

Introduction

THE UNITED NATIONS, REGIONAL ORGANIZATIONS, AND MILITARY OPERATIONS: THE PAST AND THE PRESENT

ANTHONY CLARK AREND*

I. INTRODUCTION

In the post-Cold War era, multilateral organizations have been playing an unprecedented role in conflict management.¹ The United Nations and a number of other international organizations have expended great resources to attempt to prevent or end bloodshed, beginning with the Persian Gulf War² and continuing through struggles in places such as Somalia,³ Rwanda,⁴ the Balkans,⁵ and Haiti.⁶ While

* Associate Professor of Government and Adjunct Professor of Law, Georgetown University.

1. Many recent works discuss the role of the United Nations and other organizations in the maintenance of international peace and security. See, e.g., ANTHONY CLARK AREND & ROBERT J. BECK, *INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM* (1993); PAUL F. DIEHL, *INTERNATIONAL PEACEKEEPING* (1993); WILLIAM DURCH & BARRY BLECHMAN, *KEEPING THE PEACE: THE UNITED NATIONS IN THE EMERGING WORLD ORDER* (1992); *ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS* (Lori Fisler Damrosch ed., 1993) [hereinafter *ENFORCING RESTRAINT*]; *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* (Lori Damrosch & David Scheffer eds., 1991); *REGIONALISM IN WORLD POLITICS: REGIONAL ORGANIZATION AND INTERNATIONAL ORDER* (Louise Fawcett & Andrew Hurrell eds., 1995); *UNITED NATIONS, DIVIDED WORLD: THE UN'S ROLES IN INTERNATIONAL RELATIONS* (Adam Roberts & Benedict Kingsbury eds., 2d ed. 1993); *THE UNITED NATIONS AND CIVIL WARS* (Thomas G. Weiss ed., 1995); Thomas G. Weiss, *New Challenges for U.N. Military Operations: Implementing the Agenda for Peace*, 16 WASH. U. L.Q. 51 (1993).

2. For discussion of the role played by supranational organizations in the Gulf War, see JOHN NORTON MOORE, *CRISIS IN THE GULF: ENFORCING THE RULE OF LAW* (1992); Michael J. Glennon, *Agora: The Gulf Crisis in International and Foreign Relations Law*, 85 AM. J. INT'L L. 63-109, 506-535 (1991); *THE KUWAIT CRISIS: BASIC DOCUMENTS* (Elihu Lauterpacht et al. eds., 1991); *AFTER THE STORM: LESSONS FROM THE GULF WAR* (Joseph S. Nye, Jr. & Roger K. Smith eds., 1992); *THE GULF WAR READER: HISTORY, DOCUMENTS, OPINIONS* (Micah L. Sifry & Christopher Cerf eds., 1991).

3. See ROBERT OAKLEY & JOHN HIRSCH, *SOMALIA AND OPERATION RESTORE HOPE: REFLECTIONS ON PEACEMAKING AND PEACEKEEPING* (1995); Chester Crocker, *The Lessons of Somalia*, 74 FOREIGN AFF., May-June 1995, 2.

many observers would note the success of these undertakings, other scholars and policy-makers would point to the manifold problems emerging from this new multilateralism. One such problem has been the tension between globalism and regionalism.⁷ As the premier global organization, the United Nations is charged with the daunting task of maintaining international peace and security.⁸ Yet alongside the United Nations are a variety of regional organizations including the Organization of American States, the Organization of African Unity, the Arab League, the European Union, the Organization for Security and Cooperation in Europe and the North American Treaty Organization. In many cases, these regional organizations are also mandated by their members to respond to threats against peace and security. Yet, this two-level approach to conflict management has led the United Nations and certain regional arrangements to take different approaches to several critical international conflicts such as Bosnia, Haiti, and Liberia.⁹ This tension casts doubt on the prospects of establishing a well-functioning, predictable post-Cold War security system.

In an effort to examine the existing tension between regionalism and globalism, the present Symposium explores the nature of this conflict and discusses alternatives for ameliorating the tension. This Article sets the stage by discussing the historical context in which the

4. See Stephen D. Goose & Franck Smyth, *Arming Genocide in Rwanda*, 73 FOREIGN AFF., Sept-Oct. 1995, at 86.

5. See LENARD COHEN, *BROKEN BONDS: THE DISINTEGRATION OF YUGOSLAVIA* (1993); Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569 (1992); see also Mats R. Berdal, *The Security Council, Peacekeeping and International Conflict after the Cold War*, 7 DUKE J. COMP. & INT'L L. 71 (1996); Christine Gray, *Case Study: Consent and United Nations Peacekeeping in Yugoslavia*, 7 DUKE J. COMP. & INT'L L. 241 (1996).

6. See, e.g., Domingo E. Acevedo, *The Haitian Crisis and the OAS Response: A Test of Effectiveness in Protecting Democracy*, in *ENFORCING RESTRAINT*, supra note 1, at 119; Ian Martin, *Haiti: Mangled Multilateralism*, 95 FOREIGN POL'Y 72 (1994).

7. I have previously set forth this tension in conjunction with a number of other tensions confronting the United Nations. See Anthony Clark Arend, *The United Nations and the New World Order*, 81 GEO. L.J. 491 (1993).

8. In the Preamble to the United Nations Charter, "THE PEOPLES OF THE UNITED NATIONS" proclaim their determination "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . ." and pledge "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 . . ." U.N. CHARTER preamble. In addition, under Chapter VII of the Charter, the United Nations Security Council is empowered to determine the existence of any "threat to the peace," "breach of the peace," or "act of aggression." U.N. CHARTER art. 39.

9. See *infra* notes 73-110 and accompanying text.

U.N. Charter attempted to define the relationship between the United Nations and regional arrangements. The essential thesis of this Article is that a fundamental tension between globalism and regionalism was present throughout the deliberations leading up to the 1945 United Nations Conference on International Organization (San Francisco Conference) and written into the provisions of the U.N. Charter themselves. As a consequence, many of the specific post-Cold War conflicts between the United Nations and regional organizations can be traced directly to the U.N. Charter framework. At the same time, other contemporary conflicts between the global organization and regional arrangements have emerged from circumstances not envisioned by the founders of the United Nations.

Part II of this Article briefly examines the early debates surrounding regional arrangements and the post-World War II organization. Part III explores the San Francisco Conference and the final U.N. Charter provisions on regional arrangements. Part IV examines the difficulties with the U.N. Charter arrangement and identifies several contemporary problems that flow from the U.N. Charter structure. Part V, in anticipation of the Symposium articles that follow, notes certain tensions that have developed from conditions unforeseen by the delegates at the San Francisco Conference. Finally, some concluding comments will be provided in Part VI.

II. THE EARLY DEBATE ABOUT A "NEW WORLD ORDER"

While World War II raged in Europe and Asia, the Allies began planning the shape of the post-war order. The League of Nations had failed in its primary task of maintaining international stability.¹⁰ It had taken only dilatory measures to counter Italian aggression and had done nearly nothing to respond to the aggression of Germany and Japan leading up to the war. Accordingly, the Allies believed that a new organizational arrangement was needed to promote international peace and security.¹¹ But as the Allies began to explore the precise contours of such an arrangement, significant differences arose

10. See generally F.P. WALTERS, *A HISTORY OF THE LEAGUE OF NATIONS* (1952); ALFRED E. ZIMMERN, *THE LEAGUE OF NATIONS AND THE RULE OF LAW* (1936).

11. For an excellent work on the drafting of the United Nations Charter from the United States' perspective, see RUTH B. RUSSELL & JEANNETTE E. MUTHER, *A HISTORY OF THE UNITED NATIONS CHARTER: THE ROLE OF THE UNITED STATES 1940-1945* (1958). One of the classic analyses of the Charter provisions is LELAND M. GOODRICH ET AL., *CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS* (3d rev. ed. 1969).

about the relationship between the soon-to-be global organization and existing and future regional arrangements.¹² One side of the debate was associated with its chief advocate, British Prime Minister Winston Churchill, and the other side with its main supporter, American Secretary of State Cordell Hull.

Winston Churchill believed that the post-war order should consist of both a centralized organization and a series of regional councils. But for Churchill, the primary role for the maintenance of international peace and security would rest with the regional councils, each of which would be led by a great power of that region. Hence, the United States would effectively preside over a regional council in the Americas, Britain would guide a regional council in Europe, and other regional hegemony would lead their councils. A central organization would exist, but it would play a role secondary to that of the regional councils.¹³ This view apparently had some important sympathizers. As Professor Inis Claude has pointed out, although "President Franklin D. Roosevelt had not clearly committed himself to a scheme of postwar organization . . . he tended to agree with the Churchillian conception."¹⁴

In opposition to Churchill's vision was the arrangement preferred by Cordell Hull. Hull favored a strong global organization that would play the primary role in conflict management. There could be regional organizations, but their role was to be clearly subordinate. Hull's opposition to Churchill's proposal seemed to stem from two very specific concerns. First, he feared that a framework in which regional organizations had primary responsibility would degenerate into a system of competing alliances.¹⁵ Second, Hull was concerned that the arrangement Churchill supported would encourage American isolationism. As Hull explained in his memoirs, the Churchillian system could serve as "a haven for the isolationists, who could advocate all-out United States cooperation in a Western Hemisphere council on condition that we did not participate in a European or Pacific council."¹⁶

12. The classic work on this debate is Inis L. Claude, *The OAS, the UN, and the United States*, 547 INT'L CONCILIATION 3 (1964). This Article draws heavily on Professor Claude's analysis.

13. *See id.* at 5.

14. *Id.*

15. *See id.*

16. 2 CORDELL HULL, THE MEMOIRS OF CORDELL HULL 1645 (1948), cited in Claude, *supra* note 12, at 5.

Despite the apparent opposition of the U.S. and British heads of state, the Allies came to adopt Hull's approach. In October of 1943, China, the United Kingdom, the Soviet Union, and the United States signed the Moscow Declaration.¹⁷ In this document, the four parties declared "[t]hat they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security."¹⁸ The Declaration made no mention of regional organizations of any kind. It was clear that the preference was for a strong, centralized organization.

With globalism in the ascendancy, the Allies then proceeded to draft a constitution for the new international organization. In the late summer and early fall of 1944, representatives of the four powers met at Dumbarton Oaks in Washington, D.C. to prepare the first draft of the U.N. Charter (Dumbarton Oaks draft).¹⁹ Not surprisingly, the Dumbarton Oaks draft reflected the primacy of the central organization. Chapter Eight, Section C of the Dumbarton Oaks draft permitted the existence of regional arrangements dealing with international peace and security, "provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization."²⁰ Moreover, the Security Council of the central Organization was to "encourage settlement of local disputes through such regional arrangements . . ." and, "where appropriate, utilize such arrangements or agencies for enforcement action under its authority . . ."²¹ But there was a critical restriction. Under the provisions of the Dumbarton Oaks draft, "no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council."²² In essence, the Dumbarton Oaks draft would have codified Hull's approach.

17. Declaration of the Four Nations on General Security, Moscow Conference, Oct. 19-30, 1943, reprinted in ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, UNITED NATIONS DOCUMENTS 1941-1945 13 (1946) [hereinafter UNITED NATIONS DOCUMENTS 1941-45].

18. *Id.* at 13.

19. For a discussion of the Dumbarton Oaks Conference, see ROBERT HILDEBRAND, DUMBARTON OAKS: THE ORIGINS OF THE UNITED NATIONS AND THE SEARCH FOR POSTWAR SECURITY (1990).

20. Dumbarton Oaks Conversations on World Organization, August 21-October 7, 1944, reprinted in UNITED NATIONS DOCUMENTS 1941-1945, *supra* note 17, at 92, 101.

21. *Id.* at 101.

22. *Id.*

Despite the agreement of the four major powers at Dumbarton Oaks, the Dumbarton Oaks draft met serious challenges when it was presented to other states. The Latin American states in particular were troubled by the secondary role given to regional organizations in the area of conflict management. This concern became clear at the Inter-American Conference on Problems of War and Peace, held in Mexico City in February and March 1945 (Mexico City Conference).²³ When the American delegation went to the Mexico City Conference, one of its main purposes was to obtain the support of the Latin American states for the Dumbarton Oaks draft. However, at the conference, the Latin Americans offered a number of suggestions for revising the Dumbarton Oaks draft. As Professor Claude has explained, "representatives of the Latin American states expressed their misgivings about the universalist bias of the Dumbarton Oaks Proposals, affirmed the value of the Inter-American system, proclaimed the intent to refurbish and strengthen that system, and insisted that the constitution of the new world organization should leave the way open for the functioning of a politically active and largely autonomous Inter-American agency."²⁴ While the American Delegation succeeded in softening some of the initial proposals presented at the Mexico City Conference,²⁵ the United States essentially agreed to support a stronger role for the Inter-American system at the San Francisco Conference.²⁶ This support was symbolized by the United States agreeing to the Act of Chapultepec, one of the main resolutions of the Mexico City Conference.²⁷

III. THE SAN FRANCISCO CONFERENCE

On April 25, 1945, the United Nations Conference on International Organization convened in San Francisco to draft the final constitutive document for the new world organization. Using the Dum-

23. See RUSSELL & MUTHER, *supra* note 11, at 555-572 for a discussion of the Mexico City Conference.

24. Claude, *supra* note 12, at 6.

25. RUSSELL & MUTHER, *supra* note 11, at 557-566.

26. Professor Claude states that the United States, in signing the Act of Chapultepec, (one of the resolutions adopted at the Conference) virtually acknowledged its responsibility for helping to secure the alteration of the Dumbarton Oaks draft in a pro-regionalist direction, and accepted the necessity of collaborating to some degree with its Latin neighbors in their projected campaign to make the United Nations Charter safe for regionalism. Claude, *supra* note 12, at 6-7.

27. *See id.*

barton Oaks draft as a guide, the delegates of 49 independent states met for a month to refine the U.N. Charter. During the San Francisco Conference, states raised a variety of concerns about the provisions of the Dumbarton Oaks draft dealing with regional arrangements. In particular, three major concerns were presented. Two came from the Latin American states, and one came from the Soviets and the French.

A. The Latin American Concerns

Following the general tenor of the Mexico City Conference, the Latin American states were intent on enhancing the role of the Inter-American system at the San Francisco Conference. Two specific deficiencies in the Dumbarton Oaks draft troubled them. First, they were bothered by the provision that no enforcement action could take place without the authorization of the Security Council. The proposed voting procedure for the Security Council enshrined the principle of the great power veto. Each of the permanent members of the Security Council, the United States, Great Britain, France, the Soviet Union, and China, could veto resolutions authorizing the use of force. As a consequence, it was feared that if a state committed an act of aggression against a Latin American state, the Security Council would be unable to act due to the exercise of the veto, and other Latin American states would have to sit helplessly by while the aggressor continued to use force. The Latin Americans therefore wanted some provision in the U.N. Charter that would allow action by Latin American regional organizations in such cases.

The second major concern of the Latin American states related to the peaceful settlement of international disputes. The Dumbarton Oaks draft, in Chapter Eight, Section A, addressed the question of the pacific settlement of disputes. It empowered the Security Council to investigate disputes that could disrupt international peace and security and established an obligation on the part of states to seek to settle "any dispute . . . [the] continuance [of which] is likely to endanger the maintenance of international peace and security."²⁸ But much to the dismay of Latin American delegations, the provisions of this section made no mention whatsoever of regional arrangements. The general belief of these delegations was that Latin American states should be under a legal obligation to submit regional disputes to the

28. Dumbarton Oaks Conversations on World Organization, *supra* note 20, at 98-99.

regional organization *before* submitting them to the United Nations.²⁹ Only if the Latin American organization was unsuccessful in resolving the problem should the matter be taken to the Security Council.

To rectify these deficiencies, an Amendment to the Dumbarton Oaks draft was presented prior to the San Francisco Conference by the delegations of Chile, Columbia, Costa Rica, Ecuador, and Peru. It provided that “[d]isputes or conflicts arising between states which belong to a given regional system shall be settled according to the agreements or statutes of that system”³⁰ But, the proposal continued, “this will not prevent the Security Council from fulfilling the functions assigned to it, when it has not been or is not possible to settle the dispute or conflict satisfactorily by applying the measures contemplated in the corresponding regional agreement or statutes, and it will be the duty of said regional body to determine in agreement with the procedure set forth in its statutes when such a case arises.”³¹ Hence, under this formulation not only would states be obligated to resort to regional arrangements first, but the regional organization would have the power to determine when the issue could be brought to the Security Council.

B. The Soviet-French Concern

One of the issues that surfaced in some of the conversations between the United States, the United Kingdom, France, the Soviet Union and China (the “Big Five”) preceding the San Francisco Conference related to the problem of renewed German aggression and the authority of the “new world organization.” Both the Soviets and French had concluded defense agreements that would be activated in the event of further German aggression.³² They feared that the new multilateral security arrangement could be somehow construed to trump these agreements. As a consequence, they desired an explicit provision in the U.N. Charter exempting such anti-German arrangements from the prohibition in the Dumbarton Oaks draft that there could be no enforcement action without the mandate of the Security Council. Ultimately, the Great Powers agreed to present an amend-

29. See Claude, *supra* note 12, at 10.

30. Proposal cited in RUSSELL & MUTHER, *supra* note 11, at 689.

31. *Id.*

32. The Soviets had concluded such agreements with Great Britain, Czechoslovakia, France, Yugoslavia, and the Lublin Government of Poland. See RUSSELL & MUTHER, *supra* note 11, at 690 n.6.

ment (the italicized portion) at the San Francisco Conference providing that:

no enforcement action should be taken under regional arrangements or by regional agencies without the authorization of the Security Council, *with the exception of measures against enemy states in this war provided for pursuant to Chapter XII, paragraph 2, or in regional arrangements directed against renewal of aggressive policy on the part of such states, until such time as the Organization may, by consent of the Governments concerned, be charged with the responsibility for preventing further aggression by a State now at war with the United Nations.*³³

C. The Response of the San Francisco Conference

In light of these three concerns, the delegates at the San Francisco Conference attempted to change the Dumbarton Oaks approach to regional arrangements.³⁴ Given that the Great Powers had agreed to make an exception to the prohibition of enforcement actions for regional organizations directly against the enemy states, the inclusion of such an exception in the U.N. Charter seemed virtually assured. But this exception raised the ire of the Latin American delegations, who had wanted a similar exception for any Latin American regional organization that would be established.³⁵

The position of the Latin American states was supported by U.S. Senator Arthur Vandenberg, the American delegate to the committee dealing with regional arrangements.³⁶ Vandenberg, a prominent Republican and member of the Senate Foreign Relations Committee, had been appointed to the American delegation presumably to avoid the kind of partisanship that had poisoned the League of Nations

33. RUSSELL & MUTHER, *supra* note 11, at 692 (citing 3 DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION 688 (1945)).

34. Professor Alan Henrikson, in his article in this Symposium, also discusses the "three 'fundamental concessions'" that were made at San Francisco to accommodate the proponents of regionalism. Alan K. Henrikson, *The United Nations and Regional Organizations: "King-Links" of a "Global Chain,"* DUKE J. COMP. & INT'L L. 35, 38 (1996) (quoting Francis O. Wilcox, *Regionalism and the United Nations*, in *The United Nations in the Balance: Accomplishments and Prospects* 425, 427 (Norman J. Padelford & Leland M. Goodrich eds., 1965)).

35. Russell and Muther report that Senator Arthur Vandenberg "consulted with Nelson Rockefeller, Assistant Secretary of State for Inter-American Affairs, who reported that the Latin American representatives were 'up in arms' on this very point." RUSSELL & MUTHER, *supra* note 11, at 694.

36. *Id.* at 694.

twenty-five years earlier. He too was troubled by the implications of permitting a special exception for Europe. He believed that "Europe would have freedom of action for her defensive regional arrangements (pending the time when the Peace League [i.e., the United Nations] shall prove its dependability as a substitute policeman) but the Western Hemisphere would *not* have similar freedom of action under its Pan-American agreement"³⁷ Accordingly, Vandenberg suggested an amendment to provide an additional exemption for "measures which may be taken under . . . the Act of Chapultepec of the Inter-American Conference on the Problems of Peace and War . . . until such time as the Organization may, by the consent of the Governing Board of the Pan American Union, be charged with this function"³⁸ Such an arrangement would allow the Inter-American system to be free from the U.N. Charter prohibition on unauthorized enforcement actions until the regional arrangement itself decided that the Security Council could indeed carry out its function.

Vandenberg's proposal split the U.S. delegation.³⁹ Some of the delegates feared that if a special exception were granted to the Latin American regional organization, other states would demand similar exemptions for other future regional arrangements. This would, they believed, effectively emasculate the United Nations: "[I]n place of a world system capable of stopping aggression everywhere, reliance for security would come to rest on regional groups—large states surrounded by smaller states in spheres of influence—which would eventually convert the world into armed camps."⁴⁰ In short, the arrangement would create precisely the type of world that Cordell Hull had sought to avoid. Regional organizations would, in effect, be able to operate outside the jurisdiction of the Security Council with regard to the use of force.⁴¹

Ultimately, after much discussion within the American delegation, a compromise was reached. Since the main concern of the Latin American states had been the consequences that the prohibition of enforcement action might have on regional self-defense actions, a

37. THE PRIVATE PAPERS OF SENATOR VANDENBERG 187 (Arthur H. Vandenberg, Jr. ed., 1952).

38. *Id.* at 188.

39. *See id.*

40. RUSSELL & MUTHER, *supra* note 11, at 696 (describing the arguments made by Vandenberg's opponents in a memorandum to the delegation).

41. *See id.* at 695 (noting that the Vandenberg proposal would exempt "regional organizations involving the use of force" from Security Council jurisdiction).

new provision was proposed to address precisely that issue. But rather than being placed in the section on regional arrangements (Chapter Eight, Section C of the Dumbarton Oaks draft), this provision was to appear in the general section on responding to aggression (Chapter Eight, Section B of the Dumbarton Oaks draft).⁴² This draft provision read as follows:

Should the Security Council not succeed in preventing aggression, and should aggression occur by any state against any other member state, such member state possesses the inherent right to take necessary measures for self-defense. The right to take such measures for self-defense against armed attack shall also apply to understandings or arrangements like those embodied in the Act of Chapultepec, under which all members of a group of states agree to consider an attack against any one of them as an attack against all of them. The taking of such measures shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under this Charter to take at any time such action as it may deem necessary in order to maintain or restore international peace and security.⁴³

This formulation solved many problems. First, it addressed the fundamental worry of the Latin American delegations—the ability of their regional arrangements to act in collective self-defense in circumstances where a veto in the Security Council would block U.N. action. Second, it gave special recognition to the Latin American system by mentioning the Act of Chapultepec by name. Third, it addressed Latin American concerns without allowing a blanket regional exception to Security Council jurisdiction on security issues.

When this proposal of the United States delegation was shared with the other members of the Big Five, it met initial resistance.⁴⁴ After discussion and consultation, however, they accepted a slightly revised version. The only major difference in the new draft was that it did not mention the Act of Chapultepec by name.⁴⁵

42. *See id.* at 697.

43. *Id.* at 698. This proposed amendment was put forth by the U.S. delegation. *Id.*

44. *See id.* at 699.

45. The proposed amendment to VIII-B of the Dumbarton Oaks draft, offered by the British delegation, provided that

[n]othing in this Charter should invalidate the right of self-defense against armed attack, either individual or collective, in the event of the Security Council failing to take the necessary steps to maintain or restore international peace and security. Measures taken in the exercise of this right shall be immediately reported to the Security Council and shall not in any way affect the responsibility of the Security Council under this

While the United States found this proposal acceptable, the Latin American delegations were somewhat skeptical.⁴⁶ As Russell and Muther explain, “[t]he Latin American delegates continued to fear . . . that the Security Council might later declare the inter-American system inconsistent with the U.N. Charter.”⁴⁷ To appease these concerns, the United States assured the Latin Americans that the American veto on the Council would preclude such a declaration.⁴⁸ Additionally, the “United States agreed to certain Latin American proposals: that the Charter reference to ‘encouraging’ pacific settlement through regional arrangements (in Section VIII-C [of Dumbarton Oaks]) should be strengthened, and that the United States should guarantee the continued validity of the Act of Chapultepec.”⁴⁹ Following these promises, the Latin American states finally agreed to the proposal.

The United States was now committed to addressing the Latin American concerns regarding the pacific settlement of international disputes. To respond to this problem, the Big Five agreed on two amendments to the Dumbarton Oaks draft. First, they agreed to make specific mention of the “resort to regional agencies or arrangements” in Section VIII-A.⁵⁰ Hence, the section providing that states would have an obligation to seek to settle disputes, “the continuance of which is likely to endanger the maintenance of international peace and security,” would list regional organizations explicitly.⁵¹

Second, the Big Five agreed to include language in Section VIII-C to provide for the apparent legal obligation of regional arrangements to settle local disputes. Drawing upon the proposal of Chile, Columbia, Costa Rica, Ecuador, and Peru, the Big Five proposed incorporating a sentence providing that “[t]he member states comprising such agencies or entering into such arrangements should make every effort to achieve peaceful settlement of local disputes through

Charter to take at any time such action as it may deem necessary in order to maintain or restore international peace and security.

Id.

46. *See id.* at 699-700.

47. *Id.* at 700.

48. *Id.*

49. *Id.*

50. U.S. DEP'T OF STATE, *Amendment Proposed by the Four Sponsoring Governments and France to Section VIII-A, 3*, in THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION: SELECTED DOCUMENTS 87, 173 (1946) [hereinafter U.N.C.I.O.].

51. *Id.*

such agencies or arrangements before referring them to the Security Council.”⁵² But the Big Five qualified this “obligation” with the important caveat that “[t]his paragraph in no way impairs the application of paragraphs 1 and 2 of Section A of this chapter.”⁵³ Under paragraph 1, the Security Council was allowed to “investigate any dispute, or any situation which may lead to international friction or give rise to a dispute.”⁵⁴ Under paragraph 2, “any state . . . may bring any such dispute or situation to the attention of the General Assembly or the Security Council.”⁵⁵ Thus, despite the appearance of a legal obligation for members of regional arrangements to settle local disputes before resorting to the United Nations, the Big Five’s proposal still allowed the Council to intervene at any time and ultimately provided that states always had the option of immediate recourse to the United Nations.

With these proposals before the Conference, the delegates proceeded to adopt similar provisions for the final version of the U.N. Charter. Hence, when the U.N. Charter entered into force on October 24, 1945, the position of regional organizations had been greatly elevated above the arrangement in Dumbarton Oaks.

D. The U.N. Charter Provisions on Regionalism

Given the course of the San Francisco Conference, the U.N. Charter provisions on regional arrangements reflect an accommodation of each of the three concerns raised about the Dumbarton Oaks draft.

1. *Enforcement Actions and Regional Use of Force: Article 51.* As noted earlier, the Dumbarton Oaks agreement provided that there could be no enforcement action without the authorization of the Security Council. The fear of the Latin American states that a paralyzed Security Council would prevent regional action was addressed in Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has

52. U.N.C.I.O., *supra* note 50, at 193.

53. *Id.*

54. Dumbarton Oaks Conversations, Chapter VIII-A, para. 1, 1946-47 U.N.Y.B. 4,7, U.N. Sales No. 1947.I.18.

55. *Id.* para. 2.

taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.⁵⁶

2. *Peaceful Settlement of International Disputes: Articles 33 and 52.* The Latin American concern regarding the resolution of international disputes found its way into two articles of the U.N. Charter. Article 33, paragraph 1, which establishes the obligation of states to settle disputes that could endanger international peace, security, or justice, lists regional arrangements as an option for states' use in carrying out this obligation:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, *resort to regional agencies or arrangements*, or other peaceful means of their own choice.⁵⁷

Article 52 addresses the desire to establish an obligation to take issues to the regional organization before going to the United Nations. Paragraph 2 provides that "[t]he Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council."⁵⁸ But the caveat also found its way into the U.N. Charter. Paragraph 4 of Article 52 provides that "[t]his Article in no way impairs the application of Articles 34 and 35." These articles were the provisions that permitted the Security Council to intervene at any stage of a conflict (Article 34)⁵⁹ and allowed states to retain the option to go to the Security Council im-

56. U.N. CHARTER art. 51.

57. *Id.* art. 33, para. 1 (emphasis added).

58. *Id.* art. 52, para. 2.

59. Article 34 provides that "[t]he Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." U.N. CHARTER art. 34.

mediately (Article 35).⁶⁰

What this U.N. Charter arrangement on pacific settlement should mean in practice is unclear. The Latin American states generally regarded it as a victory for regionalism.⁶¹ However, the desires of the Latin American states notwithstanding, the U.N. Charter did not establish an absolute legal obligation for members of regional organizations to take local disputes to the local organization. As Cordell Hull's successor as Secretary of State Edward R. Stettinius explained, this arrangement merely "ma[de] more clear that regional agencies will be looked to as an important way of settling local disputes by peaceful means."⁶² Stettinius later told President Truman that paragraph 4 of Article 52 "insure[d] the paramount authority of the Council and its right to concern itself if necessary with disputes of this [regional] character."⁶³ Thus, the most the U.N. Charter did was provide a good-faith obligation to attempt to settle local disputes through the regional organizations, while establishing no true *legal* obligation.

3. *Use of Force Against Enemy States: Article 53.* The concern raised by the French and the Soviets that the U.N. Charter prohibition on enforcement actions without the consent of the Council would emasculate anti-German treaties was addressed in Article 53:

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of

60. Article 35 provides, in part:

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

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

U.N. CHARTER art. 35, paras. 1-2.

61. See Claude, *supra* note 12, at 11-12.

62. *Statement for the Press, 15 May 1945, No. 25, reprinted in On the Charter of the United Nations: Hearings Before the Committee on Foreign Relations, U.S. Senate, 79th Cong. 306 (1945).*

63. Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, The Secretary of State, Pub. No. 2399, Conf. Series 71 at 405 (Dep't State 1945).

the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107⁶⁴ or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.⁶⁵

Under these articles, the U.N. Charter preserved the basic prohibition on unauthorized enforcement actions while allowing for regional action both in self-defense and in response to renewed enemy aggression. But these provisions left many questions unresolved: What is an enforcement action? Are there regional uses of force, other than these two explicit exceptions, that do not qualify as enforcement actions? And, what is an "armed attack"? Do states have to be "hit first" before they can respond under Article 51?

IV. THE TENSIONS IN THE U.N. CHARTER ARRANGEMENT

A review of the U.N. Charter's history illustrates that it failed to unambiguously define the relationship between regional arrangements and the United Nations. Instead, the U.N. Charter provided language that satisfied all the parties in 1945. But that very language contains the seed of some of the tensions that have recently presented themselves in contemporary conflicts. Two unresolved issues have been especially troublesome: (1) The question of initial jurisdiction and (2) the meaning of "enforcement action".

A. Initial Jurisdiction

When an international conflict occurs, which organization is supposed to handle it? The United Nations? The applicable regional organization? The U.N. Charter provisions do not provide a clear answer. Yet these are precisely the kinds of questions that have been raised repeatedly since the U.N. Charter was adopted. As Professor

64. Article 107 provides that "[n]othing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action." U.N. CHARTER art. 107.

65. U.N. CHARTER art. 53.

Alan Henrikson argues in his article in this Symposium,⁶⁶ throughout the Cold War period a variety of cases arose in which jurisdiction of the United Nations and the respective regional organization was at issue.⁶⁷ More recently, the jurisdictional question has emerged in the Gulf War, the Balkans, and Haiti, as explained below.

1. *The Gulf War.* The U.N. Security Council became immediately involved following the invasion of Kuwait by Iraqi troops on August 2, 1990. The Council adopted a series of dramatic resolutions that condemned the invasion and imposed diplomatic and economic sanctions.⁶⁸ But at least one observer indicated that he believed the Arab League—the relevant regional organization—should have taken up the issue. Clovis Maksoud, the Ambassador from the Arab League to the United Nations, believed the Arab League should have attempted to resolve the dispute between Iraq and Kuwait before the United Nations took more forceful actions.⁶⁹ In fact, Maksoud even asserted that there was a legal obligation to take the matter to the Arab League first. In an article written some time after the invasion, he queried: “Why was the United States so eager to frustrate Arab efforts by seeking U.N. enforcement of international law when the U.N. Charter itself requires that regional organizations seek solutions first?”⁷⁰ Following the United Nations’ lead, the Arab League immediately condemned the Iraqi action on August 3. On August 10, League Members’ heads of state echoed this condemnation and decided to support the Saudi request for military assistance. Maksoud himself resigned to protest the limited regional response.⁷¹

Even though it seems clear from the U.N. Charter that there was no legal obligation for the League to address the matter before U.N. consideration,⁷² the fact that Maksoud could make that argument demonstrates the ambiguities in the U.N. Charter. Clearer provisions

66. See Henrikson, *supra* note 34.

67. *Id.* at 43-52.

68. See S.C. Res. 661, U.N. SCOR, 45th Sess., 2933rd mtg., at 1-2, U.N. Doc. S/RES/661 (1990), reprinted in 29 I.L.M. 1323, 1325-1327 (1990) (imposing diplomatic and economic sanctions on Iraq); S.C. Res. 660, U.N. SCOR, 45th Sess., 2932nd mtg., U.N. Doc. S/RES/660 (1990), reprinted in 29 I.L.M. 1323, 1325 (1990) (condemning the invasion of Kuwait).

69. See Clovis Maksoud, *The Arab World's Quandary*, 8 WORLD POL'Y J. 551 (1991).

70. *Id.* at 554.

71. See Arend, *supra* note 7, at 516-18 (discussing Haiti's case).

72. See *supra* text accompanying notes 52-55.

in the U.N. Charter could perhaps have prevented such confusion.

2. *The Balkans.*⁷³ A similar jurisdictional problem arose in the Balkans. In the early 1990s, as the Republic of Yugoslavia was breaking up in a bloody civil war, it was unclear which organization should address the problem. The United Nations was initially reluctant to become involved, but so were regional bodies such as the European Community, the West European Union, and NATO. It appeared as though the regional organizations and the global organization were deferring to each other, without any organization willing to take up the issue.⁷⁴ Ultimately, on September 25, 1991, the U.N. Security Council adopted Resolution 713 which declared the situation a threat to international peace and security and imposed an arms embargo.⁷⁵ Nearly five months later, the Security Council authorized the deployment of peacekeeping troops as the United Nations Protection Force (UNPROFOR I).⁷⁶ After fighting broke out in Bosnia and the magnitude of the tragedy reached disastrous proportions, the Council adopted Resolution 770 on August 13, 1992, which called upon “[s]tates to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant U.N. humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina.”⁷⁷ While this resolution seemed to invite regional organizations to take action, none came forward. Eventually, the United Nations established the United Nations Protection Force II

73. This account draws heavily upon Ivo Daalder, *Fear and Loathing in the Former Yugoslavia*, in THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT 35, 47-53 (Michael E. Brown ed., 1996) [hereinafter INTERNATIONAL DIMENSIONS] and James B. Steinberg, *International Involvement in the Yugoslavia Conflict*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 1, at 27.

74. Steinberg discusses the “choice of institution” problem. He explains that “[a] broadly shared consensus at the beginning of the Yugoslav conflict held that primary responsibility for helping to resolve the conflict lay with regional institutions.” Steinberg, *supra* note 73, at 55. But, he notes, “[f]or a number of reasons . . . the regional organizations, both European and transatlantic (CSCE, EC, WEU, and NATO), proved of limited use.” *Id.* at 56.

75. S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., at 1, U.N. Doc. S/RES/713 (1991), reprinted in 31 I.L.M. 1427, 1431-32 (1992). See generally Steinberg, *supra* note 73, at 38-39 (discussing the involvement of regional organizations and the U.N. in the Balkans).

76. S.C. Res. 743, U.N. SCOR, 47th Sess., 3055th mtg., at 2, U.N. Doc. S/RES/743 (1992), reprinted in 31 I.L.M. 1428, 1447-1449 (1992).

77. S.C. Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., at 1, U.N. Doc. S/RES/770 (1992), reprinted in 31 I.L.M. 1429, 1468-70 (1992); see Steinberg, *supra* note 73, at 41-44.

(UNPROFOR II) to provide humanitarian assistance.⁷⁸ But as the conflict continued, so too did the uneasy relationship between the United Nations and regional arrangements. In May of 1993, the Security Council adopted Resolution 824, establishing a series of "safe areas" within Bosnia.⁷⁹ On June 4 1993, the Security Council authorized UNPROFOR to use force, if necessary, to insure the integrity of the safe area.⁸⁰ However, in the same resolution, the Security Council *decided* that

Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.⁸¹

This resolution represented a U.N. authorization for NATO airstrikes. But as NATO undertook these airstrikes, "Boutros-Ghali and others worried that using NATO air power to suppress Bosnian Serb air defenses would be seen as a hostile act that would take UNPROFOR beyond the limits of a peacekeeping operation and make it a party to the conflict."⁸² Unfortunately, just such claims were made and, as Chantal de Jonge Oudraat explained, "UNPROFOR's position became increasingly murky and difficult as time went by."⁸³ Indeed, "[a]t various points in the conflict, Bosnian Serbs took U.N. peacekeepers hostage to deter further *NATO action*."⁸⁴ Ultimately, the United Nations "abandoned enforcement as a means of fulfilling its mandate."⁸⁵ With the conclusion of the Dayton

78. S.C. Res. 776, U.N. SCOR, 47th Sess., 3114th mtg., at 2, U.N. Doc. S/RES/776 (1992), reprinted in 31 I.L.M. 1430, 1472-73 (1992); see Steinberg, *supra* note 73, at 44.

79. S.C. Res. 824, U.N. SCOR, 48th Sess., 3208th mtg., at 2, U.N. Doc. S/RES/824 (1993) (establishing Sarajevo, Tuzla, Zepa, Gorazde, Bihac, Srebrenica, "and their surroundings" as "safe areas," noting that these areas "should be free from armed attacks and from any other hostile act[s]").

80. S.C. Res. 836, U.N. SCOR, 48th Sess., 3228th mtg., at 3, U.N. Doc. S/RES/836 (1993).

81. *Id.*

82. Chantal de Jonge Oudraat, *The United Nations and Internal Conflict*, in INTERNATIONAL DIMENSIONS, *supra* note 73, at 489, 516.

83. *Id.*

84. *Id.* (emphasis added).

85. Daalder, *supra* note 73, at 66.

Accord,⁸⁶ the International Force (IFOR) was created as a NATO operation and the United Nations moved to the periphery.

3. *Haiti*. In Haiti, the issue came in a different form. The U.N. Security Council did not even convene following the coup against Jean-Bertrand Aristide on September 30, 1991.⁸⁷ The Organization of American States (OAS), however, did meet. At an ad hoc meeting of foreign ministers on October 2, the Latin American states condemned the coup and recommended that their member states impose diplomatic and economic sanctions. The next day, the Security Council convened, but it did not adopt a resolution. Instead, the members of the Council verbally condemned the coup and expressed their support for the OAS actions. The U.N. General Assembly subsequently took up the situation in Haiti and did adopt a resolution condemning the action.⁸⁸ Under Article 10 of the U.N. Charter, General Assembly resolutions such as this are non-binding and serve only as recommendations to U.N. members.⁸⁹

As time passed, however, the OAS actions appeared not to be producing any change in the regime.⁹⁰ As a consequence, the United States took the matter to the Security Council in 1992.⁹¹ On June 16, 1993, the Security Council adopted Resolution 841, which imposed an embargo on Haiti for petroleum, petroleum products, arms, and "related *materiel* of all types."⁹² Shortly thereafter, negotiations began in an effort to provide a peaceful transfer of power back to the

86. General Framework Agreement for Peace in Bosnia and Herzegovina, Nov. 15-Dec. 14, 1995, reprinted in 35 I.L.M. 75, 89-92 (1996).

87. This account draws heavily upon Arend, *supra* note 7, at 500-503. It also draws upon Marc W. Chernick, *Peacemaking and Violence in Latin America*, in INTERNATIONAL DIMENSIONS, *supra* note 73, at 267.

88. G.A. Res. 46/7, U.N. GAOR, 46th Sess., 31st plen. mtg. at 2, U.N. Doc. A/RES/46/7 (1991).

89. Article 10 provides that

[t]he General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12 [prohibiting the General Assembly from making recommendations on a matter currently before the Security Council.], may make *recommendations* to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

U.N. CHARTER art. 10 (emphasis added).

90. See Acevedo, *supra* note 6, at 134.

91. See Chernick, *supra* note 87, at 290-291 ("In late 1992, the Bush administration brought the case before the United Nations, implicitly recognizing the limits of the OAS.").

92. S.C. Res. 841, U.N. SCOR, 48th Sess., 3238th mtg., U.N. Doc. S/RES/841 (1993), reprinted in 32 I.L.M. 1206, 1206-1209 (1993).

Aristide regime.⁹³ The resulting Governors Island Agreement, however, produced no such transfer. The Security Council then moved to impose a naval blockade on Haiti and ultimately authorized “all necessary measures” to restore the Aristide regime.⁹⁴ But moments before a U.S.-led invasion could take place, the regime of Raul Cedras voluntarily stepped down from power.⁹⁵

The United Nations’ initial reluctance to respond to the crisis in Haiti seems due to perceptions of Security Council members that the matter was a domestic conflict and thus not the proper subject for international actions.⁹⁶ In contrast, the member states of the OAS believed the matter to be rightfully one of international jurisdiction and most likely would have preferred to have the United Nations address the conflict instead of the OAS.⁹⁷

These three cases—and undoubtedly others that could be added—indicate that there is no clear standard that can be used to determine whether the United Nations or the appropriate regional organization should address a particular dispute. This lack of a standard would seem to damage the legitimacy of both the United Nations and the involved regional organization.⁹⁸

B. The Meaning of “Enforcement Action”

As previously noted, Article 53 of the U.N. Charter allows the Security Council to use regional arrangements for the conduct of “enforcement actions,” but prohibits such actions without the Council’s consent. The U.N. Charter, however, leaves unclear the meaning of the words “enforcement action.” In fact, the reference to “enforcement action” in Article 53 is the only time that the phrase is actually used in the U.N. Charter. Since the adoption of the U.N.

93. See Chernick, *supra* note 87, at 291.

94. See *id.*

95. See Robert Greenberger et al., *Dodging the Bullet: An Invasion of Haiti is Averted by Accord to Restore Aristide*, WALL ST. J., Sept. 19, 1994, at A1.

96. See Andrew Deutz, *Intervention in the Post-Cold War Era: International Organizations’ Responses to Kurdistan, Yugoslavia and Haiti 27* (Apr. 28, 1992) (unpublished manuscript, on file with the *Duke Journal of Comparative & International Law*). I draw upon Mr. Deutz’s analysis in my discussion of Haiti. See also Acevedo, *supra* note 6, at 137-38.

97. See Acevedo, *supra* note 6, at 141 (“For the members of the OAS, the notion that the illegal replacement of a democratically elected government is still a matter essentially within the domestic jurisdiction of its member states, and thus immune from international scrutiny, is no longer the axiomatic precept it once was . . .”).

98. I am indebted to students in my International Organization class for emphasizing this point with me.

Charter, this ambiguity has presented numerous problems. In 1962, for example, when the Organization of American States authorized the "quarantine" of Cuba, some asserted that this action, which had not been authorized by the Security Council, was an impermissible "enforcement action."⁹⁹ In 1983, the United States invaded the island state of Grenada with the authorization of another Western Hemispheric arrangement, the Organization of East Caribbean States.¹⁰⁰ Once again, some critics asserted that this invasion action was illegal because the Security Council had failed to provide any kind of authorization.¹⁰¹ In both cases, however, advocates for the actions taken offered a variety of reasons why these uses of force did not amount to "enforcement actions."¹⁰²

In the post-Cold War era, one of the most notable examples highlighting the ambiguous meaning of "enforcement action" was the intervention in Liberia by the Economic Community of West African States (ECOWAS), an organization created to promote economic cooperation.¹⁰³ On Christmas Eve, 1989, Charles Taylor, a Liberian ex-patriot, invaded his home state with a rebel group known as the National Patriotic Front of Liberia. Civil war ensued and thousands of refugees began fleeing into Guinea and Côte d'Ivoire.¹⁰⁴ Despite efforts by Liberia to take the matter to the U.N. Security Council, that body did not address the conflict until 1991. By May of 1990, however, ECOWAS began formal consideration of the Liberian matter. Initially, the regional body attempted to achieve a peaceful resolution of the conflict. However, the situation in Liberia deterio-

99. See, e.g., Quincy Wright, *The Cuban Quarantine*, 57 AM. J. INT'L L. 546 (1963).

100. See ROBERT J. BECK, *THE GRENADA INVASION: POLITICS, LAW, AND FOREIGN POLICY DECISIONMAKING* (1993); David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER*, *supra* note 1, at 157, 184.

101. See AREND & BECK, *supra* note 1, at 64 (arguing that the regional action in Grenada was impermissible under the U.N. Charter paradigm).

102. In support of the Cuba action, see Abram Chayes, *Law and the Quarantine of Cuba*, 41 FOREIGN AFF. 550 (1963); Leonard Meeker, *Defensive Quarantine and the Law*, 57 AM. J. INT'L L. 515 (1963). In support of the Grenada invasion, see JOHN NORTON MOORE, *LAW AND THE GRENADA MISSION* (1984).

103. The chronology in this section is drawn from Stephen John Stedman, *Conflict and Conciliation in Sub-Saharan Africa*, in *INTERNATIONAL DIMENSIONS*, *supra* note 73, at 235, 250-253 and Abiodun Williams, *Regional Peacemaking: ECOWAS and the Liberian Civil War*, in *THE DIPLOMATIC RECORD 1990-1991* 213 (David D. Newsom ed., 1992).

104. "[I]n August 1990, the conflict had generated an estimated 250,000-375,000 refugees; by October 1994, the war had produced an estimated 1.25 million refugees." Stedman, *supra* note 103, at 252.

rated, and on August 24, 1990, ECOWAS dispatched a three thousand person force known as the ECOWAS Monitoring Group (ECOMOG), which was charged by ECOWAS with "keeping the peace, restoring law and order, and ensuring that the cease-fire is respected."¹⁰⁵

Was the action by ECOWAS, taken without Security Council sanction, an "enforcement action"? A strong argument can be made that it was. While the members of ECOWAS may have been concerned about the flow of refugees and the concern that the fighting would spill over into neighboring states, ECOMOG's mandate to keep the peace and restore law and order seemed to extend beyond the limits of a purely defensive action allowed under the U.N. Charter. If the organization was acting solely under Article 51 of the U.N. Charter as a collective self-defense body, its resolutions would logically state such a legal basis. Moreover, the protracted involvement of ECOMOG in Liberia seems to indicate more ambitious goals than collective self-defense.

In spite of these arguments that the ECOMOG action was an impermissible "enforcement action," the U.N. Security Council did not condemn the intervention when it finally addressed the matter on January 22, 1991.¹⁰⁶ Instead, the President of the Security Council issued a statement on behalf of the Security Council supporting the activities of ECOWAS: "The members of the Security Council commend the efforts made by the ECOWAS Heads of State and Government to promote peace and normalcy in Liberia."¹⁰⁷ Does this mean that the Security Council was providing an *ex post facto* authorization for the intervention? If so, would it not have made more sense for the Security Council to adopt a formal resolution to clarify the the legal status of the Security Council's action? Perhaps the Security Council's action meant that ECOMOG's military action fell below the threshold of an "enforcement action." Some scholars, including Professor John Norton Moore, have contended that regional intervention in civil conflict for purposes of promoting self-determination does not constitute an impermissible "enforcement ac-

105. See Peter da Costa, *Life After Doe*, 1990 WEST AFRICA 2510 (No. 3813, 24-30 September 1990). For further discussion on the creation of ECOMOG, see David Wippman, *Military Intervention, Regional Organizations, and Host-State Consent*, 7 DUKE J. COMP. & INT'L L. 224-30 (1996).

106. See U.N. SCOR, 47th Sess., 2974th mtg., U.N. Doc. S/PV.2974 (1991) (provisional verbatim record, statement of the President, Mr. Bagbeni Adeito Nzengeya).

107. *Id.* at 9.

tion.”¹⁰⁸ The Security Council may have been implicitly agreeing with this contention, though it could have made that point more clearly. Nevertheless, the Liberian conflict did not resolve the lack of clarity surrounding the words “enforcement action.” If anything, the reaction of the Security Council merely added more uncertainty to the meaning of Article 53 of the U.N. Charter.

While these problems relating to both the nature of organizational jurisdiction and the meaning of “enforcement action” may not have an easy solution, Professor Henrikson does make a novel suggestion. In his article in this Symposium, he proposes that the United Nations establish formal relationships between itself and regional organizations.¹⁰⁹ If the United Nations could conclude special agreements with certain regional organizations, perhaps these agreements could delineate both jurisdiction and authority for the regional conduct of enforcement actions.¹¹⁰ When crises arise, a set of guidelines outlining appropriate responses would already be in place. Such an arrangement would not be a panacea, but might be a beginning.

V. NEW TENSIONS BETWEEN REGIONALISM AND GLOBALISM

In addition to the tension that can be traced directly to the U.N. Charter framework, several other specific problems have emerged in the new terrain of the post-Cold War world. These tensions were not

108. JOHN NORTON MOORE, *supra* note 102, at 23-32.

109. See Henrikson, *supra* note 34, at 63 (suggesting that special agreements concluded under Article 43 of the U.N. Charter “could . . . both harness the energies of regionally powerful countries . . . and restrain them, precluding a devolution of the world system into spheres-of-influence order, or disorder.”).

110. As Henrikson notes, such agreements could be under Article 43 of the United Nations Charter. *Id.* Article 43 provides, in part, that:

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

...

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

U.N. CHARTER art. 43. Henrikson highlights the reference in Article 43 to the possibility of agreements between the Council and “groups of Members.” Henrikson, *supra* note 34, at 67-68.

anticipated by the founders of the United Nations, but, nonetheless, present serious challenges to the ability of multilateral institutions to deal with conflict management. While numerous new problems could be mentioned, three critical ones emerged from the Symposium and are addressed in several subsequent articles. These are (1) the increasing problem of internal conflict; (2) the issue of host-state consent; and (3) the legal status of "peacekeepers."

A. The Problem of Internal Conflict

In his article in this Symposium, Dr. Mats Berdal argues that one of the difficulties with contemporary peace operations is the increasing involvement of multilateral institutions in internal conflict.¹¹¹ When the U.N. Charter provisions on the use of force were drafted, the framers intended that the United Nations would address interstate conflict.¹¹² These were the types of conflicts that had precipitated the first two World Wars and, accordingly, were the types of conflicts that the new organization was designed to prevent. But in the post-World War II era in general, and in the post-Cold War period in particular, civil wars and what might be called "mixed conflicts"¹¹³—civil wars with external intervention—have been the predominant type of hostilities. Indeed, the most troublesome recent conflicts—Haiti, Somalia, Rwanda, Liberia, and the Balkans—fall into one of these two categories. Yet, since Chapter VII was intended to deal with state-to-state aggression, the U.N. Charter does not precisely define a role for the United Nations in internal conflict. In fact, Article 2(7) of the U.N. Charter specifically prohibits the United Nations from intervening into "matters which are essentially within the domestic jurisdiction of any state . . ." While this provision is qualified by the statement that "th[is] principle shall not prejudice the application of enforcement measures under Chapter VII,"¹¹⁴ the question of when an internal matter does threaten inter-

111. Mats R. Berdal, *The Security Council, Peacekeeping and International Conflict after the Cold War*, 7 DUKE J. COMP. & INT'L L. 71, 75-76 (1996).

112. This thesis is developed in AREND & BECK, *supra* note 1, at 37. See also John Norton Moore, *The Use of Force in International Relations: Norms Concerning the Initiation of Coercion*, in NATIONAL SECURITY LAW 85, 139-140 (John Norton Moore et al. eds., 1990).

113. This term has been used in AREND & BECK, *supra* note 1, at 37. It is an abbreviation of Professor John Norton Moore's term "mixed civil-international conflict." See John Norton Moore, *Toward an Applied Theory for the Regulation of Intervention*, in LAW AND CIVIL WAR IN THE MODERN WORLD 3 (John Norton Moore ed., 1974).

114. U.N. CHARTER art. 2(7).

national peace and security is not addressed.

The consequences of this lacuna are clear. In any given conflict, regional organizations and the United Nations may differ on when an internal crisis rises to the level of an *international* threat. In the case of Haiti, for example, it was clear that the Organization of American States believed that the coup against Aristide presented an international problem,¹¹⁵ while the United Nations, at least initially, believed that the matter was one of domestic jurisdiction.¹¹⁶

As such conflicts arise in the future, how will the international community be able to address them when regional organizations and the United Nations cannot agree on the nature of the threat? Conceivably, this lack of agreement could produce serious conflicts between the two types of organizations.

B. Host-State Consent

Another issue that arose during the Symposium was the problem of host-state consent and the conduct of military operations—a problem that both Professors David Wippman¹¹⁷ and Christine Gray¹¹⁸ discuss in their articles in this Symposium. As noted above, the U.N. Charter framework for the collective use of force was designed to address problems caused by an aggressor state.¹¹⁹ The provisions in Chapter VII, therefore, establish a procedure for the Security Council to authorize the use of force against a recalcitrant state—a state that has threatened the peace, breached the peace, or committed an act of aggression.¹²⁰ Under this arrangement, force would be used against a state for the purpose of correcting its behavior. If, for example, a particular state invaded its neighbor, the Security Council could authorize states to use force to end the invasion. Consent was not at issue because force was being used against a state purposely without obtaining its consent.

In the period following the adoption of the U.N. Charter, how-

115. See Acevedo, *supra* note 6, at 119-20.

116. See Deutz, *supra* note 96, at 27, quoted in Anthony C. Arend, *supra* note 7, at 501.

117. Wippman, *supra* note 105.

118. Christine Gray, *Case Study: Consent and United Nations Peacekeeping in Yugoslavia*, 7 DUKE J. COMP. & INT'L L. 241 (1996).

119. See *supra* Parts III.A. and III.B.; see also AREND & BECK, *supra* note 112.

120. U.N. CHARTER art. 39 (giving the Security Council authority to determine if there is a "threat to the peace, breach of the peace, or act of aggression"). Under Article 42, the Security Council is authorized to impose military sanctions against a state. *Id.* art. 42.

ever, a new type of military operation has developed, which has become known as "peacekeeping."¹²¹ Peacekeeping, as it evolved after 1945, meant the interposition of a neutral force in an area of conflict once hostilities have essentially ceased.¹²² The purpose of such a peacekeeping operation was to facilitate the withdrawal of troops, supervise a cease-fire, and serve as a buffer against renewed fighting.¹²³ Most importantly, peacekeeping was undertaken with the consent of the state on whose territory the forces were stationed, and preferably with the consent of all the parties to the conflict.¹²⁴ Throughout the Cold War period, the United Nations and even some regional organizations engaged in a variety of peacekeeping operations, most of which were quite successful.¹²⁵

In the post-Cold War era, a new type of peace operation has emerged. Although frequently called "peacekeeping", this type of operation has involved the use of force in the territory of certain states without consent of all parties. A notable example of this type of operation was seen in Somalia. When the U.N. Security Council created the United Nations Operations in Somalia (UNISOM I) in April of 1992,¹²⁶ cease-fire agreements had been signed by the parties.¹²⁷ The purpose of this operation was generally in keeping with the traditional meaning of peacekeeping.¹²⁸ As time progressed this consent began to appear illusory,¹²⁹ yet the United Nations continued to authorize further action. In December of 1992, the Council

121. Many works have been written on peacekeeping, including DIEHL, *supra* note 1; ALAN JAMES, *PEACEKEEPING IN INTERNATIONAL POLITICS* (1990); UNITED NATIONS, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACEKEEPING* (2d ed.1990); *THE EVOLUTION OF UN PEACEKEEPING, CASE STUDIES AND COMPARATIVE ANALYSIS* (William J. Durch ed., 1993) [hereinafter *THE EVOLUTION OF UN PEACEKEEPING*].

122. See AREND & BECK, *supra* note 1, at 65-66.

123. William J. Durch, *Introduction*, in *THE EVOLUTION OF UN PEACEKEEPING*, *supra* note 121, at 1, 3-4.

124. See *id.* at 4-5.

125. For a discussion of United Nations peacekeeping operations, see Sally Morphet, *UN Peacekeeping and Election-Monitoring*, in *UNITED NATIONS, DIVIDED WORLD*, *supra* note 1, at 183.

126. S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg., U.N. Doc. S/RES/751 (1992).

127. Cease-fire agreements were concluded between the parties at Mogadishu on March 13, 1992. *Id.* at 1.

128. S.C. Res. 751, *supra* note 126, at 2 (stating that the mission of UNOSOM I in Somalia is "to facilitate an immediate and effective cessation of hostilities and the maintenance of a cease-fire throughout the country in order to promote the process of reconciliation and political settlement in Somalia and to provide urgent humanitarian assistance.").

129. See Stedman, *supra* note 103, at 254-55.

authorized member states "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."¹³⁰ This resulted in the establishment of the Unified Task Force (UNITAF), a United States-led operation under U.N. Charter VII of the U.N. Charter. Regardless of host-state consent, UNITAF was to take military action if necessary to see that humanitarian assistance reached its destination.¹³¹ The United Nations had therefore approved a "peacekeeping" operation that was not premised on consent. In fact, as the faction lead by Mohammed Farah Aideed became increasingly belligerent,¹³² the U.N. Security Council even authorized the Secretary-General "to take all necessary measures against all those responsible for the armed attacks . . . to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment."¹³³ By this time, the United Nations was clearly not undertaking a neutral peacekeeping operation.

In light of this new type of operation, one of the critical questions now relates to consent. When is host-state consent necessary for a United Nations or regional operation? What if, as in the case of Somalia, there is no true *state* to give its consent? Is the level of consent required different depending upon whether the action is undertaken by the United Nations or a regional arrangement? These types of questions are taken up in this Symposium by David Wippman and Christine Gray. Professor Wippman explores the consent issue when dealing with internal conflict. In an extensive review of state practice, he examines how perceptions of the legality of intervention vary in light of the degree of control by a central government.¹³⁴ Professor Gray then explores the problems of host-state consent that emerged in the specific case of U.N. peace operations in the Balkans.¹³⁵

130. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992).

131. Under Security Council Resolution 794, UNITAF was provided with the mandate "that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible." S.C. Res. 794, *supra* note 130, at 3.

132. This faction was allegedly responsible for the deaths of twenty-four Pakistani peacekeepers on June 5, 1993. See *Report of the Commission of Inquiry Established Pursuant to Resolution 885 (1993) to Investigate Armed Attacks on UNOSOM II Personnel Which Led to Casualties Among Them*, para. 117, U.N. Doc. S/1994/653 (1994).

133. S.C. Res. 837, U.N. SCOR, 48th Sess., 3229th mtg., U.N. Doc. S/RES/837 (1993).

134. See Wippman, *supra* note 105, at 213-34.

135. See Gray, *supra* note 118, at 243-263.

C. The Legal Status of Personnel

A final problem that emerged from the Symposium discussion is the legal status of personnel engaged in multilateral peace operations. Not only did the framers of the U.N. Charter seem to assume that U.N. uses of force would be undertaken only to fight recalcitrant states, they also appear to have assumed that these military actions would be undertaken by contingents of military forces of the U.N. member states. Thus, under Article 43 of the U.N. Charter, all members were to enter into special agreements with the United Nations whereby they would place contingents of their forces at the disposal of the Security Council.¹³⁶ If the Security Council decided to authorize an enforcement action, it could call upon states to provide the military force that they had promised in these agreements.¹³⁷ The U.N. Charter did not envision any kind of standing U.N. force, either for enforcement actions or peacekeeping, and therefore it contains no provisions explicitly discussing the legal status or protection of such forces.

With the creation of U.N. forces—either for peacekeeping or other purposes¹³⁸—this gap in the law has raised much concern. In his article below, Professor Sharp discusses many of these problems. He first explores existing international law dealing with the protection of military forces.¹³⁹ Sharp discusses the four Geneva Conventions of 1949 on the law of armed conflict and the two Geneva Protocols of 1977 to those Conventions,¹⁴⁰ as well as other potential sources of law on the question. Sharp then examines the more recent 1994 Convention on the Safety of United Nations and Associated Personnel (Safety Convention).¹⁴¹ While the Safety Convention does attempt to establish a clearer legal regime for the protection of U.N. personnel, Sharp concludes that it is inadequate in its present form.¹⁴² He there-

136. U.N. CHARTER art. 43, para. 1. For the language of Article 43, see *supra* note 110.

137. *Id.* art. 43, para. 1.

138. Professor Sharp provides an excellent taxonomy of the variety of possible "peace operations." Walter Gary Sharp, Sr., *Protecting the Avatars of International Peace and Security*, 7 DUKE J. COMP. & INT'L L. 93, 97-112 (1996).

139. *Id.* at 113-44.

140. *Id.* at 120-27.

141. G.A. Res. 49/59, U.N. GAOR, 49th Sess., Agenda Item 141, U.N. Doc. A/RES/49/59 (1994); see Sharp, *supra* note 138, at 145-59.

142. Sharp, *supra* note 138, at 157 ("[I]ts greatest shortcoming is that its defined category of protected U.N. personnel is too narrowly circumscribed and the line it attempts to draw between peacekeeping and peace-enforcement is unclear.").

fore discusses a number of difficulties with the Convention and makes several recommendations for improvement.¹⁴³ In particular, he proposes a “*Draft Protocol Additional to the Geneva Conventions . . . Relating to the Protection of Civilians and Military Forces Operating Under the Authority of the United Nations.*”¹⁴⁴ This fascinating proposal provides an important point of departure for further discussions on this issue.

Following Professor Sharp’s article, Professor Christopher Greenwood provides a slightly different view on the existing legal regime relating to the protection of United Nations peacekeepers.¹⁴⁵ After tracing the development of the law through the four Geneva Conventions of 1949 and the Safety Convention, Greenwood responds to Sharp’s proposal. Like Sharp, Greenwood acknowledges the existence of flaws within the current legal arrangement. But unlike Sharp, Greenwood does not believe that these problems call for a “radical departure”¹⁴⁶ from the basic approach taken in the Geneva and Safety Conventions. In fact, Professor Greenwood believes that the effect of Professor Sharp’s proposal would actually be to weaken the legal regime for protecting peacekeepers.¹⁴⁷

Finally, it should be noted—especially given the theme of this Symposium—that both Sharp¹⁴⁸ and Greenwood¹⁴⁹ have concerns about the applicability of the protection regime to members of regional organizations. Professor Sharp attempts to address this problem by suggesting in his draft Protocol that personnel of other organizations that are acting under the authority of the United Nations be given the same protection as members of a United Nations operations.¹⁵⁰

VI. CONCLUSION

As multilateral activities continue into the next century, the relationship between the United Nations and the panoply of regional or-

143. *See id.* at 157-59.

144. *Id.* at 165-67.

145. Christopher Greenwood, *Protection of Peacekeepers: The Legal Regime*, 7 DUKE J. COMP. & INT’L L. 185 (1996).

146. *See id.* at 207.

147. *See id.* at 205-06.

148. Sharp, *supra* note 138.

149. Greenwood, *supra* note 145, at 195-96.

150. Sharp, *supra* note 138, at 178-79.

ganizations is likely to remain uneasy. The source of this tension can be found in two places. Some current problems can be traced to the drafting of the founding document of the United Nations itself. Other contemporary difficulties have arisen out of circumstances unanticipated by the framers of the U.N. Charter. But whatever the source, these problems have the potential to prevent the successful management of international conflict by multilateral institutions.

Over the course of the conference which led to this Symposium issue, a number of suggestions were made to improve relationships between the United Nations and regional organizations. The problems mentioned in this introductory Article will be discussed in greater depth in the articles that follow. Other problems will also be presented, and perhaps more significantly, a host of specific recommendations will be made. It is to be hoped that the analysis of these problems and the recommendations suggested will help inform members of the policy-making community as they attempt to craft the design for a new international system.

