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Myths and Misconceptions about the United Nations

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IN THE U.S. NAVY, INSPECTIONS MEASURE READINESS and performance against standard criteria. These evolutions identify problems for correction and provide an opportunity for improvement. They can offer both assessment and prediction, but only when the inspectors understand the criteria and how they influence performance. Analogously, any evaluation of the United Nations, if it is to achieve comparable results, should proceed from a similar foundation—a shared understanding of standard criteria. Let us consider, then, how these familiar practices may be applied to an assessment of the United Nations.

The increasingly prominent role of the UN in American security policy since Desert Storm has not been accompanied by a better understanding of the organization's utility. Myths and misconceptions persist about the organization and its relationship to its members. Left unaddressed, these misapprehensions will prevent full appreciation of what the UN can do. Conversely, criticism of the United Nations—even when richly deserved—will not contribute to correcting problems that reduce or even destroy the organization's effectiveness in matters of international security, unless these issues are clarified and addressed. What must be kept in mind?

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Quite simply, the UN exists to *enhance international security*. Its Charter is the source of its authority in meeting this responsibility; the Charter is oriented wholly to maintaining or restoring international security or to removing the root causes of instability. Few would argue that success has been the norm, the routine, in UN operations—failures are easy to identify. But, as with an inspector, we need to look beyond the simple fact and ask: Why is the UN not successful more often? What exactly is taking place?

Although the UN has not had an impressive record lately, the myths and misconceptions that pervade current discussions are contributing unfairly to the worsening of its reputation. Are assessments based upon valid measures of effectiveness? Can an organization succeed when evaluated against unreasonable expectations? Can corrections be designed if the problems themselves are misunderstood? Can the depth of specific failures be fathomed when their origins are not recognized? Indeed, are the real problems even being identified?

What, then, are the myths and misconceptions about the United Nations? Can they be encapsulated in a number of statements that are widely accepted as true—including by many military officers—but that can be shown to be false?

***Myth**: The UN was founded upon excessive confidence in idealism.* The "Joint Declaration by the United Nations" was signed in Washington on 1 January 1942. It extended the purposes and principles of the Atlantic Charter to twenty-four nations besides the original signatories, the United States and the United Kingdom; six more countries joined by February 1943. Those purposes and principles were incorporated, in evolved and elaborated form, in the UN Charter, which was signed by representatives from fifty-one countries in the San Francisco Opera House on 26 June 1945, to enter into force on 24 October 1945.[1] The realities and priorities that dominated those momentous times were the immediate roots of the United Nations. The Second World War had not yet ended when the UN Charter was drafted and signed. Memory was recent and vivid of the catastrophic failure of the League of Nations in Manchuria and Ethiopia; of Pearl Harbor, the Bataan Death March, the terror-bombing of cities, the battles and destruction on a scale truly without historical precedent; the death of more than fifty million people; and confirmation of the Holocaust.[2] Even as we celebrate the coincidence of the fiftieth anniversaries of the end of World War II and the establishment of the United Nations, it remains clear that values and ideals had indeed been fought for, but while those who wrote the Charter may have approached the future with optimism, the UN was not—could not have been—the product of facile idealism. The framers were tough-minded about their business, which was to design a better system of world affairs.

The Charter of the United Nations was drafted both to be acceptable to the victors of World War II—to succeed where the League of Nations had failed—and to meet the test of time. The document spoke to the highest

aspirations of mankind (in its Purposes and Principles), but it was tempered by the realities of power (as reflected in voting procedures and requirements).[3] Achieving consensus within a world committed to this apparent dichotomy took both deft diplomacy and the confidence not to compromise where steadfast resolution was appropriate. Those who can remember the conferences at Moscow, Cairo, Teheran, Yalta, Dumbarton Oaks, and San Francisco recall the endurance involved in their successes. At the time, those involved saw their negotiating partners as obstinate, intractable, and heavy-handed.[4] Consequently, the Charter they negotiated fully acknowledged that the world was far from unified in its values and priorities, so the Charter incorporated checks and balances. Frequently ineffective during the Cold War precisely because of the checks, the Charter nevertheless has proved on the whole to be resilient and useful. In fact, even the United Nations' limited successes in the early decades of the Cold War—such as the legal maneuvers that brought the United Nations into Korea and the Congo despite the Soviet view of those cases—fostered a limited but real confidence. That assurance produced an ever-increasing list of specialized agencies and organizations, such as UNICEF, that today continue to assist the international community in areas where the UN has proven to be of value.

Myth: *The UN is just a debating society; it has no real authority.* To junior officers on board ship, the question of authority in daily business is real and sometimes perplexing. They soon learn, however, that they possess all the authority necessary to fulfill their responsibilities. This is always true because there is an unbreakable link between responsibility and authority: no one is made responsible to take action who is not invested with the authority to do so. In various circumstances, that authority may be seen to flow from the commanding officer, Navy Regulations, or even their own oath of office. In any case, valid authority proceeds from some source accepted by all as legitimate.

The indispensable connection between authority and responsibility is rarely questioned in the context of the professional actions of a naval officer—but it is less clear with respect to international relations, even though the question of authority is not greatly different in that setting. Very simply, since 1648, sovereign states have been the source of authority.[5] The UN itself is neither an independent international entity nor a supranational authority but a collection of sovereign states that have vested the organization—for certain purposes and with clear limitations—with their authority. Their instrument for doing so is the Charter, which is both a treaty and a constitution that guides, and in some cases compels, the actions of the member states and the United Nations itself.

Although the UN comprises six principal organs, the most significant authority delegated by the member states is exercised by the Security Council. Understanding how the framers shaped the Charter both to empower and

restrain the Security Council dispels false expectations and makes clear what the Council is responsible to accomplish. The member states have vested in it only that authority which is consistent with the formal "Purposes and Principles" and with decisions taken in accordance with the Charter. Specifically, common public expectations of the Security Council most frequently fail to take into account the Charter's requirement for at least a minimal consensus.[6] Absent that consensus, the Security Council lacks authority to act. Situations in which no consensus was formed frequently have been interpreted as failures on the part of the Security Council—or some member of it—to fulfill its responsibilities in times of crisis. In reality, a defeated proposal is a failure to achieve the consensus required for a plan of action to proceed under the collective authority of the sovereign member states. At times, this may be a good thing, as will be discussed later. In any case, the UN cannot be held responsible when there is no authority to act. Again, that authority is what has been granted and specified by the member nations.

There are remarkably foresighted provisions in the Charter regarding such matters as threats to and breaches of the peace; principles of justice and international law; humanitarian concerns; human rights; self-determination of states and peoples; and economic, social, and cultural issues.[7] The UN's record, however, is quite inconsistent on these matters, and obviously not only as a consequence of the Cold War. Inconsistency has been and will be a result of the fact that "the United Nations is a gathering of sovereign States and what it can do depends on the common ground that they can create between them."[8]

Inconsistency is not in itself a problem if it simply reflects the changing desire and will of the member states at different times. However, it can be less than inspiring to observers, and it certainly contributes to the impression that the organization lacks steady authority. This impression is compounded with respect to the United States, which enjoys veto authority as a permanent member of the Security Council (discussed below); the UN cannot act on matters of international security without American agreement or acquiescence. Consequently, it appears to many that the United Nations acts on U.S. authority rather than that the United States acts in cooperation with the collective authority of the other member states.

Myth: *The veto keeps the UN from being effective.* Neither the powers entrusted to the Security Council nor its voting procedures for decision making are well understood. The latter have been depicted in generally negative terms over the years. As early as 1951, commentators and analysts as well informed as Hans Kelsen reported that even the term "veto" was seen as pejorative.[9] Well before the UN became involved in Korea, the proper interpretation of the voting procedures was a subject of important debate. The post–World War II situation in Iran was among the earliest examples where decisions were taken with a

permanent member abstaining.[10] The purpose of according only the permanent members the power to veto a Security Council resolution was to prevent a recurrence of the experience of the League of Nations Council, where even an abstention by any Council member prevented a decision.[11]

Voting in the Security Council is complex. Decisions on other than procedural matters must be made by what has been called a "qualified majority"—the crux of the veto authority worked out at the Yalta Conference.[12] The intent of the qualified-majority approach—which today means that nine votes are required for approval, including affirmative votes or abstentions by all the permanent members (the United States, United Kingdom, France, Russia, and China)—is to ensure that the organization does not make decisions that any permanent member of the Security Council opposes. Clearly, it would not further the maintenance of international peace and security for the United Nations to take decisions that one of these major powers considered inimical to its national interests. Therefore, although the veto has earned much criticism over the years, it probably remains essential if the UN is to continue to enjoy the support of the permanent members. It is fair to conclude that without their involvement the organization would quickly lose any semblance of effectiveness and solvency.[13]

Moreover, the veto protects all member states against the Security Council taking a binding decision that would require them to oppose a major power on an issue of great importance to that power.[14] It likewise protects each major power from underwriting an organization acting against its interests. Ultimately, the veto protects the world from decisions that would undermine both international stability and the United Nations' potential for playing a useful role in facilitating that stability.

Thus the appropriateness of the veto derives from national interests. Member states vest the organization with limited authority to take actions in their mutual interest. The permanent members of the Security Council have interests considerably broader in scope than do most other states. If a proposed resolution is so contrary to the interest of a permanent member as to be blocked by veto, it is also clearly outside the bounds of "mutual interest." Also, the potential consequences to a state of confronting a permanent member on such an issue are themselves not in the mutual interest, or of benefit to the organization. The problem with "parliamentary diplomacy" arises only when that logic is weakened by the capricious use of the veto to wield power that would, or could, not be exercised in any other manner.[15]

The states entrusted with the veto already possess influence over world affairs commensurate with their veto authority. That is, the permanent members are presumably able to ensure that their national interests prevail whether they hold the veto or not; having that assurance, they at least lose nothing by restricting

themselves, by and large, to pursuing international goals within the United Nations or in a manner consistent with the Charter. Those nations can accordingly be expected to bring their considerable influence to bear when the expectations of the Charter are not fulfilled. The Security Council's permanent members certainly possessed such leverage at the end of World War II, when the Charter was drafted and they willingly accepted the additional responsibilities it placed on them.

If today, however, the Council's permanent members no longer command so great an influence, the logic of entrusting them with the veto is less sound. Of course, alliances, alignments, and political, economic, and even ideological issues must be considered in addition to the more easily measured and understood indicators of national power. On the other hand, if all the potential advantages of the veto are to be realized, full account must be taken of the current and emerging status of other member states. If and when other states command such leverage and are prepared to accept the burdens of permanent Security Council membership, perhaps they also should enjoy the veto—without it, and were their influence ignored in Council decisions, the dangers the veto is supposed to prevent could arise.

Like so many complex matters, all this is easy enough to say as a matter of reasoning. Yet probably no one could set forth the intricate combination of the elements of national power that would unmistakably identify those nations having such stature that they should hold the veto. World War II made such a formula unnecessary with respect to the original permanent members; peacetime politics lack such clarity.[16]

Another facet of disillusionment with the veto also warrants inspection. In recent years a well intentioned but wholly unfortunate idea seems to have arisen that Security Council members are not entitled to disagree. A legacy of the apparently capricious casting of the veto for ideological reasons during the Cold War, which was believed to prevent the UN from fulfilling its intended role, this view now frames a different but no less damaging mindset. Disagreement is an important element in the search for clear vision. The process of discussing disagreements yields perspective on the problem and limits the potential courses of action to those that will promise success. Acknowledging disagreement causes adjustment to reality; choosing to ignore differences in order to preserve the appearance of agreement calls to mind the tale of "the Emperor's new clothes." Certain recent "agreements" reached in the latter way in the Security Council certainly could be said, like the emperor of fable, to have failed to prepare fully for the task at hand. Before nations accept onerous responsibilities and bring significant power to bear in good-faith efforts to make a better world, they should discuss and examine every important perspective, frankly and fully.

Criticism of the United Nations for failing to solve a particular international problem assumes (besides, erroneously, that all problems have solutions) that a consensus exists about which party is wrong and how the matter should be solved. That is simply not always the case. After all, if the parties to the dispute can legitimately disagree, so can the members of the Security Council. Plainly stated, they retain the sovereign authority to disagree—and the sovereign authority to be wrong. So it is not necessarily inappropriate, although it may be disappointing, for the Security Council to fail to achieve consensus. This is not, by the way, to say that it is always wise to act on consensus that *can* be reached; if the consensus view cannot be expected to lead to success, it does not justify action.

The authority of the UN can be exercised only when there is agreement about what to do and the collective political will to do it. At some point a threshold of tolerance is crossed allowing the level of consensus necessary for an effective response in pursuit of justice.[17] That threshold was obviously met for Desert Storm; it has still (at this writing) not been crossed in the Balkans.[18]

To characterize that threshold would be difficult indeed, involving perhaps some elaborate formula relating the issues to the nations involved and the principles at stake. For example, Argentina's attempt to seize the Falklands (Malvinas) was rejected in Security Council Resolution 502, whereas China's effort to perfect its claim to the Spratly Islands has been met in an entirely different manner; the same principles applied in different situations brought different reactions, indicating different thresholds of tolerance and a different balance of priorities.

Myth: *The UN costs too much.* Perhaps this complaint is legitimate—though if so, only recently. It certainly gained impetus from the explosion of peace-keeping operations in the wake of the Cold War. If all the proposed peace-keeping actions in 1994 had been approved by the Security Council, manned by the member states, and funded by the General Assembly, the bill would have exceeded $4 billion.[19] The United States would have paid over 30 percent of that cost. In fact, of course, only a fraction of the possibilities were carried out by the United Nations.

As it is, the United Nations is undoubtedly an expensive undertaking. If its operating costs were to soar higher, the impact on the U.S. federal budget would make impossible much of what Congress has been convinced should be done about vital national concerns. Obtaining additional funding for UN activities would require Congress to show greater confidence in the UN than recent events would seem to justify.

Consider, however, the UN price tag from another perspective. The peace-keeping portion of the UN budget reflects the costs of military operations in response to threats to peace affecting all member states. That is, it reflects the

costs of global responsibilities. Certainly there is waste in the UN budget, and it is more than reasonable to expect that the organization should quickly reduce it. In the meantime, however, in view of the importance of the issues at stake, the overall cost appears sobering but not unreasonable. Again, the real problem seems to arise when the projected costs are measured against results to date. Improving results could cost even more, at least at first. But the price of *success* in international peace is rarely an issue; it is always money well spent. On the other hand, the cost of failure is never low enough. To spend money, time, effort, and lives in half-hearted futility achieves nothing, nor does it preclude the more terrible consequences of war.

***Myth**: The Geneva Conventions do not apply to all UN peace operations.* Anyone harboring this baseless concern should consult the documents. The four Geneva Conventions of 1949 have Articles 2 and 3 in common; their combined effect is to extend the protections of the treaties to the broadest possible characterization of armed conflict.[20] The Conventions apply to all military activities with which the United States might occupy itself, "even if the said occupation meets with no armed resistance."[21] They also apply to conflicts "not of an international character" that take place within the territory of a party to the treaties.[22] Whether a "war" exists is no impediment to the application of the Geneva Conventions.

Moreover, the Security Council has no authority to act unless it determines that a threat to or breach of international peace exists; that threat, however, may be perceived entirely within the boundaries of a single sovereign state.[23] Of course, if the Security Council were to decide to place or permit foreign forces on the territory of a state, the conflict would thereby gain an international character; in either case, the Conventions apply.

There are few states that are not parties to the Conventions.[24] Many of these—for example, the fragments of the former Yugoslavia—would be bound as successor states to observe the Conventions unless they formally renounce them.[25] Accordingly, that the armed forces of the United States would be introduced into a location or situation in which the Geneva Conventions did not in some way apply is unlikely. If such a situation did exist, the Security Council could stipulate the application of Geneva (and Hague) Conventions through the very resolution that authorized the deployment of forces. Such direction by the Security Council then would carry the same legal authority as the treaties themselves.[26] While parties to a conflict cannot be made to comply with the Conventions, they can be held accountable for transgressions. Finally, since the UN itself commands no armed services, its troops—who are not "stateless" but forces of member nations—enjoy the protection of the Conventions by virtue of the fact that their nations are parties to them. Participation in these Conventions is already so wide that it would be difficult to argue that they

do not constitute an obligation in all cases, on all parties, under international law.

It is a fact that situations have occurred in which states have argued that the Geneva Conventions did not apply—but such arguments strain credulity. Treaties are to be interpreted according to the ordinary sense of their wording.[27] The language of the common Articles 2 and 3 of the Geneva Conventions would have to be distorted indeed to define an instance in which they did not apply.

Finally, any proposed operation deemed to be outside the protections and obligations of the Geneva Conventions would probably be seriously, and properly, questioned. In the United States, the Constitution considers treaties to be "the supreme Law of the Land";[28] it would surely be grotesque if those sworn to defend the Constitution were not protected by that law—but there is no substantial prospect of any such thing. The circumstance would be too extraordinary, its likelihood too remote, to warrant weight in the forming of U.S. policy.

***Myth**: When an international security problem arises, the UN should help solve it.* Each international dispute has its peculiarities and characteristics; not all lend themselves to solution through the United Nations. Experience suggests that only those for which consensus is sustainable throughout the implementation of a solution are amenable to direct Security Council action. Some disputes might be referred to mediators or lend themselves to other peaceful settlement methods consistent with the Charter.[29] Others resist solution but so threaten escalation that some action is required even at the risk of yet worse consequences.

Consensus in the Security Council must answer the demands of both international and domestic politics. Achieving that may be easier now than at any other time since the end of World War II, but it is by no means easy. For example, a nation having no other recourse is likely to seek the support of the United Nations. Such a case will, by definition, present the greatest possible demands on the resources and the political will of that organization's member states, so it will be the most difficult for which to achieve agreement about effective action. Given that agreement, moreover, the Security Council will probably find it necessary to request that the General Assembly vote additional funds to support the action decided upon. Accordingly, national representatives must explain at home why the extra funds should be made available. In essence, this process requires a solution consistent with the values, priorities, commitments, and abilities of all concerned. The more significant the proposed action, the more problematic the prospects become—with the unfortunate result that the UN frequently finds itself in the "do *something*" dilemma. An action taken to assuage the urge to act somehow but that offers no promise of at least improving matters (as is likely, since it necessarily reflects only the "lowest common denominator") can actually make them worse. Some would interpret

such action as a decision not to compel an offender to reverse a wrong, and it only compounds the difficulty later of extracting political commitments from delegations that must now explain at home the investment in failure.

***Myth**: The UN is dominated by the permanent members of the Security Council.*[30] There are ten non-permanent members of the Security Council, and any seven of them could block a decision sought even by all five permanent members; but that has never happened. In fact, Security Council decisions have been blocked only by permanent members exercising their veto authority. The implication should be that the ten states elected to the Security Council (each to represent a region) have decided—at least frequently enough to meet the Charter's requirements—that it was in their own interest, and presumably their region's, to agree to proposed Security Council resolutions when no permanent member opposed them. The rationale by which they define those interests may be wrong-headed, illogical, short-sighted, misguided, cynical—or precisely correct. That is really not at issue. They each have sovereign authority to make their own political decisions, upon their own criteria, and to cast their votes.

If a certain member state, having been unable to convince seven of the Security Council's non-permanent members to side with it on some dispute, is disappointed by a decision taken by the Council, nothing therein is inconsistent with the Charter it accepted when it joined. Since no state has withdrawn from the organization over disagreement with Security Council decisions, we may conclude that even those who make this complaint see it as in their interest to belong to the UN.

That there is an imbalance of influence under the Charter regime is itself reasonable. In theory, considering the reasons for the Charter's solicitude for the Council's permanent members, the non-permanent members might even enjoy (through the seven-of-ten rule) disproportionate leverage. True, the regional distribution criterion by which they are elected to the Council was devised to make it unlikely that any seven could join and work their collective will outside the framework of "parliamentary diplomacy."[31] Notwithstanding, the Charter does so empower them, through collective action—which they have not exercised. Therefore, if on a specific issue the permanent members of the Security Council dominate the UN, it is with the considered acquiescence of the rest of the member states.

***Myth**: "The UN directed the United States to. . . ."* In truth, this simply does not happen. Owing to the veto authority of the United States as a permanent member of the Security Council, the UN can levy only those requirements that are specifically acceptable to this nation. It is true that the General Assembly can require certain financial assessments even when the United States voted against the assessment.[32] However, even this authority can be avoided, by withdrawing from the organization.

Membership in the UN has not encumbered the sovereign authority of the United States. Claims to the contrary are either less than candid or reflect an underestimation of that authority and inappropriate deference to the UN—false assessments that the American population as a whole does not seem to share. If the government cannot gain domestic support for cooperation with the United Nations, to claim that it has been compelled by the organization does not help; it is more likely to inflame domestic opposition to that and future UN-associated actions.

But more important—and fully refuting this myth—is what agreement with the UN on an issue means *for* U.S. sovereignty. Working with the UN is simply a formal procedure for cooperating with other states. When it does so, the United States loses no part of its sovereignty. Member governments do not surrender their sovereignty to the UN; they *invest* their sovereignty *in* it.

This is no rhetorical nicety: working with and through the UN is a "force multiplier," not a loss but a gain. It offers the United States the opportunity to define publicly a diplomatic or legal position, and in a setting that tends to align, as we have seen, other sovereign states in support. It is likely that in the UN the opponent can be isolated and stigmatized as having violated some aspect of the Charter, as having gone back on its solemn word—transforming what, from other viewpoints, might have been a purely partisan or ideological dispute into a matter of good faith and obligation.

When the use of force is anticipated, the UN structure at least influences states to avoid interference and could even effectively compel them to help.[33] The result is more likely to be a coalition or alliance framework that both offers economies of force and reduces the ability of the target state to enlist allies of its own.

Even when there is disagreement with the American position in the Security Council or General Assembly, the character and scope of the opposition can become clear and, accordingly, the scale of effort required to prevail can be more accurately estimated. This ability to count potential costs in advance can assist in choosing tools of statecraft to protect national rights and interests in the dispute.

In any case, in working with or through the UN the United States surrenders nothing that it could do independently except those options it is willing to forego to enlist assistance or agreement to an even more attractive course. If in a given case a course of action is decided upon by the Security Council that is not actually in the national interest, that is a failure on the part of those who negotiated the issue for the United States, not of the United Nations.

When, then, is it best for the United States to pursue a solution with or through the United Nations? Clearly, if the collective authority and resources

of the UN can be brought to bear, the various costs to the United States are reduced, domestic consensus is easier to attain, and the legitimacy of the complaint is confirmed. Gaining such cooperation or endorsement is a matter of framing and obtaining a favorable Security Council decision. There are a number of questions any state would need to answer in deciding whether to address a crisis unilaterally or through the UN (or perhaps a regional organization as provided for in the Charter).[34] A sampling of questions that might be useful for the United States is offered as an appendix.

The years that have passed since the United Nations won great favor by sanctioning the U.S.-led coalition against Iraq have produced a confused and generally uninformed view of its Charter. The recent flurry of American involvements in high-profile UN decisions and operations have been disappointing indeed. If the nation is to remain engaged with its treaty partners, avoid further failures, and get the most out of its investment in this instrument that was specifically designed to improve international security, it is essential that the fundamental nature of national obligations to, and the authority of, the United Nations be properly understood.

The ability of the UN to fulfill its goals will depend, in part, on the ability of those who represent the member states to use the tools and methods authorized, endorsed, conceded, or at least not prohibited by the Charter. As the world moves inexorably away from the global constructs of the Cold War, the United Nations faces a critical period quite different from any in its history. The balance and flexibility of its Charter are sufficient to meet this new challenge—but only if those who must make the required decisions enjoy domestic support. To that end, the United States needs to base understanding of the United Nations on firmer ground than myth; but it also needs to see more effective realization of the UN's potential. Without such evidence of the ability to succeed, the UN's opportunity to try will be withdrawn. If that happens, some of these myths will have become self-fulfilling prophecies.

Resorting to the United Nations

The questions below apply in general to any issue involving national security policy. In some cases, a different order might be useful. Obviously, each option has costs as well as benefits, all of which must be considered by policy makers attempting to achieve goals reflecting national priorities. This is not an easy task; neither is it an escapable one.

Concerning the United Nations, one might ask:

- Will resort to an international authority establish a precedent that is not in the broad interests of the United States? That is, can the nation accept

the costs, for instance, of reciprocity, the establishment of precedent, and so on?

• Is there benefit in attempting to use the peaceful methods of resolution listed or implied by Chapter VI of the Charter?

• Should the United States deal with the matter multilaterally through an ad hoc coalition, work through a third party, negotiate bilaterally, or simply act unilaterally?

• Could the International Court be asked to deliver an advisory opinion or order "provisional measures" (more frequently referred to as "interim measures") that would strengthen the U.S. position if it does resort to the Security Council? If so, among the questions to be considered are, first, what is the likelihood that if the United States sought such an opinion or order from the Court that it would fail? Would such a loss be acceptable? If an adverse ruling were ignored, would the loss of credibility be acceptable to the Court itself? Second, does time permit that option? Can it be taken concurrently with other actions? Third, will the Security Council support enforcement of the Court's interpretation? And fourth, will the Court's ruling strengthen the authority for unilateral action?

• Does the issue call for or permit action by the United States under Article 51? If so, is a collective security response required? Would such a response be useful? Is the use of force appropriate? What political, military, geostrategic, or economic costs would result from the use of force?

• Does the issue, in itself, involve an expectation that the United States will resort to the UN or treaty partners in order to keep an obligation or promise? That is, was the promise, or is the treaty provision, explicit? Is the treaty bilateral or multilateral? Have unforeseen disadvantages appeared that make the original treaty provisions adverse? What are the costs of ignoring, abrogating, violating, or failing to fulfill the obligation? What might reciprocal responses involve? What would the reactions of other states be?

• Is the position of the United States consistent with the Principles and Purposes of the Charter? Will the other permanent members agree? Will the majority of other member states agree?

• Will U.S. security policy be furthered by resort to the UN, or by the involvement of the international community? Or would it be constrained by competing interests or by the difficulties inherent in consensus-building?

• Is the issue a clear and present danger to the security of the United States—i.e., its domestic tranquility, citizens, territory, rights, property, or vital interests?

• Does the issue represent a threat to or breach of the international peace? Do other nations recognize the issue as either a direct or otherwise

important threat, or a precedent for one, to themselves? Can a qualified majority be achieved in the Security Council to take appropriate and effective action against the threat? Can a regional organization be called upon to take Chapter VIII action to avoid the possibility of failure to attain a qualified majority or consensus in the Security Council?

Notes

1. Louise W. Holborn, ed., *War and Peace Aims of the United Nations: September 1, 1939-December 31, 1942* (Boston: World Peace Foundation, 1943), p. 1. See also *Department of State Bulletin*, vol. 6, p. 3, "Declaration of Principles, Known as the Atlantic Charter, 14 August 1941," in Holborn, pp. 2–3. See also *Department of State Bulletin*, vol. 5, p. 125; and 236 U.S. Executive Agreement Series, p. 4.

2. For war losses, H.P. Willmott, *The Great Crusade: A New Complete History of the Second World War* (New York: Maxwell Macmillan International, 1989), p. 477. Willmott's figures count only the war's dead; he considers them an underestimation.

3. Charter of the United Nations with the Statute of the International Court of Justice annexed thereto [hereafter "Charter"]. Entered into force 24 October 1945: 59 Stat 1031, TS 993, Bevans 1153. Amendments ratified 17 December 1963: 16 UST 1134, TIAS 5857, UNTS 143; 20 December 1965: 19 UST 5450, TIAS 6529; 20 December 1971: 24 UST 2425, TIAS 7739. Chapter I, Articles 1 and 2.

In brief, the Purposes are: maintenance of peace and security—including the prevention and removal of threats, suppression of acts of aggression, adjustment or settlement of international disputes, strengthening universal peace, and furthering international cooperation. The Principles include sovereign equality, fulfilling the obligations of membership, peaceful settlement of international disputes, refraining from the threat or use of force against the territorial integrity and political independence of states, cooperation with UN efforts for prevention and enforcement, the responsibility even of non-members not to threaten the peace, and avoiding interference in the domestic matters of member states except when international peace and security are threatened or breached.

For voting procedures and requirements, see Charter, Articles 18, 19, 27 (which deals with the Security Council), 67, and 89.

4. For a detailed discussion of the international negotiations and the U.S. view, see Ruth B. Russell and Jeanette E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945* (Washington, D.C.: The Brookings Institution, 1958). For the specifics of the Yalta Conference see U.S. Department of State, *Foreign Relations of the United States, Diplomatic Papers, the Conferences at Malta and Yalta* (Washington: U.S. Govt. Print. Off., 1945).

5. The Peace of Westphalia, concluded in 1648, established the current nation-state system.

6. Charter, Article 27 (3).

7. Ibid., Preamble and Chapter I.

8. Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Security Council on 31 January 1992 (New York: United Nations, 1992), para. 2. See also Security Council, S/PV.3046, 31 January 1992 (Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting), p. 144.

9. Hans Kelsen, a prominent international legal scholar, and the first holder of the prestigious Charles H. Stockton Chair of International Law at the Naval War College in 1953, had other insights into the United Nations as well. The author studied with the late Professor Leo Gross, who worked in the Secretariat of the League of Nations, helped to craft the UN Charter, and married Hans Kelsen's daughter, Gerta. Professor Gross was another early Stockton Professor.

10. Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (London: Stevens & Sons, 1951), pp. 239–43; see especially the explanatory notes.

11. See the Covenant of the League of Nations, Article 5 (1). Since the 1965 amendments enlarging it, the Security Council has been composed of fifteen members. The five permanent members are the victorious major powers of World War II or, in the cases of Russia and the People's Republic of China, their successor states. The others are elected for two-year terms by the General Assembly from among all UN members in good standing. A regional quota system, not addressed in the Charter, ensures geographically representative membership.

12. See communique signed at the Yalta Conference (11 February 1945), in U.S. Department of State, *Foreign Relations of the United States.*

13. Quite another question is the matter of voting on procedural issues, which require only an affirmative vote of nine members; here the veto and "qualified majority" do not apply. Much important diplomatic work is conducted concerning these "procedural issues." The agenda of the Security Council, for example, is voted on as a procedural matter. Such a vote can determine, how, when, and even if a question is to be dealt with. For a more thorough discussion of Security Council voting and procedures, see Sydney D. Bailey, *The Procedure of the UN Security Council*, 2nd ed. (Oxford, U.K.: Clarendon Press, 1988).

14. Charter, Article 25.

15. See Philip C. Jessup, "Parliamentary Diplomacy: An Examination of the Legal Quality of the Rules of Procedure of Organs of the United Nations," in Academic de Droit International, *Recueil des Cours*, vol. 89, 1956 (The Hague: A.W. Sijthoff, Leyden, 1957), pp. 181–320.

16. See the Charter, Chapter XVIII, Articles 108 and 109. Two-thirds of all member states including the current permanent members of the Security Council would have to vote for, and then *ratify* nationally, any change to the Charter. That is, not only do the UN delegations of the permanent members enjoy veto authority over such a change, but their national legislators do as well. This formula makes it highly unlikely that any permanent member will lose its status.

17. Ibid., Articles 1 and 2 (3).

18. For the crisis in the Balkans there is no clear political consensus in the Security Council on basic questions such as: Is there aggression by one party against another? Is there a clear rationale for establishing borders for the recognized states? Is genocide in progress? Is the political leadership of these nascent states sufficiently in control of their populations to guarantee compliance with agreements to which they become parties? What enforcement actions are required and appropriate to bring the fighting to an end? Do the parties who have accepted peace-keepers want to stop fighting?

19. Chapter IV (Articles 9 through 22) of the Charter deals with the composition, functions, and authority of the General Assembly and its relationship to the other organs of the UN. The General Assembly establishes the budget and assigns assessments to the members. These assessments vary widely and are based upon economic ability above a minimum level.

Decisions in the General Assembly, on a list of issues defined as "important matters," require a two-thirds majority of those present and voting. Other questions, including the addition of "important matters" to the list, are decided by a simple majority. Members in arrears of their dues can lose their voting privileges.

20. TIAS 3362, UST 6, pp. 3114–216 (Convention I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field); TIAS 3363, UST 6, pp. 3217–315 (Convention II: Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea); TIAS 3364, UST 6, pp. 3316–515 (Convention III: Geneva Convention Relative to the Treatment of Prisoners of War); TIAS 3365, UST 6, pp. 3516–695 (Convention IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War)—all dated 12 August 1949 [hereafter "Geneva Conventions"]. Also in Dietrich Schindler and Jiri Toman, eds., *The Laws of Armed Conflict: A Collection of Conventions, Resolutions and Other Documents*, 2nd ed. (Rockville, Md.: Sijthoff & Noordhoff, 1981), pp. 305–31, pp. 333–54, pp. 355–425, and pp. 427–88 respectively, and pp. 299–523 inclusive for the attendant documents and listings of reservations by the parties.

In Article 2, which is identical in each Convention, the parties agree that:

> In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
>
> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3, which is also common to all of the Conventions, extends their provisions even "in the case of armed conflict not of an international character in the territory of one of the High Contracting Parties. . . ."

21. Geneva Conventions, Article 2.

22. Ibid., Article 3.

23. Charter, Article 2(7) includes two provisions, of which the first prohibits interference and the second provides an exception to the prohibition. The text reads: "Nothing contained in the current Charter shall

authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." Chapter VII deals with threats to and breaches of the peace and the authority to take enforcement action.

24. U.S. Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 1993*, Department of State Publication 9433 (Washington: U.S. Govt. Print. Off., June 1993), pp. 389–91, lists 174 parties.

25. Yugoslavia was a party. See ibid., p. 390.

26. Charter, Articles 2 (5) and 25.

27. See Article 31 (1) of the Vienna Convention on the Law of Treaties, 1155 UNTS 331; and American Law Institute, *Restatement of the Law: The Foreign Relations Law of the United States*, 2 vols. (St. Paul, Minn.: American Law Institute, 1987), at §325 (1).

28. U.S. Constitution, Article VI.

29. See Charter, Article 33 for a partial list, and also United Nations, *Handbook on the Peaceful Settlement of Disputes between States* (New York: United Nations, 1992), for a more detailed treatment.

30. This complaint was almost universal among the International Fellows from the National Defense University and the Inter-American Defense College students who have taken the author's courses at the National War College. It was also a common lament among attendees at a number of conferences at which the author has addressed UN issues.

31. See General Assembly Resolution 1991A (XVIII) of 17 December 1963; and Bailey, pp. 111–2.

32. Charter, Article 17. This "power of the purse" invested in the General Assembly is a most significant one. Failure to pay assessments can be cause for loss of voting rights or even dismissal from the organization. Over the years many nations have fallen behind in their assessment payments—including the United States. Some have withheld payments for internal political reasons or because those assessments were to support an operation or action they had opposed. The International Court of Justice, in its decision in the "Expenses Case," has made clear that these states are still obliged to make payment; nevertheless, members continue to fall behind. With UN operations being undertaken on an unprecedented scale and at unprecedented cost, a financial crisis is imminent. See International Court of Justice, *Reports, Judgements, and Advisory Opinions (1962), Certain Expenses of the United Nations*, p. 151; the ICJ Report is also digested in William W. Bishop, Jr., *International Law: Cases and Materials*, 3rd ed. (Boston: Little, Brown, 1962), p. 262.

33. Charter, Articles 2 (5) and 25. While it is legally possible to compel a state's behavior through authority derived from Article 25, it would not seem a good or credible strategy. Enforced neutrality, however, could pay dividends.

34. See Charter, Chapter VIII.

Ψ

Truth lies within a little and certain compass, but error is immense.

Henry St. John,
Viscount Bolingbroke