

10-1-1995

While the United Nations Slept: Missed Opportunities in the New World Order

Patrick Reilly

Recommended Citation

Patrick Reilly, *While the United Nations Slept: Missed Opportunities in the New World Order*, 17 Loy. L.A. Int'l & Comp. L. Rev. 951 (1995).

Available at: <http://digitalcommons.lmu.edu/ilr/vol17/iss4/10>

This Notes and Comments is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles International and Comparative Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

WHILE THE UNITED NATIONS SLEPT: MISSED OPPORTUNITIES IN THE NEW WORLD ORDER

I. INTRODUCTION

Throughout human history, philosophers, politicians, and diplomats have contemplated securing a more permanent peace. Seldom if ever have the nations of the world had lasting peace within their grasp. Now is such a time.

The high hopes of the day have been expressed in the form of building a “new world order”¹ to make the planet “freer from the threat of terror, stronger in the pursuit of justice and more secure in the quest for peace.”² The new world order, however, is more than an aspiration for a safer planet. It is an opportunity to reshape collective security in a rapidly changing world. It is a process as well as a result.³

A. *Development of Collective Security*

This unified world concept is not new, and it has evolved over the centuries.⁴ The “Pax Romana”⁵ served the civilized western

1. Dan Oberdorfer, *Bush's Talk of 'New World Order': Foreign Policy Tool or Mere Slogan?; Arguments Over Meaning Reflect Struggle to Define U.S. Approach*, WASH. POST, May 26, 1991, at A31. President Bush and his national security advisor Brent Scowcroft crystallized their concept of the new world order during a four-hour fishing trip near Kennebunkport, Maine, on August 23, 1990. *Id.* Soviet President Mikhail Gorbachev had previously used the phrase in an address to the U.N. *Excerpts From Gorbachev's Speech*, WASH. POST, Dec. 8, 1988, at A32.

2. *Bush: Out of These Troubled Times . . . a New World Order*, WASH. POST, Sept. 12, 1990, at A34.

3. President Bush characterized the new world order as both an end and a means to an end, stating:

We have a vision of a new partnership of nations that transcends the Cold War. A partnership based on consultation, cooperation, and collective action, especially through international and regional organizations. A partnership united by principle and the rule of law and supported by an equitable sharing of both cost and commitment. A partnership whose goals are to increase democracy, increase prosperity, increase the peace, and reduce arms.

President George Bush, Address to the U.N. General Assembly (Oct. 8, 1990), *quoted in* HENRY KISSINGER, *DIPLOMACY* 804-05 (1994).

4. Columnist William Safire traced the origin of the phrase “new world order” back to the poetry of Tennyson, who, in 1842, wrote of the death of King Arthur: “The old order changeth, yielding place to new.” Oberdorfer, *supra* note 1, at A31.

world for several hundred years as the Roman Empire preserved peace, albeit in the form of imperial universality.⁶ Imperial universality is achievable, however, only through the use of aggressive military force.⁷ As a result, the doctrine of a world empire has been long considered both impractical and undesirable.⁸

Eventually, the notion of co-operative universality,⁹ based upon the principle of equality among nations, took hold. In 1815, at the end of the Napoleonic Wars, the nations of Europe established a long-lasting peace at the Congress of Vienna.¹⁰ One century later, upon the conclusion of World War I, a unified body of sovereign countries created the first universal peace organization, the League of Nations.¹¹ Championed by Woodrow Wilson, the League assumed the duty "to organize the vital forces of the world in support of peace, security and human welfare."¹²

Sustaining hard-fought global peace, rather than merely contemplating it, proved to be a more elusive task. U.S. isolationism, economic collapse, and the League of Nations' failure to respond to totalitarian encroachments ultimately doomed Wilson's promising experiment.¹³ In particular, the impotence of sanctions against Italy made it clear that the League had failed, and that war would return.¹⁴

Ironically, the U.N. grew out of a wartime coalition.¹⁵ As

5. The Latin word "pax" signifies a "period of international history characterized by an absence of major wars and a general stability of international affairs usually resulting from the predominance of a specified political authority." WEBSTER'S NEW INTERNATIONAL DICTIONARY 1658-59 (3d ed. 1986).

6. GEORG SCHWARZENBERGER, *THE LEAGUE OF NATIONS AND WORLD ORDER* 7 (1936).

7. *Id.* at 10.

8. *Id.* at 10 n.1.

9. *Id.* at 10.

10. See Boutros Boutros-Ghali, *Maintaining International Peace and Security: The United Nations as a Forum and Focal Point*, 16 LOY. L.A. INT'L & COMP. L.J. 1 (1993).

11. FRANCIS P. WALTERS, *A HISTORY OF THE LEAGUE OF NATIONS* 4 (1967).

12. LELAND M. GOODRICH & EDVARD HAMBRO, *CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS* 3 (World Peace Foundation 1949).

13. *Id.* at 3-4; WINSTON S. CHURCHILL, *THE SECOND WORLD WAR, VOL. I: THE GATHERING STORM* 12, 83 (1948). Churchill felt that, as late as 1934, the League of Nations would have been an "august instrument" in bringing "an overwhelming power to bear" on Hitler and Germany. *Id.* at 70, 83.

14. GOODRICH & HAMBRO, *supra* note 12, at 4. League sanctions were in response to Italy's 1935 invasion of Abyssinia (now Ethiopia). CHURCHILL, *supra* note 13, at 156.

15. The 1942 Declaration by United Nations formed a wartime coalition of twenty-six countries, each pledging to commit full resources toward defeating the Axis powers. GOODRICH & HAMBRO, *supra* note 12, at 570. This document came on the heels of the

Allied forces advanced beyond Normandy, the framework for a new international diplomatic organization was crafted at Dumbarton Oaks.¹⁶ This framework was adopted into the Charter of the U.N. ("Charter") and was signed on June 26, 1945.¹⁷ The primary purpose¹⁸ of this new organization was:

[t]o 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 which might lead to a breach of the peace.¹⁹

The framers of the Charter intended that the nations of the world would actively enforce their promise of peace. Among the founders of the U.N., President Franklin Roosevelt sought to create a powerful international organization that would respond decisively against aggression in sharp contrast to the "toothless" League of Nations.²⁰

Atlantic Charter, signed by the United States and the United Kingdom, which hoped to establish a "wider and permanent system of general security" at the conclusion of World War II. *Id.* at 4.

16. GOODRICH & HAMBRO, *supra* note 12, at 6. The Dumbarton Oaks Proposals called for, among other things, a General Assembly, a Security Council, a Secretary-General, and an International Court of Justice. *Id.*

17. U.N. CHARTER art. 111.

18. See George K. Walker, *United States National Security Law and United Nations Peacekeeping or Peacemaking Operations*, 29 WAKE FOREST L. REV. 435, 450 (1994). Walker noted that many commentators believe that maintaining international peace and security is the U.N.'s primary purpose based on its placement among the principles listed in Article One of the Charter and on the "primary station" given to the goal of international peace and security. *Id.*

19. U.N. CHARTER art. 1, ¶ 1. The Charter states several other purposes for the U.N. as well, including: (1) "[t]o develop friendly relations among nations;" (2) "to achieve international cooperation in the solution of international economic, social, and other humanitarian problems;" and (3) "[t]o be a center for harmonizing the actions of nations." U.N. CHARTER art. 1.

20. "[President Roosevelt] explained to reporters what he had in mind: If an aggressor 'started to run amok and [sought] to grab territory or invade its neighbors,' the new international organization 'would stop them before they got started.'" Stanley Meisler, *50 Years Ago, Hopes Soared as U.N. Began Life*, L.A. TIMES, June 26, 1995, at A1.

B. *The U.N. in the Post-Cold War Era*

For nearly fifty years, the Cold War hampered the U.N.'s effectiveness as a tool of collective security. With the end of the Cold War, however, sovereign states look to the U.N. with renewed optimism as a forum for international peace.²¹ This situation brings with it significant opportunities and solemn challenges. In response to Iraq's 1990 invasion of Kuwait, the Security Council granted member states wide latitude toward achieving Kuwait's liberation.²² Because the Persian Gulf War enjoyed largely unified support from the international community, it was a decisive military and diplomatic victory for the U.N.

The U.N.'s success in orchestrating this collective security endowed it with new and unprecedented prestige. With this prestige came new opportunities, greater challenges, and higher expectations. The U.N. has embraced this new role openly, as it currently sponsors thirty-three missions worldwide, committing approximately 90,000 troops at an annual cost of \$3.8 billion.²³ Truly, the U.N. has become the world's "peacebroker."²⁴

Since the Persian Gulf War, however, the shortcomings and inherent limitations of the U.N. as a tool for maintaining world peace have become readily apparent. Outdated bureaucracy,²⁵ command and control inadequacies,²⁶ and lack of political resolve have led to failed peace-keeping efforts in Somalia and the former Yugoslavia.²⁷ Those stunning failures have prompted critics to argue that an expanded U.N. peace-keeping role is not only wasteful, but dangerous.²⁸ Most unsettling is the current "bash-the-U.N." mood that prevails in the domestic political arena.²⁹

21. Boutros-Ghali, *supra* note 10, at 1.

22. U.N. SCOR, 45th Sess., 2963d mtg. at 1, U.N. Doc S/RES/678 (1990). Resolution 678 granted member nations authority to "use all necessary means" to liberate Kuwait and restore international peace and security in the region. *Id.*

23. Julia Preston, *Waste in Somalia Typifies Failings of U.N. Management*, WASH. POST, Jan. 3, 1995, at A11. Not surprisingly, commentators refer to peace-keeping as a "growth industry." Walker, *supra* note 18, at 435.

24. Boutros-Ghali, *supra* note 10, at 2.

25. Preston, *supra* note 23, at A11.

26. *Id.*

27. Carla Anne Robbins, *GOP Bid to Downgrade U.N. Peacekeeping Role Is Likely to Gain Steam in House Vote Today*, WALL ST. J., Feb. 16, 1995, at A18.

28. *Id.*

29. *Id.*

As the U.N. marks its fiftieth anniversary, it reaches a decisive crossroad. In spite of recent setbacks, the turbulence of the post-Cold War world highlights a growing need for greater U.N. involvement in the settlement of disputes. Further, the current balance of power still lends itself to active and successful U.N. involvement in the maintenance of collective security.³⁰

This Comment explores structural changes in the U.N. that will better enable it to act as a tool for maintaining collective security. Part II recommends a significantly expanded role for the International Court of Justice. Part III discusses amending the U.N. Charter's provision that gives veto power to the five permanent members of the Security Council. Finally, Part IV probes post-Cold War conflicts in Kuwait, Somalia, and the former Yugoslavia, and offers solutions designed to refocus U.N. peace efforts.

II. COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

The International Court of Justice ("Court") was created in 1945 to be the principal judicial organ of the U.N.³¹ It stands alongside the Security Council, General Assembly, and Secretariat, among others, as one of the six branches of the organization.³² Initially, there were high hopes that the judicial process would replace "the vicissitudes of war and the reign of brute force."³³ For fifty years, however, the Court's contribution to resolving international disputes has been minimal.³⁴ The Court exists instead as an untapped resource for the pacific settlement of international disputes.³⁵

The heart of the problem can be found in the Court's founding document. The Statute of the International Court of

30. "The end of the cold war was a major movement of tectonic plates and the after-shocks continue to be felt. But even if the ground beneath our feet has not yet settled, we still live in a new age that holds great promise for both peace and development." BOUTROS BOUTROS-GHALI, *AN AGENDA FOR PEACE* 6 (2d ed. 1995).

31. U.N. CHARTER art. 92.

32. U.N. CHARTER art. 7, ¶ 1.

33. Ibrahim J. Gassama, *World Order in the Post-Cold War Era: The Relevance and Role of the United Nations After Fifty Years*, 20 *BROOK. J. INT'L L.* 255, 321 (1994).

34. *Id.* Fewer than seventy-five disputes were lodged with the Court from 1945 to 1990. David J. Scheffer, *Non-Judicial State Remedies and the Jurisdiction of the International Court of Justice*, 27 *STAN. J. INT'L L.* 83, 85 (1990).

35. Gassama, *supra* note 33, at 321.

Justice ("Statute") offers to the Court only minimal jurisdiction.³⁶ Under the Charter, all member nations are ipso facto parties to the Statute.³⁷ The Statute itself, however, offers only two ways for the Court to obtain jurisdiction.³⁸ First, states may consent to jurisdiction on an ad hoc basis.³⁹ Second, a signatory to the Statute may recognize the Court's compulsory jurisdiction over it before a matter arises.⁴⁰ Either way, the Court hears cases only where both parties have given voluntary consent to the Court's jurisdiction. Further, countries are free to set certain conditions on any acceptance of compulsory jurisdiction.⁴¹ Given this extremely limited framework, the Court's contribution to ensuring the maintenance of international peace and security has been all but nonexistent because competing sovereign nations have consistently turned to other means to settle international disputes.⁴²

36. *Id.* at 322. The Court clearly has enforceable powers once member nations appear for settlement of a given dispute. The U.N. Charter states that once a member state is a party to a case before the Court, it must comply with the Court's decision. U.N. CHARTER art. 94, ¶ 1. Failure to comply with a Court decision gives recourse to the adverse party through the Security Council, which may act to enforce a decision of the Court. U.N. CHARTER art. 94, ¶ 2.

37. U.N. CHARTER art. 93, ¶ 1.

38. Article 36 of the Statute of the International Court of Justice provides, in pertinent part:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - a. the interpretation of a treaty;
 - b. any question of international law;
 - c. the existence of any fact which, if established, would constitute a breach of an international obligation;
 - d. the nature or extent of the reparation to be made for the breach of an international obligation.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, ¶¶ 1, 2.

39. *Id.* at art. 36, ¶ 2. In addition to providing consent to the Court's jurisdiction on an ad hoc basis, jurisdiction may be contracted through treaty or convention "compromissory clauses." *Id.*; Scheffer, *supra* note 34, at 90.

40. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, ¶ 2. The United Kingdom is the only permanent member of the Security Council which currently recognizes the Court's compulsory jurisdiction. Gassama, *supra* note 33, at 324.

41. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, ¶ 3.

42. Gassama, *supra* note 33, at 321-22. Commentators have offered two other reasons why nations have been reluctant to recognize the compulsory jurisdiction of the Court. First, Marxist or Third World nations may have been put off by the Court's strikingly Western legal roots. Second, the judicial selection process may be too politicized for some

The Court could be an invaluable asset to the pacific settlement of international disputes. To further this purpose, the U.N. should condition new and continued membership on mandatory recognition of the Court's compulsory jurisdiction in subject matters detailed in Article 36 of the Statute.⁴³ Such a change would require deleting the phrases "may at any time" and "in relation to any other state accepting the same obligation" from paragraph two of Article 36.

Such a change, however, will not happen anytime soon. Amending the Charter is extremely difficult and would require U.S. support.⁴⁴ Congress is acting currently to significantly limit U.S. involvement in the U.N.⁴⁵ Further, the notion of an international court enjoining a U.S. President or Congress from taking ac-

and not fairly representative of the global population for others. *Id.* at 322 n.183. These reasons, however, do not withstand scrutiny. Originally, most states favored mandatory compulsory jurisdiction at the U.N. San Francisco conference in 1945, only to have its implementation blocked by the United States and Soviet Union. Jeffrey L. Dunoff, *Institutional Misfits: The GATT, the ICJ & Trade-Environment Disputes*, 15 MICH. J. INT'L L. 1043, 1088-89 n.224 (1994). Since then, the major world powers have consistently resisted compulsory jurisdiction as an encroachment upon national sovereignty. *Id.* at 1089. Also, the Court must apply customs and principles of international law, not just those of Western nations. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38. Further, Marxist and Third World states have been actively participating in activities of the "strikingly Western" General Assembly for fifty years. With regard to the alleged politicization of the Court, the Statute expressly forbids a country from having more than one member on the Court at any given time. *Id.* at art. 3, ¶ 1. The Statute further forbids Court members from acting in an administrative, political, or professional function, and from hearing cases in which a conflict could exist. *Id.* at art. 16, ¶ 1; art. 17, ¶¶ 1, 2. Together these provisions ensure an independent judiciary and preclude any one nation from having too strong a voice on the Court.

43. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, ¶ 2(a)-(d).

44. Amending the Statute is as difficult as amending the Charter, which requires a two-thirds vote of the General Assembly, a two-thirds vote of all members, and unanimous support of the permanent members of the Security Council. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 69; U.N. CHARTER art. 108.

Such an amendment should not be read to affect Article 95 of the Charter, which allows member nations to resolve their differences in other fora by virtue of consensual agreement. U.N. CHARTER art. 95. This proposed amendment simply would allow an aggrieved state to hail an adverse member state into court.

45. Meisler, *supra* note 20, at A1. The Charter is a treaty, which has the same effect in U.S. law as an act of Congress. See *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829). Where a treaty conflicts with an act of Congress, the last expression of the sovereign controls. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889). As a result, acceptance of mandatory compulsory jurisdiction through a Charter amendment would still be susceptible to subsequent acts of Congress. As a practical matter, however, this would be unlikely to occur, as withdrawal of such acceptance would result in a forfeiture of membership in the U.N.

tion, or ordering it to pay damages to another country, may seem shocking to some.⁴⁶ The notion is so shocking that the United States withdrew its long-standing acceptance of compulsory jurisdiction as soon as it became clear that the Court would exercise that jurisdiction in the Nicaragua case.⁴⁷

A mandatory compulsory jurisdiction system would have a significant positive impact on the pursuit of collective security. First, member states would be able to argue their respective positions in an objective judicial forum, rather than in the heated arena of politics. Second, disputing parties would participate in an added avenue of conflict resolution before resorting to more confrontational measures. This detour would act as a delay mechanism. It would increase the prospects of peaceful settlement and allow the Security Council and the international community to prepare for the implementation of future remedial measures, if necessary. Third, decisions of the Court would give the Security Council and the international community an unbiased and credible mandate to take remedial action. Most importantly, member states would get their "day in court," increasing the likelihood that disputes peacefully resolved will remain peacefully resolved.

III. SECURITY COUNCIL ENFORCEMENT OF COURT DECISIONS

Even if U.N. member states were automatically subject to the jurisdiction of the Court, a party still could fail either to recognize the Court's jurisdiction or to comply with a Court order. In such

46. President Harry S. Truman, however, appeared to accept this concept, putting it bluntly:

When Kansas and Colorado have a quarrel over the water in the Arkansas River they don't call out the National Guard in each state and go to war over it. They bring a suit in the Supreme Court of the United States and abide by the decision. There isn't a reason in the world why we cannot do that internationally.

John K. Cooley, *Truman's Advice on Water in the Desert Still Holds*, INT'L HERALD TRIB., Nov. 11, 1992; BARTLETT'S FAMILIAR QUOTATIONS 655 (16th ed. 1992).

47. The United States recognized compulsory jurisdiction of the Court from 1945 to 1986, but reserved to its own jurisdiction disputes that were "essentially within the domestic jurisdiction of the United States, as determined by the United States." Gassama, *supra* note 33, at 324 n.189 (emphasis added). Not surprisingly, the United States withdrew its recognition of compulsory jurisdiction when it became apparent that the above language would not prevent the Court from exercising jurisdiction in the Nicaragua case. *Id.*; Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. United States), 1984 I.C.J. 932 (Nov. 26).

a situation, that party then would be subject to remedial action by the Security Council.⁴⁸

Under the Charter, however, non-procedural decisions of the Security Council must receive unanimous support from its permanent members.⁴⁹ The Charter prevents a member of the Security Council from voting on resolutions in matters to which it is a party with respect to threats to the peace, breaches of the peace, and acts of aggression.⁵⁰ As a result, a Security Council member cannot frustrate Security Council actions through use of its veto power in matters of current or prospective military conflict. This provision, however, does not prevent a permanent member from using its veto power to impede Security Council measures that are not directly related to threats to international peace.

History has demonstrated that the seeds of armed conflict are sown over long periods of time and arise for various reasons. Nevertheless, while a permanent member that is a party to a dispute is unable to thwart the desire of the Security Council on an issue of armed conflict, it is perfectly able to frustrate the implementation of "non-military" Article 94 measures. Under this framework, only the most urgent disputes, fraught with the worst human consequences, are protected from the selfish veto of a permanent Security Council member.⁵¹ Court decisions unrelated to ongoing breaches of the peace or to imminent threats to the peace are effectively unenforceable against permanent members.

For this and other reasons, some have argued against the permanent member veto power in the Security Council.⁵² The veto power, however, is the primary restraint on the powers of the

48. U.N. CHARTER art. 94, ¶ 2.

49. U.N. CHARTER art. 27, ¶ 3. Article 27 requires a "double veto" in that Security Council decisions must receive approval from any nine of the fifteen council members as well as unanimous approval of its five permanent members. *Id.*

50. U.N. CHARTER art. 27, ¶ 3. The Charter also prohibits members of the Security Council from voting on issues of the pacific settlement of local disputes. *Id.*

51. Even a Security Council member nation that is not a permanent member has the ability to frustrate close Security Council votes because of the nine vote requirement for passage. *See* U.N. CHARTER art. 27, ¶ 3.

52. The drafters of Article 27 were reluctant to require unanimous support of every Security Council member in a given measure. GOODRICH & HAMBRO, *supra* note 12, at 214. They were similarly reluctant to require a mere majority or "special majority" vote. *Id.* The heart of Article 27 came from a compromise solution which was established at the Crimea Conference in February, 1945. *Id.* at 215.

Security Council.⁵³ While merely a political check on the system, the veto power should be maintained because it remains as an effective protection against "excessive interventionism" by the Security Council.⁵⁴

Rather than revoking the veto power, Article 27 of the Charter should be amended to prohibit a Security Council member from voting on an Article 94 enforcement measure where that member was a party to the underlying matter.⁵⁵ This change would preclude a Security Council member from obstructing Article 94 enforcement measures against it.⁵⁶ Only with such an amendment will the Security Council have the authority to enforce Court decisions against any noncomplying party, even if that noncomplying party is a permanent member of the Security Council.

IV. PEACE-KEEPING AND PEACE ENFORCEMENT OPERATIONS

As the U.N. was formed from a wartime coalition,⁵⁷ it followed logically that the Charter would provide some framework for armed collective security "to ensure that no state could ever again drive the world to war."⁵⁸ Chapter VII of the Charter directly addresses "enforcement of peace" among nations of the world.⁵⁹ The Charter empowers the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall . . . decide what measures shall be taken . . . to maintain or restore international peace and security."⁶⁰

Over the U.N.'s first fifty years, three kinds of military missions developed: large-scale enforcement, peace-keeping, and peace enforcement.⁶¹ In a large-scale enforcement action, as used

53. Matthias J. Herdegen, *The "Constitutionalization" of the U.N. Security System*, 27 VAND. J. TRANSNAT'L L. 135, 154 (1994).

54. *Id.*

55. This restriction would be in addition to the restrictions already articulated in Article 27 of the Charter.

56. Such an amendment also would prevent a prevailing party from voting in favor of enforcement sanctions against the adverse party.

57. GOODRICH & HAMBRO, *supra* note 12, at 4.

58. James W. Houck, *The Command and Control of United Nations Forces in the Era of Peace Enforcement*, 4 DUKE J. COMP. & INT'L L. 1, 6 (1993).

59. GOODRICH & HAMBRO, *supra* note 12, at 262.

60. U.N. CHARTER art. 39.

61. See generally Houck, *supra* note 58, at 12-22.

in Korea in the 1950s and Kuwait in 1991, an ad hoc coalition acts under the authority, but not the command, of the Security Council.⁶² Further, the coalition does not act as a neutral police force, but rather as an active enforcer.⁶³ Peace-keeping missions, on the other hand, place U.N. commanded forces in a position of neutrality, their presence being a deterrent to violence among separate fighting armies.⁶⁴ In response to the pressures of the post-Cold War world, a new model has developed—peace enforcement. With characteristics that resemble both large-scale enforcement operations and peace-keeping missions, peace enforcement missions employ non-neutral U.N. forces which apply active force “against any disputant who breaches the peace.”⁶⁵ U.N. operations in Somalia and Bosnia have followed the peace enforcement model.⁶⁶

A. Charter Authority

Because peace-keeping operations are not mentioned expressly in the Charter, their legal basis has been described as, among other things, “ambiguous.”⁶⁷ Member states recognize peace-keeping, however, as a legally supported model of action despite the lack of any express provision in the Charter.⁶⁸ Thus, widespread acceptance and tradition have carved out a legal justification for employing peace-keeping measures where none arguably existed.⁶⁹ Despite the lack of express authority in the Charter, peace-keeping missions have become a well-settled aspect of international law.⁷⁰

Further, the Charter does authorize peace enforcement missions under Chapter VII, which expressly empowers the Security Council to raise forces “for the purpose of maintaining

62. *Id.* at 12-15.

63. *Id.* at 12-13.

64. *Id.* at 22; THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING 4-5 (2d ed. 1990).

65. Houck, *supra* note 58, at 22.

66. *Id.* at 30.

67. Richard Lee Gaines, *On the Road to a Pax U.N.: Using the Peace Tools at our Disposal in a Post-Cold War World*, 25 N.Y.U. J. INT'L L. & POL. 543, 552 (1993). In fact, former U.N. Secretary-General Dag Hammarskjöld once facetiously referred to peace-keeping as falling under “Chapter Six and a half” of the U.N. Charter. *Id.*

68. *Id.* at 552-53.

69. *Id.*

70. *Id.* at 553 n.45.

international peace and security."⁷¹ Article 43 agreements between the U.N. and member states legally bind those participating states to commit a specified number of forces when the U.N. calls upon them.⁷² The issue of whether the Security Council may "draft" member armed forces without a voluntary Article 43 agreement in place, however, remains unresolved.⁷³ Despite the original assumption that Article 39 missions would rarely occur,⁷⁴ a solid basis of Charter authority exists for the armed settling of international disputes.

B. *Defining the Scope of International Disputes*

Under Article 39 of the Charter, the Security Council has the power to determine whether a threat to the peace or a breach of the peace exists, or if an act of aggression has occurred.⁷⁵ The Article provides no definition of the terms "threat," "breach," or "aggression."⁷⁶ The Charter simply charges the Security Council with determining whether such a situation exists.

The remainder of the Article, stating as its essential purpose to "maintain or restore international peace and security," implicitly precludes the Security Council from intervening in conflicts that are essentially domestic in nature.⁷⁷ Once again, the language of

71. U.N. CHARTER art. 43, ¶ 1.

72. Andrew S. Miller, *Universal Soldiers: U.N. Standing Armies and the Legal Alternatives*, 81 GEO. L.J. 773, 780 (1993).

73. *Id.* at 778. Note that the Charter, which provides that the Security Council, under its Article 39 authority, may mandatorily "call upon" member nations to apply measures "not involving the use of armed force." U.N. CHARTER art. 41; GOODRICH & HAMBRO, *supra* note 12, at 277. The omission of similar language in Article 43 plus the phrase "and in accordance with a special agreement," indicates that the Security Council may not "draft" armed forces of member nations without a prior Article 43 agreement. See U.N. CHARTER art. 43, ¶ 1.

74. GOODRICH & HAMBRO, *supra* note 12, at 271.

75. Article 39 provides that "[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." U.N. CHARTER art. 39.

76. At the 1945 U.N. Conference in San Francisco, many supported the inclusion of a definition of "aggression" in the Article. GOODRICH & HAMBRO, *supra* note 12, at 263. Some were "particularly fearful that the Great Powers would under certain conditions close their eyes to aggressive action as a way of avoiding the obligation to take enforcement measures." *Id.* Because of the difficulty of creating a workable definition, and because of resistance from the U.N.'s sponsoring governments, no definition found its way into the Charter. *Id.* at 11, 264.

77. The Charter also expressly prohibits the U.N. from intervening "in matters which are essentially within the domestic jurisdiction of any state . . ." U.N. CHARTER art. 2,

the provision is vague, with no hint of what separates domestic disputes from international conflicts. By omission, Article 39 further implies that the Security Council also shall determine whether an international conflict exists.

The effect of this ambiguous language is twofold. First, the Security Council wields almost unlimited power.⁷⁸ It alone determines the existence of conflict, the international scope of the conflict, and the measures necessary to address that conflict. Second, the Security Council has neither legal nor practical guidance as to where it should engage or, more importantly, where it should *not* engage. As a result, while the Security Council has exercised its authority actively in recent years, it has been far from consistent in distinguishing domestic disputes from international conflicts, and the overall results of its peacemaking efforts reflect that inconsistency.

1. Bright Lines in Iraq

At first, distinguishing international conflicts from domestic disputes seemed to be an easy task. Iraq's 1990 invasion and subsequent occupation of Kuwait was a pure act of international aggression. The Security Council, backed by an almost unanimous international community, responded decisively to push Iraqi troops behind its own borders.⁷⁹ Even beyond the actual fighting, the Security Council "imposed unprecedented requirements on Iraq" under the Gulf War cease-fire resolution.⁸⁰ Those restrictions included requiring Iraq to destroy its chemical and biological weapons and manufacturing facilities.⁸¹ The Security Council also ordered Iraq to destroy its ballistic missile production facilities and inventory.⁸²

¶ 7. As a result, if a dispute is of a domestic nature, the Security Council may not authorize intervention without prior consent from the host-state. Gaines, *supra* note 67, at 559. If a domestic dispute threatens to expand into a regional conflict outside the state's borders, the Security Council may intervene. U.N. CHARTER art. 39; Anthony Clark Arend, *The United Nations and the New World Order*, 81 GEO. L.J. 491, 496 (1993).

78. The only limitations on the Security Council's power are in its own voting and veto provisions. U.N. CHARTER art. 27, ¶ 3.

79. U.N. SCOR, 45th Sess., 2693d mtg. at 1, U.N. Doc. S/RES/678 (1990).

80. Arend, *supra* note 77, at 497.

81. U.N. SCOR, 46th Sess., 2981st mtg. at 5, U.N. Doc. S/RES/687 (1991).

82. *Id.* Arend notes that the Security Council ordered the destruction of Iraq's stockpile even though the mere *possession* of chemical weapons and ballistic missiles is not banned by international treaty. Arend, *supra* note 77, at 498. While Iraq's possession of

Reaching further, the Security Council ordered Iraq to accept humanitarian assistance for its own Kurdish and Shi'ite citizens in the aftermath of the Gulf War.⁸³ Resolution 688 was justified under the philosophy that the imminent likelihood of citizens fleeing their own country as refugees was a threat to international security.⁸⁴ These other restrictions clearly fell under the Security Council's Article 39 authority to take action against threats to the peace, as Iraq's prior encroachment against Kuwait justified preventing another similar occurrence. Currently, the Security Council maintains a crippling economic embargo on Iraq because of its failure to fully comply with Security Council resolutions.⁸⁵

2. Closed Eyes⁸⁶ in Bosnia-Herzegovina

The once bright lines of armed conflict, however, have blurred since the resolution of the Gulf War. For example, the conflict in Bosnia-Herzegovina has been something of an enigma, "particularly difficult" to characterize as either purely domestic or international.⁸⁷ Originally, the conflict had all the trappings of a full-blown civil war. It was "a classic example of a fight for self-determination in a newly established state . . ."⁸⁸ The issue became blurred, however, when Croatia became "deeply involved" in the Bosnia-Herzegovina conflict after Croatia and Serbia had signed a U.N. peace agreement.⁸⁹ Also, it became clear early on that no reconstruction of the former Yugoslavia would occur.⁹⁰ Because of the confusion over the nature of the conflict, the

these weapons may not have violated international law, the preventative measures adopted by the Security Council in Resolution 687 were justified under Article 39 of the Charter. Without these measures, Iraq would have remained a viable military presence in the Gulf region, and as a result, a continued threat to international peace would have existed.

83. U.N. SCOR, 46th Sess., 2982d mtg. at 2, U.N. Doc. S/RES/688 (1991).

84. Arend, *supra* note 77, at 499 (quoting Paul Lewis, *U.N. Votes to Condemn Handling of Iraq Rebels*, N.Y. TIMES, Apr. 6, 1991, at A5).

85. Julia Preston, *U.N. Offers Plan to Ease Oil Embargo on Iraq for Humanitarian Reasons*, WASH. POST, Apr. 14, 1995, at A28.

86. *See supra* note 76.

87. Yoshiko Inoue, *United Nations' Peace-keeping Role in the Post-Cold War Era: The Conflict in Bosnia-Herzegovina*, 16 LOY. L.A. INT'L & COMP. L.J. 245, 250 (1993).

88. *Id.* at 251.

89. *Id.* at 252.

90. The United States and the European Community recognized the sovereignty of Slovenia, Croatia, and Bosnia-Herzegovina within a year after the breakup of Yugoslavia. David Hoffman, *U.S. Recognizes 3 Ex-Yugoslav States*, WASH. POST, Apr. 8, 1992, at A19.

Security Council was "slow and cautious" in its response to the fighting in the former Yugoslavia.⁹¹

At some point, though, the U.N. clearly had an excuse to intervene. Once the fighting factions had been recognized as independent and sovereign states, and Serbian forces had attempted to annex parts of Bosnia, the conflict took on an international dimension as an act of aggression by one nation against another.⁹² Further, this became a conflict "of a special kind," namely a brutal and aggressive genocidal assault by the Serbs against the Bosnian population.⁹³

When the Security Council finally acted, however, it opted for the worst of all possible courses. First, by enacting an arms embargo, the Council effectively rendered Bosnia helpless to defend itself.⁹⁴ Second, the Security Council's belated measures of intervention on Bosnia's behalf proved wholly inadequate.⁹⁵ Although 24,000 U.N. forces are currently on duty in the Balkan theater, they are lightly armed.⁹⁶ Moreover, amid the bloodiest European conflict since World War II,⁹⁷ U.N. military strategy has been frighteningly passive.⁹⁸ The first U.N. airstrikes were carried out only after sixty-eight civilians were killed following the bombing of an open-air market.⁹⁹ Those airstrikes, however, were ineffective and prompted a humiliation campaign by Serb forces that included taking 150 U.N. peacekeepers hostage.¹⁰⁰ Diplomats have been unfocused¹⁰¹ and negotiators were at one

91. *Id.* at 252.

92. *Id.* at 251-52. "The fact that Serbs are claiming the right to annex parts of Bosnia to the existing Serbian Republic is further evidence of the international nature of the conflict, as such an act would be an outright invasion of a sovereign state." *Id.* at 252.

93. Craig Scott et al., *A Memorial For Bosnia: Framework of Legal Arguments Concerning the Lawfulness of the Maintenance of the United Nations Security Council's Arms Embargo on Bosnia and Herzegovina*, 16 MICH. J. INT'L L. 1, 72 (1994).

94. *Id.* at 72-73.

95. *Id.* at 73.

96. John Pomfret, *Year in Bosnia Changes British General's View: About-Face of U.N.'s Commander Rose Underscores Peacekeeping Force's Problems*, WASH. POST, Jan. 23, 1995, at A10.

97. *Id.*

98. "The basic strategy of the U.N. mission appears to be to stay long enough to pick up the pieces after the war is over." John Pomfret, *By Default, U.N. Keeps 'Fig Leaf' Role in Bosnia*, WASH. POST, Dec. 12, 1994, at A31.

99. Pomfret, *supra* note 96, at A10.

100. *Id.*

101. Joel Brand, *Foreign Mediators in Bosnian War Split on How to Win Serbs' Assent*, WASH. POST, Jan. 26, 1995, at A19.

time resigned that Croatian President Franjo Tudjman would eventually order U.N. troops out of Croatia.¹⁰²

What role the U.N. or its member states will play, if any, in the conclusion of the Balkan conflict, remains unclear.¹⁰³ Until recently, U.N. member states showed neither the courage nor the resolve to carry out the difficult comprehensive peace enforcement measures they flirted with for almost three years.¹⁰⁴ This inaction lingered in spite of the fact that the Security Council demonstrated that it felt that it had the authority, under Article 39, to intervene by ordering airstrikes.¹⁰⁵ The only successful results of intervention have come in the form of peace talks as the consequence of a two-week campaign of sustained airstrikes against the Bosnian Serbs.¹⁰⁶ Those airstrikes, however, were conducted by NATO. As a result, the Western powers have "all but abandoned" any pretense that the U.N. controls intervention in the Balkans.¹⁰⁷

102. John Pomfret, *U.S. Foresees Sending GIs to Help U.N. Quit Croatia: Tudjman's Deadline Compounds War Risks*, WASH. POST, Feb. 25, 1995, at A1. One western diplomat expressed the "hope [that Tudjman will] change his mind." *Id.* Tudjman did change his mind, but only after Western nations promised his country \$35 million in reconstruction aid. Christine Spolar, *U.N. Deal on Croatia Fuels Hope for Peace Gains for Zagreb Seen in Peacekeepers' Stay*, WASH. POST, Apr. 2, 1995, at A34.

103. President Clinton specifically conditioned the introduction of U.S. combat troops on the assurance of complete autonomy. Thomas E. Ricks and Robert S. Greenberger, *Clinton Would Consider Sending Troops to Bosnia*, WALL ST. J., June 1, 1995, at A11. Under these conditions, U.N. commanders would have no control over U.S. troops. Further, U.S. troops would not require U.N. approval to carry out protective airstrikes or to alter "the all-important 'rules of engagement' that dictate how lethal firepower can be used." *Id.* President Clinton backed away from those conditions, however, just a few days later. William Drozdiak & Bradley Graham, *European Force Set For Bosnia: U.S. to Provide Support for Rapid-Reaction Unit, but No Ground Troops*, WASH. POST, June 4, 1995, at A1.

104. A strong argument can be made that an Article 39 determination should not be made "unless members are prepared to apply the additional measures listed in Chapter VII" of the Charter. LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 293 (3d ed. 1969).

105. Western inaction today recalls the appeasement and weakness of an earlier day. "So they go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent." WINSTON S. CHURCHILL, *WHILE ENGLAND SLEPT* 326-27 (1938).

106. Mark M. Nelson & Carla A. Robbins, *Tentative Deal Suspends Bosnia Bombing*, WALL ST. J., Sept. 15, 1995, at A12.

107. Thomas E. Ricks & Mark M. Nelson, *NATO Shows New Resolve With Air Strikes in Bosnia*, WALL ST. J., Aug. 31, 1995, at A3. Where many bright lines of encroachment existed in Iraq, few exist in Bosnia-Herzegovina. Iraq's clear-cut encroachment against Kuwait, in addition to the extraordinary strategic value of Kuwait as an oil producing nation, may explain why the U.N. has acted so weakly in Bosnia where it acted so forcefully in Iraq.

3. "God's Work"¹⁰⁸ in Somalia

In Somalia, the U.N. took a giant step toward further blurring the lines between domestic and international conflicts. Operation Restore Hope, a humanitarian mission, sent U.S. troops "to open supply routes, to get the food moving, and to prepare the way for a U.N. peace-keeping force . . ."¹⁰⁹ The primary obstacle to achieving this short-term goal,¹¹⁰ however, was the dominant presence of armed gangs, who had effective control of the limited transportation arteries in Somalia.¹¹¹ President Bush articulated a stern warning to those who threatened to impede the success of the humanitarian mission: "[W]e will not tolerate armed gangs ripping off their own people, condemning them to death by starvation."¹¹² As a result, the mission quickly transformed into a crusade to disarm local warring military factions.¹¹³

Neither threats nor force worked in Somalia. The failure to disarm Somali factions resulted in intense fighting with forces loyal to General Mohammed Farah Aidid,¹¹⁴ leading to unacceptable casualties for a U.N. humanitarian mission.¹¹⁵ In terms of its efforts to prevent starvation, Operation Restore Hope was a temporary success. But, for all its nation-building aspirations, the U.N. adventure in Somalia was an unmitigated disaster.¹¹⁶

108. In asking the American people to support Operation Restore Hope, President George Bush described the proposed military operation in Somalia as "doing God's Work." *Bush: 'The People of Somalia . . . the Children . . . Need Our Help.'* WASH. POST, Dec. 5, 1992, at A16.

109. *Id.*

110. Bush promised that the mission would not be open-ended, stating that forces would "not stay one day longer than is absolutely necessary." Dan Oberdorfer, *Bush Sends Forces to Help Somalia: 'America Must Act,' President Says*, WASH. POST, Dec. 5, 1992, at A1. In March 1995, 1,800 U.S. Marines landed in Mogadishu to guard the last retreating U.N. forces. Rick Atkinson, *Marines Dig In to Guard U.N.'s Somalia Pullout*, WASH. POST, March 1, 1995, at A23.

111. Oberdorfer, *supra* note 110, at A1.

112. *Id.*

113. Gassama, *supra* note 33, at 294.

114. *Id.* at 295.

115. Most devastating to U.S. public opinion was the October 3, 1993, ambush that resulted in the deaths of eighteen American soldiers. The raid was compared to the 1968 Tet Offensive, which shook American public support for its involvement in Vietnam. Keith B. Richburg, *Aideed's Urban War, Propaganda Victories Echo Vietnam*, WASH. POST, Oct. 6, 1993, at A12.

116. Peace-keeping in Somalia ballooned into a \$1 billion per year mission. Preston, *supra* note 23, at A11.

C. Clarifying Article 39

The dismal failure in Somalia illustrates how easily a U.N. mission can become ensnared in a largely domestic conflict.¹¹⁷ The Balkan quagmire further demonstrates the lack of guidance from the Charter in distinguishing international conflicts from domestic disputes, and how that lack of guidance fosters indecision at the highest levels of command. Unfortunately, these problems will not simply fade away with the passing of their respective conflicts. The international scene is forever changing, military technology is forever advancing, and the threat of war is forever present. It is time to refocus the vision of U.N. peace-keeping.

To clarify the purpose of U.N. peace-keeping missions, Security Council responses to "act[s] of aggression" and "breach[es] of the peace" should be strictly limited to conflicts between distinct sovereign nations.¹¹⁸ Further, the term "threat to the peace" in Article 39 should be defined to include essentially domestic disputes that are likely to become regional conflicts and situations where an aggressor nation threatens to encroach upon another. Under this reading of the provision, for example, the Security Council would have had Article 39 authority in Somalia if at any time it appeared that the battle would spill over into other countries. Similarly, the Council would have Article 39 authority if it ever appeared that Iraqi forces were preparing to attack Kuwait for a second time.¹¹⁹ Such an amendment to Article 39 would necessarily preclude the Security Council from intervening in matters not within the scope of its authority as originally envisioned by the framers of the Charter. Further, U.N.

117. More troubling, the Somalia mission seemed to muddle the primary purpose of the U.N., namely, to settle *international* disputes and to intervene where domestic disputes threaten international peace. U.N. CHARTER art. 1, ¶ 1.

118. U.N. CHARTER art. 39. The primary purpose of the U.N., as laid out in Article One, must be read with respect to its historical context. The U.N. was created as a tool to respond to "acts of aggression" that had previously gone unchecked. U.N. CHARTER art. 1, ¶ 1. Nowhere does Chapter VII of the Charter express or imply an intent to settle civil wars or build nations.

119. Such an amendment also would restrict Security Council action in certain situations. For example, the Security Council never would have had the authority to engage in peace enforcement in Somalia because the international community never recognized the sovereign independence of any tribes within the region. In the Balkan conflict, however, the Security Council would have had authority to intervene early in the conflict, as the European Union had recognized the sovereignty of Croatia and Slovenia six months after fighting began.

peace-keeping actions would maintain clear and decisive objectives throughout the course of a given conflict.¹²⁰

D. The Failure of Peace Enforcement

The terrific command and control obstacles confronting U.N. military commanders in peacemaking operations have played a significant role in the disasters in Bosnia and Somalia.¹²¹ In early 1995, U.N. Secretary General Boutros Boutros-Ghali proposed establishing a Rapid-Reaction Force under the umbrella of the Security Council.¹²² The force would act as a specially trained reserve force on "permanent call" to the U.N., ready to respond to international military emergencies.¹²³

The Boutros-Ghali proposal was not exactly ground breaking.¹²⁴ It echoed calls made over the past several years for some kind of a standing U.N. military force.¹²⁵ Proponents for creating such a standing army argue that reliance on ad hoc coalitions to maintain international peace and security is no longer a realistic option in the post-Cold War world.¹²⁶ It was Boutros-Ghali's proposal, however, that was received as "out of step with the

120. Article 39 also could be defined by way of an advisory opinion from the International Court of Justice. U.N. CHARTER art. 96, ¶ 1. Advisory opinions of the Court carry great weight under the Charter, and have been used frequently as a basis for continued action. GOODRICH ET AL., *supra* note 104, at 569.

121. "As a result of experiences in Somalia and Bosnia, U.N. officials have found they do not have the military capability to go beyond cautious, nonbelligerent peacekeeping." Julia Preston, *U.N. Aide Proposes Rapid-Reaction Unit In Face of U.S. Congressional Opposition; Boutros-Ghali's Plan Appears to Have Little Chance*, WASH. POST, Jan. 6, 1995, at A23.

122. *Id.*

123. Boutros-Ghali "insisted that the United Nations must have sole command over troops in its peacekeeping missions." *Id.*

124. Others have previously argued for creating a U.N. Rapid Deployment Force ("RDF"). The RDF would "not be . . . held permanently under U.N. command, but would be activated by the Security Council only when needed for emergencies." Miller, *supra* note 72, at 784-85 (discussing Richard Gardner's 1992 proposal for organizing permanent U.N. military forces).

125. The other proposals for expanded U.N. peace-keeping operations constitute a three-tiered structure that includes: (1) a Standing Reserve Peace Force; (2) a Rapid Response Peace Force; and (3) a Permanent Peace-keeping Force. Alan K. Henrikson, *How Can the Vision of a 'New World Order' Be Realized?*, 16 FLETCHER F. WORLD AFF. 63, 76 (1992).

126. *Id.* at 74.

negative mood in many capitals about further empowering the United Nations."¹²⁷

The current system, which utilizes voluntary stand-by arrangements, is not working either. The U.N. presently has agreements with dozens of countries to voluntarily provide troops and equipment for peace-keeping missions.¹²⁸ These agreements, however, are not binding.¹²⁹ Not surprisingly, when chaos erupted in Rwanda last year, no country mobilized peace-keeping forces to stop the bloodshed.¹³⁰

The arguments for and against creating a universal armed force have not changed much in the last eighty years. Framers of both the League of Nations Covenant and the U.N. Charter considered proposals for establishing an "internationalized" standing armed force.¹³¹ Both times, the respective framers rejected such proposals because of political difficulties.¹³² On the other hand, reliance on ad hoc coalitions, the failed model of the League of Nations, was equally unacceptable to the framers of the U.N. Charter.¹³³

This is the troublesome paradox that confronts the U.N. on its fiftieth anniversary. The international community formed the U.N. on the assumption, based on practical experience, that ad hoc coalitions were not an effective way to keep the peace. Yet, from that assumption it follows that the U.N., to successfully enforce the peace, must possess some inherent authority to mobilize its member states to military action, even where a state may oppose

127. Preston, *supra* note 121, at A23. A NATO-led Rapid Reaction Force, quite different from the one envisioned by Boutros-Ghali, signalled the end of U.N. influence in the Balkan theater. Its unsanctioned movements completely bypassed the U.N. chain of command. John Pomfret, *British-French Force in Bosnia Tells U.N.: You Don't Control Us*, WASH. POST, July 29, 1995, at A16.

128. Preston, *supra* note 121, at A23.

129. *Id.*

130. *Id.* The United States had a similar stand-by arrangement with the U.N. It mobilized troops to Rwanda for humanitarian purposes only. *Id.*

131. GOODRICH ET AL., *supra* note 104, at 317.

132. *Id.* "[E]ncroachment on national sovereignty was likely to be unacceptable to many, including the United States Congress." *Id.* This point is well taken. While it is one thing to hail a member state into court as a privilege of U.N. membership, it is entirely another matter to order that member state onto the field of battle where that member state has anything less than one hundred per cent support for the action.

133. *Id.* at 318. The final version of Article 43 was a compromise approach. Member states could maintain their sovereignty while concurrently providing the Security Council with an advance military capability. *Id.*

the proposed action. Few if any, however, have the faith or the desire to give up such broad sovereign authority no matter how noble the cause.

In this context, it is apparent that "peace enforcement" missions ultimately are unworkable. Without real authority to "draft" members into action, a peace enforcement mission is essentially no different than a mission formed from an ad hoc coalition. Sovereign autonomy would be compromised, however, if the Security Council had the power to draft members into action. Further, because peace enforcement missions do not contain the same sweeping objectives as those in ad hoc coalitions, peace enforcement missions resemble awkward "police actions," where a limited mission objective strangles a fighting force's effectiveness. As a result, limited authority is combined with limited resources to return limited results.

From that assessment, the outlook for the U.N. as a player in the maintenance of international peace appears bleak. The inherent limitations of peace enforcement missions have shown that the U.N. is little more than its toothless predecessor, the League of Nations, in this regard because it does not have the authority to accomplish what it was designed to achieve. This notion rests, however, upon the flawed assumption that ad hoc coalitions are necessarily ineffective models to enforce the peace. To the contrary, the world has relied successfully on ad hoc coalitions to prevent a third world war for over fifty years. The victory in the Gulf War, prosecuted by an ad hoc coalition of member forces, was arguably the U.N.'s finest hour.

To rely on the formation of ad hoc coalitions, however, is to rely on the courage of leaders to deter aggressors before conflicts escalate beyond control. That is arguably unsettling, as the future strength of the U.N. will vary with the strength and discipline of its member states. It is, however, the only practical option that will ever be available. Institutions don't enforce peace, people do. By only relying on peace-keeping missions and ad hoc coalitions, the trappings of peace enforcement will disappear. U.N. military efforts will cease to be half-hearted and half-baked.

V. CONCLUSION

By tying its membership to compulsory recognition of jurisdiction under the International Court of Justice, the U.N. will solve many international disputes without deploying a single

battalion. Further, an amendment to Article 27 of the Charter would give the Security Council the power to enforce Court decisions against all its members, including permanent members. On the peace-keeping side, Article 39 of the Charter should be clarified to settle expectations and to provide a clear path of action for the Security Council as it moves into the 21st century. Finally, peace enforcement "should be struck from the U.N.'s vocabulary" so that international peace may be maintained through the traditional use of ad hoc coalitions and peace-keeping forces.¹³⁴

Peace-keeping is the U.N.'s most visible and scrutinized activity.¹³⁵ The credibility and success of the body as a whole rests upon its ability to keep the peace effectively. As the League of Nations was doomed by impotence,¹³⁶ so too will the U.N. if it fails to meet the coming challenges. The only certainty facing the U.N. is that the problems of international peace-keeping will not get any easier in the 21st century. As the U.N. marks its fiftieth birthday, some have noble aspirations that the U.N. will be an instrument for giving the phrase "new world order" true meaning.¹³⁷ One wonders, however, if history will repeat itself to see the U.N. follow the same failed footsteps of the League of Nations.

*Patrick Reilly**

134. Nancy Landon Kassebaum & Lee Hamilton, *Fix the U.N.: At 50, It's Sick But Savable—and We Need to Keep it Going*, WASH. POST, June 25, 1995, at C7.

135. Boutros-Ghali, *supra* note 10, at 2. Peace-keeping attracts the greatest amount of attention even though seventy to eighty percent of the work done by the U.N. is unrelated to war. *Id.*

136. CHURCHILL, *supra* note 13, at 120-21.

137. The phrase "new world order" has meant many things to many people. It represents everything from offering "new ways of working with other nations," to expanding the U.N.'s peace-keeping role, to fulfilling an American need "to find grand justifications for fighting wars." Even national security advisor Brent Scowcroft complained that the new world order had become a "catch phrase" that had become endowed with grandiose meanings beyond anything he or Bush originally conceived." Oberdorfer, *supra* note 1, at A31.

* J.D. candidate, Loyola Law School, 1996; B.A., University of Southern California, 1988.