled with questions of Congressional authority under the U.S. Constitution. Upon assuring the Congress on the Gulf, President Bush responded by "pulling a copy of the Constitution from his suit pocket at a meeting with congressional leaders from both parties and telling that he understood what it said the responsibility of Congress to declare war. . . . He added, however, 'It also says that I'm the commander in chief.'"<sup>9</sup> The long-running historical debate between the president and Congress over the authority to wage war is rooted in these passages from the Constitution:

"The Congress shall have Power...to declare War, grant Letters of Marque and Reprisal, and make rules concerning Captures on Land and Water; to raise and support Armies, but no Appropriation of Money to that Use Shall be for a longer Term than Two Years; to provide and maintain a Navy; to make Rules for the Government and Regulation of the land and naval Forces; to provide for calling forth Militia to execute the Laws of the Union, suppress Insurrection, and repel Invasion..."

-Article I, Section 8

"The President shall be Commander in Chief of the Army and the Navy of the United States, and of the Militia of the several States, when called into actual Service of the United States,..."

-Article II, Section 2

Acting upon this question, whether the president, in fulfillment his constitutional duties, could act alone to place the United States at war, the framers' intent for the Constitution on this issue was clear and profuse. Addressing the scope of the president's power to make war, James Madison, the principal architect of the Constitution, wrote in 1793:

Every just view that can be taken of this subject admonishes the public of the necessity of a rigid adherence to the simple, the received and the fundamental doctrine of the Constitution, that the power to declare war is fully and exclusively vested in the legislature; that the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war; that the right of convening and informing Congress, whenever such a question seems to call for a decision, is all the right which the Constitution has deemed requisite or proper . . . . 10

"The history of human conduct," Hamilton believed, "does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate, created and circumstanced as would be the president of the United States."<sup>11</sup>

"In *The Federalist*, no. 69, Hamilton explains the commander-in-chief clause:

The president is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as the first general and admiral of the confederacy; while that of the British king extends to the declaring of war and to the raising and regulating of fleets and armies; all which, by the Constitution under consideration, would appertain to the legislature.

Hamilton summarized the meaning of the power to declare war: it meant 'when the nation is at peace, to change that state into a state of war; whether from calculations of policy or from provocations or injuries received: in other words, it belongs to Congress only, to go to war."<sup>12</sup>

Thus, the constitutional conclusion to this debate is clear: without congressional consent, the executive lacks the power to act alone to place the United States at war. Unequivocally, the framers of the Constitution intended to give Congress the decision to declare and then approve the waging of war. Clearly, in order to follow through, "the president lacked the power to place the United States at war against Iraq. Acting on this belief--after the president's November 8 Announcement--56

members of Congress brought an act in *Dellums v. Bush* to restrain the president from war without prior congressional consent. . . . They argued only that the president's claim of an 'offensive option,' coupled with a pattern of presidential acts that raised a substantial possibility that the option would be executed, created a case or controversy justifying judicial intervention. Accordingly, they asked that the court issue an injunction ordering the president not to use offensive force against Iraq without prior congressional consent."<sup>13</sup>

In *Dellums*, the court claimed that:

If the executive had the sole power to determine that any particular offensive military operation, no matter how vast, does not constitute war-making but only an offensive military attack, the congressional power to declare war will be at the mercy of a semantic decision by the executive. Such an "interpretation" would evade the plain language of the Constitution, and it cannot stand. . . . Here, the forces involved are of such magnitude and significance as to present no serious claim that a war would not ensue if they become engaged in combat, and it is therefore clear that congressional approval is required if Congress desires to become involved.<sup>14</sup>

The law-suit intended to force President Bush to seek congressional authority before ordering a U.S. strike against Iraqi troops. "We believe the president has a responsibility to send to Congress a declaration of war," said Rep. Ronald Dellums, D-Calif.<sup>15</sup> Still acting on what was perceived as policy before November 8, 1990, White House spokesman Marilyn Fitzwater said on November 13, 1990: "there is no need for congressional declaration of war because 'our policy is not to make war; our policy is to seek the peaceful resolution of this matter and the withdrawal of Saddam Hussein.'"<sup>16</sup>

One final argument concerning the Constitutional debate is the explicit reference to the War Power Act of 1973. "The War Powers Resolution provides that authority to introduce U.S. forces into hostilities, actual or imminent, can be inferred only from a provision of law specifically authorizing such action, a provision which must explicitly

refer to the War Powers Resolution. . . . Congressional approval could not be inferred from anything other than explicit authorization."<sup>17</sup> In this context, the War Powers Act was the legislative result of a concerted effort on the part of congressional leaders to provide a framework in a measure to regain the constructive influence in foreign policy by asserting the constitutional powers of the Congress to participate in decision-making with respect to the deployment and commitment of armed forces. The resolution begins with a clear statement to this effect:

The Purpose of this Joint Resolution is to fulfill the intent of the framers of the Constitution of the United States of America and ensure that the collective judgment of both the Congress and the President will apply to the introduction of United States armed forces into hostilities or situations where imminent involvement in hostilities is clearly by the circumstances, and to the continued use of such forces in hostilities or in such situations.

-Section 2(a)

The situation in the Persian Gulf, coupled with the increasing U.S. involvement in this volatile region, must have compelled the Congress to act under the War Powers Act on and before November 8, when the president claimed the need for an "adequate offensive military option." Such was not the case. By doing otherwise, Congress forfeited the opportunity for effective congressional participation in decision-making regarding the U.S. actions in the Gulf. "The congressional debate on explicit authorization for the Gulf War was effectively over long before it began. It should have begun on August 7, 1990, the day after Secretary of Defence Dick Cheney announced the U.S. commitment to defend Saudi Arabia in the event of an attack by Iraq, which had overrun Kuwait four days earlier. . . . The Commitment was thus made as a sole executive agreement--an agreement more sweeping in its terms than any of the seven mutual security treaties to which the United States is party, for none of those contains an ironclad commitment to go to war."<sup>18</sup>

Clearly, "Congress [had] shown no inclination to demand that the administration invoke the War Powers Resolution in the gulf crisis. The 1973 law, which successive presidents have rejected as unconstitutional, requires that the president inform Congress whenever U.S. troops face an 'imminent' risk of hostilities. It gives lawmakers the option of imposing a 60-day limit (extendable to 90 days) on the deployment.

Short of that, however, there [was] no consensus on Capital Hill concerning how often members of Congress should be consulted or how much weight their views should carry in administration decision-making."<sup>19</sup>

However, if Congress had had any aspiration for the use of force against Iraq, the Congress had to meet two conditions in order to approve such action: explicit authorization and the referral to the War Powers Act. "The authorization finally enacted by Congress on January 12, 1991, met both requirements."<sup>20</sup>

In view of the constitutional conflict between both branches of government, U.S. intervention in the Persian Gulf had demonstrated the limitations and difficulties faced while conducting the change of policy in the Middle East. Protesting that the president's goal of deploying an offensive capability indicating a decision to underplay, if not abandon, the dependence of economic sanctions and the collective policies of the U.N. Security Council, members of Congress had expressed their desire to participate fully in the policy decision-making. The Congress had explicitly stated that they wished to prolong the implementation of the U.N. embargo long before and shortly after the January 12 Congressional authorization, demanding that the economic sanctions take its toll on Iraq before committing to war. "House majority leader Richard A. Gephardt, D-Mo., went further, reportedly urging Bush to give economic sanctions far more time--as long as a year and a half--before resorting to military force", and to ensure a peaceful resolution to the crisis.<sup>21</sup> There was evidence that the embargo is working. Thus, there was no need leading to the rush of military

action by the United States at time that it did.

*The New York Times* on January 12, 1991, "related a meeting between Senator J. Bennett Johnston (D-La.) and President Bush:

'I told him I continued to favor sanctions and asked if there was any way to withdraw any of the troops.' He said Mr. Bush told him there was not. 'If you cannot withdraw the troops, you have made the decision to go to war,' the senator said." 22

On December 5, 1990, Secretary of State James Baker, in his first congressional testimony after the U.N. Security Council vote on Resolution 678, stated that "the international trade and arms embargo against Hussein have not influenced the 'ruthless dictator' who 'undoubtedly believes he can endure economic sanctions.' . . . Democratic senators repeatedly questioned Baker's claim that waiting longer would impose additional difficulties for the anti-iraq coalition. In response to a statement by Baker that his visit to Baghdad would be 'the last best chance' for peaceful resolution," Sen. Paul Sarbanes, D-Md. "said: 'I beg to disagree with you. The last best chance for peaceful solution . . . is to sustain the sanction policy for a period of time sufficiently long to give it a chance to work.'"23

The sanctions were just beginning to pinch Iraq's food and industrial supplies. Hussein had shown signs of anxiety, abruptly firing his oil minister and army chief of staff in the latter parts of November. Ironically, Bush had then decided to give up on time and gamble upon the brute strength of the U.S. forces. He had decided alone on an empty, costly show of force that precluded only to war with Iraq.

In reality, actual Congressional commitment to war--barring Iraqi capitulation--therefore (while confronted with a fait accompli by the executive, and then only upon an executive agreement, the doubling in size of the U.S. troop deployment to the Middle East and a change of policy away from the trade embargo), was made when President Bush announced the offensive troop buildup on November 8, 1990. Thus

instituted in this view, the executive committed a breach of authority and power not provided for by the Constitution to the president; conciliating not only an unconstitutional act in regard to the actions unbecoming of the executive, but which also made inconsistent the pursuit of United Nations policy in regard to all Security Council Resolutions after November 8, 1990 in an attempt to liberate Kuwait by peaceful means.

**U.S. Foreign Policy, U.N. Security Council Resolution 678,  
and the International Community**

The international community called for a continued search for a peaceful settlement during the gulf crisis. With a shared international concern for a peaceful solution to the conflict in the Persian Gulf, the United Nations Security Council had acted upon its policy objectives in conformity with international law, the U.N. Charter, and the common aspiration of the international community with regard to the issues of collective security and peace enforcement before the November 29 resolution for the use of force against Iraq.

The shift in U.S. policy, as was suggested at the end in Chapter 3, precluded to the fact that Resolution 678 was analogous to the judicially developed penumbra of power available to the President of the United States in the conduct of foreign relations under the Constitution. The United Nations had (by means of the Bush Administrations' successful efforts to pass the U.N. Security Council Resolution 678 on November 29, 1990, 'justifying' the use of military force in the Gulf after January 15, 1991), been afflicted by the shift of U.S. policy in the Gulf, not only in the November 8 announcement to almost double the U.S. military deployment to the Persian Gulf, but also in the adoption of Resolution 678. The shift of U.S. policy on November 8 intended to give the U.S. the political and military capacity to launch an invasion of



Iraq, thus either alienating the Security Council from the intended peaceful resolution of the gulf crisis, or coercing the international community into adapting an aggressive military posture with concern to the restoration of Kuwait's sovereignty and legitimate government.

The U.N. Security Council, seeking to increase pressure on Iraq to adhere compliance with all resolutions, passed on October 29, 1990 Resolution 674, "reaffirming the goal of the international community of maintaining international peace and security by seeking to resolve international disputes and conflicts through peaceful means."<sup>24</sup> The resolution asked, in addition to recalling Resolution 661 for the tightening of the trade embargo, that the secretary general of the United Nations, Javier Perez de Cuellar, pursue and "undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait on the basis of Security Council Resolutions."<sup>25</sup>

Soviet Foreign Minister Eduard Shevardnadze said in Moscow on the day of the military build-up, November 8, 1990, "'we prefer political methods for a solution, just as the United States does.' If these methods [economic sanctions] fail and force has to be used, Shevardnadze said, 'any decision should be taken in the framework of the Security Council.'"<sup>26</sup> Yet, the United States, led by Baker at the November 16, 1990 proceedings of the Security Council, "appeared to dismiss a proposal made at the United Nations . . . by Yevgeny Primakov, the special Soviet envoy on the Middle East, suggesting that the coalition try one more peace-making mission to Iraq."<sup>27</sup>

By November 26, "the Security Council had approved 10 resolutions . . . declaring Kuwait's annexation null and void and imposing farreached economic sanctions on Iraq. So far, all of these resolutions have won the support of at least 13 Security Council members, with Yemen and Cuba the only two ever to vote against or abstain."<sup>28</sup>

In the adoption of Resolution 678 on November 29, 1990, the Security Council gave in to the compulsion of the United States. It was then a matter of great international concern. Consequently, Egypt declared it would not participate in an offensive action; the Soviets Union urged for a prolonged diplomatic settlement; at home in the U.S., Bush had seen a sudden creation of valid dissent and doubt in the American people; questions arose about restoring a monarch in Kuwait instead of installing a democratically elected ruler; and the protest by the international community, in the presence of Yemen and Cuba at the Security Council vote, threatened the viability and stability of the United Nations in the resolution of international conflicts. It jeopardized not only the purposes and principals of the U.N. Charter in the preservation of international peace, but also the role of collective security, and the respect for the rule of international law.

"Respect for the rule of law implies adherence to both international and domestic legal precepts, whether they promote or obstruct favored policies. Compliance precedents are in the universal long-term interest of actors within each legal system, and noncompliance in either system ultimately undercuts an actor's standing to object to the noncompliance of others. The concept of the rule of law is incoherent if it can" not be honored in either system.<sup>29</sup>

### Conclusion

"More and more nations are looking to the U.S. Constitution as a model for their new domestic orders. Before they look too closely, architects of the 'new world order' might consider devoting some attention to shoring up the United States' own legal (constitutional) order."<sup>30</sup> The difficulties and conflicts faced by the United States government while conducting policy against Iraq were inherent in the interpretation of the Constitution. Specifically, the obscure authority by which the president may act in regard to United States relations with other nations, committing the nation to waging war with Iraq after the November 8th military deployment, was meant as an unconditional policy by the executive, with little room for legislative decision-making. Found to be inconsistent, thus, was U.S. executive policy against Iraq after November 8, 1990, in regard to the Constitutional role of the executive branch. Hence, the president of the United States had the legal, if not the ethical or moral responsibility to bring his case for immediate consultation before Congress. Seeking approval for the military build-up in the Gulf before November 8, 1990 was not only proper, but required. The executive branch's rush to a military confrontation with Iraq, in this view, does put into question the authority of the president and the inherent danger to the international community in ordering American military forces into combat without previous consultation.

Also found as inconsistent, was the role of U.S. foreign policy after November 8, 1990, in consideration of the Security Council Resolutions under Chapter VII of the U.N. Charter. While the international community continuously sought out all peaceful and non-violent means, U.S. policy diverted such attention away from the objectives of the United Nations, to other means which eventually led to the eventful consequences of war with Iraq. Furthermore, in the adoption of Resolution 678, while no other peaceful means had been exhausted, the United States propagated an elusive

technique in the role of collective security that left all obligation and commitment to the U.S.-led military coalition in the actions of a self favored policy. Undermining the purposes and principles of the United Nations, Resolution 678 sets a dangerous precedent for the future. As power relations shift and change among the nations of the world, justifying the role of collective security enforcement on a coalition basis rather than on an equitable international system may come to conflict with the overall wellbeing of the international community, posing a threat to the continued existence of human civilization.

"The emergence of the collective security machinery of the U.N. Security Council suggests that the council might yet become, to use Churchill's words, the 'constabulary power before which barbaric and atavistic forces will stand in awe.' That role presupposes the presence of U.N. forces under the direction of the council's military staff committee. Such forces would be made available by member states pursuant to special agreements with the council. In the United States, the U.N. Charter's implementing legislation--the U.N. Participation Act--requires that Congress approve any such agreement. None has yet been negotiated with any member state. The time may soon be ripe to commence that process, and an appropriate place to set forth that approval, including the conditions and restrictions under which the United States could provide standing forces to the council, would be a revised War Powers Resolution."<sup>31</sup>

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**Conclusion:**

**A 'New World Order'?**

## CONCLUSION

### A "New World Order?"

The emergence of the United Nations as an important institution for promoting international peace and security had yield largely to the rhetoric of President Bush's call for "a new world order." Behind such rhetoric lies an American foreign policy of stunning ambition:

Our strategy is to lead a global alliance, political alliance if you will. . . . We remain the one nation that has the necessary political, military and economic instruments at our disposal to catalyze a successful response by the international community. Geographically, of course, we stand apart from much of the world, separated as we are by the Atlantic and the Pacific. But politically, economically and strategically there are no oceans. And in a world without oceans a policy of isolationism is no policy at all. Only American engagement can shape the peaceful world that our people so deeply desire.<sup>1</sup>

But such dominance by one member state must never again be allowed, if the United Nations is to retain its identity as the essential and indisputable leader of the collective security system. This problem is inherent in a procedure in which enforcement actions under Chapter VII are taken on behalf of the United Nations by some coalition members, but without any U.N. control over the nature, timing or extent of the military action. The principle dangers over the retraction of the Security Council's control over the military actions authorized are: that such undertakings will be identified with the countries policies involving military action rather than the policy enacted by the United Nations, thus damaging the credibility of the organization itself; there would be no accountability by the international organization in acts of reprisal that go far and beyond those authorized, thus the enforcement principle may develop into potential atrocities of war; and, after the enforcement action has taken place, what is to guarantee a peaceful settlement that is politically coherent with the policies of the United Nations?

The most prominent feature of the new world order is once again the reemergence of U.S. dominance in the international arena. For the first time since



1945, in the developments of the post-cold war era, the United States has asserted its role as the major military, economic and political power in the sphere of international relations. "It is difficult to think of any other nation, at any other time in history, that could within six weeks have deployed 150,000 army personnel some 5,000 miles from their bases, with tanks and guns and warplanes to match, and without denuding any of its other outposts around the world. . . . From a standing armed force of 2.1 million, and a ready reserve of another 1.65 million, Operation Desert Shield accounts for less than 5 percent of President Bush's deployable military force."<sup>2</sup> Their deployment, a magnificent logistical feat in itself, demonstrated the strength of the U.S. sea and airlift capability.

The exceptional position of the United States in the world today enables it to exercise great influence, as the gulf war made clear. "Inasmuch as this objective was not mandated by the United Nations, it can only be seen as U.S. dictated. The removal of Hussein from power may very well be a shared objective. But to use the legality of the U.N. sanctions to achieve an unenvisaged political objective, as the United States has done, represents a serious abuse of the Security Council's moral authority as well as its legitimate and political mandate. . . . Such conduct threatens to erode the very foundation of the United Nations. For meticulous adherence to the spirit as well as the letter of the Charter is what renders possible a willingness on the part of member states to forgo certain sovereign prerogatives in pursuit of an internationalist order. . . . If the experience of the United Nations in the Gulf War teaches us nothing else, it is that this fundamental bias of the emerging world order -- like the old order it is transcending -- stands in need of urgent correction. It is in this capacity that the United Nations must play a role."<sup>3</sup>

"Under no circumstances, therefore, should we ever permit ourselves again to get into a situation whereby the United States gives legitimacy to a force that is led

by a command structure outside the U.N. and over whose actions the U.N. has absolutely no control whatsoever -- as was evident in this war from the beginning to the end, particularly in those final days when there were desperate attempts to secure peace before the ground war began.

"The United Nations also has to insist that all alternatives be exhausted before force is employed. That was another great tragedy of this war. The United Nations got caught up in its own good feeling about the newfounded solidarity it was experiencing between August and November, and thus abdicated its responsibility to adhere more strictly to the provisions of the Charter."<sup>4</sup> We should not be prepared again to see the Security Council as an arm of U.S. foreign policy.

The credibility of U.N. action to repel aggression and restore international peace and security, as foreseen in the U.N. Charter, has been profoundly affected by the United States response to the Iraqi invasion of Kuwait. "In choosing to use the U.N. Security Council as the principle vehicle to reverse Iraq's aggression, the United States and its president masterfully orchestrated this turning point in the organization's history. That the object was valid goes without saying. The means and methods employed, however, were in many cases questionable and in some cases unacceptable. U.S. domination of the proceedings, the precipitous rush to war, the open-ended language of some of the resolutions adopted -- these and other aspects of the U.N.'s response to the Gulf crisis raise serious questions about the ability of the organization to serve the interests of the world community and not merely or primarily those of its most powerful states. . . .

"That such a development could take place testifies to the volatility of the U.N. system and its inherent tendency to fluctuate between immobility and excessive activism."<sup>5</sup>

The powerful coalition formed against Iraq led to no Council control of the enforcement action authorized. Such action devastated a county and its people to an

extent that undermines entirely the principle of collective security. "There were almost no allied casualties at all but at least 100,000 Iraqi soldiers and tens of thousands of Iraqi civilians were killed. We were lied to -- the world was lied to -- about what the American military could expect and the toll this war would take."<sup>6</sup> "U.S. pressures on the U.N. Security Council to endorse the use of force against Iraq led to a war that might have been completely unnecessary if creative diplomacy and economic sanctions prescribed by the U.N. Charter had been given more of a chance to work. Equally important, even if one believes that war may have been necessary to dislodge Hussein, the United States conducted the war in an unnecessary destructive manner that departed from the spirit if not the letter of the Charter."<sup>7</sup>

"The conduct of the Gulf War . . . clearly demonstrated the weaknesses of U.N. enforcement capabilities and drew into question the process by which decisions relating to enforcement are made. Having given its blessing to the use of force, the Security Council then stepped aside and the United States was free to initiate and conduct the war as it saw fit.

"The magnitude of human suffering and material destruction that U.S.-led forces inflicted on Iraq makes evident the need for the Council to do more to ensure that it does not bless unnecessarily bloody wars when carrying out its legitimate responsibilities for enforcing the nonaggression principle. In the future, therefore, U.N. decisions for enforcement should follow a strictly evenhanded multilateral process.

"Never again should the Security Council be content to accept as much violence as its militarily most powerful member might mete out. Never again should the Council authorize military action without giving a specific mandate for how it is to be employed."<sup>8</sup>

Today a new revolution in collective activity is in procession. In the immediate future there are increasingly complex threats to international peace and security; for instance, massive migrations and social de-stabilization caused by a degenerating

environmental or massive economic debt may be the first significant signs of emerging threats to international order. In anticipation of these problems, the meaning of collective security is slowly changing to include social, environmental and economic factors that increasingly threaten global peace and security. In short, the traditional definition of collective security seems to be changing, and expanding to include more complex and encompassing global threats.

At the same time, the meaning of state sovereignty seems to be undergoing profound changes as well; in particular, the supposedly sovereign state is increasingly dependent upon the complex economic, political and environmental factors that govern or influence its well being, and even its very existence. So, as the meaning of the states sovereignty is changing, the precise meaning and scope of collective security must change as well. More than ever, it is at this time of history that the member nations of the United Nations must guarantee, as an international community, the peaceful settlements of disputes which are politically coherent with the spirit and letter of the U.N. Charter. Above all, collective security should be understood as a proactive force for peace-building, rather than simply a reactive response by the Security Council to demonstrable diplomatic, political or military threats. Therefore, that we may in order achieve a more peaceful coexistence with the nations of the world, the lessons of the Gulf War must teach us to seek for a more constructive and collective role for the United Nations in the New World Order.

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## A P P E N D I X

### I

# The Covenant of the League of Nations<sup>\*</sup>

#### The High Contracting Parties

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,  
by the prescription of open, just and honourable relations between nations,  
by the firm establishment of the understandings of international law as the actual rule of conduct among Governments,  
and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,  
Agree to this Covenant of the League of Nations.

#### Article 1

1. The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

2. Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere

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<sup>\*</sup> The texts printed in italics indicate amendments adopted by the League.

intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

3. Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

#### Article 2

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

#### Article 3

1. The Assembly shall consist of Representatives of the Members of the League.
2. The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.
3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.
4. At meetings of the Assembly, each Member of the League shall have one vote, and may have not more than three Representatives.

#### Article 4

1. The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

2. With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be Members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

2. *bis.* *The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.*

3. The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

5. Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

6. At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

#### Article 5

1. Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

2. All matters of procedure at meetings of the Assembly or of the Council,

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including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

3. The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

### Article 6

1. The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

2. The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

3. The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

4. The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

5. *The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.*

### Article 7

1. The Seat of the League is established at Geneva.

2. The Council may at any time decide that the Seat of the League shall be established elsewhere.

3. All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

4. Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

5. The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

### Article 8

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

2. The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

3. Such plans shall be subject to reconsideration and revision at least every ten years.

4. After these plans have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

5. The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

6. The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes.



## Article 9

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

## Article 10

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

## Article 11

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

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

## Article 12

1. The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration *or judicial settlement* or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision* or the report by the Council.

2. In any case under this article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

## Article 13

1. The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*.

3. *For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any Convention existing between them.*

4. The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure

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to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

### Article 14

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

### Article 15

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or *judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose, the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each

case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

#### Article 16

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall, *ipso facto*, be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

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

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

#### Article 17

1. In the event of a dispute between a Member of the League and a State which is not a member of the League or between States not members of the League, the State or States not members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given, the Council shall immediately institute an enquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

4. If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

#### Article 18

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall, as soon

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as possible, be published by it. No such treaty or international engagement shall be binding until so registered.

### Article 19

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

### Article 20

1. The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

2. In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

### Article 21

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

### Article 22

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave-trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

### Article 23

Subject to and in accordance with the provisions of international Conventions existing or hereafter to be agreed upon, the Members of the League:

- (a) will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations;
- (b) undertake to secure just treatment of the native inhabitants of territories under their control;
- (c) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;
- (d) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest;
- (e) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind;
- (f) will endeavour to take steps in matters of international concern for the prevention and control of disease.

### Article 24

1. There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

2. In all matters of international interest which are regulated by general Conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

3. The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

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### Article 25

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

### Article 26

1. Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

2. No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

A P P E N D I X

II

# The Charter of the United Nations

We the peoples of the United Nations determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

and for these ends

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims.

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Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

### CHAPTER I *Purposes and Principles*

#### Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

#### Article 2

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

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the



present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## CHAPTER II *Membership*

### Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

### Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

### Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

### Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

## CHAPTER III *Organs*

### Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

### Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

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CHAPTER IV *The General Assembly*

COMPOSITION

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.
2. Each Member shall have not more than five representatives in the General Assembly.

FUNCTIONS AND POWERS

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.
2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.
3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.
4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests.
2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United

Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

#### Article 13

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

#### Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

#### Article 15

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

#### Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

#### Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

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## VOTING

### Article 18

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.
3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

### Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

## PROCEDURE

### Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

### Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

### Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

## CHAPTER V *The Security Council*

### COMPOSITION

#### Article 23

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

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

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

### FUNCTIONS AND POWERS

#### Article 24

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

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

#### Article 25

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

#### Article 26

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

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## VOTING

### Article 27

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

## PROCEDURE

### Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

### Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

### Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

### Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

### Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

## CHAPTER VI *Pacific Settlement of Disputes*

### Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

### Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

### Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

### Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

### Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

### Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

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### CHAPTER VII     *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression*

#### Article 39

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

#### Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

#### Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

#### Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

#### Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obliga-



tions assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

#### Article 45

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

#### Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

#### Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

#### Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

#### Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

#### Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carry-

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ing out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

### Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

## CHAPTER VIII *Regional Arrangements*

### Article 52

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

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

### Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

### Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX *International Economic and Social Cooperation*

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.
2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

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CHAPTER X *The Economic and Social Council*

COMPOSITION

Article 61

1. The Economic and Social Council shall consist of eighteen Members of the United Nations elected by the General Assembly.
2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.
3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.
4. Each member of the Economic and Social Council shall have one representative.

FUNCTIONS AND POWERS

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.
2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.
2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.
2. It may communicate its observations on these reports to the General Assembly.

## Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

## Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

## VOTING

### Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

## PROCEDURE

### Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

### Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

### Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

### Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

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### Article 72

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

## CHAPTER XI     *Declaration Regarding Non-Self-Governing Territories*

### Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another, and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

### Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

## CHAPTER XII *International Trusteeship System*

### Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

### Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

### Article 77

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

### Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

### Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

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### Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

### Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

### Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

### Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreement and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

### Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

### Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.



## CHAPTER XIII *The Trusteeship Council*

### COMPOSITION

#### Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations:

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

### FUNCTIONS AND POWERS

#### Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

#### Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

### VOTING

#### Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

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## PROCEDURE

### Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

### Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

## CHAPTER XIV *The International Court of Justice*

### Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

### Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

### Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

### Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

### Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

## CHAPTER XV *The Secretariat*

### Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

### Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

### Article 99

The Secretary General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

### Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

### Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

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### CHAPTER XVI *Miscellaneous Provisions*

#### Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

#### Article 103

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

#### Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

#### Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

### CHAPTER XVII *Transitional Security Arrangements*

#### Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

#### Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

## CHAPTER XVIII *Amendments*

### Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.

### Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

## CHAPTER XIX *Ratification and Signature*

### Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

### Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Govern-

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ment of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

A P P E N D I X

III

The United Nations  
Resolutions  
on the Conflict in the Gulf



## Security Council

Distr.  
GENERALS/RES/660 (1990)  
2 August 1990

## RESOLUTION 660 (1990)

Adopted by the Security Council at its 2932nd meeting,  
on 2 August 1990

The Security Council,

Alarmed by the invasion of Kuwait on 2 August 1990 by the military forces of Iraq,

Determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait,

Acting under Articles 39 and 40 of the Charter of the United Nations,

1. Condemns the Iraqi invasion of Kuwait;
2. Demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;
3. Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;
4. Decides to meet again as necessary to consider further steps to ensure compliance with the present resolution.





Security Council

Distr.  
GENERAL

S/RES/661 (1990)  
6 August 1990

RESOLUTION 661 (1990)

Adopted by the Security Council at its 2933rd meeting on  
6 August 1990

The Security Council,

Reaffirming its resolution 660 (1990) of 2 August 1990,

Deeply concerned that that resolution has not been implemented and that the invasion by Iraq of Kuwait continues with further loss of human life and material destruction,

Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait,

Noting that the legitimate Government of Kuwait has expressed its readiness to comply with resolution 660 (1990),

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

Affirming the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter,

Acting under Chapter VII of the Charter of the United Nations,

1. Determines that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;
2. Decides, as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;
3. Decides that all States shall prevent:

(a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;

(b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;

(c) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;

4. Decides that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs;

5. Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;

6. Decides to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports on the progress of the implementation of the present resolution which will be submitted by the Secretary-General;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in the present resolution;

7. Calls upon all States to co-operate fully with the Committee in the fulfilment of its task, including supplying such information as may be sought by the Committee in pursuance of the present resolution;

8. Requests the Secretary-General to provide all necessary assistance to the Committee and to make the necessary arrangements in the Secretariat for the purpose;

9. Decides that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:

(a) To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies;

(b) Not to recognize any régime set up by the occupying Power;

10. Requests the Secretary-General to report to the Council on the progress of the implementation of the present resolution, the first report to be submitted within thirty days;

11. Decides to keep this item on its agenda and to continue its efforts to put an early end to the invasion by Iraq.



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RESOLUTION 662 (1990)

Adopted by the Security Council at its 2934th meeting,  
on 9 August 1990

The Security Council,

Recalling its resolutions 660 (1990) and 661 (1990),

Gravely alarmed by the declaration by Iraq of a "comprehensive and eternal merger" with Kuwait,

Demanding, once again, that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990,

Determined to bring the occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait,

Determined also to restore the authority of the legitimate Government of Kuwait,

1. Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void;
2. Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation;
3. Further demands that Iraq rescind its actions purporting to annex Kuwait;
4. Decides to keep this item on its agenda and to continue its efforts to put an early end to the occupation.



RESOLUTION 664 (1990)

Adopted by the Security Council at its 2937th meeting  
on 18 August 1990

The Security Council,

Recalling the Iraqi invasion and purported annexation of Kuwait and resolutions 660, 661 and 662,

Deeply concerned for the safety and well being of third state nationals in Iraq and Kuwait,

Recalling the obligations of Iraq in this regard under international law,

Welcoming the efforts of the Secretary-General to pursue urgent consultations with the Government of Iraq following the concern and anxiety expressed by the members of the Council on 17 August 1990,

Acting under Chapter VII of the United Nations Charter:

1. Demands that Iraq permit and facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries and grant immediate and continuing access of consular officials to such nationals;
2. Further demands that Iraq take no action to jeopardize the safety, security or health of such nationals;
3. Reaffirms its decision in resolution 662 (1990) that annexation of Kuwait by Iraq is null and void, and therefore demands that the government of Iraq rescind its orders for the closure of diplomatic and consular missions in Kuwait and the withdrawal of the immunity of their personnel, and refrain from any such actions in the future;
4. Requests the Secretary-General to report to the Council on compliance with this resolution at the earliest possible time.



## Security Council

Distr.  
GENERAL

S/RES/665 (1990)  
25 August 1990

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### RESOLUTION 665 (1990)

Adopted by the Security Council at its 2938th meeting,  
on 25 August 1990

The Security Council,

Recalling its resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990) and demanding their full and immediate implementation,

Having decided in resolution 661 (1990) to impose economic sanctions under Chapter VII of the Charter of the United Nations,

Determined to bring an end to the occupation of Kuwait by Iraq which imperils the existence of a Member State and to restore the legitimate authority, and the sovereignty, independence and territorial integrity of Kuwait which requires the speedy implementation of the above resolutions,

Deploring the loss of innocent life stemming from the Iraqi invasion of Kuwait and determined to prevent further such losses,

Gravely alarmed that Iraq continues to refuse to comply with resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990) and in particular at the conduct of the Government of Iraq in using Iraqi flag vessels to export oil,

1. Calls upon those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990);

2. Invites Member States accordingly to co-operate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with maximum use of political and diplomatic measures, in accordance with paragraph 1 above;

3. Requests all States to provide in accordance with the Charter such assistance as may be required by the States referred to in paragraph 1 of this resolution;

4. Further requests the States concerned to co-ordinate their actions in pursuit of the above paragraphs of this resolution using as appropriate mechanisms of the Military Staff Committee and after consultation with the Secretary-General to submit reports to the Security Council and its Committee established under resolution 661 (1990) to facilitate the monitoring of the implementation of this resolution;

5. Decides to remain actively seized of the matter.

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Security Council

Distr.  
GENERAL

S/RES/666 (1990)  
13 September 1990

RESOLUTION 666 (1990)

Adopted by the Security Council at its 2939th meeting  
on 13 September 1990

The Security Council,

Recalling its resolution 661 (1990), paragraphs 3 (c) and 4 of which apply, except in humanitarian circumstances, to foodstuffs,

Recognizing that circumstances may arise in which it will be necessary for foodstuffs to be supplied to the civilian population in Iraq or Kuwait in order to relieve human suffering,

Noting that in this respect the Committee established under paragraph 6 of that resolution has received communications from several Member States,

Emphasizing that it is for the Security Council, alone or acting through the Committee, to determine whether humanitarian circumstances have arisen,

Deeply concerned that Iraq has failed to comply with its obligations under Security Council resolution 664 (1990) in respect of the safety and well-being of third State nationals, and reaffirming that Iraq retains full responsibility in this regard under international humanitarian law including, where applicable, the Fourth Geneva Convention,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that in order to make the necessary determination whether or not for the purposes of paragraph 3 (c) and paragraph 4 of resolution 661 (1990) humanitarian circumstances have arisen, the Committee shall keep the situation regarding foodstuffs in Iraq and Kuwait under constant review;

2. Expects Iraq to comply with its obligations under Security Council resolution 664 (1990) in respect of third State nationals and reaffirms that Iraq remains fully responsible for their safety and well-being in accordance with international humanitarian law including, where applicable, the Fourth Geneva Convention;





## Security Council

Distr.  
GENERALS/RES/667 (1990)  
16 September 1990

## RESOLUTION 667 (1990)

Adopted by the Security Council at its 2940th meeting,  
on 16 September 1990

The Security Council,

? Reaffirming its resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990) and 666 (1990),

Recalling the Vienna Conventions of 18 April 1961 on diplomatic relations and of 24 April 1963 on consular relations, to both of which Iraq is a party,

Considering that the decision of Iraq to order the closure of diplomatic and consular missions in Kuwait and to withdraw the immunity and privileges of these missions and their personnel is contrary to the decisions of the Security Council, the international Conventions mentioned above and international law,

Deeply concerned that Iraq, notwithstanding the decisions of the Security Council and the provisions of the Conventions mentioned above, has committed acts of violence against diplomatic missions and their personnel in Kuwait,

Outraged at recent violations by Iraq of diplomatic premises in Kuwait and at the abduction of personnel enjoying diplomatic immunity and foreign nationals who were present in these premises,

Considering that the above actions by Iraq constitute aggressive acts and a flagrant violation of its international obligations which strike at the root of the conduct of international relations in accordance with the Charter of the United Nations,

Recalling that Iraq is fully responsible for any use of violence against foreign nationals or against any diplomatic or consular mission in Kuwait or its personnel,

Determined to ensure respect for its decisions and for Article 25 of the Charter of the United Nations,

Further considering that the grave nature of Iraq's actions, which constitute a new escalation of its violations of international law, obliges the Council not only to express its immediate reaction but also to consult urgently to take further concrete measures to ensure Iraq's compliance with the Council's resolutions,

Acting under Chapter VII of the Charter of the United Nations,

1. Strongly condemns aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait, including the abduction of foreign nationals who were present in those premises;

2. Demands the immediate release of those foreign nationals as well as all nationals mentioned in resolution 664 (1990);

3. Further demands that Iraq immediately and fully comply with its international obligations under resolutions 660 (1990), 662 (1990) and 664 (1990) of the Security Council, the Vienna Conventions on diplomatic and consular relations and international law;

4. Further demands that Iraq immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait and in Iraq and take no action to hinder the diplomatic and consular missions in the performance of their functions, including access to their nationals and the protection of their person and interests;

5. Reminds all States that they are obliged to observe strictly resolutions 661 (1990), 662 (1990), 664 (1990), 665 (1990) and 666 (1990);

6. Decides to consult urgently to take further concrete measures as soon as possible, under Chapter VII of the Charter, in response to Iraq's continued violation of the Charter, of resolutions of the Council and of international law.

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Security Council

Distr.  
GENERAL

S/RES/669 (1990)  
24 September 1990

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RESOLUTION 669 (1990)

Adopted by the Security Council at its 2942nd meeting,  
on 24 September 1990

The Security Council,

Recalling its resolution 661 (1990) of 6 August 1990,

Recalling also Article 50 of the Charter of the United Nations,

Conscious of the fact that an increasing number of requests for assistance have been received under the provisions of Article 50 of the Charter of the United Nations,

Entrusts the Committee established under resolution 661 (1990) concerning the situation between Iraq and Kuwait with the task of examining requests for assistance under the provisions of Article 50 of the Charter of the United Nations and making recommendations to the President of the Security Council for appropriate action.



## Security Council

Distr.  
GENERAL

S/RES/670 (1990)  
25 September 1990

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### RESOLUTION 670 (1990)

Adopted by the Security Council at its 2943rd meeting,  
on 25 September 1990

The Security Council,

Reaffirming its resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), and 667 (1990),

Condemning Iraq's continued occupation of Kuwait, its failure to rescind its actions and end its purported annexation and its holding of third State nationals against their will, in flagrant violation of resolutions 660 (1990), 662 (1990), 664 (1990) and 667 (1990) and of international humanitarian law,

Condemning further the treatment by Iraqi forces of Kuwaiti nationals, including measures to force them to leave their own country and mistreatment of persons and property in Kuwait in violation of international law,

Noting with grave concern the persistent attempts to evade the measures laid down in resolution 661 (1990),

Further noting that a number of States have limited the number of Iraqi diplomatic and consular officials in their countries and that others are planning to do so,

Determined to ensure by all necessary means the strict and complete application of the measures laid down in resolution 661 (1990),

Determined to ensure respect for its decisions and the provisions of Articles 25 and 48 of the Charter of the United Nations,

Affirming that any acts of the Government of Iraq which are contrary to the above-mentioned resolutions or to Articles 25 or 48 of the Charter of the United Nations, such as Decree No. 377 of the Revolution Command Council of Iraq of 16 September 1990, are null and void,

Reaffirming its determination to ensure compliance with Security Council resolutions by maximum use of political and diplomatic means,

Welcoming the Secretary-General's use of his good offices to advance a peaceful solution based on the relevant Security Council resolutions and noting with appreciation his continuing efforts to this end,

Underlining to the Government of Iraq that its continued failure to comply with the terms of resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 666 (1990) and 667 (1990) could lead to further serious action by the Council under the Charter of the United Nations, including under Chapter VII,

2 - Recalling the provisions of Article 103 of the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations,

1. Calls upon all States to carry out their obligations to ensure strict and complete compliance with resolution 661 (1990) and in particular paragraphs 3, 4 and 5 thereof;

2. Confirms that resolution 661 (1990) applies to all means of transport, including aircraft;

3. Decides that all States, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the present resolution, shall deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances, subject to authorization by the Council or the Committee established by resolution 661 (1990) and in accordance with resolution 666 (1990), or supplies intended strictly for medical purposes or solely for UNJIMOG;

4. Decides further that all States shall deny permission to any aircraft destined to land in Iraq or Kuwait, whatever its State of registration, to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside Iraq or Kuwait in order to permit its inspection to ensure that there is no cargo on board in violation of resolution 661 (1990) or the present resolution, and for this purpose the aircraft may be detained for as long as necessary; or

(b) The particular flight has been approved by the Committee established by resolution 661 (1990); or

(c) The flight is certified by the United Nations as solely for the purposes of UNJIMOG;

5. Decides that each State shall take all necessary measures to ensure that any aircraft registered in its territory or operated by an operator who has his

principal place of business or permanent residence in its territory complies with the provisions of resolution 661 (1990) and the present resolution;

6. Decides further that all States shall notify in a timely fashion the Committee established by resolution 661 (1990) of any flight between its territory and Iraq or Kuwait to which the requirement to land in paragraph 4 above does not apply, and the purpose for such a flight;

7. Calls upon all States to co-operate in taking such measures as may be necessary, consistent with international law, including the Chicago Convention, to ensure the effective implementation of the provisions of resolution 661 (1990) or the present resolution;

8. Calls upon all States to detain any ships of Iraqi registry which enter their ports and which are being or have been used in violation of resolution 661 (1990), or to deny such ships entrance to their ports except in circumstances recognized under international law as necessary to safeguard human life;

9. Reminds all States of their obligations under resolution 661 (1990) with regard to the freezing of Iraqi assets, and the protection of the assets of the legitimate Government of Kuwait and its agencies, located within their territory and to report to the Committee established under resolution 661 (1990) regarding those assets;

10. Calls upon all States to provide to the Committee established by resolution 661 (1990) information regarding the action taken by them to implement the provisions laid down in the present resolution;

11. Affirms that the United Nations Organization, the specialized agencies and other international organizations in the United Nations system are required to take such measures as may be necessary to give effect to the terms of resolution 661 (1990) and this resolution;

12. Decides to consider, in the event of evasion of the provisions of resolution 661 (1990) or of the present resolution by a State or its nationals or through its territory, measures directed at the State in question to prevent such evasion;

13. Reaffirms that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention Iraq is bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it, as are individuals who commit or order the commission of grave breaches.

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## Security Council

Distr.  
GENERAL

S/RES/674 (1990)  
29 October 1990

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### RESOLUTION 674 (1990)

Adopted by the Security Council at its 2951st meeting,  
on 29 October 1990

The Security Council,

Recalling its resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 667 (1990) and 670 (1990),

Stressing the urgent need for the immediate and unconditional withdrawal of all Iraqi forces from Kuwait, for the restoration of Kuwait's sovereignty, independence and territorial integrity and of the authority of its legitimate government,

Condemning the actions by the Iraqi authorities and occupying forces to take third-State nationals hostage and to mistreat and oppress Kuwaiti and third-State nationals, and the other actions reported to the Security Council, such as the destruction of Kuwaiti demographic records, the forced departure of Kuwaitis, the relocation of population in Kuwait and the unlawful destruction and seizure of public and private property in Kuwait, including hospital supplies and equipment, in violation of the decisions of the Council, the Charter of the United Nations, the Fourth Geneva Convention, the Vienna Conventions on Diplomatic and Consular Relations and international law,

Expressing grave alarm over the situation of nationals of third States in Kuwait and Iraq, including the personnel of the diplomatic and consular missions of such States,

Reaffirming that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention Iraq is bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it, as are individuals who commit or order the commission of grave breaches,

Recalling the efforts of the Secretary-General concerning the safety and well-being of third-State nationals in Iraq and Kuwait,

Deeply concerned at the economic cost and at the loss and suffering caused to individuals in Kuwait and Iraq as a result of the invasion and occupation of Kuwait by Iraq,

Acting under Chapter VII of the Charter of the United Nations,

\* \* \*

Reaffirming the goal of the international community of maintaining international peace and security by seeking to resolve international disputes and conflicts through peaceful means,

Recalling the important role that the United Nations and its Secretary-General have played in the peaceful solution of disputes and conflicts in conformity with the provisions of the Charter,

Alarmed by the dangers of the present crisis caused by the Iraqi invasion and occupation of Kuwait, which directly threaten international peace and security, and seeking to avoid any further worsening of the situation,

Calling upon Iraq to comply with the relevant resolutions of the Security Council, in particular its resolutions 660 (1990), 662 (1990) and 664 (1990),

Reaffirming its determination to ensure compliance by Iraq with the Security Council resolutions by maximum use of political and diplomatic means,

A

1. Demands that the Iraqi authorities and occupying forces immediately cease and desist from taking third-State nationals hostage, mistreating and oppressing Kuwaiti and third-State nationals and any other actions, such as those reported to the Security Council and described above, that violate the decisions of this Council, the Charter of the United Nations, the Fourth Geneva Convention, the Vienna Conventions on Diplomatic and Consular Relations and international law;

2. Invites States to collate substantiated information in their possession or submitted to them on the grave breaches by Iraq as per paragraph 1 above and to make this information available to the Security Council;

3. Reaffirms its demand that Iraq immediately fulfil its obligations to third-State nationals in Kuwait and Iraq, including the personnel of diplomatic and consular missions, under the Charter, the Fourth Geneva Convention, the Vienna Conventions on Diplomatic and Consular Relations, general principles of international law and the relevant resolutions of the Council;

4. Also reaffirms its demand that Iraq permit and facilitate the immediate departure from Kuwait and Iraq of those third-State nationals, including diplomatic and consular personnel, who wish to leave;



5. Demands that Iraq ensure the immediate access to food, water and basic services necessary to the protection and well-being of Kuwaiti nationals and of nationals of third States in Kuwait and Iraq, including the personnel of diplomatic and consular missions in Kuwait;

6. Reaffirms its demand that Iraq immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait and in Iraq, take no action to hinder these diplomatic and consular missions in the performance of their functions, including access to their nationals and the protection of their person and interests and rescind its orders for the closure of diplomatic and consular missions in Kuwait and the withdrawal of the immunity of their personnel;

7. Requests the Secretary-General, in the context of the continued exercise of his good offices concerning the safety and well-being of third-State nationals in Iraq and Kuwait, to seek to achieve the objectives of paragraphs 4, 5 and 6 above and in particular the provision of food, water and basic services to Kuwaiti nationals and to the diplomatic and consular missions in Kuwait and the evacuation of third-State nationals;

8. Reminds Iraq that under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq;

9. Invites States to collect relevant information regarding their claims, and those of their nationals and corporations, for restitution or financial compensation by Iraq with a view to such arrangements as may be established in accordance with international law;

10. Requires that Iraq comply with the provisions of the present resolution and its previous resolutions, failing which the Security Council will need to take further measures under the Charter;

11. Decides to remain actively and permanently seized of the matter until Kuwait has regained its independence and peace has been restored in conformity with the relevant resolutions of the Security Council.

B

12. Reposes its trust in the Secretary-General to make available his good offices and, as he considers appropriate, to pursue them and to undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait on the basis of Security Council resolutions 660 (1990), 662 (1990) and 664 (1990), and calls upon all States, both those in the region and others, to pursue on this basis their efforts to this end, in conformity with the Charter, in order to improve the situation and restore peace, security and stability;

13. Requests the Secretary-General to report to the Security Council on the results of his good offices and diplomatic efforts.

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## *Use-of-Force Resolution Text*

*The following use-of-force draft was adopted by a vote of 12 in favor, 2 (Cuba and Yemen) against with 1 (China) abstaining.*

\* \* \*

The Security Council,

Recalling and reaffirming its resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 667 (1990), 669 (1990), 670 (1990), 674 (1990) and 677 (1990),

Noting that, despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement [withdrawal] resolution 660 (1990) and the above subsequent relevant resolutions, in flagrant contempt of the Council,

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

Determining to secure full compliance with its decisions,

Acting under Chapter VII of the Charter of the United Nations,

1. Demands that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions and decides, while maintaining all the decisions, so allow Iraq one final opportunity, as a pause of goodwill, to do so;

2. Authorizes member states cooperating with the government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement Security Council resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

3. Requests all states to provide appropriate support for the actions undertaken in pursuance of paragraph 2 of this resolution;

4. Requests the states concerned to keep the Council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 of this resolution;

5. Decide to remain seized of the matter.



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#### Some Mexican authors on IR, IO and IL issues

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