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Alternatives to the Use of Force and the Role of the United Nations

CHARLES S. MILLIGAN*

I. THE CENTRAL PURPOSE OF THE UNITED NATIONS

The subject of this paper, "alternatives to the use of force," goes to the essence of the United Nations. The U.N. addresses numerous other subjects as well and arguably succeeds more in other areas than in this central purpose. Because various limitations and deficiencies of the U.N. will be addressed, it is important for me to dissociate myself entirely from those whose criticism undermines both internationalism and peace processes,¹ and also from those who laud the several types of utopianism² which discount the role of political structures and international law in the quest for world peace.

The U.N. Charter's most familiar words are "to save succeeding generations from the scourge of war."³ The Charter states further that the U.N.'s goal is "to practice tolerance and live together in peace with one another."⁴ Clearly, attitudes and habits of mind have a role in sustaining governmental peace policies. The Preamble also recognizes the necessity for structures and instrumentalities to promote both peace and other goals. Thus the U.N. intends "to unite our strength to maintain international peace and security; and to ensure, by the acceptance of principles *and the institution of methods*, that armed force shall not be used, save in the common interest."⁵ Subsequent articles of the Charter implement these purposes, accompanied by authorization to devise new instruments as changing times bring forth new problems or opportunities.

The Gulf War has directed attention to the Charter provisions which allow the authorization of armed force.⁶ However, two important qualifi-

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The core of this paper was presented at a conference on "The Use of Force in the Post Cold War Era," March 15, 1991, sponsored by the International Legal Studies Program of the University of Denver College of Law. Material has been added in the light of subsequent events, but the basic position remains as presented.

1. See, e.g., *The Heritage Foundation and the United Nations: Dying Dia-Tripes*, United Nations Ass'n, USA, Nov. 1989.

2. See, e.g., Ronald Glossop, *Toward Democracy for the World Community*, unpublished paper presented at the Conference on The Ethics of Democracy, sponsored by the Institute for Advanced Philosophic Research at Estes Park, Colorado, August 15, 1991.

3. U.N. CHARTER preamble.

4. *Id.*

5. *Supra* note 3 (emphasis added).

6. U.N. CHARTER art. 39-51; see also UNITED NATIONS SECURITY COUNCIL, RESOLUTIONS RELATING TO THE SITUATION BETWEEN IRAQ AND KUWAIT, U.N. Doc. DPI/11-4/Rev.

cations, less frequently cited, exist. First, armed force, especially if used offensively rather than defensively, may be used only as a last resort.⁷ The Charter provides for active use of armed force in several places. For example, Article 45 states:

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. *The strength and degree of readiness* of these contingents and plans for their combined action shall be determined, *within the limits* laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.⁸

Clearly, defensive use of force is distinguishable from an offensive or invasive use, although admittedly the line between them can blur in many actual situations.

Second, when the Security Council authorizes the use of armed force, it is not a blanket endorsement. Instead, force may be used *to the degree and within the limits* set by the authorizing resolution and by provisions noted in other articles.⁹ Once combat has begun, it is extremely difficult to observe restraint. For example, the Bishop of London, the Very Reverend Winnington-Ingram, during World War I urged young English soldiers to "kill Germans . . . to kill the good and the bad, to kill the young and the old, to kill those who have shown kindness to our wounded . . . As I have said a thousand times, I look upon it as a war of purity."¹⁰

Ultima ratio regum (the final argument of kings, force). Self-restraint is difficult in times of tension and conflict as they are not politically profitable. Nonviolent procedures require self-imposed restraints from the beginning and throughout their operation. This would require a shift from world leaders who exploit fears and hatred, and escalate the

1—40059—(1991), reprinted in 30 I.L.M. 846-64 (May 1991).

7. The U.N. must observe stages of intensity. Chapter VII of the Charter deals with "action with respect to threats to the peace, breaches of the peace, and acts of aggression." Article 40 provides for "provisional measures" involving communication and recommendations "in order to prevent aggravation of the situation." These measures must be implemented "without prejudice to the rights, claims, or position of the parties concerned." Article 41 outlines measures the Security Council may authorize "*not involving the use of armed force*" (emphasis added). Article 42 provides for the use of force in a defensive enforcement role, in case "measures provided for in Article 41 would be inadequate or have proved to be inadequate." This is similar to the weapons police carry to back up their enforcement, but do not normally use unless compliance with their orders requires the coercive power of physical force. As Article 42 states: "Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

8. *Supra* note 6, at art. 45 (emphasis added).

9. *Id.* at arts. 41-43.

10. See *Swords into Plowshares, Plowshares into Swords*, LIBERTY, Sept.- Oct. 1985, at 4; see also Dick Cheney, Associated Press, Aug. 2, 1991 ("I think it was a catharsis . . . that sort of lifted the burden").

rhetoric of violence and passion, to leaders able to convincingly articulate the wisdom and courage of steadiness, persistence and effectiveness toward solutions. Above all, leaders and the public must exercise patience when patience is required for constructive results. William Ernest Hocking spoke of this during World War I. After asserting the importance of the ability to act and sustain motivation, he added, “[b]ut readiness to wait, the negative element in morale, is as important as readiness to act, and oftentimes it is a harder virtue.”¹¹ Consider also the words from Louis B. Sohn, Bemis Professor of International Law, Emeritus, of Harvard, which serve as a summary of the discussion to this point. Speaking of the proposed addition of new rules for international behavior, he says:

Such rules will not help, however if national decision-makers should continue to arrogate to themselves the right to determine in each case whether the rules permit them to engage in a particular activity regardless of consequences to other countries. This kind of traditional self-judging privilege has to be replaced by conferring on impartial international tribunals or boards the power to decide whether a particular activity is legal; what are the bounds for that activity, and what correlative restrictions should be imposed on other parties to avoid unnecessary provocation. All disputes should be settled “legally, not lethally” as escalation of any dispute can endanger the future of mankind and the life on our planet. The Charter of the United Nations is correct in emphasizing that any dispute or situation, “the continuance of which is likely to endanger the maintenance of international peace and security,” is of concern to the United Nations as a whole.¹²

II. HINDRANCES TO THE UNITED NATION'S EFFECTIVENESS

The Charter of the United Nations reflects circumstances at the time of its adoption on June 26, 1945.¹³ Inevitably developments since then have occurred which render some of the concerns less important. Conversely, other circumstances have arisen which were unforeseen and not provided for in the Charter. That time causes change would not have surprised the founders, but I imagine they would have been very surprised — and dismayed — about some of the particulars of those changes. The U.N. founders would have been astonished that good people in allegedly democratic nations would exploit fears for political gain; that Stalin would become paranoid with such tragic consequences; that Joseph McCarthy would dominate the U.S. political scene, unopposed by an otherwise decent U.S. president, to leave a legacy of deceit and suspicion; or that the Cold War between the superpowers would become the basis of international politics for nearly forty years. The founders anticipated ba-

11. W. E. HOCKING, *MORALE AND ITS ENEMIES* 17 (1918).

12. BENJAMIN B. FERENCZ, *A COMMON SENSE GUIDE TO WORLD PEACE* viii (1985).

13. The United Nations Charter came into force October 24, 1945.

sic cooperation between the powers which in short time became obsessive enemies. This lack of international cooperation has hindered the fulfillment of the Charter.

Additionally, the Charter called for the establishment of a Military Staff Committee, to be composed of "the Chiefs of Staff of the permanent members of the Security Council or their representatives."¹⁴ It was to function as an advisory group, providing counsel and guidance to the Security Council in particularly sensitive and difficult situations. It has never functioned.¹⁵

Also, the individual veto power which the five permanent members of the Security Council possess has often been blamed for the U.N.'s inability to act. It was thought at the time that the United States Senate would not ratify membership without the protection of national interest; the other four nations may have had similar sentiments. Although it is true that the veto power has often stymied the Security Council, in retrospect it is at least arguable that, given the Cold War and the rise of nationalism and fundamentalism, the U.N. might have perished had it not been for the veto power. The Soviets might have left the U.N. when votes were consistently going against them during Stalin's reign. Similarly, the United States might have left during Vietnam and Nicaragua, if votes had been taken. It seems the veto power was necessary; the world and the national leaders were not ready for a supranational decisionmaking body on issues of war and peace.

The International Court of Justice, the principal judicial organ of the United Nations, was a functional continuation of the Permanent Court of International Justice of the League of Nations. Authorized under Chapter XIV of the Charter, it has its own detailed statute. Every member of the U.N. is *ipso facto* a member of the International Court of Justice. When a dispute between nations occurs over a legal matter, the issue "should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."¹⁶ The superpowers have been unwilling to use the Court on issues which they consider vital to their national interests. For instance, when in 1984 Nicaragua brought an action against the United States, alleging violations of international law, President Reagan refused to accept the Court's jurisdiction, withdrew the U.S. as a party to the case, and subsequently terminated its acceptance of the compulsory jurisdiction of the Court.¹⁷ This response to both the International Court and international law was a

14. *Supra* note 6, at art. 47.

15. The U.N. military action in Korea, 1950-53, was under the U.N. flag, but not under command of the Secretary-General, who had delegated command to General MacArthur. Security Council action was possible only because the Soviet delegate had walked out earlier. On the unworkability of the Military Staff committee, see FERENCZ, *supra* note 12, at 36.

16. *Supra* note 6, at art. 36, ¶ 3.

17. See U.S. DEP'T STATE BULL., Jan. 1986, at 67.

blow to principles of justice among nations and to the Court's power.

One other failing remains to be mentioned, which is the inability to expedite significant arms control. Article 26 states:

In order to promote the establishment and maintenance of international peace and security *with the least diversion for armaments of the world's human and economic resources*, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be *submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments*.¹⁸

Those charged with national and international responsibility have failed to implement weapons control.¹⁹ If one nation does not trust another, that is all the more reason (1) to wish to see that nation's arsenal limited, and (2) not to threaten that nation by spectacular accumulation of powerful weapons and increasingly hostile rhetoric.²⁰ A nation only needs enough armaments to show it is serious, not easily cowed, and not to be taken lightly. The conventional Cold War rationale has many flaws, but the transition from MAD (Mutually Assured Destruction) to "Who's-Ahead-In-The-Arms-Race?" seems extremely illogical.²¹ Of all the untenable assumptions that leaders of nations make, none is more suspect than "our enemy will perceive sanity as weakness."

U.N. initiatives are often stymied by states with veto power or by a majority coalition in the General Assembly. Nevertheless, the Secretary-General at times needs to speak out bluntly, taking responsible leaders to task. Although hampered by national policies which limit constructive action, the position, insofar as it involves heavy responsibilities, carries strong leadership requirements. Part of the U.N.'s meaning and symbolism implies that it should be a few notches above the common level of nationalism. Moreover, there are some occasions in which the Secretary-General has the role of moral spokesperson for the *people* of the world (Javier Pérez de Cuéllar has been a marked improvement in this regard). Similarly, although they are selected as national representatives, U.N. Ambassadors *should* promote U.N. purposes.

A reflection on the history of our own government reveals that responsible criticism of social institutions can correct and improve them.

18. *Supra* note 6, at art. 26 (emphasis added).

19. See 20 DEF. MONITOR, No. 4 (1991); see also *Middle East Missile Sales: The Suppliers and the Supplied*, 13 NUCLEUS 5 (1991); STANLEY FOUNDATION, *BEYOND COLD WAR* 21-37 (1990); *Swords Into Plowshares*, UNESCO COURIER, Mar. 1982, at 5-33; ARM CONTROL, DISARMAMENT, AND NATIONAL SECURITY 89-121, 365-75 (Donald G. Brennan ed., 1961).

20. Oct. 15: "We're dealing with Hitler revisited;" Oct. 23: a comparison with Hitler's "Death's Head Battalions;" Nov. 1: "brutality that I don't believe Adolf Hitler ever participated in;" quoted in *More than a Madman*, NEWSWEEK, Jan. 7, 1991, at 20.

21. See generally STEVEN KULL, *MINDS AT WAR: NUCLEAR REALITY AND THE INNER CONFLICTS OF DEFENSE POLICYMAKERS* (1988) (interviews with top level people in the Defense Department and related industries).

The Bill of Rights became effective in 1791. Seven years later the Alien and Sedition Act contradicted the First Amendment by outlawing attempts toward "unlawful assembly, or combination" and publishing "any false, scandalous and malicious writing" bringing into disrepute the U.S. government, Congress, or the President. As Professor Morris says, "The Sedition Act was aimed at repressing political opposition," and it was "carried out in a partisan manner."²² It took three years for the Act to be repealed, convictions pardoned, and fines restored with interest. That was the same length of time it had taken to ratify and activate the Bill of Rights. Criticism and debate of social institutions is one way to maintain the health of such institutions. The more democratic an institution, the more likely that there will be certain built-in inefficiencies and a risk of faulty decisions. The mature reaction to these problems is to work and vote for amendment where possible.

A similar maturity ought to apply to the United Nations, which relates to far more complex institutional relationships than we have in our country: numerous languages, ancient hostilities, deeply imbedded cultures concentrated in definite areas, vastly greater populations, and the obstacles posed by ingrained and competing national sovereignties. Though our national government has more than two hundred years of governmental experience, social momentum, and individual loyalty undergirding it, most would agree that our government needs improvement. Obviously, this also applies to the fledgling United Nations, which lacks the police enforcement powers of a city, state or nation.

III. THE PEACE-KEEPING FORCES OF THE UNITED NATIONS

The 1988 Nobel Peace Prize was awarded to the U.N. Peace-Keeping Forces, paying tribute to the "young people of many nations . . . who, in keeping with their ideals, voluntarily take on a demanding and hazardous service in the cause of peace."²³ More than 500,000 men and women from fifty-eight countries have served in U.N. peace-keeping forces. There are currently more than 10,000 from thirty-five countries serving as peace-keepers under the U.N. flag. More than 700 have died while serving. In many respects these Blue Berets, Soldiers of Peace, have forged peace when the General Assembly was unable to act because of U.S./U.S.S.R. hostility. As the Secretary-General stated in a lecture at Cambridge University:

[T]he onset and persistence of the Cold War could have paralyzed the [United Nations] . . . But it is a measure of the inner vitality and resilience of the Organization that, instead of allowing this factor to block all its endeavors, it found other ways of defusing conflicts. It originated the concept of peace-keeping to contain hostilities at the

22. RICHARD B. MORRIS, *ENCYCLOPEDIA OF AMERICAN HISTORY* 129 (1953).

23. United Nations Association USA, *United Nations Focus, Peace-Keeping*, at 40-47 (1989). [Hereinafter "UNA Peace-Keeping"].

regional level. The technique of conflict control . . . in diverse theaters has been one of the most constructive innovations in the field of international affairs in our age.²⁴

The U.N. Charter does not provide for Peace-Keeping Forces; it does however, support such operations. The Preamble lists as one of its main purposes the establishment of "conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained." Chapter VI, "Pacific Settlement of Disputes," addresses negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, use of regional institutions or arrangements, "or *other peaceful means* of their own choice."

"Peace-Keeping" refers to situations where conflict has momentarily subsided and where there is grave danger that the peace will collapse. The presence of the Blue Berets prevents the parties from becoming embroiled in conflict and keeps the parties working peacefully together, seeking negotiated settlements. There are two types of Peace-Keeping operations: Observer Missions, teams of unarmed military officers; and Peace-Keeping Forces, including all ranks of troops which carry light weapons, normally used only in self-defense. The Secretary-General stated:

In a larger perspective, we must work towards a time when war will cease to be an acceptable option of national policy or a possible means of settling disputes and when a reliable and respected international system will take its place. In this perspective, the development of international peace-keeping has an essential place, just as the concept of civil police was essential to the development of the rule of law within nation states.²⁵

The achievements of the Soldiers of Peace should be better known. As observers, they were on the Iran-Iraq cease-fire line, in Afghanistan, India-Pakistan, southern Lebanon, the Golan Heights, and Cyprus. As for what they do, Sir Brian Urquhart, former Under-Secretary-General for Special Political Affairs at the U.N., has said, "It is like the staff in a hospital engaged in getting the patient's temperature down and keeping him reasonably healthy. And when you get to a certain point, a great surgeon may be able to arrive and deal with the problem."²⁶ Typical of the assignments of peace-keeping operations are:

1. Observing a situation and reporting to the Secretary-General;
2. Investigating incidents and negotiating to avoid resumption of fighting;
3. Physically controlling of buffer zones;

24. *Id.* at 40.

25. *Id.* at 47.

26. *Id.* at 43.

4. Controlling movements of armed personnel and weaponry in sensitive areas;
5. Verifying compliance or violations in regard to cease-fire or other agreements;
6. Assisting in maintaining law and order;
7. Assisting local governments to restore normal order after fighting has taken place; and
8. Providing humanitarian assistance to the local population.

Implicit in these functions is recognition that after severe fighting many normal operations of an area will have broken down, such as police coverage, emergency medical services, and communications. Several such U.N. operations, both in Iraq and at its borders, provided such relief and health care. Sadruddin Aga Khan, who carried out similar assignments in Afghanistan, released reports based on field studies of the need in many places for food, blankets, and medicine.²⁷ These reports undoubtedly played an important role in persuading the Security Council to authorize limited Iraqi oil exports, under the Secretary-General's supervision, to finance such relief.²⁸

Security Council Resolution 687, adopted on April 9, 1991, mandated the official cease-fire and also called for the establishment of the United Nations Iraq-Kuwait Observer Mission (UNIKOM).²⁹ On that same date Javier Pérez de Cuéllar announced that 300 military observers and 680 soldiers had been deployed in the demilitarized zone between Iraq and Kuwait to monitor military personnel withdrawals, equipment withdrawals and traffic. Additionally, the U.N. is also charged by Resolution 687 with overseeing the elimination of Iraq's chemical, biological, and nuclear weapons.³⁰

IV. PEACE-MAKING FORCES OF THE UNITED NATIONS

Peace-Making refers to situations where armed conflict exists and where the U.N. has been called in to mediate. Thus it differs from Peace-Keeping, which applies to situations in which there exists a fragile peace, truce, or cease-fire in effect.³¹ In actual practice the two functions may

27. See Patrick E. Tyler, *Mounting Health Crisis Seen in Iraq*, N.Y. TIMES, June 3, 1991, at A1; see also Interview with Sadako Ogata, U.N. High Commissioner for Refugees, in KAYHAN INT'L, reprinted in WORLD PRESS REV., July 1991, at 11.

28. Security Council vote August 15, 1991. It is ironic that with all the additional demands made upon the United Nations, and despite the vote by the U.S. Congress in 1990 to begin annually paying 20 percent of the amount owed to the U.N. until it is paid off, as of June 1991 no arrearage payments have been made. Thomas K. Hafén, *U.N. Force Deployed in Gulf*, THE INTERDEPENDANT, June-July 1991, at 4-5.

29. U.N. SC Res. 687, reprinted in 30 I.L.M. 847 (1991).

30. U.N. SC Res. 687, *supra* note 29.

31. United Nations Association USA, *United Nations Focus, Peace-Making*, at 48-55 (1989).

overlap and intermingle, as was apparent in Lebanon, Afghanistan, and Syria-Israel. Peace-Making operations require a stronger need for protection since the risk is high of a sporadic attack on U.N. personnel. Peace-Making armaments are inadequate for sustained defense; they are intended only to provide temporary deterrence sufficient to impede an attack until greater force arrives. "U.N. peace-keeping works through persuasion, moral force and diplomatic pressure, as opposed to military force and coercion."³² "Alternatives to the use of force" does not completely divorce the possible use of defensive force. Commitment to peaceful methods simply reverses the conventional "fight first and talk later" stance. However, two attributes provide an advantage to the U.N. forces: impartiality and permanence. Javier Pérez de Cuéllar said in his Nobel Peace Prize acceptance address:

The Secretary-General and his representatives may not be more talented than national diplomats, but they have the advantage that they are independent of States. They are, consequently, more able to win the confidence of parties to a conflict in the exercise of good offices. Their permanence, however, is a distinct advantage in the case of protracted negotiations. Indeed, one reason we were able to seize as rapidly as we did the opportunity for peace, offered us by the changing international climate, was because we had, for years, been maintaining close contact with the parties involved and working tirelessly to bring their views closer together.³³

Namibia's achievement of independence exemplifies this impartiality and permanence. Resolution 435 of the Security Council in 1978 called for free and fair elections to choose a Namibian constituent assembly.³⁴ For ten years the Security Council and the Secretary-General diligently worked, mainly behind the scenes, to secure these elections. In January 1989 the Security Council was able to put Resolution 435 into effect, ending more than twenty years of warfare.³⁵ Six months later more than 6,000 people — military and civilian — from 109 nations were cooperating in the U.N. Transition Assistance Group (UNTAG). The military component monitored the cease-fire and withdrawal, demobilization, and assistance to the civilian component. This component had the responsibility for preventing intimidation or interference with the election process, and, if necessary, to ensure the good conduct of the territory's existing police forces, and to do so with scrupulous impartiality.

In 1987 the Secretary-General announced that all issues had been resolved in the U.N. plan, save one: South Africa's insistence that Namibia's independence must be linked to Cuban withdrawal of forces from Angola. In late 1988 a U.S. mediated accord was signed at the U.N.

32. *Id.* at 55.

33. *Id.*

34. U.N. SC Res. 435, reprinted in 17 I.L.M. 1563 (1989).

35. See generally *Reports, Documents on Peace in Southwestern Africa and Transition for Namibian Independence*, 28 I.L.M. 944 (1989).

by Angola, Cuba, and South Africa, implementing the U.N. plan for Namibia's independence with a U.N. military observer mission and the U.N. Angola Verification Mission (UNAVEM), to verify the redeployment and gradual withdrawal of Cuban troops from Angola.³⁶ The words of Theodore C. Sorensen appropriately highlight the magnitude of such a victory:

The single greatest enemy of law is war . . . War requires power; law limits power. War feeds on emotion; law is based on reason. War justifies emergency measures; law requires a long-range perspective. War weakens law, distorts it, abuses it, overrides it, suspends it. War, I repeat, is the single greatest enemy of law.³⁷

The encouragement garnered from such words is necessary, for, as the Secretary-General has said:

Our powers of destruction have increased to the point where it is madness to use them. The necessity of the rule of law in our crowded, interdependent planet is becoming increasingly evident. It is clear that if we fail to act together on many matters we may lose the capacity to act at all.³⁸

V. THE COSTS OF THE GULF WAR

Examination of the Gulf War in terms of its costs and benefits provides a necessary background for consideration of the costs and benefits of alternatives to force. The purpose of the following list is to give a broad picture of the many forms of "cost" of the Gulf War. Data are not available for a precise and complete accounting; some of the forms of value destroyed are not quantifiable, yet their reality is palpable, and some of the collateral effects are knowable only to a small extent.

A. *Financial*

The monetary cost might seem to be the easiest to calculate, but there are many aspects which are inaccessible. The Pentagon announced the total cost of \$61 billion, which was higher than previously stated and well beyond contributions from other nations.³⁹ This figure does not include the \$9 billion debt forgiveness granted to Egypt (and similar gratui-

36. *Id.*

37. Theodore C. Sorensen, *Law: The Most Powerful Alternative to War*, 4 *FORDHAM INT'L L.J.* 13, 15 (1980).

38. *United Nations Focus, Peace-Making*, *supra* note 31, at 55 (quoting the Secretary-General's Nobel Peace Prize acceptance address). The comment in the Stanley Foundation report states, "[It] is not internationalism that is in crisis, but rather multilateralism that is in disarray." *The United Nations and the Future of Internationalism*, at 14 (1987). A problematic challenge not dealt with here is that most wars since World War II have been within nations, not between two nations. The Gulf War was an exception, but while that was going on there were twenty-eight other conflicts being fought within nation-states, not including Yugoslavia.

39. *Gulf War Price Tag Pegged at \$61 Billion*, *L.A. TIMES*, Nov. 8, 1991, at 15, col. 1.

ties to other nations), the loss or abandonment of equipment, businesses with losses either from disruption in the area or consequences in communities (airlines, restaurants, health services and other enterprises restricted because were employees summoned to war), and in addition, the general effect on the economy. The financial cost of the war cannot be limited to the United States alone. For example, thousands of Filipino workers were dismissed. Many women who were domestic workers were not paid wages and, because of their gender, had no standing in either Iraqi or Kuwaiti courts. The number of such workers from several third world countries was very large and the money they sent home was important to both their families and to their home countries' depressed economies.⁴⁰ Consequently, \$61 billion only begins to address the full financial cost.

B. *Casualties*

The U.S. and Allied Forces casualties were remarkably low, considering the intensity of their use of force. Thirty five of the 148 American combat deaths,⁴¹ or 23%, were from friendly fire.⁴² A senior military official stated that more than 100,000 Iraqi soldiers and more than 100,000 civilians died during the forty-three days of combat.⁴³ Others place the figures much higher.

Staggering casualties also occurred after the war. Estimates are exceedingly rough; perhaps 20,000 were killed in the Iraqi civil war and somewhere between 2,000 and 5,000 Kuwaitis were killed during the occupation by Iraq.⁴⁴ The U.S. government has not released any official information about Iraqi deaths, even though the Geneva Convention lists this as a requirement after the conclusion of a war. We know even less about the permanent injuries: blindness, insanity, loss of limbs, or to what extent children were the victims. Whatever the eventual totals, the deaths and injuries were far from insignificant when thought of in human rather than statistical terms, and in global rather than merely American terms.

C. *Refugees*

Again estimates vary, but roughly three million refugees fled into Iran, one million into Jordan, and two million into or at the border of Turkey. This does not include the displaced workers from the Philippines, India, and Pakistan or the Palestinians and Iraqis fleeing from persecution in post-war Kuwait. Kuwait has been deporting 300 foreigners a week as late as August, according to the Red Cross. Prior to the Gulf War

40. *Innocent Lives in the Balance*, ASIaweek, reprinted in *WORLD PRESS REV.*, Nov. 1990, at 20.

41. Bill Gannon, *Gulf War Tactics Being Scrutinized; High-Tech Weaponry Had Flaws*, *THE GAZETTE*, Sep. 21, 1991, at B6.

42. *Id.*

43. Steven Thomma, Knight-Ridder News Service, May 30, 1991.

44. *Id.*

there were more than fifteen million refugees in the world, more than half being in the Middle East and South Africa.⁴⁵ This emphasizes the regional impact of adding three to five million more refugees to what was already a critical situation.

D. *Environment and Resources*

Reports on environmental damage have varied, depending on what factors were measured, the extent of the survey, and who paid for the study. It will probably be some time before effects on the flora and fauna can be accurately determined. However, if environment refers to potable water, acceptable air quality, unpolluted shores and cities with adequate sewage, we do know that Iraq and Kuwait have suffered severe damage.⁴⁶ Of course damage from oil slicks and smoke from the fires has been widely publicized. These were the direct result of armed conflict. During the months the sanctions were in effect there were no oil wells set on fire. It was in January that Iraqi troops opened the pipes from the al-Ahamdi terminal and dumped oil into the gulf. As was stated in one report:

At the same time, the Allied air campaign bombed tankers and refineries, adding thousands of more barrels to the slick, which at one time flowed south toward Saudi Arabia. Experts agree, however, that about 3.25 million barrels that were dumped into the gulf by Iraqi troops and Allied air raids proved far easier to clean up than the Doomsday estimates [released by Pentagon officials] of 12 million to 13 million barrels.⁴⁷

A typical estimate is that eighty-five percent of Kuwait's wells were set on fire by Iraqis on February 22, burning six billion barrels a day, a terrible, unjustifiable and senseless act. Add to that the amount of fuel consumed in the gigantic transport of troops and equipment and the more than 100,000 sorties flown over Iraq.⁴⁸ This was far and away the largest consumption and loss of this non-renewable resource in a comparable period in the history of the world. One major purpose of the war was to protect Gulf oil reserves for the future. It must be conceded that armed force failed to accomplish this effectively.

45. World Refugee Survey, 1989 World Refugee Statistics, at 30, 31 (U.S. Comm. for Refugees, Washington, D.C., 1989). This does not include refugees who have resettled.

46. E.g. Patrick E. Tyler, *U.S. Officials Believe Iraq Will Take Years to Rebuild*, N.Y. TIMES, June 3, 1991, at A1; Prof. Jassem Al-Hassan on the oil fires, Associated Press, August 13, 1991; Melinda Liu, *Apocalypse Near*, NEWSWEEK, Apr. 1, 1991, at 14-16.

47. Carol Rosenberg, report on the Gulf oil spill, Knight-Ridder News Service, Apr. 18, 1991.

48. Susanne M. Schafer, *Air Force: War Against Iraq Decided Within Hours*, Associated Press release, Mar. 18, 1991. As of February 4, there had been 44,000 sorties over Iraq, one for every minute since the war began. It was later determined that 640 wells had been set on fire.

E. Other Costs

One could continue to summarize additional types of costs of the Gulf War. Such a list would include: diversion from domestic issues; diversion from global problems of hunger, oppression, conflict, and displaced persons; intensification of ethnic prejudices (toward Kurds, Palestinians, Shiites, and in the U.S. toward Arabs); destruction of the infrastructure in Iraq; destabilization of governments; archeological damage; and the deterioration of attitudes. The latter refers to attitudes of mind and spirit; the cynacism which occurs (e.g., *silent leges inter arma* [laws are silent in time of war]⁴⁹ and Aeschylus' time-honored statement, "In war, truth is the first casualty").⁵⁰

VI. POSITIVE RESULTS OF THE GULF WAR

It cannot be denied that there were positive results from the Gulf war, the chief one being that the Iraqi army was driven out of Kuwait. This, however, occurred at a terrible price — the destruction of Kuwait. Part of this took place during Iraq's invasion and initial occupation, part was intensified in response to the bombing which began January 16. Many art treasures taken from Kuwait were returned, as was some of the stolen gold.⁵¹ Some of these treasures, however, were deliberately destroyed. However, if the war was primarily to oust Saddam, it did not achieve its objective. The CIA's part in urging Kurdish revolt⁵² was based on somewhat defective intelligence, if it was thought that such a revolt would lead to Saddam's downfall. But the war did demonstrate the effec-

49. Cicero, *For Milo* iv.

50. There are several examples of this maxim. The soldier who claimed to have been brutally tortured by his Iraq captors was featured repeatedly, but when it was revealed that his facial bruises were the result of a plane accident and self-inflicted blows, coverage was slight. See Michael Wines, *After the War: P.O.W.'s; Ex-P.O.W.'s Offer Accounts of Terror and Torture in Iraq*, N.Y. TIMES, Mar. 15, 1991, at 1, col. 5. U.S. intelligence officers said they found shipping documents in Arabic that showed the equipment was delivered after the embargo took effect in August. Ten days after the war was over the State Department released a brief which stated that no such documents were found. See Paul Bedard, *U.S. Probes Iraq's Rearming; Jordan Denies It Is Conduit*, WASH. TIMES, Apr. 30, 1991, at A1. Moreover, the President emphasized that the actions of the U.S. would be defensive and that the sanctions would be given time. However, within four days he called for an "interdiction" (blockade). False information was given out in connection with the tragic bombing of the air raid shelter February 13. See, e.g., John Barry, *What Really Happened*, NEWSWEEK, Feb. 25, 1991, at 20. One might well say that such things are inevitable in war; this is precisely the point. Deception is inextricably attached to war and it leads to a progressively easier public toleration of deception. Cf. *Media Ethics Update*, Spring 1991; Ved P. Nanda, *The Iran-Contra Affair — A Symptom of a Malady?*, 11 Hous. J. INT'L L. 368-370 (1989).

51. Walter Putnam, *Kuwaitis to Visit Baghdad to Reclaim Art Treasures*, Associated Press, Aug. 12, 1991. Among the stolen materials was art worth at least \$500 million and forty tons of gold.

52. Tim Weiner, *CIA Broadcasts Urged Kurds On*, Knight-Ridder News Service, April 6, 1991.

tiveness of the Patriot anti-missile missiles and the coordination of the Allied troops. It also dispelled some false beliefs, i.e. that Arab soldiers would never surrender to non-Arab forces.⁵³ Another important consequence was the condition that Iraq destroy its chemical weapons, biological weapons, and nuclear materials and laboratories.

VII. NON-VIOLENT METHODS

Nonviolent methods of addressing conflict also have costs and limitations. One major limitation is that such methods are slow to accomplish their goals, and thus are politically difficult to sell. People like to see results. Political opponents often charge weakness and cowardice, insisting that such methods do not work. Nonviolent methods do not have dramatic appeal suitable for headlines and televised excitement. This disadvantage is not minor, for effective social procedures must have public support. Hate can be aroused by shouting a few words and waving a bloody shirt. Understanding requires pedestrian explanation, patience, and long-term dedication. That sanctions can achieve remarkable transformations under the most difficult circumstances is illustrated by South Africa; however, that has taken many years.⁵⁴

A second limitation is that results are not guaranteed. That is true of all methods for promoting public policy, but somehow people expect one hundred percent results from pacific procedures. They do not however, make the same connection between force and its failures. Before the Gulf crisis, 435,000 U.S. troops were stationed at 395 major military bases in thirty-five foreign countries, with another 47,000 naval and marine corps personnel aboard ships in foreign waters. During the 1980s the U.S. spent \$160 billion or more every year to defend Western Europe, \$30 to \$40 billion to defend parts of Asia, and \$20 to \$40 billion to protect U.S. access to Persian Gulf oil.⁵⁵ It can hardly be argued that these investments have prevented problems and failures. However, few ask, "How did \$300 billion spent in ten years to protect Persian Gulf oil prevent the invasion of Kuwait or its loss of oil," or, "How did \$350 billion bring stability to the Philippines or human rights to Pakistan?"

At the same time, educated people can be entirely ignorant of the accomplishments of the United Nations while complaining about its ineffectiveness. Obviously the task of educating the public on these matters has been neglected. But as Pierre Elliott Trudeau has said, "Government leaders *everywhere* are very much involved in the politics of war; they are

53. Russel Watson, *After the Storm*, NEWSWEEK, Mar. 11, 1991, at 28.

54. See Ved P. Nanda, *The Case for Comprehensive Multilateral Sanctions Against South Africa—A Legal Framework*, in EFFECTIVE SANCTIONS ON SOUTH AFRICA (G. Shepherd ed.) (1989); Lindiwe Mkhondo, *South African Apartheid — One Conflict That's Being Resolved*, WORLD WISE, July 1991; Ved P. Nanda, *When Do Sanctions Work?*, DENVER POST, July 28, 1991.

55. See generally 21 DEF. MONITOR, No. 1 (1991).

not very much involved in the politics of peace.”⁵⁶ Yet, the facts are not difficult to comprehend. Secretary-General Pérez de Cuéllar pointed out that the 1989 price of U.N. peace-keeping was \$1.5 billion, almost exactly one percent of the world’s official arms exports for 1987, \$164 billion.⁵⁷

A third limitation is that sanctions make life more difficult for the populace, especially the poor. The rulers and the privileged manage very well. Oddly enough, the ordinary people understand this and take the hardships very well. Their anger turns toward their rulers who have brought these hardships to pass. This contrasts with those who have instead suffered a forceful attack. Their anger and fear turn upon those who attack them, not their rulers. It was the Blacks in South Africa who wanted the sanctions to continue.⁵⁸ In World War II, production of war material actually increased in Hamburg as a result of the devastating bombing.⁵⁹ It is strange to hear those who express great sympathy for the populace enduring the hardships of sanctions dismiss the tragedies and terrors visited upon them by round-the-clock bombing.

Sanctions also penalize businesses stationed in the quarantined area. This provides a major reason for the political opposition to sanctions in South Africa as well as Iraq. The utilization of weaponry and its support brings profit to selected industries and prestige to the military; nonviolent methods do not. Of course the government acquires debt in the former and the national economy is far better off when nonviolent procedures are followed, but that is politically difficult to sell compared with immediate and visible profit, which is why Heilbroner calls this arrangement “military socialism.”⁶⁰

A fourth limitation of economic and diplomatic measures is that they require restraint despite intensified public passions. Kuwait was ravaged, held hostage, and was vulnerable. Such a situation calls for delicacy, skill, and shrewdness, not bombast and rash threats. But the most vocal part of the public clamors for violent and rash actions. Some hostages may be killed regardless of the type of response undertaken. However, hostages may not appreciate a frontal attack to rescue them if the collateral effect is to increase the possibility of torture and death. If the Gulf War was for Emir Shaikh Jabir al-Ahmad al-Jabir as-Sabah and members of the Sabah family, such costs were inconsequential. If it was for the Kuwaitis who stuck it out — the people themselves, including the 61% of the residents who were not Kuwaitis — then there is yet some accounting to be

56. Trudeau, *The Nuclear Imperative*, reprinted in *WORLD PRESS REV.*, Jan. 1985, at 27.

57. UNA Peace-Keeping, *supra* note 23, at 47.

58. President Bush lifted U.S. sanctions against South Africa July 10 1991, but the African National Congress and others opposed this. See Christopher S. Wren, *DeKlerk's Victory: Without Resolving the Issue of Power, Pretoria Regains World Acceptance*, N.Y. TIMES, July 11, 1991, at A10.

59. JOHN KENNETH GALBRAITH, *THE AFFLUENT SOCIETY* 161-63, and 132 (1958).

60. ROBERT L. HEILBRONER, *AN INQUIRY INTO THE HUMAN PROSPECT* 39 (1974).

done.

VIII. CONCLUSION

I have stressed the political difficulties in mustering support for non-violent social and international policies, because I believe that they are the greatest barrier for such mature and effective measures, exacerbated by the temptation for politicians to appeal to the violent and dramatic. When the fighting ends, you still have to turn to negotiation to deal with the settlement.

It is instructive to examine the news reports over the past few years to see how frequently our government has publicly cautioned other states to avoid bloodshed and violence, appealing for calmness and reason, at the same time that we were using force and threat of force in our perceived national interest. Our leaders understand perfectly well that to negotiate with your enemy is not a sign of weakness or cowardice, but of wisdom and maturity — when it comes to other nations. We recommended this policy to the Soviets with regard to the Balkan states, to China in dealing with the dissidents in Cambodia, and many other places. The U.S. has proclaimed the effectiveness of sanctions against Nicaragua, Cuba, the U.S.S.R., Libya, Zimbabwe, Panama, while claiming that sanctions do not work when it comes to China, South Africa, El Salvador, and Iraq.

In the late fall of 1990, almost every day some high government official announced that sanctions were ineffective and would never work in Iraq. However, in December, CIA Director, William Webster testified before the House Armed Services Committee that sanctions were having a powerful effect in Iraq. Iraq was running out of cash, faced shortages of basic foodstuffs, its tanks would gradually become inoperable, and its air force would be able to maintain current operations for only three to six months.⁶¹ Presumably, due to his intelligence resources, he was in a better position than anyone else to report on this. Ironically, on the same day as Webster's testimony, the Secretary of State was urging the Senate to threaten war because the sanctions were a failure. Webster was not heard from in public until January when he revised his story, saying that although sanctions would adversely affect the Iraqi Air Force, "The Iraqi Air Force is not likely to play a major role in any battle for Kuwait."⁶²

Verbal violence between states and leaders, such as President Bush and Saddam Hussein, often muddles rational reasoning. A tragic example occurred at the CIA's urging the Kurds to overthrow Saddam, as a result of a secret order by Bush for the CIA to transmit Kurdish language radio broadcasts into Iraq, and for tactical intelligence to be given to Kurdish

61. Lars-Erik Nelson, *CIA Chief Did a Flip on Gulf War*, N.Y. DAILY NEWS, January 15, 1991.

62. *Id.* Webster resigned May 8, 1991.

rebels in Turkey.⁶³ The civil war which followed the armistice was a bloodbath. Deaths from attacks by Iraqi Hind helicopters were matched by refugees dying from disease and starvation. The U.N. team reported 2,000 dying each day in May; a State Department official said it was 3,000; a Harvard team said as many as 170,000 Iraqis could die by the end of summer.⁶⁴

Another example of being deluded by rhetoric is seen in the clichés which become common when public passions are inflamed; for example, “we have to teach him a lesson, or there will be other tyrants.” As for this cliché, which I call the “Didactic Theory of War,” if war “teaches” so well, how is it that the bombing of Tripoli did not deter the coup attempt in Grenada in 1983, and why did not the Grenada action prevent Noriega’s theft of the Panamanian election in 1989, and why did not the Panama invasion prevent Saddam Hussein’s aggression in Kuwait in 1990?

A final example of the double-standard is the propensity to judge failures in the use of force and/or technology by one set of criteria and to judge failures in programs of constructive human relations or social problem-solving by entirely different criteria. However, when there is a failure or a disappointment in a program which is nonviolent and socially constructive in its purpose, all too often the response is, “Well, that goes to show that things like that do not work.” Thus any failure or delay in effect of sanctions against Iraq was met with rejection of all economic and diplomatic means for coping with the problem.

There are times in life when destructive force must be used. But this should be a *last* resort in international relations, and if we are ever to have a livable world it is imperative that we learn better ways to use alternatives to force.

63. See generally Weiner, *supra* note 52.

64. Knight-Ridder News Service, May 30, 1991.

