



2006

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Recommended Citation

Margaret E. McGuinness, *Multilateralism and War: A Taxonomy of Institutional Functions*, 51 Vill. L. Rev. 149 (2006).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol51/iss1/12>

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MULTILATERALISM AND WAR: A TAXONOMY OF
INSTITUTIONAL FUNCTIONS

MARGARET E. MCGUINNESS*

PRÉCIS

THE dichotomy that emerged from the debate over the United States' invasion of Iraq, pitting multilateralism against unilateralism, has generally obscured more than it has enlightened about the law, rationales and effectiveness of multilateralism in war. This Article examines "security multilateralism" and concludes that, while the authority to address peace and security is, as a matter of international law, aggregated at the Security Council, the functions through which the United Nations works in support of that aggregated legal mandate are dispersed throughout the organization and affiliated bodies. Inquiries that seek to measure the effectiveness of U.N. security multilateralism against other multilateral or unilateral actors in armed conflict need to take this dispersal of functions into account.

This Article proposes a taxonomy of security multilateralism formed by these disaggregated functions: (1) assessment, (2) intermediation, (3) humanitarian assistance, (4) sanctions, (5) military intervention and (6) post-conflict administration. In this Article, the taxonomy is applied to three cases that represent the spectrum of legality of outside interventions in war: U.N. multilateral (East Timor); ad hoc, non-U.N. multilateral (Kosovo); and unilateral (Iraq). This comparative empirical examination reveals the ways in which U.N. multilateralism may be over-valued (e.g., the U.N.'s legitimating effect on outside military interventions), under-valued (e.g., the U.N.'s ability to assess threats and impose sanctions) or misconstrued (e.g., U.N. military operations may be no more or less multinational than a non-U.N. operation). The Article concludes with implications for reform of U.N. security functions and recommendations for how the taxonomy might be applied to future research.

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MULTILATERALISM AND WAR

From the beginning, America has sought international support for our operations in Afghanistan and Iraq, and we have gained much support. There is a difference, however, between leading a coalition of many nations, and submitting to the objections of a few. America will never seek a permission slip to defend the security of our country.

.....

Had we failed to act, Security Council resolutions on Iraq would have been revealed as empty threats, weakening the United Nations and encouraging defiance by dictators around the world.¹

INTRODUCTION

In the run up to invasion of Iraq in March 2003, opinion in the United States divided roughly into two camps: those who supported the invasion, regardless of whether it was sanctioned by the United Nations, and those who opposed the invasion *unless* it was sanctioned by the United Nations. The dichotomy pitted unilateralism against multilateralism. Either the United States would act regardless of legal support from the Security Council, or it would act only with legal support from the U.N. and as part of a multilateral operation with broad international support.² This divide between unilateralism and multilateralism marked the contours of the debate about the rationale for war,³ the appropriate role of the U.N. in post-conflict reconstruction⁴ and the internationalization of the troops on the ground.⁵

1. President George W. Bush, State of the Union Address (Jan. 20, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html>.

2. A few voices tried to bridge the gap. See Anne-Marie Slaughter, *Good Reasons for Going Around the U.N.*, N.Y. TIMES, Mar. 18, 2003, at A33 (arguing that war might be legitimate—even if illegal—if WMDs were found and Iraqi people welcomed U.S. occupation and post-conflict phase was internationalized). *But see*, Anne-Marie Slaughter, *President's Message*, NEWSL. (Am. Soc'y of Int'l Law) Apr. 2004 (concluding, one year after invasion that "the war was illegal and illegitimate").

3. See, e.g., E.J. Dionne, Jr., *Voices That Must Be Heard*, WASH. POST, Oct. 8, 2002, at A25; Dana Milbank, *With Congress Aboard, Bush Targets a Doubtful Public*, WASH. POST, Oct. 8, 2002, at A21.

4. See, e.g., Warren Hoge, *The Conflict in Iraq: Diplomacy; U.S and U.N. Are Once Again the Odd Couple over Iraq*, N.Y. TIMES, Nov. 14, 2004, § 1, at 15; see also Anthony Lake & Eric P. Schwartz, Editorial, *Tough Decisions on Who Will Govern Postwar Iraq*, BOSTON GLOBE, Apr. 6, 2003, at C11 (arguing importance of national interests in sharing cost of responsibilities in postwar governance and humanitarian relief of Iraqi people).

5. See, e.g., Glenn Kessler, *United States Puts a Spin on Coalition Numbers*, WASH. POST, Mar. 21, 2003, at A29; see also Ivo Daadler, *Bush's Coalition Doesn't Add Up Where It Counts*, NEWSDAY (N.Y.), Mar. 24, 2003, at A16 (criticizing Bush administration's contention that war against Iraq has growing international support).

The unilateralists cited the rationales articulated in the Bush administration's National Security Strategy ("NSS") as support for a policy that seeks to pursue U.S. national interests aggressively—unconstrained by any pre-existing commitments under international agreements.⁶ The administration's early abandonment of the Kyoto Protocol⁷ and the International Criminal Court⁸ were signals that the NSS would form the core of Bush administration policies and its relationship to multilateral institutions.⁹ After the attacks of 9/11, some argued that the nature of the ongoing terrorist threats would demand a more multilateralist approach; and for a time, that appeared to happen. The United States sought and obtained Security Council authority for a range of measures to combat the global Al Qaeda terrorist network. These measures did not, however, signal a return to the broad multilateralism in security matters that had marked the 1990s.¹⁰

Opposing arguments put forward by the multilateralists relied, in large part, on the legal requirement under the U.N. Charter that the use of force is prohibited, except where authorized by the Security Council or in self-defense. If the threat from the Iraqi regime was to be reduced or eliminated, it should be done with the imprimatur of the "international community," that is, through multilateral institutions.¹¹

6. NATIONAL SECURITY STRATEGY OF THE UNITED STATES (Sept. 2002), available at <http://www.whitehouse.gov/nsc/nss.pdf> ("The U.S. National Security Strategy will be based on a distinctly American internationalism that reflects the union of our values and our national interests.").

7. Kyoto Protocol to the U.N. Framework Convention on Climate Change, Feb. 16, 2005, 37 I.L.M. 32.

8. Rome Statute of the International Criminal Court, 37 I.L.M. 999 (1998) (entered into force July 1, 2002). On May 6, 2002, the United States formally informed the United Nations that it did not intend to become a party to the Rome Statute. See Diane F. Orentlicher, *Unilateral Multilateralism: United States Policy Towards the International Criminal Court*, 36 CORNELL INT'L L.J. 415, 416 (2004) ("United States opposition to the International Criminal Court . . . is widely seen as a manifestation of America's deeper-and-growing antipathy toward multilateral institutions."); see also Letter from John Bolton, Under Secretary of State, to Secretary General Kofi Annan (May 6, 2002) (on file with author).

9. See, e.g., Gareth Evans, *The U.S. Versus the World? How American Power Seems to the Rest of Us*, 27 FLETCHER F. WORLD AFF. 99, 102-03 (2003); Ian Johnstone, *The U.S.-U.N. Relations After Iraq: The End of the World (Order) as We Know It?*, 15 EUR. J. INT'L L. 813, 826-27 (2004).

10. Because the U.S. military operation against the Taliban was considered to be an act of self-defense, no explicit authorization by the Security Council was required. See Derek Jinks, *State Responsibility for Terrorist and Insurgent Groups: State Responsibility for Acts of Private Armed Groups*, 4 CHI. J. INT'L L. 83, 84-87 (2003) (explaining United States' self-defense claim). The coordination of financial sanctions and other measures taken against the Taliban regime, however, was done through the Security Council. See, e.g., S.C. Res. 1373, U.N. SCOR, U.N. Doc S/RES/1373 (Sept. 28, 2001); S.C. Res. 1368, U.N. SCOR, U.N. Doc S/RES/1368 (Sept. 12, 2001).

11. See Thomas M. Franck, *What Happens Now? The United Nations After Iraq*, 97 AM. J. INT'L L. 607, 609 (2003) (noting Security Council's effectiveness in interpreting and applying rules to enhance responsiveness to terrorism); Thomas L.

The arguments of the unilateralists and multilateralists were largely normative and revolved around the question of what international law requires: Does the law permit the United States to act alone, or is the United States required to act only through some form of multilateral institution? Absent largely from the public debate was whether one or the form of intervention would be more effective in bringing about the shared goal of reducing threats to international peace and security.¹² It is that question of effectiveness of the *form* of intervention to prevent, reduce or end war that this Article seeks to address.

International legal scholars have traditionally assumed that multilateralism, like law, matters. In contrast, realist international relations scholars traditionally argue that multilateralism, like law, does not matter, or at least that it does not matter much.¹³ In recent years, international law scholarship has begun to take a critical look at multilateralism from a variety of theoretical perspectives beyond legal doctrine.¹⁴ At the same time, rational institutionalists of international relations are moving closer to international law scholars in recognizing that while multilateralism cannot be accepted uncritically as promoting peace and the rule of law, it does alter the behavior of international actors. The challenge to international legal scholars has been how to prove or disprove the claim that multilateralism reduces incidents of war or limits war's destructiveness. In order to be able to test the unilateralist rationales of those who tout "benign impe-

Friedman, *Present at . . . What?*, N.Y. TIMES, Feb. 12, 2003, at A37 (arguing necessity of complete international legitimacy and acceptance in United States' dealings with Iraq). *But see* William H. Taft IV & Todd F. Buchwald, *Preemption, Iraq, and International Law*, 97 AM. J. INT'L L. 557, 557 (2003) (arguing legality of Operation Iraqi Freedom).

12. I use the term "shared" cautiously. The Bush administration's stated rationale—at least at the time of the invasion—was justified on the threat Iraq posed as a result of its unlawful retention of banned weapons and ongoing weapons program. At the time of the invasion, the assumption that Iraq was, in fact, not fully complying with U.N. inspections requirements was shared by many of the individual and state opponents of the invasion.

13. By calling law "epiphenomenal," realists allow themselves to concede that law may make a difference to international relations, but that difference is negligible. For a discussion of this difference, see *infra* notes 42, 46 and accompanying text.

14. *See, e.g.*, JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 8 (2005) ("International law emerges from states acting rationally to maximize their interests given their perceptions of the interests of other states and the distribution of state power."); Jose Alvarez, *Multilateralism and Its Discontents*, 11 EUR. J. INT'L L. 393 (2000); Kenneth Anderson, *The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of International Civil Society*, 11 EUR. J. INT'L L. 91, 109-10 (2000); Allan Gerson, *Multilateralism á la Carte: The Consequences of Unilateral "Pick and Pay" Approaches*, 11 EUR. J. INT'L L. 61 (2000); Andrew Guzman, *A Compliance-Based Theory of International Law*, 90 CAL. L. REV. 1823, 1840-41 (2002) (adopting repeated-game model of state behavior to demonstrate effect of international law on compliance); *see also* Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002) (providing empirical examination of compliance with international human rights treaties).

rialism” through “humanitarian unilateralism,”¹⁵ against those who are unqualified supporters of preserving post-World War II multilateralism through the United Nations, the analysis needs to start with a working definition and thick description of what we mean by multilateralism in the security context.

Multilateralism in war, or “security multilateralism,” is the coordination of security relations among states according to the principles and legal norms governing the use of force.¹⁶ The power of the U.N. to address armed conflict and maintain just peace is, as a matter of Charter law, *aggregated* at the Security Council. But, the *functions* through which the U.N. organization works in support of that aggregated legal mandate are, however, dispersed and carried out by many bodies. These functions include: (1) assessment, (2) intermediation, (3) humanitarian assistance, (4) sanctions, (5) military intervention and (6) post-conflict administration. Empirical studies of security multilateralism should take into account the ways in which the U.N. has carried out these disaggregated functions, and the extent to which non-U.N. actors can carry out the same functions without U.N. participation. An overly narrow focus on decisions taken at the Council, acting in support of the military intervention function, ignores and risks marginalizing the importance and effectiveness of the other functions in addressing threats to international peace and security.

This Article examines two past conflicts—East Timor and Kosovo—and compares them with the 2003 invasion of Iraq. Viewing these three conflicts through the taxonomy of these six institutional functions of multilateralism reveals useful information about how these dispersed functions are actually carried out.

This Article quite intentionally leaves aside the separate, but important, question of what the rules of multilateralism in armed conflict should be. The limited project here is to provide a framework for considering the relative effectiveness of different forms of addressing armed conflict in the three different contexts represented by East Timor, Kosovo and Iraq: U.N. multilateral, ad hoc multilateral and unilateral. I do not mean to minimize the important long-term systemic effects of the content of the international rules. Rather, I hope to inform debate over reform of the rules governing how and when armed force may be used by refining a tool with which to evaluate the effectiveness of different forms of institutional ac-

15. See NIALL FERGUSON, *COLOSSUS: THE PRICE OF AMERICA'S EMPIRE* 5 (2004) (quoting Robert Kaplan's view that American imperialism can be viewed as “benign form of order”); see also Max Boot, *The Case for American Empire*, *WKL. STANDARD*, Oct. 15, 2001, at 27 (calling for expansion of goals and more assertive approach to implementing America's response to terrorism); Emily Eakin, *Pax American—The Case for an American Empire*, *COLUM. ST.*, Apr. 7, 2002, at D1 (arguing America is not mere superpower or hegemon, but empire).

16. I borrow here from John Ruggie's definition of multilateralism. John Gerard Ruggie, *Multilateralism: the Anatomy of an Institution*, in *MULTILATERALISM MATTERS: THE THEORY AND PRACTICE OF AN INSTITUTIONAL FORM* 3, 8-14 (John Gerard Ruggie ed., 1992) [hereinafter *MULTILATERALISM MATTERS*].

tion in armed conflict, even—or especially—those actions that are unlawful under the current rules. Further, my hope is that by providing a framework through which to draw on the empirical case studies being done by political scientists, international lawyers can become more informed about the context in which rulemaking takes place.

The project here is largely positive, describing the role of multilateral institutions in each case and the extent to which U.N. multilateralism differed from, or was more or less effective than, non-U.N. efforts. In each of these cases, arguments were put forward that participation by outside parties (unilateral, regional or U.N.-based) was justified under international legal norms. I do not intend to wade into those debates, except to the extent that those justifications included arguments based on efficacy of the form of intervention.¹⁷

Part One of this Article examines accounts of multilateralism in international law and international relations and analyzes the historical and legal foundations of U.N. security multilateralism. It concludes that, while the legal authority over security multilateralism is aggregated at the Security Council, the *functions* of security multilateralism are dispersed throughout the U.N. and affiliated organizations and argues that these functions should be viewed as subordinate to the Council. Part Two presents the disaggregation of security multilateralism into a taxonomy of these dispersed functions: (1) assessment, (2) intermediation, (3) humanitarian assistance, (4) sanctions, (5) military intervention and (6) post-conflict administration. Part Three applies the taxonomy to the three armed conflicts that range along a continuum of legality from U.N. multilateral (East Timor) to non-U.N. multilateral (Kosovo) to unilateral (Iraq). Part Three examines these conflicts through the taxonomy of functions and makes some preliminary observations about security multilateralism that reveal the ways in which the U.N. has been overvalued (the U.N. may not have a strong legitimating effect on outside military interventions), under-valued (the U.N. may have effective capacity to assess threats and impose sanctions) or misconstrued (U.N. military interventions may be no more or less multinational than non-U.N. operations). The Article concludes with potential implications for reform of U.N. security functions and recommendations for how the taxonomy might be applied to future research.

I. MULTILATERALISM IN ARMED CONFLICT

The terms “multilateral” and “unilateral” have become verbal hand grenades in the current discourse on international relations and war in the United States and Europe, and as such are tossed around with great imprecision by pundits and the popular press.¹⁸ One example is the way

17. For a discussion of the relative merits of UN and non-UN military interventions, see *infra* notes 285-314 and accompanying text.

18. See, e.g., Patrick Tyler, *A Nation at War: The Attack; U.S. and British Troops Push into Iraq as Missiles Strike Baghdad Compound*, N.Y. TIMES, Mar. 21, 2003, at A1.

in which even some prominent legal academics have been accused of near-zealotry in their promotion of multilateral solutions to international security problems.¹⁹ For international law skeptics in and out of the academy, “multilateralism” takes on almost pejorative overtones; representing anti-democratic decision making that allows outside states to “veto” actions taken to protect the United States’ national interests.²⁰ But the central claim of both unilateralists and multilateralists is that their approach will promote long-term stability and peace.

“Security multilateralism”²¹ is distinct from two other forms of security relationships between states: “security bilateralism” and “security unilateralism.” Bilateralism refers to reciprocal arrangements between two states, generally understood to produce mutual benefits and rights and incur mutual obligations.²² Unilateralism generally refers to actions that

Complicating the discussion further, in Europe, multilateralism takes on a broader meaning that encompasses not only the process of transnational cooperation, but also the more “supranational” elements of centralized rule-making in the European Union. Multilateralism within Europe has been internalized as a legitimate means for legislating national policy. Because European states accept multilateralism as descriptive of both these accepted processes and norms, multilateralism is a less polarizing notion. See, e.g., Joachim Krause, *Multilateralism: Behind European Views*, WASH. Q., Spring 2004. Krause notes that the European view is not monolithic, but includes three strands—German, French and British—that see multilateralism and collective security respectively as: (1) a good in itself in that it promotes international law and diplomacy over war, (2) effective and necessary only insofar as it can be used to assert French interests or counteract the hegemon and (3) as an instrument to be used when practicable and effective, and to be ignored when not.

19. One example of the polemics involved with the mere use of the term “multilateral” was a discussion on the Charlie Rose show in December 2002, involving Harold Koh, Christopher Hitchens, David Rieff and Michael Walzer. See *The Charlie Rose Show* (PBS television broadcast Dec. 12, 2002). In a subsequent article about the experience, Hitchens noted that Koh “must have pronounced the words ‘multilateral’ or ‘multilateralism’ several dozen times.” Christopher Hitchens, *Multilateralism and Unilateralism: A Self-Canceling Complaint*, Dec. 18, 2002, <http://www.slate.com/id/2075659>. In fact, Koh only used the term “multilateral” seven times. See *The Charlie Rose Show*, *supra*. Despite his inaccurate recall, Hitchens points out the self-canceling—at least in linguistic terms—complaint of those in the British labor party who in 2002 decried the Bush “regime change” policy not unwise per se, but unwise merely because it was “unilateral” and not “multilateral.” To convert a policy that is “unilateral” (using the dictionary definition of “one-sided”) into one that is “multilateral” (“many sided”) would only require that the opponents of the policy join in. *Id.*

20. See, e.g., John R. Bolton, *Should We Take Global Governance Seriously?*, 1 CHI. J. INT’L L. 205, 208-09 (2000); see also David E. Sanger, *A Doctrine Under Pressure: Preemption Is Redefined*, N.Y. TIMES, Oct. 11, 2004, at A10 (discussing Democratic candidate John Kerry’s proposal to use “global test” when dealing with questions of national security).

21. I use the term “security multilateralism” to distinguish it from trade and economic multilateralism.

22. Over time, a large number of bilateral agreements, for example the web of bilateral investment treaties (“BITs”) may come to resemble a multilateral system, but are reflective of the bilateral dynamic. See Kenneth W. Abbott & Gregory W. Bowman, *Economic Integration in the Americas: “A Work in Progress”*, 14 NW. J. INT’L

affect the welfare and well being of one or more other states taken by one state alone and without prior coordination or cooperation with outside states.²³ In the security context, unilateralism is frequently used to describe the use of aggressive force or other forms of “self-help” through violent means.²⁴ Security multilateralism refers to the institutions and process of addressing armed conflict through cooperation and coordination of larger groups of states.²⁵ Theories of why states cooperate with one another or coordinate their actions in the face of armed conflict help explain the rationales for existing multilateral security arrangements.

A. Systematizing Security Multilateralism

Efforts to systematize and evaluate security multilateralism have emerged along two separate tracks: normative and doctrinal explanations of the law governing international security multilateralism and explanations of U.N. multilateralism as a political phenomenon.²⁶ The Security

L. & Bus. 493, 510-11 (1994) (explaining complexities and problems that arise with having complete network of bilateral agreements among nations). In the defense and security context, a paradigmatic example is the mutual defense agreement. See, e.g., Mutual Security Treaty, U.S.-Japan, Jan. 18, 1960, 11 U.S.T. 1632; Mutual Defense Treaty, U.S.-S. Korea, Oct. 1, 1953, 5 U.S.T. 2368; Mutual Defense Treaty, U.S.-Phil., Aug. 30, 1951, 3 U.S.T. 3950.

23. See Pascal Boniface, *The Specter of Unilateralism*, WASH. Q. Summer 2001, 155, 158-59 (discussing U.S. unilateralism, unilateralist policies and European reaction to such policies). The Oxford English Dictionary defines “unilateral” as “the pursuit of a foreign policy without allies or irrespective of their views.” OXFORD ENGLISH DICTIONARY, available at <http://www.oed.com> (citing HENRY KISSINGER, *WHITE HOUSE YEARS 1089* (1979)) (“From an early hostility to the American alliance with Japan . . . the Chinese leader soon came to view it as a guarantee of America’s interest in the Western Pacific and a rein on Japanese unilateralism.”).

24. If a state acts alone in deploying force, but does so either with the approval of the U.N. Security Council or under the international rules governing self-defense, it is generally not considered “unilateral,” as a normative matter, despite the fact that it is descriptively unilateral. For a further discussion, see *infra* notes 114-119 and accompanying text.

25. Cooperation is required where states refrain from actions that “would otherwise be in their immediate self-interest in order to reap larger medium- or long-term benefits.” GOLDSMITH & POSNER, *supra* note 14, at 12. Coordination appears in interstate relations where “states receive higher payoffs if they engage in identical or symmetrical actions than if they do not.” *Id.* The classic example of coordination is where a uniform solution to a technology problem is required (width of a railway gage, for example) but each state is indifferent to the outcome. Coordination in the security context is required for standardization of equipment and rules of engagement and other aspects of operations composed of troops from two or more nations.

26. For an excellent summary of the division between international law and international relations, see OONA HATHAWAY & HAROLD KOH, *FOUNDATIONS IN INTERNATIONAL LAW AND POLITICS 1-3* (2004) [hereinafter *INTERNATIONAL LAW AND POLITICS*]. See Oona Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 475-76 (2005) [hereinafter *Between Power and Principle*]. The apparent insularity of international law from the core concerns of legal scholarship has marginalized international law scholars within law schools

Council is placed at the center of most legal analysis of security multilateralism because of the authority committed to the Council under the U.N. Charter.²⁷ In most respects, these accounts analyze U.N. security multilateralism in its aggregate form, focusing on the decisions of the Council when it acts in its enforcement capacity. The role of the subordinate U.N. organs and related agencies in the area of armed conflict tends to be marginalized or minimized as a result. Nevertheless, these accounts of the rationales for multilateralism that can be included as a means of testing the relative effectiveness of multilateral and non-multilateral approaches.

1. *Legitimacy and Fairness*

The legitimacy and fairness school argues that the United Nations itself, through the law of the Charter, legitimates any action taken by the U.N. member states to regulate the use of force, including decisions to approve counter-force. According to Thomas Franck, the legal requirement of Council authorization in the case of all non-defensive use of force confers legitimacy, a legitimacy derived from the universality of membership of the United Nations and of the norms in the Charter.²⁸ This legitimacy is therefore both procedural and substantive. Because membership is an expression of state sovereignty of the member state, that sovereignty confers on the collective group decisions of the U.N. the political legitimacy of each individual sovereign act.²⁹ Each sovereign act in turn is the result of political accountability of each member state to its domestic con-

as well. *Id.* at 476. While these tracks have largely remained parallel, in recent years there have been increasing efforts to import the insights of international relations into legal scholarship. *See, e.g.*, INTERNATIONAL LAW AND POLITICS, *supra*; Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Inter-Disciplinary Scholarship*, 92 AM. J. INT'L L. 367 (1998).

27. *See, e.g.*, Jose Alvarez, *Hegemonic International Law Revisited*, 97 AM. J. INT'L L. 873, 874 (2003); Anne-Marie Slaughter, *The Liberal Agenda for Peace*, 4 TRANS-NAT'L L. & CONTEMP. PROBS. 377 (1994).

28. *See* THOMAS FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* 24 (1990) (defining legitimacy as "a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process").

29. Indeed, it is on the broad measure of universality that the U.N. has also improved upon the League structure. All states are members of the United Nations General Assembly and therefore have the right to participate in its core functions. All member states thus derive benefits from and incur obligations under each of the functions carried out in the area of peace and security. *See* THOMAS FRANCK, *NATION AGAINST NATION* 187 (1985) [hereinafter *NATION AGAINST NATION*] (discussing reciprocity between member states); *see also* THOMAS FRANCK, *RECOURSE TO FORCE* (2002) [hereinafter *RECOURSE TO FORCE*]; *DEMOCRATIC ACCOUNTABILITY AND THE USE OF FORCE IN INTERNATIONAL LAW* (2002) (Charlotte Ku & Harold K. Jacobson eds., 2002) [hereinafter *ACCOUNTABILITY*]; Mariano-Forentina Cuellar, *Reflections on Sovereignty and Collective Security*, 40 STAN. J. INT'L L. 211, 221 n.49 (2004) (discussing sovereignty-based collective security). Of course, not all member states are democratic or legitimate, which has created the so-called "democracy deficit" in the U.N. and other multilateral organizations.

situencies, which further enhances the legitimacy of the U.N.'s actions.³⁰ This perspective has been particularly valuable to understanding procedural norms, for example: the political nature of Council decision-making,³¹ efforts to reform voting procedures³² and expansion of Council membership.³³

Further, the U.N. facilitates collective action by permitting a group of nations to address security threats in a way each state could not do acting alone,³⁴ conferring on the process a neutral character; it is at once the decision of all the international community and the decision of no state in particular.³⁵ This neutrality, in turn, brings about better, more just results than those that would be achieved through non-neutral, unilateral or ad hoc self-help.³⁶ The combination of legitimacy and neutrality carries long-

30. An alternative perspective views supranational power as less legitimate. See Michael Glennon, *The United States, Democracy Hegemony, & Accountability*, in ACCOUNTABILITY, *supra* note 29. Accountability of member state actions through transnational constituencies, including so-called "CNN legitimacy," plays a separate role from that of sovereign legitimacy. See, e.g., David Kennedy, *Tom Franck and the Manhattan School*, 35 N.Y.U. J. INT'L L. & POL. 397 (2003). This rooting of legitimacy of the Council in domestic law is part of the larger effort in international law to explain legitimacy of international rule making as derived from integration with the domestic legal order, either directly or through transnational networks. See, e.g., ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER 266-71 (2003) (arguing that sub-national governmental units can operate through transnational networks without giving up sovereignty); Harold Koh, *Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998).

31. For a general discussion of domestic political influences on Security Council member behavior, see ACCOUNTABILITY, *supra* note 29.

32. See Gabriella Venturini, *Italy and the United Nations: Membership, Contribution and Proposals for Reform*, 20 HAMLINE L. REV. 627, 634 (1997).

33. See, e.g., Lawrence D. Roberts, *United Nations Security Council Resolution 687 and Its Aftermath*, 25 N.Y.U. J. INT'L L. & POL. 593, 620 (1993). Other work focusing on the substantive norms of security multilateralism (i.e., the prohibition of the use of force and the exceptions thereto) has contributed to understanding whether the rules themselves have ongoing viability in light of the relative desuetude of the Council during the Cold War and the persistence of armed conflict throughout the same period. See Glennon, *supra* note 30.

34. That is, the U.N. finances and delegates authority to international organizations with specialized expertise and ability to carry out certain missions in the context of war. The Military Committee was to be the ultimate military capacity of the international community. Absent the standing Military Committee, other organizations carry out specialized missions in the context of war. See, e.g., Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428, U.N. GAOR, 5th Sess., 325 plen. mtg., U.N. Doc. A/1775 (Dec. 14, 1950). For a further discussion of taxonomy functions, see *infra* notes 137-94 and accompanying text.

35. See NATION AGAINST NATION, *supra* note 29, at 99 (1985) (noting decision to make U.N. separate legal identity from its constituent states).

36. One view is that the U.N. has been effective in not taking political sides, or at least that, when the U.N. does weigh in on one or another side of a dispute, it does so in the interest of peace and security and not in terms of political preferences. This view holds that because it represents the will of the international community, and because it embodies the central international human rights instruments and organs, any result obtained under the auspices of the U.N. will at

term systemic benefits by reinforcing the notion that rules, not pure power, govern the relations between states.

2. *Realism*

The realist view has traditionally rejected the importance of the norms and process governing Security Council enforcement mechanisms, just as it rejects international institutions generally.³⁷ Instead, realists argue that U.N. enforcement mechanisms are at best a reflection of rational state action in an anarchical international system governed by power politics.³⁸ The very composition of the Council, including the veto for the permanent five, reflects rational calculations by states aimed at aggrandizing power and maximizing security.³⁹ More powerful states will access the Security Council when it serves their interest to do so and will disregard it when it does not.⁴⁰ Less powerful states make similar calculations, allying with powerful states and joining institutions when the benefits outweigh the costs.⁴¹ To the extent that law exists, it is “epiphenomenal” to what really happens in the world system.⁴² Under this view, any multilateral mechanism aimed at providing for collective security is therefore not too different, in practice, from alliances that balance power and security.⁴³

least be more “just” than that obtained by “interested” third parties. *See generally* THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1998) [hereinafter *FAIRNESS IN INTERNATIONAL LAW*].

37. The seminal realist work is HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* (1973), in which he sets out the thesis that “[i]nternational politics, like all politics, is a struggle for power. Whatever the ultimate aims of international politics, power is always the immediate aim.” *Id.* at 27; *see also* Hans J. Morgenthau, *Positivism, Functionalism, and International Law*, 34 *AM. J. INT’L L.* 260 (1940).

38. To a rational state, collective security multilateralism would be assessed in policy terms in much the same way alliances were assessed. A state should enter into a multilateral security arrangement if the benefits to that state outweigh the costs. *See* John J. Mearsheimer, *The False Promise of International Institutions*, 19 *INT’L SECURITY* 3 (1995) (arguing there is little value in international institutions and multilateralism has little impact on state behavior). Rationalism in the sphere of security relationships is complicated to a certain degree by distinctions between comparative and absolute gains and the problem of cheating. *Id.* at 13.

39. Kenneth Waltz amended Morgenthau’s view of states as motivated solely by the aggrandizement of power to include the “subdued optimism” of the belief that states are “motivated by the desire for security.” Mearsheimer, *supra* note 38, at 48 n.180; *see also* KENNETH N. WALTZ, *THEORY OF INTERNATIONAL POLITICS* 126 (1979) (arguing security ranks top priority for states within anarchic system).

40. *See* MORGENTHAU, *supra* note 37, at 29 (“[States] may also try to further [the realization of power] through non-political means, such as technical co-operation with other nations of international organizations.”).

41. *See* Mearsheimer, *supra* note 38, at 3. This is how large and small states behave in all alliance-based actions.

42. Calling international law epiphenomenal “is a nice way of saying it is stupid.” David J. Bederman, *Constructivism, Positivism, and Empiricism in International Law*, 89 *GEO. L.J.* 469, 473 (2001).

43. The history of the first forty-four years of the U.N. appears to vindicate this as a political theory supported by empirical evidence. Military force operating

Yet, strict realist assumptions about multilateralism fail adequately to explain cooperation and coordination among states in a range of security activities, including in areas where states quite clearly have acted *against* their own short and medium-term interests.⁴⁴ If powerful states act rationally in pursuit of aggrandizing their power, why do multilateral security institutions persist, even during a period (i.e., the Cold War) when some central institutions like the Security Council exercised their functions relatively infrequently? This requires an explanation that focuses less on formalist explanations of the legal rules of the Charter and more on the ways in which multilateral organizations operate as norm regimes.⁴⁵

3. Institutionalism

Institutionalism, which began as an offshoot of realism (that is, among international law skeptics), provides an account and definition of multilateralism that balances the competing views of realism and legal formalism and offers a more pragmatic approach to evaluating the behavior

under the auspices of the U.N. was invoked only twenty times between 1945 and 1989. See ACCOUNTABILITY, *supra* note 29, at 17, App. A (providing table of invocations of U.N. force for years 1989-2000). During that same time period, the world experienced approximately 100 incidents that could be categorized as armed conflicts that breached international peace. See Sec'y-Gen., *Report of the Secretary-General on An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, ¶ 14, delivered to the members of the United Nations, U.N. Doc. A/47/277-S/24111 (June 17, 1992) (estimating over 100 conflicts, leaving twenty million dead between 1946 and 1989). Nonetheless, longitudinal models demonstrate a persistent decline in the global magnitude of armed conflict since it peaked in the early 1990s. See MONTY G. MARSHALL & TED ROBERT GURR, PEACE AND CONFLICT 2005: A GLOBAL SURVEY OF ARMED CONFLICTS, SELF-DETERMINATION MOVEMENTS, AND DEMOCRACY I (2005). Broad conclusions regarding causation, as opposed to mere correlation, between the persistence of war and the existence of collective security mechanism can be misleading. See Cuellar, *supra* note 29, at 221 n.49 (arguing that "sovereignty-centered collective security" of U.N. has been marginal in addressing international security problems, while acknowledging that it would be "difficult to make statistically rigorous inferences about the precise impact of the United Nations or international law on the extent of global violent conflict").

44. For examples in which states acted through the Council for reasons counter to their apparent self-interest, see S.C. Res. 418, U.N. SCOR, U.N. Doc. S/RES/418 (Dec. 9, 1977) (establishing arms embargo against South Africa); S.C. Res. 421, U.N. SCOR, U.N. Doc. S/RES/421 (Nov. 4, 1977) (establishing Security Council committee to monitor South African compliance with Resolution 418).

45. See Robert O. Keohane, *Multilateralism: An Agenda for Research*, 45 INT'L J. 731, 737 (1990) (discussing institutionalists, rational institutionalists and neo-liberal institutionalists) [hereinafter *An Agenda for Research*]; see also Robert O. Keohane, *The Demand for International Regimes*, in INTERNATIONAL REGIMES 141, 153-54 (Stephen D. Krasner ed., 1983) (arguing that regimes form and are necessary when at least one of following three conditions is met: absence of clear legal framework that imposes liability for action, imperfect information or high transaction costs). Institutionalists take law into account as important to some aspects of politics, but not to the core national interests. Institutions and regimes reduce transaction costs, stabilize expectations and allow "repeat playing" and cooperation in international affairs. See *id.* at 153-61 (discussing efficiencies that regimes provide).

of international institutions. The persistence of multilateral security institutions in defiance of both the classical realists who insist that institutions are “epiphenomenal,” and those legal formalists who see international order as largely derived from neutral rules and process, required an alternative account; institutionalism bridged the gap.

The political scientist John Ruggie defines broad multilateralism as “the co-ordination of relations among three or more states according to a set of principles.”⁴⁶ Ruggie’s definition built on an earlier description by Robert Keohane of multilateralism as “the practice of co-ordinating national policies in groups of three or more states.”⁴⁷ From an institutionalist perspective, it is the *multilateral form* of an institution which creates “robust and adaptive” characteristics that enhance durability and adaptability.⁴⁸ It is this adaptability—not the formalism of the legal rules—that makes U.N. multilateralism generally, and U.N. security multilateralism specifically, enduring.

By adding the normative dimension to coordinated policies, Ruggie acknowledges that multilateral behavior is motivated by more than raw political preference on the part of the states, but includes a set of rules that govern the relationships of states entering into the multilateral arrangement.⁴⁹ These rules are created by the participating states who agree to their implementation and enforcement through the multilateral arrangement itself. Security multilateralism has two dimensions: (1) cooperation and coordination function of participating in collective security and (2) the normative element, or the rules governing the use of force.⁵⁰

Security multilateralism thus includes the political processes of dispute resolution, including the use of force itself,⁵¹ and the law governing

46. See MULTILATERALISM MATTERS, *supra* note 16, at 6 (contrasting multilateralism with bilateralism).

47. *An Agenda for Research*, *supra* note 45, at 731.

48. “[M]uch of the institutional inventiveness within multilateral arrangements today is coming from the institutions themselves, from platforms that arguably represent or at least speak for the collectivities at hand.” MULTILATERALISM MATTERS, *supra* note 16, at 6.

49. John Ikenberry is more specific in referring to the principles by which multilateral relationships are governed as “constraining rules.” See MULTILATERALISM MATTERS, *supra* note 16, at 3-47; G. John Ikenberry, *Is American Multilateralism in Decline?*, 1 PERSP. IN POL. 533, 534 (2003), available at <http://www.apsanet.org> (citing *An Agenda for Research*, *supra* note 45; John Van Oudenaren, *What is “Multilateral”?*, 117 POL’Y REV. 33, 33-47 (2003)) (distinguishing between multilateralism and other kinds of international relations).

50. See ANTHONY CLARK AREND, LEGAL RULES AND INTERNATIONAL SOCIETY 128 (1999) (stating that interactions of states in international system creates structure of system); ANTHONY CLARK AREND & ROBERT J. BECK, INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM 51 (1993) (describing collaborative aspect of collective security).

51. Some international lawyers argue that the use of force cannot be construed as a legal process on the fundamental ground that violence is the opposite of war, but modern multilateralism contemplates the use of force on behalf of upholding law. See RECOURSE TO FORCE, *supra* note 29, at 40-44 (discussing expansion

those processes. Viewed from this perspective, multilateralism refers to a variety of international efforts to reduce or eliminate the threat of war: the use of the individuals, the U.N. or other multilateral organizations as mediators to the dispute;⁵² the use of non-coercive measures designed to prevent the exercise of violence in the first place;⁵³ the use of force authorized under the authority of the United Nations Security Council;⁵⁴ the use of force under the authority of non-U.N. multilateral organizations;⁵⁵ and the joint deployment of military forces of different nations.⁵⁶

This institutionalist framework provides a useful starting point for examining the bases of the functions of U.N. security multilateralism in law and practice. The next two sections explain how the two elements of security multilateralism—cooperation and norm enforcement—developed in a way that is distinct from bilateralism or unilateralism and how these two strands form the core of the Security Council's role in maintaining peace and security. A close analysis of the Charter and U.N. practice demonstrates that the this aggregation of legal and, to some degree, political power at the Council was intentional, but was accompanied by a dispersal of supporting functions carried out in the General Assembly, other organs of the U.N. and affiliated organizations.

B. *Pre-League of Nations Security Multilateralism*

The path from unilateral, ad hoc coalitions to the security multilateralism of the U.N. illustrates how and why this combination of political and legal authority came to be aggregated at the Security Council and also why other functions of security multilateralism can be seen as subordinated to the central peace enforcement powers of the Council. Forms of security multilateralism have existed almost as long as wars and conflicts have been

sion of definition of threats to peace, breach of peace and actions of aggression as in order to use U.N. forces to maintain civil order in domestic disputes).

52. An example of this can be seen in the Cambodian peace process. See STEVEN R. RATNER, *THE NEW U.N. PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* 146 (1995) [hereinafter *NEW U.N. PEACEKEEPING*] (discussing U.N. activity in Cambodia during peace process).

53. See Taft & Buchwald, *supra* note 11, at 563 (explaining that purpose of preemptive operation in Iraq was to prevent Iraq from using weapons of mass destruction and arguing this action did not violate international law).

54. See Jules Lobel & Michael Ratner, *Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime*, 93 AM. J. INT'L L. 124, 130-38 (1999) (providing examples of use of force by states acting under implied authorizations from U.N.).

55. The Kosovo action was not authorized by the U.N. Security Council, but was carried out as a NATO operation. See John C. Yoo, *UN Wars, US War Powers*, 1 CHI. J. INT'L L. 355, 356 (2000) (discussing United States participation in NATO action in Kosovo).

56. See Quynh-Nhu Vuong, *U.S. Peacekeeping and Nation-Building: The Evolution of Self-Interested Multilateralism*, 21 BERKELEY J. INT'L L. 804, 808 (2003) (describing how countries participating in peacekeeping operate under U.N. command).

carried out.⁵⁷ In the ancient world, multilateralism took the form of a balance of power system functioning among the city-states of ancient Greece, which transformed the states, all of relatively equal strength, into a greater world order.⁵⁸ The 1648 Peace of Westphalia, ending the Thirty Years War in Europe, marked the beginning, not only of the modern notion of statehood and sovereignty, but also of modern multilateralism, a process through which sovereigns interacted with one another.⁵⁹ Following the end of the Napoleonic Wars in 1815, the great powers—Great Britain, Austria, Russia, Prussia and France—rebuilt the international order at the Congress of Vienna,⁶⁰ a system that “sought to forge a consensus on the issues confronting Europe and to pave the way for dealing with them on a *multilateral* basis.”⁶¹ After the Concert of Powers failed,⁶² it was replaced in the second half of the nineteenth century by a “striving for unilateral advantage checked only by external constraints, while bilateral alliance formation was raised to a new level of sophistication by Bis-

57. See HENRY KISSINGER, *DIPLOMACY* 20 (Simon & Schuster 1994) (suggesting that Europe faced two options after collapse of “medieval dream of the universal empire”: one country creates another empire or no states can become powerful enough to create another empire, in which case balance of power keeps most aggressive states “in check”).

58. See *id.* at 21 (providing examples of states that utilized balance of power systems successfully).

59. See *id.* at 65 (explaining how France became dominant in seventeenth century). At the same time, the notion of *raison d'état* became the central rationale in European diplomacy. See *id.* (discussing rise of *raison d'état* after Peace of Westphalia). But see PHILLIP BOBBITT, *THE SHIELD OF ACHILLES* 502-08 (2002) (arguing instead that Peace of Westphalia represented beginning of constitutionalism).

60. See KISSINGER, *supra* note 57, at 78-79, 88. The Congress in some senses was a precursor of the Helsinki Final Act: “[T]he results achieved at Vienna were inspired by a certain concept of international relations which excluded the use of force and which consequently represented a considerable advance on the highway robbery of the eighteenth century.” BOBBITT, *supra* note 59, at 164-65 (quoting JACQUES DROZ, *EUROPE BETWEEN THE REVOLUTIONS, 1815-1848* (1967)).

61. See MULTILATERALISM MATTERS, *supra* note 16, at 18 n.53 (citing HENRY KISSINGER, *A WORLD RESTORED* 5 (1964)) (noting that “Kissinger concentrates on the Congress system . . . which ended by about 1823” but contends that his own commentary would hold true for entire Concert system). This institutional framework proved viable for a generation and was, more or less, regarded by its participants as “legitimate,” a true “Concert of Powers,” as it became known after the Treaty of Aix-la-Chapelle in 1818. See BOBBITT, *supra* note 59, at 164, 166 (discussing legitimacy of Concert of Powers). But see *id.* at 539 (contending that Congress reflected constitutional response to these events).

62. The institutionalization of multilateral security under the Concert has been attributed to the threat of Napoleonic imperial ambitions and the threat that the French revolution posed to the very notion of dynastic rule, which brought diverse cultures and religions to the Concert—England’s liberal Protestantism on the one hand and conservative Catholic Austria and Orthodox Russia on the other. See MULTILATERALISM MATTERS, *supra* note 16, at 18-19. The revolution of 1848 “shook the prevailing concept of legitimate political order from within, and the sense of international cohesion diverged sharply thereafter.” *Id.* at 580.

marck.”⁶³ During the same period, on the economic side, free trade emerged,⁶⁴ along with the gold standard, as the paradigms of nineteenth century multilateralism.⁶⁵

Security multilateralism was not like trade. There had been no coalescing principle of behavior comparable to Ricardian trade economics to govern interactions between states on the security side. States thus continued throughout the nineteenth century to rely on alliances as a means to express power and balance threats. Those alliances, however, failed to stop World War I and arguably hastened it. Only after World War I did the European powers begin to think of security as a common good, like economic wealth, indivisible and susceptible to public regulation through the application of principles to state behavior.

C. *Security Multilateralism Under the League of Nations Covenant*

The first formal use of the term “multilateral” to refer to a shift from alliances to some sort of rule-based system for regulating war was made in conjunction with the Kellogg-Briand Pact of 1928.⁶⁶ But this form of mul-

63. *Id.* at 18-19 (explaining decline of multilateralism after Concert disbanded).

64. *See id.*

65. *See id.* at 19-20 (stating that free trade and gold standard are “paradigms . . . of multilateralism”). The gold standard refers to the existence of two conditions: a link between the domestic money supply and gold at fixed, or close to fixed, rates; and the allowance of the inflow of gold in case of favorable balance of payments and outflow of gold when there is a disfavorable balance of payments, both of which allow conversion of currency at relatively fixed rates. *See id.* at 20 (explaining two conditions that must be present for gold standard to exist). Great Britain initially pursued free trade unilaterally. But when other countries proved reluctant to follow the example, Britain was left to negotiate a series of bilateral tariff agreements. *See id.* (explaining why Great Britain engaged in trade negotiations with other countries). Some of these bilateral treaties had *multilateral* consequences because of the inclusion of most-favored-nation (“MFN”) clauses, which committed each party to extend to the other concessions gained by agreements with third parties, that is, they were a network of bilateral agreements according to set of principles (free trade economics and MFN treatment). *See id.* (explaining consequences of bilateral treaties such as Cobden-Chevalier Treaty between Great Britain and France of 1860). The aggregate effect of the bilateral treaties was one of *multilateralizing* international trade. *See id.* n.62 (citation omitted).

66. *See* 10 OXFORD ENGLISH DICTIONARY 81 (2d ed. 1989) (citing GLASGOW HERALD, June 13, 1928, at 10/6) (attributing usage of “multilateralism” to French Foreign Minister Briand in 1928 when he discussed Kellogg-Briand Pact). “M. Briand insisted specifically on the term ‘war of aggression’ after first talking generically of all war. The reason was the transformation of bilateralism into multilateralism.” *Id.* Sixty-three states became parties to the Kellogg-Briand Pact (“Pact”) outlawing war and the use of multilateralism in this context recognized that, among the states party to the treaty, aggression was outlawed, but not self-defense. *See* General Treaty for Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 (outlawing war as method to settle dispute between parties to Pact); *see also*, Thomas Ehrlich, *The Measuring Line of Occasion*, in INTERNATIONAL LAW AND THE USE OF FORCE 129, 133 (Thomas Ehrlich & Mary Ellen O’Connell eds., 1993) (arguing that while Kellogg-Briand Pact clearly outlawed war to enforce legal rights, legal scholars debated whether right to

tilateralism as collective security had been established in the Covenant of the League of Nations a decade earlier. "Collective security systems commit members to combined retaliation against *any state*, including a member of the system, that commits aggression against a member state."⁶⁷ "[A] threat against one is a threat against all" form of collective security differed from earlier alliances based on defense against threats and attacks *external* to the alliance states.⁶⁸ It thus formed the foundation for an understanding of peace and security as an indivisible common good.

The framers of the League of Nations intended this new collective security to supplant the power politics and the ad hoc alliances that led to World War I with predictability and a certain degree of transparency in the use of force.⁶⁹ They shared the radical hope that the League "would be a means of abolishing war from the earth and substituting the saner procedures of international conciliation."⁷⁰ Multilateral collective security through the League assumed rational action by state actors; the threat of collective action was to be viable and credible to such a degree that unilateral acts of aggression would be viewed as too costly. Article 11 of the League Covenant declared that "[a]ny 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"⁷¹ Article 10 provided that members would "undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."⁷² This multilateralism of collective security was manifested in the broad—but by no means universal—membership and the escalation of economic and political sanctions available to the member states prior to triggering the collective use of force.⁷³ By 1935, fifty-five nations, three-quarters of the nations in the world, were members of the League.⁷⁴ Notably absent, however, were Germany and Japan, both having withdrawn from the League in 1933, and the United States and Soviet Union, which had never joined.

armed reprisals remained); CHRISTOPHER C. JOYNER, *INTERNATIONAL LAW IN THE 21ST CENTURY* 164 (2005) (stating that *travaux préparatoires* of pact suggest that use of force in self-defense was preserved under treaty).

67. Edwin M. Smith, *Collective Security, Peacekeeping, and Ad Hoc Multilateralism, in ACCOUNTABILITY*, *supra* note 29.

68. *See id.* (contrasting collective security and alliance systems by noting that alliance systems directed efforts at states external to alliance).

69. *See id.* (explaining that League attempted to replace "European balances of power with the elements of a global collective security system"); *see also* JOYNER, *supra* note 66, at 163-64 (discussing uses of force permitted by Covenant).

70. EVAN LUARD, *A HISTORY OF THE UNITED NATIONS* 3 (1982).

71. League of Nations Covenant art. 11.

72. *Id.* art. 10.

73. *See* Smith, *supra* note 67, at 82-83 (discussing Articles 12 through 15 of League Covenant, which permitted mechanisms for peaceful settlement of disputes, and Article 16, which permitted boycotts and embargo and recommendation of use of force "to protect the covenants of the League").

74. JOSEPH WHITAKER, *AN ALMANAC FOR THE YEAR OF OUR LORD* 175 (1935).

The League Covenant adopted the language of bilateral treaties requiring the exhaustion of non-military options such as arbitration to resolve disputes, which made war an option of last resort, but nonetheless an option. The Covenant also introduced the notion that parties should refrain from military action while the League was considering the dispute.⁷⁵ It thus introduced the form of security multilateralism that we recognize today: one that contemplates an institutional role in the prevention of armed conflict in addition to codifying the presumption against the legality of war as the primary means of self-help,⁷⁶ one characterized by procedural mechanisms (escalation of dispute resolution procedures) and by a set of norms (presumption against the use of force).

League multilateralism extended the basic principle of collective response within a security alliance to the entire world: external aggression against one state would trigger a response from the combined armed forces of the rest of the world. Why, then, despite some minor successes,⁷⁷ did League multilateralism fail?

1. *League Failures*

The League's failure to serve as an effective brake on military aggression has been attributed to textual flaws in the Covenant,⁷⁸ lack of political will by its members and the notable absence of the Soviet Union and the United States in the organization.⁷⁹ Members had no obligation to take military action in the event of triggering Article 10, although they were obligated to participate in the economic sanctions against violators of the

75. See Smith, *supra* note 67, at 83; see also IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* 58 (Oxford Univ. Press 2002) (1963) (discussing sanctions under Article 16 if member went to war without authorization under Article 12, 13 or 15 of Covenant); JOYNER, *supra* note 66, at 165 (articulating three clear goals of U.N. Charter: preservation of peace, protection of human rights and promotion of self-determination); LUARD, *supra* note 70, at 13-14 (stating that under League's Mandate System, former colonies and possessions of defeated powers were placed under general oversight of League, which set precedent for principle of accountability to international body). The formation and success of International Labour Organization had the effect of encouraging establishment of other specialized agencies.

76. See BROWNLIE, *supra* note 75, at 57 (discussing general purpose of Covenant).

77. See LUARD, *supra* note 70, at 3-4 (describing League's success in resolving frontier dispute between Sweden and Finland, defending sovereignty of Albania, securing withdrawal of Greek forces from Bulgaria in 1925 and resolving territorial dispute between Turkey and Iraq over Mosul).

78. For example, the requirement for unanimous adoption of sanctions and the failure to define precisely what kinds of force were prohibited as "resort to war." See FAIRNESS IN INTERNATIONAL LAW, *supra* note 36, at 257 (citing BROWNLIE, *supra* note 75, at 66).

79. See *id.* at 255 (discussing reasons for Covenant's failure to prohibit war). Japan's invasion of Manchuria in 1931, Italy's invasion of Ethiopia in 1936 and the Soviet attack on Finland in 1939 signaled the collapse of the League and the interwar agreements. See RECOURSE TO FORCE, *supra* note 29, at 11 (providing reasons for failure of implementation of rules against participating in war).

Covenant.⁸⁰ Nevertheless, when those economic sanctions failed, the Council of the League was empowered merely to “recommend” military action.⁸¹ And despite the fact that such a recommendation carried no obligation to act, no military action was ever even recommended.⁸² Because members made decisions at the League on the basis of individual state interests and not violations of the norm of non-aggression, the period of the League saw more individual acts of aggression by one state against another than at any other time in the preceding century.⁸³ The principle of multilateral collective security within an international institution broke down completely.

In contrast to the vision of its founders, the League turned out to be not a universalized version of a security alliance, but rather a non-universal organization lacking both the actual obligation of collective security and the means through which to enforce such an obligation. As a result, League members acted in their own individual interests rather than collectively on behalf of broader international security or in furtherance of international rules.

2. *Interwar Arrangements*

Nonetheless, a norm against aggressive war had taken root, strengthened by the conviction that the devastation of World War I could not be repeated. The small-group multilateral security treaties that were negotiated and signed during the interwar period reflected this normative dimension of the Covenant and, though limited in membership, set up procedures that reflected collective decision-making. The 1925 Locarno Treaty between Germany, Belgium, France, Britain and Italy, for example, included a provision under which the parties agreed not to attack or invade each other except where it was a collective action under the League Covenant or legitimate application of self-defense.⁸⁴ The Kellogg-Briand Pact, which reached near-universal membership,⁸⁵ established the pre-

80. See League of Nations Covenant art. 16 (outlining sanctions for violations of Articles 12, 13 or 15 of Covenant); see also LUARD, *supra* note 70, at 5.

81. See League of Nations Covenant art. 16.

82. Under the League Covenant, even in cases where force might have been recommended, the armed forces designated to respond to the aggression were to remain under national control. See LUARD, *supra* note 70, at 7.

83. See *id.* at 5.

84. See FAIRNESS IN INTERNATIONAL LAW, *supra* note 36, at 258 (citing Treaty of Mutual Guarantee Between F.R.G., Belg., Fr., Gr. Brit. and Italy, art. 1, Oct. 16, 1925, 54 L.N.T.S. 290; Treaty of Mutual Guarantee Between Fr. and Pol., art. 1, Oct. 16, 1925, 54 L.N.T.S. 354; Treaty of Mutual Guarantee Between Fr. and Czech., art. 1, Oct. 16, 1925, 54 L.N.T.S. 360); *Final Protocol of the Locarno Conference, 1925*, 20 AM. J. INT'L L. Supp. 21 (1926)) (explaining that Article 1 of Locarno treaty allows parties to exercise self-defense or act pursuant to Article 16 of League of Nations Covenant).

85. Sixty-three states had acceded to the Kellogg-Briand Pact by 1938. See FAIRNESS IN INTERNATIONAL LAW, *supra* note 36, at 258 (quoting BROWNIE, *supra* note 75, at 75 n.5) (noting that at outbreak of World War II, all states of world but

sumption in international law against military action except in cases of self-defense. Together with the League Covenant, these treaties represented the ascendance of the norm prohibiting the use of force to promote international political aims. But, while the League and these treaties promoted the idea of non-violent dispute resolution, the failure of the League and these treaty systems to prevent World War II raised the question whether *any* international institution purporting to restrain state action according to law could ever succeed.

The failure of the League raised a core empirical question about multilateralism: Was World War II the result of the League's failure to prevent it, or the result of the separate failures of the governments in the League to act to prevent war? This would prove to be a vexing question about the relevance of security multilateralism during the creation of the United Nations: Could any multilateral organization have prevented war? If the answer was no, why create one?⁸⁶ The question has continuing salience today in examining the effectiveness of past security multilateralism in order to make recommendations for how security multilateralism should be applied in the future.⁸⁷ The failure of the League to create an enforceable obligation of collective action in the face of aggression was specifically addressed in the text of the Charter.⁸⁸

D. *Security Multilateralism Under the United Nations Charter*

In drawing from the immediate lessons of the failures of the League period, the founders of the U.N. sought to meld two approaches to reducing the occurrence of war: (1) an international institution embodying the normative constraint against the use of force, coupled with an effective political mechanism for managing the escalation of disputes and the adoption of collective security measures; and (2) an internationalized version of the political and military alliance that defeated Germany and Japan.⁸⁹

four—Bolivia, El Salvador, Uruguay and Argentina—were parties to Kellogg-Briand Pact).

86. See LUARD, *supra* note 70, at 14.

87. The core of the empirical problem in security multilateralism is causation. Keohane has pointed this out in the contemporary context of international organizations, but the causation problem applies equally to historical examinations of the League's role in World War II. See Keohane, *supra* note 45, at 731.

88. The problem of enforcement of the obligation to participate in collective security—putting teeth in the actual institution through the designation of armed forces to be at the disposal of the organization—was also addressed during the discussions at the San Francisco Conference. See FAIRNESS IN INTERNATIONAL LAW, *supra* note 36, at 258 (indicating “how and in what circumstances . . . Articles 42-47 [are] to be implemented”).

89. The original twenty-six states that met in January 1942 to declare themselves the United Nations were all allies against the Axis powers. See LUARD, *supra* note 70, at 17. The coordination of efforts among the Allies to create a United Nations continued up through the San Francisco Conference (including incorporating proposals at Dumbarton Oaks and Yalta) with the aim of establishing the organization before the end of the war. Roosevelt told Congress, “[t]his time we

In essence, it was to be a “coalition of the willing” acting according to a set of rules.⁹⁰

Article 2(4), which prohibits the unilateral, non-defensive use of force, has been described as the “legal cornerstone” to the rules governing the use of force under the Charter,⁹¹ and represents the central normative claim of the United Nations: Peace is preferable to war.⁹² But like the Covenant, the Charter codified important qualifications to that foundational prohibition. First, Article 51 permits states to employ force in self-defense, where that self-defense conforms to international law.⁹³ Second,

shall not make the mistake of waiting until the end of the war to set up the machinery of peace. This time, as we fight together to get the war over quickly, we work together to keep it from happening again.” LUARD, *supra* note 70, at 35-36. Even among the former Allied Powers, however, the lessons learned from WWII were perceived differently. This may explain, in part, the deep divisions that would arise between Europe and the United States on the legality and legitimacy of the Iraq invasion of 2003. See, e.g., Jed Rubenfeld, *Unilateralism and Constitutionalism*, 79 N.Y.U. L. REV. 1971, 1984-92 (2004) (contrasting roots of American unilateralism with European multilateralism).

90. Thomas Franck notes that this modern term “coalition of the willing” has its root in the authorization of ad hoc participation in enforcement actions provided in Article 43 of the Charter. See RECOURSE TO FORCE, *supra* note 29, at 25. For further discussion, see *infra* notes 278, 290 and accompanying text.

91. See JOYNER, *supra* note 66, at 165 (asserting fundamental intent of Article 2(4) is to prevent states from using force against “territorial integrity” or “political independence” of other states). Article 2(4) states: “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.” U.N. Charter art. 2, para. 4.

92. Thomas Franck has called Article 2(4) the Lauterpachtian “ground norm,” that is, a reflection of Hersh Lauterpacht’s description of the “primordial duty of the law” that “there shall be no violence by states.” See RECOURSE TO FORCE, *supra* note 29, at 1, 20 (citing HERSH LAUTERPACHT, *THE FUNCTION OF LAW IN THE INTERNATIONAL COMMUNITY* 64 (1933)).

The language of Article 2(4) has left room for interpreting what is meant by “force,” and whether it includes non-violent “force” such as extreme economic coercion. The majority view is that it refers only to armed force or military aggression. See JOYNER, *supra* note 66, at 166 (noting that acts of economic aggression or cultural imperialism are not considered under rubric of “force”). This view was confirmed, for example, by General Assembly Resolution 3314 (1974) defining “aggression” as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.” *Id.* (noting that threat to use force is not included in definition).

93. Article 51 states:

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

U.N. Charter art. 51.

Article 42, permits the Security Council to authorize the use of force when it has determined that such force is necessary to restore peace and security.⁹⁴ While the blanket prohibition and two qualifications outline the legal constraints on the use of armed force, the Charter also provides the legal basis for the coordination and cooperation of actions of member states necessary to manage broad security multilateralism.

1. *Coordination of Security Relations*

a. Composition and Structure of the Council

Because the U.N. was established to perfect the collective security mechanism that had failed in the League, the collective security provisions of the Charter took on a different shape from those of the Covenant.⁹⁵ Chapter V provides that the U.N. Member States “confer on the Security Council primary responsibility for the maintenance of international peace and security” and agree that the Council “acts on their behalf.”⁹⁶ This

“The drafting history shows that article 51 was intended to safeguard the Chapurtepec treaty which provided for collective defense in case of armed attack.” Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1633 (1984). The Chapurtepec Act of 1941 “declared, in effect, that aggression against one American state shall be considered an act of aggression against all.” *Id.* at 1633-34 (citing D.W. BOWETT, SELF-DEFENSE IN INTERNATIONAL LAW 183 (1958)). This explicitly informed the discussions at San Francisco. Thus, the collective security norm adopted in the Charter reflects the language of regional defense alliances. The challenge would be applying the norm in an institution with universal membership.

94. Article 42 states:

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.

U.N. Charter art. 42.

95. Franck refers to the difference between the League approach and the U.N. approach as a shift from collective self-defense to one of collective security. See FAIRNESS IN INTERNATIONAL LAW, *supra* note 36, at 257, 259 (reciting transitional steps from League approach to sources of law providing foundation for Charter); see also RECOURSE TO FORCE, *supra* note 29, at 2 (describing intent of Charter as initiating era in which war is prohibited as means of state policy but collective security is norm).

96. The authority to maintain international peace and security and take effective collective measures for the prevention and removal of threats to the peace, rests with the Security Council under Chapters V, VI, VII and VIII of the Charter. See NATION AGAINST NATION, *supra* note 29, at 161 (“The drafters of the UN Charter intended the Security Council to be the pivotal organ of the new international system they were devising.”). U.N. Charter art. 24 (noting that Security Council has “primary responsibility for the maintenance of international peace and security” in accordance with provisions of Chapters VI, VII, VIII and XII). Chapter XII, which addresses U.N. authority under the Trusteeship System created to govern former colonial possessions of the axis powers, is beyond the scope of this Article. This list of enumerated powers of the Council is not meant to be exclusive. See THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 448 (Bruno Simma ed., 2d

conferral of binding power on the Council to act on behalf of the entire membership is the keystone of all other multilateral security functions carried out by the Council and by other organs of the U.N. acting in support of those security functions.⁹⁷ The membership, voting and decision making structure reflect the historical compromise between the allied powers who wanted to concentrate all the executive powers of the U.N. in themselves, and the smaller states who wanted a broader base of participation in Council measures.⁹⁸ The structure and power of the Council resulting from this compromise created a body that serves executive and quasi-legislative functions in international security.⁹⁹ By demarcating the executive powers of the Council and the limited plenary powers of the General Assembly, and including specific provisions formalizing methods of communication between the two bodies, the founders corrected the earlier failure of the League Covenant to delineate political powers clearly.¹⁰⁰

b. Investigation and Dispute Resolution Powers

Unlike the League Covenant, the Charter places the dispute resolution procedures under the competence of the Security Council.¹⁰¹ Under

ed. 2002) [hereinafter U.N. CHARTER COMMENTARY] (noting that while Council is organ with “specific’ powers” it has “general’ powers as well”); *see also infra* notes 101-09 (discussing U.N. investigation and dispute resolution powers). Chapter V describes the composition, powers and procedures of the Council; Chapter VI lays out the procedures for the pacific settlement of disputes; and Chapter VII defines the power of the Security Council to take binding measures to preserve international peace and security, including through the use of force. Chapter VIII describes regional arrangements, which can be used as sub-organs of the Council in carrying out enforcement actions. *See* U.N. Charter chs. V, VI and VII. For a discussion of the legal basis of the Council’s power to bind Member States along as well as Council practice under Article 25, *see* U.N. CHARTER COMMENTARY, *supra*, at 458-64.

97. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 450-52 (discussing history and practice of Council actions taken under Article 24). There is some dispute over the question whether, as a matter of international law, the Security Council acts on behalf of the Member States or on behalf of the United Nations. *See id.* at 448-49 (citing Degni-Segui, *Article 24, in* J.P. COT & A. PELLET, *LA CHARTE DES NATIONS UNIES* 450 (2d. ed. 1991); D. DICKE & H.W. RENGELING, *DIE SICHERUNG DES WELTFRIEDENS DURCH DIE VEREINTEN NATIONEN—EIN ÜBERBLICK ÜBER DIE BEFUGNISSE DER WICHTIGSTEN ORGANE* (1975); HANS KELSEN, *THE LAW OF THE UNITED NATIONS* 280-84 (1964); 2 G. DAHM ET AL., *VÖLKERRECHT* (1961)). This debate does not bear on how the Council carries out its powers.

98. U.N. CHARTER COMMENTARY, *supra* note 96, at 443-44 (discussing compromise reached at San Francisco Conference).

99. *Id.* at 445; *see also* Alvarez, *supra* note 27, at 874 (describing counter-terrorism efforts at U.N. Security Council as examples of its “legislative” phase). The danger of too much legislative power is that the Council becomes vulnerable to “capture” by the hegemonic power. *Id.* at 883 (finding Council’s “legislative prowess” may render it vulnerable to “global hegemonic international law”).

100. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 445 (asserting that primary responsibility for maintaining peace remains with Security Council, with secondary, co-responsibility placed with General Assembly).

101. *See* U.N. Charter art. 33, para. 2, arts. 34, 35.

Chapter VI, the Council is empowered to “investigate any dispute” which might “lead to international friction or give rise to a dispute” as part of its mandate to maintain international peace and security.¹⁰² While the General Assembly has general plenary authority to discuss and pass resolutions relating to disputes, the Security Council effectively has the ability to preempt the Assembly by taking action on any matter.¹⁰³ This has practical significance in that the Council, as the U.N. organ empowered with the balance of political and enforcement power for the maintenance of peace and security, may take the lead in preventing and settling a dispute before it escalates to violent conflict.¹⁰⁴ The powers of the Council under this chapter are generally understood to include any measures up to, but not including, coercive action.¹⁰⁵

Another significant feature of the Council’s dispute resolution authority is its connection to Article 2(3), which provides that “[a]ll Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endan-

102. *Id.* art. 34.

103. *See id.* art. 35 (limiting proceedings of General Assembly on any disputes to be subject to provisions of Articles 11 and 12 of Charter, requiring that Assembly refer threats to international peace and security to Council and prohibiting Assembly from making recommendations where Security Council has already taken action). *But see* U.N. CHARTER COMMENTARY, *supra* note 96, at 445-46 (noting that one possible interpretation of Art. 24—as corroborated by Art. 11(2)—is that Assembly has *no power* in area of international security) (emphasis added).

104. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 447. The U.N. CHARTER COMMENTARY states that:

[P]lacing the primary responsibility for the maintenance of peace and security on the Security Council means that the Security Council and the General Assembly have a parallel or concurrent competence with regard to dealing with questions of maintenance of peace, *but that the Security Council possesses exclusive competence with regard to taking effective and binding action, especially enforcement measures.*

Id. (emphasis added) (citing HANS Kelsen, *THE LAW OF THE UNITED NATIONS* 283 (1964)); L.M. GOODRICH, *The UN Security Council*, in *THE UNITED NATIONS: PAST, PRESENT, AND FUTURE* 20 (J. Barros ed., 1972)); *see also* Jose E. Alvarez, *Judging the Security Council*, 90 AM. J. INT’L L. 1, 22 (1996) (analyzing role of Council action in forming legal precedent); Louis B. Sohn, *The Security Council’s Role in the Settlement of International Disputes*, 78 AM. J. INT’L L. 402, 402-04 (1984) (noting Council’s powers are independent). The one exception to the Council’s broad power in this domain may be binding decisions made by the International Court of Justice, which is generally viewed as operating independently of the Council. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 447 (noting that International Court of Justice’s (ICJ) ability to determine matter is not restricted by Council action, evidenced by requirement in Article 94(2) that Council may be called upon to enforce ICJ opinion as necessary); Rosalyn Higgins, *The Place of International Law in the Settlement of Disputes by the Security Council*, 64 AM. J. INT’L L. 1, 1-18 (1970) (asserting Council is not authorized to make legal interpretations that are binding on non-consenting states).

105. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 584 (recognizing that earlier practice of Council in area of dispute resolution left some doubt as to whether it was acting under its enforcement powers in way that could bind parties).

gered.”¹⁰⁶ Like Article 2(4), Article 2(3) reflects the norm of non-violent dispute settlement established by the League.¹⁰⁷ Its “detailed elaboration,” however, through Article 33, which empowers the Council to call upon the parties to settle their dispute by “peaceful means,” places dispute resolution at the heart of the Council’s functions.¹⁰⁸ The “peaceful means” enumerated in Article 33 contemplate a range of dispute resolution activity: fact-finding, negotiation, enquiry, mediation, arbitration and the use of international tribunals.¹⁰⁹

c. Economic and Military Sanctions

Chapter VII, the most significant departure from the League Covenant, confers on the Council coercive enforcement power through the use of economic and military sanctions¹¹⁰ and, ultimately, the application of

106. See U.N. Charter art. 2, para. 3.

107. *Id.*

108. See *id.* art. 33; see also U.N. CHARTER COMMENTARY, *supra* note 96, at 583-85 (discussing relationship between two Articles).

109. See U.N. CHARTER COMMENTARY, *supra* note 96, at 588-91 (discussing procedures that constitute “peaceful means”). This list is illustrative, not exclusive, as Article 33 leaves open the option to pursue “other peaceful means.” *Id.* In practice, the Council has carried out these functions through both oversight and active participation in the dispute resolution procedures alongside the parties to the dispute. Articles 34, 35, 36, 37 and 38 confer authority in the Council, in effect, to supervise dispute settlement of the parties. U.N. Charter arts. 36-38; see also U.N. CHARTER COMMENTARY, *supra* note 96, at 588-91 (discussing Article 33); *id.* at 598-601 (discussing Article 34); *id.* at 609-14 (discussing Article 35); *id.* at 616-27 (discussing Article 36); *id.* at 630-38 (discussing Article 37); *id.* at 644-48 (discussing Article 38).

110. Article 41 authorizes the Council to “decide what measures *not involving the use of armed force* are to be employed to give effect to its decisions” and to “call upon [Member States] to apply such measures.” U.N. Charter art. 41; see also U.N. CHARTER COMMENTARY, *supra* note 96, at 736-37 (noting that Article 16 of League Covenant was precursor and partial model for Article 41). It thereby permits sanctions to be imposed and, in another departure from the League Covenant, enforced against all Member States. Among the illustrative list of measures capable of being taken under Article 41 are “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.” U.N. Charter art. 41; see U.N. CHARTER COMMENTARY, *supra* note 96, at 740-45 (discussing other potential measures, including creation of international criminal tribunals and establishment of post-conflict administrative entities). Like all enumerated Chapter VII powers, the sanctions can be applied by the Council regardless of whether international law has been breached by the State against whom the measures are taken. See *id.* at 739 (“[Measures under Article 41] can be employed whenever this appears conducive to maintenance of international peace and security.”). Because they are not sanctions *per se*, the precise legal term is “enforcement measures,” which has been used by the U.N. and by international tribunals. *Id.* (citing sources). But because “sanctions” is the commonly applied term, it is useful in framing these measures as stopping short of actual use of force. See Christopher C. Joyner, *United Nations Sanctions After Iraq: Looking Back to See Ahead*, 4 CHI. J. INT’L L. 329, 330-33 (2003) (noting “sanctions” in context of U.N. action entails internationally legitimized forceful measures). For a further discussion of sanctions in the taxonomy, see *infra* notes 177-83 and accompanying text.

armed force, wherever the Council “shall determine the existence of any threat to the peace, breach of the peace or act of aggression”¹¹¹ In practice, the requirement of determining a threat to international peace and security has led the Council to employ formal investigations—on its own or as supervisor of other U.N. bodies, including subsidiary organs of the General Assembly—in the service of its enforcement function.¹¹² In effect, all powers of the Security Council under Chapters V and VI serve Chapter VII enforcement powers whenever there is a threat to the peace. Additionally, unlike the League Covenant, an actual breach of law by a Member State is not a prerequisite to those enforcement powers.¹¹³

d. Enforcement Through Military Means

Article 42 authorizes the Council to take military measures to “maintain or restore international peace and security.”¹¹⁴ This decision to employ force under United Nations command, or authorize force by a Member State, group of Member States or a regional organization, may be taken whenever measures under Article 41 “would be inadequate or have proved to be inadequate.”¹¹⁵ The authorization of the use of armed force under Article 42 was adopted unanimously at the San Francisco Conference and is broadly considered one of the central improvements over the failed League system for enforcement of collective security.¹¹⁶ Article 42 has also been invoked frequently and significantly in the post Cold-War period.¹¹⁷

111. U.N. Charter art. 39. Chapter VII further permits that the Council “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.” *Id.*

112. Further, this power has been understood to extend to internal conflicts, effectively extending the power of the Council to all armed conflict in whatever context it arises. See U.N. CHARTER COMMENTARY, *supra* note 96, at 723 (“While the concept of threat to the peace in Art. 39 may have originally referred mainly to threats of inter-state conflicts; the Security Council soon abandoned such a strict reading.”) (citation omitted).

113. See *id.* at 705 (distinguishing Chapter VII powers of Charter from collective action measures available under League Covenant, which were characterized as sanctions in response to breach of law).

114. U.N. Charter art. 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.”).

115. *Id.*

116. See U.N. CHARTER COMMENTARY, *supra* note 96, at 751 (“While the League Council could merely recommend that States apply armed force against an aggressor, the newly created Security Council should, pursuant to Art. 42, be able to place troops at the disposal of the Security Council.”).

117. See, e.g., DANESH SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: THE DELEGATION BY THE UN SECURITY COUNCIL OF ITS CHAPTER VII POWERS 168 (1999) (discussing Security Council’s delegation of its Chapter VII powers to Member States to use force in Iraq, Somalia and Bosnia); Helmut Freudenthuss, *Between Unilateralism and Collective Security: Authorizations of*

Chapter VII provides for the creation of the Military Staff Committee, which, like much of the rest of the enforcement mechanisms of the Charter, immediately fell victim to the Cold War.¹¹⁸ Chapter VIII recognizes the legal personality of regional organizations that might also have the maintenance of peace and security as their mandate.¹¹⁹

e. Uniting for Peace and Chapter 6 1/2

The drafters of the Charter did not contemplate that the Council would lapse into disuse almost from its inception. At the time of the drafting, creation of a formal, secondary role for the General Assembly in peace and security was considered and rejected,¹²⁰ opposed forcefully by

the Use of Force by the UN Security Council, 5 EUR. J. INT'L L. 492 (1994) (tracing steps taken by Security Council since Resolution 665 of 1990 Iraq conflict and examining Security Council authorizations of use of force). For a discussion of invocations of Article 42 in response to situations in East Timor, Kosovo and Iraq, see *infra* notes 211-81 and accompanying text.

118. See U.N. Charter art. 45 (requiring that Member States make their air armed forces available for combined international enforcement actions); *id.* art. 46 (explaining that Military Staff Committee shall assist Security Council with plans for application of armed force); *id.* art. 47 (establishing Military Staff Committee to report to and be at disposal of Security Council); see also U.N. CHARTER COMMENTARY, *supra* note 96, at 768 ("Article 46 might well be the most obsolete of those provisions of Chapter VII which have been overtaken by historical events"); *id.* at 770 (noting that "Military Staff Committee has had no meaningful role to play in history of U.N. to date").

119. These provisions were originally intended to be effective only in the short or medium-term, as a bridge between the creation of the United Nations and the ultimate staffing of a permanent Military Committee that would carry out the Security Council enforcement measures under unitary United Nations command. Accordingly, Article 52 recognizes the authority of regional organizations and their role in pacific dispute settlement, and Article 53 empowers the Council to use "regional arrangements or agencies for enforcement action under [Security Council] authority." U.N. Charter arts. 52, 53. Thus regional organizations—generally collective security cooperatives with actual capacity to act—can lawfully employ force when either the Security Council has identified a threat to peace and security and uses the regional group to carry out the enforcement, or the regional organization has made a determination of a threat to peace and security and has requested permission from the Security Council to act. See U.N. CHARTER COMMENTARY, *supra* note 96, at 859-60 (articulating how Article 53 governs and limits "permissibility of enforcement measures by regional arrangements"). In the absence of a standing Military Committee, Article 53 has been invoked by regional organizations to justify their multilateral military interventions in disputes—even absent explicit Security Council authorization. Two prominent examples during the Cold War are the Organization of American States (OAS) intervention in the Dominican Republic in 1960 and the OAS naval blockade of Cuba in 1962. See U.N. CHARTER COMMENTARY, *supra* note 96, at 860-61 (noting this was first instance of extensive debate as to regional organizations' rights to enforcement).

120. See RECOURSE TO FORCE, *supra* note 29, at 31, 34-39 (stating that Big Powers agreed any member state could call General Assembly's attention to conditions impairing its security or general welfare); see also NEW U.N. PEACEKEEPING, *supra* note 52, at 63-64 (noting General Assembly may make recommendations related to maintenance of collective security).

the United States.¹²¹ Article 11(2) of the Charter grants the General Assembly the power to make recommendations—not binding decisions—on “questions relating to the maintenance of . . . peace and security” except in instances where the “Council is exercising in respect of any dispute or situation the functions assigned to it in the . . . Charter.”¹²² As the Council enforcement mechanisms fell into desuetude, however, the role of the Assembly was expanded through the Uniting for Peace Resolution and the creation of so-called “Chapter 6 1/2” peacekeeping operations.¹²³

Passed by the Assembly during the Korea crisis in 1950,¹²⁴ the Uniting for Peace Resolution, established that, where the Council fails to exercise its authority (i.e., where it has been deadlocked by veto or threat of a veto) and where there is a vote of at least seven members of the Council, the Assembly may act to address threats to peace and security.¹²⁵ The Assembly in fact did so—relying on the Uniting for Peace Resolution—in 1956 (the Suez crisis) and in 1960 (Congo).¹²⁶ U.N. peacekeeping missions, the so-called “blue helmet” operations, developed alongside the Uniting for Peace Resolution as a way to deploy troops under U.N. auspices, but for limited, non-enforcement purposes. Despite being authorized in most cases by the Council, these operations stop short of deploying troops with authority to use force.¹²⁷ They have also been established through resolutions that do not invoke Chapter VII. Thus the moniker Chapter 6 1/2 represents the legal authority for these missions—halfway between pacific dispute resolution and enforcement actions.

121. The United States viewed the Council’s role in peace and security as political in function, with the General Assembly “concerned with the promotion of constructive solutions of international problems in the widest range of human relationships, economic, social, cultural and humanitarian.” *RECOURSE TO FORCE*, *supra* note 29, at 32 (quoting U.S. Secretary of State Cordell Hull).

122. U.N. Charter art. 11, para. 2, art. 12, para. 1.

123. *See RECOURSE TO FORCE*, *supra* note 29, at 32 (arguing General Assembly’s ability to make recommendations allows it broader powers); U.N. CHARTER COMMENTARY, *supra* note 96, at 262 (discussing lack of restrictions on General Assembly’s recommendation power).

124. G.A. Res. 377(V), U.N. Doc. A/377 (Nov. 3, 1950); *see also RECOURSE TO FORCE*, *supra* note 29, at 33-35 (detailing adoption of “Uniting for Peace” resolution).

125. There is some controversy over whether the recommendations made by the Assembly can include enforcement actions of a Chapter VII type. *See RECOURSE TO FORCE*, *supra* note 29, at 37-38 (describing General Assembly actions in light of Security Council deadlocks). The question was largely mooted by the commencement of the practice of creating blue helmet operations, as in Suez and Congo.

126. *See id.* at 36 (discussing use of “Uniting for Peace” resolution to create international emergency force in Suez); *id.* at 37 (citing creation of the Congo force (ONUC)).

127. Blue helmets generally were lightly armed and operated under orders to use force only in self-defense. *See RECOURSE TO FORCE*, *supra* note 29, at 39 (recognizing thirty-nine such operations in U.N.’s first fifty years).

The definition of peacekeeping that prevailed following the Suez crisis was “the stationing of U.N. military personnel, with the consent of warring states, to monitor cease-fires and dissuade violations through interposition between competing armies.”¹²⁸ Since that time, the term peacekeeping has come to encompass all consensual deployment of troops in conflict zones, or former conflict zones, under U.N. command, for the purpose of maintaining peace. A central tool for addressing peace and security therefore emerged as a hybrid practice—bridging Council authority in principle and Assembly authority in fact.

2. *According to a Set of Principles*

The Security Council is required to carry out its duties and exercise its authority “in accordance with the Purposes and Principles of the United Nations,”¹²⁹ including the requirement that peace be reached “in conformity with the principles of justice and international law.”¹³⁰ Like the League Covenant, the U.N. Charter implicitly recognizes that the problem of peace and security has many causes and articulates the shared aspiration that peace and justice co-exist. The founding members laid out this duality of mission in the preamble: to “save succeeding generations from the scourge of war” and “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”¹³¹ The Council’s collective security

128. NEW U.N. PEACEKEEPING, *supra* note 52, at 10. As the role of the U.N. in resolving intra and inter-state conflicts during the 1990s expanded, the term peacekeeping was supplemented with peacemaking (“action to bring hostile parties to agreement”) and peace-building (“efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people”). *Id.* at 16 (quoting The Secretary-General, *Report of Secretary-General Pursuant to Statement Adopted by Summit Meeting of Security Council on 31 January 1992*, ¶ 55, U.N. Doc. S/24111, A/47/277 (June 17, 1992)). Indeed, the confusion over terminology has obscured the range of functions—from delivery of humanitarian aid, to military observation, to policing—that were being carried out by “peacekeeping” operations during the 1990s.

129. U.N. Charter art. 24, para. 2.

130. *Id.* art. 1, para. 1.

131. U.N. Charter pmb. The centrality of “justice” to the United Nations is explicitly laid out in Article I, which defines the primary purpose of the United Nations as:

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.

U.N. Charter art. 1, para. 1 (emphasis added). In addition, the words of the preamble—“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,”—provide a crucial emphasis on individual rights that has important implications for multilateral participation in post-conflict justice.

These are aspirational, not concrete, norms. Nor is there anything in the text of the Charter to require that the Council, in carrying out its enforcement powers,

functions incorporate the economic and social norms enumerated in other parts of the Charter—from the aspirational norms set forth in the preamble to the centrality of human dignity in the provisions relating to upholding human rights and eliminating discrimination.¹³² Even where specific enumerated powers are conferred to the General Assembly, the incorporation of these normative requirements into the “peace and security” functions creates a symbiotic relationship between the Council and the other bodies and mechanisms of the U.N. organization.¹³³ That relationship has been bolstered through U.N. practice. For example, the U.N. Human Rights Commission—founded in large part to support the Charter’s aspiration of placing respect for human dignity and rights at the center of international order—is both a producer of information that can be used by the Council (and by the General Assembly when acting in its peace and security role) and a means through which the Council monitors compliance with its binding obligations.¹³⁴

Enforcement decisions of the Council are the only decisions made by the U.N. that are binding on Member States. Thus, the Security Council is empowered to maintain international peace and security in a manner consistent with broad principles of international law and justice; all the other functions of the U.N. are legally subordinate to that purpose.¹³⁵ By subor-

act to promote justice. See *RECOURSE TO FORCE*, *supra* note 29, at 16-19 (noting problem of injustice stems more from inaction due to veto than any specific instance of unconscionable action). Thus, what “justice” requires has largely been a question of evolving practice. *Id.*

132. See U.N. Charter arts. 55-60 (dealing with international economic and social co-operation). Social and economic functions are premised on “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations.” *Id.* art. 55.

133. For a full description of the enumerated powers of the General Assembly, see *LUARD*, *supra* note 70, at 54-58; *NATION AGAINST NATION*, *supra* note 29, at 185; *U.N. CHARTER COMMENTARY*, *supra* note 96, at 257-75.

134. The investigations and reporting of the UNHRC were important to the process of escalating Security Council involvement and the expansion of the U.N. Protection Force (UNPROFOR) mandate in Bosnia-Herzegovina in 1992. See, e.g., S.C. Res. 771, ¶ 5, U.N. Doc. S/RES/771 (Aug. 13, 1992) (calling upon “international humanitarian organizations to collate substantiated information in their possession . . . and make this information available to the Security Council”). That same day, UNHRC opened a special session on the Bosnia situation, and appointed a special rapporteur to report findings to the Secretary General. See *Chronology: Developments Related to the Crisis in Bosnia: March 10-August 28, 1992* (Aug. 31, 1992), in 3 U.S. DEP’T OF ST. DISPATCH 676, 678 (July-Dec. 1992) (noting that on August 14, 1992 Trdeusc Mazowiecki was appointed to investigate human rights abuses).

135. In practice, the Security Council rarely explicitly requests that such functions be subordinated. But in recent practice, where the Council has created its own organs, such as the International Criminal Tribunal for the Former Yugoslavia, it makes clear it is acting within its Chapter VII enforcement powers, and retains the authority to limit or shut down the activities of the subordinate body. See S.C. Res. 827, ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993) (establishing International Criminal Tribunal for Former Yugoslavia (ICTY)). In some instances, related multilateral treaties are also effectively subordinated to the enforcement

dinating all the other functions to the Council's enforcement power, the Charter clarifies and simplifies the normative element of security multilateralism as dependent on: (1) Security Council determination that the use of force meets the self-defense exception under Article 51 or (2) Security Council authorization of the use of force.¹³⁶

The power of the United Nations to address armed conflict and maintain just peace can therefore be understood, as a matter of Charter law, to be *aggregated* at the Security Council. At the same time, the *functions* through which the U.N. organization works in support of that aggregated legal mandate are dispersed throughout the organization and are carried out by many bodies and affiliated organizations. These separate functions form a taxonomy of security multilateralism.

II. A TAXONOMY OF U.N. SECURITY MULTILATERALISM

Part I of this Article established that U.N. security multilateralism encompasses much more than the Article 42 decision to authorize the use of force to counter threats to international security. At the same time, those additional functions of security multilateralism derive their legal authority from, and exist at the service of, the enforcement and collective security mechanisms. The aggregate of these functions forms U.N. security multilateralism. In order to examine the empirical differences between outside actions taken under the U.N. enforcement mechanism and those in which the U.N. was not used, these broad functions need to be unbundled, or disaggregated, into functions that are susceptible to effective comparative case study.

Six distinct functions of security multilateralism find basis in both the Charter and in the practice of the U.N.: (1) assessment, (2) intermediation, (3) humanitarian assistance, (4) sanctions, (5) military intervention and (6) post-conflict administration.¹³⁷ These functions derive directly

powers of the Council. *See* Rome Statute of the International Criminal Court art. 16, July 17, 1998, U.N. Doc. A/CONF.183/9 (deferring power of International Criminal Court to commence or proceed with prosecution when Security Council has so requested under its Chapter VII authority).

136. Because even uses of force by regional organizations require Security Council authorization, it is fair to characterize all security multilateralism as encompassing these two normative dimensions. There is, however, general acknowledgment that *consensual* uses of force are permitted outside the Security Council context. For example, if a state invites another state to deploy peacekeepers to put down an internal uprising, it would be considered lawful. *See* U.N. CHARTER COMMENTARY, *supra* note 96, at 684 (detailing legal basis of such consensual peacekeeping in United Nations Charter).

137. Steven Ratner ascribes to his broader definition of peacekeeping ("second generation peacekeeping"), several of the functions that I include here as part of security multilateralism. The actual functions (administrative, mediation, political governance) have considerable overlap with the taxonomy here, and Ratner's own typology is extremely useful in understanding the ways in which past U.N. interventions have operated. *See* NEW U.N. PEACEKEEPING, *supra* note 52, at 41 tbl. 2.1 (describing functions performed by second generation peacekeeping mis-

from the legal authority of the Council to address threats to international peace and security, but are often carried out by non-Council bodies.¹³⁸ Indeed, each of the discrete functions can be performed by non-U.N. organizations or by States operating entirely outside the formal security multilateral system.¹³⁹ Because they can be performed—and historically have been performed—by actors and sub-groups separate from the U.N., this taxonomy offers a framework for measuring U.N. performance against non-U.N. performance. Disaggregating also permits closer examination of the extent to which the U.N. plays more (or less) of a role in those disputes that have been characterized as “unlawful” or contrary to the norms of the Charter.

Table 1.0 illustrates the taxonomy of security multilateralism along with the basis for categorizing actions taken in a particular conflict, the specific legal authority under the Charter or related legal instruments and the potential rationales of the functions emanating from theoretical accounts of multilateral behavior.¹⁴⁰

At the enforcement stage, the coordination/cooperation element of the U.N. and the application of the substantive norms are generally characterized as an “on-off switch”: the U.N. is involved in the conflict or it is not.¹⁴¹ The taxonomy illustrates that actual U.N. practice is more complex. The functions of the U.N. can more easily be understood as a continuum or series of functions, that, when disaggregated, present a clearer picture of what U.N. multilateralism is and how to evaluate its effectiveness. This disaggregation highlights the fact that arguments that characterize outside involvement in conflict as “unilateral” or “multilateral” frequently focus narrowly on the military intervention function—ignoring the extent to which other functions that are significant to addressing the threat are carried out multilaterally or unilaterally.

sions). I take a somewhat broader view of the functions, both in terms of pre-conflict prevention functions (assessment, humanitarian aid, sanctions) and post-conflict nation-building. Most importantly, I depart from Ratner’s focus on consensual interventions. Quite purposely I have chosen to look at non-consensual activities in order to demonstrate the range of possible roles for the U.N. and compare them with other potential non-consensual guarantors of peace and security.

138. See, e.g., *id.* at 82, 86 tbl. 3.1 (describing peacekeeping roles played by Council, Assembly, Secretariat, other U.N. organs, regionals organs, international financial institutions (IFIs), non-governmental organizations (NGOs) and media).

139. Functions can, of course, be contracted out to NGOs and other private entities. *Id.*

140. Legitimacy and fairness-based analysis can be expanded beyond the questions raised by the legal prohibition against non-defensive use of force to look, for example, at whether the U.N. assessment function in a particular case has promoted legitimacy and fairness. Institutional rationales based on overcoming collective action problems can be similarly measured. For a further discussion of these rationales, see *infra* note 152 and accompanying text.

141. See generally Higgins, *supra* note 104 (discussing how Security Council applies principles of international law when settling disputes).

TABLE 1.0: TAXONOMY OF FUNCTIONS U.N. SECURITY MULTILATERALISM

FUNCTION	MECHANISMS	U.N. AGENCIES	U.N. CHARTER PROVISIONS/ TREATIES	RATIONALE FOR FUNCTION
ASSESSMENT	Intelligence Cooperation Fact-finding bodies Inspection regimes Special rapporteurs	General Assembly Security Council HR committees UNHRC	Ch. IV. Arts. 10,11,13 Ch. VI. Art. 34 Ch. VII Art. 39 HR treaties Constituting treaties	Address collective action problem Deter and monitor rule violations
HUMANITARIAN ASSISTANCE	Provision of food, shelter Refugee protection, relocation	General Assembly agencies (e.g., UNDP, UNHCR, WFP)	General Assembly Constituting treaties Ch. VI and Ch. VII	Foundational norm of human dignity Prevent, limit resource-based conflict
INTERMEDIATION	Traditional diplomacy Facilitation of negotiation Active mediation Adjudication Arbitration	Security Council & Sec'y Gen. Special Representatives Ad hoc arrangements	Ch. VI. Arts. 33-38	Prevent conflict Promote pacific and welfare-enhancing solutions
SANCTIONS	Pro-visional measures Economic and military sanctions Regional sanctions and boycotts	Security Council Special Sanctions committees	Ch. VII. Arts. 39-41	Address collective action problem Coercive measures to prevent war
MILITARY INTERVENTION	Advisors Protective forces (maintain status quo during humanitarian operation) War fighting Peace-keeping	Security Council	Ch. VII. Arts. 42-43, 48 Ch. VIII Arts. 52-54	Prevent or end violation of other norms (humanitarian intervention) Enforce rules Restore peace and security
POST-CONFLICT ADMINISTRATION	Policing Civil administration Judicial functions	Security Council General Assembly organs Ad hoc tribunals, ICC	Ch. VII Peace agreements ICC statute	Maintenance of peace and security Create pre-conditions for other norm

An additional advantage of the taxonomy is to inform normative discussions with broader facts about the cases. For example, these “disaggregated” functions can appear less threatening to the unilateralists or “sovereigntists”¹⁴² who are focused solely on the decision to authorize force in response to a threat. Similarly, to strict multilateralists, it can shed

142. See Peter J. Spiro, *The New Sovereigntists: American Exceptionalism and Its False Prophets*, FOREIGN AFFS., Nov./Dec. 2000, at 9, 9-10 (discussing “sovereigntist” view that United States can decide what international regimes to participate in).

light on those functions outside the Article 42 powers that are most susceptible to reform, i.e., those functions that temporally precede military intervention, but that are nonetheless essential to conflict resolution. More broadly, the taxonomy demonstrates the role of incremental steps; decisions and actions taken within each of the functions of the taxonomy can have significant impact on the degree to which threats to international security are adequately addressed.

Some initial caveats about the taxonomy are in order. The taxonomy classifications are not static events. Each function more or less reflects a phase in the escalation and de-escalation of armed conflict and the role of outside parties in the escalation and de-escalation of conflict. Several of the functions may substantially overlap with one another in any given case. Assessment, for example, generally occurs on an ongoing basis, initially providing information necessary to engage subsequent functions such as humanitarian assistance or economic sanctions and later providing rationales for the continuation or cessation of those functions.¹⁴³ The taxonomy does not account for exogenous variables that might affect the performance of each function, such as budgets. The taxonomy may therefore be less suited to quantitative analyses of the functions and more suited to qualitative and descriptive case studies.

A significant danger in attempting to measure the success of outside interventions in conflict case studies lies in time measurement of the study. In the long run, what matters is sustainable peace. Here, the intent is to create a mechanism through which both short and medium-term effects of security multilateralism can be observed and evaluated—perhaps even in the context of ongoing cases (e.g., each of the cases examined here) and in the process add value to the project of institutional assessment.

The taxonomy helps address, but does not eliminate, the central challenge to empirical examination of multilateral institutions and war: causation. Quantitative work on the causes of war and the methods for limiting war has been taking place in the political science literature for some time.¹⁴⁴ Much of that work comes out of important and useful systematic efforts to compile datasets amenable to quantitative analysis.¹⁴⁵ Fewer international law studies have been done on the incidence of war as it relates

143. This is certainly the case in Kosovo, where the U.N. assessment continued throughout the pre- and post-intervention phases, even though the intervention itself was not carried out by the U.N. For a further discussion of Kosovo, see *infra* notes 233-55 and accompanying text.

144. See generally Taylor Seybolt, *Major Armed Conflicts 2000*, in SIPRI YEARBOOK 2001, at 15, 16 (Oxford Univ. Press 2001) (examining intra-state conflicts in fourteen countries).

145. The Correlates of War Project (and Correlates of War 2), The Conflict Data Project and Major Episodes of Political Violence Project, are the datasets on war that are most widely used, and contain variables to measure frequency, location and severity of conflicts. See Seybolt, *supra* note 144, at 82 n.9. They are set up to test hypotheses of war causation.

to international legal regimes and/or international institutions.¹⁴⁶ As Robert Keohane has explained, the central problem of testing the hypothesis that the existence of international institutions causes more war is the problem of the null-set hypothesis. There is no alternative set of nation states interacting *without* the framework of U.N. multilateralism against which to test the current system.¹⁴⁷ At best, therefore, quantitative studies reveal associative relationships, i.e., observations that conflict are more or less associated with the existence of certain institutions. These associative studies themselves can result in misleading conclusions.¹⁴⁸

In introducing the taxonomy I do not purport to overcome the problem of proving causation (nor do I intend to address causalities, beyond merely making preliminary observations from a limited set of data) or to avoid entirely the danger of over-ascribing the effects of institutions.¹⁴⁹ Because the taxonomy categorizes the cases according to the functions that U.N. security multilateralism—under the law that created it—is intended to accomplish, it can be used to compare performance under discrete functions across the range of U.N., non-U.N. and unilateral cases. One way to begin that comparative analysis is to question whether the performance of that function was or was not successful in eliminating or reducing the threat to international security it was intended to address. The danger of using this as the measure of effectiveness is that it may become too reductivist, i.e., threats would be traced back to their root causes, and in each of the cases where violent force is ultimately used, the institutional function could be deemed ineffective.¹⁵⁰ Nonetheless, it may be a useful starting point for testing the rationales of security multilateralism. When evaluating the intermediation function, for example, one clear measure of effectiveness is the success of the function at achieving pacific settlement.

146. For examples of recent efforts in legal literature, see William C. Bradford, *International Legal Regimes and the Incidence of Interstate War in the Twentieth Century: A cursory Quantitative Assessment of the Associative Relationship*, 16 AM. U. INT'L L. REV. 647, 723 (2001); Cuellar, *supra* note 29, at 220. Both of these studies acknowledge the limitations of being able to draw conclusive causal relationships between the incident of war and the existence of a legal regime or institution with authority to regulate that war.

147. See Keohane, *supra* note 45, at 738 (explaining that there is no institution-free baseline from which to measure impact of institutions on state capabilities).

148. See Cuellar, *supra* note 29, at 223, 225-26 (arguing that increased incidence and intensity of war are associated with post-World War II period). *But see* MARSHALL & GURR, *supra* note 43, at 1 (noting decline in global magnitude of armed conflict since peak in early 1990s).

149. But many of the functions within the taxonomy—for example, assessment and intermediation—are suitable for qualitative empirical examination based on the data available from case studies and from the United Nations itself.

150. Further, there is some literature demonstrating that resolution of interstate and intra-state conflict comes most appropriately at a time of ripeness, which often requires violence to erupt before the parties are amenable to solution. See generally I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA* (1989).

Thus, across cases, we should be able to make limited observations about whether intermediations emanating from core U.N. functions (e.g., U.N.-sponsored dispute resolution processes) are better than non-U.N. or unilateral efforts. The goal here is not quantitative analysis, but rather to raise questions that can be subject to further empirical testing in future case studies.

A. Assessment

Assessment describes the function of information gathering necessary to the process of determining threats to international peace and security. Threats have been understood broadly to include any aggressive use of force, resource and territorial conflicts, human rights problems that may rise to the level of conflict, ethnic tensions, weapons development, weapons deployment and terrorism.¹⁵¹ Subsidiary organs and committees of the General Assembly, including the U.N. Human Rights Commission and various committees set up under several of the international human rights treaties (e.g., the Human Rights Committee, the Torture Committee), are empowered to request direct reporting from states, appoint special rapporteurs to perform investigations and, in some instances, take testimony of states and individuals on issues relating to human rights and human security.¹⁵²

Although not generally viewed as being in direct support of functions of the Security Council, these investigatory and reporting functions find their legal basis in Chapters V, VI and VII.¹⁵³ These functions are important to furthering the general aims of the U.N. to prevent war and eliminate threats to international peace and security. In direct support of its powers, the Council also empowers the Secretary General to appoint special representatives who can engage in direct fact-finding missions.¹⁵⁴ The

151. See High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565, at 19-20 (Dec. 2, 2004) (describing range of threats to peace).

152. The assessment functions, though not described as such, have themselves been the subject of empirical study. See, e.g., Philip Alston, *Critical Appraisal of the United Nations Human Rights Regime*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 1*, 19-20 (Philip Alston ed., 1992) (analyzing shortcomings of frameworks used to access U.N.'s human rights program); Thomas M. Franck & H. Scott Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Agencies*, 74 AM. J. INT'L L. 308, 311 (1980) (examining fact-finding practices of several U.N. organs and agencies). For example, empirical examinations of past practices of the U.N. Human Rights Commission reveal significant bias against Israel and in favor of states that contribute to regional instability such as the Sudan. See HARRIS O. SCHOENBERG, *A PATTERN OF PREJUDICE: THE UNITED NATIONS DEAL WITH ISRAEL* (1990).

153. For a full discussion of these functions, see *supra* notes 18-137 and accompanying text.

154. See NEW U.N. PEACEKEEPING, *supra* note 52, at 72-75 (discussing role of special representatives); see also Press Release, President, Security Council, Statement on U.N. Special Representative for Afghanistan, U.N. Doc. AFG/148-SC/7164 (Apr. 10, 2001), available at www.un.org.pk/latest-dev/hq-stmt-011005.htm

Council can act on its own to establish specific fact-finding mechanisms, e.g., weapons inspections regimes. The Council is also the locus of direct state-to-state cooperation and, at times, the direct sharing of intelligence. While the Council is often put down as a “gab shop,”¹⁵⁵ the function of receiving and analyzing data on which it acts is among its most important roles.¹⁵⁶

All of these aspects of the assessment function in principle are designed to overcome—though clearly do not always solve—collective action problems by promoting cooperation and correcting asymmetries in information.¹⁵⁷ By including representatives on the universal membership, e.g., through the U.N. Economic and Social Council (ECOSOC) organs, the assessment function may help promote legitimacy and fairness.¹⁵⁸ Perceptions of fairness may in turn affect whether and what action the Council decides to take on an issue.

B. *Intermediation*

Intermediation describes any process of pacific (non-violent) intervention or intercession between parties aimed at resolving ongoing armed conflict or addressing the threat of conflict. In the context of international armed conflict (both inter-state and intra-state), intermediation has been used almost synonymously with mediation to describe, third-party efforts in dispute resolution.¹⁵⁹ Here, the term is not used as a complete

(introducing newly appointed Special Representative for Afghanistan); Darrell Dela Rosa, *Self-Determination: The UN Role in Western Sahara*, UN CHRONICLE, Vol. XL, No. 3 (2003), available at www.un.org/Pubs/chronicle/2003/issue3/0303p22.asp. (describing Special Representative’s role helping people of Western Sahara).

155. See DORE GOLD, *TOWER OF BABBLE: HOW THE UN HAS FUELED GLOBAL CHAOS* (2004).

156. For a discussion of the U.N.’s assessment of Iraq’s weapons program, see *infra* notes 269-72 and accompanying text.

157. See *supra* note 25 (discussing cooperation/coordination function of multilateral institutions).

158. Steven R. Weisman, *Powell Says More Inspectors in Iraq Are ‘Not the Answer’*, N.Y. TIMES, Feb. 15, 2003, at A9 (contrasting international reaction to Colin Powell’s presentation and unilateral assessment with presentation and report of U.N. Monitoring, Verification and Inspection Commission (UNMOVIC) director Hans Blix).

159. Mediation and intermediation have been defined broadly as the *action*: “the efforts of one or more persons to affect one or more other persons when . . . the former, the latter or both perceive a problem requiring a resolution”; the *object*: “any intermediary activity . . . undertaken by a third party with the primary intention of achieving some compromise settlement of issues at stake between the parties, or at least ending disruptive conflict behavior”; and/or the *process*: mediation is “the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs.” Jacob Bercovitch & Allison Houston, *The Study of International Mediation: Theoretical Issues and Empirical Evidence*, in *RESOLVING INTERNATIONAL CONFLICTS: THE THEORY AND PRACTICE OF MEDIATION* 13 (Jacob

synonym of mediation, but rather is intentionally more expansive.¹⁶⁰ In armed conflict, both people and processes can act as intermediaries that resolve the dispute or affect positions of the parties.¹⁶¹ Neutrality and impartiality are sometimes, but not always, attributes of these efforts.¹⁶²

One type of intermediation process is traditional diplomacy, including the kind of multilateral diplomacy common to the U.N. system, and other multilateral security organizations such as Organization of American States (OAS) and North Atlantic Treaty Organization (NATO), as well as state-to-state or party-to-party bilateral diplomacy and negotiation.¹⁶³

Bercovitch ed., 1996) [hereinafter *RESOLVING INTERNATIONAL CONFLICTS*] (internal citations omitted).

One explanation of the interchangeability of terms mediation and intermediation is linguistic; the term “mediator” to refer to the person emerged later in domestic scholarship, whereas the notion of intermediaries, i.e. “go betweens” in the diplomatic and international context has been around for centuries and has existed in many cultures. See *id.* at 12 (discussing P.H. GULLIVER, *DISPUTES AND NEGOTIATIONS: CROSS-CULTURAL PERSPECTIVES* (1979)); see also Barbara Messing, *El Salvador*, in *WORDS OVER WAR* 167 (Melanie C. Greenberg et al. eds., 2000) (referring to U.N.-sponsored peace process in El Salvador as “intermediation”).

160. I also want to avoid confusion with the domestic literature on mediation, which defines mediation more narrowly. See, e.g., JAMES ALFINI ET AL., *MEDIATION THEORY AND PRACTICE* (2001); LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* 196 (1987) (explaining mediation occurs when outside neutral third party helps others resolve dispute or plan transaction). See generally Leonard L. Riskin, *Who Decides What? Rethinking the Grid of Mediator Orientations*, *DISP. RES. MAG.*, Winter 2003, at 22 (distinguishing domestic and international forms of mediation). In the international setting, mediation is distinguished from binding forms of third-party intervention such as arbitration and adjudication in that it is initiated upon the request of the disputants and leaves the ultimate decision-making power with them. See *RESOLVING INTERNATIONAL CONFLICTS*, *supra* note 159, at 12. Because state actors are subject to international adjudication and arbitration only where they consent, the rationale for considering mediation apart from arbitration and adjudication is weaker in the armed conflict context.

161. See ZARTMAN, *supra* note 150; see also *INTERNATIONAL MEDIATION IN THEORY AND PRACTICE* (I. William Zartman & Saadia Touval eds., 1985); I. William Zartman, *Toward the Resolution of International Conflicts*, in *PEACEMAKING IN INTERNATIONAL CONFLICTS* 3 (I. William Zartman & J. Lewis Rasmussen eds., 1997).

162. See William J. Bien, *The Oslo Channel: Benefits of a Neutral Facilitator*, in *WORDS OVER WAR*, *supra* note 159, at 109, 129 (discussing Norwegian mediation of Oslo accords, which was viewed as effective because Norway was credible “neutral” in Israel-Palestinian dispute). Non-neutrals also work, as the case of Richard Holdbrooke acting as forceful “peacemaker” at Dayton. See Melanie C. Greenberg & Margaret E. McGuinness, *From Lisbon to Dayton: International Mediation and the Bosnia Crisis*, in *WORDS OVER WAR*, *supra* note 159, at 35, 65 [hereinafter *From Lisbon to Dayton*].

163. The Charter promotes traditional multilateral diplomacy in the General Assembly structure—sovereign equality measured by one state one vote—and the rotating membership among the ten non-permanent members of the Security Council. See U.N. Charter art. 18, para. 1 (providing each member of General Assembly is entitled to one vote); *id.* art. 23, para. 2 (describing system of non-permanent member election to Security Council).

Regional organizations are similarly constituted to promote discussion and debate. See, e.g., North Atlantic Treaty art. 9, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (mandating parties are represented to implement treaty); OAS Charter art. 56,

Here again, the U.N.'s role as a venue and institutional focal point of diplomacy is of central importance.¹⁶⁴ But in addition to traditional diplomacy, the Charter empowers the Council and Secretary General to appoint special representatives, and convene other ad hoc pacific dispute resolution efforts.¹⁶⁵ The problem of the permanent veto during the Cold War contributed to the expansion of such ad hoc efforts at mediation and diplomatic resolution.¹⁶⁶

Intermediation may also occur when the parties themselves agree, either *ex ante* or in the course of a dispute, to submit the dispute to a neutral third party to adjudicate the dispute. While binding forms of third-party adjudication are understood in the domestic context to be distinct from mediation,¹⁶⁷ I include them as part of the process and actors that make up pacific intermediation in the international context. The parties themselves may agree, for example, to binding arbitration or to seek an advisory court opinion, or they may be subject to a pre-commitment to binding adjudication by the International Court of Justice.¹⁶⁸ The important distinction for the purposes of understanding security multilateralism is not

Apr. 30, 1948 (noting all Member States are represented in General Assembly); *id.* art. 71 (allowing all Member States to be represented on each Councils of Organization); *id.* art. 80 (noting Permanent Council of Organization is composed of one representative of each Member State). Preventative diplomacy has itself become a separate field of study. See generally CARNEGIE COMM'N ON PREVENTING DEADLY CONFLICT, PREVENTING DEADLY CONFLICT: FINAL REPORT (1997); MICHAEL S. LUND, PREVENTING VIOLENT CONFLICTS: A STRATEGY FOR PREVENTATIVE DIPLOMACY (1996).

164. See generally John H. Barton & Melanie C. Greenberg, *Lessons of the Case Studies, in WORDS OVER WAR*, *supra* note 159, at 343.

165. See, e.g., NEW U.N. PEACEKEEPING, *supra* note 52, at 68-69 (discussing Secretary General's role as mediator and guarantor); Kjell Skelsbaek & Gunnar Fermann, *The UN Secretary-General and the Mediation of International Disputes, in RESOLVING INTERNATIONAL CONFLICTS*, *supra* note 159, at 75-101 (delineating Secretary-General's role in mediation).

166. See JOCHEN PRANTL & JEAN KRASNO, INFORMAL AD HOC GROUPINGS OF STATES AND THE WORKINGS OF THE UNITED NATIONS 15-16 (2002), <http://www.reformwatch.net/fixters/61.pdf> (discussing U.N. Emergency Force (UNEF) Advisory Committee in context of Suez Crisis in 1956); *id.* at 22 (discussing Congo Advisory Committee in wake of serious tensions at Security Council over what should be done about crisis in Congo in August 1960); *id.* at 35 (explaining that Groups of Friends of Secretary-General formed around specific issue, keep close contact with Secretary-General, and support his efforts).

167. For a discussion of this distinction, see *supra* note 165.

168. See U.N. Charter art. 92 (establishing ICJ as principal judiciary of U.N.); *id.* art. 95 (allowing member of U.N. to seek justice elsewhere); *id.* art. 96 (authorizing ICJ to give advisory opinions); see also Statute of the International Court of Justice art. 59 (mandating that decisions of ICJ only has binding force between parties of particular case). To the extent the ICJ can provide definitive rulings on rights and obligations of parties to a dispute, and also say what international law requires in a certain context, it serves a useful function in promoting peaceful settlements of disputes.

Recent empirical studies suggest that the reach of the ICJ is, however, limited. See, e.g., Eric A. Posner & John C. Yoo, *A Theory of International Adjudication* (Feb. 2004) (Univ. Chic. Sch., John M. Olin Law & Econ. Working Paper No. 206), available at http://www.law.uchicago.edu/Lawecon/WkngPprs_201-25/206-eap-yy.

between binding and non-binding means, but between pacific, consensual means of reaching peace and coercive and military means of addressing threats to the peace.

C. *Humanitarian Assistance*

Humanitarian assistance refers to the range of activities by outside parties to a dispute to alleviate human suffering through direct aid and/or protective services. This is placed in the taxonomy because war always results in some element of human suffering for which mechanisms of multi-lateral humanitarian assistance will be triggered. Although it is not always the case that all human suffering is the result of war—see, for example, the tsunami disaster of 2004¹⁶⁹—humanitarian disasters have at times contributed to or exacerbated war.¹⁷⁰ Thus, while there are many U.N. institutions that have evolved to address humanitarian needs generally, almost all of these institutions have been at one time or another placed into service in conflict situations. Because humanitarian assistance can take place before, during or after armed conflict, its position in the taxonomy does not reflect a rigid temporal classification. Indeed, it is the function that is most likely to overlap with each one of the other functions.

The functions of humanitarian assistance address all forms of human suffering around armed conflict, food, shelter, medical assistance, refugee protection and relocation, and in some instances, human rights protection. Almost all of these humanitarian functions are carried out under the authority of the General Assembly and its constituent organs.¹⁷¹ Non-governmental organizations can also be deployed under contract to Member States who commit relief money or under contract directly to General Assembly organizations.¹⁷² Humanitarian assistance has also been carried

tribunals.pdf (describing difficulty achieving compliance with ICJ opinions). Indeed, in two of the cases studied here the ICJ played no role.

169. See United Nations Foundation, <http://www.unfoundation.org/donate/undp.asp> (last visited Oct. 6, 2004) (providing information about U.N. Development Programme Tsunami Relief Fund). Additionally, providing relief to victims of the Asian tsunami was a priority at all levels of the U.N. family, including UNHCR, UNHCHR, UNDP and UNICEF.

170. See Edmond J. Keller, *Drought, War, and the Politics of Famine in Ethiopia and Eritrea*, 30 J. MOD. AFR. STUD. 609, 611 (1992) (explaining how humanitarian crises led to downfall of governments).

171. See G.A. Res. 57, U.N. GAOR, 1st Sess. (Dec. 11, 1946) (establishing United Nations International Children's Emergency Fund (UNICEF)); see also G.A. Res. 2816 (XXVI) (Dec. 14, 1971) (establishing office of United Nations Disaster Relief Co-ordinator also known as UNDR0); G.A. Res. 2029 (XX) (Nov. 22, 1965) (establishing United Nations Development Programme also known as UNDP); G.A. Res. 1714, (XVI) (Dec. 19, 1961) (establishing World Food Programme also known as WFP); G.A. Res. 428, U.N. GAOR, 5th Sess. (Dec. 14, 1950) (establishing office of United Nations High Commissioner for Refugees also known as UNHCR); NEW U.N. PEACEKEEPING, *supra* note 52, at 36-38 (describing roles of Assembly and its constituent organs in "second generation" peacekeeping).

172. See LARRY MINEAR ET AL., HUMANITARIANISM AND WAR: LEARNING THE LESSONS FROM RECENT ARMED CONFLICTS (OCCASIONAL PAPER NUMBER 8) (1991), *avail-*

out under Chapter VII powers, particularly Article 39, although the Security Council has not always been explicit when referring to the authority under which it is acting.¹⁷³ One prominent example is the creation of UNPROFOR to deliver aid to Bosnia in 1992.¹⁷⁴ There, the determination of a threat to international peace and security led not to a military intervention to alter the balance of force on the battlefield, but rather to secure delivery of humanitarian assistance in the midst of the war. That humanitarian assistance mission, in turn, required member states to contribute troops dedicated to protect the delivery of assistance.¹⁷⁵ The first U.N. Operation in Somalia (UNOSOM) is another example of the Council using Chapter VII powers in support of a humanitarian mission after determining that a threat to international peace or security existed.¹⁷⁶

D. *Sanctions*

Sanctions are non-violent, coercive, collective economic and political measures taken by the international community to affect the behavior of states or non-state parties that are threatening international peace and security.¹⁷⁷ Sanctions are the first step in the escalating coercive measures

able at http://hwproject.tufts.edu/publications/electronic/e_op8.pdf (discussing challenges of humanitarian assistance in war zones). It is common, for example, for UNHCR to contract with NGOs such as International Rescue Committee to assist with its protection functions.

173. See Charlotte Ku & Harold K. Jacobson, *Toward a Mixed System of Democratic Accountability*, in ACCOUNTABILITY, *supra* note 29, at 349, 354 (discussing Council's failure to be explicit about when it is acting under Chapter VII and/or Article 39 powers).

174. See S.C. Res. 743, U.N. Doc. S/RES/743 (Feb. 21, 1992) (creating United Nations Protection Force (UNPROFOR) and referencing powers of Security Council under Article 25 and Chapter VIII); see also S.C. Res. 713, U.N. Doc. S/RES/713 (Sept. 25, 1991) (creating arms embargo on states of former Yugoslavia, and referring explicitly to Council's Chapter VII powers). This explicit reference to Chapter VIII (regional powers) reflected the role of the European Commission (EC) and the OSCE in the Bosnian peace process at that point. See *From Lisbon to Dayton*, *supra* note 162, at 40-41 (discussing ineffective assistance of UNPROFOR in Bosnia).

175. See S.C. Res. 743, ¶ 2, U.N. Doc. S/RES/743 (Feb. 21, 1992) (authorizing United Nations Protection Force).

176. See S.C. Res. 751, ¶ 2, U.N. Doc. S/RES/751 (Apr. 24, 1992) (establishing U.N. Operation in Somalia (UNOSOM I)). This is not to suggest that only humanitarian crisis arising as a result of or in the midst of war can be carried out under Security Council authority. Some natural disasters may have a broad enough reach and impact to be considered threats to international security. See GA Res. 59/279, U.N. Doc. A/RES/59/279 (Jan. 28, 2005) (noting in wake of Asian Tsunami that addressing natural disasters can "reduce risks to [local populations], their livelihoods, the social and economic infrastructure and environmental resources").

177. See DANIEL DREZNER, *THE SANCTIONS PARADOX 2* (1999) (defining economic coercion as "the threat or act by a nation-state or coalition of nation-states, called the *sender*, to disrupt economic exchange with another nation-state, called the *target*, unless the targeted country acquiesces to an articulated political demand"). The exchange that is disrupted may include "trade sanctions, boycotts,

of the Security Council. Under Chapter VII, Article 41, the Security Council may take so-called "provisional measures," which include just about anything "not involving the use of armed force."¹⁷⁸ These can include, for example, severing of diplomatic relations or other procedural sanctions aimed at isolating one of the parties to a dispute, or a state deemed to be a threat to peace and security. The intent is to limit or channel that state or party's engagement with the international community.¹⁷⁹ These diplomatic sanctions can be effectively carried out by the broader U.N. membership through procedural sanctioning at the General Assembly or by international organizations affiliated with the United Nations. Under Chapter VIII, the Council can also endorse sanctions brought by regional organizations.

The more common form of sanctions is an economic and/or military embargo targeted at one or more of the parties to a conflict or the state threatening the peace. Examples of this include economic sanctions restricting a range of trade and investment.¹⁸⁰ Military sanctions most commonly have come in the form of banning sales or transfers of weapons and materiel.¹⁸¹ The effectiveness of both economic and military embargoes has proved to be a rich area of empirical study in the political science literature.¹⁸² The legal literature has also looked at the fairness and legitimacy of sanctions, examining, for example, whether sanctions aimed at states are effective at hurting governments and their leadership or whether they have the unintended consequence of doing more harm to individuals (e.g., innocent civilians) who have no power to effect change in policy.¹⁸³

aid suspensions, freezing of financial assets, or the manipulation of tariff rates." *Id.* at 3.

178. See U.N. Charter art. 41, para. 1 (mandating Security Council has right to decide what measures besides armed force should be used to enforce its decisions).

179. The General Assembly's refusal to issue credentials to the South African delegation in 1974 is one example of procedural sanctioning. See G.A. Res. 3206 (XXIX) (Sept. 30, 1974).

180. For a discussion of U.N. Security Council sanctions against Iraq, see *supra* notes 177-79 and *infra* notes 181-83 and accompanying text.

181. See S.C. Res. 1160, ¶ 8, U.N. Doc. S/RES/1160 (Mar. 31, 1998) (banning trade of arms with Federal Republic of Yugoslavia); S.C. Res. 757, ¶ 4, U.N. Doc. S/RES/757 (May 30, 1992) (imposing full range of trade, economic, diplomatic and military sanctions against FRY).

182. See generally DREZNER, *supra* note 177.

183. The 1991 UNSC arms embargo against all the states making up the former Republic of Yugoslavia, for example, may have had the effect of locking in military advantage for the JNA. See, e.g., *From Lisbon to Dayton*, *supra* note 162, at 47-51 (discussing Vance-Owen peace plan for Bosnia that would reward "Serbs with more land than they had had before war, meaning ethnic cleansing would have been rewarded . . ."). See generally M. Cherif Bassiouni, *Legal Control of International Terrorism: A Policy-Oriented Assessment*, 43 HARV. INT'L L.J. 83 (2002) (discussing sanctions in context of response to terrorism); Robert W. McGee, *Legal Ethics, Business Ethics and International Trade: Some Neglected Issues*, 10 CARDOZO J. INT'L & COMP. L. 109 (2002) (discussing ethics of economic sanctions).

E. *Military Intervention*

Military intervention describes any outside use of force to address threats to international peace and security. This is the most controversial function in the taxonomy. Whereas some of the other functions find authority in multiple provisions in the Charter and within constituting treaties of subsidiary organs, the authority to use force—collectively and on behalf of advancing the underlying norms of the organization—rests in one place: Chapter VII, Article 42 specifically empowers the Security Council—upon consideration that non-military measures taken under the same Chapter have proven ineffective—to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”¹⁸⁴ The Security Council has exercised that power in a number of ways—to include advisory functions, protective functions, actual war fighting and pure post-conflict peacekeeping. Many of the rationales for unified U.N. command that were discussed at San Francisco—collective security, burden-sharing and enhanced capacity—went untested as they were premised on the existence of the permanent Military Committee.¹⁸⁵

Blue helmet peacekeeping operations¹⁸⁶ are somewhat more complicated. In some instances, U.N. deployments that are referred to as peacekeeping take place when there is no peace to make, i.e., they are attempts at either conflict prevention or at forcing parties to the table, more *peacemaking* than *peacekeeping*.¹⁸⁷ Where peacekeeping serves solely a policing function and where there is a peace to keep, e.g., after the signing of a peace agreement, transfer of sovereignty from a prior regime to a new government or an interim security force while the state rebuilds capacity after the devastation of war, these are not considered interventions within the meaning of the taxonomy. There is a difficulty here: there are many instances where the line between the conflict and post-conflict phases is not clear.¹⁸⁸ Nonetheless, military intervention here in-

184. See U.N. Charter art. 42, para. 1 (providing these actions may include demonstrations, blockades and other operations); see also *supra* notes 114-19 and accompanying text.

185. See U.N. CHARTER COMMENTARY, *supra* note 96, at 766-75 (discussing Articles 45, 46 and 47).

186. See NEW U.N. PEACEKEEPING, *supra* note 52, at 16-21 (describing definitional differences between peacekeeping and peacemaking and describing all U.N. “blue-helmet” peacekeeping missions). For further discussion, see *supra* notes 125-27 and accompanying text.

187. See NEW U.N. PEACEKEEPING, *supra* note 52, at 20 (“UNOSOM I, deployed to supervise a cease-fire among Somali clans after the country’s government collapsed, proved powerless against them.”). The UNOSOM I and II missions were criticized for precisely this error in mission—peace enforcement cannot be carried out effectively where conflict still rages. See *supra* note 176 and accompanying text (discussing UNOSOM Missions).

188. See, e.g., President George W. Bush, Address Aboard the USS Abraham Lincoln (May 1, 2003), available at <http://www.cnn.com/2003/US/05/01/bush.transcript/index.html> (declaring that “major combat operations in Iraq have ended”). President Bush was subsequently criticized for this statement being prema-

cludes any action where troops are deployed, regardless of the offensive or defensive nature of the rules of engagement governing that deployment.

Included within the function of military intervention are deployments in which the U.N. does not take action itself, but rather provides implicit or explicit approval of defensive uses of force that meet the requirements of Article 51. Also included are actions that are taken by regional organizations under Article 53. Thus comparative examinations of different types of military interventions would include comparing blue helmet operations under explicit U.N. military command and actions taken by coalitions with explicit U.N. authority with those multilateral actions taken under Article 53 authority, multilateral actions with no U.N. authority and interventions completely outside of any multilateral organization and for which there is no U.N. authority, i.e., ad hoc and purely unilateral uses of force.

F. *Post-Conflict Administration*

Post-conflict administration encompasses all non-military measures taken by outside parties—through occupation¹⁸⁹ or at the invitation of the affected state—after the end of hostilities to secure the peace. Security Council authority under Chapter VII includes all measures to restore peace and security, which has permitted the U.N. to perform the full range of governmental functions in a post-conflict context. It has become the norm in peace agreements to include provisions governing post-conflict administration or transitional authority to bridge the period from conflict to autonomous, peaceful governance.¹⁹⁰ Many of these post-conflict arrangements reflect the successful historical experiences of the Allies in post-war Germany and Japan. They also reflect some of the history of the League Mandates after World War I.¹⁹¹ Thus, post-conflict administra-

ture. The transfer of sovereignty recognized by the United Nations in June 2004 is a more accurate, though formalistic, transition date. *See* S.C. Res. 1546, ¶ 1, U.N. Doc. S/RES/1546 (June 8, 2004) (endorsing formation of sovereign Iraqi Government by June 30, 2004). *See infra* Table 4.4 and accompanying discussion.

189. *See* Gregory H. Fox, *The Occupation of Iraq*, 36 *GEO. J. INT'L L.* 195, 228-32 (2005) (describing threshold legal determinations of occupation and occupier status under laws of war).

190. *See, e.g.*, Republic of Bosnia and Herzegovina-Federation of Bosnia and Herzegovina: Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, with Attached Agreed Principles for the Interim Statute for the City of Mostar, Nov. 10, 1995, 35 *I.L.M.* 170, 176-77 (1996) (establishing interim municipal governments in new territories).

191. *See* League of Nations Covenant art. 22, para. 5. (establishing procedure for mandates). The Mandates carried with them the normative requirement that the mandate powers promote human rights and the rule of law within the mandate territories. The Covenant provides:

[T]he 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

tion melds ideas of state or nation-building with the protection of human rights norms and broad notions of democratic statehood.¹⁹²

Borrowing from those historical traditions, post-conflict administration has come to encompass almost all dimensions of internal governance, from providing public utilities, to holding elections, to policing, to establishing or re-establishing functioning judiciaries.¹⁹³ The capacities needed to carry out these tasks are distinct from those required at the military intervention stage.¹⁹⁴

III. EVALUATING PERFORMANCE UNDER THE TAXONOMY

Having established that the bases and rationales for U.N. security multilateralism and introducing a taxonomy of the functions of security multilateralism, this section turns to three illustrative cases: East Timor, Kosovo and Iraq. In each case, the facts are summarized and a description of how the functions were carried out is presented in table form.

Figure 1 illustrates where each of the three cases falls on a continuum of legality of outside intervention in armed conflict, ranging from U.N. multilateral (most lawful) to unilateral (least lawful). While not a perfect representation of the possible forms of outside intervention into conflict,¹⁹⁵ the continuum describes the most common legal characterization of these three cases. A focus on the legality of the decision to deploy force in an effort to resolve the underlying threat to peace and security tells us

military and naval bases and of military training of the natives for other than police purposes and the defence of territory

Id.

192. Indeed, the danger is that an outside power, including the U.N., engaging in governmental functions of a sovereign state may engender feelings of neo-colonialism. The push for democratic norms can act to ameliorate these concerns. *See, e.g.,* Peter Galbraith, *The United Nations Transitional Authority in East Timor (UNTAET)*, 97 AM. SOC'Y INT'L L. PROC. 210 (2003) (describing challenges of balancing governmental responsibility in post-colonial setting).

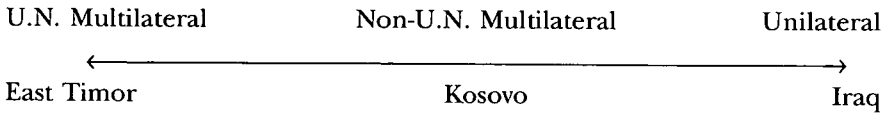
193. *See, e.g.,* NEW U.N. PEACEKEEPING, *supra* note 52, at 169-88 (describing U.N. Transitional Authority in Cambodia's (UNTAC) role in post-conflict Cambodia including civil and judicial administration, oversight of elements of national budget, establishment and monitoring of elections, promotion of human rights, economic reconstruction and education); Fox, *supra* note 189, at 201-29 (describing range of U.S. activities in administering Iraq through Coalition Provisional Authority).

194. I distinguish here between prosecution of war and post-conflict policing. Where large-scale violence continues, however, it is often difficult to draw the line between conflict and post-conflict and between civilian policing and military or paramilitary deployments. Where formal peace agreements have been put in place, however, or, as in the case of Iraq, a formal transfer of sovereignty has been made with the approval of the United Nations (shifting legal status from one of occupation to post-occupation) a line can be drawn that provides a useful, if imperfect, distinction between conflict and post-conflict. That is what I have tried to do in the taxonomy.

195. For example, it does not account for unilateral interventions that can more accurately be called "unilateral plus," i.e., two or more states acting outside either U.N. or regional multilateral authority.

little about what institutional factors contributed to making outside involvement in a conflict effective. By broadening the view of these three conflicts to include the range of disaggregated multilateral security functions, the taxonomy is designed to overcome any over-emphasis on the institutional decision at the military intervention stage and any corresponding under-emphasis or marginalization of the other functions.

FIGURE 1: FORMS OF OUTSIDE INTERVENTION



Again, this study does not intend to address the question of whether the decision to apply outside force in each of the cases was correct as a normative matter. Nevertheless, normative analyses underlying conclusions about the legality of these cases is helpful in testing the rationales for outside involvement in each case. These cases were chosen precisely because, at least from a formalist perspective focused *solely* on the question of Council enforcement powers, only one, East Timor, *should* have taken place under the law. An understanding of the arguments about legality and illegality is important to drawing conclusions about future reforms, but it is not necessary to the more limited project of understanding the comparative effectiveness of unilateral and multilateral efforts.

In addition to representing points along the continuum of international "legality," these cases were chosen to be an illustrative sub-set of potential cases. This sub-set permits qualitative empirical examination of a range of cases across one discrete functional dimension.¹⁹⁶ Each also represents a non-consent based outside intervention into armed conflict.¹⁹⁷ In each case, the full range of functions in the taxonomy played a role.

A. U.N. Security Multilateralism: The Case of East Timor

The U.N. intervention in the transition to independence in East Timor in 1999 is often described as a paradigm of U.N. security multilateralism. Tables 2.0-2.4 illustrate how the functions of assessment,

196. Indeed, it was my work on a study for the Carnegie Commission for Deadly Conflict Series that raised questions in my mind about testing the effectiveness of "functions" served by multilateral organizations in armed conflict. See John H. Barton & Melanie C. Greenberg, *Lessons of the Case Studies, in WORDS OVER WAR*, *supra* note 159, at 343-69 (examining role of mediation and arbitration as means of preventing deadly conflict). There is no formal controlling for independent variables. I thought it was useful to look at regional diversity as much as possible.

197. I tried to avoid comparing, for example, U.N. efforts in Cambodia and Namibia (which were consent based) with those of NATO and the United States in Kosovo and Iraq. See NEW U.N. PEACEKEEPING, *supra* note 52, at 137-206 (analyzing UNTAC operations in Cambodia).

intermediation, sanctions and post-conflict administration were carried out in that case. The military intervention data are contained in Table 2.0. A brief summary of the facts of the case follows.

TABLE 2.0: EAST TIMOR: ASSESSMENT FUNCTION

FACT-FINDING BODIES, SPECIAL RAP- PORTEURS	1987: U.N. Human Rights Commis- sion East Timor Hearings 1994: Special Rapporteur on Extraju- dicial, Summary, or Arbitrary Execu- tions 1995, 2002: U.N. High Commissioner for Human Rights visit ¹⁹⁸ 1999: Commission on Human Rights Special Session 1999: Special Rap- porteur on Extrajudicial, Summary, or Arbitrary Executions, Torture, and Violence against women conduct joint fact-finding mission
GENERAL ASSEMBLY RESOLUTIONS	Res. 3485 (1975) Res. 31/53 (1976) Res. 32/34 (1977) Res. 33/39 (1978) Res. 34/40 (1979) Res. 35/27 (1980) Res. 36/50 (1981) Res. 37/30 (1982) ¹⁹⁹

198. See U.N. Econ. & Soc. Council (ECOSOC), Sub-Comm. on Comm'n on Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms, in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories*, U.N. Doc. E/CN.4/1995/61 (Dec. 14, 1994) (*prepared by Special Rapporteur, Bacre Waly Ndiaye*) (reporting types of violations that fall within ambit of mandate and emphasizing import of paying attention to violations of right to life).

199. See G.A. Res. 37/30, ¶ 1, U.N. Doc. A/RES/37/30 (Nov. 23, 1982) (requesting Secretary General to initiate consultations with all parties); G.A. Res. 36/50, ¶ 4, U.N. Doc. A/RES/36/50 (Nov. 24, 1981) (noting initiative taken by Portugal); G.A. Res. 35/27, ¶ 3, U.N. Doc. A/RES/35/27 (Nov. 11, 1980) (welcoming diplomatic initiatives by Portugal); G.A. Res. 34/40, ¶ 2, U.N. Doc. A/RES/34/40 (Nov. 21, 1979) (stating that East Timor must be able to determine its own future under U.N. auspices); G.A. Res. 33/39, ¶ 2, U.N. Doc. A/RES/33/39 (Dec. 13, 1978) (reaffirming Res. 3485); G.A. Res. 32/34, ¶¶ 2, 5, U.N. Doc. A/RES/32/34 (Nov. 28, 1977) (reaffirming Res. 3485 and asking Secretary-General for Special Representative to assess situation in territory); G.A. Res. 31/53, ¶¶ 2, 4-5, U.N. Doc. A/RES/31/53 (Dec. 1, 1976) (expressing concern at Indonesian intervention in East Timor, reaffirming Res. 3485 and rejecting claim that East Timor has been integrated into Indonesia); G.A. Res. 3485 (XXX), ¶ 1, U.N. Doc. A/2439 (Dec. 12, 1975) (calling upon Indonesia to stop its violation of territorial integrity of East Timor and calling upon all states to respect right of self-determination of people of East Timor).

TABLE 2.1: EAST TIMOR: INTERMEDIATION FUNCTION

U.N. NEGOTIATIONS	Aug. 1998: Portugal and Indonesia agree to begin negotiations on special autonomy for East Timor May 5, 1999: U.N.-brokered agreement between Portugal and Indonesia calling for Secretary-General to hold referendum on autonomy ²⁰⁰
U.N. SPECIAL REPRESENTATIVES	Sergio Vieira de Mello, Sec. Gen. special rep.

TABLE 2.2: EAST TIMOR: SANCTIONS FUNCTION

SECURITY COUNCIL SANCTIONS	N/A
IFI SANCTIONS	Sept. 1999: World Bank calls on Indonesian President to honor referendum outcome; IMF suspends economic mission to Indonesia.
UNILATERAL SANCTIONS	Sept. 1999: United States suspension of military ties with Indonesia. ²⁰¹

200. See Agreement Between Republic of Indonesia and the Portuguese Republic on the Question of East Timor, May 5, 1999, available at http://www.usip.org/library/pa/et/east_timor_05051999.ques.html (detailing agreement between Indonesia and Portugal).

201. Other unilateral actions against Indonesia include: 1991, U.S. Senate and House members adopt declaration on East Timor for incorporation into Foreign Relations Authorization Act calling for suspension of military training program funds for Indonesian government; 1995, European Parliament condemns continuing military oppression in East Timor and calls on international community (especially the EU member states) to halt arms sales to Indonesia; 1996, European Parliament again condemns the illegal occupation of East Timor and calls for EU member states to halt military assistance and arms sales to Indonesia.

TABLE 2.3: EAST TIMOR: POST-CONFLICT ADMINISTRATION²⁰²

	MAY 1999-OCT. 1999	OCT. 1999-MAY 2002	MAY 2002-MAY 2005
GOVERNING AUTHORITY	UNAMET	UNTAET National Consultative Council (NCC), East Timorese National Council, Transitional Cabinet ²⁰³	UNMISSET
POLICING	U.N. Civilian Police	U.N. Civilian Police (CivPol)	Policia Nacional de Timor-Leste (PNTL) ²⁰⁴
JUDICIAL STRUCTURES		Transitional Judicial Service Commission (recruitment and training of judges)	
POST-CONFLICT/HR ENFORCEMENT		Mixed panels—international and East Timorese judges; Special Department for Prosecution of Serious Crimes; Commission for Reception, Truth and Reconciliation (CAVR) Ad hoc court in Jakarta Community Reconciliation Process	
ELECTIONS	Popular consultation on offer of special autonomy from Indonesia	Constituent Assembly—elected 08/2001 President—elected 04/2002	

202. See Joel C. Beauvais, *Benevolent Despotism: A Critique of U.N. State-Building in East Timor*, 33 N.Y.U. J. INT'L L. & POL. 1101, 1127-28, 1151-54 (2000-2001) (describing UNTAET's period of "co-government" prior to transfer of full authority to East Timor).

203. The Transitional Cabinet is comprised of five Timorese and four internationals under chairmanship of the Transitional Administrator.

204. PNTL received advice and training from the U.N. Civilian Police.

TABLE 2.4: EAST TIMOR: HUMANITARIAN ASSISTANCE (POST-CONFLICT)²⁰⁵

	UNAMET (5/1999-10/1999)	UNTAET (10/1999-5/2002)	UNMISSET (5/2002-5/2005)
FOOD	Sept. 1999: WFP begins food distribution.	Jan. 2000: food distribution shifts to targeted approach (to prevent food aid dependency); emphasis now placed on vulnerable groups, "food for work" and school feeding programs.	2003: WFP food aid intervention 2004: Protracted Relief and Recovery Operation
HEALTH	Sept. 1999: First WHO team arrives in East Timor (medical and health assessment mission)	2000: East Timor Interim Health Authority (IHA) is established; works in conjunction with U.N. agencies. ²⁰⁶	
REFUGEES	May 1999: UNHCR becomes operational in East Timor; provides assistance to IDPs. ²⁰⁷	Oct. 1999: MOU between UNHCR and Indonesia allows access to refugee population from East Timor and provides assurance of security of UNHCR staff.	Jan. 2003: UNHCR declares cessation clause for East Timorese refugees. ²⁰⁸

205. See U.N. Transitional Admin. in East Timor, Office of Comm'n and Pub. Info., *East Timor Update* 1-2 (Mar. 15, 2000) (detailing number of refugees who returned to country, number of tons of food that has been distributed and number of shelter kits distributed to needy families). See generally WORLD HEALTH ORG. (WHO), REG'L OFFICE FOR SOUTH-EAST ASIA, WHO COUNTRY COOPERATION STRATEGY 2004-2008, DEMOCRATIC REPUBLIC OF TIMOR-LESTE (Apr. 2004), available at http://www.who.int/countries/en/cooperation_strategy_tls_en.pdf (detailing WHO's humanitarian assistance in East Timor); *Disaster to Development: How WFP Fights Hunger*, www.wfp.org/index.asp?section=5 (discussing how World Food Program fights against global hunger by saving refugees, improving nutrition and quality of life and promoting self-reliance).

206. See *East Timor Update*, *supra* note 205, at 3 (Mar. 15, 2000) (discussing how IHA is composed of sixteen East Timorese and nine international staff and has recently been established). IHA works with U.N. agencies and NGO health-care providers:

[R]ebuilding and rehabilitation [of] healthcare facilities; re-establishing basic health services throughout the country; ensuring the supply of essential drugs and immunization services; providing training and support for East Timorese health personnel; maintaining communicable disease surveillance and improving disease prevention and control; re-establishing the country's laboratory services; and ensuring adequate maternal and child health services.

Id. at 4.

207. See generally U.N. High Comm'r for Refugees, Evaluation and Policy Analysis Unit, *Evaluation of UNHCR's Repatriation and Reintegration Programme in East Timor, 1999-2003*, U.N. Doc. EPAU/2004/02 (Feb. 2004) (prepared by Chris Dolan & Judith Large) (describing UNHCR's contribution to coping with emergency in East Timor). The three main areas of assistance to returnees are repatriation (transport, transit, accommodation and non-food items), the Shelter Programme and the Quick Impact Projects. See *id.*

208. See U.N. Refugee Agency, *East Timorese Refugee Saga Comes to an End*, Dec. 30, 2002, at 2, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/print?tbl=NEWS&id=3e1060c84> (describing how "cessation clause" is declared for refugees once it is determined that they no longer have credible fear of persecution upon return to their home countries and they no longer need international protection).

		<p>Oct. 1999: repatriation program begins; Mass Information Campaigns—designed to encourage people to return.</p> <p>Reconciliation activities at border and support to CAVR.</p> <p>Shelter Project—provides construction materials and technical guidance.</p> <p>ICRC and IRC deal with child refugee issues.</p> <p>IOM—assists in returns from West Timor.</p>	
ECONOMIC DEVELOPMENT		<p>2000: UNTAET receives grants from Trust Fund for East Timor (TFET) for emergency infrastructure rehabilitation and water supply and sanitation rehabilitation.²⁰⁹</p> <p>UNDP mobilizes and coordinates financial and technical resources, identifies strategic development issues and capacity-building.²¹⁰</p>	<p>2003: UNDP moves to improving the socio-economic conditions of the population.</p>

East Timor Summary. In January 1999, representatives of the governments of Portugal and Indonesia began a series of talks under U.N. auspices to negotiate the future of East Timor, a former colony of Portugal that had been occupied by Indonesia since 1975.²¹¹ The government of Indonesia proposed “special autonomy,” which would allow East Timor to form its own government with legislative, executive and judicial powers,

209. See generally *Trust Fund for East Timor (TFET): East Timor Rehabilitation and Development*, Progress Report, Donors’ Council Meeting, Lisbon, Portugal, June 21-23, 2000 available at http://www.adb.org/Documents/Conference/EastTimor/Trust_Fund/default.asp#contents (describing rehabilitation projects and strategies for assistance). TFET is a trust fund that is administered by the World Bank and the Asian Development Bank (ADB). The World Bank is the trustee of TFET. Donors include: Portugal, Japan, Australia, United Kingdom, Finland, United States, Ireland, New Zealand, Italy, the European Commission and the World Bank Post-Conflict Fund. Grants were made to UNTAET for projects that were co-managed by UNTAET and ADB.

210. See U.N. Executive Bd. of the U.N. Dev. Programme and of the U.N. Population Fund, *Country Programme Outline for East Timor (2003-2005)*, U.N. Doc. DP/CPO/ETM/1, at 3 (July 29, 2002) (detailing how UNDP helped develop such areas as electoral and legislative process, civic education, judicial system, audit system and community organizations).

211. See United Nations and East Timor—A Chronology, <http://www.un.org/peace/etimor/Untaetchrono.html> [hereinafter *East Timor Chronology*] (“Talks begin in New York between the Personal Representative of the Secretary-General . . . and the Directors-General of the Indonesian and Portuguese Foreign Ministries.”). For a history of East Timor’s struggle for independence following the 1975 Indonesian invasion of the former Portuguese colony, see ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 223-30 (1995).

with Indonesia retaining military control.²¹² Portugal made its acceptance of the proposal contingent on a “popular consultation” process whereby the people of East Timor would be given the chance to vote to accept Indonesia’s offer of special autonomy or instead claim total independence.²¹³ The U.N. was enlisted to present the autonomy plan to the people of East Timor and to organize and conduct the popular consultation.²¹⁴

In May 1999, Secretary-General Kofi Annan signed the Modalities and Security Agreements, thereby committing the U.N. to the implementation of the popular consultation.²¹⁵ On June 11, the Security Council passed Resolution 1246, establishing the United Nations Mission to East Timor (UNAMET) in order to prepare, carry out and monitor the election.²¹⁶ The Council stressed that the maintenance of security, to ensure both the integrity of the ballot and the safety of election workers and observers, was the responsibility of the Indonesian government; it did not specifically invoke its enforcement powers under Chapter VII.²¹⁷

In the time leading up to the August election, pro-Indonesian militias carried out a campaign of violence and intimidation against the citizens of East Timor that prompted Annan to delay the registration and the vote for a number of weeks.²¹⁸ Despite the violence, ninety-five percent of registered voters participated in the consultation, with a majority voting in favor of independence.²¹⁹ Violence against the East Timorese by pro-Indonesian militias increased immediately following the election. Reports, some based on direct fact-finding carried out by the Council,²²⁰ estimated

212. See Jennifer Toole, *A False Sense of Security: Lessons Learned from the United Nations Organization and Conduct Mission in East Timor*, 16 AM. U. INT’L L. REV. 199, 214 (2000) (describing how under Indonesia’s autonomy proposal, East Timor could conduct its own elections and create its own law so long as it was in compliance with Indonesian law).

213. See *id.* at 214-15 (“Portugal agreed to accept the proposal so long as the people of East Timor could be consulted, by secret ballot, as to whether they wished to accept Indonesian autonomy or pursue independence.”).

214. See *id.* at 215 (explaining how Portugal and Indonesia requested help from U.N. on presenting proposal to East Timorese people).

215. See *id.* (“The Secretary General immediately signed the Modalities and Security Agreements, expressing the U.N.’s commitment to organize and conduct the consultation.”).

216. See *id.* (describing how UNAMET registered 451,792 voters in two months).

217. See S.C. Res. 1246, ¶ 9, U.N. Doc. S/RES/1246 (June 11, 1999) (requesting Indonesian government to ensure popular consultation is carried out in fair and peaceful way).

218. See Toole, *supra* note 212, at 216 (detailing how militia beat and tortured East Timorese people and burned property to ground).

219. See Hilary Charlesworth, *The Constitution of East Timor*, 1 INT’L J. CONST. L. 325, 326 (2003).

220. Security Council Mission, *Report of the Security Council Mission to Jakarta and Dili*, ¶ 1, delivered to the Security Council, U.N. Doc. S/1999/976/Annex (Sept. 14, 1999) (reporting events witnessed in East Timor).

that more than 200,000 East Timorese were forced from their homes as a result of the unrest.²²¹ On September 15, the Council expressly invoked its authority under Chapter VII to pass Resolution 1264 which authorized the deployment of the International Force for East Timor (INTERFET), a multinational force under Australian military command, to East Timor with the mandate to “restore peace and security.”²²² On October 25, with INTERFET on the ground in East Timor, the Council created the United Nations Transitional Administration in East Timor (UNTAET), which was to assume interim governorship over East Timor and oversee the transition toward independence.²²³ The mandate of UNTAET was broad civil governance.²²⁴

Sergio Vieira de Mello was appointed Special Representative of the Secretary-General (SRSG) and Transitional Administrator in November.²²⁵ Among his first official acts was the creation of the National Consultative Council (NCC) and the Transitional Judicial Service Commission, both aimed at increasing East Timorese political participation during the transition.²²⁶ De Mello also signed a UNTAET regulation making Indonesian law the applicable law in the territory.²²⁷ The early work of UNTAET was consumed with the transition of security responsibilities from INTERFET, persistent militia incursions into East Timor, the integration of East Timorese into civil service and administrative positions within the gov-

221. See Toole, *supra* note 212, at 216-17 (noting approximate number of East Timorese driven from their homes).

222. See S.C. Res. 1264, ¶ 3, U.N. Doc. S/RES/1264 (Sept. 15, 1999); East Timor Chronology, *supra* note 211 (noting INTERFET was placed under unified command structure lead by Australia).

223. See S.C. Res. 1272, ¶ 1, U.N. Doc. S/RES/1272 (Oct. 25, 1999) (establishing UNTAET).

224. The Resolution reads that the mandate of UNTAET shall consist of the following elements:

- (a) To provide security and maintain law and order throughout the territory of East Timor;
- (b) To establish an effective administration;
- (c) To assist in the development of civil and social services;
- (d) To ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance;
- (e) To support capacity-building for self-government; [and]
- (f) To assist in the establishment of conditions for sustainable development.

Id. ¶ 2; see also Galbraith, *supra* note 192.

225. See East Timor Chronology, *supra* note 211 (noting date of SRSG’s appointment).

226. The NCC was a joint East Timorese-UNTAET advisory body charged with review of UNTAET regulations, while the Transitional Judicial Service Commission was charged with the recruitment and training of judges. See Beauvais, *supra* note 202, at 1120, 1153 (describing functions).

227. This regulation defined the applicable law as “the laws applied in East Timor prior to 25 October 1999’ insofar as they do not conflict with internationally recognized human rights standards.” See *id.* at 1151 (quoting Reg. No. 1999/1, On the Authority of the Transitional Administration in East Timor, ¶ 3.1, U.N. Doc. UNTAET/REG/1999/1 (Nov. 27, 1999)).

ernment and responses to the humanitarian disaster resulting from the violence following the popular consultation.²²⁸ Within two years, UNTAET had succeeded in turning over much of the governing functions—including judicial functions—to the East Timorese.

On May 20, 2002, after more than two years of U.N. administration, East Timor gained independence as the “Democratic Republic of Timor-Leste.” Three days earlier, the Council had passed Resolution 1410, establishing the post-independence U.N. Mission to Support East Timor (UNMISSET) with a two-year mandate. Like UNTAET, it was headed by a SRSG. Its mandate, however, was not actual governance, but to “provide assistance to core administrative structures critical to the viability and political stability of East Timor; to provide interim law enforcement and public [s]ecurity and to assist in developing the East Timor Police Service” and contribute to the maintenance of external and internal security of Timor-Leste.²²⁹ Civilian policing and peacekeeping were therefore a large part of the UNMISSET mandate; 1,250 civilian police and 5,000 military troops were assigned to the initial mission. After several extensions of the mandate, UNMISSET was replaced in May 2005 by a U.N. Office in Timor-Leste (UNOTIL), which is mandated through Council resolution to continue advising the East Timor government on civilian administrative institution building and police and military matters. Its current mandate expires May 2006.²³⁰

B. *Non-U.N. Security Multilateralism: The Case of Kosovo*

Kosovo has been characterized as the paradigmatic non-U.N. multilateral intervention.²³¹ The controversial doctrine of humanitarian interventionism—outside use of force based on human rights violations internal to a sovereign state, even where those violations do not rise to the level of threats of international peace and security—has also been widely explored through the Kosovo case.²³² While this Article does not address the merits of the doctrine of humanitarian interventionism, the form of intervention in Kosovo, i.e., a NATO-led multilateral intervention, provides an example

228. See East Timor Chronology, *supra* note 211.

229. See U.N., Background Paper on UNMISSET, <http://www.un.org/depts/dpko/missions/unmiset/background> (last visited Mar. 24, 2005) (describing UNMISSET’s mandate).

230. See U.N. Mission in Timor-Leste (UNOTIL), <http://www.unmiset.org/> (last visited Aug. 5, 2005).

231. See, e.g., Mary Ellen O’Connell, *The UN, NATO, and International Law After Kosovo*, 22 HUM. RTS. Q. 57, 57 (2000) (noting that NATO use of force in Kosovo was inconsistent with express terms of Charter and Security Council practice); Bruno Simma, *NATO, the UN and the Use of Force: Legal Aspects*, 10 EUR. J. INT’L L. 1, 12 (1999) (stating that NATO airstrikes breached Charter).

232. See generally SIMON CHESTERMAN, *JUST WAR OR JUST PEACE?* (2001); Klinton W. Alexander, *NATO’s Intervention in Kosovo: The Legal Case for Violating Yugoslavia’s National Sovereignty in the Absence of Security Council Approval*, 22 HOUS. J. INT’L L. 403 (1999); Julie Mertus, *Reconsidering the Legality of Humanitarian Intervention: Lessons from Kosovo*, 41 WM. & MARY L. REV. 1743 (2000).

of a technically unlawful regional effort at multilateralism against which to measure U.N. multilateral and purely unilateral efforts. Tables 4.1-4.5 categorize the elements of the Kosovo case into the taxonomy.

TABLE 3.1: KOSOVO: ASSESSMENT

INTELLIGENCE GATHERING	NATO United States, European Union
FACT-FINDING BODIES	NATO ICTY Investigators OSCE; EC/EU Monitoring Body

TABLE 3.2: KOSOVO: INTERMEDIATION

AD HOC GROUPS, FACILITATED NEGOTIATIONS	Contact Group (United States, United Kingdom, Germany, Italy, France and Russia) NATO Sec'y Gen. Rambouillet Talks (Feb. 6, 1999-Feb. 23, 1999) Paris Talks (Mar. 15, 1999-Mar. 18, 1999)
SECURITY COUNCIL	S.C. Res. 1160; S.C. Res. 1199 (supporting recommendations of Contact Group)
ICJ	FRY case against Belgium (dismissed without reaching merits in 2003)

TABLE 3.3: KOSOVO HUMANITARIAN ASSISTANCE

EUROPEAN UNION	Post-Conflict (under UNMIK)
NATO	KFOR securing delivery of aid post-conflict
GENERAL ASSEMBLY AGENCIES	UNHCR (refugee protection, return and resettlement); UNDP; Others operating under the UNMIK mandate

TABLE 3.4: KOSOVO SANCTIONS

SECURITY COUNCIL SANCTIONS	S.C. Res. 713 (1991) FRY arms embargo S.C. Res. 1160 (1997) FRY economic embargo S.C. Res. 1199 (1998) Arms embargo (lifted 2001)
REGIONAL SANCTIONS	EC arms embargo (1991) EC economic sanctions (1998) Contact Group (plus Canada and Japan) (1998)

TABLE 3.5: KOSOVO POST-CONFLICT CIVIL ADMINISTRATION

	JUNE 1999 – PRESENT
POLICING	S.C. Res. 1244 (establishing UNMIK)
CIVIL ADMINISTRATION	UNMIK
INSTITUTION BUILDING/DEMOCRATIZATION	OSCE (democracy programs); EU (economic reconstruction)
PHYSICAL RECONSTRUCTION	EU, under UNMIK
JUDICIAL PROCESSES; WAR CRIMES PROSECUTIONS	Sept. 1999: SRSG promulgates UNMIK Reg. 1999/7 dissolving Joint Advisory Council; Establishes commission for Appointment of Judges and Prosecutors (AJC) Sept. 1999: SRSG creates Technical Advisory Commission 2000: Kosovo War and Ethnic Crimes Court (KWECC); Broad cooperation with ICTY

Kosovo Summary. The conflict in Kosovo emerged following the disintegration of the Socialist Federal Republic of Yugoslavia (FRY), which had begun in 1991 with declarations of independence by Slovenia and Croatia, and later Bosnia and Macedonia.²³³ War broke out immediately following the Croatian and Slovenian declarations, and engulfed Bosnia for most of 1992-1995. Although the problem in Kosovo was recognized by the international community as among the tinderboxes that could further inflame the Balkans, the Kosovo problem was left out of the U.S./EU sponsored peace negotiations over Bosnia, and was not addressed in the 1995 Dayton accords.²³⁴

Kosovo had been a fully autonomous republic within the Republic of Serbia until 1989, when then-Serbian President Slobodan Milosevic revoked Kosovo's autonomy.²³⁵ In the following years, ethnic Albanians, who made up more than eighty percent of the Kosovar population, were relegated to a second tier society, while the minority Serbs filled all the key positions in government, education and other public and private employ-

233. For a discussion of the origins of the conflict, see CHESTERMAN, *supra* note 232, at 207.

234. For a further discussion of Dayton agreement, see *supra* note 190 and accompanying text. One exception to this was the December 1992 warning from the U.S. administration to Milosevic that "[i]n the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbs in Kosovo and in Serbia proper." CHESTERMAN, *supra* note 232, at 207 (quoting David Binder, *Bush Warns Serbs Not to Widen War*, N.Y. TIMES, Dec. 28, 1992, at A6). Another exception which would have effect in the post-conflict period was the territorial jurisdiction of the ICTY, which included all territories of the FRY. See Statute of the International Tribunal art. 8, May 25, 1993, 32 I.L.M. 1192.

235. This status gave it powers similar to the constituent republics (e.g., Bosnia, Croatia and Macedonia). See CHESTERMAN, *supra* note 232, at 207; Parul R. Williams & Patricia Taft, *The Role of Justice in the Former Yugoslavia: Antidote or Placebo for Coercive Appeasement?*, 35 CASE W. RES. J. OF INT'L L. 219, 236-37 (2003).

ment. In 1991, the Kosovar Albanians declared their independence, secretly elected a president (Ibrahim Rugova) and created a parallel set of institutions, all of which went unrecognized by Belgrade and most of the outside world. During these years, Belgrade kept a tight grip on Kosovo, while also prosecuting the war in Bosnia.

In 1996, the Kosovo Liberation Army (KLA) emerged as the military arm of Albanian separatism, engaging in sporadic attacks against Serb officials in Kosovo. The Serbs responded with more repression of student and other ethnic movements in the region. In fall 1997, violence between Serb authorities and the KLA escalated.²³⁶ Violence escalated further the next spring after dozens of Albanian separatists were killed by Serbian police. The Security Council responded by passing Resolution 1160, invoking its enforcement powers under Chapter VII to condemn the excessive force of the Serbian police and the terrorist actions of the KLA, and to impose sanctions in the form of an arms embargo. The Council expressed support for a peaceful solution taking into account broad legal principles of territorial integrity and respect for autonomy of the Kosovar Albanians.²³⁷ As fighting between the KLA and Serbian police and military continued, the U.S.-led "Contact Group" (United States, United Kingdom, France, Germany, Italy and Russia) served as an intermediary in peace discussions between Milosevic and Rugova.²³⁸ The talks foundered in May 1998. In June, the Contact Group joined by Canada and Japan applied additional sanctions against the FRY.

Intense fighting between the KLA and Serbs continued throughout the summer, resulting in thousands of Albanian villagers being driven into the hills, and the discovery of atrocities being carried out on both sides. On September 23, the Council again invoked its Chapter VII powers when it adopted Resolution 1199, in which the Council formally determined that the situation in Kosovo constituted a threat to international peace and security.²³⁹ The resolution called for a ceasefire, for actions to improve the humanitarian situation and demanded that the FRY implement the Contact Group statement of June 1998: "(a) cease all action by security forces; (b) enable effective monitoring by the EC Monitoring Mission; (c) facilitate the return of refugees and displaced persons and allow free and unimpeded access for humanitarian organizations and supplies; and (d) 'make rapid progress' towards finding a political solution."²⁴⁰ While the

236. In February 1998, U.S. diplomat Bob Gelbard referred to the Kosovo Liberation Army (KLA) as a "terrorist" organization, which some have interpreted as emboldening Milosevic. See Joanne Mariner, *Good and Bad Terrorism?*, FINDLAW, Jan. 7, 2002, <http://writ.news.findlaw.com/mariner/20020107.html>.

237. See S.C. Res. 1160, ¶ 5, U.N. Doc. S/RES/1160 (Mar. 31, 1998). Despite invoking Chapter VII, the resolution did not explicitly decide that the situation in Kosovo represented a threat to international peace and security.

238. See CHESTERMAN, *supra* note 232, at 208. Most of the actual shuttle diplomacy was carried out by U.S. diplomat Richard Holbrooke.

239. See S.C. Res. 1199, U.N. Doc. S/RES/1199 (Sept. 23, 1998).

240. See CHESTERMAN, *supra* note 232, at 208; S.C. Res. 1199, *supra* note 239.

text of the resolution noted that the Council would “consider further action and additional measures to maintain and restore peace and stability in the regions,” it was deliberately ambiguous and stopped short of a threat of military intervention in large part to placate Russian concerns.²⁴¹

Two massacres of Kosovar Albanians by Serbian forces apparently resulted in the hardening of United States and NATO resolve to intervene. In the face of Milosevic’s defiance of the earlier Council resolutions, the United States called on NATO to act, implying that the legal basis of such action rested in the prior Council Resolutions.²⁴² On October 15, 1998, NATO’s political arm, the North Atlantic Council, voted to order an air campaign in the FRY, with a delayed trigger of ninety-seven hours, in order to give last-minute diplomatic efforts time to work. Two days later, the FRY agreed to a NATO air verification mission over Kosovo and further agreed to an Organization for Security and Co-operation in Europe (OSCE) verification mission to Kosovo, which included FRY assurances that it would comply with Resolutions 1160 and 1199. These agreements were then explicitly endorsed by the Council in Resolution 1203, passed October 24.²⁴³ That Resolution, however, stopped short of authorizing NATO, under Article 53 of the Charter, to act in support of the Council’s authority to enforce peace and security.²⁴⁴

Intermediation efforts continued at Rambouillet from February 6 to February 23 of 1999 and again in Paris from March 15 to March 18, but an agreement was not reached. The FRY rejected provisions that would have enabled NATO total freedom of movement throughout the FRY and required a referendum on Kosovo independence within three years.²⁴⁵ After last-ditch ultimatums failed to get Milosevic to agree to the terms of the Rambouillet agreement, the NATO bombing campaign began on March 24, 1999. The air campaign ceased on June 10, 1999.

On the day of the first air strikes, the Council met in an emergency session, with Russia, China, Belarus and India indicating that they opposed the NATO action as a violation of the Charter. Those who supported the action failed to present a cogent ground for why it might be lawful,²⁴⁶ but a draft resolution demanding an end to the air strikes was nonetheless

241. See CHESTERMAN, *supra* note 232, at 208.

242. See *id.*

243. See S.C. Res. 1203, U.N. Doc. S/RES/1203 (Oct. 24, 1998). China and Russia abstained on 1203. Both countries contended at the time that they did not believe 1203 authorized NATO action. The legal effect of this Resolution on that subsequent NATO action has been contested. See CHESTERMAN, *supra* note 232, at 209-10.

244. Nevertheless, the United States viewed the Resolution as giving NATO the green light to act. See *id.* at 210 n.335.

245. See *id.* at 210-11 (describing provisions that FRY rejected).

246. The United States, Canada and France tried to fashion a legal rationale, stressing that the FRY was in violation of the two prior Council Resolutions, 1199 and 1203. See *id.* at 211.

defeated, twelve votes to three.²⁴⁷ During the remainder of the bombing campaign, the U.N. was involved in only one substantive issue relating to Kosovo: a resolution on May 14 regarding refugee assistance.²⁴⁸

In the midst of the NATO bombing, the FRY sought adjudication of the legality of the intervention by the International Court of Justice (ICJ). The FRY sued Belgium, one of the few NATO countries that had agreed to the compulsory jurisdiction of the ICJ, arguing that the NATO air campaign was a violation of the laws of war—both the *jus ad bellum*, governing when a State could go to war and the *jus in bello*, governing how war can be carried out.²⁴⁹ The FRY's application to the court was rejected on jurisdictional grounds; there was thus no adjudication of the lawfulness of the intervention.²⁵⁰

When the bombing stopped on June 10, the Council adopted Resolution 1244, establishing the United Nations Interim Administration in Kosovo (UNMIK).²⁵¹ UNMIK, like the UNTAET mandate that came in East Timor a few months later, had a broad mandate to establish transitional governance and maintain security in Kosovo. The four "pillars" of the UNMIK mission were organized as follows: (1) Police and Justice, under the U.N.; (2) Civil Administration, under the U.N.; (3) Democratization and Institution Building, led by the OSCE; and (4) Reconstruction and Economic Development, led by the European Union.²⁵² Bernard Koucher was appointed head of UNMIK and Special Representative of the Secretary-General, and he retained ultimate authority over all four pillars.²⁵³ Part of the UNMIK resolution approved the deployment of NATO troops under Kosovo Force (KFOR) to secure Kosovo.²⁵⁴

The UNMIK mission was occupied with rebuilding a judicial structure, while also cooperating with investigations into atrocities by the International Criminal Tribunal for former Yugoslavia (ICTY). The broad

247. Only Russia, China and Namibia supported the resolution. *See id.* at 213.

248. *See* S.C. Res. 1239, U.N. Doc. S/RES/1239 (May 14, 1999).

249. *See* Case Concerning Legality of Use of Force (Yugo. v. Belg.) (Req. for Provisional Measures) (Order of June 2, 1999), 38 I.L.M. 950.

250. The ICJ declined the relief sought but remained seized of the question. *See id.* ¶ 51.

251. *See* S.C. Res. 1244, U.N. Doc. S/RES/1244 (June 10, 1999).

252. *See* U.N. Interim Admin. Mission in Kosovo (UNMIK), Information Sheet, <http://www.unmikonline.org/intro.htm> (last visited Mar. 23, 2005). Pillar one had been "humanitarian assistance" led by UNHCR, but it was phased out in 2000. An excellent account of the post-conflict judicial challenges is Wendy S. Betts et al., *The Post-Conflict Transitional Administration of Kosovo and the Lessons Learned in Efforts to Establish a Judiciary and Rule of Law*, 22 MICH. J. INT'L L. 371 (2001).

253. He left office in January 2001; four subsequent SRSGs have rotated through the job. Currently, Søren Jessen-Petersen holds the position. *See* Information Sheet, *supra* note 252.

254. 50,000 NATO troops made up the first KFOR deployment. KFOR had initial responsibility for all policing. In 2001, civilian policing was transferred to UNMIK. *See* Tables 3.1-3.5 and sources.

mandate of the UNMIK occupation continues in force today. As of this writing, KFOR remains on the ground providing multinational peacekeeping.²⁵⁵

C. *Unilateralism: The Case of Iraq*

The 2003 U.S.-led invasion and subsequent occupation of Iraq is included in this illustrative comparative examination as the case in which the U.N. did not explicitly authorize the intervention; indeed, it is broadly viewed—even by members of the U.S. administration that carried it out—as illegal.²⁵⁶ The United States made clear its intention to act with or without U.N. authority on the ground that the Iraqi regime represented a threat to international peace and, more specifically, a threat to U.S. national security. In sharp contrast to the U.S.-led coalition to remove Iraq from Kuwait in 1991, the 2003 invasion did not enjoy wide support around the world; to the contrary, many of the closest allies of the United States opposed the use of force.²⁵⁷ Tables 5.1-5.5 illustrate the Iraq conflict through the taxonomy of functions. Following is a summary of the facts.

255. See Kosovo Force Information, <http://www.nato.int/kfor> (last visited Nov. 11, 2005).

256. The purpose of this discussion is not to resolve the debate over whether the invasion may have been technically legal on the basis of the Council resolutions governing the coalition ceasefire with Iraq in 1991. For present purposes of this Article, I am accepting that the basis of the invasion was the threat posed by the Iraqi government on the basis of its possession of WMD (biological and chemical weapons) in violation of certain prior Security Council resolutions. For the Bush administration's *ex post* justification of the legality on the basis of the prior resolutions, see Taft & Buchwald, *supra* note 11. Kofi Annan in an interview declared the invasion to be illegal and a violation of the Charter. See Interview by Owen Bennett-Jones, BBC World Service with Kofi Annan, Secretary-General of the United Nations, in New York, N.Y. (Sept. 15, 2004), available at http://news.bbc.co.uk/2/hi/middle_east/3661640.stm.

257. Richard Perle, who had been an advisor to the Bush administration, has also stated that the war was illegal. See Oliver Burkeman & Julian Borger, *War Critics Astonished as U.S. Hawk Admits Invasion Was Illegal*, GUARDIAN, Nov. 19, 2003. Perle was a member of the Defense Policy Board advising the U.S. Department of Defense. See *id.*

TABLE 4.1: IRAQ ASSESSMENT FUNCTION²⁵⁸

	MAR. 1991-MAR. 2003	MAR. 2003-JUNE 2004	JUNE 2004-PRESENT
INTELLIGENCE COOPERATION	U.S. covert operations in Iraq Iraq Liberation Act (United States enacts a regime change policy) (Oct. 31, 1998) United States works with Iraqi opposition groups (INC, the INA, the KDP, the PUK, SCIRI and the MCM)	United States and British government intelligence estimates that Iraq still stockpiling WMD (Aug. 2003)	U.S.-led MNF
FACT-FINDING	S.C. Res. 687 (report on steps taken to facilitate return of all Kuwaiti property seized by Iraq) S.C. Res. 986 (establishes review of "Oil for Food" Program) S.C. Res. 1284 (fact-finding on humanitarian issues)	S.C. Res. 1511 (requests United States to report on efforts and progress) U.N. election support fact-finding	
INSPECTION REGIMES	S.C. Res. 687 (triggers ongoing inspections; Iraq must provide a list of all weapons of mass destruction in its possession) IAEA and UNSCOM reports pursuant to 687 (May 1991-Apr. 2004); UNSCOM reports pursuant to S.C. Res. 1205 S.C. Res. 1284 (creates UNMOVIC to replace UNSCOM) (Dec. 1999) UNMOVIC reporting pursuant to S.C. Res. 1284 (Jun. 2000-Feb. 2005) UNMOVIC and IAEA conduct approx. 750 inspections at 550 sites pursuant to S.C. Res. 1441 (Nov. 2002-Mar. 2003) Final report of UNMOVIC chief inspector Hans Blix to U.N. Security Council (Mar. 7, 2003)		

258. For sources of dates, see RAYMOND W. COPSON, CONGRESSIONAL RESEARCH SERVICE, IRAQ WAR: BACKGROUND AND ISSUES OVERVIEW, CRS REPORT 20-21, available at <http://www.fas.org/man/crs/RL31715.pdf> (last visited Dec. 30, 2005); The Iraq Crisis—Timeline: Chronology of Modern Iraqi History, <http://www.middleeastweb.org/iraqtimeline.htm> (last visited Sept. 7, 2005) [hereinafter Iraq Crisis—Timeline]; see also S. SELECT COMM. ON INTELLIGENCE, REPORT ON THE U.S. INTELLIGENCE COMMUNITY'S PREWAR INTELLIGENCE ASSESSMENTS ON IRAQ, S. REP. NO. 108-301 (2004); KENNETH KATZMAN, CONGRESSIONAL RESEARCH SERVICE, IRAQ: U.S. REGIME CHANGE EFFORTS AND POST-SADDAM GOVERNANCE, CRS REPORT 1, 18, available at <http://fpc.state.gov/documents/organization/28648.pdf> (last visited Dec. 30, 2005); Iraq Liberation Act of 1998, Pub. L. No. 105-338, 112 Stat. 3178; InfoPlease, Iraq War Timeline, <http://www.infoplease.com/ipa/A0908792.html> (last visited Sept. 7, 2005); Iraq Watch, http://www.iraqwatch.org/un/Index_IAEA.html (last visited Sept. 7, 2005) (IAEA reports); Iraq Watch, http://www.iraqwatch.org/un/Index_UNSCOM.html (last visited Sept. 7, 2005) (UNSCOM reports); Iraq Watch, http://www.iraqwatch.org/un/Index_UNMOVIC.html (last visited Sept. 7, 2005) (UNMOVIC reports).

TABLE 4.2: IRAQ HUMANITARIAN ASSISTANCE FUNCTION²⁵⁹

	MAR. 1991-MAR. 2003	MAR. 2003-JUN. 2004	JUNE 2004-PRESENT
PROVISION OF FOOD, SHELTER, RECONSTRUCTION	S.C. Res. 688 (humanitarian issues); Res. 986 (establishes "Oil for Food" Program); S.C. Res. 1111, 1143, 1210, 1242, 1280, 1281, 1302, 1330, 1352, 1360, 1382, 1409, 1443 (1997-2002 extensions of Oil for Food program) U.S. Exec. Order creates Office of Reconstruction and Humanitarian Assistance, within the Department of Defense (Jan. 20, 2003)	S.C. Res. 1472 (restarted Oil for Food Program); S.C. Res. 1476 (recalls previous res. pertaining to humanitarian aid); S.C. Res. 1500 creates U.N. Assistance Mission to Iraq (UNAMI) S.C. Res. 1511 (authorizes U.N. aid to Iraq under U.S. supervision); Oil-for-Food program ends (Nov. 21, 2003)	Range of U.N. development programs administered through UNAMI (mission extended in August 2004); ²⁶⁰ Direct U.S. government assistance programs

TABLE 4.3: IRAQ SANCTIONS FUNCTION²⁶¹

	MAR. 1991-MAR. 2003	MAR. 2003-JUNE 2004	JUNE 2004-PRESENT
ECONOMIC SANCTIONS	S.C. Res. 687 (continues economic sanctions and boycott) S.C. Res. 700 (approving guidelines for monitoring arms embargo) S.C. Res. 1051 (approves export-import monitoring plan) S.C. Res. 1134 (threatens further sanctions) S.C. Res. 1137 (imposes travel ban) S.C. Res. 1409 (new procedures that virtually eliminated U.N. review of civilian exports to Iraq)	Repeal of unilateral U.S. embargo (Nov. 2003)	N/A

259. See COPSON, *supra* note 258, at 17-18, 22-24; KATZMAN, *supra* note 258, at 39; see also Human Rights Watch, *Iraq: Human Rights Concerns for the 61st Session of the U.N. Commission*, <http://hrw.org/english/docs/2005/03/10/iraq10309.htm> (last visited Sept. 7, 2005).

260. These include the full "alphabet soup" of U.N. agencies: ESCWA, FAO, ILO, IOM, OHCHR, UNDP, UNEP, UNESCO, UNFPA, UN-HABITAT, UNHCR, UNICEF, UNIDO, UNIFEM, UNOPS, WFP, WHO. See S.C. Res. 1546, *supra* note 188 (extending UNAMI mandate).

261. See COPSON, *supra* note 258, at 24; KATZMAN, *supra* note 258, at 15-16. For more information on this program, see KENNETH KATZMAN & CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., *IRAQ: OIL FOR FOOD PROGRAM, ILLICIT TRADE, AND INVESTIGATIONS*, CRS REPORT, available at <http://www.fas.org/sgp/crs/mideast/RL30472.pdf> (last visited Dec. 30, 2005).

TABLE 4.4: IRAQ POST-CONFLICT ADMINISTRATION FUNCTION²⁶²

	MAR. 2003-JUN. 2004	JUNE 2004-PRESENT
POLICING	MNF and CPA carry out policing with Iraqi support	NATO pledge aid for training MNF train Iraqi police Iraqi government takes over most civilian policing
CIVIL ADMINISTRATION	CPA established Apr. 15, 2003 S.C. Res. 1483 (affirms sovereignty of Iraq and recognizes United States and United Kingdom as occupiers) U.S.-Appointed Interim Iraqi Council S.C. Res. 1511 (recognizing interim Iraqi government) U.N. lends election-planning support (Brahimi) Iraq Governing Council (July 2003) Iyad Allawi designated prime minister of Iraqi interim government (May 28, 2004)	CPA withdraws Sovereign Iraq government institutions Res. 1546 (recognizes legitimacy of interim Iraqi government and calls on U.N. members to support it) National Assembly elected Aug. 2004 Council was sworn in (Sept. 1, 2004)
JUDICIAL FUNCTIONS	Iraqi Special Tribunal established Interim Constitution	Interim government takes over Baathist detention and trials

Iraq Summary. The U.S.-led coalition that rolled back the Iraqi invasion of Kuwait in less than two months in early 1991 had been expressly authorized by the Council under Resolution 678.²⁶³ Following that military action, Iraq agreed to a ceasefire that was codified in Council Resolution 686.²⁶⁴ What followed over the next twelve years was a series of Council resolutions taken under its Chapter VII enforcement powers to: extend economic sanctions, demarcate a final border with Kuwait and create a weapons inspections and reporting regime (UNSCOM);²⁶⁵ demand disclosure of WMD programs (Res. 707); report IAEA and UNSCOM assessments (Res. 715, Res. 1051); establish the “oil-for-food” program to limit prior embargoes (Res. 986, 1111, 1143, 1210 and 1242);²⁶⁶ condemn

262. See KATZMAN, *supra* note 258, at 18-19; *Iraq Crisis—Timeline*, *supra* note 258.

263. See S.C. Res. 678, U.N. Doc. S/RES/678 (Nov. 29, 1990), available at <http://www1.umn.edu/humanrts/peace/docs/scres678.html> (noting that this resolution came after application of embargo against Iraq (Res. 661)).

264. See S.C. Res. 686, U.N. SCOR, 2978th mtg., U.N. Doc. S/RES/686 (1991); see also *Letter Dated 3 March 1991 from the Permanent Representative of Iraq to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, U.N. Doc. S/22320 (1991), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N91/072/05/IMG/N9107205.pdf?OpenElement> (last visited Oct. 6, 2005) (resolving Iraqi Foreign Minister Aziz’s acceptance of ceasefire terms under Res. 696).

265. See S.C. Res. 687, U.N. SCOR, 2981st mtg., U.N. Doc. S/RES/687 (1991), available at <http://www2.unog.ch/uncc/resolutio/res687.pdf> (demarcating final border with Kuwait, establishing UNSCOM and requiring IAEA reporting on Iraq’s nuclear program).

266. Resolutions 1302, 1330, 1352, 1360, 1382 and 1409 extended and revised the mandate of the “oil-for-food” program. See S.C. Res. 1409, U.N. Doc. S/RES/1409 (May 14, 2002), available at <http://www2.unog.ch/uncc/resolutio/res1409.pdf>; S.C. Res. 1382, U.N. Doc. S/RES/1382 (Nov. 29, 2001), available at <http://www2.unog.ch/uncc/resolutio/res1382.pdf>.

Iraq for ongoing violations (Res. 1134, 1137); condemn Iraq for halting UNSCOM inspections (Res. 1205); and create a monitoring, verification and inspection commission (UNMOVIC) to replace UNSCOM (Res. 1284). In December 1998 and again in September 2001, United States and British forces undertook sustained targeted air strikes against strategic Iraqi targets, on both of these occasions, the use of force was justified on the grounds of Iraq's ongoing violations of Council resolutions, though no separate Council resolution was obtained for those actions. Notwithstanding the attacks, Iraq refused to readmit U.N.-mandated weapons inspectors whom it had expelled in 1998.

Following the September 11, 2001 al Qaeda attack on the United States, the Bush administration made clear that containment of the Saddam Hussein regime was not enough; if Iraq continued to defy Council resolutions on WMDs, military force should be deployed. The United States described the Iraqi regime as "a grave and growing danger" in January 2002, and began an open campaign to win support for "regime change" in Iraq.²⁶⁷ In his address to the U.N. General Assembly in September 2002, President Bush challenged the U.N. to hold Iraq accountable for its violations of the series of Council resolutions passed after the first Gulf War. Bush made clear that the United States would work with the U.N. on the threat to peace and security posed by Iraq. But he also underscored that the United States would act unilaterally if the U.N. failed to follow the U.S. position.²⁶⁸ Notably, Secretary General Kofi Annan also challenged Iraq to meet its obligations under the "mandatory resolutions adopted by the Security Council under Chapter VII of the Charter . . . for the sake of world order."²⁶⁹ In response, Iraq denied that it possessed chemical, biological or nuclear weapons, insisted that it had complied with Resolution 687, but nonetheless agreed to readmit the weapons inspectors from UNMOVIC and IAEA.

Despite Iraq's readmission of the inspectors, the United States and United Kingdom pushed for a resolution at the Council that should Iraq provide false information to the U.N. or fail to allow full access and coop-

www2.unog.ch/uncc/resolutio/res1382.pdf; S.C. Res. 1360, U.N. Doc. S/RES/1360 (July 3, 2001), *available at* <http://www2.unog.ch/uncc/resolutio/res1360.pdf>; S.C. Res. 1352, U.N. Doc. S/RES/1352 (June 1, 2000), *available at* <http://www2.unog.ch/uncc/resolutio/res1352.pdf>; S.C. Res. 1330, U.N. Doc. S/RES/1330 (Dec. 5, 2000), *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/N00/782/89/PDF/N0078289.pdf>; S.C. Res. 1302, U.N. Doc. S/RES/1302 (June 8, 2000), *available at* <http://www2.unog.ch/uncc/resolutio/res1302.pdf>.

267. President George W. Bush, State of the Union Address (Jan. 29, 2002), *available at* <http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>.

268. *See* President George W. Bush, Address to the United Nations General Assembly (Sept. 12, 2002), *available at* <http://www.whitehouse.gov/news/releases/2002/09/20020912-1.html> (noting that United States "[would] work with the U.N. Security Council to meet our common challenge.").

269. Kofi Annan, U.N. Secretary-General, Address to the United Nations General Assembly (Sept. 12, 2002).

eration with inspectors, such actions would be a material breach of Iraq's obligations under the prior resolutions. Further, the United States wanted the resolution to explicitly authorize the member states (i.e., the United States) to "use all necessary means . . . to restore international peace and security in the area."²⁷⁰ Other members of the Council opposed the proposal, and instead, they pushed for a resolution that would strengthen the inspection regime but would stop short of authorizing force. France, in particular, wanted the Council to meet for a second resolution to authorize force in the event Iraq failed to comply with the new terms. Resolution 1441, adopted under Chapter VII authority on November 8, 2002, was the compromise. The Resolution noted that Iraq was in "material breach of its obligations under relevant resolutions" but concluded that Iraq would "face serious consequences" if it failed to meet the terms set by the Council.²⁷¹

UNMOVIC and IAEA inspectors returned to Iraq in November 2002, and on December 7, 2002 Iraq delivered its report on the extent of its past and present WMD programs. In their reports to the Council in January 2003, the chiefs of the two inspections regimes noted that, while there was no evidence to support claims that Iraq was rebuilding its nuclear weapons program and that they could not confirm that prohibited weapons remained in Iraq, Iraq had not fully accounted for all their WMD-related activities and had not fully complied with the inspections procedures required in the earlier resolutions.²⁷² Despite these mixed reports, the United States seized on the reports as evidence that Iraq was not meeting U.N. requirements and began troop deployments to the Gulf and Kuwait. On February 5, 2003, with U.S. and U.K. troops amassing on the Iraqi border with Kuwait and carriers and battleships moving into position, the Council met to discuss Iraq's compliance with Resolution 1441 and hear evidence presented by U.S. Secretary of State Colin Powell intended to prove that Iraq possessed prohibited weapons and was undermining the inspections regime. The United States requested that the Council pass a second resolution expressly authorizing force. When the United States and United Kingdom failed to garner enough support to carry a majority (even absent a veto), they abandoned efforts to secure a second resolu-

270. See United Kingdom of Great Britain and Northern Ireland and United States of America: Draft Resolution, U.N. SCOR, U.N. Doc. S/2002/1198 (2002), available at <http://www.un.int/usa/sres-iraq.htm>.

271. S.C. Res. 1441, U.N. SCOR, 4644th mtg., U.N. Doc. S/RES/1441 (2002), available at <http://image.guardian.co.uk/sys-files/Guardian/documents/2005/04/28/1441.pdf>.

272. See Dr. Hans Blix, Executive Chairman of UNMOVIC, *An Update on Inspection* (Jan. 27, 2003), available at <http://www.un.org/Depts/unmovic/Bx27.htm>; Iraq Watch, *IAEA Update Report for the Security Council Pursuant to Resolution 1441(2002)* (Jan. 27, 2003), available at <http://www.iraqwatch.org/un/IAEA/iaea-updatereport-012703.html>.

tion.²⁷³ In the meantime, however, the United States secured commitments to participate in military operations from its “coalition of the willing,” which, in addition to the United Kingdom, included Australia, Poland, Spain and Italy.²⁷⁴

U.S. forces began the attack on Iraq on March 19, 2003. Ground forces entered Iraqi territory on March 20, and by April 9, coalition forces led by the United States had taken control of Baghdad. President Bush announced the end of major combat engagements on April 14, 2003, and put in place the Coalition Provisional Authority (“CPA”), which would serve as an occupation government.²⁷⁵ While many in the U.S. administration opposed any role for the U.N. or for any countries that were not part of the coalition in the post-conflict reconstruction of Iraq, President Bush announced in April that the U.N. would have a “vital role” to play in Iraq’s postwar reconstruction.²⁷⁶

Acting under Chapter VII, the Council adopted Resolution 1483 on May 22, 2003, lifting the economic sanctions on Iraq, recognizing the United States and United Kingdom as occupying forces under international law and establishing a U.N. mission in Iraq that would work with the CPA on governance and reconstruction issues.²⁷⁷ Kofi Annan appointed Sergio Vieira de Mello, who had led the successful UNTAET effort in East Timor, to be Special Representative in Iraq and head the U.N. presence there until a permanent U.N. mission could be established.²⁷⁸

On August 14, 2003, the Council passed Resolution 1550, establishing the U.N. Assistance Mission in Iraq (UNAMI). On August 19, a car bomb was detonated in front of the building housing the U.N. mission, killing de Mello and 14 other U.N. officials. The U.N. immediately withdrew its mission and did not return a permanent staff presence in Iraq until February 2004.

273. The United Kingdom offered a compromise resolution setting March 17 as a deadline for Iraq to disarm. Germany, France and Russia rejected the compromise resolution and warned the United States not to attack. See CNN, *U.S., U.K., Spain Draft Resolution on Iraq* (Feb. 24, 2003), <http://www.cnn.com/2003/US/02/24/resolution.text>.

274. For an analysis of additional states contributing troops, see Table 5.1.

275. See Fox, *supra* note 189.

276. See Judy Keen, *Bush, Blair Agree U.N. Role in Iraq “Vital,” Differ on Specifics*, USA TODAY, Apr. 8, 2003, at A.02.

277. S.C. Res. 1483, U.N. SCOR, 4761st mtg., U.N. Doc. S/RES/1483 (2003), available at <http://www2.unog.ch/uncc/resolutio/res1483.pdf>.

278. The resolution requested that the U.N. Special Representative has responsibility for “coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq,” including refugee return, working toward democratic governance, physical reconstruction, promoting human rights, rebuilding civilian police capacity and promoting legal and judicial reform. S.C. Res. 1483, U.N. SCOR, 4761st mtg., U.N. Doc. S/RES/1483 (2003), available at <http://www2.unog.ch/uncc/resolutio/res1483.pdf>.

Full sovereignty was transferred to Iraq on June 16, 2004 and was subsequently recognized by Council Resolution 1546.²⁷⁹ Elections were held in January 2005. The United States continues its military occupation, on the basis of an agreement with the Iraqi government, with over 150,000 troops deployed as of this writing, and maintains a large civilian diplomatic and aid presence that continues many aspects of the CPA and works closely with the Iraqi government.²⁸⁰ The U.N., by contrast, maintains only a few dozen officials in Iraq, and operates a range of programs in Iraq out of other offices in the region.²⁸¹

D. *Preliminary Observations*

An examination of the case data reveals some interesting preliminary observations about how the functions of security multilateralism are carried out by the U.N. (East Timor), by other multilateral organizations (Kosovo) and by states acting alone or in ad hoc coalitions (Iraq). These cases also demonstrate that the labels “multilateral” and “unilateral” are not descriptive of what actually happens on the ground. These observations serve as potential hypotheses for future empirical studies.

1. *No Case Is Purely Multilateral or Purely Unilateral*

The most significant observation drawn from the three cases is that, despite varying degrees of compliance with international law at the military interventions stage, in all of the cases the full range of U.N. security multilateralism functions played an important role. That is, by drawing out the timeline to include assessment, humanitarian assistance and intermediation in all the cases, the U.N. role looms large. Indeed, the U.N. played a much larger and more sustained ongoing role in the pre-military intervention phase in the case of Iraq (the most “unilateral” military intervention) than in East Timor or Kosovo. That may be accounted for by the fact that the 2003 invasion of Iraq was in many ways connected to the 1991 war against Iraq and to the restrictions placed on Iraq as a condition of the 1991 ceasefire (no-fly zones, inspections regimes). Nonetheless, in looking at how the U.N. performed those functions, particularly the assessment and sanctions functions, the result is mixed. The U.N. did quite well in maintaining the sanctions regime despite the scandals surrounding the

279. See S.C. Res. 1546, U.N. SCOR, 4987th mtg., U.N. Doc. S/RES/1546 (2004), available at <http://www2.unog.ch/uncc/resolution/res1546.pdf>.

280. See Michael O’Hanlon & Adriana Lins de Albuquerque, Brookings Inst., *Iraq Index Archive: Tracking Reconstruction & Security in Post-Saddam Iraq*, at 14, available at www.brookings.edu/fp/saban/iraq/indexarchive.htm (last visited Sept. 7, 2005) (stating number of civilian U.S. contractors); *id.* at 19 (stating number of Multinational Force troops deployed); see also SECTION 2207 REPORT ON IRAQ RELIEF AND RECONSTRUCTION (Oct. 25, 2005), available at <http://www.state.gov/p/nea/rls/rpt/2207/oct2005/pdf>.

281. Many of the U.N. programs were relocated to Amman, Jordan. See U.N. Assistance Mission for Iraq (UNAMI), About UNAMI, <http://www.uniraq.org/aboutus/unct.asp?pagename=unct> (last visited Sept. 7, 2005).

oil-for-food program; what the coalition forces discovered, or failed to discover, about the Iraqi weapons program and the capacity of Iraq to pose a military threat in essence confirmed the results of the joint UNMOVIC/IAEA inspections. On the other hand, the U.N. human rights assessment mechanisms failed to capture the full extent of human rights atrocities committed by the Iraqi regime.²⁸²

The most important observation about Iraq is that, despite the unilateral or ad hoc nature of the military intervention phase, Iraq was a core focus of the Council's enforcement powers for over a decade. During that same period, there was no other state—at least no state that was not inflamed in civil war—that received the same level of attention or was subject to more economic sanctions, political oversight or outside intervention than Iraq. Further, Iraq demonstrates that while the military intervention was overwhelmingly (ninety percent) a U.S. operation, it did include troops from a larger number of states than either East Timor or Kosovo. The picture that emerges from the disaggregated Iraq case is therefore more mixed than the narrow view of whether the military intervention itself was multilateral.

East Timor, in contrast, reveals that what is viewed as paradigmatically multilateral has been largely affected by bilateral (East Timor/Indonesia; East Timor/Portugal) relations with the former occupying powers and regional participation in the post-independence phase. One example of this is the failure of Indonesia to fully cooperate in prosecution of Indonesians responsible for atrocities committed during the violence of 1999. On the peacekeeping side, the “universality” of U.N. security multilateralism is in little evidence in the case of East Timor. Troops have been contributed to the UNTAET and UMISET military missions largely from states in the region (Australia, Japan, South Korea, Thailand, Philippines, New Zealand, Bangladesh) and from the former colonial power, Portugal. In terms of post-conflict justice, the U.N. has failed in East Timor to establish an international tribunal to prosecute atrocities committed by the Indonesian government.²⁸³

Kosovo, by contrast, appears to be the most internationalized in terms of the post-conflict prosecution of war crimes as marked by its broad cooperation with the ICTY. For example, Kosovar Prime Minister Ramush Haradinaj resigned his position after he was indicted by the ICTY for his

282. This was largely due to the ability of the Iraqi regime to block efforts to send U.N. human rights investigators into Iraq. See, e.g., U.S. AGENCY FOR INT'L DEV., IRAQ'S LEGACY OF TERROR: MASS GRAVES 2-3 (Jan. 2004), available at http://www.usaid.gov/iraq/pdf/iraq_mass_graves.pdf (describing post-invasion unearthing of over 270 mass graves with remains of over 400,000 people, and noting inability of U.N. and human rights NGOs to gain access to these sites during Saddam Hussein regime).

283. See Seth Mydans, *East Timor Atrocities Will Go Unpunished*, INT'L HERALD TRIB., May 11, 2005, available at <http://www.ihf.com/articles/2005/05/10/news/timor.php>.

actions as commander of the KLA.²⁸⁴ Thus, Kosovo appears, along the measure of multilateralism as conforming to a set of universally recognized principles of justice, to be somewhat more “multilateral” than East Timor.

284. In March 2005, he surrendered himself to the tribunal at the Hague and pleaded not guilty to all thirty-seven counts in the indictment. *See Overview of Court Proceedings Haradinaj Case*, available at <http://www.un.org/icty/news/Haradinaj/haradinaj-cp.htm> (last visited Mar. 23, 2005); *see also Case Information Sheet Haradinaj et al. Case (IT-04-84)*, available at <http://www.un.org/icty/glance/haradinaj.htm>.

2. *Whether the Military Intervention Phase Is U.N. or Non-U.N. Has Little Bearing on the Form and Composition of the Military Operation*TABLE 5.0: COMPARING MILITARY INTERVENTION IN THE CASES²⁸⁵

	EAST TIMOR	KOSOVO	IRAQ
INITIAL CONFLICT PHASE (DATES)	Sept. 1999-May 2002	Mar. 1999-June 1999	Mar. 2003-June 2004
TYPE	U.N.	Regional	Ad hoc
TITLE OF OPERATION	INTERFET Sept. 1999-Oct. 1999 UNTAET Oct. 1999-May 2002	Operation Allied Force	Operation Iraqi Freedom
COMMAND STRUCTURE	UNAMET: U.N. MNF (Res. 1270): Aus. UNTAET: U.N.	NATO	United States
TOTAL # OF STATES	INTERFET: 22 UNTAET: 28	13	48
LEAD STATE	Australia	United States	United States
TROOPS COMMITTED BY LEAD/ (AS PERCENTAGE OF TOTAL)	INTERFET: 5,500 (65) UNTAET: 1,667 (23) (as of Mar. 2000)	23,208 sorties (62)	423,998 (90.1)
OTHER STATES TROOP COMMITMENTS/ (AS PERCENTAGE OF TOTAL)	UNTAET: Thailand 912 (12) Portugal 750 (10) Jordan 705 (9.8) N.Z. 650 (9.2) Philippines 620 (8) Bangladesh 530 (7) All Others (21) ²⁸⁶	France 2,414 (6) U.K. 1950 (5) N.D. 1252 (3) Italy 1081 (2.9) Germany 636 (1.7) ²⁸⁷ Others (19.4)	U.K. 40,906 (8.75) Others (1.15) ²⁸⁸

The legitimacy and fairness rationales for collective military action under U.N. auspices might suggest that U.N. operations are more likely to attract broader participation in and diversity of troop deployment than

285. See Steve Bowman, *Kosovo and Macedonia: U.S. and Allied Military Operations*, CRS Issue Brief For Congress (July 8, 2003), available at <http://www.usembassy.it/pdf/other/IB10027.pdf>; O'Hanlon & de Albuquerque, *supra* note 280; see also Allan Hawke, *Austl. Sec'y of the Dep't of Def., Address to the United Services Institute* (Feb. 2, 2000), available at www.defence.gov.au/media/speechTpl.cfm?currentId=920; *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation* <http://www.whitehouse.gov/news/release/2003/03/20030321>; U.N. Transitional Admin. in East Timor, Office of Comm'n and Pub. Info., *East Timor Update*, (May-June 2000), available at <http://www.un.org/peace/etimor/untaetPU/ETupdateMGE.pdf> [hereinafter *East Timor Update*].

286. See *East Timor Update*, *supra* note 285. Other States and the number of troops they contributed are: Bolivia, 2; Brazil, 57; Canada, 150; Chile, 25; Denmark, 4; Egypt, 75; Fiji, 180; France, 3; Ireland, 33; Kenya, 200; Malaysia, 20; Nepal, 4; Norway, 4; Pakistan, 130; Russia, 2; Singapore, 20; S. Korea, 400; Sweden, 2; U.K., 4; Uruguay, 5; United States, 3.

287. See John E. Peters et al., *European Contributions to Operation Allied Force: Implications for Transatlantic Cooperation* (2001), <http://www.rand.org/publications/MR/MR1391/>.

288. See T. Michael Moseley, USCENTAF, *Operation Iraqi Freedom—By the Numbers, Assessment and Analysis Division* (Apr. 30, 2003), available at http://www.globalsecurity.org/military/library/report/2003/uscentaf_oif_report_30apr2003.pdf.

unilateral or regional efforts. These cases appear to refute that hypothesis. Table 6.0 illustrates this point. The pure U.N. operation, East Timor, went through three different military command structures—U.N., Australian and back to U.N. Kosovo remained a NATO command operation throughout. Iraq was and remains a U.S. command operation. As measured by the *number* of states contributing troops, the NATO operation was the least diverse, East Timor the second most diverse and Iraq the most diverse.²⁸⁹ But measured in terms of *burden sharing*, Kosovo was the most diverse, that is, the burden of troop coverage was more equally dispersed among the contributing states. The INTERFET operation in East Timor was also somewhat more dominated by the leading troop contributor (65% Australian) than Kosovo was by the United States (62%).²⁹⁰ Iraq was the most dominated by the leading troop-contributing state, with 90.1% of the troops contributed by the United States.

There is little or no evidence to suggest that the troop command structure and deployments for Kosovo and Iraq would have been any different had the Security Council authorized those two operations. In Kosovo, NATO was in the best position to be effective in the military intervention phase, for many of the same military reasons that NATO took the lead in the only military intervention that proved ultimately successful in Bosnia. In fact, NATO, under U.S. leadership, was also key to the intermediation phase, in that only the threat of NATO intervention was a credible coercive tool to get Milosevic to the negotiating table. Even if the Council had expressly authorized the intervention, the form of the military intervention phase would not have been any different; it would have been a NATO operation and thus under NATO rules of engagement.

Similarly, all evidence suggests that the Iraq operation would have been substantially similar in composition to the 1991 intervention, with the United States taking the lead and the United Kingdom serving as second coalition partner.²⁹¹ Thus, the objections to Iraq on the grounds that U.S. troops made up 90% of the “coalition of the willing” are not grounded in an argument that rests on either military effectiveness or any requirement under U.N. practice for diversity of troops.²⁹² Moreover,

289. Of course, the United States counted very small troop contributions in the total number of states participating in the coalition, and included troops in non-combat roles.

290. The fact that Kosovo was an air campaign makes comparisons with ground operations or mixed ground/air operations difficult. Sorties were chosen as a data point to reflect a rough measure of diversity and state participation. See Table 5.0.

291. Had they supported the 2003 invasion, France and Germany may have contributed some troops and funding, but it would not have made a material difference on the overall numbers.

292. Indeed, diversity of nationalities of troops at the military intervention and post-conflict stages can be problematic. See, e.g., Ann M. Fitz-Gerald, *Multinational Land Force Interoperability: Meeting the Challenge of Different Cultural Backgrounds in Chapter VI Peace Support Operations*, J. CONFLICT STUD., Spring 2003, at 60.

these “coalitions of the willing” that are observed in all cases appear to be exactly what was contemplated by the Charter.²⁹³

3. *Control of the Military Intervention Phase May Determine Control in the Post-Conflict Peacekeeping and Policing*

These cases further demonstrate that there is a certain degree of “path dependence” in military interventions.²⁹⁴ Once troops are on the ground to prosecute the war or bring about peace, they are likely to stay on the ground in much the same form. Kosovo is a somewhat unique case because the military intervention phase was carried out as an air campaign. Across the three cases, however, the form of the military intervention affected the form of the post-conflict peacekeeping phase. East Timor began as a U.N. operation, and continued as a U.N. operation post-conflict. Kosovo began as a NATO operation, and remained a NATO peacekeeping operation, albeit operating next to a U.N. civilian authority. In East Timor, between the conflict phase and the post-conflict phase, the number of troop-contributing states was reduced from twenty-eight to sixteen. Australia remained, however, the leading troop contributor.

This has important implications for planning future interventions, particularly where the military intervention, as in Kosovo and Iraq, was forcibly resisted by one or more of the parties to the underlying conflict. The party objecting to the presence of the outside interveners will likely continue to object to the presence of those same outside interveners post-conflict. Where neutral, disinterested parties serve as police and peacekeepers, there may be less resistance to implementation of the peace, but the path dependence problem suggests that a change in participants is difficult to achieve.²⁹⁵

293. For a discussion of multilateralism in armed conflict, see *supra* notes 18-136 and accompanying text.

294. Path dependence originated in the economics literature to describe the process whereby even seemingly insignificant historical events can “lock in” or affect future outcomes. See S.J. Liebowitz & Stephen E. Margolis, *Path Dependence, Lock-in and History*, J.L. ECON. & ORG. 1, 1 (1995).

295. A good example of effective neutral peacekeepers is the Sinai Multinational Force and Observer Mission, which operates under a unique, non-U.N. mandate to monitor Egyptian and Israeli compliance with the 1978 Camp David Accords. See *Camp David Accords* (Sept. 17, 1978), available at http://usinfo.state.gov/mena/Archive_Index/The_Camp_David_Accords.html.

TABLE 5.1: POST-CONFLICT MILITARY OPERATIONS²⁹⁶

	EAST TIMOR	KOSOVO	IRAQ
POST CONFLICT DATES	May 2002-Present	June 1999-Present	June 2004-Present
NAME OF POST-CONFLICT OPERATION	UNMISET	KFOR UNMIK	MNF in Iraq
COMMAND STRUCTURE	U.N.	KFOR: NATO UNMIK: U.N.	United States
TOTAL # OF STATES	16	37	28
LEAD MILITARY AND OTHER TROOPS COMMITTED/ (PERCENTAGE OF OVERALL PRESENCE)	Aust. 881 (19) Japan 650 (14) Portugal 647 (14) N.Z. 614 (13) Thailand 498 (11) S. Korea 437 (9) Others (20) ²⁹⁷	KFOR United States 5,400 (14) Italy 4,750 (12.5) France 4,700 (12) Ger. 3,900 (10) U.K. 3,300 (8.6) Russia 3,200 (8.4) Others (34.5) ²⁹⁸ UNMIK POLICE 2003 United States 399-522 India 341-499 Jordan 411-426 Germany 329-363 ²⁹⁹	United States 148,000 (84) United Kingdom 10,000 (5.7) S. Korea 3,597 (2) Italy 3,359 (1.9) Poland 2,359 (1.3) Ukraine 1,587 (0.9) ND 1405 (0.8) Others (3.4) ³⁰⁰

296. See UNMISET, *United Nations Mission of Support in East Timor* (2005), available at <http://www.un.org/Depts/dpko/missions/unmiset/>; see also Kosovo Force (KFOR), <http://www.nato.int/kfor/>; U.S. Dep't of Def., *Iraq Year in Review: 2004 Fact Sheet* (Jan. 21, 2005), available at http://www.defendamerica.mil/downloads/MNFI-Year-in-Review_2004Fact-Sheets.pdf.

297. Contributions as of 31 October 2002. See Report of the Secretary-General on the United Nations Mission of Support in East Timor available at <http://daccessdds.un.org/doc/UNDOC/GEN/N02/675/89/IMG/N0267589.pdf?OpenElement>. As reported by the Secretary-General, other states include: Bangladesh, 7; Bolivia, 2; Brazil, 86; Denmark, 4; Egypt, 2; Fiji, 188; Ireland, 4; Kenya, 2; Malaysia, 36; Mozambique, 2; Nepal, 13; Pakistan, 127; Philippines, 64; Russian Federation, 2; Singapore, 225; Slovakia, 36; Sweden, 2; Turkey, 2; Uruguay, 3; Yugoslavia, 3.

298. Other states include: Argentina, 113; Austria, 480; Azerbaijan, 34; Belgium, 700; Bulgaria, 50; Canada, 50; Czech Republic, 200; Denmark, 700; Estonia, 50; Georgia, 34; Greece, 1,500; Hungary, 322; Iceland, 50; Ireland, 104; Jordan, 100; Latvia, 50; Lithuania, 50; Luxembourg, 50; Morocco, 400; Netherlands, 550; Norway, 900; Poland, 750; Portugal, 329; Slovakia, 40; Spain, 1,100; Sweden, 750; Switzerland, 134; Turkey, 948; Ukraine, 300; United Arab Emirates, 1,100. Steve Bowman, *Kosovo and Macedonia: U.S. and Allied Military Operations, CRS Issue Brief for Congress* (July 8, 2003), available at <http://www.usembassy.it/pdf/other/IB10027.pdf>.

299. Reports of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, March 2003; June 2003; September 2003, available at <http://www.un.org/Docs/sc/sgrep03.html>. Other states include: Argentina, 139-147; Austria, 39-44; Bangladesh, 74-84; Belgium, 1; Bulgaria, 86-99; Cameroon, 20; Canada, 10-22; Czech Republic, 9-16; Denmark, 26-29; Egypt, 60-66; Fiji, 31-34; Finland, 23-34; France, 78-87; Ghana, 31-84; Greece, 18-20; Hungary, 5; Iceland, 1; Italy, 54-58; Kenya, 44; Kyrgyzstan, 4; Lithuania, 8-9; Malawi, 17-21; Malaysia, 17-46; Mauritius, 5; Nepal, 36-38; Nigeria, 26-86; Norway, 19-27; Pakistan, 182-194; Philippines, 61-62; Poland, 122-124; Portugal, 15-20; Romania, 175-183; Russian Federation, 118-126; Senegal, 16; Slovenia, 15; Spain, 11-128; Sweden, 40-42; Switzerland, 9-11; Tunisia, 4-6; Turkey, 161-165; U.K., 128-133; Ukraine, 185-193; Zambia, 6-31; Zimbabwe, 37-64.

300. See U.S. Dep't of Def., *Iraq Year in Review: 2004 Fact Sheet* (Jan. 21, 2005), available at http://www.defendamerica.mil/downloads/MNFI-Year-in-Review_

Iraq is most striking in this regard. There, the “post-conflict” phase is ongoing, and includes major military actions by the U.S.-led Multinational Forces (“MNF”) against a violent and active insurgency.³⁰¹ The initial reason why the United States failed to “internationalize” the post-invasion phase was political opposition within the United States, fueled by bitterness over France and Germany’s successful blocking of the second Council resolution that would have authorized U.S. action. Practical considerations of command structure, familiarity with the theater of operations and troop rotation and training have also played into the decision to keep the troops who prosecuted the military intervention on for the peacekeeping and policing phase. The level of post-invasion violence—at times more fierce than the initial battles that secured the occupation—has also left even prior coalition partners with little domestic support for troop deployments³⁰² and weakening domestic support in the United States.³⁰³ This opposition, ironically, has come at the phase of the intervention that has been at least formally legitimated by Security Council resolution.³⁰⁴

4. *Whether U.N. Security Multilateralism Confers Legitimacy Varies Across Function and Time*

Each of the cases demonstrates that the legitimacy and fairness rationale for preferencing U.N. security multilateralism is vulnerable.³⁰⁵ The cases further demonstrate that the process of securing a Security Council resolution—even one adopted under Chapter VII enforcement powers—may not confer automatic legitimacy. At the same time, those functions that were performed outside the U.N. and without U.N. authority did not automatically become “illegitimate.”

In the case of Kosovo, an international commission of jurists has concluded that the NATO bombing campaign was illegal but legitimate, on the grounds of near-universality of support, the humanitarian values at

2004-Fact-Sheets.pdf. Other states include: Romania, 744; Japan, 565; Bulgaria, 470; Denmark, 392; El Salvador, 381; Australia, 335; Hungary, 301; Georgia, 161; Azerbaijan, 151; Portugal, 135; Mongolia, 132; Latvia, 120; Lithuania, 115; Slovakia, 103; Czech Republic, 98; Albania, 72; Estonia, 47; Macedonia, 33; Kazakhstan, 30; Moldova, 12; Norway, 10.

301. See O’Hanlon & Lins de Albuquerque, *supra* note 285, at 15 (estimating strength of insurgency in Iraq as growing 5,000 in November 2004 to 15,000-20,000 in June 2005).

302. For an example of this, see Spain and the United Kingdom.

303. See, e.g., PEW RESEARCH CTR., AMERICA’S PLACE IN THE WORLD 2005 (Nov. 2005), available at <http://people-press.org/reports/pdf/263.pdf> (opinion poll showing forty-eight percent of American public support Iraq war, forty-four percent oppose).

304. Of course, many of those who opposed the 2003 invasion as illegal do not view ex post endorsements of the occupation as conferring any additional legitimacy.

305. I use legitimacy to mean the creation of a process and result that is viewed as neutral and fair. For a discussion of fairness and legitimacy in multilateralism, see *supra* notes 28-36 and accompanying text.

stake and the fact that a multilateral organization grounded in its own normative principles carried out the intervention.³⁰⁶ In effect, many of the same scholars who ground the legitimacy of the aggregation of the Council's binding authority to decide questions of security multilateralism in the fairness and neutrality that the law confers found themselves arguing that this kind of legitimacy could be conferred outside of the Council context.

First, legitimacy in Kosovo is conferred by NATO itself, a security multilateral organization that follows Ruggie's multilateralism definition: three or more states coordinating their actions according to a set of principles. For NATO, the principles around which the actions of the members are coordinated are identical to the U.N., save one—universality.³⁰⁷ Because its membership is non-universal, it cannot be said to gain legitimacy from membership.³⁰⁸ On the other hand, the fact that democratic governance was a pre-requisite to membership arguably lends NATO a kind of political legitimacy absent in the universal membership of the U.N.³⁰⁹ Second, legitimacy was conferred by the broad support of world opinion behind the intervention, even with three votes at the Council going against it. Third, the prior and subsequent involvement of the U.N. lent it legitimacy. Setting aside the argument that Resolution 1203 could be construed as conferring formal legality on the NATO action after the fact,³¹⁰

306. See KOSOVO REPORT, INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO (Oct. 2000), available at <http://www.reliefweb.int/library/documents/thekosovoreport.htm>. Other observers have reached the same conclusion, and international law scholars have struggled to find a way to argue that, because it was legitimate, it reflected a new, emerging norm in international law. See, e.g., Ruth Wedgwood, *NATO's Campaign in Yugoslavia*, 93 AM. J. INT'L L. 828 (1999).

307. The North Atlantic Charter borrowed liberally from the U.N. Charter in those portions governing the collective security relationship. As Ruggie notes:

There was a direct path from the negotiations over Article 51 of the U.N. Charter, endorsing an inherent right of individual and collective self-defense, to the drafting of the North Atlantic Treaty. The same cast of characters who negotiated the U.N. provision at San Francisco, Gladwyn Jebb on the British side and Senator Arthur Vandenberg on the American side, also sought to ensure that the North Atlantic Treaty would be compatible with it. That accomplishment allowed the United States to operate "within the Charter, but outside the [Soviet] veto," as the Senator liked to say. What is more, Article 51 was not drafted with a future NATO in mind; it was instigated by the Latin Americans to allow for a Latin American regional security organization that was beyond the reach of a U.S. veto in the U.N. Security Council.

MULTILATERALISM MATTERS, *supra* note 16, at 589 (citations omitted).

308. Indeed, it was, prior to the post Cold War enlargement program, intentionally limited to the United States, Canada and the Western European states as a working alliance to balance the threat of the Soviet Union.

309. See, e.g., Helene Sjusren, *On the Identity of NATO*, 80(4) INT'L AFF. 687-703 (July 2004).

310. This is an argument that has no basis in the text of Article 53, which does not contemplate ex post legalization of regional efforts.

legitimacy and legality, as the Commission concluded, may derive from sources outside the Charter.

Kosovo demonstrates that the “legitimacy-enhancing” rationale of current U.N. security multilateralism may be over-valued. From these cases one can observe that actual effectiveness in rolling back the threat to peace and security results in legitimacy—perhaps even more so than legitimacy or perceptions of legitimacy results in effectiveness. Here, the effectiveness of the NATO air campaign led to the later Council resolutions and the willingness of the U.N. to take up the lead in the post-conflict phase.³¹¹ This stands in stark contrast to Iraq, where uncertainty about the nature of the ongoing threat to peace and security and the significant instability following the initial military phase led to a reluctance of further international involvement.

In East Timor, the initial intervention, the elections and the transition to independence were all successful and welcomed internationally. The presence of the U.N. in each of these processes conferred a legitimacy that outside powers acting alone (e.g., the United States as close ally of the former colonial government) could not have done. But the U.N. operation came under fire as it grew from a necessary intervention to supervise the transition to nation building and judicial institution building. The longer any outside post-conflict administration plays a role in core aspects of civil society such as judicial processes, the more the outside actor appears to lose legitimacy. This appears to be the case, as in East Timor, even where the post-conflict operation is founded on broadly supported Security Council resolutions that ground the U.N. civil administration in the law of the Charter. Similarly, in Kosovo six years on, with Kosovo remaining under international administration and violence between Serbs and Albanians on the rise, legitimacy of the NATO peacekeeping and U.N. civilian mission is being questioned.³¹²

In Iraq, the converse is observed. The decision of the United States to intervene without U.N. authority has gained some degree of legitimacy following the Iraqi elections of January 2005 and the adoption of the new

311. One way to illustrate this point is through this counter-factual: NATO begins a bombing campaign against Belgrade and Yugoslav targets in Kosovo. Things go terribly wrong. Blocks of civilian housing are destroyed in Belgrade and bombings wipe out civilians on the ground in Kosovo indiscriminately. Rather than rally to remove Milosevic, Yugoslav public opinion is hardened against NATO and the United States. Even the Kosovar Albanians begin to question the campaign. Would the U.N. have authorized further NATO activities under a Chapter VII resolution? Would the international commission have concluded that the action was “illegal” but “legitimate”? The answer to those questions is undoubtedly no.

312. See Nicholas Wood, *Ambitious Experiment Leads Kosovo to a Crossroads*, N.Y. TIMES, Oct. 3, 2005, at A3 (noting criticism that “the very presence of the United Nations mission, past a certain point, delayed the maturing of Kosovo’s own governing bodies”).

Iraqi Constitution by popular referendum in October 2005.³¹³ Though at the time of this writing the legitimacy was fragile and contingent on a number of factors (including, for example, the ability of the Iraqi Special Tribunal to provide fair and impartial trials of Saddam Hussein and former members of his government for crimes committed during the Baathist regime), this legitimacy was founded not in the procedural neutrality of the decision to invade (which was decidedly not a neutral decision) but in the ability of the intervention to create substantive legitimacy. Success, it seems, not only breeds success, but in the case of international security, breeds legitimacy. In other words, legitimacy is not fixed at the point of Council authorization under its enforcement powers, but is itself a function of the effectiveness of the intervention.³¹⁴

5. *The U.N. Has Comparative Advantage in Assessment, Sanctions and Civil Administration*

As the debate in early 2005 over whether and how much to intervene in the Darfur demonstrates, the Security Council process is not particularly well-suited to the deployment of force in response to fast-moving crises. Only when an interested state or group of states brings its own strategic interests and a commitment to contribute troops to the workings of the Council, does it tend to act. This problem can be traced directly to the failure to establish a military committee as originally envisioned in the Charter as well as the mixed political-legal nature of Council decision-making.³¹⁵ As the cases of Kosovo and Iraq demonstrate, military interventions by ad hoc coalitions can be more effective in carrying out immediate aims (the capitulation of Milosevic, ousting of the Hussein regime) because those interventions take place under unified command structures among states that already cooperate militarily. Similarly, the INTERFET operation in East Timor was, for all purposes, an Australian military operation.

The U.N., however, has capacity and competence in other areas, particularly assessment, sanctions and post-conflict peacekeeping, policing and administration.³¹⁶ This suggests that even where agreement on the rules governing military intervention may be difficult to reach, efforts should be made to improve and strengthen these functions at the U.N.

313. This sense of legitimacy can be evidenced in public statements made by Germany and France following the election.

314. The U.N. has recently recognized this issue. See *A MORE SECURE WORLD: OUR SHARED RESPONSIBILITY, REPORT OF THE HIGH-LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE* (2004), available at <http://www.un.org/secureworld/report2.pdf>.

315. For a discussion of a military committee, see *supra* notes 34 and 119.

316. A recent quantitative study by RAND concluded that the U.N. is, in fact, better at post-conflict civil administration (or "state building") than the United States. See JAMES DOBBINS ET AL., *THE UN'S ROLE IN NATION BUILDING: FROM THE CONGO TO IRAQ* (Feb. 2005), available at http://www.rand.org/pubs/monographs/2005/RAND_MG304.pdf.

Iraq demonstrates, for example, that sustained oversight by the Council of inspections and assessment regimes can result in relatively accurate fact-finding.³¹⁷ In East Timor, the U.N. was extraordinarily successful at assessing human rights violations, humanitarian needs and the modalities for carrying out the election. Kosovo demonstrates that, when an effective regional organization has the capacity to act in assessing threats, the U.N. can usefully piggy-back on those efforts. Sanctions against Iraq were more or less effective in shutting down certain military capacity. The same can be said in Kosovo, although there, the embargoes had the effect of locking in disparities of military capacity between the parties.

In post-conflict administration, the U.N. has done well in securing initial transitions to peace (East Timor and Kosovo), in supporting reconstruction of civil society (East Timor and Kosovo) and in running elections (East Timor, Kosovo and a supporting role in Iraq). One reason why the U.N. may be better at post-conflict civil operations than an ad hoc coalition is rooted in both operational capacity and the legitimacy rationale; those affected by war see the U.N., more or less, as a neutral actor in the reconstruction process.³¹⁸

IV. CONCLUSION

The taxonomy assists in understanding and analyzing the functions of multilateralism in war and demonstrates that the *functions* through which the U.N. organization works in support of that aggregated legal mandate are dispersed and carried out by many bodies. It therefore presents a way to overcome the problem of over-inclusiveness of data and over-ascription of causation and sets out a framework for comparative empirical examination of multilateralism in armed conflicts. International lawyers can benefit from deeper engagement with empirical work that assesses the relative competencies of institutions and actors (unilateral and multilateral) within each of the functions. In that regard, this study is intended to raise observations that can serve as testable hypotheses. It also raises additional questions. How, for example, have the institutional functions represented in the taxonomy been carried out in different types of conflicts, e.g., wars of secession, civil conflict and wars of independence? How can the taxonomy be used in the context of non-state threats to international peace and security, e.g., terrorism and organized crime?

The place to start answering these and other questions is through a function-by-function examination, done against the backdrop of the centrality of legal and normative authority of the Council. From the point of view of reforming the rules and laws of the security multilateralism, em-

317. Additional research on the rules and processes governing intelligence collection and cooperation would be useful in this regard.

318. See Dobbins, *supra* note 316, at xxx (noting that U.N. "has an ability to compensate, to some degree at least, for its 'hard' power deficit with 'soft' power attributes of international legitimacy and local impartiality," whereas United States does not have those advantages when it carries out military mandates).

phasis in future research should be on how, precisely, each of the functions performs against the measure of preventing or shortening wars. In the areas I have identified where the Council's aggregated authority and ability to marshal diverse actors within the U.N.—assessment, sanctions and post-conflict civil administration—future studies aimed at analyzing these functions across a larger set of cases would be useful in identifying problems with either the norms or practice of the U.N.

