

Articles

THE UNITED NATIONS AND REGIONAL ORGANIZATIONS: “KING-LINKS” OF A “GLOBAL CHAIN”

ALAN K. HENRIKSON*

I. INTRODUCTION

Should there be a formal connection, that is, a legal link as well as closer political and operational relationships, between the United Nations and certain regional institutions at work in the international peace and security field, particularly between the United Nations and the North Atlantic Treaty Organization (NATO)? This Article examines both the theoretical merits of the idea of formalized U.N.-NATO cooperation of some kind and the likelihood of forming such an “alliance” of these hitherto unconnected, and quite different, organizations. It does so in the context of a broader, more systemic question: Could a U.N.-NATO relationship and other such imaginable relationships between the United Nations and other regional organizations, taken together, although each is likely to remain *sui generis* in some respects, be forged into a more unified and coherent international security structure?¹ Could regional arrangements or agencies including NATO become, in the graphic language used by Senator Arthur H. Vandenberg during the United Nations Conference on International Organization at San Francisco in 1945, “king-links” in a “global chain”?²

The limitations of the United Nations as the sole global

* Associate Professor of Diplomatic History and Director of The Fletcher Roundtable on a New World Order, The Fletcher School of Diplomacy, Tufts University; Affiliate, The Center for International Affairs, Harvard University.

1. For an elaboration of the history and issues involved in this question, see Alan K. Henrikson, *The Growth of Regional Organizations and the Role of the United Nations, in REGIONALISM IN WORLD POLITICS: REGIONAL ORGANIZATIONS AND INTERNATIONAL ORDER* 122-68 (Louise Fawcett & Andrew Hurrell eds., 1995).

2. Calculated Risk, in *THE PRIVATE PAPERS OF SENATOR VANDENBERG* 337, 366 (Arthur H. Vandenberg, Jr. ed., 1952).

peacekeeper are becoming more and more evident as the hopefulness of that organization at the end of the Cold War gives way to a more realistic appreciation of the intractability of many of the problems with which the United Nations must deal. The United Nations' own deficiencies as an institution are compounded by deficits in the support given it by the United States and other countries, most notably in their failure to meet peacekeeping cost assessments.³ As a result, the United Nations, underfunded, overcommitted, and overstrained, has begun to withdraw from the peacekeeping field, in some cases transferring its authority to other entities, including regional organizations.

The most remarkable case in point, possibly indicative of a future trend, was the Transfer of Authority (TOA) on December 20, 1995, from the Commander of the U.N. Peace Forces in Bosnia-Herzegovina to NATO's Commander-in-Chief Allied Forces Southern Europe, who was mandated by the North Atlantic Council and the Supreme Allied Commander Europe to lead a U.N.-approved but non-U.N. military force to carry out the U.S.-brokered Dayton Peace Agreement. With this action, a U.N.-directed *multilateral* operation, the U.N. Protection Force (UNPROFOR), was succeeded by an alliance-based *multinational* Implementation Force (IFOR), "under the command of NATO, with a grant of authority from the UN."⁴

The distinction between "multilateral" and "multinational" is crucial to the argument advanced in this Article. It may be explained as follows: The "multinationalization" of international peace operations—meaning their takeover either by regionally based military alliances or by individual great powers plus selected smaller countries within traditional spheres of influence, often regionally defined—must be kept within the ambit of the United Nations Organization in order not to degenerate into hegemonic domination and exploitation. Such degeneration can be avoided by ensuring that peace operations are conducted "multilaterally," meaning that when great powers and their allies contribute forces, they do so in an organized way and under a supervisory authority.⁵ Multilateralism can be encouraged by

3. See Boutros Boutros-Ghali, *The U.S. Must Pay Its Dues*, N.Y. TIMES, April 8, 1996, at A15; *Don't Capsize the U.N.*, N.Y. TIMES, April 1, 1996, at A16.

4. *Fact Sheet: Summary of the Dayton Peace Agreement*, 6 U.S. DEP'T OF STATE DISPATCH 24 (Supp. 5, 1995); see generally Chris Scheurweghs, *IFOR—Fact Sheet* (July 26, 1996) (on file with *Duke Journal of Comparative & International Law*; available on internet NATODATA list through <scheurwe@hq.nato.int>).

5. See further discussion *infra* text accompanying note 71.

(1) the constraint of reciprocity, or the mutual apprehension and exchanged regard between regional organizations or alliances; and by (2) the negotiation of more explicit, formalized bonds between regional power groupings and the United Nations Organization, particularly through, it is suggested here, the conclusion of "special agreements" to make available to the U.N. Security Council armed forces, assistance, and facilities as provided for and required by the as-yet-unused Article 43 of the U.N. Charter.⁶ By the conclusion of such agreements, and the closer liaisons that would result, the military action of regional organizations or alliances within regions, otherwise independent of wider international authority, could be "re-multilateralized," with benefits for international comity.

To ground this argument on a firm understanding of the international-organizational and diplomatic history of the issue of global-regional action in the peace and security field, Part II of this Article presents a brief "constitutional" analysis of the problem in the context of the U.N. Charter as it has evolved, followed by a review of the pattern of global-regional organizational relations during the Cold War, in Part III. With the end of that era, major new possibilities of international cooperation in regional peace-and-security maintenance have emerged. Part IV of this Article, on post-Cold War peacekeeping relations, discusses these new possibilities, emphasizing the principle of reciprocity as a positive guideline in a "mixed" multinational and multilateral order. A particularly important case in the context of the argument offered here is that of Haiti. The international intervention in Haiti in September 1994 will be analyzed, politically as well as legally, for the lessons that it may hold for multilateral-multinational cooperation in other regions, including the geopolitically sensitive sphere of the former Soviet Union. This dis-

6. Article 43 of the United Nations Charter states:

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.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
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, paras. 1-3.

cussion is followed in Part V by a short presentation of the pertinent views of U.N. Secretary-General Boutros-Ghali on possible methods of harnessing regional energies in the global interest—outlined initially in his 1992 report to the Security Council, *An Agenda for Peace*.⁷ Finally, a concluding Part VI considers the types of formalized links, including Article 43 special agreements, which might be established, particularly by NATO allies with the U.N. Security Council, for the better concatenation of global and regional peace-and-security efforts.

II. THE ACCOMMODATION OF REGIONAL ARRANGEMENTS WITHIN THE U.N. CHARTER

The legal framework of global-regional cooperation is the U.N. Charter's Chapter VIII on Regional Arrangements.⁸ Chapter VIII records an international consensus regarding global-regional relationships that was formulated, though not fully worked out, at the Dumbarton Oaks Conference in late 1944 and at the San Francisco Conference concluding in June the following year.⁹ The new United Nations Organization was intended to be the paramount world institution.¹⁰ Nonetheless, three "fundamental concessions," as Francis O. Wilcox has characterized them, were made to the idea of regionalism and region-based peacemaking in order to give a regional entity "elbowroom to deal with local disputes in the first instance" and make it less necessary for the United Nations itself to become involved.¹¹

The first concession, stated in Article 33(1) of Chapter VI on the Pacific Settlement of Disputes, was the provision that parties to any dispute endangering international peace and security "shall, first of all, seek a solution by . . . resort to regional agencies or arrange-

7. AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACEKEEPING: REPORT OF THE SECRETARY-GENERAL, U.N. Doc. A/50/60 (1995), U.N. Sales No. E.95.I.15 (1995).

8. See generally Henrikson, *supra* note 1, at 125-129.

9. See Anthony Clark Arend, *The United Nations, Regional Organizations, and Military Operations: The Past and Present*, 7 DUKE J. COMP. & INT'L L. 7-15 (1996).

10. Article 103 of the U.N. Charter unequivocally states: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

11. 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).

ments," by direct negotiation, third-party mediation, arbitration, or by some other means of their own choosing. Chapter VIII on Regional Arrangements states that nothing in the Charter is to preclude "the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action."¹² Chapter VIII further declares that U.N. members "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."¹³ Such regional efforts to maintain peace thus were, at least in principle, actively promoted by the U.N. Organization, without derogating from the independent right of the Security Council to investigate peace-threatening situations¹⁴ or the right of any country, even a non-U.N. member, to bring a local situation directly to the attention of the Organization, either to the Security Council or to the General Assembly.¹⁵

The second concession to regionalism was the allowance in the Charter for the continued operation of existing mutual assistance pacts, including the 1942 Anglo-Soviet Treaty of Alliance against Nazi Germany and its European associates¹⁶ and the Four-Nation Declaration signed in Moscow in October 1943.¹⁷ Article 53(1) of Chapter VIII declares that measures against "enemy states," defined in Article 53(2) as those that during the Second World War had been enemies of any Charter signatory, could be taken immediately, without prior authorization by the Security Council, in accordance with Article 107 in Chapter XVII on Transitional Security Arrangements.¹⁸ These measures could continue until the United Nations it-

12. U.N. CHARTER art. 52, para. 1.

13. U.N. CHARTER art. 52, para. 2.

14. *Id.* art. 34 (providing that "[t]he Security Council may investigate any dispute . . . in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.").

15. *Id.* art. 35, para. 1 (stating in part that "[a]ny Member of the United Nations may bring any dispute . . . to the attention of the Security Council or of the General Assembly."). Paragraph 2 of Article 35 allows for non-member States to bring disputes before the Security Council or the General Assembly. *See id.* art. 35, para. 2.

16. Treaty for an Alliance in the War Against Hitlerite Germany and Her Associates In Europe, May 26, 1942, U.K.-U.S.S.R., T.S. 2(1942), Cmd. 6376; P. (1941-2) IX 641; 144 B.S.P. 1038; 204 L.N.T.S. 353.

17. Declaration of Four Nations on General Security, Nov. 1, 1943, U.S.-U.S.S.R.-U.K.-R.O.C., 1 FOREIGN RELATIONS OF THE U.S. 749, 755-56 (1943).

18. U.N. CHARTER art. 107 (confirming that "[n]othing in the present Charter shall invali-

self assumed responsibility which, as the wording of Article 106 in Chapter XVII suggests,¹⁹ might not be possible if the aforementioned Article 43 special agreements²⁰ making armed forces, assistance, and facilities available to the Security Council, for its use, had not already been negotiated and implemented. Article 53(1) explicitly states that these measures of immediate enforcement against former enemy states might result from "regional arrangements directed against renewal of aggressive policy on the part of any such state." Arguably, these transitional-period provisions still hold today, although the passage of over fifty years and common political sense would make it unwise, certainly, to invoke them specifically against Germany, Italy, or Japan.²¹ The particular point to be made here is the Charter's recognition of a right of pre-emptive enforcement action under "regional arrangements," including alliances.

The third and, in its consequences and present meaning, the most important concession to regionalism was the signatories' recognition via Article 51 at the end of Chapter VII (Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) of "the inherent right of individual or collective self-defence." This right, which as "inherent" is natural or inalienable and not time-bound, could be exercised regionally, or in any other way. Article 51 usually has been understood to allow for treaties of mutual assistance

date 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.").

19. *Id.* art. 106 (stating that "Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties [to the Four-Nation Declaration and France] shall . . . consult with one another . . . with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.").

20. *See supra* note 6.

21. *Cf.* David J. Scheffer, *Commentary on Collective Security, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 101, 108 (Lori F. Damrosch & David J. Scheffer eds., 1991) (asserting that Article 106 of the Charter, "a flexible document," continues to be relevant). Scheffer comments that

Article 106 provides a rather convenient method by which a multinational force of the character which was deployed during the Iraq-Kuwait crisis could take enforcement action deployed under the direction of the great powers, which could have reached a decision outside the Security Council to use force against Iraq in conformity with the U.N. Charter and on behalf of the United Nations.

Id. A more historical reading of Article 106 and the Declaration of the Four Nations on General Security signed in Moscow would relate Chapter XVII on Transitional Security Arrangements more tightly to the circumstances following the Second World War. For the diplomatic history of the Moscow Four-Nation Declaration, see HERBERT FEIS, CHURCHILL, ROOSEVELT, STALIN: THE WAR THEY WAGED AND THE PEACE THEY SOUGHT 207-17 (1957).

for the purpose of collective self-defense.²² There is no reason why these defensive pacts, even though Chapter VII does not mention regionalism or regional entities, could not be among the "regional arrangements" referred to in Article 52 at the beginning of Chapter VIII. Article 53(1) of the latter chapter contains the otherwise limiting (except for the previously assured Article 51 autonomous right of self-defense) provision that the Security Council "shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority." It states further that, except for anti-enemy state measures, which could be virtually automatic, "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council"²³ However, despite this requirement of Security Council authorization, regional groupings constituted as alliances, such as NATO, *using Article 51* could not be so constrained.

The early examples of regionally based, though not formally "regional" mutual defense pacts were the Inter-American Treaty of Reciprocal Assistance completed at Rio de Janeiro in 1947, the Brussels Pact of 1948 centered on Western Europe, and, as noted, the

22. See HANS KELSEN, *THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS* 792-96 (1950) (emphasizing the autonomy of Article 51 organizations). Article 5 of the April 4, 1949, treaty on which NATO is based provides for action "in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations." North Atlantic Treaty, Apr. 4, 1949, art. 5, 63 Stat. 2241, 2244, 34 U.N.T.S. 243, 246. During the approval process of the North Atlantic Treaty, the Canadian External Affairs Minister, Lester B. Pearson, wrote:

It would be difficult to maintain successfully, and therefore perhaps unwise to maintain at all, that the proposed treaty does not in important respects contemplate a regional arrangement within the meaning of Chapter 8 of the Charter. Article 52(1) defines 'regional arrangements and agencies' in terms which seem clearly applicable to the arrangements and agencies contemplated under the new treaty. . . . However, I think that, by clear intendment, the governing article of the Charter is Article 51 and that nothing in Chapter 8 or elsewhere in the Charter impairs or restricts, or could be construed as impairing or restricting, the unqualified and inherent right of individual or collective self-defence if an armed attack occurs. In other words, reading the relevant sections together, there is no real difficulty with the second sentence of Article 53(1).

Telegram EX-677 from the Secretary of State for External Affairs to the Canadian Ambassador to the United States (Mar. 14, 1949), in 15 DOCUMENTS ON CANADIAN EXTERNAL RELATIONS, 1949, at 585 (Hector Mackenzie ed., 1995). Pearson added that Leo Pasvolosky, Special Assistant to the U.S. Secretary of State, when being cross-examined on the U.N. Charter by the Senate Foreign Relations Committee, spoke as follows of Article 51: "The word 'collective' relates in part to the regional arrangements that I have just described, but it relates also to any group action that may be taken for purposes of self-defence." Therefore, in our view, regional arrangements can take collective defense measures under Article 51 without any authorization from the Security Council." *Id.* at 586.

23. U.N. CHARTER art. 53, para. 1.

North Atlantic (Washington) Treaty of 1949 which was transatlantic as well as Western European in strategic scope.²⁴ All of these agreements for common defense refer to Article 51, and thus can be said to avoid the constraints on "regional arrangements or agencies" of Chapter VIII, and perhaps even the more general limitations imposed by the Charter on the resort to force by U.N. members viewing their own and their allies' vital interests.²⁵

The international order that emerged from the Second World War delicately balances an individual U.N. member country's right of self-defense, whether exercised alone or in concert with other U.N. members of similar interest and outlook and perhaps region, and the prerogatives of the Security Council in preserving peace and security. Neither, according to the terms and implications of the Charter, is unmistakably supreme, and therefore competition has been engendered. The Charter itself imposed no system for enabling the world and regional organizations to function together and to act jointly. At the San Francisco Conference, Senator Vandenberg had asserted hopefully that "we have found a sound, a practical formula for putting regional organizations into effective gear with the global institu-

24. Both U.S. Secretary of State Dean Acheson and British Foreign Secretary Ernest Bevin made public statements to the effect that the arrangement based on the North Atlantic Treaty was not a regional organization within the meaning of Article 52 in Chapter VIII of the U.N. Charter. See Richard H. Heindel et al., *The North Atlantic Treaty in the United States Senate*, 43 AM. J. INT'L L. 633, 638-39 (1949). See E. N. van Kleffens, the Dutch ambassador to the United States, did openly consider the Atlantic Pact to be a regional arrangement, however. E. N. van Kleffens, *Regionalism and Political Pacts With Special Reference to the North Atlantic Treaty*, 43 AM. J. INT'L L. 666 (1949); see also Alan K. Henrikson, *The Creation of the North Atlantic Alliance*, in AMERICAN DEFENSE POLICY 296-320 (John F. Reichart & Steven R. Sturm eds., 1982) (discussing the making and early history of the Atlantic pact).

25. An often-overlooked qualification in Article 51 is the provision that the right of individual or collective self-defense can be exercised "until the Security Council has taken measures necessary to maintain international peace and security," at which point the active need for self-defensive measures, presumably, no longer would exist. U.N. CHARTER art. 51. The fact that the Security Council may be seized of an issue cannot by itself, of course, warrant a requirement that countries' Article 51 self-defensive measures must immediately be suspended. A U.N. takeover of responsibility would have to be seen actually to be working, i.e., actually maintaining international peace and security. Whether the Security Council's measures are adequate or not is a question that obviously would leave much room for national judgment. Hans Kelsen observes:

It probably was not the intention of the legislator to confer upon the attacked state the power to decide whether the measures taken by the Security Council are adequate. His idea was probably that a state is allowed to exercise its right of self-defence until the Security Council has taken the measures which the Security Council deems necessary to restore peace. But this idea is not unambiguously expressed in Article 51.

Kelsen, *supra* note 22, at 803.

tion."²⁶ What he meant specifically was that Article 51, with its express recognition of the right of collective self-defense, permitted formation of a regionally based inter-American security arrangement, the Rio Treaty, which would preserve America's freedom of action under the Monroe Doctrine. This U.S.-controlled mechanism would be meshed with the larger U.N. system only nominally. He and many other U.S. policymakers then placed their main reliance on regional initiative, capacity, and action. Concluding, however that the world organization would be "infinitely strengthened" by enlisting "the dynamic resources of these regional affinities," Vandenberg proclaimed: "We weld these regional king-links into the global chain."²⁷

III. GLOBAL-REGIONAL RELATIONS DURING THE COLD WAR

This loosely constituted arrangement was intended by its designers to enable the United Nations and existing and future regional bodies to work, at least theoretically, in unison. Despite the roominess of the U.N. Charter structure, considerable tension subsequently developed between the global institution and regional entities through competing claims in the Charter. As discussed earlier, Articles 33(1) and 52(2) seem to allow regional agencies priority of action with regard to managing disputes of essentially a "local" character,²⁸ however, Articles 34 and 35,²⁹ together with the powerful general Charter authorizations of Articles 24 and 39,³⁰ appear to give the United Nations, and specifically the Security Council, the pre-eminent role in world peacekeeping and peacemaking. Article 103, though making the supremacy of the United Nations explicit, does not clarify the actual global-regional balance of obligations.³¹ The

26. THE PRIVATE PAPERS OF SENATOR VANDENBERG, *supra* note 2, at 366.

27. *Id.*

28. See text accompanying notes 12-13, *supra*.

29. See text accompanying notes 14-15, *supra*.

30. U.N. CHARTER art. 24, para. 1 (stating that the "Members [of the United Nations] confer on the Security Council primary responsibility for the maintenance of international peace and security . . ."); U.N. CHARTER art. 39 (providing that "[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.").

31. Article 103 of the U.N. Charter states in its entirety that "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreements, their obligations under the present

vagueness of this division of responsibility between the global organization and regional groupings has conditioned the history of all subsequent dealings between them.

During most of the Cold War period, the world organization and regionally based bodies, rather than growing closer in conformity with the lines of development generally suggested by the U.N. Charter, tended to grow apart. The Korean War provided the first serious test of the cohesiveness of the global chain. The United Nations Security Council, owing to the temporary absence of the Soviet Union's representative, called for withdrawal of the North Korean invaders and "recommended" that member states furnish such assistance as may be needed in order to repel the North Korean attack.³² It was necessary for the Security Council to "*recommend*," as there were then no Article 43 forces for it to *order* into the field in Korea, or anywhere else. The return to the Council of Soviet Ambassador Jakov Malik, who could exercise a veto, made it necessary to turn to the General Assembly, which also had a basic responsibility for peace and security under the Charter and which could decide important questions by a two-thirds majority. The U.S. representative there proposed that member states earmark troops for U.N. use, pending the conclusion of Article 43 special agreements, so that the organization might be given the means to maintain international peace and security.³³ Adopting this proposal, known as the Acheson Plan or, formally, the "Uniting for Peace" Resolution, the General Assembly recommended that "each [U.N.] Member maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available, in accordance with its constitutional processes, for service as a United Nations unit or units."³⁴ The Uniting for Peace Resolution also established a Collective Measures Committee which, after learning of the resources and plans of the members, would make a report on methods "which might be used to maintain and strengthen international peace and security in accordance with the Purposes and Principles of the Charter, taking account of collective self-defence and regional arrangements (Articles 51 and 52 of the Charter)."³⁵ At that time, it was only the North Atlantic

Charter shall prevail."

32. U.N. SCOR, 5th Sess., 474th mtg. at 4, U.N. Doc. S/PV.474 (1950).

33. See WILLIAM R. FRYE, A UNITED NATIONS PEACE FORCE 57-58 (1957).

34. G.A. Res. 377A, U.N. GAOR, 5th Sess., Supp. No. 21, at 10-12, U.N. Doc. A/1775 (1950).

35. *Id.*; see also DEAN ACHESON, PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT 450 (1969).

Alliance that had the capacity to act regionally, if not beyond the treaty-defined North Atlantic area.

The globally-oriented multilateral and regionally-oriented, great power-focused multinational principles here were balanced uneasily, with the United States reluctant to commit itself primarily to the one or the other. The U.S.-dominated "Unified Command" in Korea, an international though not fully internationalized or true U.N. command structure, did not set a permanent pattern for subsequent international military organization. Nonetheless, the "Unified Command" precedent was suggestive of a way of compromising multilateralism and multinationalism so as to preserve the advantages of both, the collectivism of the former and the voluntarism of the latter.

In its reply to the General Assembly's request for its plans to meet the expectations of the Uniting for Peace Resolution, the United States government, in what has been described as "a model of skillful obfuscation" stated that "in appropriate circumstances, pursuant to the [North Atlantic] Treaty and the Charter," and "in accordance with due constitutional processes," American forces "maintained in furtherance of the Treaty" could "participate in collective measures to maintain or restore peace and security in the North Atlantic area in support of United Nations action," i.e., "if the United States chose to go to war in the NATO area, its NATO troops would be happy to let themselves be called U.N. troops."³⁶ The significance of actually placing a U.N. imprimatur on a major NATO operation in the European theater, such as the later 1995-96 "Joint Endeavor" operation in Bosnia-Herzegovina would show, could be considerable, for doing so made a powerful regional action internationally more legitimate.

After Korea, there occurred a kind of crossover of regionalism and universalism. NATO, in particular, assumed a major responsibility for maintaining international security, even well outside its sphere.³⁷ The United Nations, denied its proper central world peace-

36. FRYE, *supra* note 33, at 59.

37. On the broad geographical scope of political consultation, if not military action, under the North Atlantic Treaty, see SIR NICHOLAS HENDERSON, *THE BIRTH OF NATO* 100-05 (1983). On NATO's extended influence, see generally Alan K. Henrikson, *The North Atlantic Alliance as a Form of World Order*, in *NEGOTIATING WORLD ORDER: THE ARTISANSHIP AND ARCHITECTURE OF GLOBAL DIPLOMACY* 111-35 (Alan K. Henrikson ed., 1986); ELIZABETH SHERWOOD, *ALLIES IN CRISIS: MEETING GLOBAL CHALLENGES TO WESTERN SECURITY* (1990).

enforcement role by the superpower division within it, assumed, *faute de mieux*, the useful but marginal role of keeping the local peace whenever cease-fires and truces could be worked out, usually in politically non-central regions. This result was not what the Charter authors had intended. "Peacekeeping" was in fact an improvisation of the United Nations—in the words of a former U.N. official in charge of the peacekeeping function, it was "discovered, like penicillin."³⁸

The few strictly Chapter VIII-based regional organizations (as distinct from regionally based alliances) played a much smaller role than the authors of the Charter had planned. These were, principally, the League of Arab States (LAS) and the subsequently formed Organization of American States (OAS) and Organization of African Unity (OAU).³⁹ These organizations were not used either as "shock absorber" or as "forum of first resort"—at least by the leadership of the U.N. Organization—because of the regionals' own weaknesses and because the strength, authority, and credibility of the U.N. Security Council also had not adequately been built up. There was an unfulfilled need for greater interdependence and synergistic action between the two levels of organization. "One can only hazard a guess," speculated Francis Wilcox twenty years after San Francisco, "but in all likelihood if the Security Council had been able to discharge effectively its responsibility for the maintenance of peace, many more disputes of a local character would have been settled at the regional level."⁴⁰

The previous successes or failures of the United Nations and regional organizations to work together may shed light on the question of whether regional arrangements for peace and security can be the "king-links," or the strong major components, of a "global chain," an integrative worldwide system of cooperative action. The global-regional story during most of the Cold War era was mainly one of in-

38. Brian Urquhart, *The United Nations, Collective Security, and International Peacekeeping*, in NEGOTIATING WORLD ORDER, *supra* note 37, at 62.

39. More recently, following the Cold War and the demise of the Union of Soviet Socialist Republics, the Organization for Security and Cooperation in Europe (OSCE) and also the Commonwealth of Independent States (CIS) have declared themselves to be regional organizations in the sense of Chapter VIII of the Charter. See Victor-Yves Ghebali, *The July CSCE Helsinki Decisions - A Step in the Right Direction*, NATO REV., August 1992, at 5; *Former Soviet Republics: Ethnic Conflicts, Turmoil Persists; Observer Status Granted to CIS*, UN CHRON., June 1994, at 36; see also Christopher J. Borgen, *The Theory and Practice of Regional Organization Intervention in Civil Wars*, N.Y.U. J. INT'L L. & POL. 797 n.136 (1994).

40. Wilcox, *supra* note 11, at 431.

ter-organizational competition, rather than cooperation.⁴¹ In Latin America, in Africa, in the Middle East, and in Europe too, Cold War conditions precluded any global-regional bonding. A consequence was that on neither level, that of the world body or that of the regional entities, could deep and true, as well as widely acceptable, peace settlements easily be made. There was constant mutual interference.

Let us consider the proposition that effective regional action for peace depends on mutually responsible peace-maintenance by the U.N. Security Council, and vice-versa, region by region. The primordial international-legal formulation of the international status of regional relationships or associations concerns the Western Hemisphere (and indeed, by implication, all other geopolitical regions to this day). That formula is Article 21 of the Covenant of the League of Nations: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace."⁴² In effect, the Covenant acknowledged spheres of interest. Principally out of deference to the non-member United States, the League generally stayed out of territorial and other disputes in the Western Hemisphere. Similarly, whenever, later, the United Nations, having the Soviet Union as a member, was tempted to step into the region, the Organization of American States, under the sway of the dominant U.S. interest, usually barred the way. A hemispheric vacuum was thus preserved, which the OAS and the United States were free to fill. The notion of world order seemed almost a threat. As an Argentine former OAS Secretary-General, Alejandro Orfila, stated, "In these circumstances, during the Cold War between the two superpowers, the vision of regional order in the Americas gained in attractiveness."⁴³

During the Guatemala crisis in 1954, the Cuban missile crisis of 1962, and the Dominican Republic crisis in 1965, the OAS was the organizational venue of choice for the U.S. government, promoted by the United States as virtually a regional surrogate for the United Nations.⁴⁴ In the last of these cases, the Dominican situation, the United

41. See Henrikson, *supra* note 1, at 134-41.

42. LEAGUE OF NATIONS COVENANT art. 21.

43. Alejandro Orfila, *The Organization of American States and International Order in the Western Hemisphere*, in *NEGOTIATING WORLD ORDER*, *supra* note 37, at 139.

44. For a focused discussion of the Cuban Missile Crisis and a general discussion on Guatemala and the Dominican Republic, see Abram Chayes, *The Legal Case for the U.S. Action on*

Nations for the first time anywhere did dispatch a peace mission alongside a regional-organizational presence—an OAS mission and an Inter-American Peace Force. The dissatisfaction of U.N. Secretary-General U Thant with the stronger regional means chosen was evident in his observing, sharply if without pointed accusation, that “the developments in the Caribbean should stimulate thought by everyone concerning the character of the regional organizations and the nature of their functions and obligations in relation to the responsibilities of the United Nations under the Charter.”⁴⁵

Regarding Africa, too, the global-regional balance with respect to peace and security was tilted in favor of the regional body, the Organization of African Unity, despite that organization’s relative lack of institutional or physical capacity. Independent-Africa’s consensus, embodied in the 1963 Addis Ababa Charter establishing the OAU, held that the territorial framework of boundaries drawn by the European colonial powers was not to be changed—an attitude reflecting anxiety about the possible effects of allowing European or other outside forces back in to adjust existing boundaries.⁴⁶ Resolution of a Moroccan-Algerian territorial dispute in 1972 according to the status quo guideline of the OAU Charter helped to establish what has been called the “Try OAU First” principle.⁴⁷ The United Nations Organization did, to be sure, become deeply involved in the civil war in the Congo in the 1960s, sending peacekeeping units and a reconciliation commission, although this was a somewhat different category of problem, centering not on differences over territory but on the basic question of political and administrative control.⁴⁸ The United Nations wanted to insulate the Congo as much as possible from the risk

Cuba, 47 DEP’T OF STATE BULL. 763-65 (1962); see also ABRAM CHAYES, *THE CUBAN MISSILE CRISIS: INTERNATIONAL CRISES AND THE ROLE OF LAW* 41-87 (1974). For a discussion of the Guatemala crisis, see generally RICHARD H. IMMERMAN, *THE CIA IN GUATEMALA* 168-173 (1982). For a discussion of the Dominican Republic crisis, see JOHN B. MARTIN, *OVERTAKEN BY EVENTS: THE DOMINICAN CRISIS FROM THE FALL OF TRUJILLO TO THE CIVIL WAR* 438 n.3 (1966) (stating that “[t]he U.N. Charter is ambiguous, setting forth at one point that primary responsibility for keeping the peace rests with the United Nations but at another point that primary responsibility rests with regional international bodies. It is standing U.S. policy to keep inter-American affairs in the OAS.”).

45. U.N. DEP’T OF PUBLIC INFO., *THE BLUE HELMETS—A REVIEW OF UNITED NATIONS PEACE-KEEPING* 208 (2d ed. 1990), U.N. Sales No. E.90.I.18 [hereinafter *THE BLUE HELMETS*].

46. See ZDENEK CERVENKA, *THE ORGANISATION OF AFRICAN UNITY AND ITS CHARTER* 93-95, 231-240 (1969).

47. See Berhanykun Andemicael, *The Organization of African Unity and the United Nations: Relations in the Peace and Security Field*, in *REGIONALISM AND THE UNITED NATIONS* 238, 254-56 (Berhanykun Andemicael ed., 1979).

48. See *THE BLUE HELMETS*, *supra* note 45, at 215-59.

of great-power intervention and, accordingly, encouraged maximum African participation. An Ad Hoc Commission of ten OAU members under Jomo Kenyatta was formed, but it could not prevent an American-British-Belgian rescue operation at Stanleyville in November 1964. The OAU joined in international requests for a meeting of the U.N. Security Council to condemn this extra-regional intervention. Ultimately, the Security Council passed a resolution placing the problem of peace promotion in the Congo "in the lap of the OAU."⁴⁹ The United Nations henceforth sought to stay out of the situation. The United Nations also refused to be drawn into the 1967-70 Nigerian Civil War, recognizing that the majority of African countries supported the Nigerian federal government in Lagos rather than the independence-seeking state of Biafra.⁵⁰ Perhaps regional order triumphed over human justice, but the lines of authority were clear.

In the Middle East during the Cold War years there was only limited contact between organized globalism and organized regionalism for the purpose of maintaining international peace and security. The Suez crisis of 1956, though innovative in the stimulus it gave to the organization of the first United Nations Emergency Force (UNEF) and to the involvement in peace-and-security affairs of the U.N. General Assembly, did not result in close cooperation between the United Nations and the most pertinent regional body, the League of Arab States. In May 1958 the President of Lebanon, Camille Chamoun, appealed to the LAS and then to the United Nations to put an end to what he deemed foreign intervention in his country—armed subversives allegedly backed by the newly combined Egyptian-Syrian United Arab Republic.⁵¹ Although the Council of the Arab League sought exclusive control of the problem, the Lebanese government exercised its right under Article 35 and went again to the Security Council. There it obtained, owing to the Soviet Union's abstention, passage of a neutral Swedish resolution calling for the dispatch of what became the United Nations Observation Group in Lebanon (UNOGIL).⁵²

49. See R. A. AKINDELE, *THE ORGANIZATION AND PROMOTION OF WORLD PEACE: A STUDY OF UNIVERSAL-REGIONAL RELATIONSHIPS* 98-102 (1976).

50. See U Thant, *Secretary-General's Press Conference*, U.N. MONTHLY CHRON., Feb. 1969, 39-40; AKINDELE, *supra* note 49, at 102-05; JOHN J. STREMLAU, *THE INTERNATIONAL POLITICS OF THE NIGERIAN CIVIL WAR, 1967-1970* at 94-95 (1977).

51. See U.N. SCOR, 13th Sess., 818th mtg. at 2, 5, U.N. Doc. S/PV.818 (1958).

52. See *THE BLUE HELMETS*, *supra* note 45, at 175-85.

Other situations in which there has been some U.N.-Arab League interchange, occasionally through the Arab group at the United Nations, include the Kuwait-Iraq border dispute of 1961, the civil strife in Yemen in 1962, and, a decade later, a border conflict between North and South Yemen. In dealing with the first of these, which was largely managed by Arab diplomacy, an Arab League Security Force, with some assistance from Great Britain, was organized and dispatched.⁵³ At that time the machinery of the U.N. Security Council was veto-blocked, and the Arab League and British action probably saved Kuwait.⁵⁴ In 1976 an even larger Arab peacekeeping force went into Lebanon, increasingly beset by complications resulting from the nearby Israeli-Palestinian struggle as well as by its own internal power struggles.⁵⁵ The United Nations did not again become involved there until 1978, when it augmented the Syrian-dominated Arab regional force with a more widely gathered U.N. Interim Force in Lebanon (UNIFIL). These precedents in Arab peacekeeping suggest a regional potential, which closer cooperation with the United Nations would help the Arab countries, together with Israel and other Middle Eastern nations, fulfill.⁵⁶

In Europe and its environs the prime example of institutionalized peace-and-security action has been, of course, that of NATO. Although U.S. Secretary of State John Foster Dulles made it plain that "NATO has not been organized as a regional association, nor has it any policy or jurisdiction to deal with disputes as between the members,"⁵⁷ the North Atlantic Treaty Organization, being a political alliance as well as a military force, actually has at times exercised a noteworthy peacemaking influence. In late 1956, following the Suez debacle, which generated inter-allied differences as well as external rifts, a NATO Committee of Three composed of the foreign ministers of Canada, Italy, and Norway recommended that the Alliance improve its consultation capabilities.⁵⁸ The NATO governments then reaffirmed their obligation to settle whatever international disputes

53. See DAVID W. WAINHOUSE ET AL., *INTERNATIONAL PEACEKEEPING AT THE CROSSROADS: NATIONAL SUPPORT—EXPERIENCE AND PROSPECTS* 414-36 (1973).

54. See *id.*

55. See Hussein A. Hassouna, *The League of Arab States and the United Nations: Relations in the Peaceful Settlement of Disputes*, in *REGIONALISM AND THE UNITED NATIONS*, *supra* note 47, at 319-321.

56. See *THE BLUE HELMETS*, *supra* note 45, at 111-52.

57. *Transcript of Secretary Dulles' News Conference*, in U.S. DEP'T OF STATE, DEP'T OF STATE BULL., No. 884, at 925-26 (1956).

58. See Henrikson, *supra* note 37, at 125-26.

they may be involved in only by peaceful means (a U.N. Charter commitment repeated in Article 1 of the North Atlantic Treaty).⁵⁹ Moreover, they agreed to submit any internal disputes to good-offices procedures *within* their Alliance, "before resorting to any other agency."⁶⁰ NATO thus could claim organizational priority, if not jurisdictional supremacy, in the diplomatic as well as the military field; the United Nations was then scarcely thought of as an alternative for resolving intra-regional matters.

The major historical achievement of NATO in peacemaking surely has been its management of Franco-German differences, including the issue of control of the Saar.⁶¹ NATO institutionally mediated the British-Icelandic "cod war"⁶² and has also moderated the British-Spanish Gibraltar controversy.⁶³ The most notable case of active inter-organizational diplomacy by NATO, involving the United Nations as well, is that of Cyprus. In 1956 the first Secretary-General of NATO, Britain's Lord Ismay, suggested to the North Atlantic Council that a committee be formed to mediate the Cyprus conflict, which deeply split NATO allies Greece and Turkey.⁶⁴ The eventual outcome of both organizations' efforts, never well coordinated, was the establishment in 1964 of the United Nations' Peacekeeping Force for Cyprus (UNFICYP) and with NATO being relied upon implicitly to uphold the broader regional geopolitical equilibrium.⁶⁵ The Soviet Union, held on the sidelines, refused to help pay for the U.N. force in Cyprus, though it was willing to vote for UNFICYP.⁶⁶ When in 1974 Turkey, responding to appeals from Turkish Cypriots, landed on Cyprus with a large-scale armed force and set up a Republic of North-

59. See NATO LETTER, Special Supplement (NATO Information Division, Paris), Jan. 1, 1957, at 8.

60. *Id.*

61. See NATO LETTER, (NATO Information Division, Paris), July 1, 1956, at 23-24.

62. See PAUL-HENRI SPAAK, *THE CONTINUING BATTLE: MEMOIRS OF A EUROPEAN, 1936-1966*, at 279-80 (1971).

63. See *NATO Seen Giving Straits of Gibraltar Control* (Foreign Broadcast Information Service, July 8, 1991).

64. See ROBERT S. JORDAN & MICHAEL W. BLOOME, *POLITICAL LEADERSHIP IN NATO: A STUDY IN MULTINATIONAL DIPLOMACY* 37 (1979).

65. See LINDA B. MILLER, *WORLD ORDER AND LOCAL DISORDER: THE UNITED NATIONS AND INTERNAL CONFLICTS* 116-48 (1967); Karl Th. Birgisson, *United Nations Peacekeeping Force in Cyprus*, in *THE EVOLUTION OF UN PEACEKEEPING: CASE STUDIES AND COMPARATIVE ANALYSIS* 219-236 (William J. Durch ed. 1993); see also *THE BLUE HELMETS*, *supra* note 45, at 281-311.

66. See Norman J. Padelford, *Financing Peacekeeping: Politics and Crisis*, in *THE UNITED NATIONS IN THE BALANCE*, *supra* note 11, at 95.

ern Cyprus, NATO as an organization, whose own members were engaged, did not react as it should have done.⁶⁷ Despite the deadlock that continues on that island, it at least can be said that the very organizational structure of NATO, together with its military power and political influence, has helped to keep the Cypriot situation contained. The story of Cyprus demonstrates, however, that without a unified, strong, and diplomatically effective United Nations, a regional alliance formation, even one as physically competent as NATO, cannot transform stability into peace.

IV. STRENGTHENING THE PRINCIPLE OF RECIPROCITY IN A MIXED MULTILATERAL AND MULTINATIONAL ORDER

The end of the Cold War with the ensuing proliferation of ethnic and other conflicts has made it possible, indeed necessary, for regional organizations and the United Nations to work together—to cooperate, rather than merely to coexist, and occasionally to coordinate. Although there were signs that both levels of international organization would then become stronger, there was no clear evidence that they would join their strengths through closely concerted action. Some involvement by the United Nations, already seen as the organization that could best perform the function of “collective legitimization,”⁶⁸ obviously was necessary for regional efforts, some of them quite unprecedented, to be made widely acceptable, as well as effective locally. In Central America, in Africa, in Southeast Asia, in the Middle East, and even in highly organized Europe, where deep involvement by the United Nations in peace maintenance was entirely unexpected, globalism and regionalism could work harmoniously.⁶⁹

One distinguishing fact of this post-Cold War “new world order” is the welcome practice, which quickly became habitual, of U.S.-Soviet/Russian political cooperation within the United Nations sys-

67. See MONTEAGLE STEARNS, *ENTANGLING ALLIES: U.S. POLICY TOWARD GREECE, TURKEY, AND CYPRUS* 68 (1992).

68. See INIS L. CLAUDE, JR., *THE CHANGING UNITED NATIONS* 87-90 (1967).

69. Many of the conflict situations, including those in Nicaragua and El Salvador, Liberia and Somalia, Cambodia and Korea, and the former Yugoslavia, are reviewed in Henrikson, *supra* note 1, at 142-159. The disproportionality of the overall effort is noted by U.N. Secretariat official Shashi Tharoor:

At the end of the 1980s, few European analysts of international affairs would have predicted that, at the beginning of 1995, a majority of the peacekeepers deployed by the United Nations (UN) across the world would be based in Europe, or that the world organisation would be spending more money on peacekeeping in Europe than on all other continents put together.

Shashi Tharoor, *U.N. Peacekeeping in Europe*, *SURVIVAL*, Summer 1995, at 121.

tem, principally in the Security Council.⁷⁰ Although the ideological struggle and nuclear arms race between the two superpowers is now largely over, the Cold War still exerts a profound influence. Not only do Cold War memories persist, but the very structure of international relations during that long conflict—the basic polarity of world strategic thinking—remains. This element of intercontinental rivalry, even if perhaps residual, should be seen as a key factor in explaining why the so-called new world order is developing today more along multinational lines rather than along perfectly multilateral lines.

Although future military forces will probably be used more collaboratively and, if on a large scale, probably in broad coalitions, it is not yet possible for them to be used "multilaterally" in the fullest, or collectivist, sense of that normative as well as descriptive-procedural word.⁷¹ A truly multilateral action must be both conducted organizationally and governed by broad community principles. More concretely, this means that the action must be not only decided upon by the United Nations but also carried out or implemented in conformity with the U.N. Charter. Some of its provisions are nearly forgotten. Chapter VII, Article 47 provides for a Military Staff Committee (MSC) "to advise and assist" the Security Council and also to be responsible under the Council "for the strategic direction of any armed forces" placed at its disposal—presumably under the terms of Article 43 special agreements, previously described. "Questions relating to the command of such forces"—here differentiated from the more general "strategic direction"—"shall be worked out subsequently."⁷² Article 47(4) also allows the MSC, "with the authorization of the Security Council and after consultation with appropriate regional agencies," to establish "regional sub-committees." A completely multilateral, or U.N.-conducted, security operation would use all of these modalities; a multinational operation, regionally based and great power- or alliance-managed, would not, even though it might have U.N. approval and be considered consistent with the purposes of the

70. On this and other elements of the "new world order" discerned by U.S. President George Bush and others, see President Bush, *Toward a New World Order*, 1 U.S. DEP'T OF STATE DISPATCH 91-94 (1990); see also ALAN K. HENRIKSON, *DEFINING A NEW WORLD ORDER: TOWARD A PRACTICAL VISION OF COLLECTIVE ACTION FOR INTERNATIONAL PEACE AND SECURITY* 10-14 (1991).

71. See John Gerard Ruggie, *Multilateralism: The Anatomy of an Institution*, in *MULTILATERALISM MATTERS: THE THEORY AND PRAXIS OF AN INSTITUTIONAL FORM* 6-7 (John G. Ruggie ed., 1993) (distinguishing between "qualitative" multilateralism and what he terms "nominal," or merely formal and mechanical, multilateralism).

72. U.N. CHARTER art. 47, para. 3.

U.N. Charter.

The difference between multilateral and multinational methods may be illustrated by examining the diplomatic and military handling of two geographically specific problems that the United States and Russia have been confronting: Haiti and Nagorno-Karabakh. Both the United States and the Russian Federation retain the keenest interest in how the other conducts itself in its own historic security "sphere". One way for each to contain the other's action is to set an example for it to follow by acting, in its own sphere, in a spirit of international cooperation, that is, by conducting its policies within the normative framework of the United Nations if not necessarily under direct U.N. control. This requirement of exemplary behavior, imposed legally by the imperatives of the Charter and politically by the logic of great-power rivalry, will here be called the principle of reciprocity. This positive guideline may not be sufficiently constraining any longer, however, despite the Haiti precedent, considered in detail below. Something of a more formalized, institutionally engaging nature may be needed. A specific proposal, involving the possible use of Article 43, will be advanced in the concluding section of this Article.

The September 1994 military intervention, led by the United States with prior authorization in July by the Security Council,⁷³ to restore the democratically elected government of President Jean-Bertrand Aristide in Haiti may be the prototype for the internationally authorized use of force following but, as noted, not yet wholly outside the context of the unforgotten Cold War.⁷⁴ Resolution 940, which was initiated by U.S. Permanent Representative Madeleine K. Albright,⁷⁵ takes note of the support given by U.N. Secretary-General Boutros-Ghali for "action under Chapter VII of the Charter" in order to assist the legitimate government of Haiti in "the maintenance of public order." The resolution also recognized "the unique charac-

73. S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg. at 1-4, U.N. Doc. S/RES/940 (1994) [hereinafter S.C. Res. 940].

74. See generally UNITED NATIONS DEPT OF PUBLIC INFO., THE UNITED NATIONS AND THE SITUATION IN HAITI (1995), U.N. Sales No. E.96.I.11 (summarizing action from a U.N. institutional perspective).

75. This is regarded as one of Ambassador Albright's signal successes. In July 1994 a State Department memorandum stated that it would be "folly" to ask the Security Council to authorize the invasion; Secretary of State Warren Christopher and Secretary of Defense William Perry also were skeptical. But Ambassador Albright told President Clinton, "If I have the authority, I think I can do it." She did. See Elaine Sciolino, *The Foreign Policy Race: Madeleine Albright's Audition*, N.Y. TIMES, September 22, 1996, (Magazine), at 86-87.

ter" of the situation in Haiti, requiring "an exceptional response," and noted further that the illegal *de facto* regime in Haiti had failed to comply with previous agreements. Resolution 940 concluded: "[A]cting under Chapter VII of the Charter of the United Nations," the Council "authorizes Member States to form a multinational"—as distinct from multilateral—"force under unified command and control"—a preferred U.S. (and also NATO) formulation—"and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership." The resolution made clear that the "cost of implementing this temporary operation" would be "borne by the participating Member States," not by the United Nations itself.⁷⁶

Concomitantly, through Resolution 940, the Security Council approved an advance team of the already existing U.N. Mission in Haiti (UNMIH), to establish appropriate means of "coordination" with the multinational force, to carry out the "monitoring" of the multinational force, and, because that force's operation would be temporary, to assess the requirements and prepare an UNMIH deployment upon completion of the force's mission.⁷⁷ The further deployment would occur when "a secure and stable environment" had been established and UNMIH possessed "adequate force capability and structure to assume the full range of its functions."⁷⁸ In effect, there would then be a "re-multilateralization" of the effort.

The determination of when to end the multinational force's mission would be made by the Security Council, "taking into account recommendations from the Member States of the multinational force, which are based on the assessment of the commander of the multinational force, and from the Secretary-General."⁷⁹ Effectively, therefore, there would be a co-decision by the U.S. government, leading the multinational operation, and by Secretary-General Boutros-Ghali, advising the Security Council. The United Nations remained nominally responsible. Future steps to be taken in Haiti, intended to be of a less forcible character, would be multilateral.

During the Security Council's discussion of the two-phased approach to the Haiti problem outlined in Resolution 940, Ambassador Albright explained this mixed multinational-multilateral sequenced

76. S.C. Res. 940, *supra* note 73, at 2.

77. *Id.*

78. *Id.* at 3.

79. *Id.*

combination of operations that was being planned in comparative terms:

The resolution before us meshes well with our policy—and that of the Council—of subjecting proposed new peace operations to rigorous review. Phase one builds on the precedents of Kuwait and Rwanda. Phase two establishes a UN mission of modest size, with a clear and achievable mandate, operating in a relatively secure environment, with the consent of the government, for a finite period of time.⁸⁰

As her allusions to the American-led operation to rescue Kuwait and the French-led intervention in Rwanda indicate, what the U.S. government envisioned was a great-power expedition into an area of vital interest and a sphere of influence.⁸¹ The United Nations, having invited the use of “all necessary means”⁸² (which it clearly did not itself possess), would be carried along, until order was restored.

A further notable feature of the Haiti operation was the composition of the forces to be involved. “We seek—and anticipate—that others will join,” Ambassador Albright said in speaking to the Security Council on behalf of Resolution 940.⁸³ The remarkable fact is that, despite the intimate interest of the United States in the Haitian matter and the long and almost hermetic Monroe Doctrine tradition of excluding outsiders from the Western Hemisphere, her invitation was extended virtually to the entire world. “My government urges all governments,” she stated, “to contribute appropriately to the prompt and successful implementation of this resolution.”⁸⁴ This was a major, indeed radical, break with a legacy of American history—the strong

80. Madeleine K. Albright, *Shared Resolve in Restoring Democracy in Haiti*, 5 U.S. DEP'T OF STATE DISPATCH 554, 555 (1994).

81. For the U.S. government, the Security Council authorization of military force in the Persian Gulf area to restore the independence of Kuwait was, in operational terms, a useful precedent. Security Council Resolution 678, as former U.N. Legal Adviser Oscar Schachter has pointed out, was remarkably permissive. He notes that

the Council did not decide that the armed forces of the cooperating states were to be placed at the disposal or under the control of the Security Council. No United Nations command was set up; no reference was made to a United Nations force or to use of the UN flag. These were features of the UN-authorized force in Korea; their omission here is further evidence that the Security Council intended to leave the choice of means, timing, command and control to the participating states.

Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 459, 459-60 (1991).

82. S.C. Res. 940, *supra* note 73, at 2.

83. Albright, *supra* note 80, at 555.

84. *Id.*

U.S. and also OAS preference for keeping the management of hemispheric security affairs regionally contained.⁸⁵

What is the explanation of this departure? The answer partly lies, of course, in Washington's wish not to appear, once again, the Colossus of the North, stepping in to commandeer its Caribbean sphere. More pertinently in the context of the present discussion of global-regional and inter-national politics, the Clinton administration was attempting to establish the informal principle that no other great power, particularly its erstwhile Cold War adversary, Russia, should or could have a free hand in intervening in its "area of responsibility," in the euphemistic language of the 1943 Four-Nation Declaration mentioned in Article 106 of the U.N. Charter's Chapter XVII on Transitional Security Arrangements.⁸⁶ In other words, if the United States allowed or even invited "all governments" everywhere in the world to join it in intervening for peace-restoring purposes in Haiti, the United States would have an easier time, rhetorically and also strategically, in advancing the position that the Russian Federation should accept partners, even from far-away continents, in any multilaterally authorized multinational operation in the Caucasus.

Nagorno-Karabakh, a bone of contention between the former Soviet republics of Armenia and Azerbaijan, was a particular object of international concern at the time. Although this was formally an

85. A partial breakthrough of globalism against hemispherism, though in non-security affairs, had occurred during the 1980s with U.S. acceptance of European Community assistance in supporting political and economic development in Central America and the Caribbean area. See Marc Pierini, *E.C. Eyes New Ties with Central America*, EUROPE: MAGAZINE OF THE EUROPEAN COMMUNITY, Nov.-Dec. 1984, at 30-31; Paget de Freitas, *E.C.-Caribbean Links Seen Growing Stronger*, EUROPE: MAGAZINE OF THE EUROPEAN COMMUNITY, Nov. 1986, at 24-27, 47. For background views on overcoming the preference for regionally managing issues concerning democracy and law and order in this sensitive region, see THIRD WORLD INSTABILITY: CENTRAL AMERICA AS A EUROPEAN-AMERICAN ISSUE (Andrew J. Pierre ed., 1985).

The later "Friends of Haiti" support group prominently included a European nation, France, as well as the United States, Canada, and Venezuela, from the Western Hemisphere. See *Meeting of the Friends of Haiti*, 4 U.S. DEP'T OF STATE DISPATCH 886, 886 (1993). This recent trend of increasing extra-hemispheric political involvement in the Americas has gone largely unnoticed by the American public at large. One historically conscious observer who has noticed it is former Secretary of State Henry A. Kissinger. Critical of the U.S. government's bringing the United Nations into Haiti, Kissinger points out that in the past Article 51 (individual and collective self-defense) has been the basis of U.S. action, and that the American position has always been that the regional organization, the OAS, should be used. He laments that the shift to the U.N. had not been widely discussed. See *The Future of the U.S.-U.N. Relationship: A UNA-USA Conference Transcript, May 21, 1996* at 20-21 (New York: United Nations Association of the United States of America, 1996).

86. See FEIS, *supra* note 21, at 212.

inter-state issue, Moscow's emissaries sought to marginalize other peacemakers. Russia's reassertion of interest in Transcaucasia and other territories throughout its "near abroad" seemed to foreshadow a reconstituted Soviet-like system of imperial pacification.⁸⁷ Therefore a relationship of reciprocity was implicitly sought. The United States, by refraining from asserting a right to intervene in Haiti by itself, or only with other members of the Organization of American States within its own hemisphere, hoped thereby to deny Russia any license to act "regionally," alone or with its smaller partners in the CIS. This was the underlying logic of the unprecedented American official request for extra-hemispheric partners in the Haitian undertaking.

It was "no accident," therefore, that the countries contributing in Haiti included, besides the United States and tiny members of the Caribbean Community (CARICOM) and the geographically remote Western Hemisphere country of Argentina, the nations, from outside the Hemisphere altogether, Australia, Bangladesh, Belgium, Benin, Denmark, Israel, Jordan, Nepal, the Netherlands, Norway, the Philippines, Poland, and the United Kingdom.⁸⁸ This laid a basis for the argument that, should the United Nations ever authorize a military peacekeeping action in the area of the former Soviet Union, the Russians and their Commonwealth of Independent States would have to accept troops from outside their region, even outside Eurasia, as well. Although Russia's Permanent Representative on the U.N. Security Council, Yuli M. Vorontsov, had been strongly condemnatory of the Haitian military-government leaders, and had voted for the "all necessary means" resolution to remove them,⁸⁹ the Russian Federation itself, of course, was not one of the twenty-nine U.N. member countries sending military troops or police monitors to Haiti. Its doing so could "invite" U.S. peacekeepers into such places as Nagorno-Karabakh.

During this same historical period, from July to September 1994, Secretary-General Boutros-Ghali decided that in Bosnia-

87. See Bruce D. Porter & Carol R. Saivetz, *The Once and Future Empire: Russia and the "Near Abroad,"* WASH. Q., Summer 1994, at 75-90; Thomas Goltz, *Letter from Eurasia: The Hidden Russian Hand,* FOREIGN POL'Y, Fall 1993, 92-116.

88. See Eric Schmitt, *U.S. Backed on Possible Invasion of Haiti,* N.Y. TIMES, Aug. 31, 1994, at A8; see also *Background Notes: Haiti,* 6 U.S. DEP'T OF STATE DISPATCH, 494, 494-98 (1995).

89. See Paul Lewis, *U.N. Gives Up on Talks to Resolve Haiti Crisis,* N.Y. TIMES, Aug. 31, 1994, at A8. The vote on Resolution 940 was 12-0-2 (Brazil and China abstaining). U.N. SCOR, 49th Sess., 3413th mtg. at 12, U.N. Doc. S/PV.3413 (1994).

Herzegovina, as in Haiti, a regionally based international grouping—the North Atlantic Treaty Organization—might take the responsibility for overseeing whatever peace agreement could be worked out for that distressed land born of the former Yugoslavia. He made this suggestion in a communication in July to the members of the "contact group"—the United States, Russia, Britain, France, and Germany.⁹⁰ The timing strongly suggests that it was the Security Council's Haiti decision, i.e., to turn that situation over to a U.S.-led multinational force under a relatively general and open-ended Security Council mandate, that set the pattern for the United Nations' more flexible though not neglectful or unprincipled handling of the Bosnian problem as well. Regarding Bosnia, too, the logic of political reciprocity would determine whether the United States and the Russian Federation would be able to work, inter-regionally, in the world's interest.

V. BOUTROS-GHALI AND THE EMERGING REGIONALISMS

Throughout the years of the post-Cold War period, it has remained the ambition of the United Nations Organization to remain atop the hierarchy of organizations managing regional problems. The *locus classicus* of this view is Secretary-General Boutros-Ghali's *An Agenda for Peace*.⁹¹ During the Cold War, he noted critically, probably with both NATO and the Warsaw Treaty Organization (WTO) in mind, "regional organizations worked on occasion against resolving disputes in the manner foreseen in the Charter." With the end of that struggle, regional organizations could more easily work together, and with the United Nations.

Accepting that the Charter "provides no precise definition of regional arrangements and agencies," Boutros-Ghali pointed out that it allows as a result "useful flexibility" for undertakings by state groupings. Encouraging "a rich variety of complementary efforts," the Secretary-General argued against any standard or rigid framework: "Just as no two regions or situations are the same, so the design of cooperative work and its division of labour must adapt to the realities of each case with flexibility and creativity." In this post-Cold War new era of opportunity,

90. See Lewis, *supra* note 89, at A8.

91. The following three-paragraph passage is based on AN AGENDA FOR PEACE, *supra* note 7, section VII, paras. 60-65.

regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the Purposes and Principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.

Under the Charter, Boutros-Ghali emphasized, "the Security Council has and will continue to have primary responsibility for maintaining international peace and security." But regional organizations should have a larger role. Regional action "as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs." Implicitly, he confirmed the increasingly obvious fact that the United Nations was becoming overburdened and could no longer afford or otherwise manage to carry on all the peace operations that were required. He further seemed to acknowledge that the moral standing of the United Nations, and particularly that of the Security Council after its authorization of "Desert Storm" during the Persian Gulf War, was in question and needed "democratic," including multi-regional, buttressing. Regional arrangements and agencies, he apparently believed, could help strengthen the sense as well as the sinews of global community.

How could contributions by regional entities be facilitated? Boutros-Ghali suggested a number of possible ways, ranging from increased diplomatic communication via the United Nations, to inter-organizational collaborative measures, to the United Nations actually designating a regional body to act on its behalf. Every manner of such cooperation would be beneficial. "Consultations," he noted, "could do much to build international consensus on the nature of a problem and the measures required to address it." Members of regional organizations participating "in complementary efforts with the United Nations in joint undertakings" might encourage other states, outside their regions, to act in support. "And should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it would serve to lend the weight of the United Nations to the validity of the regional effort."

Secretary-General Boutros-Ghali's subsequent annual *Report on the Work of the Organization of September 1993* noted the enormous expansion that had taken place in the number and scope of U.N.

peacekeeping operations and expressed his regret over the difficulty the U.N. had encountered in securing sufficient manpower and other assistance.⁹² In order to deal with the vastly increased demand and resulting shortages, he recounted steps he had taken, including asking member states to "designate" qualified personnel for U.N. assignment, setting up a special planning team to define common standards for equipment and operations, and even authorizing use of the services of contractors. He also had instituted a "military planning cell" in the Department of Peacekeeping Operations at the United Nations.⁹³ However, he therein made no comprehensive proposal to solve what was coming to be known as "The Crisis in Peacekeeping."⁹⁴ In particular, he offered no definite, practical plan for drawing on regional energies.

His 1994 report, *Building Peace and Development*, however, contained something noteworthy—an account of a meeting he convened in New York on August 1, 1994, "between the Secretary-General and the heads of regional organizations, the first meeting of its kind,"⁹⁵ as he described it:

The purpose of the meeting was to assess cooperation between the United Nations and regional arrangements and organizations with a view to further enhancing it in the future. The meeting was attended by the Commonwealth of Independent States, the Commonwealth Secretariat, CSCE, EU, the League of Arab States, NATO, OAU, OAS, the Organization of the Islamic Conference and the Western European Union. The Economic Community of West African States (ECOWAS) was invited but was unable to attend. The participants were in broad agreement that primary responsibility for the maintenance of international peace and security remains with the Security Council. At the same time, participants acknowledged the desirability of decentralizing some tasks, under a United Nations mandate. In the view of many delegations, the key to closer cooperation and coordination between the United Nations and regional organizations was a smooth and constant exchange of

92. See BOUTROS BOUTROS-GHALI, U.N. DEP'T OF PUBLIC INFO., REPORT ON THE WORK OF THE ORGANIZATION FROM THE FORTY-SEVENTH TO THE FORTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY 66, 102-104 (1993).

93. See *id.* at 103-04.

94. This phrase was used as the title of a monograph analyzing the potential for U.N. peacekeeping operations as part of a larger collective security apparatus. ADAM ROBERTS, *THE CRISIS IN PEACEKEEPING* (1994).

95. BOUTROS BOUTROS-GHALI, U.N. DEP'T OF PUBLIC INFO., *BUILDING PEACE AND DEVELOPMENT 1994: REPORT ON THE WORK OF THE ORGANIZATION FROM THE FORTY-EIGHTH TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY* 258 (1994).

information on emerging crises at a sufficiently early stage.⁹⁶

Among the more specific substantive issues discussed were the training of peacekeeping personnel from regional organizations, coordination of command and control for joint peacekeeping operations, and coordination of the implementation and verification of sanctions under Chapter VII.⁹⁷

In a more public expression of his views, an article in the *New York Times* under the title "Beleaguered Are the Peacemakers," Boutros-Ghali summarized the U.N. case for increased help from, and to, regional arrangements and organizations.⁹⁸ His reasoning proceeded by quick steps:

The UN invented peacekeeping Peacekeeping today has become far more complicated These changes require greater involvement of regional organizations and arrangements Such groups can help ease the financial and material burdens placed on the U.N. . . . They can provide special insights into conflicts in their various regions and can sometimes respond more quickly militarily.

The Secretary-General insisted, however, that "unity of command is essential" lest the different types of U.N.-authorized activity in a situation damagingly counteract each other. The "new regionalism" is a "challenge," as he called it ambivalently:

Regional entities can enhance the efficiency and the effectiveness of U.N. efforts for peace. Their involvement with the U.N. would further democratize the international system. But the very features that make regional entities effective may also make regional involvement seem threatening. Those close to a problem and well equipped to handle it may also be too close to its living historical associations: in short, regional involvement may raise the old fears of regional hegemony and intervention.

These methods of U.N.-regional cooperation must be improved. We must take care that new regionalism does not become an alternative to multilateralism. The resurgence of spheres of influence

96. *Id.*

97. See *id passim*. Evidently pleased with this "useful exchange of views," the Secretary-General expressed his "intention to hold further meetings of this kind." *Supplement to An Agenda for Peace: Position Paper of Secretary General Boutros-Ghali on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. GAOR, 50th Sess., para. 85, U.N. Doc. A/50/60 (1995), reprinted in AN AGENDA FOR PEACE, *supra* note 7.

98. The following paragraphs are based on Boutros Boutros-Ghali, *Beleaguered Are the Peacekeepers*, N.Y. TIMES, Oct. 30, 1994, § 4, at 15.

and resultant rekindling of old regional hostilities would deal a serious blow to collective security.

VI. A CONCLUDING PROPOSAL

How can the regional hegemonies that Secretary-General Boutros-Ghali fears be reined in? The time has come, it is here proposed, for the unfulfilled Charter commitment of Article 43 that provides for "special agreements" between the Security Council and U.N. member states or groups of U.N. member states to be honored. Special agreements making available armed forces, assistance, and facilities should be negotiated with the Security Council taking the initiative prescribed for it in Article 43(3).⁹⁹ Such accords may be crucial to preservation of the global-regional balance that is envisioned in the U.N. Charter. The opportunity presented by the end of the Cold War may not last indefinitely. Already, there are signs that the post-Cold War comity in that institution, most visibly in the Security Council, is breaking down.¹⁰⁰

Through Article 43 agreements, linkages could be formed between the world body and members of regional bodies that would both harness the energies of regionally powerful countries, such as the United States or Russian Federation, and restrain them, precluding a devolution of the world system into a spheres-of-influence order, or disorder. The dynamic factor of inter-regional reciprocity, as seen in the case of Haiti or of Nagorno-Karabakh or prospectively of Abkhazia, Moldova, or Tajikistan,¹⁰¹ may not be, as a purely political process and force, sufficient in itself to regulate global-regional tensions worldwide. Too much would depend on skillful management by diplomacy. Not even formal U.N. Security Council resolutions authorizing complementary global-regional efforts which, as Secretary-General Boutros-Ghali has pointed out, should encourage participation by extra-regional states, may suffice to prevent an excessive tipping of the scales against multilateralism in the handling of

99. See *supra* note 6.

100. See *Russian Block of Security Council Action on Iraq Could Signal New Dynamic of Far-Reaching Impact*, INT'L DOCS. REV., Sept. 9, 1996, at 1-2. "Ambassador [Sergey] Lavrov never used the word *veto*," said one participant in the consultations regarding the Security Council's response to the intervention of Iraqi forces in the factional strife among Kurdish factions in the north. "He merely kept saying that the British draft was not acceptable to his government. But it was a veto he was talking about." *Id.* at 2.

101. See Elizabeth Fuller, *Mediators for Transcaucasia's Conflicts*, WORLD TODAY, May 1993, at 89-92.

local problems. The example of Resolution 940, sometimes viewed critically as a U.N. "license" for the exercise of military force in Haiti and, by logical extension, of other "big-power armies" elsewhere, is an ambiguous legacy.¹⁰² Article 43 would be a steelier mechanism for equilibrating the multilateral-multinational balance, it is suggested, because it would give the Security Council more direct control over the national forces made available.

Why have Article 43 special agreements never been concluded, to date? Most of the answer lies in the effects, and aftereffects, of the Cold War.¹⁰³ Today, however, negotiation of such connective links should be possible. As Secretary-General Boutros-Ghali remarked in *An Agenda for Peace*, "Under the political circumstances that now exist for the first time since the Charter was adopted, the long-standing obstacles to the conclusion of such special agreements should no longer prevail."¹⁰⁴ Although some might take the view that Article 43 "has become a dead letter," that initially vital provision of the Charter surely is capable of being revived.¹⁰⁵ Some of the necessary conditions, as noted, have been fulfilled by history itself; the sufficient conditions can be filled through active leadership.

Who might enter into these agreements? Article 43 states that

102. See *A U.N. License to Invade Haiti*, N.Y. TIMES, Aug. 2, 1994, at A20.

103. See *supra* Part III. There have been, of course, technical difficulties as well as ideological-political impediments to the working out of Article 43 arrangements. Many of the technical problems are noted in the initial report on the subject of the U.N. Military Staff Committee, *General Principles Governing the Organization of the Armed Forces Made Available to the Security Council by Member Nations of the United Nations: Report of the Military Staff Committee*, U.N. SCOR, 2d Sess., Special Supp. 1 for Apr. 1947, U.N. Doc. S/336 (1947). Such legal and practical difficulties are cited as sufficient in themselves to warrant abandonment of the idea of Article 43 agreements, now as well as then, by Andrew S. Miller, *Universal Soldiers: U.N. Standing Armies and the Legal Alternatives*, 81 GEO. L.J. 773 (1993). That the basic reason for the non-realization of Article 43 agreements was the political impasse in East-West relations is attested to, however, by the Soviet government itself, which insisted during the early talks that members' contributions of armed forces, assistance, and facilities be strictly limited, in strict detail, by the "principle of equality," rather than by the overall equivalence of contributions. A Soviet representative said in 1947, "I should like to draw the Security Council's attention to the fact that the whole question of armed forces being made available to the Security Council by the United Nations under special agreements is not only, and not so much, a technical question as a political one. It is a political problem and should be decided as such." FRYE, *supra* note 36, at 53, 183.

104. AN AGENDA FOR PEACE, *supra* note 7, at 25.

105. The "dead letter" characterization is that of Oscar Schachter, who acknowledges: "The fact that Article 43 agreements have not been concluded and have not been found necessary for military measures does not mean that the article is devoid of present interest." OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 394 (1991). He explains, however, by noting the "implication" of the article and its non-use to date "that member States cannot be legally bound to provide armed forces unless they have agreed to do so." *Id.*

"[a]ll Members" of the United Nations undertake to provide forces, assistance, and facilities in accordance with special agreements negotiated "as soon as possible on the initiative of the Security Council."¹⁰⁶ The original expectation was that the five permanent members of the Security Council would do so, both as valuable contributions in themselves and as examples to others. Ironically, when the subject of Article 43 agreements was revisited in the U.N. General Assembly during the 1960s, the Soviet Union, otherwise ostensibly in favor of the idea and also of breathing new life into the Military Staff Committee which was asked to draft "the basic provisions of a model agreement," argued that the resulting "force should not include contingents from States which were permanent members of the Security Council."¹⁰⁷

Prominent among the other countries favoring the Article 43 concept at that time was Canada, which had led the successful effort to establish UNEF during the Suez crisis and which, perhaps owing to that nationally gratifying experience, advocated "the conclusion of agreements under Article 43 of the Charter between the Security Council and Member States for the provision of armed forces for peace-keeping." The Canadian representative conceived "the peace-keeping capacity of the United Nations in the broadest sense." Like others, he did not consider the idea of "a permanent United Nations force" to be realistic, and he did not favor it. Instead, he encouraged member states "to earmark forces or police units or services and facilities which could be made available to the United Nations if a request were made and if the Government concerned agreed."¹⁰⁸

Canada continues to be an active proponent of specially trained, broadly capable forces for possible U.N. operations. It therefore would today be a logical candidate to be the first U.N. member country to conclude a special agreement with the Security Council. Conceivably other countries, such as the Netherlands, which is Canada's co-leader among the "friends of rapid reaction" group of some twenty-four nations from around the world, might follow.¹⁰⁹ Such ac-

106. U.N. CHARTER art. 43, paras. 1, 3.

107. *Comprehensive Review of the Whole Question of Peace-keeping Operations in All Their Aspects*, U.N. GAOR, Special Comm. on Peace-keeping Operations, 5th Special Sess., Annex 1, Agenda Item 8, at 17, U.N. Doc. A/6654 (1967).

108. *Id.* at 18.

109. The other members of the "friends of rapid reaction" group, which do not expressly represent regions and presumably are willing to be of service anywhere, are Argentina, Australia, Bangladesh, Chile, Denmark, Egypt, Finland, Indonesia, Ireland, Jamaica, Japan, Jordan, Malaysia, New Zealand, Nicaragua, Norway, Poland, Senegal, South Korea, Sweden,

tion could start a trend, particularly if, especially for the developing countries on the "friends" list, various inducements of a financial or other material kind were added to facilitate the conclusion of Article 43 negotiations with the Security Council.

What should be the form of agreements between individual U.N. member states, or even groups of such states, and the United Nations? Some guidance may be found in the text of a Model Agreement with Troop Contributing Countries provided to the General Assembly by the Secretariat in 1991.¹¹⁰ This document, no doubt reflecting Secretary-General Boutros-Ghali's perspective and preferences, affirms "the international nature" of U.N. peacekeeping operations. It specifies that the personnel made available "shall remain in their national service but shall be under the command of the United Nations."¹¹¹ In practice, however, as a member of the U.N.'s Department of Peace-keeping Operations later noted with particular reference to operations in Bosnia, "the Secretariat has tended to leave command in the hands of commanders in the field, providing guidance of a primarily political nature." He added that the United Nations and NATO "found much common ground, in particular through a 'dual key' arrangement in which both organizations must grant prior approval for specific actions."¹¹²

The awkwardness of the dual-key command procedure has become a strong argument in favor of the even greater "multinationalization" of U.N. peace operations. Perhaps this has now been carried to an excess. The problem of finding the right legal-political formulation and operational regime for gearing the major global and regional security organizations to each other is no doubt difficult, but it cannot be impossible to solve. How such a rapprochement of institutions might begin to be achieved, in specific terms, was suggested by Ambassador Thomas R. Pickering when serving as U.S. Permanent Representative at the United Nations in

Ukraine, and Zambia. Barbara Crossette, *At the U.N.: A Proposal To Speed Aid During Crisis*, N.Y. TIMES, July 21, 1996, § 1, at 9. The group's specific proposal, not to be confused with "stand-by arrangements" for providing national military assets for immediate use in more urgent peace-maintenance situations, is to set up a stand-by field headquarters at the U.N.'s New York headquarters which could be deployed at short notice to countries where missions are approved by the Council.

110. *Comprehensive Review of the Whole Question of Peace-keeping Operations in All Their Aspects, Model Agreement Between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-keeping Operations: Report of the Secretary General*, U.N. GOAR, 46th Sess., Agenda Item 74, U.N. Doc. A/46/185 (1991).

111. *Id.* at 3.

112. Tharoor, *supra* note 69, at 128-129.

1991 following the Persian Gulf War.¹¹³ Speaking personally, Pickering speculated that the size of the U.N.'s security role in the future, would depend on how the two key elements of "legitimacy"—the need for international political approval as well as legal justification for forcible action—and "flexibility"—the need for independence of judgment in exercising military command responsibility—were inter-related:

For military actions comparable in scale to Desert Storm, there does not seem an obvious answer to this problem since a greater degree of UN direction and control could have imposed disabling constraints. On the other hand, we hope and believe that the scale of Iraq-Kuwait is unlikely to be repeated in the foreseeable future. Moreover, Council cohesion nurtured by the Iraq experience could carry over to other issues. If this proves true, there may be pressure for enhancing the Security Council's role in future peace enforcement and this should be considered.¹¹⁴

Pickering then proposed: "One way the Charter offers to do that is by negotiation of Article 43 agreements between the Security Council and countries it selects." His own reading of Article 43 suggested a number of "relevant points." In the context of the present argument, these merit full recounting:

First, the conclusion of such an agreement need not confer an automatic, mandatory obligation to provide troops to the Security Council, but could instead simply state their availability subject to certain terms or procedures.

Second, Article 43 is silent on command arrangements: the phrase "on its call" does not necessarily mean "at its direction."

Third, by specifying "assistance and facilities" the language permits members to satisfy their obligations by means other than provision of combat troops—a useful flexibility.

Fourth, Paragraph 3 specifies that agreements shall be at the initiative of the Security Council, a helpful limiting factor that ensures selectivity.

Finally, Paragraph 3 also states that agreements may be between the Council and individual members or *groups of members*,

113. See Thomas R. Pickering, The U.N. Contribution to Future International Security, Personal Remarks at the Conference on Naval Expeditionary Forces and Power Projection, sponsored by The Fletcher School of Law and Diplomacy and the United States Marine Corps University, Cambridge, Mass. (Nov. 20-21, 1991) (text on file with the *Duke Journal of Comparative & International Law*).

114. *Id.* at 11.

offering a potential basis for associations between the Security Council and regionally based alliances. Since alliances offer a more functional basis for concerted military action than a chance grouping of UN member states, this too could be a useful feature.¹¹⁵

Such a conception of a possible "allied" relationship between the United Nations and the "regionally based" North Atlantic Treaty Organization has potential practical merit, as well as theoretical interest, as a further way of, finally, closing the Cold War era. This would be an indirect benefit. An Article 43-bonded relationship between the United Nations and NATO members could have some effect in reducing the anxiety of Russians about the future expansion of the Atlantic Alliance, whose future conduct they may feel they have more influence over if they can discuss the use of NATO members' Article 43-provided assets in the U.N. Security Council. This could be a diplomatically useful supplement to any direct "Charter" that might be negotiated between the North Atlantic Alliance and the Russian Federation. It derives from the established United Nations Charter, a historically grounded treaty commitment.

At present, between NATO and the United Nations there exists nothing more than an informal "liaison" relationship.¹¹⁶ It may even go too far to term it a relationship, given the extraordinary caution with which institutional contact is being made.¹¹⁷ However, even such

115. *Id.* at 11-12 (emphasis in the original). The question naturally arises whether "groups of states" if formed into regionally based alliances having organizational structures and representative officials (e.g., NATO today) could themselves enter into Article 43 special agreements with the U.N. Security Council. On this basic legal issue Hans Kelsen is instructive, emphasizing that if a "group" of members is to be a contracting party to an agreement with the United Nations Organization, it must be "a juristic person". KELSEN, *supra* note 22, at 754. "But this is possible only if it is an organised group endowed with an organ competent to represent the 'group' in relation to other persons of international law." *Id.* By this strict standard, NATO would fail. One can imagine, however, NATO's Secretary General and the North Atlantic Council, together, designing a common "framework" for individual NATO allies' parallel agreements with the United Nations, and even conducting informal talks with U.N. Secretariat officials and Security Council members concerning Article 43.

116. See *Liaison with United Nations*, Memorandum from Lieutenant General, CAAR, Director, IMS, for all Assistant Directors, IMS Chief of Staff, SHAPE, Doc. PO(93)85(2d Revise) (July 14, 1993) (copy on file with the *Duke Journal of Comparative & International Law*), ("setting out the administrative procedures for NATO Headquarters Liaison Officer to the United Nations (UNLO) programme in the form of an interim Terms of Reference."). The document adds, lucidly and with precision: "This memorandum and the enclosed TOR are strictly administrative in nature, and therefore are not to be, indeed, must not be, construed or interpreted, in any sense, as an instrument, or part of a process, to formalize what is an informal, ad hoc, arrangement that facilitates the interchange of information between NATO and the UN."

117. See *id.*

a non-binding association, intended mainly for the exchange of information, has an unprecedented explicitness. Such articulation eases communication and promotes familiarization. The NATO practice of rotating its U.N. Liaison Officers in New York approximately every two weeks is introducing an increasingly large number of officers to the mores of the world body.

A somewhat more basic and even "linked" relationship between the two organizations is now developing. They increasingly rely on each other—the United Nations on NATO's potency, and NATO on the U.N.'s authority. In the field, as in Bosnia, the two organizations are in close contact. At the highest institutional level, that of the Secretaries-General, there is increased communication and even some consultation, if still rather stiff and formalized. NATO's Secretary-General, Dr. Javier Solana, regularly reported to Secretary-General Boutros-Ghali, and through him to the Security Council, regarding the work of IFOR in implementation of the Dayton Peace Agreement.¹¹⁸ Despite this appearance of hierarchical subordination in the reportage relationship, the two organizations' chief servants are functioning more or less as equal partners in the maintenance of international peace and security in the Balkan region. Regional organizations, including alliances like NATO and conceivably even the CIS, can best work together on a kind of collegial basis, as "fellow" organizations.¹¹⁹

Nonetheless, as this Article contends, there is reason to consider fashioning a more structured relationship between the world organization and the world's leading regional alliance and, by extension, other regional arrangements and agencies as well. Besides NATO and the CIS, the Arab League, OAS, OAU, and others deserve to be mentioned. The trend toward multinationalism, as against multilateralism, in peace maintenance can go too far. Through the logic and politics of inter-regional reciprocity, as noted with regard to Haiti and Nagorno-Karabakh, some limited international restraint can be exercised over great-power actions in particular geographic areas,

118. See, e.g., Letter from the Secretary General of the United Nations to the President of the Security Council (June 21, 1996), U.N. Doc. S/1996/465 (1996), conveying a letter of the same date from the Secretary-General of the North Atlantic Treaty Organization, which begins: "In accordance with Security Council Resolution 1031 (1995), I attach the seventh report of the operations of the multinational implementation force (IFOR). I would appreciate your making this report available to the Security Council." *Id.*

119. Remarks by General John R. Galvin, NATO Supreme Allied Commander Europe, at The Fletcher School of Law and Diplomacy, Tufts University, Medford, Mass. (Sept. 16, 1992) (characterizing the relationship between NATO and the U.N. during the Persian Gulf conflict).

otherwise perhaps likely to become outright spheres of influence. Such informal inhibition is not enough, however. Article 43, as has been suggested, provides one way of more tightly tying in power pacts to central authority, thereby enhancing the role of the U.N. Security Council, *without* depriving great powers and alliance systems of their freedom to act independently, under Article 51, if and as necessary. NATO and the other regional "king-links," as Senator Vandenberg called them, need to be better welded into the "global chain."¹²⁰ Otherwise, regionally based arrangements for peace and security could become iron spheres of local dominance, not golden circles of a more enlightened world order.

120. THE PRIVATE PAPERS OF SENATOR VANDENBERG, *supra* note 2, at 337, 366.