The United Nations and peace enforcement
With special reference to Kuwait 1990-91

By

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Abstract

This thesis investigates the role of the United Nations in the area of peace enforcement. It studies the UN system for the maintenance of international peace and security in the face of threats to the peace, breaches of the peace and acts of aggression. It assesses the Security Council attempts to employ enforcement measures under Chapter VII of the UN Charter in response to inter-state and intra-state conflicts, paying attention to the effect of the Council's increasing involvement in internal situations, both on the development of the system and on the outcome of conflicts. It also takes account of changes in the nature of modern conflict and of the Security Council's innovative rebuttals; these amount to a transforming of peace enforcement and necessitate its reconceptualisation.

The thesis examines challenges posed to the viability of peace enforcement by an increasing tendency to employ 'interventionist' methods such as 'humanitarian intervention' and the 'new internationalism'. In this respect, the thesis examines the assumption that these new methods do not substitute for the UN system of peace enforcement, which retain the universal approval of member states. It further assesses the argument that a reformed peace enforcement system will serve the cause of peace better than these controversial methods.

The study of the Kuwait crisis as a central case in this thesis benefited from the release of authoritative accounts during the years 1995-99, by writers who had held official responsibilities during the crisis. The thesis also benefited from the study of peace enforcement cases that occurred after Kuwait in measuring claims raised after the Gulf war concerning the reactivation and viability of peace enforcement. These cases allowed the thesis to provide an account of peace enforcement during the first ten post-Cold War years, to contrast them to earlier cases, and to draw lessons for the future of the UN peace enforcement system.

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Part I

Chapter 1

Introduction

1- Rationale

The aim of this thesis is to study the role of the United Nations in the area of peace enforcement. It discusses the concept of peace enforcement, its development since the establishment of the United Nations, and its transformation in the 1990s. It investigates the practice of the Security Council in the adoption and implementation of peace enforcement measures and the political and constitutional problems arising from this practice.

The use of force by the United Nations under Chapter VII of the Charter and the employment of mandatory sanctions will be examined in different cases to assess their impact on the outcome of conflicts and their effects on the credibility of the UN system for peace enforcement. The thesis pays particular attention to the influence of great powers on the decisions of the Security Council through systematic analysis of the roles of permanent members in imposing mandatory economic measures and taking military actions in international and internal conflicts.

The role of the United Nations in the area of peace enforcement received little attention during the Cold War. Studies in the area during the forty years between 1950 and 1990 concentrated on the only experience of explicitly authorised UN enforcement military action in Korea in 1950, and the only two

cases of UN mandatory sanctions in Rhodesia in 1967 and South Africa in 1977. These cases were treated as isolated incidents as they did not provide precedents for the practice of the Security Council during the Cold War. Therefore, the paucity in practice was the main reason for the limited academic and intellectual interest in the area of peace enforcement. Brian Urquhart observed in 1986 that

> we rarely hear much about Chapter VII – Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression – the once famous 'teeth' of the United Nations of which everyone was so proud at the Organisation's birth. It seems as if the international body politic is now too weary, too distracted, too divided, too lacking in common purpose ever to decide to use its teeth.[1]

Scholarly literature paid more attention to the study of the use of force by states in the form of a unilateral action and military intervention where constitutional justification centred on the right of self-defence. With contrast to the only explicit incident of UN peace enforcement operation in Korea, the use of force in a unilateral manner was mobilised in many major conflicts. Sanctions were also imposed in many cases regionally and unilaterally beyond the authority of the Security Council. Consequently, academic writings continued to focus on these uses of force and sanctions outside the UN framework.

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[1] Brian Urquhart, 'The role of the United Nations in maintaining and improving international security' (1986 Alastair Bunchan Memorial Lecture) *Survival*, vol. XXVIII, no. 5, p. 391.

This situation was created by the continuing confrontation between the East and West during the Cold War as well as by other political and economic factors. The struggle for the balance of power caused many military confrontations, and disagreement among the big powers impeded the Security Council from taking collective action. Within the UN a new consensual and impartial alternative system was established to help warring parties by observing cease-fire agreements and acting as a buffer force to keep the peace in areas of conflict. Peacekeeping was largely viewed as a relatively viable option in the face of the Council's inability to enforce peace. Between 1947 and 1988, the UN authorised 13 peacekeeping operations. Therefore, the emphasis shifted to the study of peacekeeping. Robert Keohane and Joseph Nye observed in 1987 that 'Limited peacekeeping is worth considering, not the overly ambitious efforts reflected in Korea and the Congo.'[2]

Changes in Soviet foreign policies and the new atmosphere of co-operation between the East and West at the end of the 1980s allowed for unprecedented reactivation of the United Nations system for the maintenance of international peace and security. During the 1990s peace enforcement started to attract more attention. The Security Council was in several conflicts able to impose military and economic measures under Chapter VII. As a result of these actions, which had been made possible by the end of the Cold War, peace enforcement became an important subject in the study of international relations and international law. However, the majority of contemporary contributions

[2] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence,* Harper Collins Publishers, London, 2nd edition 1989, p. 280.

treated peace enforcement in a context of humanitarian intervention or peacekeeping. The comprehensive and integral study of the important political and constitutional aspects of peace enforcement within one framework is still missing. This thesis intends to fill this lacuna in contemporary literature by studying peace enforcement on its own and within an independent theoretical and empirical framework.

2- Summary of chapters

Part I of the thesis argues for the possibility and importance of theorising on peace enforcement as an independent concept distinguished from other systems of peace maintenance. It attempts to study the definition of peace enforcement by taking account of various scholarly attempts to define the term and notes that UN documents did not provide a conclusive definition. Part I undertakes a major task of reconceptualising peace enforcement. It argues that the increasing employment of enforcement measures in civil wars has significantly transformed the parameters of peace enforcement and has thereby necessitated its reconceptualisation.

Part II studies the case of Kuwait as the most systematic and explicit experience of the application of the UN scheme for peace enforcement. The provisions of Articles 39, 40, 41, and 42 were systematically implemented during the period from August 1990 to January 1991. It also discusses the issue

of how sanctions end, and the food for oil deal as a model of exceptions to the sanctions regime.

The thesis attaches special importance to the role of the United States in the authorisation and implementation of enforcement measures and for this reason Part III will be devoted to the role of the US. It attempts to clarify the relation between the US and UN over cases of peace enforcement especially during the Kuwait crisis. It addresses the nature of this relation and whether it is built on exploitation or co-operation. The study of the US role in relation to roles of the Security Council will help to explain not only the organisational aspects of the role of the Security Council but also the influence of national interests, the actual actors, and Realpolitik behind the Council resolutions.

Part IV examines four major constitutional problems and their effects on the process of authorisation in the Council and the practice of peace enforcement operations. It further contributes to the field by suggesting a four-point criterion for the measuring of adequacy and inadequacy of sanctions under Article 41 before the Council can move to authorise the undertaking of a military action.

Part V examines the innovative role of the Security Council in the area of international terrorism during the 1990s and the undertaking of enforcement measures under Chapter VII to combat transnational terrorist activities.

Part VI reviews cases of peace enforcement during the Cold War and the post-Cold War period. It draws conclusions from each case for the study of peace enforcement.

The main argument of the thesis is divided into two parts. The first part is related to the situation during the Cold War and the second one is pertinent to the effect of the transformation caused by the end of the Cold War. The first part accepts the assertion made by most scholarly studies that the Cold War hindered the mobilisation of the UN peace enforcement system, but it refers to the danger of generalisation entailed in this assertion. Generalisation would obscure the role of some political dynamics which are not solely pertinent to the Cold War. For instance, the thesis argues that European colonialism and its legacy in Africa was responsible for the Security Council's inability to invoke explicitly Chapter VII peace enforcement measures during the Congo crises in the early 1960s, even though ONUC embodied many characteristics of peace enforcement. It is widely held that the use of the veto by great powers was the main reason for the Council's inability to undertake enforcement action to resolve conflicts during the Cold War. In its conclusion the thesis makes a contrary argument that most of the uses of the veto by permanent members were meant to protest against insufficient measures envisaged by Security Council draft resolutions. However, the thesis agrees that the right of veto reduced the chances of the UN to act as a centralised agency capable of taking effective action to enforce the peace. It further accepts that great powers used the veto in many situations to protect their interests and to prevent the authorisation of enforcement measures against their will.

The second part of the argument accepts the contention that the end of the Cold War enabled the Security Council to take effective enforcement

measures, largely allowing for the revival of the Charter system for peace enforcement, while some provisions of Chapter VII remained dormant. However, it observes that the impossibility to reactivate important provisions of Articles 43 and 47 including the role of the Military Staff Committee, provides an evidence that the Cold War rivalry was not the only reason for the latency of major portions of the UN Charter system.

The second main argument is derived from the Security Council attempts to resolve civil wars through peace enforcement arrangements. It asserts that the extensive employment of peace enforcement measures in intra-state conflicts during the 1990s has transformed the practice of the UN in this area and necessitated the reconceptualisation of the term.

Chapter 2

The theory of peace enforcement

1- Terminological confusion

Peace enforcement has been constitutionally and operationally confused with other terms, such as peacekeeping, peacemaking, preventive deployment, collective self-defence, and humanitarian intervention. Each of these terms was, on many occasions, used to mean or substitute for peace enforcement. In practice peace enforcement may interact with other kinds of international responses and the United Nations may find itself in a perilous situation by acting in gray areas between two or more of these mandates. N. D. White observed that 'the divisions between observation, peacekeeping and peace enforcement action are unclear, as there are grey areas in which one function merges into another.'[3]

Robert Oakley cited 'several different definitions of both peacemaking and peacekeeping' arguing that the 'United Kingdom, for example, uses the former as the United States uses the term "peace enforcement"-the application of considerable military forces to bring about peace, by imposing it if need be.' Oakley himself preferred to define peacemaking 'as diplomacy, mediation, conflict prevention, or conflict resolution.'[4] To understand what Oakley meant

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[3] N. D. White, *Keeping the peace, the United Nations and the maintenance of international peace and security,* Manchester University Press, Manchester and New York, 1993, p. 187.

[4] Robert B. Oakley, 'Using the United Nations to Advance U.S. Interests' in Ted Galen Carpenter, ed. *Delusions of Grandeur, The United Nations and Global Intervention,* Cato Institute, Washington, 1997, p. 79.

by peacemaking, requires interpretation of each component of the terms included in his definition.

It is difficult to make an accurate distinction between various definitions on geographical or cultural bases, and differences between the UK and the US in defining peace operations are not so clear, but it is true that there is no universal agreement on the meaning of these terms. For instance, the following two examples provide evidence contrary to Oakley's argument. The American Bar Association stated in its Report on Peacekeeping, Peacemaking, and Peace Enforcement that peace enforcement forces may be 'referred to as "peacemaking" troops'[5] while, a British diplomat and UN Under-Secretary-General until 1997 Sir Marrack Goulding asserted that 'Peacemaking means attempts to negotiate peace settlements.'[6]

A former Netherlands representative at the Security Council, Hugo Scheltema used the term peacemaking to refer to peace enforcement measures under Chapter VII. He stated that 'The essence of peacekeeping is that it is not peace-making. There is no coercion and no enforcement under Chapter VII of the Charter. Any peacekeeping operation is based on consensus of all parties concerned.'[7]

Peace enforcement measures undertaken by the Security Council were divided according to their functions and mandates into different types:

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[5] American Bar Association, *The United Nations at 50: Proposals for Improving Its Effectiveness*, Section of International Law and Practice, Washington D.C. 1997, p. 45.
[6] Marrack Goulding, 'The United Nations and Conflict in Africa Since the Cold War' *African Affairs*, vol. 98, no. 391, April 1999, p. 158.
[7] Hugo Scheltema, 'Transformations within the United Nations' in Jeffrey Harrod and Nico Schrijver, *The United Nations Under Attack*, Gower, Aldershot and Brookfield, 1988, p. 4.

decentralised, limited, selective, and subcontracted. However, there is no agreement among scholars on the use of these terms to describe certain enforcement measures. Furthermore, peace enforcement has been used in conjunction with other established methods of conflict resolution, such as humanitarian intervention, preventive deployment, and action in self-defence. Examples of this are 'Humanitarian enforcement' 'preventive enforcement'[8] and 'self-enforcement'. It is also influenced by the use of the term 'enforcement' in customary international law[9] which reflect a limited legal scope compared with the UN system for peace enforcement.

Peace enforcement has been confused with terms related to peacekeeping. Scholars and practitioners have repeatedly referred to peace enforcement as 'wider peacekeeping' 'third generation peacekeeping' 'enlarged peacekeeping' 'peace keeping with muscles'. The terms 'multi-functional peacekeeping'[10] or 'multidimensional peacekeeping'[11] were also used to describe operations which include peace enforcement mandates.

The prevalence of peacekeeping has had a strong impact on the understanding of peace enforcement. Writers tended to use the term 'operations' originally applied on peacekeeping analogously to describe peace

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[8] Lincoln P. Bloomfield and Allen Moulton, *Managing International Conflict, From Theory To Policy,* St. Martin's Press, New York, 1997, p. 85.
[9] Antonio Cassese, *International Law in A Divided World,* Clarendon Press, Oxford, 1992, p. 215.
[10] Marrack Goulding, op. cit. note 4, p. 166.
[11] A. B. Fetherston, *Towards a Theory of United Nations Peacekeeping,* Macmillan Press and St. Martin's Press, London and New York, 1994, pp. 23 – 44; Shashi Tharoor, 'Foreword' in Donald C. F. Daniel and Bradd C. Hayes, *Beyond Traditional Peacekeeping,* Macmillan, London, 1995, p. xvi.

enforcement measures, but this understanding blurs the differences in function and mandate between the two methods and reduces peace enforcement to the act of 'deployment'. 'Peacekeeping operation' is an accurate term for the description of the military and civilian personnel deployed under a peacekeeping mandate. However, the 'enforcement operation' does not cover the scope of peace enforcement as a system consisting of various measures and stages included in Articles 39 – 50 of the UN Charter. Many studies, in defining the term peace enforcement, did not refer to mandatory economic and diplomatic sanctions as components of the term. The frequent use of the term 'enforcement operation' has therefore contributed to the confused understanding of peace enforcement.

The development of analysis and research on the issue of peacekeeping since the 1950s has influenced the study of peace operations. There is tendency to consider all UN peace operations[12] as essentially corresponding to peacekeeping. Scholars like Paul Diehl studied peace enforcement as one of the functions of peacekeeping.[13] The use of such terms to describe what were clearly authorised enforcement actions reflects an intent, a propensity to persevere with the impartiality of UN peacekeeping. The UN tended not to declare its intention to undertake coercive measures with relation to internal conflicts in order to avoid provocation and internal resistance. Any of the local factions might think that the UN action was directed against its forces and

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[12] The term 'peace operations' refers in this thesis to any of the UN military or civilian operations.

might, therefore, initiate hostilities against the UN forces or intensify its attacks against other factions in the area.[14] These practical necessities caused the UN to designate its forces in Bosnia and Somalia as peacekeeping forces despite the enforcement mandate sanctioned by the Security Council.

2- The concept of peace enforcement

Faced with conceptual imprecision, the thesis may instead examine the way in which, in practice, the usage of the term has evolved. This chapter illuminates the development of the concept of peace enforcement from its emergence in 1945 to the present, with particular attention to the transformation of the concept during the 1990s. Since 1945, the practice of the United Nations in the area of peace maintenance and the subsequent theoretical discussion have made significant changes to the original system of the Charter. Many of these changes gained the approval of the Security Council and acquired general acceptability from the international community. This chapter will take account of these changes and attempt to assess the process of transformation and its effect on the concept of peace enforcement. However, the ultimate goal of the chapter is to reconceptualise the term 'peace enforcement' in the light of developments since the establishment of the United Nations.

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[13] Paul F. Diehl, *International Peacekeeping,* The Johns Hopkins University Press, Baltimore and London, 1993, p. 163,

[14] This happened in the Congo in 1960-61, despite that the UN did not announce peace enforcement measures, but local factions and authorities interpreted the deployment of large UN forces in the country as a hostile action.

Peace enforcement is a system of collective security. However, the identification of the UN peace enforcement system as identical to the concept of collective security is one of the flaws caused by ambiguity and generalisation in some of the present literature. Although collective security represents the underlying philosophy for the study of peace enforcement, at the end of the century the concept of peace enforcement has largely altered from the early twentieth century models and can not be defined only within the context of earlier conceptions of collective security. However, the coherent understanding of peace enforcement necessitates an overview of the conceptual background of the idea and its development before the establishment of the United Nations.

Conceptual background

The idea of collective security emerges after major international wars: victors usually set to establish a world order governed by principles which seek to prevent the outbreak of another war and to halt war if it erupts. During the three centuries which preceded the creation of the United Nations, major post-war settlements were concluded. The Westphalia settlement in 1648, the Utrecht treaty in 1713, the Vienna agreement in 1815, and the Versailles treaty in 1919 were all perceived to have produced a constitution-like formation.[15] Collective security is claimed to revive in such decisive moments.[16] Hence, scholars argue

[15] G. John Ikenberry, 'Constitutional Politics in International Relations' *European Journal of International Relations,* vol. 4, no. 2, June 1998, p. 148.

[16] We would argue here that the peaceful end of the Cold War revealed that peaceful world transformation, where no big power was coerced to abandon its power, may not lead to

that elements of collective security have tended to emanate from post war treaties. Inis Claude indicated that 'Adumbrations of the idea can be found in such seventeenth-century documents as the Treaty of Osnabruck'.[17]

Adam Roberts and Benedict Kingsbury also noted that the history of collective security has almost been a part of the history of the states systems 'and was aired for instance at the negotiations which led to the 1648 Peace of Westphalia.' However, most Western studies do not go beyond the Concert of Europe, the Holy Roman Empire, and the Peace of Westphalia and apply this principle to the extra-European world.[18] Furthermore, Joel Larus contended that

> An examination of non-Western political literature, that is, Chinese, Hindu, Islamic, and African, reveals that the collective security idea was never proposed by early writers from these civilisations. Other political concepts and schemes to maintain peace that are generally associated with Western statecraft can be found in ancient non-Western political

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international constitution-like reform or to the establishment of alternative world organisation, although, it may lead to the resurgence of agreed dormant principles. For instance, the end of the Cold War did not allow for any amendment to the Charter or reform of the Security Council, but made it possible for member states largely to reactivate the UN system for peace enforcement.

[17] Inis Claude, *Swords into Plowshares, the Problems and Progress of International Organisation,* 4th edition, Random House, New York, 1984, p. 247.

[18] Adam Watson explained how international societies adopted societal elements inherited from past systems recognising that the pattern of an international society 'is not drawn up afresh for each society. It is to a large extent inherited from previous societies'. The Persian Empire inherited from Assyrian and Babylonian systems, the Macedonian Kingdoms and the Mauryas from the Persians, the Romans from the Macedonians, the Byzantine *oikoumene and* the Arab caliphate from the Romans, and the Europeans from the Romans and Greek. Adam

Watson, *The evolution of international society, A comparative historical analysis,* Routledge, London and New York, 1992 p. 318.

> writings. ... The collective security idea, however, is missing from the premodern political literature of the non-Western world. ... Collective security must be considered as a uniquely indigenous Western political idea, one that in time was exported to Asia, the Middle East, and Africa.[19]

This is arguably a mistaken view: the idea of collective security is not an exclusively Western, or modern, idea. Although, it is true that the idea of collective security has been elaborated in the twentieth century by Western figures such as Woodrow Wilson, Theodore Roosevelt, Colonel House, Lord Robert Cecil, Lloyd George, and M. Bourgeois,[20] the idea had its roots in agreements by non-Western nations, more than thirteen centuries ago. In the fourth century, pre-Islamic Arabs concluded a treaty called Solh al-fudool according to which all Arab entities should come to the defence of any victim tribe, one attacked by another tribe. All tribes were under obligation to assist the victim and to act against the aggressor.[21] Furthermore, Surat Al-Hujrat in the Qur'an can be read to contain almost the same meaning as Chapter VII of the United Nations Charter and the general spirit of the UN system for the maintenance of peace and security. Verse 9 of Surat Al-Hujrat reads:

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[19] Joel Larus, 'The Myth Is Born' in Joel Larus, ed. *From Collective Security to Preventive Diplomacy, Readings in International Organisation and the Maintenance of peace,* John Wiley and Sons, New York, London, and Sydney, 1965, pp. 5 - 6.

[20] Many associations in the West contributed to the promotion of the idea of collective security organisations, these included the Fabian Society, the Association de la Paix par le Droit, Organisation Centrale, the British Peace Society, and the American League to Enforce Peace.

[21] Ibn Husham, *Sirat Ibn Husham,* (Arabic text) Dar Al–Giel, Beirut, no date, pp. 122 – 125.

> If two parties among the believers fall into a fight, make ye peace between them: but if one of them transgress beyond bounds against the other, then fight ye all against the one that transgresses until it complies with the command of Allah. But if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair and just.[22]

The Verse embodies a collective security system based on consistency, fairness, and justice. Another argument against the historical reductionism practised by some Western scholars in considering the roots of the idea of collective security is the case of the blockade and economic sanctions imposed in the seventh century by most Arab tribes against the Bani Abd al Mutallib and Bani Hashim. The pact signed by the Quraish in this respect imposed a total ban on the delivery of commercial goods to these two tribes for three years. [23]

However, earlier examples such as Solh al-fudool, or those of the last three centuries, like the Treaty of Osnabruk, the Utrecht Treaty, and the Vienna Agreement can be considered as forms of limited or regional collective security. In this sense, the twentieth century system of collective security is unique,

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[22] *The Qur-an,* King Fahd Complex For The Printing of The Holly Qur-an, Al-Madina Al-Munawarah, S. 49, A-9-11, Juz 26, no date, pp. 1590 – 1591.

[23] Mohamed Heikal, *The Life of Muhammad,* Shrouk International, London and Cairo, 1983, pp. 115 – 116. Heikal observed that the Arab tribes led by Quraysh 'agreed among themselves to a written pact in which they resolved to boycott Bani Hashim and Bani Abd al Muttalib completely, prevent any intermarriage with them, and stop all commercial relations. The written pact itself was hung inside the Ka'bah, as was then the practice, for record and sanctification.'

because it has claimed universality or has at least attempted to be universal. Inis Claude observed that although the idea of collective security was not invented by Wilson, 'nor was it expressed and elaborated solely by him', the idea remained 'a phenomenon of the opening decades of the twentieth century'.[24] However, Wilson's devotion to the project of the 'League to Enforce Peace' during World War I, and his contribution to the development of the idea of collective security, were remarkable.

Wilson's doctrine presupposed an absolute 'collectivity' in the sense that all states should be ready to take action to defend the security of all states against any states that might use their force in a manner inconsistent with international rules. Three important elements could be drawn out of Wilson's absolute 'collectivity'. First it presupposes a system which could avoid the repetition of old systems of power alliance by envisaging that coercive action against an aggressor should be taken by all states; in this respect Wilson believed that neutrality must not be allowed; 'Nobody can hereafter be neutral as respect the disturbance of the world's peace'.[25] However, this assertion never materialised. States continued to take neutral positions either by refusing to participate in the League of Nations and the United Nations, or by practising neutrality within the international organisation.[26] Second, the system should maintain justice through the consistent application of its measures and all

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[24] Inis Claude, op. cit. note 16.
[25] Cited in F. H. Hinsley, *Power and the Pursuit of Peace, Theory and Practice in the History of Relations Between States,* Cambridge University Press, Cambridge, 1963, p. 317.
[26] Philip E. Jacob, Alexine L. Atherton, and Arthur M. Wallenstein, *The Dynamics of International Organisation,* The Dorsey Press, Illinois and Georgetown, revised edition 1972, p. 57.

countries should equally benefit from its merits. Third, it should ensure the applicability of collective measures against any state, including the great powers, which misuses its power in a way that may threaten international peace.[27]

The contrast of collective security to the balance of power was always central in theoretical discussions. As Inis Claude noticed in 1962: 'Advocates of collective security, from Wilson's day to the present, have tended to define and characterise it in sharp contrast to the balance of power system.'[28] This feature was stressed by Roberts and Kingsbury who described collective security as 'distinct from systems of alliance security, in which groups of states ally with each other, principally against possible external threats.'[29] Hedley Bull observed that the principle of collective security, as had been derived from the neo-Grotian ideas, 'should rest not on a balance of power, but on a preponderance of power wielded by a combination of states acting as the agents of international society as a whole that will deter challenges to the system or deal with them if they occur.'[30]

Martin Wight gave an interpretation different from Claude, Bull, and Roberts and Kingsbury. He dismissed the sharp contrast between collective security and balance of power; instead, Wight considered it as a form of balance

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[27] For further discussion of Wilson's ideas on collective security see F. H. Hinsley, op. cit. note 23 chapter 14; Inis Claude, op. cit. note 20, chapters 4 and 5.
[28] Inis Claude, op. cit. note 16, p. 111.
[29] Adam Roberts, 'The United Nations and international security' *Survival*, vol. 35, no. 2, Summer 1993, p. 23.
[30] Hedley Bull, *The Anarchical Society, A Study of Order in World Politics,* Macmillan Press, London, 2nd edition 1995, 15th print 1997, p. 231.

of power. He referred to a similar disagreement between Wilson who wanted the collective security system of the Covenant to abolish the balance of power, and Lord Cecil and Churchill who saw the League of Nations as an attempt to institutionalise the balance of power.[31] Wight himself defined collective security as follows: 'Collective security means internationalised defence.'[32] Following this, when Wight discussed the Korean crisis of 1950 he agreed that Korea was an example of UN collective security, at the same time he contended that 'The Korean War, however, was a crisis of simple balance of power.'[33]

The difference between Wight and Bull on this issue is intentional and contingent on distinct definitional elements. Both used the term 'combination of power' to describe the preponderance of power required by collective security to overwhelm the aggressor.[34] But, Wight further asserted that 'The balance of power worked traditionally by *ad hoc* alliances against a known enemy; the League, as Sir Arthur Salter said, was to be a permanent potential alliance 'against the *unknown* enemy.'[35] In simple words, Wight considers the League of Nations and the UN systems of collective security as attempts to institutionalise the balance of power by turning the '*ad hoc* alliances' against a *known* enemy, into 'permanent alliances' against *unknown* enemy.

For other scholars, including Quincy Wright, collective security is not distinct from the balance of power, but is, rather, 'only a planned development

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[31] Martin Wight, *Power Politics,* Leicester University Press and the RIIA, Leicester, 2nd edition 1995, 2nd print, 1997, p. 207.
[32] Ibid. p. 206.
[33] Ibid. p. 227.
[34] Hedley Bull, op. cit. Note 30; Ibid. p. 207.
[35] Martin Whight, op. cit. note 31, p. 207.

of the natural tendency of balance of power politics.'[36] The distinction between collective security and the balance of power was further blurred by the Cold War bloc politics.

Nevertheless, the stipulation of universality in collective security is a fundamental difference from the balance of power, but because it did not materialise in post war conflicts after 1919 and 1945, great doubts arose questioning its conceptual validity. Those who did not dismiss the Grotian discourse of internationalism but doubted its practicality in an international society dominated by the interests of great powers, tended to provide interpretations derived from the ideal of collective security but not in conformity with all its basic manifestations. Universality also distinguishes collective security from collective self-defence practised by alliances and regional defence organisation like NATO. These institutions were not designed to facilitate co-operation on a global basis; conversely, they seek to prevail, as alliances, in military and political conflicts.[37] At the same time, regional organisations like the OAS and the OAU cannot be precluded from organising collective security among member states.[38] According to LeRoy Bennett, a regional organisation could qualify for collective security if it incorporates most of the states in the region and if the terms of agreement for collective action are

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[36] Quincy Wright, *The Study of International Relations,* Appleton-Century-Crofts, New York, 1955, p. 240.

[37] Robert O. Keohane, 'International Institutions: Two Approaches' in Friedrich Kratochwil and Edward D. Mansfield, eds. *International Organisation, A Reader,* Harper Collins College Publishers, 1994, p. 44.

[38] Marina S. Finkelstein and Lawrence S. Finkelstein, eds. *Collective Security,* Chandler Publishing, San Francisco, 1966, p. 2.

directed essentially against threats from within the region.[39] However, universality remains an important proviso for achieving the objectives of collective security as a safeguard of world peace.

Reconceptualising peace enforcement

Efforts to identify and conceptualise collective security before the establishment of the United Nations and during the Cold War period provide the bases for understanding the United Nations scheme for collective security, but these attempts are not sufficient as a basis for understanding peace enforcement at the end of the century. Developments in the concept of peace enforcement are reinforced by the evolving global changes during the post-Cold War period which have presented the world with new challenges. Leaders, who inspired the ideal of collective security, including the framers of the UN Charter envisaged a system primarily concerned with wars between states. They did not envisage that a collective security system would be essentially concerned with internal wars and with the delivery of humanitarian aid to civilians. Peace enforcement has largely been conceived of in recent years as a system for dealing with civil wars. This has been dictated by the increasing number of intra-state conflicts since the 1940s, compared with inter-state conflicts. Wiseman has noted that

[39] A. LeRoy Bennett, *International Organisations, Principles and Issues,* Printice-Hall, New Jersey, 1984, 3rd edition, p. 135.

> 'data sets which deal with the characteristics of international conflict show that from 1900 to 1941, 80% of wars were between armed forces of two or more states, whereas from 1945 to 1976, 85% were on the territory of one state only and were internally oriented'[40]

In his *Supplement to An Agenda for Peace,* the UN Secretary-General Boutros Ghali updated in 1995 world accounts of the contrast between internal and international conflicts.

> Of the five peace-keeping operations that existed in early 1988, four related to inter-state wars and only one (20 per cent of the total) to an intra-state conflict. Of the 21 operations established since then, only 8 have related to inter-state wars, whereas 13 (62 per cent) related to intra-state conflicts ... Of the 11 operations established since January 1992, all but 2 (82 per cent) related to intra-state conflicts.[41]

The United Nations Development Programme (UNDP) explained that 79 out of the 82 armed conflicts that broke out in the five years following the fall of Berlin Wall in November 1989 were internal wars.[42] The rapid acceleration of

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[40] H. Wiseman, 'The United Nations and international peacekeeping: a comparative analysis' in UNITAR, *The United Nations and the Maintenance of International Peace and Security,* Martinus Nijhoff, 1987, p. 265.

[41] Boutros Boutros-Ghali, *Supplement to An Agenda for Peace,* United Nations, New York, 1993.

[42] UNDP, *Human Development Report 1994,* Oxford University Press, New York, 1994, p. 47.

internal conflicts and the complex character of civil wars have posed new challenges to peace enforcement. It was not anticipated that a peace enforcement system would be mobilised to restore democracy, combat international terrorism, and hunt down warlords as was attempted by the Security Council in the 1990s. All these responses have been deemed necessary to combat threats to international peace and security. In what follows here, a brief summary will be given of the evolution of thinking on peace enforcement during the 1990s. Chapters 8 and 9 will address the historical record.

The problem of refugees fleeing their homeland and taking shelter in neighbouring countries as a direct result of fierce fighting between antagonists is increasingly becoming a source of justification for mobilising measures under Chapter VII to avert humanitarian crisis. The issue of refugees has now repeatedly been considered to cause a threat to international peace and security.[43] Measures to ensure the delivery of food to civilians and protection of minorities from ethnically motivated attacks are also now authorised under Chapter VII. To reduce the intensity of war the Council might attempt to restrict accessibility to weapons, by imposing an arms embargo and by taking steps to demobilise irregular forces.

Forces deployed to enforce any of these measures are different from peacekeeping forces. They do not necessarily obtain the consent of any of the warring parties and they may be instructed to abandon impartiality at a certain

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[43] Justin Morris, 'The United Nations: collective security and individual rights' in M. Jane Davis, *Security Issues in the Post-Cold War World,* Edward Elgar, Cheltenham and Brookfield, 1996, p. 130; Adam Roberts, 'Willing the End But Not the Means' *The World Today,* May 1999, p. 8.

stage or to direct their weapons, from the outset, against one side. To be prepared for all possibilities, peace enforcement forces must retain superiority over the combined forces of all parties to the conflict.[44] This would reduce forces' vulnerability to attack, exploitation, or marginalisation by warring parties.[45] Preponderance of power is essential in peace enforcement operations and serves as a deterrent to potential aggressors and war perpetrators.

Peace enforcement forces may be functioning within a multidimensional peace operation. In this case mandated forces will play the policing role to ensure the efficacy of other efforts, albeit that each operation may seek to preserve its distinct nature. The multidimensional approach will be necessitated by what scholars call 'complex emergencies', referring to the scope of crisis and the diverse requirements for its alleviation. These emergencies may range from continued fighting between combatants, absence of a central government, and the dismantling of essential infrastructure, to drought, famine, spread of killing diseases, and environmental problems.

In such situations, peace enforcement would constitute an integral part of a broad peace strategy aiming to provide responses to the wide diversity of emergencies. However, the success of such a strategy is contingent on many conditions. It also needs to be carefully formulated to avoid the negative effects which may result from the activities of one agency on other participating

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[44] William J. Durch, 'Keeping the Peace: Politics and Lessons of the 1990s' in William J. Durch, ed. *UN Peacekeeping, American Politics, and the Uncivil Wars of the 1990s,* St. Martin's Press, New York, 1996, p. 6.

[45] Michael Wesley, *Casualties of the New World Order, Causes of Failure of UN Missions to Civil Wars,* Macmillan Press and St. Martin's Press, London and New York, 1997, p. 28.

bodies and their plans, especially with respect to frequent overlap of military and civilian roles.[46]

However, the United Nations as an organisation consisting of various agencies operating in a context of a complex organisational system has its internal problems of coordination. Therefore, the UN is ill-prepared for the role of coordinating and harmonising the different aspects of multidimensional operations. Marrack Goulding, former Under-Secretary-General, stated that 'As for the UN system, there are well-known jealousies and competition between its programmes, funds and agencies, each of which has its own inter-governmental policy-making body, its own mandate, its own sources of funding and its own chain of command.'[47] In his view, the only entity capable of designating a cooperative approach in multidimensional operations is the office of the Secretary-General, but all other UN bodies must provide support for the mission.[48]

The use of force represents the most controversial component of a multidimensional operation,[49] one which usually raises disagreement between different functioning agencies. This reflects the paradox posed by the simultaneous need to pursue civilian missions in an unprovocative environment, and the necessity to protect these missions against possible

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[46] Thomas G. Weiss, *Military-Civilian Interactions, Intervening in Humanitarian Crises,* Rowman and Littlefield Publishers, Lanham and Oxford, 1999, pp. 7 – 30.
[47] Marrack Goulding, 'The United Nations and Conflict in Africa Since the Cold War' *African Affairs,* vol. 98, no. 391, April 1999, p. 166.
[48] Ibid.

[49] Fen Osler Hampson, *Nurturing Peace, Why Peace Settlements Succeed or Fall,* United States Institute of Peace Press, Washington D.C. 1996, p. 226.

monopolisation and vandalism. The imposition of mandatory economic sanctions may also find opposition from aid agencies working to alleviate the suffering of civilians within the multidimensional operation.

Peace enforcement is assumed to achieve compliance with the strategic goals of the international community such as depriving a target of chemical and mass destruction weapons or to compel an aggressor to abandon threatening policies. This is what Lawrence Freedman called 'strategic coercion'.[50] The aim to apply justice towards aggressors and perpetrators of ethnic attacks has also emerged as UN policy following peace enforcement actions. This affects the way peace enforcement actions end. In this respect the chapter refers to the lessons learned from Churchill's attitude toward Germany after World War I. Churchill's proclamation, after the defeat of Germany in the war and the establishment of the League of Nations, to remove 'the just grievances of the vanquished' was soon regretted by the allies when Germany re-consolidated its power and started to threaten Europe once again.[51] During the 1990s this lesson seems to have been learned by the great powers, especially Western countries; as they have tended to persevere in pressure on target states and in making those responsible for serious armed attacks accountable to the law of war. This is to be achieved through the continuous imposition of sanctions, obliging aggressors to compensate their victims for damages they inflicted upon them,

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[50] Lawrence Freedman, 'Strategic Coercion' in Lawrence Freedman, ed. *Strategic Coercion, Cocepts and Cases,* Oxford University Press, Oxford and New York, 1998, pp. 15 – 36.
[51] Harold Macmillan, *Winds of Change, 1914 – 1939,* Macmillan, London, 1966, p. 389.

and possibly making those responsible face indictment and trial before war crimes tribunals.

3- Definition

UN documents do not provide a definition of peace enforcement and it was only defined in contrast to peacekeeping. *The Blue Helmets* defines peacekeeping as

> an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are based on consent and cooperation. While they involve the use of military personnel, they achieve their objectives not by force of arms, thus contrasting them with the 'enforcement action' of the United Nations under Article 42.[52]

This definition makes a distinction between peacekeeping operations and enforcement actions. It refers to the non-forcible nature of peacekeeping which stipulate the consent of concerned parties and their co-operation, contrasted to the enforcement powers under Article 42 which require no consent and operate on mandatory bases.

The American Bar Association defines peace enforcement as follows

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[52] *The Blue Helmets, A Review of United Nations Peacekeeping,* United Nations, New York, 1990, pp. 4 – 5.

'"Peace enforcement" forces refers to troops used to enforce or restore, sometimes without consent of the parties, observance of peace or cease-fire agreement; it also refers to troops used to deter or to stop aggression.'[53] This definition envisages situations where peace enforcement could be mobilised with consent of the target. It acknowledges a new fact, that an explicit peace enforcement action could be taken with the consent of one party to the conflict or of more than one party. This can be contrasted with the Charter system for peace enforcement which does not stipulate consent for the deployment of peace enforcement forces. The definition also refers to the observance of a cease-fire as a major task for peace enforcement forces. Observance of peace and cease-fire agreements was originally known as the main task of peacekeeping operations. However, the UN Secretary-General contended that in some situations peace enforcement units will be required to foresee and implement the cease-fire agreements. Boutros Ghali stated that

> Cease-fires have often been agreed to but not complied with, and the United Nations has sometimes been called upon to send forces to restore and maintain the cease-fire. This task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors. I recommend that the Council consider the utilisation of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member

[53] American Bar Association, op. cit. note 5, p. 45.

> States would be available on call and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorisation of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General. I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter.[54]

Ghali described these forces as more heavily armed compared with peacekeeping forces. They would be provisional measures and constitutionally based on Article 40 rather than Article 42 of Chapter VII. Ghali seemed to draw on Hammarskjold contention during the Congo crisis in 1960, that a large UN military operation could be mobilised by the Security Council under Article 40 with their control assigned to the Secretary-General.[55] However, while Ghali calls the mobilisation of such military forces a peace enforcement operation, Hammarsjold insisted that such forces could not be categorised with peace enforcement, and they only represent impartial peacekeeping forces.[56]

Ghali stipulated that such peace enforcement units should be distinguished from forces constituted under Article 43 to deal with acts of

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[54] Boutros Boutros-Ghali, *An Agenda for Peace,* United Nations, New York, 1992.
[55] UN Documents S/P.V. 887th meeting, 20 July 1960, p. 17.
[56] Security Council Official Records, 15th year, 920th meeting, paragraph 73.

aggression 'or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations.' Ghali's discussion of peace enforcement reflects the comprehensive approach undertaken by *An Agenda for Peace* to the UN peace operations. A UN envoy, Olara Otunnu, provided the following definition

> Enforcement action may be defined as a forcible collective military operation, authorised by the Security Council under Chapter VII of the Charter, for the purpose of restoring compliance with international norms following a major breach of the peace or an act of aggression. Although it involves war fighting, enforcement action should be viewed and conducted in a different way from a war waged primarily to achieve national objectives.[57]

Otunnu distinguishes between an enforcement action under Chapter VII and war-fighting. He referred to one clear difference related to the objectives of the military action which are assumed to satisfy the interests of the international community and not necessarily the national interests of any country. However, in practice, it is difficult to verify the conduct of the military operation and to try to keep it within the limitations of the defined objectives. A UN official,

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[57] Olara A. Otunnu, 'The Peace-and-Security Agenda of the United Nations: From Crossroads into the New Century' in Olara A. Otunnu and Michael W. Doyle, *Peacemaking and Peacekeeping for the New Century,* Rowman and Littlefield Publishers, Maryland, 1998, p. 305.

Yasushi Akashi considered enforcement actions as 'practically indistinguishable from war-fighting.' On the other hand, Michael Howard drew an important distinction between war and peace enforcement in practice. He indicated the significance of the allies decision to end the Gulf war in 1991 at a specific point, rather than to enter Baghdad and 'to install US General Norman Schwarzkopf as an imperial pro-consul' in Iraq.[58]

So far, these attempts adopt a narrow definition of peace enforcement within the context of military operations. Although decisions by the Security Council to undertake military action represent the ultimate resort to resolve the conflict, the Charter system includes other mandatory measures to be employed by the Council as necessary. For John Ruggie

> Enforcement is easy to grasp, and it was the use of force that the UN's architects envisaged. A specific act of aggression, or more general set of hostile actions, are collectively identified as a threat to international peace and security and the aggressor state is subjected to an array of sanctions until its violation is reversed. Ultimately, enforcement can involve flat-out war-fighting - the "all necessary means" of Resolution 678, authorising what became Operation Desert Storm.[59]

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[58] Michael Howard, 'When Are Wars Decisive?' *Survival,* vol. 41, no. 1, Spring 1999, p. 134 – 135.

[59] John Gerard Ruggie, *Constructing the World Polity, Essays on International Institutionalisation,* Routledge, London and New York, 1998, p. 244.

Ruggie's definition explores the wide raging enforcement measures entailed in Chapter VII and their implementation according to the gravity of the situation. Lincoln Bloomfield provided another attempt to define peace enforcement as an escalating system for combating aggression and threat to international peace. 'Enforcement means applying sanctions (the first steps under UN Chapter 7) and ultimately using force if necessary to punish aggressors and other transgressors of the community's ground rules.'[60]

This study employs a broad definition of peace enforcement, one that includes all the binding and enforceable measures under Chapter VII as they constitute an integral UN system for peace enforcement. Many definitions of peace enforcement do not mention diplomatic and economic sanctions. They concentrate on distinguishing military operations under Chapter VII from other peace operations by explaining the mandatory and enforcement nature of peace enforcement operations which other operations lack. Thomas Weiss, for example, defined economic sanctions as 'non-forcible enforcement action'. Claude, like Bloomfield and Ruggie, has described the UN peace enforcement system as a comprehensive system which include 'collective measures, ranging from diplomatic boycott through economic pressure to military sanctions, to enforce the peace.'[61] This is the approach followed here. In this study,

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[60] Lincoln P. Bloomfield and Allen Moulton, *Managing International Conflict, From Theory To Policy,* St. Martin's Press, New York, 1997, p. 87.

[61] For Michael Akehurst the enforcement measures included in Chapter VII are two pronged. He states that 'Enforcement action *stricto sensu* (that is, action to deal with a threat to the peace, breach of the peace, or act of aggression) can take two forms; Article 41 provides for non-military enforcement action and Article 42 provides for military enforcement action.'

therefore, peace enforcement refers to the employment by the Security Council of mandatory enforceable collective measures under Chapter VII including diplomatic and economic sanctions, air and maritime blockade, arms embargo, and the use of force. The consent of any party to the conflict would help the operation but it is not a prerequisite for military deployment.

4- The UN Charter system

The principle of peace enforcement is indicated in the first Article of the UN Charter. Article 1 provides for the maintenance of international peace and security and obligates member states to take 'effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,'

The drafters of the UN Charter were keen to state their main objective clearly and to do so early in the Charter. They wanted to empower the organisation with effective instruments which its predecessor the League of Nations lacked: this eventually proved to be a terminal defect. The system of peace enforcement draws on the principle of non-use of force in interstate relations. Article 2(4) asks all member states to refrain from the threat or use of force against the territorial integrity or political independence of any state. Furthermore, any use of force inconsistent with the principles of the United Nations is prohibited and outlawed. Only the International Organisation is

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Michael Akehurst, *A Modern Introduction to International Law,* George Allen and Unwin, London, 4th edition 1982, p. 183.

conferred upon to utilise the use or threat of force in order to uphold the norms and principles of the Charter.[62]

Even the Organisation was impeded from intervening in matters within the domestic jurisdiction of sovereign states, a determination widely considered as a derivation from the Westphalian norm of sovereignty. However, Article 2(7), which include the principle of sovereignty, made one exception to the absolute sovereignty of member states, that is when the Security Council undertakes measures under Chapter VII.

The primary responsibility of the Security Council for the maintenance of international peace and security is determined by Article 24. In carrying out this responsibility, members of the Security Council act on behalf of all member states and not only on behalf of their national governments. This principle is, however, contradicted in theory by the granting of special privileges to permanent members, such as the right of veto, often used to protect their particular interests, and is blurred in the practice by compromises between great powers, and with non-permanent members, to preserve limited national interests. Therefore, the system may allow for the authorisation of an action at the behest of a permanent member while such an action may not necessarily reflect the interests of the majority of member states in the UN as a whole.

However, all member states are obliged under Article 25 to accept and carry out the decisions of the Security Council. There is disagreement

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[62] Hedley Bull, op. cit. note 30.

between scholars on what constitutes a binding measure and whether peaceful settlement measures under Chapter VI are recommendatory or could also be binding on member states. Approaches to the issue of recommendatory and binding nature of Security Council decisions range from a broad presumption, that every Security Council decision is binding, to a limited and prevailing view, that only enforcement measures under Chapter VII are mandatory.[63]

It might be presumed that, before the Security Council starts to consider enforcement measures under Chapter VII, it should exhaust the procedures of peaceful settlement. Although this seems logical, in cases of clear aggression the Council may from the outset start to employ severe economic and military measures against the aggressor. In fact the pacific measures of settlement identified by Chapter VI are concerned with situations which are 'likely to endanger the maintenance of international peace and security' but, when an action has already proved to pose a threat to international peace, the Council may authorise immediate enforcement measures, as was the case in Korea 1950 and in Kuwait 1990. However, peaceful attempts may resume at some point during the conflict notwithstanding the undertaking of enforcement measures by the Council.

Under Article 39 of Chapter VII the Security Council is empowered to determine whether a threat to peace, a breach of the peace, or an act of aggression has taken place. Many scholars have observed that once such a

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[63] N. D. White, Keeping the peace, *The United Nations and the maintenance of international peace and security,* Manchester University Press, Manchester and New York, 1993, pp. 61 66, 83 – 89.

determination is made, the way is open, at least on the legal level, for the Security Council to take enforcement measures against the target. But, the determination of a threat to the peace alone does not provide enough ground for an automatic coercive response in the absence of further authorisation by the Security Council. Therefore, actions by member states cannot be justified on the ground that the Council has determined the occurrence of a threat to the peace as it was the case in Iraqi Kurdistan in 1991. It is also important that the Council may not necessarily follow such a determination with enforcement measures as in the situation in the Democratic Republic of Congo after 1997 and the war between Ethiopia and Eritrea after 1998.

The Security Council may take provisional measures under Article 40 'as it deems necessary and desirable' to prevent a situation from becoming further aggravated and to call upon parties to the conflict to comply with such measures. Acting under Article 41 the Security Council can employ mandatory economic sanctions, interruption of means of communications and the severance of diplomatic relations. The assumption is that the Council has issued decisions to resolve the conflict, but that decisions are not complied with by one party or more to the conflict and that, therefore, sanctions were employed to bring about compliance with these provisions.

If measures under Article 41 prove to be inadequate or incommensurate with the gravity of the situation, the Council may take a military action 'by air, see, or land forces as may be necessary to maintain or restore international peace and security.' Articles 43 to 49 describe the

mechanisms for the undertaking of the United Nations military action. The action shall be taken by all the members of the United Nations or by some of them, as the Security Council may decide. All member states shall provide national military contingents and render necessary assistance and facilities as may be required by the Council and in accordance with special agreements to be reached by the Council and member states. These agreements shall be initiated by the Council which shall decide on the numbers and types of forces, the location of forces and their degree of readiness.

Article 47 provides for the establishment of a Military Staff Committee consisting of the Chiefs of Staff of the five permanent members. The Committee should advice and assist the Council on the military requirements for the maintenance of international peace and security. It should be responsible under the Security Council from the command and control of armed forces and their strategic direction.

Until the Security Council has taken necessary measures, member states retain the inherent right of individual or collective self-defence under Article 51. Such actions should be immediately reported to the Council and they must not affect the Council's authority and responsibility to take at any time enforcement measures in order to restore international peace and security.

The UN peace enforcement system differed from earlier envisaged systems of collective security by adopting a unique method of voting which give each of the five permanent members the right to nullify substantial

decisions and thereby block Security Council action. The Charter system does not agree with majority voting in the Security Council and great powers are not considered as equal to small countries in this respect. This was seen as a realistic departure from the Covenant's provisions which give permanent membership for great powers but deny them the right to veto any decision. The adoption of the veto was considered as a practical necessity to include all great powers in the membership of the organisation. The underlying assumption was that the veto would help to avoid major confrontations between big powers by abandoning the authorisation of a military action against the will of a permanent member. However, in effect, this put great powers beyond the reach of Chapter VII enforcement measures and, therefore, threatened the UN's ability to become a centralised enforcement agency. Furthermore, the use of the veto encouraged the recourse by vetoed states or states which anticipated a veto to decentralised, independent actions in the form of alliances of power or self-defence.[64]

5- Viability of Peace enforcement

Perspectives of optimism and pessimism 1982 - 1999

There is plenty of discussion on the viability of the system of collective security. Opponents and proponents have provided opposing arguments for and against the idea of collective security. In this introductory part the thesis does

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[64] Hans J. Morgenthau, *Politics Among Nations, The Struggle For Power and Peace,* Alfred A. Knopf, 1978, 5th edition, pp. 310 – 311.

not intend to review classical discussions on this issue. It rather attempts to address the issue of the viability of peace enforcement through the illustration of three different perspectives prevailed in three different periods between 1984 - 1999. The first existed from 1982 to 1989 and represented a pessimistic view, of the Cold War's impact on the workability of the UN system for peace enforcement. The second one endured between 1990 and 1993 and reflected the most optimistic evaluation of UN practice in the area of peace enforcement. From 1994 to the end of the century a third pessimistic view about the viability of peace enforcement prevailed. Each of these notions requires examinations.

The first perspective

During the last years of the Cold War most scholars determined that the UN peace enforcement regime was likely to remain dormant. Pessimism was also evident during the Cold War years before 1982, but the uniqueness of the period between 1982 and 1989 is that pessimism continued despite the successes achieved by the United Nations in the area of peace maintenance during these years which had been marked by the awarding of the Noble Peace Prize to the UN Secretary-General. This notion was almost prevalent until the Berlin Wall came down and the Soviet Union decided to dissolve itself. Brian Urquhart, a former UN Under Secretary-General, observed in the mid 1980s that to wait for the UN collective security system to work was like attempting

to get the souls of Shakespeare's Henry IV to respond.[65] He explained the political atmosphere in the world as follows

> I hope very much that we are not going through the process that I grew up with in the 1930s. The laziness, the lack of persistence, the cynicism, the easy escape-goating that destroyed the League are all fatal tendencies. ... I wonder if we are not drifting into such disintegration now, in regard to the United Nations. If we are doing that, we run a very considerable risk of descending eventually into World War III, in a time of nuclear weaponry. After that - it seems likely that the experience will be fairly terminal - there will not be too many people around to set up a third world organisation.[66]

Despite some relative successes achieved by the United Nations late in the 1980s, especially in Namibia, it was not expected that the international situation would allow for the reactivation of the provisions of Chapter VII. Urquhart's view was shared by many other scholars. Oscar Schachter, for instance, found himself 'bound to conclude' that the collective security system of the UN Charter had been largely replaced by the fragmented actions of

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[65] Brian Urquhart, 'The United Nations, Collective Security, and International Peacekeeping' in Alan K. Henrikson, ed. *Negotiating World Order, the Artisanship and Architecture of Global Diplomacy,* Scholarly Resources, Delaware, 1986, p. 59.

[66] Ibid. p. 60.

alliances.[67] Nigel White stated in 1990 that 'As we have seen, mandatory military action remains on paper only, so the ultimate weapon is mandatory economic action under Article 41 of the Charter (ignoring the recommendation of military measures as in Korea – a situation which is unlikely to occur again)'.[68] One of the rare exceptions to this dominant conviction is Alan James's observation in 1988 that 'one should not assume that circumstances will never arise in which an appropriate coalition of members might want to act in accordance with Chapter VII.'[69]

International relations' scholars and statesmen could not foresee the dramatic changes which took place in the world by the end of the 1980s and marked the end of the Cold War. As the functioning of the United Nations is dependent on co-operation of member states, the Charter system for peace enforcement was not expected to evolve. On the contrary, a fear of further disagreement and confrontation between the Superpowers in the absence of an effective International Organisation was anticipated to bring horrors and destruction beyond the scope of havoc caused by World War II.

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[67] Oscar Schachter, 'The role of International Law in Maintaining Peace' in W. Scott Thompson and Kenneth M. Jensen, eds. *Approaches to Peace, An Intellectual Map,* United States Institute of Peace, Washington, D.C. 1991, p. 113.

[68] N. D. White, *The United Nations and the maintenance of international peace and security,* Manchester University Press, Manchester and New York, 1990. P. 232

[69] Alan M. James, 'Unit Veto Dominance in United Nations Peace-Keeping' in Lawrence S. Finkelstein, ed. *Politics in the United Nations System,* Duke University Press, Durham and London, 1988, p. 79.

The second perspective

Between 1989 and 1991 a new optimism emerged. The agreement between the permanent members of the Security Council on more than 15 resolutions under Chapter VII in one year represented a remarkable change in the practice of the Council. In the aftermath of the Gulf war the leaders of the 'Group of Seven' (G7) declared at their summit in London on 16 July 1991 that

> We believe the conditions now exist for the United Nations to fulfil completely the promise and the vision of its founders. A revitalised United Nations will have a central role in strengthening the international order. We commit ourselves to making the UN stronger, more effective in order to protect human rights, to maintain peace and security for all and to deter aggression. We will make preventive diplomacy a top priority to help avert future conflicts by making clear to potential aggressors the consequences of their actions. The UN's role in peacekeeping should be reinforced and we are prepared to support this strongly.[70]

George Bush proclaimed the birth of a New World Order and told the Congress in September 1990 that a new international system of justice and order is emerging. Bush's proclamation was supported by the action to rebel the Iraqi invasion of Kuwait and the establishment of Operation Provide Hope to protect

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[70] *Financial Times*, 17 July 1991, page 4.

the Kurds in Northern Iraq. Bush maintained this commitment until the end of his presidency and during his last few days in the White House he ordered American forces into Somalia under the UN mandate, in the largest peace operation in Africa since the Congo 1960. On the part of the Untied Nations the optimism of world political leaders was reiterated in Boutros Ghali's *An Agenda for Peace* in January 1992:

> In these past months a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter - a United Nations capable of maintaining international peace and security, of securing justice and human rights ... This opportunity must not be squandered. The Organisation must never again be crippled as it was in the era that has now passed.[71]

An Agenda for Peace contained an ambitious plan for peace enforcement, anticipating the revival of Article 43, and an active role for the Military Staff Committee in peace enforcement operations.

On the scholarly level, many writers expected the beginning of a new era. Ernst Haas stated that 'The waning of the Cold War seems to have brought with it a rebirth of collective security advocated and designed in 1945 by the victors in the World War II.'[72] Schachter himself asserted in 1991 that 'UN

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[71] Boutros Boutros-Ghali, op. cit. note 54.
[72] Ernst B. Haas, 'Collective conflict management' in Friedrich Kratochwil Edward D. *International Organisations, A reader,* Mansfield Harper College Publishers, 1994, p. 237.

enforcement action against an aggressor is presently the centre of world attention.'[73] Adam Roberts made a similar point in 1993 saying that 'The issue of organising enforcement actions is central to almost every discussion on the United Nations' future role.'[74] Some writers borrowed Thomas Paine's words in 1775 to describe the early days of the post-Cold War: 'We have it in our power to begin the world all over again. A situation similar to the present hath not appeared since the days of Noah until now. The birthday of a new world is at hand.'[75]

However, scepticism did not cease during this period. Some scholars used Voltaire's description of the Holy Roman Empire as neither Holly nor Roman nor empire analogously to describe the New World Order. Many continued to question the substance of these incidents as solid precedents or as providing an indication of a shift towards an effective role for the Security Council in the area of peace enforcement. In this sense, the identification of the Gulf crisis as a 'defining moment' or a 'watershed in the history of the UN' was rejected and doubts were raised about the endurance of agreement in the Security Council.

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[73] Oscar Schachter, 'Authorised Uses of Force by the United Nations and Regional Organisations' in Lori Fisler Damrosch and David J. Scheffer, eds. *Law and force in the new international order,* Westview Press, Boulder and Oxford, 1991, p. 66.
[74] Adam Roberts, op.cit. note 29, p. 15.
[75] Thomas Paine, *Common Sense,* Penguin, Harmondsworth, 1976, p. 120.

The third perspective

Unsuccessful experiences encountered by the UN forces in some parts of the world in the years after the Gulf war and the rhetoric of statesmen, specially of the US Administration, in favour of national interests were interpreted as a retreat from the renewed commitment to a collective security system. A good example of this tendency is the Clinton Administration's Policy on Reforming Multilateral Peace Operations, signed by the President in May 1994:

> We would place our national interests and these of our friends uppermost. The US will maintain the capability to act unilaterally or in coalition when our most significant interests and these of our friends are at stake. Multilateral peace operations must, therefore, be placed in proper perspectives among the instruments of US foreign policy.[76]

Nevertheless, during the last eight years a tendency to mobilise Chapter VII in international conflicts as well as civil wars is evident. During the first three months of 1998 the Security Council passed 13 resolutions, eight of them adopted under Chapter VII. A balanced account of the UN record in the area of peace enforcement is provided by John Ruggie in 1998:

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[76] 'The Clinton Administration Policy on Reforming Multilateral Peace Operation' Bureau of International Organisational Affairs, U.S. Department of States, Publication No. 10161, 4 May 1994. Also issued as: Presidential Decision Directive (PDD) 25, 'Reforming Multilateral Peace Operations' May 1994.

> The end of the cold war created new possibilities for UN peace operations, but they were not nearly as unproblematic or unlimited as the early post-cold war euphoria anticipated. After Somalia and Bosnia many observers question if any opportunity at all remains, but now the sense of limits seems exaggerated. The United Nations is severely constrained by systemic factors, to be sure. But it remains unclear whether these operations were inherently destined to be defeated by such constraints, because governments and the UN Secretariat also poorly understood and managed more volitional aspects of operations, over which they have greater control.[77]

Ruggie believes that there are 'areas in which some improvement is possible.' These three perspectives are reflections of different political atmospheres that prevailed during the designated three periods. Although there are no clear dividing lines between these periods, the first was generally dictated by the limitations of the Cold War before 1990, the second notion stemmed from the extensive UN practice in the area of peace maintenance during the immediate years of the post-Cold War period, and the third reflects uncertainty about the future of peace enforcement. The abstracting of three different perspectives in this introduction illuminates the different periods through which the Security Council has operated and helps in shaping the historical framework for the development of peace enforcement.

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[77] John Gerard Ruggie, op. cit. note 53, p. 240.

Part II

Chapter 3

The role of the Security Council in the crisis of Kuwait

The purpose of this chapter is to study the application of peace enforcement measures adopted by the Security Council during the Kuwait crisis 1990 – 1991. This will be done by systematic analysis of the United Nations response to the Iraqi invasion of Kuwait.[1] The chapter will assess the economic, political, and legal effects of the UN response to the crisis.

Kuwait is chosen to serve as a central case in this study because it represents the best case for the systematic study of the UN peace enforcement measures. In its initial reaction to the invasion, the Security Council determined the existence of a threat to international peace and security under Article 39 of the Charter and called on Kuwait and Iraq to settle their dispute through peaceful negotiations pursuant to the provisional measures of Article 40. A few days later the Council employed comprehensive mandatory economic sanctions against Iraq and the occupied territory of Kuwait under Article 41. In November 1990, the Council authorised the use of all necessary means to reverse the invasion in accordance with the provisions of Article 42.

In the case of Korea 1950, the Council did not employ mandatory sanctions against North Korea and the issue was permanently removed from the agenda of the Council in January 1951. Thus, Korea as the first attempt by the

[1] For this purpose the chapter will concentrate, in the study of economic sanctions against Iraq, on the regime of sanctions imposed before the outbreak of the Gulf war in January 1991.

Security Council to mobilise enforcement measures, does not allow for the systematic study of the UN Charter system for peace enforcement as Kuwait does. However, a comparison between aspects of peace enforcement in Korea and Kuwait will be maintained in this chapter.

The chapter will discuss the situation in the UN during the time of the invasion, the Security Council's initial response, the application of economic sanctions, and the authorisation of the use of force against Iraq. To affirm the assertion that the case of Kuwait is unique and to illuminate its significance for peace enforcement, the chapter will discuss special issues related to the use of force against Iraq including the relation with the host state, the concept of 'all necessary means', and the UN ultimatum. The chapter will also discuss the issue of 'how sanctions end' in order to evaluate the Security Council procedure and mechanism for the suspension and termination of sanctions.

1- The Iraqi invasion of Kuwait

The Iraqi invasion of Kuwait in August 1990 could be viewed in a historical context, as a culmination of Iraqi claims to Kuwait's territory since the Anglo-Ottoman Agreement in 1913. Iraqi leaders made several attempts to annex Kuwaiti territories in 1933, 1961, and 1973.[2] While Baghdad claims that Kuwait is an integral part of Iraq, the territorial dispute has mainly concentrated on the two Islands of Warba and Bubyan.

[2] Amatzia Baram, 'The Iraqi Invasion of Kuwait: Decision-making in Baghdad' in Amatizia Baram and Barry Rubin, *Iraq's Road to War,* Macmillan, London, 1994, p. 6.

Although these historical claims contributed to the developments of the summer of 1990, the invasion was a direct result of the political and economic circumstances following the end of Iran-Iraq war in 1988. Iraq and the Gulf states interpreted their partnership in the war against Iran differently; while Iraq believed that it had defended the security of the Gulf states, these states claimed they had provided unprecedented support for Iraq's war machinery. Between 1988 and 1990, Iraq demanded specific economic and territorial concessions from Kuwait. Iraq specifically accused Kuwait of using Iraqi oil reserves from the Rumayla oil field, which straddles the Iraq-Kuwait border, and demanded reimbursement. The UN Secretary-General Perez de Cuellar concluded from his two meetings with Tariq Aziz, Iraqi Foreign Minister, in Amman on 31 August 1990 and Saddam Hussein in Baghdad on 12 January 1991 that the immediate reason for the invasion 'was the Iraqi anger over Kuwait's oil pricing policy.'[3]

In the middle of July 1990, Iraq started the build-up of its forces on the border with Kuwait. During the two weeks before the invasion, some Arab states mounted intense diplomatic efforts in an attempt to avert the Iraqi threat. Political leaders ruled out the possibility of an Iraqi military attack against Kuwait. President Husni Mubarak met with Tariq Aziz, on 22 July 1990 and a few days later he discussed the situation with Saddam Hussein. One week before the invasion Mubarak confirmed that Iraq had agreed to seek a peaceful

[3] Javier Perez de Cuellar, *Pilgrimage for Peace, A Secretary-General's Memoir,* St. Martin's Press, New York, 1997, p. 242.

settlement of its differences with Kuwait and the UAE.[4] A few days before the invasion Kuwait cancelled a state of alert that it had declared earlier as a consequence of the dispute with Iraq, and a Kuwait source said: 'It was all a summer cloud that has been blown away.'[5] A Bush Administration official said on 20 July: 'Our assessment is that Saddam Hussein is unlikely to take military action in the Gulf, at least in the short term.'[6] Bush himself admitted in 1998 that until 2 August 1990 his Administration 'could not confirm anything more definitive about Iraqi intentions than the movements themselves.'[7]

The confusing signals which came from Iraq, Kuwait, and other concerned parties during the course of diplomatic efforts before the invasion, did not help to clarify Iraqi intentions and, therefore, made it difficult for the world at large to predict the Iraqi action. On 2 August 1990, Iraqi forces crossed the border with Kuwait, occupying the territory of the neighbouring state and subjugating the whole country. The invasion posed a real challenge to the international community and particularly to its leading international organisation, the United Nations, which had been created mainly to maintain international peace and security by deterring armed attacks against the political and territorial integrity of any state and combating acts of aggression.

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[4] *International Herald Tribune,* 26 July 1990.
[5] *International Herald Tribune,* 21 - 22 July 1990; Joseph Kostiner, 'Kuwait: Confusing Friend and Foe' in Baram and Rubin, op. cit. note 2, pp. 112 – 113.
[6] *International Herald Tribune,* Ibid.
[7] George Bush and Brent Scowcroft, *A World Transformed,* Vintage Books, New York, 1999, p. 302.

2- Situation in the UN

At the time of the invasion of Kuwait the United Nations had been encouraged by the successes it had achieved during its recent practice in the areas of peacekeeping and peacemaking. In Afghanistan, Angola, Namibia, and the Iran - Iraq war, the United Nations had succeeded in helping to bring about peaceful settlements, and most of the provisions of the resolutions adopted by the General Assembly and the Security Council were brought into effect. Although the deployment of UN operations in these four cases have been discussed in some recent writings, the intention was always to measure their effectiveness against their mandates and functions compared with other peacekeeping operations.[8] However, they were distinguished from other traditional peacekeeping operations and referred to by some scholars as United Nations breakthroughs.[9] In this chapter, the four cases will be discussed from a different perspective to see the influence they had on the consideration of aspects of peace maintenance by the Security Council during the Kuwait crisis.

Afghanistan. When the Soviet Union invaded Afghanistan in 1979 the Security Council was only able to call an emergency session of the General Assembly to consider the situation.[10] The Council's early attempt to adopt a resolution

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[8] Examples of this analysis are Alan James, *Peacekeeping in international politics,* Macmillan and the IISS, London, 1990; Nigel White, *The United Nations and the maintenance of international peace and security,* Manchester University Press, Manchester, 1990.

[9] G. R. Berridge, *Return to the UN, UN Diplomacy in Regional Conflicts,* Macmillan, London, 1991, pp. 43 – 102.

[10] Security Council resolution 462, 9 January 1980.

deploring the USSR armed intervention and demanding the withdrawal of the foreign troops from Afghanistan was blocked by a Soviet negative vote.[11]

During Gorbachev's first years in power the Soviet Union showed less interest in maintaining its big military presence in Afghanistan,[12] but the situation in Kabul remained unchanged. The breakthrough was later achieved in Geneva when the UN Under Secretary-General Diego Cordovez with representatives of Afghanistan, Pakistan, USSR, and US announced the conclusion of the Geneva Accords on 14 April 1988. However, the Soviet decision to withdraw from Afghanistan was crucial for bringing about the peaceful settlement. The withdrawal decision represented a clear example of Soviet intent to reform its foreign policy, contributing significantly to the atmospheres of co-operation in the UN. Vladimir Petrovisky, Soviet Deputy Foreign Minister, admitted that

> bearing in mind the fact that our action was condemned by over one hundred members of the United Nations we came to realise eventually that we had set ourselves against the international community, violated

[11] Security Council draft resolution, (S/13729) 7 January 1980.

[12] Fred Halliday traced changes in Soviet policy towards Afghanistan since the arrival of Gorbachev in 1985. He mentioned several statements by Gorbachev which provided clear signals of Soviet's determination to withdraw from Afghanistan, despite noticeable opposition to the new policy in Moscow and Kabul. Fred Halliday, 'Soviet Foreign Policy Making and the Afghan War: from "Second Mongolia" to "Bleeding Wound" *Review of International Studies,* (forthcoming issue).

> rules of conduct and defied man's universal interests. As a result we have withdrawn our troops from Afghanistan,[13]

Apart from determining the end of the Soviet occupation of Afghanistan which lasted for nine years, the agreement asked the UN to play a continuing role in monitoring the implementation of the Accords. Furthermore the Accords recommended in their supplementary Memorandum of Understanding the deployment of a UN staff to support the representative of the Secretary-General in his good offices mission. It took the Security Council about six months to approve the creation of the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP) when it adopted on 31 October 1988 resolution 622 confirming its agreement to the measures envisaged by the Secretary-General including the arrangement for the temporary dispatch of fifty military UN officers to verify the parties' compliance with the provisions of the agreement.

Iran-Iraq war. On 12 July 1982 the Security Council adopted a resolution pertaining to the war between Iran and Iraq calling for an immediate end to all military operations and a withdrawal of forces to internationally recognised boundaries. It decided to send a team of United Nations observers to verify and supervise the cease-fire and withdrawal.[14] Resolutions 522, 582, and 588

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[13] *Disarmament and Multilateralism*, First Committee of the 44th General Assembly of the United Nations, 26 October 1989, p. 6.
[14] Security Council resolution 514.

reaffirmed, *inter alia*, the call for a cease-fire and withdrawal of forces. In 1987, however, the Council adopted resolution 598 under Chapter VII of the Charter determining the existence of a threat to the peace and utilising measures provided for in Article 40. Although the provisions of resolution 598 were constantly violated by both parties for 12 months, there were no enforcement measures taken until the two parties informed the Secretary-General in July 1988 of their formal acceptance of resolution 598. Despite the invoking of Chapter VII, the conduct of the United Nations Iran-Iraq Military Observer Group (UNIIMOG) on the ground did not suggest any feature inconsistent with or exceeding the traditional duties of peacekeeping operations.

Angola. In a letter to the Security Council on 5 May 1978 Angola requested the adoption of measures to repulse the South African attacks against its territorial integrity. The letter was a response to the invasion of Angola by South African regular forces utilising the international territory of Namibia as a springboard for the invasion. One day after the receipt of the letter the Security Council unanimously adopted resolution 428 in which, *inter alia,* it condemned South Africa's aggression against the People's Republic of Angola and demanded that South Africa scrupulously respect the independence, sovereignty and territorial integrity of Angola. In resolution 566 (1985) the Security Council rejected 'South Africa's insistence on linking the independence of Namibia to irrelevant and extraneous issues as incompatible with resolution 435 (1978)'.

However, during the process of settlement, resolution 435 was constantly referred to as a point of departure for the joint peaceful negotiations which might bring peace and independence simultaneously to Angola and Namibia. In the course of mediation between the concerned parties, the US envoy Dr. Chester Crocker, Assistant Secretary of State for African Affairs, accepted to negotiate agreements pertaining to both situations in Namibia and Angola. On 22 December 1988 two substantial agreements were signed at the Headquarters of the United Nations by the Foreign Ministers of Cuba, Angola, and South Africa. The Bilateral agreement between Angola and Cuba came into effect on 1 April 1989 when 3,000 Cuban troops started to move northwards as the first phase of the withdrawal of 50,000 Cuban forces from Angola. The United Nations Angola Verification Mission (UNAVEM) was created five days before the signature of the two agreements at the request of Cuba and Angola to verify compliance with the bilateral agreement.[15]

Namibia. Namibia was one of the most complex situations the international community had ever dealt with, through the League of Nations and then the United Nations. It had remained on the United Nations agenda since 1946. In 1966 the General Assembly decided to put the territory under the protection of the UN, terminating South Africa's mandate to administer the region. A prolonged process to secure peace and freedom for the people of Namibia and to effectuate calls for the independence of their territory had eventually

[15] Security Council resolution 626, 20 December 1988.

culminated in the signature of the Brazzaville Protocol by Cuba, Angola, and South Africa. The Protocol included the parties' agreement to start on 1 April 1989 the implementation of resolution 435, which stressed the 'early independence of Namibia through free elections under the supervision and control of the United Nations.' The creation of the United Nations Transition Assistant Group (UNTAG) was authorised by resolution 435 on 29 September 1978, in order to assist the Secretary-General's Representative to carry out the duties conferred upon him by the Security Council.[16]

Conclusion. In the four cases of Afghanistan, Iran-Iraq, Angola, and Namibia the United Nations achieved tangible successes through the utilisation of its Good Offices, peacekeeping operations, and even the explicit adoption of measures under Chapter VII of the Charter. However, the Security Council did not take any enforcement action to resolve these conflicts. The four cases posed a real test to the ability of the United Nations to maintain international peace and security as they constituted some of the most serious situations that ever faced the UN. Yet, changes in world politics and particularly the declaration of new Soviet foreign policies by Mikhail Gorbachev played a crucial role in the bringing about of some peaceful settlements. In the case of Afghanistan, the willingness of the Soviet Union to withdraw its forces enabled the process of peaceful settlement and moved the problem of Afghanistan to the stage of what

[16] *The Blue Helmets, A Review of United Nations Peace-Keeping,* United Nations, New York, 1990, pp. 341 - 388.

Zartman calls 'ripe conflict'.[17] The UN provided useful supervision and support for the peaceful negotiations initiated by the United States and the Soviet Union. However, the agreement between the two superpowers in the Security Council has relatively enhanced the Council's ability to act.

For the purpose of this study, it is suggested here that the successes achieved by the UN in a short period before the Iraqi invasion of Kuwait, had significantly influenced the practice of the United Nations and, particularly, the Security Council during the Kuwait crisis.

3- The initial reaction of the Security Council

On 2 August 1990 Iraqi forces moved towards the southern border of Iraq, rolling their tanks into Kuwait and occupying the whole country. Representatives of the five permanent members and other members of the Security Council received the news of the invasion a few hours later and immediately met for an informal session at the Headquarters of the United Nations in New York. Seven of the Council members agreed on a draft resolution condemning the invasion and demanding an unconditional withdrawal of Iraqi forces from Kuwait. Two hours later the Council met formally and unanimously adopted resolution 660. Yemen, who represented the Arab states in the Council, was the only member who did not vote for the resolution by absenting itself from the meeting. The adoption of resolution 660

[17] I. William Zartman, *Ripe for Resolution: Conflict and Intervention in Africa,* Oxford University Press, Oxford, 1985; Richard N. Haass, *Conflicts Unending: The United States and*

was followed by unilateral and partial application of sanctions by several member states against Iraq. The first reaction, in terms of economic sanctions, came from the United States and United Kingdom when they announced a freezing of Kuwait's assets on the day of the invasion. The United States took even further measures by freezing Iraqi assets and suspending purchases of Iraqi oil. Similar terms were approved by the meeting of the European Community Foreign Ministers on 5 August, including a freeze on both Iraqi and Kuwaiti assets and an oil embargo against Iraq. These measures were followed by a declaration of an arms embargo by the Soviet Union against Iraq and a joint call from the US and the Soviet Union calling for a worldwide ban on arms sales to Iraq.

In anticipation of Iraqi attack against Saudi Arabia and before the adoption of any Security Council resolution authorising member states to deploy military forces, the United States and the United Kingdom announced on 3 August 1990 that they were sending naval vessels to the Gulf. They argued that their acts were pursuant to the inherent right of collective self-defence under Article 51 of the Charter.[18] Between the 2nd and 25th of August, the Security Council adopted five resolutions, 660, 661, 662, 664, and 665. The five initial resolutions asserted the following important decisions:

i) Condemnation of Iraqi action.

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regional Disputes, Yale University Press, New Haven, 1990, p. 27.

[18] James A. Baker, III, with Thomas M. DeFrank, *The Politics of Diplomacy, Revolution, War and Peace, 1989 – 1992,* G. P. Putnam's Sons, New York, 1995, pp. 278 – 279.

ii) A call for an immediate and unconditional withdrawal of Iraqi forces from Kuwait.

iii) Imposition of economic and diplomatic sanctions against Iraq.

iv) Regarding the annexation of Kuwait as null and void.

v) Demanding that Iraq permit the departure of third country nationals and not to jeopardise their safety.

vi) Requesting member states to take necessary measures to ensure the effective implementation of economic sanctions.

Two significant preambles, affirming the determination of the Council to force Iraqi troops out of Kuwait and to invoke measures of Chapter VII, were frequently repeated in the texts of the first twelve resolutions adopted by the Security Council between August and November 1990. In the first preamble of resolution 660, the Council expressed its determination to bring the occupation of Kuwait by Iraq to an end. The texts of the resolutions indicated that the Security Council set itself the task of restoring the sovereignty, independence and territorial integrity of Kuwait. The resolve was also affirmed by the UN Secretary-General, Perez de Cuellar, as he revealed in 1997 that: 'There was never a question in my mind that this aggression must be repelled.'[19] However, it was clear that the cost of reversing the Iraqi invasion through the enforcement machinery would be high. If the statement of the Kuwaiti ambassador to the UN in the first formal Security Council meeting after the invasion was accurate and that the Amir and his government were

[19] Javier Perez de Cuellar, op. cit. note 3, p. 237.

resisting from inside Kuwait, the role of the Council could have been to render assistance to the legitimate government in order to defend its country. But, unable to withstand the Iraqi forces, which rated as one of the largest in the world, the Amir and members of his family sought refuge in Saudi Arabia. In the case of Korea in 1950, the government of South Korea had remained in the country after the invasion and retained partial power with forces resisting the advance of North Korean troops. In accordance with those circumstances, the intention of the Security Council was 'to assist the Republic of Korea in defending itself against the armed attack and to restore international peace and security in the area.'[20] The Council determination to bring the Iraqi invasion to an end in the face of the full occupation of Kuwait and the capabilities of Iraqi forces had ultimately led to the largest foreign military deployment in the history of the region. The determination of the Council was supported by willingness among its members to invoke Chapter VII of the UN Charter. All the measures imposed by the Security Council against Iraq were adopted under the authority of Chapter VII of the Charter with an unusual tendency among member states to utilise the enforcement measures in order to terminate the Iraqi aggression.

[20] Security Council resolution 84, 7 July 1950.

4- Sanctions against Iraq

The sanctions policy

On 6 August 1990 the Security Council imposed mandatory economic sanctions against Iraq in response to its military invasion of Kuwait. Resolution 661 represented, hitherto, the most comprehensive sanctions policy in the history of the United Nations. It was explicitly adopted under Article 41 of the Charter, following the determination by the Council that the invasion constituted a threat to international peace and security, under Article 39, and the provisional measures of resolution 660 pursuant to Article 40.

Article 41 of the UN Charter states that

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effects to its decisions and it may call upon the members of the United Nations to apply such measures. These may include the complete or partial interruption of economic relations and of air, sea, rail, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

The experiment of imposing mandatory economic sanctions on Iraq has significantly added to the record of UN practice in the area of peace enforcement. Before the case of Kuwait, member states rarely utilised the UN collective machinery to combat aggression through the application of economic

sanctions against an aggressor. Even when the Security Council was able to authorise such an action during the Korean Crisis (1950) particularly when the USSR boycotted the Council meetings, no mandatory sanctions were imposed.[21] If such measures were taken against North Korea the controversy over the constitutionality of the use of force could have been extended to the adoption and implementation of economic sanctions. However, at least none of the states of the Eastern camp were expected to impose sanctions against North Korea.

Sanctions against Iraq were comprehensive and strict including the severance of economic and diplomatic relations, the imposition of a weapon embargo, and the interruption of other communications. The Security Council adopted on 6 August 1990 resolution 661 which include the following provisions:

> all states shall prevent a) the import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution; b) any activities by their nationals or in their territories which would promote or calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present

[21] Texts of the Security Council resolutions 82, 83, and 84 (1950).

resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings; c) the sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, food stuffs to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products.

The resolution obliged member states to take further financial measures against Iraq by stating that

all states shall not make available to the government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait,

except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs.

Furthermore, resolution 661 called upon all states to act strictly in accordance with the subsequent provisions. In order to closely monitor the effective implementation of sanctions a committee was formed to examine the reports submitted by the Secretary-General on the progress of sanctions application and to seek information from states concerning the steps they have taken to secure the strict implementation of the adopted measures.[22] Moreover, states were requested to protect the assets of the legitimate government of Kuwait and not to interpret any provision as a prohibition of assistance to the government of Kuwait. The provisions of resolution 661 could be summarised in four main parts: a ban on imports from Iraq and the then occupied territory of Kuwait; a prohibition of activities which may help Iraq to export goods; prevention of provision of supplies to Iraq including weapons and military equipment; and a call for all states to denounce making available to persons within Iraq or Kuwait any funds or financial resources.

The precise wording of this resolution indicates that members of the Security Council utilised their experience of earlier attempts at imposing

[22] The same committee was later entrusted by the Security Council in resolution 669 of 24 September 1990, with the task of examining requests for assistance in accordance with Article 50 of the United Nations Charter and making recommendations for appropriate action.

sanctions on countries they had targeted collectively or unilaterally.[23] This helped substantially in avoiding the violation of sanctions and in filling anticipated loopholes.

Use of naval forces to interdict shipments

The Security Council in adopting resolution 661 during the early days of the invasion was uncertain about ways of combating possible breaches of sanctions.[24] From the defiant speeches of the Iraqi Authorities it was deemed likely that Iraq would not stop the movement of its ships and oil tankers.[25] The US Administration and the government of the UK were convinced that they had the right under Article 51 to stop and interdict any suspected ships without further authorisation from the Security Council.[26] However, despite isolated incidents in which US Naval forces attempted to stop Iraqi ships, the US was reluctant to pursue more unilateral interdictions because China, France, and the USSR opposed, at least at that stage, any action outside the framework of the UN.[27] The US was willing to secure international legitimacy for its acts, but it was uncertain about the intentions of the USSR and China towards the adoption

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[23] Cases of international economic sanctions until 1985 are covered in Gary Clyde Hufbauer and Jeffery J. Schott, *Economic sanctions reconsidered,* Institute for International Economics, Washington DC, 1985.

[24] The target tactics to evade sanctions in various cases were traced by Jerrold D. Green, 'Strategies for evading economic sanctions' in Miroslave Nancic, and Petre Wallensteen, eds. *Dilemmas of economic coercion, sanctions in world politics,* Praeger Publishers, New York, 1983, pp. 61 - 86.

[25] Mr. Anbari, representative of Iraq in the Security Council said that his government regards resolution 661 as null and void. S/PV.2933, 6 August 1990.

[26] *Independent,* 14 August 1990.

[27] On 19 August 1990, American warships fired two shots across the bow of two Iraqi oil tankers. *Independent,* 20 August 1990.

of further resolutions contemplating the right to inspect and verify shipments with the minimum use of force. Hitherto, the Soviet Union had called for a diplomatic solution, preferring no further action against Iraq, but under mounting pressure from America, Gorbachev wrote a letter to Saddam Hussein on 23 August asking him to immediately start withdrawing from Kuwait and to order the release of hostages. Otherwise, Gorbachev warned, the Security Council will 'adopt corresponding extra measures.'[28] No positive reply was received from Saddam during the next two days and the Soviet Union went along with the United States in adopting further measures.

On 25 August 1990, the Security Council adopted resolution 665 calling upon member states deploying maritime forces to the area to use such measures as may be necessary to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destination. The formulation of resolution 665 had raised many objections within the Security Council, revealing controversy over its provisions and the meaning of its wording. The first draft was amended several times. A sentence referring to the 'minimum use of force' was deleted from the first text at the request of China.

China and Britain expressed their differing understanding of its contents. Mr. Li Daoyu, the representative of China, said that 'we hold that measures must be taken within the framework of resolution 661 (1990), which does not provide for the use of force, and will naturally not allow force to be used for its

[28] Exchange of letters between the President of USSR and Iraq were mentioned in a statement by Mr. Lozinsky, the representative of the Soviet Union in the Security Council. S/PV.2938, 25 August 1990.

implementation.'[29] At the same meeting, Sir Crispin Tickell, the representative of Britain said 'I must make it clear to the Council that those measures [referred to in paragraph 1 of resolution 665. (1990)] include such minimum use of force as may be necessary to achieve the purposes of the paragraph I have cited.'[30] Mr. Tickell reminded the Council that 'sufficient legal authority to take action already exists under Article 51 of the Charter and the request which we and others have received from the government of Kuwait. If necessary, we will use it.'[31]

However, during the course of voting, China concurred and the five permanent members voted in favour of resolution 665. The Soviet Union fully supported resolution 665, declaring its readiness to co-ordinate with other member states in taking any action, using the mechanism of the Military Staff Committee to facilitate the implementation of the resolution.[32]

The economic effects of the crisis

The economic consequences of the crisis and particularly the impact of sanctions and war against Iraq had far-reaching and deep effects on many countries. The economies of the Gulf states, OPEC and non-OPEC countries, and other countries in the world were affected by the crisis. However these

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[29] Security Council meeting, S/PV. 2938, 25 August 1990.
[30] Ibid.
[31] Ibid.
[32] The possibility of Soviet participation with allied forces was discussed in Lt-Col. Jeffrey McCausland, *The Gulf Conflict: A Military Analysis,* Adelphi Paper 282, IISS and Brassey's, London, November 1993, p.3; Lawrence Freedman, and Efraim Karsh, *The Gulf Conflict*

effects varied from being seriously damaging in some places to being beneficial in others. This was noticeable even within the same country; for example, there were instances of one sector being badly affected while another sector attained growth. Syria is a case in point, in that it lost the annual remittance of about $200 million as a result of the expulsion of 100,000 Syrians from Kuwait. At the same time, the rising oil price had positively contributed to the Syrian economy.[33]

For Jordan, full compliance with the provisions of resolution 661 would have caused, according to its representative at the Security Council, an economic disaster. The economic difficulties suffered by Jordan were described by Elyahu Kanovsky:

> The Gulf War seriously aggravated the already depressed economy, especially since Jordan made the costly mistake of siding with Saddam Hussein. Saudi Arabia and the other Gulf states cut off all aid to Jordan, which was nearly half a billion dollars in 1989. The US suspended its aid program, freezing over $100 million. The UN sanctions already reduced Jordan's trade (including transit trade) with Iraq. Though this trade had been diminishing since the end of the Iran-Iraq war in 1988, nonetheless it still was almost one fourth of total Jordanian exports in 1989. The tourist industry, an important sector of Jordan's economy, was

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1990 - 1991, Diplomacy and War in the New World Order, Faber and Faber, London, 1993, p.126.

[33] *Economist,* 13 October 1990.

adversely affected. But probably the most difficult blow was Kuwait's mass expulsion of Palestinian- Jordanian nationals. 300,000 people had returned to Jordan by the beginning of 1992.[34]

Jordan's total economic losses were estimated at $1.8 billion, according to a study carried out by the Overseas Development Institute (ODI) of Britain.[35] Mr. Salah the UN representative of Jordan, in addressing the closed meeting of the committee which was established by resolution 661, said that 'Jordan was committed to full implementation of the resolution, but no state should be asked to commit economic suicide.' He told the committee that promises alone do not help and the remedies offered to Jordan should be 'prompt, effective and complete.'[36] During the crisis, allegations were made several times that Jordan had continued to trade with Iraq and the allied forces later claimed that they had hit oil tankers travelling between Iraq and Jordan.[37] Jordan responded to these allegations by explaining the difficulties it faced and the reality of maintaining services for 150,000 refugees already in the country, the high rates

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[34] Eliyahu Kanovsky, *The Economic Consequences of the Persian Gulf War: Accelerating Opec's Demise,* The Washington Institute For Near East Policy, Policy Papers Number 30, Washington, DC. 1992, p. 68.

[35] The estimation included in a memorandum, *The Economic Impact of the Gulf Crisis on Third World Countries,* issued to the Foreign Affairs Select Committee by CAFOD, Christian Aid, CIIR, Oxfam, Save the Children Fund, and World Development Movement, Overseas Development Institute, London, March 1991.

[36] Security Council Committee established by resolution 661, 3rd meeting (closed) 27 August 1990.

[37] E. Lauterpacht and others, *The Kuwait Crisis Basic Documents,* Cambridge International Documents Series, Vol. 1, Cambridge Grotius Publications Limited 1990, pp. 245 - 256.

of insurance which were making its main exports, namely potash and phosphate, unprofitable and the lack of alternative sources of energy.[38]

For another neighbouring country, Iran, the application of sanctions against Iraq and the general effects of the crisis on oil prices was a boost for its economy. Iranian revenues from oil exports rose to $14.5 billion in 1991 compared with $9 billion in 1988, in response to the rise in oil prices.[39]

Conclusion

Scholarly discussion of sanctions impact

Discussions among scholars about how to make sanctions effective reflect varying arguments. For Kaempfer and Lowenberg, 'to make trade sanctions effective in producing substantial economic damage in the target country, the sanctions must be comprehensive in coverage (i.e., include most trade flows between the target and the rest of the world).'[40] Miroslav says that 'The assumption is often that the more comprehensive the action, the more intense

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[38] Memorandum explains the economic and financial impact on Jordan resulting from the imposition of restrictions on its economic relations with Iraq and Kuwait, in document S/AC.25/1990/CRP.3.

[39] *Petroleum Intelligence Weekly,* 8 April 1991, p. 10. The economic effects of the crises on Turkey were stated by Bruce Kuniholm: 'Turkey commitment to the coalition's cause came at substantial cost, both economic and political. Trukish financial losses from the war were difficult to calculate, but included lost trade with Iraq and Kuwait, lost tourism revenues, lost fees from transit trade, suspension on payment of Iraqi debts, lost fees for transit of Iraqi oil through the Turkish pipeline, suspended construction contracts, lost remittances from Turkish workers in Iraq and Kuwait, and increased oil prices.' Bruce R. Kuniholm, 'After the Gulf War: Turkey and the East' in Herbert H. Blumberg and Christopher C. French, eds. *The Persian Gulf War, Views from the Social and Behavioral Sciences,* University Press of America, New York, 1994, p. 456.

[40] William H. Kaempfer, and Anton D. Lowenberg, *International Economic Sanctions: A Public Choice Perspective,* Westview Press, Boulder and Oxford, 1992, p. 3.

the pressure, and the more likely the compliance.'[41] However, Miroslav and Wallensteen express an important reservation on this point: 'The more total is the present punishment, the more one's future capacity to apply such measures may be undermined ...Quite simply if almost all links are cut there is little left with which to inflict additional economic pain.'[42]

Many scholars and statesmen have observed that if sanctions against Iraq were not to succeed in bringing about compliance, it would be difficult to imagine any programme of economic sanctions attaining substantial success. In his speech to the NATO Council on 13 August 1990, James Baker, the US Secretary of State, stressed the importance of giving sanctions time to work, and subsequently giving the allies time to think about how to make them effective. In his view, if sanctions against Iraq were to fail the UN would suffer a mortal blow. The five-month period given for sanctions against Iraq to work before commencement of military operations is short compared with ten years or more allowed for sanctions against Rhodesia or South Africa.[43] However, despite the wide acceptance of this argument, there are still some scholars who believe that a lengthy period of sanctions makes them less effective. A good example is Peter Wallensteen who states 'Of course it could be argued that the impact would not be felt during the first year of sanctions, and that, if only the

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[41] Peter Wallensteen, 'Economic Sanctions: Ten Modern Cases and Three Important Lessons' in Nincic and Wallensteen, op. cit. note 24 p. 90.

[42] Miroslav Nincic and Peter Wallensteen, *Economic Coercion and Foreign Policy,* op. cit. note 20, p. 10.

[43] For analysis of Sanctions against Rhodesia and South Africa see Margaret Doxey, *International Sanctions in Contemporary Perspective,* Macmillan, London, 1987; Zacklin, Ralph, *The United Nations and Rhodesia: a study in international Law,* Praeger, New York,

sanctions continued over time, the impact would be greater. The relevant data suggest the opposite. The longer the sanctions are applied the more modest is their economic impact.'[44]

Another significant factor is the timing of the Security Council sanctions against an aggressor. If, for a long period, the international community uses the prospect of sanctions as a threat without imposing real penalties, the target country may be able to alter its trade routes and find alternative resources to those affected by sanctions. These anticipatory measures could moderate the impact of any subsequent sanctions on the target. In the case of Rhodesia, the white minority government benefited from the long period between the Unilateral Declaration of Independence and the real application of sanctions. In this sense, the case of Kuwait was unique in that the comprehensive mandatory sanctions against Iraq were imposed within five days of the invasion.

Impact of sanctions on Iraq

In a discussion of sanctions against Rhodesia Robin Renwick concluded that: 'The idea of an automatic correlation between economic deprivation and the loss of the political will to resist is, to say the least, questionable.' For Renwick, although sanctions are essentially punitive and although they can weaken the country to which they are applied, 'more ambitious claims should

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1974; M. S. Daoudi, and M. S. Dajani *Economic Sanctions: Ideal and Experience,* Routledge and Kegan Paul, London and Boston, 1983.

[44] Peter Wallensteen, *Economic Sanctions: Ten Modern Cases,* op. cit. note 24.

not be made for a sanctions policy'.[45] Renwick's two points are relevant to the discussion on sanctions against Iraq. Despite the comprehensive and mandatory nature of sanctions against Iraq and despite Iraqi suffering, it could be concluded that in the time allotted, sanctions failed to push Saddam Hussein out of Kuwait.

A definitive answer to the question raised after the Gulf war by scholars such as Hugh Miall[46] and Fred Halliday[47] of whether sanctions, if they were given more time, could have succeeded in securing the compliance of Iraq was not possible. However, those who opposed the use of force, before the outbreak of the war in the Gulf, argued that comprehensive economic measures would convince Saddam Hussein to withdraw from Kuwait. A memorandum presented to George Bush in October 1990 by eighty-one Democratic members of the Congress rejected the use of force and stated that 'UN sponsored embargo must be given every opportunity to work'.[48] Senator Sam Nunn, chairman of the Armed Service Committee, specifically called on the Administration to 'stick to sanctions – a couple of years if necessary'. However, those who supported the use of force were convinced that sanctions would not resolve the conflict. It is revealed that on 10 January 1991, CIA Director William Webster testified before the Congress arguing that 'even if

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[45] Robin Renwick, *Economic Sanctions,* Harvard University, Centre For International Affairs, Cambridge, 1981, p. 92.
[46] Hugh Miall, 'Could the Gulf Conflict have been settled Peacefully' in Oxford Research Group, *Decision Making in the Gulf: Lessons to be learned,* Current Decision Report no. 5, June 1991.
[47] Fred Halliday, 'The Gulf War 1990-1991 and the Study of International Relations' *Review of International Studies,* vol. 20, May 1994, pp. 115 - 117 and 119.
[48] Bush and Scowcroft, op. cit. note 7, pp. 389 and 417.

the sanctions continue to be enforced for another six or twelve months, economic hardship alone is unlikely to compel Saddam Hussein to retreat from Kuwait or cause regime-threatening popular discontent in Iraq.'[49]

The imposition of sanctions against Iraq for ten years after the invasion of Kuwait provided further evidence in support of the latter argument. However, the circumstances during the first five months of the crisis were different, and it is difficult to rule out the possibility of Iraqi compliance, if sanctions and political pressures were maintained for longer period. The same question will be discussed from a different perspective in Part IV of the thesis to see whether the measures taken against Iraq before 29 November 1990 had proved to be inadequate, as the Charter stipulates, and consequently justified the authorisation of military action against Iraq.

5- Authorisation of the use of force

Prior to the Iraqi invasion of Kuwait the use of force had rarely been authorised. It happened only twice previously. However, it was the first time, in the case of Kuwait, that Chapter VII of the Charter was explicitly invoked.[50] In 1950, during the Korean war, the Security Council made the first attempt to fulfil its responsibility towards the enforcement of peace. Between 25 June and 7 July 1950, the Council adopted three resolutions calling on North Korea to withdraw its forces to the 38th parallel, and empowered the unified command to

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[49] U.S. News, *Triumph without Victory, The Unreported History of the Persian Gulf War,* Times Books, New York, 1992, p. 207.

use the flag of the United Nations in the course of operations against North Korean forces.[51] The only factor that enabled the adoption of these resolutions was the absence of the Soviet Union.[52] In another incident in 1961, the peacekeeping operation in the Congo (ONUC) was authorised by the Security Council to use force as a last resort to prevent the spread of civil war.[53]

Sixteen weeks after the adoption by the Security Council of economic sanctions against Iraq on 6 August 1990, the Council met to adopt a resolution authorising the use of force to restore international peace and security in the Gulf area.[54] On 29 November 1990 twelve countries out of the fifteen members of the Security Council voted in favour of a resolution that

> [a]uthorises all member states co-operating with the government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above the foregoing resolutions, to use all necessary means to uphold and implement Security Council resolution 660 (1990) and all subsequent relevant resolutions, and to restore international peace and security in the area.[55]

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[50] Security Council resolution 660, 2 August 1990.
[51] Sydney Bailey 'The Korean Armistice' Macmillan, London, 1992, pp. 209 - 210.
[52] D. W. Bowett, *United Nations Forces,* Stevens and Sons, London, 1964.
[53] Rosalyn Higgins, *United Nations Peacekeeping,* Vol. 2. Oxford University Press, Oxford, 1970.
[54] The 10 non-permanent members of the Security Council during the period when the first 12 resolutions related to the situation between Iraq and Kuwait were adopted, were Canada, Colombia, Cote d'Ivoire, Cuba, Ethiopia, Finland, Malaysia, Rumania, Yemen, and Zaire.
[55] Security Council resolution 678, 29 November 1990.

The Security Council decided to allow Iraq one final opportunity, as a sign of good will, to withdraw from Kuwait and to comply with subsequent resolutions. The adoption of resolution 678 marked a shift from economic sanctions to military measures. It moved the agenda from the measures of Article 41 'not involving the use of force' to Article 42 where the Charter authorises the Security Council whenever it deems the response of the aggressor, to the non-military measures, as unsatisfactory 'to take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security'.

The enabling of resolution 678

Thirteen members of the Security Council including the five permanent members were represented by their Foreign Ministers in the meeting during which resolution 678 was adopted.[56] The Council rarely experienced such a presence of Foreign Ministers in the years before 1990 and that was apparently due to the importance of the drafted resolution under consideration.[57] James Baker the US Secretary of State and the president of the Security Council started the meeting by quoting from the speech of Haile Selassie the Ethiopian emperor to the League of Nations in 1936:

[56] Cote d'Ivoire and Yemen were represented by their permanent representatives to the United Nations.
[57] S/PV.2963, 29 November 1990.

> There is no precedent for a people being the victim of such injustice and of being at present threatened by abandonment to an aggressor. Also, there has never before been an example of any government proceeding with the systematic extermination of a nation by barbarous means in violation of the most solemn promises made to all the nations of the Earth that there should be no resort to a war of conquest and that there should not be used against innocent human beings terrible poison and harmful gases.

Selassie himself anticipated in his speech to the League of Nations: 'God and history will remember your judgement'.[58] It is worth noting that Harry Truman also referred to Ethiopia in his main speech after the invasion of South Korea.[59] James Baker's paraphrasing of the Ethiopian Emperor called to the attention of member states two significant points. First, the contrast of the situation in Kuwait to a clear case of conquer and subjugation of a Third World East African country by a Western colonial power.[60] Second, he purported to remind the Council of the impotency of the League of Nations and its inability to face such a clear act of aggression and to affirm that member states 'must not let the

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[58] Haile Selassie to the League of Nations, League of Nations Official Journal, Records of the 16th Ordinary Session of the Assembly, Special Supplement 151, Text of Debates, Part II, pp. 22 - 25, at p. 25.

[59] Harry S. Truman, *Memoirs by Harry S. Truman,* vol. II, Doubleday, New York, 1956, pp. 232 – 233.

[60] Ethiopia was a non-permanent member of the Security Council in November 1990 and voted for resolution 678.

United Nations go the way of the League of Nations.'[61] James Baker concluded by saying: 'If Iraq does not reverse its course peacefully, then other necessary measures, including the use of force should be authorised.'

It seems Baker had intentionally avoided mentioning the first attempt by the Security Council to authorise the use of force against North Korea in 1950, because that could have provoked a negative Russian or Chinese vote. The Russian foreign minister, Edward Shevardnadze, fully supported the adoption of resolution 678. However, Shevardnadze expressed his confidence that the international community would overcome the crisis peacefully: 'I repeat peacefully and in a political way ... and to end it on a note of hope for a better future for all of us.'[62]

Mr. Dumas, the foreign minister of France, as well as the Russian foreign minister stipulated at the same meeting that the Security Council should not introduce any action to extend the scope or nature of the sanctions adopted in its resolutions 661, 665 and 670, or any new measures regarding Iraq during the period from 29 November 1990 up to the date in paragraph 2 of resolution 678. Therefore, the position of France and the Soviet Union was a mixture of hope for peace, mainly motivated by their good relations with Iraq during the past years and intolerance of Iraq's provocative actions since the invasion.

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[61] For comparison of the competence of the League of Nations and the United Nations see Paul F. Diehl, *International Peacekeeping,* The Johns Hopkins University Press, Baltimore and London, 1993, pp. 20 - 26.

[62] The political reasons for the Soviet support for the US initiative were discussed in Ken Matthews, *The Gulf Conflict and International Relations,* Routledge, London and New York, 1993, pp. 79 - 82.

France was particularly anxious about its nationals in Baghdad and Kuwait who were taken hostage with other Western nationals.[63] The only permanent member which did not vote for the resolution was China.

The Chinese Government expressed its refusal to authorise the use of force which is implicitly contained in the draft of resolution 678, but it did not cast a negative vote because it supported, as the Chinese foreign minister explained, some other provisions of the resolution, namely the call on Iraq to fully comply with resolution 661 - which demanded the immediate withdrawal of Iraq from Kuwait - and the implementation of subsequent resolutions.[64] Cuba and Yemen, despite their agreement with China and other Security Council members on supporting the provisions of resolution 660, voted against resolution 678, in anticipation of a military confrontation on a large scale as a result of passing such a resolution, showing their reservation over the command of forces which would have nothing to do with the United Nations.[65]

Thus, the Chinese abstention gave rise to an old constitutional question about the legitimacy of the adoption of a resolution by the Security Council on non procedural matters when one or more of its permanent members is absent or abstaining.[66] The question is, should China's abstention have affected the legality of resolution 678? China itself did not claim that right and its behaviour

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[63] S/PV.2937, 18 August 1990, (Resolution 664); Jolyon Howorth, 'French Policy in the Conflict' in Alex Danchev and Dan Keohane, *International Perspectives on the Gulf Conflict, 1990-91,* Macmillan and St. Martin's Press, London and New York, 1994, pp. 175 – 200; 'Vladimir Nosenko, Soviet Policy in the Conflict' in Ibid. pp. 136 – 144.
[64] Op. cit. note 59.
[65] Op. cit. note 59.
[66] Sydney Bailey, *Voting In the Security Council,* Indiana University Press, Bloomington, 1969.

during the crisis suggested that China intended to permit the adoption of such a resolution by the Security Council.

Looking back to the Korean Crisis, the Soviet Union had absented itself from the meetings of the Security Council from 13 January to 30 July 1950, with no intention of hindering the passage of resolutions against North Korea. The Russians did not even directly relate their absence to the conflict in Korea, they rather objected to the representation of China at the Council. However, the Soviet Union continued to argue for the invalidity of resolutions 82, 83, and 84 on the assumption that they did not receive the concurring votes of the five permanent members.[67]

The role of the Military Staff Committee

During the Kuwait crisis the Military Staff Committee did not function and it was only referred to in paragraph 4 of resolution 665 concerning the co-ordination of the actions of the states with regard to the implementation of economic sanctions.

The Soviet Union, China, and France had repeatedly stressed the importance of reactivating the Military Staff Committee. However, the US Administration expressed its unwillingness to give the Command of forces to the Military Staff Committee.[68] The significance of reactivating the Committee was one of the main issues raised by Mikhail Gorbachev when he stated the

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[67] See Sydney Bailey, *How Wars End.* Vol. 2, Clarendon Press, Oxford, 1982.
[68] Excerpts from the statements made in Forty Seventh Session of the General Assembly on *An Agenda for Peace,* Report of the Secretary-General, October 1992, p. 47.

outlines of Soviet's new foreign policy in 1987.[69] From that time, the Soviet delegation to the UN insisted on establishing a UN Command to control its operations and showed readiness to make full use of the machinery of the Military Staff Committee. The Chinese have always been anxious not to allow any unilateral undertaking of UN forces command by the US. The Foreign Minister of China said that any authorisation of use of force against Iraq would simply lead to an initiation of war by some states against other member states.[70] His comments reflected China's opposition to the dominance and control of the United States over the presence of forces in the Gulf.

On the academic level, a Russian international lawyer, Nikolai Krylov, stated that the Military Staff Committee is intended to render assistance to the Security Council in all the questions pertaining to military needs of the Council for the purposes of peace maintenance, including 'preparation of plans for using military forces, exercising command responsibility, and undertaking strategic direction of the military forces available to the Security Council.' Furthermore, he was of the opinion that the functioning of this body could be improved if certain proposals were to be taken into consideration: The sessions of the Committee should be held on the level of the chiefs of General Staffs because the participation of relatively low-ranking military officials in its meetings has been one of the evident defects in the work of the Military Staff Committee. Krylov added that 'In order to manage the UN military forces more

[69] Financial Times, 15 October 1987.
[70] S/PV.2963, 29 November 1990.

effectively, each member of the Military Staff Committee could take command of the forces for rotating periods of not more than three months each.'[71]

An American international lawyer, David Scheffer, reacted to Krylov's views by arguing that the Charter is a flexible document and that its provisions on the issue of the command of UN forces may not necessarily mean that the Military Staff Committee should take command of all the United Nations military enforcement operations. 'Nikolai Krylov may be too optimistic in what he proposes for the Military Staff Committee...The Charter makes clear that the Committee - serves at the pleasure of the Security Council...In the three relevant articles - 45, 46, and 47 - the operative word (assistance) ... in the following sentence the Charter clarifies that, (Questions relating to the command of such forces shall be worked out subsequently).' Scheffer concluded by saying that 'The charter thus does not stipulate that the military command of a UN authorised enforcement action must be created within the Military Staff Committee. The Charter leaves the issue of operational command open for treatment on a case-by-case basis by the Security Council.'[72] The ideas put forward by Nikolai Kaylov and David Scheffer reflect to a large extent the opposing views of their two governments on the issue of the role and capacity of the Military Staff Committee.

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[71] Nikolai B. Krylov, 'International Peacekeeping and Enforcement Actions After the Cold War' in Lori Fisler Damrosch and David J. Scheffer, *Law and Force in the New International Order,* Westview Press, Boulder and Oxford, 1991, pp. 94 - 100.
[72] David J. Scheffer, 'Commentary on Collective Security' in Ibid.

The relation with the host state

When Rosalyn Higgins discussed the relation with the 'host state' in the case of Korea she stated that 'Although the UN was engaged in enforcement action against North Korea, with its main military command centre in Tokyo, it is none the less still reasonable for our purpose to designate the Republic of Korea as the ''host state''.'

Kuwait could not be designated, similarly to South Korea, as a host state at the time of deployment, as no part of the territory was free from the Iraqi occupation, despite the fact that allies' forces obtained the consent of the Government of Kuwait. However, Saudi Arabia could be considered as the main host state, upon its consent the US forces were present on its territory from the early days of the crisis. The uniqueness of the case of Kuwait created the exceptional situation of a third party becoming a major 'host state' although it was claimed that Saudi Arabia was itself under threat of Iraqi invasion, and therefore, Americans were there to defend the country.

The Allies' forces were deployed in the whole Gulf area and with the exception of Jordan, all neighbouring states and other states in the area provided facilities for the presence of the allies' forces. Syria although did not host foreign forces its own forces formed part of the allies' forces which fought against Iraq. In addition to the ground bases provided by states, the American warships were present on the high waters and on the shores of Gulf states. In the case of Kuwait it is more appropriate to talk about a 'host area' or a 'host

region' rather than a 'host state' although consent was obtained from different sovereign states.

All necessary means

The phrase 'to use all necessary means' could be considered as the most important provision of the twelve resolutions adopted by the Council before the outbreak of the Gulf war. In the present chapter the 'use of all necessary means' will be comprehensively explored to see how it developed through the practice of the UN and its significance for peace enforcement operations as a provision of comprehensive authorisation.

Resolution 678 did not explicitly refer to the use of force, however it authorised all member states to 'use all necessary means' to implement the Security Council resolutions. The expression 'all means' may include the use of military power as one of the optional measures, but the confusion arises from the word 'necessary' which could be understood as a precondition to the use of any means under resolution 678, including military force. However the issue of whether there were adequate reasons to justify the use of force was left for UN member states to decide upon, and no form or machinery was set up by the Security Council to facilitate the undertaking of such a task. In the case of Rhodesia, General Assembly resolution 2022 requested the government of the United Kingdom, in an attempt to restore peace and democracy, to take various measures including the suspension of the 1961 constitution and to call immediately a constitutional conference in which representatives of all political

parties would take part. Furthermore, the resolution called upon the United Kingdom to employ 'all necessary measures' including military force to implement the subsequent provisions. If the resolution of the General Assembly was to be implemented against the white minority government of Ian Smith, there could have been no difficulty in understanding the phrase 'all necessary means' because it was clearly interpreted within the context of the resolution to include the use of force. The support of the majority of African countries in the General Assembly for the rights of the black people in Rhodesia, helped in adopting such clear terms in resolution 2022.[73]

The phrase was also used in 1992 during the civil war in Somalia when the Security Council unanimously adopted a resolution authorising the use of 'all necessary means' and the sending of a military force led by the United States to protect the relief operations in Somalia.[74] However, the United States did not understand the sentence 'to establish as soon as possible a secure environment for humanitarian relief operations in Somalia' as a constraint. On the contrary it preferred to interpret the term as additional measures to the authority which was already secured by the phrase 'all necessary means.'

Again, in Bosnia, the undertaking of 'all necessary measures' was authorised by the Security Council.[75] However, this time the command of forces was led by European countries, namely Britain and France, which

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[73] Robin Renwick, op. cit. note 45, p. 89.
[74] Security Council resolution 794, 3 December 1992.
[75] Security Council resolution 770, 1992.

provided the majority of forces on the ground until 1995.[76] However, the British commander General Sir Michael Rose did not instruct his forces to the use of 'all necessary means' mandated by the Security Council. It was the second time that Britain showed unwillingness to mobilise the necessary measures as intended by the United Nations. For different reasons, Britain turned down a similar mandate in 1966 concerning the case of Rhodesia by refusing to use force to arrest oil tankers destined to Southern Rhodesia.[77] In the Bosnian case, until 1995, necessary means were reduced to the scope of the function and mandate of peacekeeping operations due to the lack of will and adequate means to enforce the peace. With the exception of a few incidents, the use of force by UNPROFOR was limited to the self-defence.

The UN ultimatums

The expression 'unless Iraq on or before 15 January 1991 fully implements ... the forgoing resolutions'[78] has no precedent in the history of the United Nations. It was the first time that the word ultimatum has come into the vocabulary used by the United Nations. A specific date was set, after which Iraq could face military action. The developments corroborated that it was a

[76] General Sir Michael Rose, the commander of forces, maintained close coordination with NATO's Headquarters and his ministry of defence in London, but his official reports on the performance of UNPROFOR went to the UN. By contrast, during the Korean crisis, the American commander of the UN forces, General MacArthur, reported directly to Washington, not to New York, and the instructions to the forces also came from the US Defence Department.

[77] Security Council resolution 221, 9 April 1966.

[78] Security Council resolution 678, 29 November 1990.

genuine ultimatum, for what was called by some critics the 'Third World War' started a few hours after the elapse of the deadline, involving over a million troops on the ground, armed with the most sophisticated machinery in the history of wars. In Bosnia, the Security Council was reluctant to act in accordance with the provisions of its resolution 770, which authorised the undertaking of necessary measures through regional organisations. The resolution was apparently referring to the Northern Atlantic Organisation (NATO) to act on behalf of the UN.[79] Although the Bosnian Serbs had repeatedly breached the UN decisions, NATO did not react until February 1994 when it issued an ultimatum for the Bosnian Serb forces to withdraw their heavy weapons from around the besieged town of Sarajevo. The ultimatum against the Bosnian Serbs was remarkably strict, short and limited in scope and time, as it was motivated by the gruesome attack on Sarajevo's market-place a few weeks earlier. Bosnian Serb forces were only allowed ten days to meet NATO's conditions. However, the possible consequences of non-compliance were clearly stated in the decision by the phrase 'or face air strikes.' So, if the Bosnian Serbs failed to comply with the NATO decision there was no reason to expect any action but limited air strikes. In another incident during the Bosnian Crisis the Security Council mobilised its authority to issue an ultimatum by giving the Bosnian Serbs until 7 March 1994 to lift their siege of Tuzla airport. Like NATO's ultimatum, the Security Council was precise and limited in its

[79] The issue of UN capacity to deal with wars in Eastern Europe is discussed in Adam Roberts, 'All the troubles of the world on its shoulders' *Independent,* 21 December 1992.

final call to the Bosnian Serbs to hand over the airport of Tuzla. However, these two ultimatums were limited in their scope and consequences.

In Korea 1950, the resolutions of the Security Council did not issue any ultimatum and the unified command carried out its military action a few days after the invasion of South Korea, without serving Kim Il-sung with further notice.

The uniqueness of the Security Council ultimatum against Iraq is two - fold: first, it was related to an unconditional total withdrawal of Iraqi forces from Kuwait. Second, the Council demanded the complete restoration of the situation hitherto prevailing and the return of the Iraqi contingents to their position before 2 August 1990. In this sense, the Iraqi ultimatum is the most comprehensive and precise the United Nations has ever issued. Furthermore, it is the only UN ultimatum that has been followed by military action. Nevertheless, the measuring of the periods allowed for the aggressors in these cases suggests that the time given to Iraq to comply with the Security Council resolutions was considerably longer than the time allowed in any other case.

6- How sanctions end

The provisions of Chapter VII did not refer to the termination of sanctions or explain when the measures of Article 41 could be terminated. This led to different experiences in the application of sanctions. A sharp contrast could be made in this respect between Iraq in 1990, and Korea in 1950. In the case of Iraq sanctions were imposed immediately after the invasion of Kuwait and

continued more than eight years after the end of the Gulf war. In Korea, there were no sanctions imposed before, during, or after the war, and the whole matter was removed from the agenda of the United Nations immediately after the end of the war.

The severe consequences of sanctions on the people of Iraq raised questions about the mechanism of sanctions termination and the elastic nature of conditions for the lifting of sanctions. However, during the past years, the Security Council has exercised its authority to remove, suspend or loosen the grip of sanctions on target states. It did so in Zimbabwe in 1979,[80] South Africa in 1994, and Haiti in 1994; the most recent example of the total lifting of sanctions is the former Yugoslavia: the Security Council ended the arms embargo against all the former Yugoslav republics in June 1996 and lifted the trade sanctions against Serb-led Yugoslavia in October 1996. In the case of Haiti the Security Council promised to suspend the oil and arms embargo if the Secretary-General reported to the Council that the parties were willing to comply with the New York Pact. The Security Council adopted resolution 861 of 27 August 1993 which declared the suspension, but 47 days later the Secretary-General gave a report calling attention to the 'repeatedly observed lack of will on the part of the command of the Armed Forces of Haiti to facilitate the deployment and operation of UNMIH'. On 18 October 1993 the Council re-imposed the embargo against Haiti.

[80] Security Council resolution 460, 21 December 1979.

In December 1996, Iraq resumed oil exports through the Turkish port of Dortyol more than six years after mandatory sanctions were first imposed against Iraq in August 1990. The Security Council agreed on a plan which allows Iraq to export $2bn worth of oil every six months. According to the UN-monitored scheme, this income should be spent on food and medicine, compensation for the victims of the invasion of Kuwait and the UN operations in Iraq and Kuwait. Although the 'Oil for Food' deal is a significant step, it only represents a partial repeal of the comprehensive sanctions regime imposed on Iraq.[81] Sanctions against the territory of Kuwait under the Iraqi occupation were automatically lifted after the end of the Gulf war, and the Council did not need to make a formal announcement of this termination. As the application of sanctions is valid until an aggressor has complied with the Council's conditions, a victim state need no confirmation of being freed from the restraints of sanctions since the conflict is resolved. However, this was not the case with Bosnia, as the arms embargo was applied against the Serbs and Bosnians intended to prevent the escalation of war, the lifting of sanctions against the victim state, namely Bosnia, required an explicit Security Council resolution.[82]

On 24 February 1998 Tony Blair, the British Prime Minister, stated that

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[81] It is worth noting that in the case of Korea in 1950, no mandatory economic sanctions were employed, and six months after the Security Council started to deal with the crisis the whole issue was lifted from the agenda of the Council. Resolution 90 of 31 January 1951, which presented the shortest text of a resolution ever adopted by the Security Council, reads: 'The Security Council resolves to remove the item 'Complaint of aggression upon the Republic of Korea' from the list of which the Council is seized'. Adopted unanimously.

[82] Security Council resolution 1021, 22 November 1995.

> I have made clear that when Saddam Hussein has complied fully with the Security Council resolutions, the UN inspectors have completed the disarmament stage of the work, and the threat from his mass destruction has gone, we can consider the lifting of sanctions. If Saddam had not blocked the implementation of UNSCOM's work so systematically, this could have happened long ago. The long-suffering Iraqi people deserve our sympathy and our help. Our quarrel was never with them.[83]

Blair repeated the same conditions stated in resolution 687 of 1991 and his speech showed no change or progress in the process of terminating sanctions against Iraq. In practice, the lifting of sanctions is not an easy decision. It is always subject to the approval of the five permanent members and at least four non-permanent members of the Council. It could take place following major transformations in the policies of the target country such as the adoption of a new political system, leading perhaps to a new constitution or some other significant change leading to the signing of peace accords and the cessation of hostilities between warring factions. However, consideration of humanitarian needs may allow for exceptions or partial suspensions in some cases.

The decision of the Security Council to suspend sanctions against Haiti before the deployment of the United Nations Mission in Haiti (UNMIH) had

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[83] A statement by Tony Blair, the British Prime Minister, before the House of Commons on 24 February 1998.

proved to be premature, and it did not last long before the Council decided to re-impose the course of sanctions. Learning from this experience and due to the seriousness of the case of Iraq, when the Council decided in April 1995 to make partial suspension of the embargo against Iraqi oil exports, it set that in very cautious terms.[84] The comprehensive resolution which is consisted of 40 paragraphs, sub-paragraphs and preambles, specified the amount, the route, the distribution of humanitarian imports, the route for the exporting of Iraqi oil and the pipelines it should go through, and the details of the administration of the deal. The Iraqi oil should be exported from Mina al-Bakr oil terminal, and from Iraq to Turkey through the Kirkuk-Yumurtalik pipeline with the assistance of independent inspection agency appointed by the Secretary-General. The inspection agency should keep the Security Council Committee informed of the amount of petroleum exported from Iraq. The Secretary-General is instructed to establish an escrow account for the return of the Iraqi oil purchases. The funds in the escrow account, which is $1 billion every 3 month, will be used to meet the following needs:

a) To finance the export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential needs, as referred to in paragraph 20 of resolution 687 (1991) provided that:
(i) exports are requested by Iraq, (ii) equitable distribution, (iii) authenticated confirmation that food arrived in Iraq.

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[84] Security Council resolution 986, 14 April 1995.

b) Provide between 130 to 150 million dollars every 90 days for United Nations Inter-Agency Humanitarian programme to guarantee the humanitarian supplies for the Governorates of Dihouk, Arabil and Suleimaniyeh.

c) Transfer a percentage to the compensation fund according to paragraph 2 of resolution 705 of 15 August 1991.

d) To meet the costs of the independent inspection agents.

e) The costs of the Special Commission. Resolution 687 (1991).

f) Expenses of the export outside Iraq.

g) $10 m. every three month for the payments envisaged under paragraph 6 of resolution 788 of 2 October 1992.

The provisions of resolution 986 intended to provide humanitarian supplies to the people of Iraq, but they also entailed a principal contemplation that Iraq will continue to pay from its own resources to cover the economic consequences of the invasion of Kuwait. Iraq should also meet the administration costs of the bodies established by the UN to monitor the appropriation of the Oil for Food'' deal. It is significant that Iraq should also pay for the peacekeeping operation deployed on its southern border.

The reactions of different countries to the 'Oil for Food' deal were described by Boutros Ghali in 1999 as follows

> Among the five permanent member states on the Security Council, China, France, and Russia were disposed to compromise, each for its

> own reasons: the desire to sell goods to Iraq, the desire to by oil, the desire that Iraq be enabled to pay what it owed them. In contrast, the United States and Britain were suspicious of Saddam but willing to see if 'Oil for Food' could work. The Arab states, notably Kuwait and Saudi Arabia were deeply hostile to any relaxation of sanctions but would never say so openly.[85]

Therefore, the 'Oil for Food' deal represented partial lifting of the oil embargo against Iraq which had been imposed by resolution 661 of August 1990. The deal was initiated by the Secretariat of the UN and adopted by the Security Council, however the approval of the United States and Britain was conditional and resulted in unprecedented restraints on the implementation of the agreement. When the work of the UN Special Commission (UNSCOM) started, Ambassador Rolf Ekeus, head of UNSCOM, promised the lifting of sanctions if Iraq was to co-operate with the Commission. Boutros Ghali blamed these promises for the delay in the implementation of the 'Oil for Food' deal.[86] However, with the disastrous suspension of the work of UNSCOM which led to the outbreak of Desert Fox operation in January 1999, the 'Oil for Food' remains the only prospect for the suspension of sanctions against Iraq.

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[85] Boutros Boutros-Ghali, *Unvanquished, A U.S. – U.N. Saga,* I. B. Tauris, London and New York, 1999, p. 210.
[86] Ibid.

Part III

Chapter 4

The role of the United States in peace enforcement operations

The study of peace enforcement as a comprehensive and integral UN process for the resolution of serious conflicts has been increasingly challenged by the influence of the great powers. It is argued that most of the enforcement actions authorised by the Security Council were instigated by the United States. This argument is very common in the literature about the Korean war in 1950 and Kuwait crisis in 1990-91. During these crises the following questions are frequently asked: Is the enforcement action a UN or US action? Is the relation between the UN and US based on co-operation or exploitation? Can a UN which is dependent on the leadership of the US achieve the objectives of collective security? This chapter argues that the post-Cold War period poses a new challenge to peace enforcement due to the dominance of one great power in the world with incomparable capabilities. However, the reliance of the UN on the capabilities of the US in many cases represents an attempt to find an easy and quick way to reverse aggressive actions rather than representing the only viable option.

The chapter attempts to assess the relationship between the UN and the US and the effect of this relation on the UN scheme for peace enforcement. This assessment will be carried out in two parts. The first part provides a brief review of the history of relations between the UN and the US. Then it pursues a conceptual analysis of the ideas of US scholars and practitioners, distinguishing between isolationist and internationalist thinking towards the UN. The second part examines the relationship in practice. The Kuwait crisis will be used as an example for testing the influence of the US on the role of the Security Council in the area of peace enforcement, however, a continuous contrast with other cases is maintained through out the chapter.

1- The United States and the United Nations

Historical background

The invasion of Kuwait took place after decades of stagnation and very little co-operation between the US and UN, especially in the area of international peace and security.[1] The outcomes of US attempts to utilise the UN during the Cold War were mostly discouraging for US policy makers. To identify the reasons that led to the creation of an atmosphere of suspicion and mistrust

[1] Robert Gregg observed that: 'In fact, By invading Kuwait in August of 1990, Saddam Hussein had provided a dramatic and unexpected impetus to the further improvement of relations between the United States and the United Nations and to the reemergence of the UN as a factor to be reckoned within the conduct of world affairs.' Gregg W. Robert, *About face? The United States and the United Nations.* Lynne Rienner Publishers, Boulder and London, 1993, p. 104.

among Americans towards the UN in the decades before 1990, two major elements need to be pointed out. First, the rivalry with the Soviet Union frustrated many of the United States' proposals and draft resolutions in the Security Council. During the American hostage crisis in Tehran, despite the support of member states to the United States claims and the ruling of the International Court of Justice (ICJ)[2] condemning the action, the United States failed to secure the adoption by the Security Council of financial measures against Iran.[3] Such failure in this incident and similar situations was compound by attempts to adopt resolutions condemning unilateral actions by the US against Vietnam, Grenada, and Panama, and the imposition of measures against its allies in Israel, South Africa, and elsewhere. The only situation during which the United States was able to push forward proposed drafts for an authorised enforcement action was the Korean crisis in 1950, when the Soviet Union absented itself from the Security Council meetings in protest against the representation of China in the Council.[4] During the Cold War the United States tended to act unilaterally because, in the view of Harold Jacobson '[i]n contrast to the original U.S. vision of the post-war order, the UN's actual role in U.S. efforts to gain security was greatly diminished.'[5]

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[2] ICJ Report, *Order of International Court of Justice,* 15 December 1979.
[3] Draft resolution (S/13735) Security Council meeting 2191, 13 January 1980.
[4] Security Council resolutions 81, 82, and 83 (1950).
[5] Harold K. Jacobson, 'U.S. Military Security Policies: The Role and influence of IGOs' in Margaret P. Karns and Karen A. Mingst, *The United States and multilateral institutions:*

Second, the influx of newly independent countries and the wide expansion of the United Nations membership, from 50 in 1945 to 113 in 1964, created a new majority in the UN consisted of African and Asian countries. Despite the enthusiasm of post-war US foreign policy makers for de-colonisation, they did not seem to have expected or wanted the rapid accommodation of many new members by the United Nations, in a relatively short period. The African and Asian states constituted a majority in the General Assembly which remained, as a working body, generally more effective than the Security Council. Evan Luard states that 'the increasing size of the Assembly, as well as the change in its composition (in which Afro Asian members came to hold two-thirds of the votes) meant that it came to be thought a less suitable instrument for use in such situations, by the US as much as by the Soviet Union.'[6] However, Luard regarded this as one of the reasons which 'encouraged the restoration of the Council's supremacy in security questions.'[7]

The new majority emphasised different diplomatic characteristics and worked for its own priorities which largely conflicted with those of the United States. For African and Asian developing countries, the highest priority was sustainable economic development. These new emphases collided with the

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Patterns of changing instrumentality and influence, Routledge, London and New York, 1992, p. 28.

[6] Evan Luard, *The United Nations, Hwo it Works and What it Does,* Macmillan, London, 2nd edition 1994, p. 53; see also Clive Archer, *International Organisations,* Routledge, London and New York, 2nd edition 1995, pp. 136 – 137.

[7] Ibid.

supreme goals of the US and Western countries who had planned for a United Nations primarily concerned with issues of international security. Accordingly, 'U.S. security policy had to be redefined; the UN could no longer be the centrepiece.'[8] William R. Frye argued in 1960 that

> The Afro-Asians, still regard intervention in 'Cold War' issues as taking sides in a power struggle from which they prefer to remain aloof. They are ready to help prevent the Cold War from spreading to new areas, but are not yet ready to step in and help solve existing Cold War problems.[9]

A review of the political spheres in the UN during the Cold War shows a constant US - Third World discrepancy over such issues as southern African developments and the Middle-East conflict.

The effect of changes in Russia's UN policy

Russian foreign policy makers started to express new optimism about the role of the United Nations from the mid-1980s. However, their hopes were not motivated this time by an old Cold War desire to dominate the United Nations

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[8] Harold Jacobson, op. cit. note 5, p. 26.
[9] William R. Frye, 'Afro-Asian block: centre stage at UN' *Foreign Policy Bulletin,* vol. XL, no. 3, 15 October 1960, p. 17.

through an anti- imperialist majority, but through co-operation with the major western powers. Mikhail Gorbachev stated in 1987 that the UN should play a central role in world politics.[10] This declaration was followed by several Soviet proposals to make the UN more effective in the control of conflicts, to improve the capability of UN bodies, and to promote economic and humanitarian efforts.[11] 'Whatever the goal and merit of each of these new Soviet proposals' one scholar argued 'they present an opportunity for both the United Nations and the United States to close a particularly unproductive chapter in post war history.'[12] The readiness of Moscow to make the UN stronger and to reactivate its machinery for peace maintenance was one of the clearest early signs of the change in the Soviet Union's foreign policy.[13] Moscow affirmed these changes by supporting the establishment of UN military missions, including the observance of the Red Army's withdrawal from Afghanistan, helping to secure the withdrawal of Cuban forces from Angola, supporting the Transitional Assistance Group in Namibia, and

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[10] Mikhail Gorbachev, 'Reality and the guarantee of world security' *Pravda*, 17 September 1987.

[11] Richard A. Falkenrath, Jr. and Edmund Piasecki, 'Perestroika at the United Nations, A Summary of Soviet Proposals and Positions' in Robert Jervis and Seweryn Bialer, eds. *Soviet American relations after the Cold War,* Duke University Press, Duharm and London, 1991, pp 218 - 223.

[12] Toby Trister Gati, 'The UN rediscovered: Soviet and American policy in the United Nations of the 1990s' in Robert Jervis and Seweryn Bialer, eds. *Soviet American relations after the Cold War,* Duke University Press, Duharm and London, 1991, p. 197.

[13] Useful analysis of early Soviet attitude towards the United Nations is found in Rupert Emerson and Inis L. Claude, 'The Soviet Union and the United Nations: An Essay in Interpretation' *International Organisation,* vol. vi, no. 1, February 1952, pp. 1 – 26.

persuading Cambodia and Vietnam to negotiate a peaceful settlement.[14] Hitherto, changes in Soviet policy towards the UN and its call for a revitalised UN with a central role in world politics and global security were cautiously received by US foreign policy makers. Although, the increasing Soviet engagement in UN efforts to resolve conflicts was emphatically evident, it was not until 1990 that the US appeared to be satisfied with new Soviet sobriety, especially with relation to the use of veto.

The US attitude towards the UN

Conceptual approach

The American attitude towards the UN was dominated by the consideration of the viability of the UN as a tool for serving US foreign policy goals and as a means for restoring and maintaining international peace and security. Two different approaches can be pointed out in the assessment of scholarly debate in this area. The first approach is a normative prescriptive one, which tends to discuss the challenges facing the United Nations from within its system. It seeks to find ways of improving the services of the United Nations through reform schemes, it addresses problems entailed in the UN system, provides analysis of empirical issues related to UN practice, and responds to questions

[14] Thomas G. Weiss and Meryl A. Kessler, 'Mosco's U.N. Policy' in Andrei G. Bochkarev, and Don L. Mansfield, eds. *The United States and the USSR in a Changing World,* Westview Press, Boulder, 1992, p. 188.

of co-operation among member states. The second approach is fundamentally critical of the UN. It questions the solvency of the organisation and the very reason for its existence. In such a perspective, the world is assumed to function without the UN and the UN is, ostensibly, irrelevant in discussions on global security issues. These two approaches could be related to debates among classical schools of International Relations; between the realists who dispute the very existence of a global will or common global interests, and the idealists who believe in 'collectivity'. Most significant to the present discussion are the opposing ideas of Hobbesians and Kantians on issues of international society, world order, and the possibility of preserving international peace over sustainable periods.[15] Some writers indicated the plausibility of having an American approach which accepts global management as a tool of US foreign policy and provide answers for isolationists' concerns. According to Patrick Morgan

> The United States seems to have arrived at a working compromise. A neoliberal rhetorical posture is being combined with a neorealist concern about national capabilities, while both are augmented by a neoisolationist response to any regional situation that seems likely to involve a costly and difficult intervention. This fits the US response to

[15] Hedley Bull, *The Anarchical Society, A Study of Order in World Politics,* Macmillan, London, 2nd edition 1995, pp. 23 – 26; Fred Halliday, *Rethinking International Relations,*

> Bosnia, the eventual response to Somalia, much of the response to Haiti, and the Clinton decision on China and human rights.[16]

The need for a sort of combination was also asserted by Henry Kissinger in 1994:

> In travelling along the road to world order for the third time in the modern era, American idealism remains as essential as ever perhaps even more so. But in the new world order ... traditional American idealism must combine with a thoughtful assessment of contemporary realities to bring about a usable definition of American interests.[17]

Tendency to combine between the ideal of managing world order collectively and practical realities acknowledges the importance of multilateralism which should be flexibly utilised to secure American interests. It also reflects the inclination to accommodate hostile isolationist views.[18] This imperative has been well established by Keohane and Nye who state: 'The United States must support international institutions that facilitate decentralised enforcement of

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Macmillan, London, 1994, pp. 8, 98 –99.

[16] Morgan M. Patrick, 'The United States' in Kolodeziej A. Edward and Kanet E. Roger, *Coping with conflict after the Cold War,* eds. The Johns Hopkins University Press, Baltimore and London, 1996, p. 42.

[17] Henry Kissinger, *Diplomacy,* Simon and Schuster, New York, 1994, p. 834.

rules without naively believing that enforcement will be automatic or easy.' They add 'Such a combination of institutional strategy and tactical flexibility could be simultaneously visionary and realistic. It would be opportunistic in the best sense: ready to seize opportunities provided by crises to make regimes more consistent with America's interest and values. It is a viable alternative to recurring fantasies of global unilateralism.'[19]

Although, there is a similarity between this and debates in classical IR theories that could help understand the US attitude towards the UN and multilateral approaches, these contemporary discussions do not necessarily reflect specific characteristics of traditional schools. Furthermore, most of the studies in the field do not claim a linkage with these theories and the distinction between two types of studies or scholars according to the above classification is not always possible. Nevertheless, the existence of two main streams in the process of forging American's UN policy is apparent. They range from those who provide the US Administration with encouraging prospects for the exploitation of the UN, to sceptics who regard the mobilisation of the UN, in most cases, as a waste of time and resources. However, a 'principled pragmatism' as a US foreign policy approach towards

[18] Martin Walker, 'A New American Isolationism?' *International Journal,* vol. 52, no.3, Summer 1997, pp. 394, 398, 402 – 404, 409.
[19] Robert O. Keohane, and Joseph S. Nye, Jr. 'Two cheers for multilateralism' *Foreign Policy,* no. 60, fall 1985, p.167.

the UN is proposed to serve as the 'best counsel' for the achievement of American foreign interests.[20]

Reasoning the embrace

American scholars and practitioners who support the use of the UN machinery in foreign policy, believe that it is in the interest of America to act within a multilateral framework. They mostly encourage the US Administration to resort to the United Nations mechanism, to seek authorisation from the UN when it is involved or intends to be involved in international conflicts and to refrain from unilateral actions, to participate in UN operations and to provide sufficient financial support for its missions. This attitude bases itself on strategic factors. Historically, the United States made strenuous efforts and provided substantial support for the establishment of the United Nations. During the wartime conferences and pre-negotiation in Tehran, Dumbarton Oaks, Yalta, and San Francisco, the United States expressed willingness, provided various diplomatic initiatives, drafted important proposals, and secured considerable portions of the necessary funds for the creation of the United Nations. The United States has remained a permanent figure in the United Nations for a long time and has offered its leadership for the

[20] James F. Leonard, 'US Policy Toward the United Nations' in Roger A. Coate, ed. *US policy and the future of the United Nations,* The Twentieth Century Fund Press, New York, 1994, p. 219.

organisation during major events and through sensitive periods in the past five decades.

Robert Strausz-Hupe claims: 'It is no exaggeration to say that Americans, of all peoples, had wanted the United Nations most, had thought and debated about it most, and had contributed in ideas, diplomacy and money to the finished product than anyone else.'[21] For this group of American Scholars and strategists, to isolate the US from UN activities and to tend to act out of its framework is a denial of the US historical efforts in the establishment of the UN.[22]

2- The role of the United States in the Kuwait crisis

The US attitude to the crisis

'When Saddam Hussein invaded Kuwait, it was the United States that galvanised the UN Security Council to act and then mobilised the successful coalition on the battlefield.' George Bush 5 January 1993.

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[21] Robert Strausz-Hupe, *Introduction*, in Gross, Franz B. and others, eds.*The United States and the United Nations,* University of Oklahoma Press, Norman, 1964, p. 7; H. G. Nicholas, a British scholar, at the twentieth anniversary of the UN acknowledged that: 'American support, both official and private, for the UN has been strong and, in the main, consistent over the twenty years since San Francisco. That the organisation exists and functions at all is due more to the United States than to any single nation.' H. G. Nicholas, *The United Nations in Crisis,* Chatham House: International Affairs, July 1965, p. 443.

[22] Reference to the influence of American scholars on US foreign policy making is supported by the fact that most of the scholars referred to in this chapter have assumed official positions mostly as advisers on international and security affairs.

On 2 August 1990, United Nations officials were informed by the United States Administration about the Iraqi invasion of Kuwait. A joint call for an urgent Security Council meeting was issued by Kuwait and the US, a request which culminated into the adoption of resolution 660, calling for an unconditional withdrawal of Iraqi forces from Kuwait. The United States had repeatedly confirmed its firm stance against the invasion of Kuwait and promised to 'stand shoulder to shoulder with Kuwait'. In carrying out this task, as well as other objectives of its own foreign policy in the crisis, the United States sought co-operation with members of the Security Council for the passing of necessary resolutions and securing international legitimacy for actions against Iraq. However, the United States had taken economic and military measures and performed diplomatic manoeuvres not under the auspices of the Security Council.[23]

The immediate resort by the Administration to the machinery of the Security Council and willingness to use the Council as a site for decision making in a major international crisis over a sustained period was unparalleled in the history of the United States. The administration was confident that the occupation of Kuwait represented a clear case of aggression to be considered by the Security Council and the international changes would permit the

[23] These include the US freezing of Iraqi and Kuwaiti assets before the adoption of SC resolution 661, the early deployment of US forces to the area, and diplomatic tours of US envoys.

adoption of effective measures. The move to condemn Iraq and to call for the withdrawal of Iraqi forces was unlikely either to be blocked by the negative vote of a permanent member or to fail to secure the votes of nine members out of the fifteen members of the Council. This was mainly due to the new atmospheres in the Security Council created by the end of the Cold War and the subsequent Soviet's willingness to cooperate with the United States.

This part of the study argues that during the Kuwait crisis, the United States administration acted simultaneously in multilateral and unilateral forms and in many instances, bilateral negotiations and deals took place between the administration and different states. The reason for such a comprehensive approach by the Bush Administration to the course of events in 1990-91 was the determination of the United States to reverse the Iraqi invasion through the exploitation of different means and methods and its readiness to explore various options to combat the aggression.

Although, the United States was able to act multilaterally and bilaterally with reasonable international consent, the unilateral route proved problematic. During the first months of the crisis, the US Administration had purported to reduce the risks of putting the matter into the hands of the Security Council, which could have restrained its ability to manoeuvre in a unilateral manner. The text of resolution 661 affirmed the right of individual states or a group of states to act in defence of the invaded country, within the

context of Chapter VII.[24] Article 51 stipulates that states should refrain from acting individually, since the Council has taken measures commensurate with the gravity of the situation. Another condition contemplated by Chapter VII provisions is the immediate reporting of measures taken by any state to implement the Council resolutions. In the second formal meeting of the Security Council on 9 August 1990, Mr. Pickering, the representative of the United States, while talking in support of resolution 662, reported to the Council military preparations already conducted by his government in the Gulf area. He said:

> For our part, at the request of the governments in the region, the United States has increased its presence in the area. We are in the course of informing this Council officially by appropriate letter of our action taken under Article 51 of the Charter. As President Bush yesterday said, this is entirely defensive in purpose, to help protect Saudi Arabia, and is taken under Article 51 of the Charter and indeed in consistency with Article 41 and resolution 661 (1990).[25]

[24] Security Council resolution 661, 6 August 1990.
[25] E. Lauterpacht and others *The Kuwait crisis: basic documents,* Cambridge International Documents Series, Vol. 1, Cambridge Grotius Publications, 1990, pp. 245-256.

Mr. Lozinsky, the representative of the Soviet Union at the Security Council during the Kuwait crisis, did not accept the unilateral military moves pursued by the United States in the area. He responded to Mr. Pickering's statement at the same meeting of the Council by saying: 'We wish to remind everyone once again that the Soviet Union is against reliance on force and against unilateral decisions. ... We are prepared to undertake consultations immediately in the Security Council's Military Staff Committee, which under the Charter of the United Nations, can perform very important functions.'[26]

In the years before the Kuwait crisis, the United States had heavily relied on Article 51, in claiming legitimacy for its interventions in countries like Grenada in 1983 and Panama in 1989. The advocates of its actions adopted a wide interpretation for the provisions of Article 51, a justification which was rejected by the International Court of Justice in the case of Nicaragua. Although the Kuwait crisis was different from the above cases, the United States still tended to put more emphasis, during the first weeks of the crises, on Article 51 to justify the early presence of American forces in the Gulf area.

The following discussion adopts a special analytical approach to explain the role of the US in the crisis and to assess the relationship between UN authority and American control and leadership. The subjects of this

[26] Ibid.

analysis are the military deployment and the campaign to meet the different costs of the crisis. First, the military deployment in the region will be evaluated on three levels according to the roles assigned to the forces on different stages and the actual conduct of power during these periods. Second, the extent to which the UN system for the maintenance of costs of international crisis has been utilised will be assessed in contrast to the fund-raising system established by the US Administration during the Kuwait crisis. The examination of the issues of forces and costs as the most two crucial elements of the crisis will explain the nature of relationship between the US and UN and the influence of the US on peace enforcement operations.

US military deployment

The American military deployment in the area started from day one of the crisis. Instructions were simultaneously issued to the USS *Eisenhower* carrier to move east in the Mediterranean, and the USS *Independence* carrier to move north from the Indian Ocean towards the Persian Gulf. However, in terms of military planing and actual preparations, the pre confrontation stage was evident on both Iraqi and American sides even before the invasion of Kuwait. On the one hand, In the two weeks before 2 August 1990, the Iraqi build-up of forces on its borders with Kuwait was apparently suggesting the plausibility of

a military assault.[27] On the other hand, in military and strategic terms, Iraq was defined by US strategists as an element of possible de-stabilisation in the Gulf area. Plans were designed and discussed at the military level a few months before the invasion of Kuwait on how US forces could respond to attacks on Gulf states. It was revealed by military sources that a plan called 1002-90 was forged before the invasion in anticipation of US confrontation with Iraq.[28] When Iraq invaded Kuwait in August 1990, Plan 1002-90 served as a starting point for operational planning for US forces. The US Central Command (CENTCOM) in Florida started airlifts and sealifts of forces and equipment to the Gulf during the first week of the crisis.

However, America was not alone and the early sending of US contingents to Saudi Arabia should not be interpreted as the embarking of a single state in the battlefield, since many states had decided to send troops. Their contributions ranged from air fighters and tanks to ambulances and drinking water. Britain was almost as swift and determined as the US in providing forces to combat Iraqi forces and resist its advance in the area. Sir Crispin Tickell, the UK ambassador to the UN during the crisis stated clearly

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[27] Anthony Parsons stressed the need for an active pre-emptive diplomacy and questioned the role of the permanent members before the invasion of Kuwait. Parsons observed: 'For a month before the Iraqi invasion, it was obvious that there was a risk of aggression. The permanent members, with their intelligence capabilities must have known better or at least to have had strong suspicions.'

[28] Lawrence Freedman and Efraim Karsh, *The Gulf Conflict, 1990-1991, Diplomacy and War in the New World Order,* Faber and Faber, London and Boston, 2nd edition 1994, p. 85; U.S. News and World Report, *Triumph without Victory: The Unreported History of the Persian Gulf War,* Random House, New York and Toronto, 1992, p. 51.

that 'at the request of the government of Saudi Arabia, my government has agreed to contribute forces to multinational efforts for the collective defence of the territory of Saudi Arabia and other threatened states in the area.'[29] Mr. Tickell explained to the Security Council the legal grounds in the British law which allow his government to undertake such a decision. The political grounds were set out earlier by Margaret Thatcher in Aspen on 5 August when she affirmed that the Iraqi invasion should not be allowed to succeed: 'Iraq's invasion of Kuwait defies every principle for which the United Nations stands. If we let it succeed, no small country can ever feel safe again. The law of jungle would take over from the rule of law.'[30] It was the first emphatic statement about the invasion of Kuwait to be declared by a western state, including the US.

States from different parts of the world also offered forces. King Hassan of Morocco offered to send troops to Saudi Arabia, and on 6 August, King Fahd accepted the offer.[31] On 10 August the League of Arab States asked its members to contribute forces for the defence of Saudi Arabia.[32] However, the United States had urged most of these countries to send forces, though their participation was rather symbolic and the US remained the major

[29] E. Lauterpacht and others. 1990, note 13.
[30] Extracts from a speech given by Mrs Thatcher to the Aspen Institute on Sunday 5 August 1990, *New York Times,* 6 August 1990.
[31] *Independent,* 7 August 1990.
[32] *Independent,* 11 August 1990.

contributor with an incomparable presence in the Gulf. Meanwhile, the military presence in the area was gradually taking the shape of an international force, led by the United States.

Functions of power

From an international law perspective the problem entailed in the issue of early military presence in the Gulf was whether the United States and other countries were legally allowed to deploy forces to the area even before the Security Council had adopted any military measures. Such an approach would question the validity of legal arguments raised by the United States and the United Kingdom which relied on the right of collective self defence. However, the present discussion concentrates on the analyses of political and military aspects to explore the functions of power and the actual roles of force during the crisis. The task of defining the functions of power had been eclipsed by divergent and confusing political and military agenda of contributing countries.

In this respect, three main roles will be pointed out to show the different tasks assigned to them over different stages of the then developing crisis. The first role was initiated by the anticipation of a possible attack by Iraqi forces on Saudi Arabia and the necessity of early movement to show the

[32] *Independent,* 11 August 1990.

unacceptability of the Iraqi invasion of Kuwait. This role remained the main feature of the military presence in the Gulf from 2 to 25 August 1990. Hitherto the Security Council had neither mandated these forces with any purposes nor officially recognised their deployment. In the four resolutions, adopted by the Council before 25 August, there was no reference to these forces. President Bush described the role of forces, a few days after the invasion, as 'wholly defensive ... They will not initiate hostilities, but they will defend themselves, the Kingdom of Saudi Arabia and other friends in the Gulf.'[33] Military planers used the rhetoric 'Desert Shield' and continued to call it so until the outbreak of the war in January 1991. However in the period before that, despite its misgivings, the term 'Desert Shield' seems compatible with the 'defensive' role. The use of the military term 'Desert Shield' has obscured the role of the then existing forces in the area, especially after 25 August. A viable concept the Americans did not use to justify their early presence in the Gulf is the Hammarskjold idea of 'preventive deployment'.[34] Despite the immaturity and the lack of adequate bases for the idea, it is plausible that the concept 'preventive deployment' could have provided some ground to accommodate the consequences of American fears that Iraq might have attacked Saudi Arabia. However, Hammarskjold did not anticipate

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[33] N.Y. Times, Excerts from BushÆs statement on US defense of Saudis, 9 August 1990, p. A15

situations where preventive deployment could be mobilised on the borders of a third country, as there were no tensions on Iraqi-Saudi borders. American forces were deployed on the border between Saudi Arabia and Kuwait.

In the second stage the role of forces started to become more offensive. Paragraph 1 of the Security Council resolution 665 of 25 August stated that the Council

> calls upon those member states co-operating with the government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1991).

Resolution 665 represented the first reference by the Security Council to the forces gathering in the Gulf, entrusting the Maritime forces with the task of shipping interdiction. Therefore, a role beyond the protection of other Gulf states from attacks and the troops's self-defence was designated for the forces.

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[34] UN Document A/4390/Add.1, 31 August 1960; Brian Urquhart, *Hammarskjold*, Alfred A. Knopf, New York, 1972, p. 256.

By 29 November the functions of forces entered a third phase. Troops were authorised to use force to push Iraqi forces out of Kuwait if the Iraqis did not comply with the Security Council resolutions and pull back before 15 January 1991.[35] During this period the obvious role of the forces was to prepare for and participate in war.

The tracing of the role of forces through three main stages illuminates the unique nature of the unprecedented military build-up in the Gulf. In the Korean crisis of 1950 - 53 the United States, along with South Korea, contributed more than ninety percent of the forces deployed to reverse the North Korean invasion. In the Korean case the United States forces did not face similar problems to justify their presence, for they had moved from the beginning of the crisis under the flag of the United Nations with a clear enforcement mandate. The United States was free to designate the command and to lead the coalition forces to a military action even without serving Kim Il-sung with further notice. The Security Council did not issue an ultimatum before the outbreak of war as it did in Kuwait.

In the case of Kuwait, despite the unprecedented involvement of the Security Council in the crisis, the council did not identify the American-led forces as United Nations forces. The situation remained so until the war had ended and a cease-fire agreement was signed in February 1991, when the

[35] SC resolution 678, 29 November 1990.

forces were, for the first time, considered as a United Nations peacekeeping mission (UNIKOM).

Costs of sanctions and force

The United States sent diplomatic envoys to different parts of the world. These envoys were charged with two obvious tasks. First, to demonstrate wide support for the establishment of the coalition. Second, to secure adequate funds to cover the necessary costs of crisis management There were three types of cost arose from the Gulf crisis; these were costs caused by the invasion, costs that resulted from the imposition of sanctions, and the basic expenses of military deployment and war.

The invasion of Kuwait caused global economic instability. Twenty percent of the world's reserves of oil were at stake in the crisis. This had directly affected the world prices of oil as well as the flow of oil supplies in different parts of the world. Countries which had economic ties with Iraq and Kuwait were clearly expected to suffer financial losses. However, this type of global consequence did not constitute a major concern for US campaigns. The costs of sanctions and the capability to mitigate their effects were crucial to the formation of the coalition. Many states were willing to join the coalition but were reluctant to declare this, because they needed assurances that their economies would not be hurt and that the alternative resources of financial

compensation could be secured. American representatives were faced with this reality. In almost every country the Secretary of State James Baker had visited, a substantial part of discussion was focused on the issue of costs.

The third type of costs, which constituted the major portion and remained the centre of US concern, was the expenditure on the deployment of forces and eventually on the military action. The costs of the war which totalled on the coalition side to about $50 billion[36] represented one of the highest costs in history of war.The international efforts to meet the costs of the crisis provide convenient grounds for the investigation of roles of the United States and the United Nations in the case of Kuwait. A close look at the activities of both sides in this respect would help to verify their roles as major actors in the crisis.

The role of the United Nations

a) Military costs

If the United Nations mechanism for peace enforcement had been mobilised, the authorised principal and subsidiary bodies of the UN could have played a substantial role in the management of military costs. According to the provisions of Article 47 of the Charter 'There shall be established a Military

[36] James A. Baker, III. With Thomas M. DeFrank, *The politics of diplomacy, revolution, war and peace, 1989-1992,* G. P. Putnam's Sons, New York, 1995, pp. 289 – 291.

Staff Committee to advice and assist the Security Council on all questions relating to the Security Council's military requirements...' These 'requirements' include the financing of military contingents at the disposal of the Council. The Committee is well equipped within the context of Chapter VII to carry out such movements. It is capable of establishing regional subcommittees after consultation with appropriate regional agencies to execute its plans. The Committee is also authorised to invite any member of the United Nations to be associated with it if that will help the Committee to discharge some of its responsibilities effectively. However, because the Military Staff Committee had not been utilised during the crisis, this mechanism remained dormant and it assumed no role in the issue of military costs. Except for the two preambles in resolutions 665 and 678, calling upon member states to render assistance and support for the possible undertaking of enforcement actions, the Security Council made no efforts to help the military deployment in the Gulf. The resolutions of the Security Council did not request the Secretary-General to take part in fund raising efforts for military purposes. The General Assembly was also paralysed and Article 17 of the Charter was not invoked as the entire budgetary system of the United Nations and its limited resources remained untouched. It might be worth noting that in a later experience in Somalia the Security Council did assign to the Secretary-General the task of organising funds. On 3 December 1992 resolution 794

which authorised the use of all necessary means to secure humanitarian relief to Somalia, stated in paragraph 11: 'Calls on all Member States which are in a position to do so to provide military forces and to make additional contributions, in cash or in kind, in accordance with paragraph 10 above and requests the Secretary-General to establish a fund through which the contributions, where appropriate, could be channelled to the States or operations concerned;' It can be argued, accordingly, that Somalia had improved on Kuwait with its fund system.

b) The costs of Sanctions and the relevance of Article 50

The Security Council expressed awareness of the economic hardship facing member states as a result of the application of economic sanctions against Iraq and the occupied territory of Kuwait.[37] Furthermore, the Council made several recommendations to alleviate the effects of the crisis on member states pursuant to Article 50 of the Charter. Article 50 stated that: 'If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.' Thus, the initiative to mobilise Article 50 did

[37] Security Council resolution 669, 24 Septemper1990.

not come from the Security Council. The Secretary-General indicated in his report to the Security Council on 6 September 1990, that a number of States expressed their intentions to consult with the Council in regard to the economic difficulties which resulted from the application of resolution 661. The Security Council responded by devoting the full text of resolution 669 to help solve this problem. Resolution 669 of 24 September entrusted the Committee established under resolution 661 concerning the situation between Iraq and Kuwait with the task of examining requests for assistance and making recommendations to the president of the Security Council for appropriate action. The Committee received claims from almost half of the United Nations membership. In dealing with these claims the Committee carried out much work, but in actual terms it did very little to help member states.

In the Korean crisis there was no reference, in the six Security Council resolutions adopted between June 1950 and January 1951, to Article 50 or subsequent necessities of providing help to states affected by the crisis. However resolution 85 was devoted to the provision of assistance and relief supplies to the people of Korea.[38] The Council requested the Secretary-General, the Economic and Social Council and other relevant organs to

[38] Security Council resolution 85 of 31 July 1950.

provide assistance 'for the relief and support of the civilian population of Korea'.[39]

The role of the United States

a) Campaigns of fund raising

In September 1990 President Bush declared that his Treasury Secretary, Mr. Brady, would head a Gulf Crisis Financial Co-ordination Group. The members of the group were said to be: the Group of Seven (G7), the European Community (EC), the Gulf Co-operation Council (GCC), and South Korea.[40] However, this group did not function, and the United States remained the only effective actor in fund-raising.

Even before the creation of this body Mr. Brady accompanied James Baker in a fund-raising mission which covered nine countries including Arab, European, and Asian states. The first stop was Jeddah. The American ambassador to Saudi Arabia Mr. Chas Freeman asked James Baker to go easy over numbers 'They are strapped for money..... Don't press for too much right now.' Baker disagreed.[41] In fact, when Baker and his staff left Washington,

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[39] However, a sentence at the end of the fourth and last paragraph of resolution 85 referred to the possible use of relief assistance 'as appropriate in connection with the responsibilities being carried out by the Unified Command on behalf of the Security Council.'

[40] The establishment of the Co-ordination Group was announced by George Bush during the meeting of International Monetary Fund (IMF) and World Bank in Washington in September 1990. See *Daily Telegraph*, 1 October 1990.

[41] James A. Baker, III. op. cit. note 40, p. 289.

they had no definite figures. During the twelve hour journey to Jeddah they went over estimations made by the Pentagon, Treasury, and State Departments. James Baker said: 'We simply doubled them all on the spot.'[42] King Fahd accepted, without arguing, Baker's proposal , that Saudi Arabia pays $15 billion. A similar amount was secured from Kuwait during the meeting between Baker and the Amir in Taif two days later. Almost half of Baker's estimated funds were secured by Saudi Arabia and Kuwait. The Americans made the objectives of their fund-raising plan clear and precise. They wanted to cover military expenditure and to support front line states, namely Turkey, Egypt, and Jordan, in order to tighten sanctions against Iraq and to hold the coalition together.

The US Administration had therefore acted in parallel to the Committee established by the Security Council for this purpose. There was not even close co-ordination between the Committee and American campaigns for fund-raising. There was a lot of controversy concerning calculations of actual costs and distribution of collected money. For instance Japan was not able to get assurances that its proposed $9 billion would be spent on humanitarian projects. Japan wanted to avoid its contribution being used for military purposes which might raise internal constitutional problems. Even Britain, the US's closest western ally during the crisis, expressed reservations over the

[42] Ibid. pp. 288 - 289.

issue. The British Chancellor of the Exchequer stated on 26 September 1990 that it was not clear 'who would give what to whom, when.'[43]

b) The US and the concept of burden sharing

The fund raising tours conducted by James Baker and other American campaigners during the Gulf crisis, could be fairly viewed, in an empirical sense, as a necessary activity to provide funds for the containment of the global effects of the crisis and to meet the costs of hostilities. However, the overall picture, comprising states from all over the world either providing donations to or receiving compensations from a single managing state, collecting and distributing money, was unprecedented in the history of contemporary wars. However, this simple observation has far reaching implications for theories and concepts of "international leadership" that have long retained substance in the field of international relations. For instance, the theory of "hegemonic leadership" does not seem to be applicable in the case of Kuwait as the stabiliser state, the one who pays the differences from its own resources or at least makes the major contribution is missing. Instead, the US

[43] *Financial Times*, 27 September 1990.

mobilised and managed the funds contributed by other states, however, that did not prevent the US from assuming absolute leadership in the Gulf.[44]

After the Gulf crisis the United States sought burden sharing in different areas to cover the costs of its military presence across the world. In May 1994, 144 members of the House of Representatives voted for a draft asking Europe to pay 75 percent of the costs of maintaining the presence of American troops in European countries.[45] President Clinton promised that America would continue assuming world leadership 'through multilateral means, such as the UN, which spread the costs and express the unified will of the international community'[46]

In the Korean War of 1950, the United States did not conduct similar campaigns to spread significantly the burden of costs over other countries. One of the reasons for this is that war broke out a few days after the invasion of South Korea allowing no time for fund raising plans. It is also worth noting that North Korea was not obliged to pay for the damages which resulted from its action as Iraq has to under resolution 687.

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[44] Jarrod Wiener, 'Leadership, the UN, and the New World Order' in Dimitris Bournantonis and Jarrod Wiener, eds. *The United Nations in the New World Order: the world organisation at fifty,* Macmillan, London, 1995, pp. 41 - 58. Duncan Snidal, 'The limits of hegemonic stability theory' *International Organistation,* vol. 39, no. 4, Autumn 1985; Robert O. Keohane, *After hegemony: cooperation and discord in the world political economy,* Princeton University Press, Princeton, 1984.

[45] 'House coalition repels efforts to cut military further' *Congressinal Quarterly,* 21 May 1994, pp. 1320-1325.

[46] 'In the name of the UN, stop it' *The Guardian,* 14 June 1993.

It could be said the successful utilisation of the concept of burden sharing is one of the unique features of the Gulf crisis. However, the profound results of the United States tours for this purpose give a partial, but significant, explanation of the American tendency to act multilaterally during the crisis: it wanted to involve as many states as possible, especially the rich ones, so that they would contribute to the overall financial and material costs.[47]

The US dominates the scene ***Did the Council 'remain seized'?***

An almost standard phrase with which the Security Council concludes its resolutions in dealing with continuing crisis is that the Council will remain 'seized of the matter'. It means that the matter will remain in the agendas of the Security Council for further considerations and the Council will remain in charge to follow the application of the measures it has authorised. In the case of Kuwait it is significant to notice that the Council was deliberately absented from the scene of the crisis from 29 November 1990 until George Bush announced the cease-fire on 27 February 1991. Two important periods unfolded, meanwhile. In the first period, between the authorisation of the use of force and the outbreak of war, there were rising tensions, polls and public opinion divisions, and the last minute attempts to attain peaceful settlement.

[47] The concept of 'burden sharing' may find a constitutional support in Article 49 of Chapter VII of the United Nations Charter which reads: 'The members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the SC.'

This period could broadly be marked with the normative question 'should the coalition go to war with Iraq?' The second period was the 42 days of war, involving the whole range of military strategies, logistic issues, conduct of war, and questions of command and control.

The United States presided over the Council during November 1990, and before handing the lead of the Council to the Yemeni delegation in December 1990, resolution 678 was adopted, authorising the use of all necessary means to uphold the Iraqi occupation of Kuwait.[48] Paradoxically, the fifth paragraph of resolution 678 reads as follow: 'Decides to remain seized of the matter.' However, for different reasons the United States on the one hand, and the Soviet Union and France on the other, did not want the Council to convene to consider issues related to the situation between Iraq and Kuwait between 29 November 1990 and 15 January 1991. For the United States the most it needed from the Security Council was the authorisation of the use of force: it did not express a willingness to mobilise the enforcement machinery of the United Nations to implement the provisions of resolution 678. The United States also did not attempt to utilise the United Nations system for pacific settlement of disputes. Paragraph I of Article 36 of the Charter reads: 'The Security Council may, at any stage of a dispute of the nature referred to in Article 33 [..likely to endanger the maintenance of

[48] The Security Council meeting of 29 November 1990 was headed by James Baker the Secretary of State.

international peace and security] or of a situation of like nature, recommend appropriate procedures or methods of adjustment.' The Soviet Union and France, when they voted for resolution 678, had both stipulated that the Council should not consider further measures against Iraq until 15 January 1990. Each of the two states was aiming to mobilise the records of its good relations with Iraq in order to find a peaceful resolution to the crisis before the elapse of the Council's dead-line. So, the Soviets and French, like the Americans, acted in a bilateral manner during this period, though their objectives were not similar.

UN or US action

Peace enforcement and intervention

Investigation of the overall relations between the US and UN in tackling major security conflicts may necessitate an assessment of some overlapping aspects of 'peace enforcement' and 'military intervention.' Peace enforcement is the term used in the Charter to characterise the concept of collective security: it was defined in the first part of this study. The attempt to reach a specific definition of the concept of intervention is problematic. As one scholar observed, the term intervention is 'potentially misleading.'[49] Definitions of the

[49] Herbert K. Tillema, 'Foreign overt military intervention in the nuclear *age' Journal of Peace Research,* 1989, Vol. 26, No. 2, p. 180.

term, intervention, range from a restrictive one limiting the concept to direct 'military operations conducted upon foreign territory by units of a state's regular military forces.',[50] to a broader definition of 'any act of interference by one state in the affairs of another.'[51] Hedley Bull offered a comprehensive definition by stating that: 'It is dictatorial interference or coercive interference, by an outside party or parties, in the sphere of jurisdiction of a sovereign a state, or more broadly of an independent political community.'[52] However the first definition seems more useful within the context of this chapter.

Many have feared the expanding range of interference and the hegemonic attitudes of the US, which have risen significantly since 1989.[53] Others recognised the reality that a substantial role for the United States is, in most cases, inevitable as perhaps is its supreme leadership in many world affairs.[54] The rhetoric of some American statesmen has acknowledged the importance of their leadership. In January 1991, during the Gulf war, George Bush stated that 'American leadership is essential. Yes, the United States bears a major share of leadership in this effort. Among the nations of the

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[50] Ibid. p. 187.
[51] Wolfgang Freidman, 'Intervention and international law' in Louis G. M. Jaqquet, ed. *Intervention in international politics*, Netherlands Institute of International Affairs, Matitnus Nijhoff, The Hague, 1971, p. 40.
[52] Hedley Bull, 'Introduction' in Hedley Bull, ed. *Intervention in world politics,* Clarendon Press, Oxford, 1984, p. 1.
[53] Stephen Lewis, interviewed by Wurst, Jim, *World Policy Journal,* Summer 1991, vol. 8 no. 3, pp. 539 - 549.
[54] Samuel P. Huntington, 'Why international primacy matters' *International Security,* vol. 17, no. 4, Spring 1993, pp. 52 – 67; Joseph S. Nye, Jr, *Bound to lead: the changing nature of American power,* Basic Books, New York, 1990.

world only the United States of America has both the moral standing and the means to back it up. We are the only nation on this earth that could assemble the forces of peace.'[55] Democrats fought the 1992 elections with different slogans in foreign policies, and promised to give more attention to domestic affairs.[56] John Dumbrell observed that 'Rather than offering a positive alternative vision for American foreign relations, Clinton in 1992 presented himself as a candidate concerned pre-eminently with domestic issues.'[57] American electorates had also corroborated this conviction by preferring Clinton, who had little experience in international affairs,[58] to George Bush, one of the most experienced American presidents in foreign affairs who was a US representative at the UN, US ambassador to China, director of the Central Intelligence Agency (CIA), and Reagan's vice president for eight years.[59] However, during the first term of Clinton presidency the behaviour of the US Administration did not seem to be less interventionist.

During the first six post-Cold War years, the United States tended to initiate substantial responses to international and internal crisis. With the obvious exception of the US intervention in Panama in 1989, which falls

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[55] George Bush, 'State of the Union Address' *Washington Post,* 30th January 1991.
[56] Tim Hames, 'Foreign policy' in Paul S. Hernson and Dilys M. Hill, eds. *The Clinton Presidency,* Macmillan Press, London, 1999, p. 126.

[57] John Dumbrell, *American Foreign Policy: Carter to Clinton,* Macmillan, London, 1997, p. 178.
[58] Tim Hames, op. cit. note 41.
[59] Raymond L. Garthoff, *The Great Transition, American-Soviet Relations and the End of the Cold War,* The Brooking Institutions, Washington D.C. 1994, p. 376

beyond the scope of peace enforcement, the multinational US-led, or supported, military operations after the Cold War were conducted under Chapter VII of the United Nations Charter. In 1990 - 91 the US led the coalition to force Iraqi troops out of Kuwait. In 1992, George Bush sent over 30,000 troops to Somalia, in the largest foreign military involvement in a civil war since ONUC operation in the Congo in 1960. In 1994, American forces intervened in Haiti to restore the authority of the elected president, Jean-Bertrand Aristide. At the end of 1996, America sent 40,000 troops to Bosnia ending years of reluctance to share a military presence in the Balkans with its European Nato partners. In November 1996, it did not take Bill Clinton, the re-elected president, long to decide to send American troops to Zaire in a humanitarian mission under Canadian command. American forces were the first Western contingent to arrive in Kinshasa.

Scholarly analyses drew different conclusions from these cases concerning the importance of American leadership and the credibility of UN peace enforcement missions. The following discussion will take account of these views, exemplified in three groups of scholarly contributions, and attempt to draw a general conclusion.

Brian Urquhart expected the style of command to follow the pattern set by operation Desert Storm. He observed in 1991 that 'the Council, in responding to Iraq's aggression against Kuwait, had to resort to authorising the

use of force by a coalition under the leadership of the United States. It seems likely that, for the foreseeable future, some such arrangements will be the only feasible one in a major military confrontation.'[60]

Adam Roberts furthered this point by discussing the use of force by or on behalf of the UN peacekeeping operations. For Roberts,

> [i]n some instances, there can be a strong case for the UN Security Council authorising an individual state to take a lead role in a country where there is already a UN peacekeeping presence, but it has been ill-supported and ineffective. This is roughly what happened over Somalia in December 1992 and Rwanda (with the authorisation of the French intervention) in June 1994. Such a system of authorisation involves an implied reproach to international organisations, yet it may be the only way of addressing certain endemic conflicts and failures of governments.[61]

[60] Brian, Urquhart, 'The UN: from peacekeeping to a collective system' in New dimensions in international security, Adelphi Papers no. 265, Part 1, Brassey's, 1991/92, p. 26.

[61] Adam Roberts, 'The crisis in UN peacekeeping' in Chester A. Crocker, Fen Osler Hampson, and Pamela Aall, *Managing global chaos: sources of and responses to international conflict,* United States Institute of Peace Press, Washington, D.C. 1996, p. 313.

Other scholars see no alternative to the use of American power in the face of a major crisis. Discussing the role of the United States after the Gulf War Walter Slocombe says:

> The war highlighted the degree to which the United States has an unrivalled capability of world-wide military reach. No country comes close to having the combination of forces, bases, technology and lift necessary to mobilise an operation on the scale of Operation Desert Storm at such a distance and under such difficult conditions. Nor has any other nation the potential of the US to organise and co-ordinate an international military effort.[62]

Slocombe argues that 'On the balance, the Gulf experience seems likely to reinforce the prospects for an active future American international role'.[63] Gareth Evans states that: 'The position of the United States really is crucial, for without the United States there can be no UN role at all in collective security.'[64]

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[62] Walter B. Slocombe, 'The role of the United States in international security after the Gulf war' in *New dimensions in international security,* Adelphi Papers no. 265, Part 1, 1991/92, p. 46.

[63] Ibid.

[64] Gareth Evans, 'The New World Order and the United Nations' in Mara R. Bustelo and Philip Alsotn, *Whose New World Order: What Roles for the United Nations?* The Federation Press, Sydney, 1991, p. 10.

However, views opposing to these arguments were expressed by other scholars. Responding to a question as to how the United Nations had reacted to the Gulf crisis, Stephen Lewis claimed:

> The UN should have insisted that if there was going to be a military operation conducted in its name, it would require the use of UN troops under a UN flag. Under no circumstances, therefore, should we ever permit ourselves again to get into a situation whereby the United Nations gives legitimacy to a force that is led by a command structure outside the UN and over whose actions the UN has absolutely no control whatsoever-as was evident in this war from the beginning to the end.[65]

Bruce Russett and James S. Sutterlin came up with similar lessons from the Gulf experience. They argued that 'There are alternative procedures that might in the future be followed by the Security Council, ones that would offer prospects of effective enforcement action without the disadvantages and problems associated with according responsibility to individual member states.'[66] In offering some alternatives, Russett and Sutterlin referred to the

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[65] Stephen Lewis, interviewed by Jim Wurst, *World Policy Journal,* vol. 8, no. 3, Summer 1991, pp. 539 - 549.

[66] Bruce Russett, and James S. Sutterlin, 'The UN in a New World Order' *Foreign Affairs,* vol. 70, no. 2, Spring 1991, pp. 69 - 83.

Korean crisis of 1950 as the first attempt to apply the enforcement measures of the United Nations with a leading role for the United States. They stated that 'The problems that arose in the Korean case would conceivably be alleviated if the unified commander were required to consult with the Security Council, or with some form of military authority appointed by the Council,'[67]

The disapproval of the procedure taken in the Gulf was also echoed in the rhetoric of some politicians. Marshal Dimitry Yazov, Soviet Defence Minister, said in an article in *Pravda,* a few weeks after the war, that western intervention in the Gulf was simply an attempt to impose a western new world order by force: 'This is objective reality. The events in the Gulf have confirmed this convincingly.'[68] The direct question which arises from such situations is whether the action was a UN or US one. Commenting on the dominance of the US in Korea 1950 and Kuwait 1991, Russett and Sutterlin stated that 'The major danger is that the entire undertaking will be identified with the country or countries actually involved in military action rather than with the United Nations.'[69]

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[67] Ibid.
[68] Yazov, Dimitry, *Daily Telegraph*, 10 May 1991.
[69] Bruce Russett and James S. Sutterlin, op. cit. note 66.

Conclusion

The UN system of peace enforcement has remained dormant, and from Korea 1950 to Zaire 1996 the United Nations always delegated the command of its forces to member states, with the United States designating the command of forces in most cases. To overcome the paradox in UN practice and the obvious deviation from UN principles and charter provisions, in future authorised peace enforcement actions, the relationships between the authority of the Security Council and the power of permanent members needs to be clearly defined.

US military and financial support has been considered by the UN Secretariat and members of the Security Council as a necessity for the undertaking of peace enforcement missions. This assumption stems from the importance of showing the credible threat and the ability to use the force against an aggressor or war perpetrator, in order to secure compliance with Security Council resolutions. For these reasons, UN Secretary-Generals tended to rely on the US. A major role for the US in the cases of Korea 1950 and Kuwait 1990 was inevitable. However, it is not impossible for the United Nations to find adequate military support from other countries to resolve many conflicts, and the US leadership is not always necessary. A peace enforcement operation in Somalia consisted of national contingents from states other than the US, would not have proved less effective than the Task Force.

Part IV

Chapter 5

Constitutional problems

The United Nations has been studied both as a political organisation and constitutional system. Although there is frequent overlap between the two approaches, some of the main examples of the political approach can be found in the studies by H. G. Nicholas,[1] Sydney Bailey,[2] and G. R. Berridge.[3] Constitutional approaches can be found in the writings of Oscar Shachter,[4] Christopher Joyner,[5] and Rosalyn Higgins.[6] Some scholars, such as Hans Morgenthau, combine the two approaches in one context, but maintain a distinction between them in the discussion.[7] Morgenthau argued that

> In order to understand the constitutional functions and actual operations of the United Nations, it is necessary to distinguish sharply between the constitutional provisions of the Charter and the manner in which the

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[1] H. G. Nicholas, *The United Nations as a Political Institution,* Oxford University Press, Oxford, 5th edition 1975.
[2] Sydney D. Bailey, *The United Nations, A short Political Guide*, Pall Mall and Praeger, London and New York, 1989.
[3] G. R. Berridge, *Return to the UN,* Macmillan, London, 1991.
[4] Oscar Shachter, *International law in theory and practice*, Martinus Nijhoff Publishers, Dordecht, Boston, and London, 1991.
[5] Christopher C. Joyner, ed. *The United Nations and international law,* ASIL and Cambridge University Press, Cambridge, 1997.
[6] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations,* Oxford University Press, London, 1963.
[7] Hans J. Morgenthau, *Politics Among Nations, The Struggle for Power and Peace,* Alfred A. Knopf, New York, 5th edition 1978.

> agencies of the United Nations, under the pressure of unforeseen political circumstances, have actually performed their functions under the Charter. The government of the United Nations, like the government of the United States, can be understood only by confronting the provisions of the constitution with the realities of political practice.[8]

The task of contrasting the practice of the United Nations with the constitutional provisions of the Charter is very important in the study of peace enforcement in the UN system. Chapter VII of the Charter embodies a constitutional and political framework for the handling of one of the most important normative questions: should the international community go to war against an aggressor? This is the most sensitive aspect of the UN's role, and as such demands the contrast of the political to the constitutional in any analysis. As the other parts of the thesis concentrate on the political aspects of peace enforcement, this part exclusively discusses the legal problems related to the application of Chapter VII of the Charter. It considers four important

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[8] Ibid. p. 468. In this sense the study of the United Nations combines elements from the two close disciplines of International Law and International Relations. The following studies provide better understanding of this relation: G. John Ikenberry, 'Constitutional Politics in International Relations' *European Journal of International Relations,* vol. 4, no. 2, June 1998, pp. 147 – 171; *International Law as a Language for International Relations,* Proceedings of the United Nations Congress on Public International Law, New York, 12 – 17 March 1995, Kluwer Law International, The Hague, London, and Boston, 1996; Charlotte Ku and Thomas G. Weiss, *Toward Understanding Global Governance, The International Law and International Relations Toolbox,* Acuns, Brown, 1998.

constitutional issues: the distinction between peace enforcement and actions in collective self-defence. The conclusion of agreements between the Security Council and member states contributing forces to peace enforcement military operations; and the constitutional effect of the absence or abstention of a permanent member during the course of voting. A fourth constitutional problem, the determination by the Council of the adequacy or inadequacy of measures provided for in Article 41 of the Charter, will be originally addressed in this part. In considering this problem, the thesis suggests a four-points criterion for measuring the adequacy and inadequacy of non-military enforcement measures before the Council can decide to take military action under Article 42.

1- Collective self-defence and peace enforcement

Peace enforcement, as explained in the first chapter of this study, is a system of collective security intended to replace traditional alliances by conferring on a central agency, the Security Council, the sole responsibility for the undertaking of economic and military measures to enforce the peace. By contrast, collective self-defence, as envisaged in Article 51 of the Charter, is an exceptional legitimate use of force by a group of states in defence of the territorial integrity and political independence of a victim state. Despite the

clear distinction in theory between these two regimes, their characteristics have been confused in practice and thus led to disputes among scholars and practitioners. The following analyses take account of these scholarly discussions and attempts to evaluate basic constitutional arguments.

Conceptual background

The establishment of the United Nations and the adoption of the Charter signified an attempt by the international community to move from a world of alliances to a system of collective security. However, this was accompanied by a tendency of states to form regional organisations and to create pacts and regional arrangements to serve the purpose of defending their territories against possible external attacks. The task of blending a rising regionalism with a central role for a global organisation was seen as crucial.[9]

This constitutes the main reason for the adoption of Article 51 of the United Nations Charter. During the United Nations Conference on International Organisation, at San Francisco, 1945, proposals were drafted to

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[9] Prime Minister Winston Churchill stated in a speech in March 1943 that 'One can imagine that under a world institution embodying or representing the United Nations, and someday all the nations should come into being a Council of Europe and a Council of Asia.' In 1944 Bertram Pickard observed that 'post-war international relations must take into account both regional and universal needs. ... and the possibility of combining the two approaches'. These two quotations and lengthy discussions on this issue are found in A Symposium of the Institute on World Organisation, *Regionalism and World Organisation: Post-war aspects of Europe's global relationships,* American Council on Public Affairs, Washington, D. C. 1944, pp. 5 - 8, 11 - 26, and 40 - 54.

include the right of self-defence in the Charter. The Latin American states played a substantial role in the formulation and the adoption of Article 51. Prior to the adoption of the Charter, an Inter-American System was developed through a series of negotiations and conferences with the intention of providing a means for the collective maintenance of peace and security in the region. During the decade which preceded the establishment of the United Nations, Inter-American states concluded four important agreements: the Conventions of the Inter-American Conference for the Maintenance of Peace, the Declaration of Lima, Declaration XV, and the Act of Chapultepec in March 1945. The Act of Chapultepec was the most comprehensive of these agreements, providing a system of what could be called 'regional collective self-defence'. Josef Kunz, and Goodrich and Hambro argue that Article 51 was contained in the Charter to 'harmonise' the Inter-American System with the general global system of the United Nations.[10] At San Francisco, Latin American Republics were anxious to modify the Dumbarton Oaks proposals to include an explicit reference to the right of collective self-defence. Thus, the provisions of Article 51 evolved from the works of a committee dealing with the question of regional arrangements at San Francisco.[11]

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[10] Josef L. Kunz, 'Editorial Comment' *The American Journal of International Law,* vol. 41, no. 4, 1947 p. 872; Leland M. Goodrich and Edward Hmabro, *Charter of the United Nations,* World Peace Foundation, Boston, 1949, p. 297.

[11] *Documents of the United Nations Conference on International Organisations, San Francisco, 1945,* UN Information Organisations, New York and London, 1945-46, Vol. XI.

The Dumbarton Oaks proposals did provide for a significant role to be undertaken by regional organisations in the maintenance of peace and security. Paragraph 1 of Article 52 of Chapter VIII reads: 'Nothing in the present Charter precludes 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, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.' Nonetheless, Article 53 stipulates prior authorisation of the Security Council for actions under Chapter VIII, as '...no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council'. The restriction laid down in Chapter VIII rendered the arrangements for regional action unsatisfactory for the Latin American Republics which had endeavoured to achieve the adoption of a more ambitious scheme to allow 'a large measure of autonomy to the operation of such regional arrangements.' Their efforts finally culminated in the adoption of Article 51 within the context of Chapter VII of the United Nations Charter.

For the purpose of this study, two observations will be made on the review of the conceptual and historical background to Article 51. First, during the process of adopting Article 51, emphasis was placed on the notion of 'collective self-defence' rather than 'individual self-defence'. Second, the

linkage of the adoption of Article 51 to the emergence of an Inter-American System is evident. The regional organisations which were formed in the few years following the establishment of the UN principally organised their entire existence around Article 51. The North Atlantic Treaty, declared on 4 April 1949, regarded the possible undertaking, by member states, of necessary action 'including the use of force' to defend the North Atlantic area as an 'exercise of the right of individual or collective self-defence recognised by Article 51' of the United Nations Charter.[12] Moreover, the North Atlantic Treaty incorporated within it a substantial part of the meaning of Article 51 by declaring that 'Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.'[13]

However, the obvious association of Article 51 with regional organisations neither identifies its whole context with the UN scheme for dealing with regional arrangements, nor even hampers it from encompassing cases of self-defence actions exercised, individually or collectively, by states not necessarily members of regional organisations. Juridically, the historical background should not dominate the interpretation of Article 51. In other

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[12] Article 5 of the North Atlantic Treaty.
[13] Ibid.

words, in practice an individual state or a group of states can claim the right of self-defence without necessarily being associated with any regional organisation.

Endurance of the right of self-defence

The relevance of Article 51

The relation between individual or collective self-defence and collective peace enforcement is explained in the text of Article 51. In fact, most of the text of Article 51 is devoted to explaining the relevance of the right of self-defence to the preceding Articles of Chapter VII which provide a system of collective peace enforcement. Article 51 reads:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

The terms of Article 51 gave rise to mounting debate over their interpretation within the context of the Article as to their conformity with relevant Articles in other Chapters of the Charter. The issue of an armed attack is a prerequisite to the use of force in self-defence. The question of whether states can use force in defence of national interests even though no armed attack has taken place, or in anticipation of an imminent occurrence of an armed attack, was quite central to the scholarly discussions on the issue of the right of self-defence. But, as this study is primarily concerned with the Security Council's response to armed attacks which might threaten international peace and security, more attention will be given to issues related to the endurance of the right of individual and collective self-defence.

Commensurate measures

Before the case of Kuwait, the question of the endurance of the right of self-defence while the Security Council is taking measures necessary to deal with a certain situation seemed to be hypothetical. An international lawyer, Jean Combacau, explained why he tended to avoid discussions on this issue when he wrote in 1986 'We have not commented on the part of Art. 51, essential as it is, which specifies that the individual action of the state may continue (until the Security Council has taken measures necessary to maintain international

peace and security) ... This is because the aim was not to study the written rules, but to examine U. N. practice, which is more or less non-existent on this point.'[14]

However, this issue appeared to remain central during the Kuwait crisis and it has been observed that the Kuwait conflict gave 'new life to the concept of collective self-defence'.[15] There were arguments for and against the legitimacy of force deployment by states under Article 51 of the Charter while the Security Council was taking measures against an aggressor. McCoubrey and White argued that 'Necessary measures within Article 51 must mean those which have the ability to perform the objectives of self-defence, namely to restore international peace by forcing the aggressor to comply with Article 2(4) principally by removing it from the victim state and possibly by preventing it from further threats or uses of force. The only way of interpreting Article 51 without undermining the Charter edifice is to interpret it to mean

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[14] Jean Combacau, 'The Exception of Self-defence in UN Practice' in A. Cassese, ed. *The Current Legal Regulations of the Use of Force,* Martinus Nijhoff, Dordecht, Boston, and London, 1986, p. 29. It should be noted that Argentina had argued in 1982 during the Falklands conflict that the United Kingdom was not permitted to act in self-defence after the adoption of resolution 502 by the Security Council under Article 40 of the Charter. See also, Sir Anthony parsons response to the Argentine claim, Security Council meeting 2362, 22 May 1982.

[15] Kevin C. Kenny, 'Self-defense' in Rudiger Wolfrum, and Christiane Philipp, eds. *United Nations: Law, Politics and Practice,* Vol. 2, Martinus Nijhoff Publishers, Dordrecht, London, and Boston, 1995, p. 1170.

that only those measures which can effectively take the place of potential actions in self-defence can be said to suspend the right.'[16]

However, the question which remains whether the right of self-defence should cease if the Security Council has taken measures specifically in the form of economic sanctions under Article 41. Referring to the Gulf crisis, Rein Mullerson observed in 1990 that 'The Security Council took measures necessary to maintain international peace and security; it adopted trade and financial sanctions against Iraq; and it authorised measures to enforce these sanctions. From the moment the Security Council adopted these measures and imposed them on Iraq, the inherent right of self-defence was replaced by these collective measures.'[17]

In another contribution to the issue, McCoubrey and White asserted that 'If it is concluded that they (economic sanctions) are an effective alternative to the use of force, then it could be strongly argued that they could replace a state's right of self-defence. Leaving aside such empirical evidence on the effectiveness of sanctions, it is pertinent to state that, at the conceptual level, it is difficult to see economic coercion, even if authorised by the United Nations, as being a replacement for a state's right of self-defence, ... Whilst it

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[16] Hillaire McCoubrey and Nigel White, *International law and armed conflicts,* Dartmouth, 1992, p. 102.

[17] Rein Mullerson, 'Self-Defence in the Contemporary World' in Lori Fisler Damrosch and David J. Scheffer, eds. *Law and force in the new international order,* ASIL and Westview Press, Boulder and Oxford, 1991, p. 13.

is perfectly acceptable to for a state to restrict its response to sanctions, it seems incongruous to forbid it from using counter-force in self-defence, if the imposition of sanctions has been authorised by the Security Council.'[18]

Cease-fire and self-defence

Oscar Schachter argued that a call for a cease-fire would necessarily stop the right of self-defence. Schachter briefly asserted that 'A resolution ordering a "cease-fire" for all parties would be adequate to preclude the use of force in self-defence.'[19] This argument is consistent with the literal meaning of such a resolution and the Council's intentions. However, if a state, deemed an aggressor by the Security Council, continued its attack against a victim state, the Council should follow its call upon parties to cease fire with serious steps to protect the victim and to restore international peace. Otherwise, the attacked state cannot be asked to stop defending itself simply because the Council has called for a cease-fire. However, Schachter's argument may look more reasonable if the Security Council determined that due to the practice of the right of self-defence international security was endangered and subsequently called for a cease-fire.

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[18] McCoubrey and White, op. cit. note 16, p. 103.

[19] Oscar Schachter, 'Authorised uses of force by the United Nations and regional organisations' in Damrosch, and Scheffer, op. cit. note 17, p. 79.

Peace enforcement as burdensome

A practical consequence arises from depriving states of the right of collective or individual self-defence because the Security Council has taken measures to restore peace. A few days after the invasion of Kuwait, Margaret Thatcher advised the United States to 'invoke article 51, begin deploying American troops to the Gulf, and launch combat operations as soon as possible.'[20] James Baker, then US Secretary of State, said that Thatcher 'believed that asking the U.N. Security Council to impose sanctions on Iraq, which was happening that very day, would preclude our later taking military action under Article 51.'[21] Thatcher's concerns were shared and addressed from a different angle by an American scholar, Richard Gardener, who contended that if the right of self-defence was eliminated once the Council started adopting resolutions 'then the United States and other countries would not make use of the Security Council again in similar situations ... this would discourage resort to collective machinery of the United Nations.'[22] However, in practical terms, the experience of the Gulf crisis affirmed, according to Baker, that 'the United

[20] James A. Baker III, with Thomas M. DeFrank, *The politics of diplomacy: Revolution, war & peace, 1989-92,* G. P. Putnams, New York, 1995, p. 278.
[21] Ibid. p. 279.
[22] Richard N. Gardener, 'Commentary on the law of self-defense' in Damrosch, and Scheffer, op. cit. note 17, p. 50.

States had no real choice initially but to try a coalition approach in dealing with the crisis.'[23]

Entitlement to collective self-defence

D. W. Bowett believes that collective self-defence cannot be properly claimed unless each of the states which take collective action is a victim of an attack. He discussed a simple definition of the right of collective self-defence: 'If state *A* attacks state *B*, the latter has a right of self-defence and any other state may come to the assistance of state *B* pursuant to the right of collective self-defence.' Bowett rejected these terms as a definition of Article 51's provisions. In his view, it 'is palpable nonsense, since it is an open invitation to states generally to intervene in any conflict between other states, anywhere in the world: it cannot possibly be consistent with a system of collective security (which is what the United Nations Charter attempted to establish) and, specifically, it is quite contrary to the delegation to the Security Council of "primary responsibility"[24] for the maintenance of international peace and security in Article 24. The above definition would, according to Bowett, bear the potential of a global conflict since each party could have some states come

[23] James Baker, op. cit. note , p. 279; see also 'Go-it-alone policy is dangerous in Gulf' *Wall Street Journal*, 29 November 1990.

[24] Derek W. Bowett, 'The interrelation of theories of intervention and self-defense' in John N. Moore and Walfgang G. Friedman, eds. *Law and civil war in the modern world,* Baltimore, London, 1974, pp. 46 - 47.

to its aid, a position similar to the nineteenth-century system of alliance. However, in practice, states adopted a definition similar to this, by regarding the action of states who come to the defence of a victim state, even if they are not direct victims of the aggression, as an action in collective self-defence under Article 51. In the case of Vietnam, the 'Memorandum of the Department of State on the legality of the United States participation in the Defence of Viet Nam,'[25] explained that the US acted in Vietnam pursuant to the right of collective self-defence because South Vietnam had the right of self-defence.[26] Bowett believes that the Memorandum should have claimed the right of collective self-defence on the ground that the attack by North Vietnam upon South Vietnam endangered the security of the United States.[27]

However, the International Court of Justice, when it opined on the case of Nicaragua, did not proclaim the occurrence of a threat to a third state to justify the right of collective self-defence. Instead, the Court stipulated that the

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[25] Memorandum of the Department of State on the legality of the United States participation in the Defence of Viet Nam, prepared by the International legal Adviser of the US Department of state, see D. J. Harris, Cases and Materials on International Law, 3rd edition, Sweet and Maxwell, London, 1983, pp. 654 - 655.

[26] Michael Akehurst argued that 'long before North Vietnam started helping the insurgents, the USA had been providing the established authorities in South Vietnam with money, weapons and military instructors from 1954 onward. (The USA claimed that the revolt was organised by North Vietnam from the beginning, but most of the evidence suggests that the insurgents received no help from Norh Vietnam during the first year or so of the revolt in the late 1950s.) consequently it could be argued that the North Vietnams help for the insurgents was justified by the prior American help for the established authorities.' Michael Akehurst, *A Modern Introduction to International Law,* George Allen and Unwin, London, 1982, 4th edition, p. 244.

[27] Derek Bowett, op. cit. note 24, p. 46.

existence of an armed attack and a request of help by the attacked state is enough to justify collective self-defence.[28] Oscar Shachter sees little practical significance in Bowett's stipulation of a threat to a third state. In his view, 'it is highly unlikely that State *A* would defend *B* against an attacker *C*, unless *A* regarded *C*'s attack as a threat.' Shachter believes that 'When a State comes to the aid of another, the legal issue is not whether the assisting State has a right of individual defence, but only whether the State receiving aid is a victim of external attack and has requested military support from the assisting State.'[29]

Hans Kelsen did not refute the idea of one state or more coming to the defence of another UN member state in accordance with Article 51, but he believed that such action should not be termed 'collective self-defence' because the other states are acting in the defence of the attacked state, 'but not in self- defence'.[30] However, the term 'collective self-defence' has frequently been used to describe a third country action in concert with an attacked state.

Third party states are entitled to the right of collective self-defence, but only the attacked state is entitled to claim the occurrence of an armed attack.

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[28] I.C.J. Report 3, Nicaragua, 1986, p. 104.

[29] The end of the cold war and the subsequent crisis in the Gulf, 1990-91, affected the perception of the right of collective self-defence in several ways. Changes in the consideration of national interests by each state in the absence of Cold War confrontation and interdependency in world economic relations had its impact on the relation between the attacked state and those that come to its aid.

[30] Hans Kelsen, *Recent Trends in the law of the United Nations, A supplement to The law of the United Nations,* Stevens and Sons, London, 1951, p. 915; Hans Kelsen, 'Collective security and collective self-defence under the Charter of the United Nations' *American Journal of International Law,* vol. 42, no. 3, 1948, pp. 783 - 796.

Third party states are not permitted to exercise the right of collective self-defence according to their own assessment of the situation.[31] The dispute on whether third party states should have interests in the area in order to be entitled to the right of collective self-defence, is largely diminishing due to the growing economic interdependency and the convergence of interests between different parts of the world. Even if Bowett's stipulation is valid, it would not be difficult for third party states to justify their action in defence of a victim state by claiming that the aggression has affected their interests.

Characterisations of collective self-defence

The characterisation of a military action as collective self-defence has long been a source of discrepant opinions among international law scholars and practitioners. Collective self-defence could possibly be confused with two other kinds of collective military action which are permissible under the Charter of the United Nations: action under regional arrangements and collective enforcement action authorised by the Security Council under Chapter VII. The latter represents the major means of the Charter to combat aggression and threats to international peace and security. However, in the few incidents where the Charter system for peace enforcement has been invoked, an important aspect of this mechanism remained dormant. The non-conclusion

[31] See I.C.J. Report 3, Nicaragua, 1986, p. 104.

of agreements between states contributing military contingents and the Security Council,[32] and the absence of a role for the Military Staff Committee in questions of command[33] made it difficult to try to draw a distinction between peace enforcement and collective self-defence. For constitutional reasons, Kelsen and Stone considered the United Nations' action in Korea in 1950 a collective self-defence action rather than a collective peace enforcement action. In the case of Kuwait, the right of collective self-defence was recognised by the Security Council a few days after the Iraqi invasion in August 1990. Furthermore, in November 1990, the Council, acting under Chapter VII, authorised the use of force against Iraqi forces. Oscar Schachter argued that the right of collective self-defence, along with the Security Council authorisation, continued to provide legal grounds for the use of force after November 1990. Shachter contended that 'the resolution adopted authorising "all necessary means" to compel Iraqi withdrawal was consistent with collective self-defence, even though no reference was made to Article 51.' In his view, 'it was an authorisation to use force that under the Charter was compatible both with collective self-defence under Article 51 and 'action' under Article 42.'[34] A controversial conclusion could be drawn from Shachter's argument, that the right of collective self-defence did not cease

[32] Article 43 of the UN Charter.
[33] Article 47 of the UN Charter.
[34] Oscar Schachter, *International law in theory and practice,* Martinus Nijhoff Publishers, Dordecht, Boston, and London, 1991, p. 403.

even after the Security Council had taken necessary measures, including the authorisation of the use of force to reverse the Iraqi invasion. Schachter admitted that the Council has the right to replace collective self-defence by enforcement measures, but he saw no evidence that the council intended to do so when it adopted resolution 678 in November 1990. Resolution 678 was explicitly adopted under Chapter VII but it did not refer to Article 42. However, it does not seem quite sensible to regard it merely as an affirmation of the earlier recognition by the Council of the right of collective self-defence.[35] The inherent right of individual or collective self-defence is technically part of Chapter VII, but it represents a different authority.

Yet, another prominent scholar, John Murphy, demonstrates that 'Resolution 678 refers only to Chapter VII of the Charter and does not otherwise specify the provisions of the Charter that authorise its issuance.'[36] Murphy states that 'There have been discussions in various other fora about possible Charter bases for this resolution. Articles 42 and 51 have been most often suggested as authority for the resolution.'[37] However, an important reservation is that actions under Article 51 do not require the authorisation of the Security Council. The authority of the Security Council is needed either to carry out an action under regional arrangements under Chapter VIII or for

[35] Security Council resolution 661, 6 August 1990.
[36] John F. Murphy, 'Force and arms' in Christopher Joyner, op. cit. note 5, p. 113.
[37] Ibid.

collective peace enforcement action under Article 42 which seems to be the case with regard to resolution 678. Kaikobad argued that, it is not entirely helpful to found the legal basis of resolution 678 on Article 51 when it can more convincingly be discerned in the scheme set out in Articles 39 to 42. Nor would it be correct to deny the status of such measures on the ground that the Council's role was marginal.'[38]

It might be helpful, in the process of characterising coercive actions, to recall that an action under Article 42 requires that the Council determines a breach of peace, threat to peace or act of aggression, as stated in Article 39. An action under the right of collective self-defence requires necessity, proportionality,[39] declaration by the victim state of being a target of an armed attack, and a request by the victim state for help.[40] An action under Article 51 does not require a determination that the situation threatens international peace and security by the Council.

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[38] Kaiyan Homi Kaikobad, 'Self-defence, enforcement action and the Gulf wars, 1980-88 and 1990-91' *The British Year Book of International Law,* Oxford University Press, 1992, year 63, p. 363.

[39] D. J. Harris, *Cases and materials on international law,* 3rd. edition, Sweet and Maxwell, London, 1983, p. 656; Rosalyn Higgins, *Problems and Process, International Law and How We Use it,* Clarendon Press, Oxford, 1994, pp. 228 – 235.

[40] I.C.J. Report 3, Nicaragua, op. cit. note 31.

Testing the legal parameters

Kuwait and the principle of immediacy

An attacked state may not immediately act in self-defence, due to an incapacity to do so in the face of a massive attack, or pending assistance from outside. It may also wish to try other methods of solution by resorting to the Security Council or the International Court of Justice or by seeking regional arbitration. If such mechanisms do not work, the attacked state may decide to use force individually or in concert with other states, claiming the right of self-defence. Would a delay of response affect the entitlement of the victim to the right of self-defence? American Secretary of State, Daneil Webster, in his widely accepted identification of the requirement of action in self-defence, proclaimed that self- defence should be confined to situations where 'the necessity of self-defence is instant, overwhelming and leaving no choice of means and no moment for deliberation.'[41] The phrase 'no moment for deliberation' assumes that action in self-defence would be immediate. In August 1990, Iraqi forces invaded Kuwait and subjugated the whole country within hours. Kuwait was unable to mount a significant resistance or act in self-defence. It took Kuwait and its allies five months to prepare for a military

[41] Included in a letter by Daneil Webster to the British Government on 24 April 1941, concerning the *Caroline case* see D. J. Harris, op. cit. note 39, pp. 655-656. On 29 December 1837. The British seized the vessel, *Caroline,* on American shore, fired it and sent it over Niagara Falls claiming the right of self-defence. Britain justified its action on the bases that *Caroline* was providing supplies for Canadian rebels.

response before the outbreak of war in the Gulf in January 1991. The UN Secretary General, Perez de Cuellar, remarked in early November 1990 that Kuwait's right of self-defence had ceased due to the elapse of a few months since Kuwait was invaded.[42] The Secretary General's opinion did not seem to contradict the stance of the United States and Britain. The two permanent members did claim the right of collective self-defence to justify the early presence of the international force in the Gulf, however, the situation changed after November 1990 and, eventually, action against Iraq took the form of collective enforcement measures authorised by the Security Council.[43]

In essence, the request for assistance by the victim state and the action in collective self-defence, must be reasonably rapid and in response to an overwhelming act of aggression.

Bosnia: between embargo and impotency to enforce the peace

An important question arises from the experience of the 1990s: if the Council is acting under Chapter VII and even invoking Article 42 of the Charter and deploying forces to the area of conflict, but its actual action in the ground does not stop aggression, does the right of the attacked state in self-defence cease?

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[42] *Washington Post,* 9 November 1990.

[43] An extreme opinion was mentioned by Rostow that the right of individual and collective self-defence exists until the Council either has restored peace or voted affirmatively to stop the right of self-defence. Eugene V. Rostow, 'Until what? Enforcement action or collective self-defense' *American Journal of International Law,* July 1991, vol. 85, no. 3, p. 510.

In the case of Bosnia, the Security Council adopted harsh measures, including a comprehensive economic sanctions regime against the Serbs, and an arms embargo against the Serbs and the Bosnians. Moreover, the Council adopted resolutions authorising the use of force.[44] Yet, for more than three years the Council was unable to stop aggression and tragic atrocities. For this reason, the Bosnians continued to defend themselves against systematic and massive armed attacks which left them 'no choice of means and no moment for deliberation.' In this case, the right of self-defence endured despite the measures taken by the Security Council. However, peace enforcement and self-defence had hitherto proved ineffective. Although the Bosnians were never denied the right to use force in self-defence, the question is whether it is consistent with the principles of the Charter to impose an arms embargo on a state entitled to this right.

Kuwait and Bosnia represent two important test cases for the legal parameters of the right of self-defence under the Charter. Kuwait is the only instance in which the full occupation of a sovereign state was carried out in less than 48 hours. This situation made impossible an immediate and significant military response by the attacked state. Bosnia represents a case where the aggression lingered on for years in the absence of decisive action by the international

[44] See Security Council resolution 770, 13 August 1992.

community, and where the victim retained the right of self-defence but had been denied the access to weapons to defend its defence.

2- Agreements under Article 43

The deployment of forces under the authority of the Security Council to undertake enforcement measures, in the absence of agreements between the Security Council and member states under Article 43, poses an essential constitutional problem. The Charter requires the conclusion of special agreements between the Council and contributing member states but, in practice, all enforcement military operations have been deployed without reference to the provisions of Article 43. Attempts to resolve this paradox have preoccupied the United Nations from the early days of its creation to the recent cases of peace enforcement.[45]

Article 43 of the Charter reads:

> 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

[45] See for example S.C. 1st year Ser. No. 1, pp. 369 – 370; Security Council meeting on 16 February 1946; Thomas G. Weiss, David P. Forsythe, and Roger A Coate, *The*

special agreement or agreements, armed forces, assistance, and facilities, including right 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 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.

Scholars have adopted different approaches to the analysis and evaluation of the issue of special agreements under Article 43. Hans Kelsen believes that enforcement actions remain legitimate even if no agreements have been concluded:

It seems that according to the intentions of the framers of the Charter the Security Council is authorised to take enforcement action involving the

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United Nations and changing world politics, Westview Press, Boulder and Oxford,

> use of armed force only through the armed forces made available to it by the special agreements concluded in conformity with Article 43. But the wording of Articles 39, 42, 47 and 48 does not exclude the possibility of a decision of the Security Council to the effect that members which have not concluded a special agreement under Article 43 shall have a definite enforcement action, or that members which have concluded special agreements shall provide armed forces in excess of those which they have placed at the disposal of the Security Council by the members. Article 42 refers to "air, sea, or land forces" without providing that these forces must be armed forces placed at the disposal of the Security Council by the Members.[46]

Kelsen's approach emphasises the necessity of not precluding states from taking enforcement action under Article 42 if special agreements have not been concluded between the Council and these member states.[47]

According to Rosalyn Higgins, it is possible to take enforcement action in the absence of the implementation of Article 43, but the Council cannot ask

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1994, pp. 32, 91 - 92.

[46] Hans Kelsen, *The law of the United Nations: A critical analysis of its fundamental problems,* Stevens and Sons, London, 1950, p. 756,

[47] At the 476th meeting of the Security Council, Sir Gladwyn Jebb argued that the Council measures against Korea could only have been regarded as peace enforcement measures in conformity with Article 42 if agreements were concluded between the Council and member states under Article 43. Security Council Official Records, meeting 476, 5th year, p. 3.

member states for compulsory participation. Higgins states that 'This writer remains of the view that, while compulsory participation in a United Nations enforcement or policing action is not possible in the absence of Article 43, the possibility does remain-at the legal level at least-of enforcement action.'[48] This understanding led Higgins to decide that the military action against North Korea in 1950 was a peace enforcement action in conformity with the provisions of Articles 39 and 42.[49]

The International Court of Justice, while dealing with the case of Certain Expenses of the United Nations, responded to a question concerning Article 17 of the Charter and the provisions of Article 43 by stating:

> 1... it cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.[50]

Mark Weller adopts a different approach, he considers the provisions of Article 43 a right and not a requirement. According to Weller, the Security Council has the right to initiate the conclusion of agreements with member

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[48] Rosalyn Higgins, 'A General assessment of United Nations peacekeeping' in A. Cassese, *United Nations peacekeeping: legal essays,* Sijthoff & Noordhoff, Alphen aan den Rijn, 1978, pp. 3 - 4.
[49] Rosalyn Higgins, *United Nations peacekeeping, Documents and commentary,* Vol. II, Asia, Royal Institute of International Affairs, London, 1970, p. 177.
[50] I.C.J. Report, Certain Expenses of the United Nations, 1962, p.151.

states, but if the Council is not so willing, the non-conclusion of such agreements will not affect its undertaking of enforcement action pursuant to Article 42. Weller believed that the provision of Article 43 'contains an obligation on the part of the members to respond to a call from the Council, but no obligation on the part of the Council to make use of the facilities offered by its members.'[51]

A third approach is taken by Oscar Schachter who considers the provisions of Article 43 a restraint on the Council's authority. According to this approach, the authority of the Security Council to conclude agreements is subject to the constitutional approval of member states.

Consequences of 'enforcement but not compulsory'

The argument, raised by Kelsen, Higgins, and the ICJ, that a military action authorised by the Security Council can still be enforcement despite the absence of agreements under Article 43, seems to constitute a prevailing notion. Yet, this idea has not been adequately explained in contemporary literature. The difficulty of assessing the notion of 'enforcement but not compulsory', which means an action can be described as enforcement even if it lacked the authority of compulsion, arises from the involvement of many

[51] Marc Weller, 'The United Nations and the jus ad bellum' in Peter Rowe, *The Gulf war 1990 - 91 in International and English Law,* Routledge, London and New York, 1993, p. 39.

constitutional problems in the issue. These problems are related to the various provisions of Chapters V, VI, VII, VIII, and XII of the Charter[52] which envisage the responsibility of the Security Council in the maintenance of international peace and security. The source of compulsion in the Charter is provided in Article 25 which reads: 'The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.' In Article 24 the Charter refers to the primary responsibility of the Council in the maintenance of peace and security, and member states 'agree that in carrying out its duties under this responsibility the Council acts on their behalf.' There is ample discussion on the issue of which decisions of the Security Council should be regarded as binding.[53] The most restrictive opinion confined the binding power of Article 25 to enforcement decisions adopted by the Council under Chapter VII. However, as confusion mounts over the obligatory nature of other provisions there is overwhelming agreement that enforcement actions are binding.[54] The International Court of Justice in its advisory opinion on the case of Namibia stated that 'It also had been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter'. The Court took the view

[52] However, with Chapter XII the problem may only exist on theoretical level.
[53] N. D. White, *The law of international organisations,* Manchester University Press, Manchester and New York, 1996, pp. 87 - 92.
[54] Rudiger Wolfrum and Christiane Philipp, eds. *United Nations: Law Policies and Practice,* Martinus Nijhoff Publishers, Dordrecht, London and Boston, 1995, Hans Kelsen, *Recent Trends,* op. cit. note 30, pp. 927 – 952, 1150-51.

that 'If Article 25 had reference solely to decisions of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Article 48 and 49 of the Charter.' However, the Court noted that the determination of whether a Council decision is binding requires consideration of the provision of the Charter on which the decision is based, the intent of the Council as documented by the wording of the decision, and the context in which the decision is taken.

The ICJ has provided means for flexible consideration of different situations on a case by case basis. This range of flexibility may be interpreted as allowing for exceptions to the general rule of regarding enforcement measures as binding. Accordingly, in the absence of agreement under Article 43 enforcement actions may in certain circumstances be considered as constituting no authority of compulsion.

Compulsion and the concept of 'Coalition of Willing'

Legal discussion on whether member states are required to provide military force under Article 43 blurred the strategic military exigencies as well as the political practicalities of peace enforcement operations. The explanation of this argument is twofold. First, the strategic nature of peace enforcement military operations does not conform to the assumption that the Security

Council can compel member states to contribute forces against their will. National contingents which participate in the undertaking of an authorised coercive action under a unified command, are expected to co-ordinate and harmonise their efforts within a workable military plan. Adam Roberts argues that 'military actions require extremely close coordination between intelligence-gathering and operations, a smoothly functioning decision-making machine and forces with some experience of working together to perform dangerous and complex tasks.'[55] These strategic military requirements seem to be irreconcilable with the literal meaning of Article 43.

Second, the phrase used by some scholars during the Gulf war 'Coalition of Willing' may also be relevant to the present discussion. Although the phrase does not represent a perfect means for the carrying out of peace enforcement actions, recent practice has shown that enforcement actions are usually executed by states which have a reasonable level of understanding, capability, and co-operation. The emphasis added by Boutros Ghali: 'Coalition of willing and able' was also significant.[56] States which lack necessary capabilities may not be asked to contribute forces.

During the Kuwait crisis, all measures employed by the Security Council were considered binding. The provisions of Article 43 were not

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[55] Adam Roberts, 'The United Nations and International Security' *Survival,* vol. 35, no. 2, Summer, 1993, p. 15.

[56] Report of the Secretary-General on an Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, UN Document S/24111, 17 June 1992.

invoked during the crisis and the Council did not conclude any agreements with member states.[57] With the exception of resolution 688 concerning the no-fly zones in Northern and Southern Iraq,[58] there was no dispute over the mandatory nature of enforcement measures taken by the Council. On the other hand, there was no need to ask 'unwilling' states to take part in the military operations. For example, there were no prospects in the Security Council or on the part of the coalition to ask states, such as China, which opposed the use of force, to provide forces or even any kind of material support. Tom Farer exemplified this dilemma by asserting that 'Jordan nominally accepted its undoubted obligation to impose economic sanctions against Iraq. Could it also have been required to allow use of its air base or space by the coalition forces? Neither the language nor history of the Charter appears to offer an incontestable answer.'[59] However, the language of the Security Council

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[57] During the Gulf crisis agreements were concluded between the coalition members, however, the Security Council was not a party to these agreements. Tom King explained in a statement to the House of Commons that: 'We agreed certain overall objectives between the governments concerned in the Coalition before the campaign started. We agreed on the importance, for example, of military objectives; we agreed on the need to minimize the risk of civilian casualties on the Iraqi side; we agreed on the importance, for example, of avoiding cultural or religious sites; we agreed that, for instance, we were not attacking water supplies or sewage installations; we agreed on what were military strategic targets and what were specific direct military targets and on the targets that we would seek to ensure were avoided.' Cited in Christopher Greenwood, 'Customary international law and the First Geneva Protocol of 1977 in the Gulf conflict' in Peter Rowe, op. cit. note 51, p. 66.

[58] Security Council resolution 688, 5 April 1991.

[59] Tom Farer, 'The future of international law enforcement under Chapter VII: Is there room for "new scenarios"?' in Jost Delbruck, ed. *The future of international law enforcement: New scenarios - new law?* Proceeding of an International Symposium of

resolutions during the Kuwait crisis was explicit and demonstrative on this matter. Both of the Council resolutions, 665 and 678, which authorised the implementation of coercive measures, asked 'Member States cooperating with the government of Kuwait' to impose these measures. Resolution 665 was even more specific in adding the phrase 'which are deploying maritime forces to the area.' Therefore, the word 'co-operation' appears to be the operational word with respect to the participation of member states in the military action against Iraq. Military readiness of national contingents contributed by member states was also stipulated to assure the effective implementation of the Council resolutions.

Ratification of agreements

The last sentence of Article 43 declares that, agreements between the Security Council and member states 'shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.' Schachter interpreted this provision as giving member states absolute authority over the deployment of their national forces through special agreements with the Council. According to Schachter 'member states cannot be legally bound to

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Kiel Institute of International Law, March 25 to 27, 1992, band 115, Duncker and Humblot, Berlin, 1993, p. 44.

provide armed forces unless they have agreed to do so' and unless such agreements were approved by their constitutional processes.[60]

Schachter's contention was challenged by Tom Farer, who asserted that

> Article 43's subjection of agreements negotiated between the Council and member states to ratification in accordance with national constitutional processes certainly need not be construed as an oblique way of preserving national discretion. For the requirement of ratification may have been intended simply to assure that such agreements were embedded in national consciousness and internal law. On this view, a state's obligation was not conditional on ratification; instead ratification was an additional obligation.[61]

The opposing views over Article 43 are largely due to the accommodation of various terms within the context of its three paragraphs. Paragraph 1 asks member states to make forces 'available to the Security Council, on its call'. However, the sense of urgency expressed in this part of the Article, is followed by a procedure that such a responsibility should be discharged 'in accordance with special agreement'. Then, Paragraph 3 starts by asserting that,

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[60] Oscar Schachter, 'Authorised uses of force by the United Nations and regional organisations' in Damrosch and Scheffer, op. cit. note 17, pp. 69 and 71.
[61] Tom Farer, op. cit. note 59, p. 43.

'agreements shall be negotiated as soon as possible on the initiative of the Security Council'. However, the same paragraph ends with the controversial assertion that agreements are to be ratified in accordance with the contributing states' constitutional processes. At the time of its adoption, the text of Article 43 attracted controversy and argument between signatory states and, evidently, compromise was made at the expense of its clarity and rectitude.

Reflections on possibilities

Throughout scholarly discussions on the Korean crisis, 1950, it has been argued that the conflict between the superpowers was the main reason behind the failure of the Security Council to implement the agreements mentioned in Article 43.[62] Although the two superpowers came to agree on many mandatory resolutions allowing for their adoption by the Security Council under Chapter VII in the post Cold War era, the situation remained unchanged and none of the provisions of Article 43 were implemented. This fact may suggest that disagreement among permanent members was not the only main reason, behind the failure to activate the enforcement machinery of the United Nations.[63] This argument falls in line with the broad contention that some

[62] See for instance A. Cassese, *Violence and law in the modern age,* Polity Press, Cambridge, 1986, p. 33.
[63] Ibid.

characteristics of the Cold War period belong to 'deeper changes in international relations.'[64]

It remains to be asked what the necessity and significance of discussion on a dead letter is to the Charter. The provisions of Article 43 had never been implemented in an enforcement operation authorised by the Security Council. Schachter observed that 'It would be excessively optimistic to expect that such special agreements could be negotiated in the near future but the hoped-for strengthening of collective security through the United Nations may in time make it politically feasible to seek such agreements. Perhaps it is not too soon to study and reflect on the possibilities.'[65] Schachter concluded. During the 1990s, many proposals were drafted for the creation of a UN standing force. At least two permanent members of the Security Council showed interest in revitalising the provisions of Article 43. France and Russia, on different occasions, expressed their readiness to coordinate their actions pursuant to Articles 43 and 47. At the Security Council summit in 1992, President Mitterrand offered to provide the UN force with 1000 French troops.[66] President Mitterrand was responding to Boutros Ghali's proposition to establish a UN force, on a permanent basis, under Article 43.[67] Mr. Lozinsky,

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[64] Ian Clark, *Globalisation and Fragmentation, International Relations in the Twentieth Century,* Oxford University Press, Oxford, 1997, p. 172.
[65] Oscar Schachter, op. cit. note 60, p. 71.
[66] *UN Chronicle,* June 1992, p. 7.
[67] Boutros Boutros-Ghali, *An agenda for peace,* United Nations, New York, 1992, paragraph 51.

the representative of the Soviet Union at the Security Council during the Kuwait crisis, said that his government was 'prepared to undertake consultations immediately in the Security Council' to verify military options in the Gulf.[68] However, the opposition of some permanent members to coercion made the conclusion of special agreements a difficult task. To reactivate the provisions of Article 43 not only requires the non-use of veto, but also requires a willingness and agreement among the members of the Security Council over the proposed enforcement action.

3- Absence or abstention of a permanent member

Article 27 of the Charter bestowed on the five permanent members of the Security Council the power of veto.[69] The meaning of the rule veto is that each permanent member is capable of blocking the Security Council from acting on substantial matters by voting against the draft resolution. There is no dispute over the constitutional effect of the use of veto. It renders the resolution under consideration invalid.

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[68] E. Lauterpacht and others, *The Kuwait Crisis, Basic Documents,* Cambridge international Documents Series, Vol. 1, Cambridge Grotius Publications, Cambridge, 1990, pp. 245 - 256.

[69] The word 'veto' is not used by the Charter, but it is frequently used in the literature to refer to the negative vote of any permanent member on substantial matters.

The permanent members of the Security Council, as well as non-permanent members, have also the right to abstain during the course of voting or to absent it-self from the meeting. In certain circumstances the Charter oblige member states not to cast either positive or negative vote. This is what the Charter has called 'obligatory abstention'.

Voluntary absence or abstention

In some situations, a permanent member may not agree to a draft resolution or some of its terms, or merely wants to show disinterest in the issue, they can then choose to abstain during the course of voting. In other situations, a permanent member may absent itself from a Security Council meeting while the Council is voting on a substantial matter. Possible reasons for this absence may include the fact that a representative did not receive instructions from his government or that it wanted to object to the work of the organisation on a different issue.[70] The absence or abstention of a permanent member evokes constitutional problems especially in cases of peace enforcement.

[70] One example is the absence of the Soviet Union from Security Council meetings in 1950 in protest at the representation of China in the Council.

Obligatory abstention

Article 27-(3) states that 'in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.' The Security Council's record is a mixture of situations where members have abided by the general rule stated in paragraph 3, and situations where members have ignored the rule and participated in the process of voting despite their involvement in the disputes.[71] The terms of Article 27-(3) explicitly restrict its effect to Council attempts to settle disputes under Chapter VI, and while the Council is encouraging a pacific settlement of a dispute through regional arrangements pursuant to Article 52-(3). It does not require a member of the Security Council who is a party to a certain dispute to abstain during the course of voting on enforcement measures under Chapter VII.

Constitutional effects of voluntary absence and abstention

In the following analysis the study will take account of two different arguments on the constitutionality of Security Council actions when a permanent member is absent or abstaining voluntarily. It provides evaluation of these two arguments and further suggests a relation between the stipulation

[71] For discussion of different eight cases see Sydney Bailey, *Voting in the Security Council*, Indiana University Press, Bloomington and London, 1969, pp. 63 - 64.

of a 'concurrent vote' in Article 27 and the status of neutrality in collective security.

Sydney Bailey observed that 'There is some evidence that at the San Francisco conference, the Sponsoring Powers took the view that an abstention would have the same effect as a negative vote.' [72]

In the early years of the Cold War, the Soviet Union argued against the constitutionality of resolutions 82, 83 and 84, passed in 1950. These resolutions authorised the United States to designate the command of forces and to use the flag of the United Nations during the military operation against North Korea in 1950. At this time, the Soviet Union was deliberately absenting itself from the Security Council meetings in protest at the representation of China in the Council. The Western response was strongly dismissive of the Soviet constitutional claims. The USSR was only able to prevent the adoption of further Security Council resolutions on the Korean crisis when its delegate returned to the meetings.[73]

Kelsen regarded resolutions 82, 83, and 84 as legally invalid arguing that due to the absence of the Soviet Union from the meetings of the Security Council the requirement of the concurring votes of the five permanent

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[72] Ibid. p. 69.

[73] In this respect the Soviet Union vetoed two draft resolutions: draft resolution (S/1653) S.C. meeting 496, 6 September 1950 and draft resolution (S/1894) S.C. meeting 530, 30 November 1950.

members was not satisfied.[74] However, for Kelsen the use of force against North Korea was legal on the basis of Article 51.[75] Richard Falk stated that 'the Soviet absence from the Security Council during the early stages of the Korean War (1950) was not then allowed to prevent 'decisions' despite the clear language in Article 27(3) that decisions required 'the concurring votes of the permanent members'.[76]

Taking account of the actual record of the Council on the issue of abstention, Bailey asserts that ' the practice has developed of regarding only negative votes as constituting vetoes.' According to Bailey, this 'applies also to the absence of permanent members.' As early as August 1947, the President of the Security Council (Representative of Syria) issued a statement declaring that:

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[74] Hans Kelsen, *Recent Trends,* op. cit. note 30, pp. 927 - 952. The Soviet Union was of the opinion that two permanent members were absent from the Security Council meetings which authorised the military operation against North Korea. On 29 June 1950 the Soviet Ministry of Foreign Affairs cabled the Secretary General in connection with the adoption of resolution 83 of 27 June 1950 which recommended 'that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore the international peace and security in the area.' The message explained that this resolution carried no legal force as it has been adopted in the absence of the representatives of the Soviet Union and China. UN Documents S/1517. For discussions on the representation of China in the Security Council see Security Council meeting no. 48, UN Documents. S/P.V. 480, Rev. 1, pp. 36 - 40, and 42 – 47; Hans Kelsen, this note, pp. 941 - 944.

[75] Hans Kelsen, *Recent Trends,* op. cit. note 30, pp. 927 -938.

[76] Richard Falk, 'The United Nations, the rule of law and humanitarian intervention' in Mary Kaldor and Basker Vashee, eds. *Restructuring the world military sector,* vol. 1, *New wars* (UNU/WIDER) and Pinter, London and Washington, 1997, p. 112.

> I think it is now jurisprudence in the Security Council-and the interpretation accepted for a long time-that an abstention is not considered a veto, and the concurrent votes of the permanent members mean the votes of the permanent members who participate in the voting. Those who abstain intentionally are not considered to have cast a veto.[77]

When the International Court of Justice opined on the matter in 1977 it referred to this precedent and similar Security Council presidential rulings as a base for its opinion: 'the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the position taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions.'[78]

The Court did not discuss the legal requirements of the Charter and the intentions of its framers, but rather relied on the practice of the Security Council. The reference was not to how the provisions of Article 27 could be interpreted, but how the Council 'interpreted the practice' of its members.

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[77] S.C.O.R., 2nd year, 173rd meeting, 1 August 1947, p. 1711.
[78] ICJ, The Namibian Case, 1977, p. 22.

China and the practice of abstention

During the Gulf crisis of 1990-91, China abstained in the vote on resolution 678 which authorised the use of force against Iraq.[79] Though it consistently opposed the military measures, China did not claim that its abstention carried a constitutional significance. Major-General Du Kuanyi, the head of the Delegation of the People's Republic of China to the United Nations Military Staff Committee, attempted to provide an explanation for China's abstention. General Kuanyi asserted that: 'I believe you are all aware that China abstained in the vote on Resolution 678. The reason for our abstention is that the resolution runs counter to China's consistent principled position of settling international disputes by peaceful means. Nevertheless, it needs to be emphasised that although China did not vote in favour of that resolution as far as the Gulf is concerned, China and other members of the international community, including the United States, shared a common purpose, that is, to bring the Iraqi invasion of Kuwait to an early end. It was for this reason that we did not use our right of veto to prevent the adoption of this resolution.'[80] Following the Gulf crisis, China maintained its abstention during the vote on resolutions related to the employment of enforcement measures under Chapter

[79] Security Council resolution 678, 29 November 1990.

[80] An address by General Kuanyi to the seminar of the Canadian Institute of Strategic Studies in Ontario, May 1991. Du Kuanyi, 'A Chinese view of the role of the United Nations in international security' in Alex Morrison, ed. *Peacekeeping, peacemaking or war: international security enforcement,* The Canadian Institute of Strategic Studies, Ontario, 1991, p. 73.

VII.[81] It also did so in relation to Libya 1992,[82] Rwanda 1993,[83] Haiti 1994,[84] and Sudan 1996.[85] More recently, on 12 November 1997, China voted in favour of a resolution adopted by the Council under Chapter VII imposing restrictions on the travel of Iraqi officials.[86] At this meeting the representative of China stressed that his government opposed the use of force and explained that China's 'affirmative' vote on this matter did not imply any change in his government's position on the question of sanctions.[87]

The absence of concurrence

Sydney Bailey and the president of the Security Council have each rightly argued that the practice has developed of considering abstention or absence as not having the effect of a negative vote.[88] However, the requirement of Article 27(3) of the 'affirmative vote of nine members including the concurring votes

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[81] In a scholarly interpretation of China's abstentions Richard Falk contended in 1994 that 'In the last few years, China has frequently abstained or even gone along on crucial Security Council votes, despite manifesting a degree of opposition to the UN approach, possibly because it has been the recipient of diplomatic side-payments (e.g. reduced pressures on human rights, preferential trade arrangements) and possibly because its economic growth seems tied to positive relations with leading states.' Falk Richard, op. cit. note 75, p.117.

[82] Security Council resolution 748, 31 March 1992.

[83] Security Council resolution 929, 22 June 1994.

[84] Security Council resolution 940, 31 July 1994.

[85] Security Council resolution 1054, 26 July 1996. China also abstained during the course of voting on resolution 688 regarding the humanitarian relief operation in Northern and Southern Iraq, on 3 April 1991.

[86] Security Council resolution 1137, 12 November 1997.

[87] Security Council meeting 3831, netsite: http://www.un.org/plwep-cgi/idoc.pl. 17 November 1997.

[88] Sydney Bailey, op. cit. note 71; S.C.O.R. op. cit. note 77.

of the permanent members' cannot be satisfied while a permanent member is abstaining or absenting itself from a Security Council meeting. In such cases, therefore, the vote is neither 'concurring' nor 'affirmative'. However, the permanent members seem to have informally agreed that only negative votes will carry constitutional effects to hinder the adoption by the Security Council of resolutions on substantial matters. As Adam Roberts and Benedict Kingsbury observed, much has been achieved in the UN's history by changes in practice rather than Charter amendment.[89] However, it could be noted that China, more than any other permanent member, has significantly contributed to the establishment of this pattern of practice, by accepting that its repeated abstention would not block the Council.

The provisions of the Charter explicitly stipulate that the concurring votes of nine of the Security Council member states including the votes of the permanent five members are required to adopt a resolution on a substantial issue. However, the practice has developed in a different way, considering the non-participation or abstention of a permanent member during the course of voting as having no constitutional effect. This was largely attributed to tendency among member states to limit the scope of the veto and to confine its

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[89] Adam Roberts and Benedict Kingsbury, *United Nations divided world,* Clarendon Press, Oxford 2nd edition, 1993, pp. 48 – 58.

effect to the direct negative vote. This part of the thesis suggests that a relationship exists between the stipulation of concurrent voting in the Charter and the status of neutrality in collective security. The original system of collective security, according to Woodrow Wilson, does not allow for neutrality, as all states should stand against aggression. To conceive abstention as having no constitutional effect is to assume that abstention is a practice of neutrality. Although, the scope of Article 27 is not limited to the practice of the Security Council in the area of collective security, it seems to draw on one of its principles, that no state is allowed to be neutral in the face of aggression. However, in practice neither this principle has worked nor has the Security Council continued to stipulate concurrence.

4- Adequacy and inadequacy

Acting under Chapter VII of the UN Charter, the Security Council may apply measures not involving the use of force to secure the compliance of an aggressor or a defiant war perpetrator with its resolutions. According to the provisions of Article 41, the Council may call upon member states to employ total or partial interruption of economic relations with the target, interruption of means of communication, and severance of diplomatic relations. The underlying premise is that these measures will succeed in bringing about

compliance. However, this assumption may not be corroborated in practice, depending on the particular circumstances of each case, and the aggressor may disregard the Security Council resolutions. Because of such defiance and the continuing threat to the peace, the Security Council may decide to take further action, including the use of force as prescribed by Article 42 while sanctions are imposed on the target.

Would be or proved to be inadequate

To shift the agenda from the provisions of Article 41, enforcement measures short of the use of force, to coercive measures provided for in Article 42, is by no means an easy task. Rather, it has proved to be one of the most difficult decisions the Council can take. The only attempt to clarify the issue of when the Council should pursue such a move is stated, in imprecise terms, in Article 42, which allows the Council to consider whether sanctions are adequate or inadequate to achieve compliance. The text of Article 42 reads:

> Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may

include demonstrations, blockade, and other operations by air, sea, or land forces of members of the United Nations.

The question of the adequacy or inadequacy of measures provided for in Article 41 has rarely been discussed and its entire significance has not yet been explored. Brian Urquhart briefly referred to the determination of inadequacy describing it as 'an important condition on the ultimate use of force' under Article 42.[90] David Scheffer attempted to apply this provision to the adoption of resolution 678 during the Gulf crisis by arguing that 'The Security Council decision reflected a judgement by the governments of some of its members - particularly by the Bush administration - both that the economic sanctions had proved to be inadequate up to the date of the Council action and would be inadequate, at least in the event Iraq continued its policy of non-compliance following the deadline of January 15, 1991, established in resolution 678.'[91]

A criterion for assessing the adequacy of measures provided for in Article 41 is missing from the Charter system for peace enforcement. Indeed, before 1990 the question of 'adequacy' was of little concern. Between 1945 and 1990 mandatory sanctions were authorised by the Security Council only

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[90] Brian Urquhart, 'Learning from the Gulf' in Mara R. Bustelo and Philip Alston, *Whose new world order?* The Federation Press, Sydney, 1991, p. 14.
[91] David J. Scheffer, 'Commentary on collective security' in Damrosch and Scheffer, eds. op. cit. note 17, p. 104.

twice, against Rhodesia[92] and South Africa,[93] and their range was narrowed in the case of South Africa to the level of arms trade only. Prior to the Kuwait crisis, 1990-91, the United Nations had never moved from the application of sanctions authorised by the Security Council to a course of military action. In its early years, the United Nations was confronted with the Korean crisis, which seemed at the time to carry the potential of a Third World War. The first resolutions to be adopted by the Security Council in relation to the crisis instantly authorised the use of force against North Korea.[94] The Korean conflict represented the only incident during which the Security Council employed military measures without prior recourse to mandatory sanctions. Such a situation was not foreseen by the Charter. Articles 41 and 42 did not emphasise that the Council may determine from the outset, due to the severity and seriousness of a certain situation, that sanctions would be ineffective and therefore, it should immediately undertake the military measures prescribed in Article 42. On the contrary, the Charter adopted an escalating system which requires justification for each further step.

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[92] Security Council resolution 232, 16 December 1966.
[93] Security Council resolution 418, 4 November 1977.
[94] Security Council resolution 82, 25 June 1950; S.C. resolution 83, 27 June 1950; S.C. resolution 84, 7 July 1950.

Suggestions of inadequacy and the effect of UN ultimatums

Practice shows that when the Security Council imposes mandatory sanctions, member states start, almost immediately, to suggest the inadequacy of sanctions, and demand the employment of military measures under Article 42. In the case of Southern Rhodesia, the Ivory Coast submitted a draft resolution to the Council, a few days after the imposition of sanctions, calling for full implementation of military enforcement measures under Articles 42 and 43. It was a remarkable gesture that the General Assembly had adopted a resolution recommending the use of force against Ian Smith's white minority government even before the imposition of economic sanctions. The comprehensive resolution 2022 of the General Assembly called upon the United Kingdom to employ all necessary means, including military force. However, despite these early recommendations for coercive measures to be employed, the Security Council persevered with economic sanctions for some ten years. During these years, the Council did not question the adequacy of sanctions against Rhodesia and representatives of the UK and US repeatedly vetoed draft resolutions which suggested more stringent use of sanctions or the use of force as a means to end the minority rule.[95] The general assumption was that 'economic

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[95] Draft resolution (S/5425/Rev.1) S.C. meeting 1069, 13 September 1963; Draft resolution (S/9696/Corr.2) S.C. meeting 1534, 12 March 1970; Draft resolution (S/9976) S.C. meeting 1556, 10 November 1970; Draft resolution (S/10489) S.C. meeting 1623, 30 December 1971.

sanctions are always to be preferred to the application of a military strategy and, in any case, are always to be exhausted before military action is initiated.' However, as Michael Reisman and Douglas Stevick observed these assumptions are not applicable to the majority of unilateral and multilateral practice.[96]

The issuing of an ultimatum, while the Council is imposing sanctions on a target clearly determines the remaining period for sanctions before the Council can take any military action.[97] Security Council resolution 678 in relation to Iraq specified 15 January 1991 as an ultimatum which allowed sanctions six weeks more before the commencement of military operations.[98]

Forming a criterion

The terms of the Charter concerning the adequacy and inadequacy of economic and diplomatic measures are ambiguous, they provide no criteria for determining the circumstances in which sanctions 'would be inadequate'. This is one of the provisions of the UN mechanism for peace enforcement which remained dormant for more than forty years and which needs to be rethought

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[96] W. Michael Reisman and Douglas L. Stevick, 'The Application of International Law Standards to United Nations Economic Sanctions Programmes' *European Journal of International Law,* vol. 9, no. 1, 1998, p. 94.

[97] Ultimatums define the remaining period for sanctions as well as the time left for peaceful initiatives.

[98] Security Council resolution 678, 29 November 1991. It could be argued that the five month between August 1990 and January 1991 was only the necessary period for the US-led coalition to prepare for war.

after it has been prematurely activated in cases of peace enforcement during the 1990s. Such contention stems from the general observation that 'More thought will have to be given to how the Security Council might develop its procedures and practices'.[99]

The defining of a criterion for measuring the adequacy and inadequacy of sanctions is important for the development of the Council procedure as well as for the credibility of the United Nations. It serves the purpose of justifying, for public opinion, Council decisions on military action in certain cases instead of persevering with sanctions and giving them more time to work. It further helps to present to aggressors and war perpetrators the credible threat of the use of force if further breaches are committed while the council is employing non-military measures. In the following suggestion, the study will attempt to outline a four-point criterion derived from subsequent UN institutional activities related to the case under consideration and the actual developments on the ground.

Further unprovoked attacks

A clear sign that sanctions might not bring about compliance can be detected when an aggressor carries out further unprovoked attacks while being submitted to mandatory measures under Article 41. Subsequent unlawful

[99] Adam Roberts, op. cit. note 55.

movements, such as forced demographic changes to the territory of the victim state, abuse of its natural resources or violation of human rights might also raise concerns and cause the Security Council to conclude that sanctions 'would be inadequate'.

Breach of accords

In the case of mandatory sanctions, attempts to resolve the conflict through negotiations and good offices might lead parties to the conflict, at some point, to sign accords which do not resolve the whole matter but bring about agreement on some important issues. The unjustified breach of such accords by a signatory party may lead to a questioning of intentions and the Council may consider the application of further measures which might involve the use of force.

Rejection of peaceful initiatives

The aggressor may continue to defy the international community and Security Council resolutions by refusing reasonable peace deals initiated either by neutral mediators acting unilaterally or under the auspices of the Secretary General's good offices. Such circumstances may constitute an 'inadequate'

situation as regards the employment of sanctions, and necessitates a move to measures under Article 42.

Withdrawal of consent

In some cases, the Council may impose financial measures or an arms embargo on a target while deploying peacekeeping forces to the area. A party to the conflict may decide to withdraw its agreement to the presence of UN forces in the area. Such a unilateral decision would put the UN mission in jeopardy and further, risk a peace process. However, the United Nations may decide to continue its military presence on other bases. In this case, the peacekeeping mission would be transferred into a peace enforcement one, and subsequent economic measures would be followed by the use of force if necessary.

Reports of the Secretary General and UN Commissions

It is a normal procedure for the Security Council to ask the Secretary General to report back on compliance while the Council is in charge of the matter. The reports of the Secretary General and his special envoys may suggest that further action, involving the use of force, is needed, or urgently needed, to

rescue a deteriorating situation.[100] In the case of Somalia the Secretary General recommended to the Security Council 'The Council would also have to determine that non-military measures as referred to in Chapter VII were not capable of giving effect to the Council's decisions.'[101] The Council may build its action on the Secretary General's recommendations or on reports submitted by UN Commissions.[102]

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[100] As the former Secretary General Boutros Ghali did with reference to Rwanda and Bosnia, however in the latter Ghali was calling for the implementation of the measures authorised by the Council.

[101] *The Blue Helmets, A Review of United Nations Peace-keeping,* United Nations Department of Public Information, New York, 3rd edition 1996, p. 293.

[102] Despite the Korean crisis not representing a case of a systematic application of Chapter VII, it can be noted that in June 1950 the United Nations Commission on Korea reported to the Security Council on the non-compliance of North Korea and requested the undertaking of urgent military measures. Paragraph 4 of resolution 83 of 27 June 1950 noted that '...the report of the United Nations Commission on Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to 38 parallel, and that urgent military measures are required to restore international peace and security'

Part V

Chapter 6

Peace enforcement and international terrorism

During the Cold War the United Nations had never taken measures against international terrorism. The Security Council proved to be impotent by failing to adopt any resolutions condemning specific terrorist activities. These patterns have dramatically changed during the 1990s, and the Security Council has actually organised collective responses under Chapter VII of the UN Charter to deal with incidents of international terrorism. The General Assembly has also been able to adopt conventions for the prevention and elimination of terrorism. The revival of the Security Council, since 1990, has enabled its member states to confront the challenges of terrorist activities in the world through the mobilisation of the UN system for peace enforcement. However, these responses have not been without difficulties and controversy over their justification and the Cold War confrontation over the meaning of international terrorism and what constitutes a terrorist attack did not disappear.

This chapter is concerned with collective responses to international terrorism in the form of peace enforcement actions. It examines the Security Council's innovative practice in this area and the challenge of imposing peace

enforcement measures in situations of international terrorism. It does not intend to explore the issue of terrorism and its wider implications, however some of its aspects are briefly explained where necessary.

The employment of diplomatic sanctions against Sudan will be discussed in length for three reasons. First, it is the first incident of mandatory diplomatic sanctions adopted as an exclusive regime of sanctions. The Council did not implement other kind of sanctions against Sudan. Second, the issue of diplomatic sanctions was rarely discussed in the literature on mandatory sanctions.[1] Third, the case of Sudan has not been studied before, a fact necessitates the explanation of regional and international factors for a coherent understanding of the case.

Terrorist acts are usually conceived of as involving the threat or use of force. When a state initiates or supports a terrorist attack against another state it breaches, to a certain degree, the principle of non-use of force among states provided for in Article 2(4) of the United Nations Charter. This formulation provides the basis for states' obligations to refrain from the use of terror in their interstate relations.

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[1] A study carried out by a group designated by the Royal Institute for International Affairs (RIIA) in 1938 to study the issue of sanctions and the role of the League of Nations, remained one of the rare contributions to discussions on the issue of diplomatic sanctions, *International Sanctions,* A Report by a Group of Members of the Royal Institute of International affairs, Oxford University Press, London and New York, 1938, pp. 15 - 23.

If an armed attack occurs against a state through the mobilisation of terrorist activities by another state, the attacked state might consider the undertaking of unilateral or multilateral counter-measures. However, the question arises about the appropriate and permissible response to such acts? Yuri Kolosov proposes that in the face of international terrorism '[t]he international community has two choices: either to recognise the right of self-defence against states which support terrorism or drug trafficking; or to recognise the competence of the Security Council to undertake collective sanctions against such states.'[2] The first option, responding in self-defence, dominated the practice of states during the Cold War era. The cases of Entebbe 1976, Iran 1980, and Libya 1986 are some examples of this practice. Oscar Schachter notes that the International Court of Justice (ICJ) ruling in the case of Nicaragua and the report of the International Law Commission on state responsibility do not support the use of force in self-defence on the basis of combating or responding to terrorist activities.[3] However, because of disagreement among the big powers on the issue of international terrorism, collective action through the Security Council against terrorism was almost impossible during the Cold War.

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[2] Yuri M. Kolosov, 'Limiting the use of force: Self defence, terrorism and drug trafficking' In Lori Fisler Damrosch and David J. Scheffer, *Law and force in the new international order,* Westview Press, Boulder and Oxford, 1991, p. 236.

[3] Oscar Schachter, *International Law in Theory and Practice,* Martinus Nijhoff Publishers, Dordercht, Boston, London, 1991, pp. 164 - 165.

Terrorist acts may include attacks against the territories, properties, civilians or armed forces of another state. Such acts may amount to the category of international wrong doings that necessitate and justify the employment of enforcement measures under Chapter VII. However, this fact does not preclude the international community from considering other methods of settlement. Like other interstate low intensity conflicts, terrorist attacks may also be dealt with through recommendations pursuant to the obligations of pacific settlement, judicial rulings, or other peaceful means. Yet, many terrorist acts may provoke unilateral or multilateral coercive responses.

There have been no international regulations specifically set out for the collective management of situations which involve international terrorism. No agreement has been reached on the requirements of enforcement action to combat terrorist activities. However, two important requirements could be derived from the relevant rulings of the ICJ and the provisions of the Charter. First, the 'scale and effect' of the action should amount to the level of an armed attack.[4] Second, the Security Council should determine that such an act has threatened the peace, breached the peace, or constituted an act of aggression.[5] When the Council make such a determination, it may apply

[4] ICJ Report, *Nicaragua case,* 1986, p. 103.
[5] Article 39 of the UN Charter.

measures against the terrorist aggressor under Article 40, 41, or 42. However, in actual terms the Council has rarely been able to mobilise some of these provisions in the face of international terrorism.

The Record of the United Nations

The UN has a very limited record in dealing with the issue of international terrorism. The United Nations Charter neither mentions the word terrorism nor contains any explicit reference to it. The General Assembly has only been successful in issuing general condemnations of international terrorism. The Ad Hoc Committee on International Terrorism established by the General Assembly in 1972 submitted a report to the Assembly in 1979 without reaching an agreed definition of terrorism.[6] While the 1954 Draft Code on the Peace and Security of Mankind included the term 'terrorist acts' in its definition of aggression, the work of the International Law Commission on this draft was not completed until 1990.[7] Hedley Bull described the atmosphere of disagreement over this issue by stating that:

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[6] GAOR 34th session, supplement No. 37 (A/34/37) 1979.

[7] UN Documents, A/CN.4/430,1990; In his address to the International Law Commission at its fiftieth anniversary on 7 July 1997, Secretary-General Kofi Annan commended the work of the Commission by stating that 'We are living through a remarkable period in the advancement of international law. Great strides have made in refining its writ, expanding its reach and enforcing its mandate. The challenges of the future, in areas such as narcotics, disease, crime and international terrorism, are increasingly recognised as transnational challenges. ... For the past 50 years, the International Law Commission has been in the

> Attempts to curb the hijacking of aircraft and the kidnapping of diplomats by international action have foundered on this lack of solidarity. In 1972 the United Nations General Assembly was not able to endorse a U.S.-sponsored conventions against 'international terrorism'. Most Socialist and Third World states, so far from seeking to condemn resort to international violence by non-state groups, have sought to extend to them the protection of the laws of war, at all events in cases where these groups are engaged in armed struggle for self-determination, against colonial rule, alien occupation or 'racist' governments.[8]

Differences between the Third World and the West over the definition of terrorism represented a fundamental reason behind the controversy over the issue.[9] Many Third World countries wanted the struggle of national liberation

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forefront of meeting those challenges.' Press Release SG/SM/6279 L/2834, Netsite: file:///H/6279.htm.

[8] Hedley Bull, *The Anarchical Society, A Study of Order in World Politics,* Macmillan Press, London, 2nd edition 1995, p. 259.

[9] For attempts to establish a definition of international terrorism see M. Cherif Bassiouni, 'An International Control Scheme for the prosecution of International Terrorism' in Alona E. Evans and John F. Murphy, eds. *Legal Aspects of International Terrorism,* D. C. Heath, Massachusetts and Toronto, 1978, p. 485; Adrian Guelke, *The Age of Terrorism and International Political System,* I.B. Tauris Publishers, London, New York, 1995, pp. 18 – 34. Brian Jenkins, *International Terrorism: A New Mode of Conflict,* Crescent Publications, Los Angeles, 1975; Martin Slann and Bernard Schechterman, eds. *Multidimensional Terrorism,* Lynne Rienner Publishers, Boulder, 1987; General Assembly, 'Declaration on Measures to

Eliminate International Terrorism' in United Nations Publications, *International Instruments of United Nations,* edited by Irving Sarnoff, United Nations, New York, 1997, pp. 74 – 75.

movements to be exempted, while Western countries withheld their support for a definition that included state terrorism. The term 'state terrorism' was invoked by Third World countries against practices of governments in colonised and occupied territories, and apartheid policies of white minority governments. In an incident chronicled by John Vincent,[10] cited by Ramsbotham and Woodhouse,[11] the Tunisian representative to the United Nations called for international intervention in South Africa to protect human rights. The South African representative disagreed and argued that it was contrary to Article 2(7) of the Charter. These discrepancies and the conflict of interests among big powers during the cold war era, contributed to the state of inaction within the United Nations.

Inconsistency in the use of the term 'terrorism'

There is inconsistency in the use of the term terrorism. While the term was mobilised in some situations, it has been omitted in many texts which deal with incidents of terrorist attacks. Some scholars favour the use of other terms as they could, in certain incidents, fairly substitute for the term terrorism.[12]

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[10] John Vincent, *Non-intervention and international order,* Princeton University Press, Princeton, 1974, pp. 261 - 277.

[11] Oliver Rabsbotham, and Tom Woodhouse, *Humanitarian intervention in contemporary conflict, a reconceptualisation*, Polity Press, Cambridge, 1996, pp. 52 - 53.

[12] Rosalyn Higgins, 'The general international law of terrorism' in Rosalyn Higgins, and Maurice Flory, eds. *Terrorism and international law,* Routledge and LSE, London and New York, 1997, pp. 19 - 20.

Judge Higgins indicated how the term was omitted in one important case. Higgins observed that '[t]he judgement of the International Court in the case of *Nicaragua v United States* is a striking example of how relevant subject-matter can be dealt with without invocation of 'terrorism'. In that case many of the claims advanced by Nicaragua against the United States were of a category frequently included in the concept of 'terrorism'.' Higgins noticed that '[f]rom beginning to end of this long case (over 550 pages) there is no use made of the concept of State terrorism.'[13]

For the purposes of this study and so as to elaborate on Higgins' observation reference could also be made to the hostages issue between the United States and Iran in 1979-80. On 13 January 1980, the United States submitted a draft resolution that called for the immediate release of the US diplomats who were being held hostage in Teheran, and asked all member states to apply comprehensive financial penalties against Iran.[14] The lengthy text of the draft resolution, which contains more than twenty paragraphs and preambles and is fully devoted to the issue of the hostages made no mention of the word terrorism, despite the 1979 Convention Against the Taking of Hostages considers 'all acts of taking of hostages as manifestations of international terrorism'. Furthermore, when the question was referred to the

[13] Ibid.
[14] Draft resolution (S/13735) Security Council meeting 2191, 13 January 1980.

International Court of Justice, the order of the World Court of 15 December 1979 regarding the hostage crisis also made no reference to international terrorism.[15]

In these cases and in many other different situations the use of terror by states has been dealt with as acts violating the international norms of human rights or breaching the laws of war in cases involving terrorism generated by armed conflicts.[16]

1- The Security Council and terrorism

The permanent members of the Security Council have repeatedly used the veto to block the adoption of resolutions which refer to international terrorism. In 1972 a draft resolution on the situation in the Middle East stated that the Security Council, 'Deplore [s] deeply all acts of terrorism and violence and all breaches of the cease-fire in the Middle East'. China and the Soviet Union vetoed amendments to the draft and the United States vetoed the final draft as a whole.[17] In 1986, the Security Council voted on a draft resolution which related to the situation in the Mediterranean and that referred

[15] ICJ Report, *Order of International Court of Justice,* 15 December 1979; It should be noted that the ICJ order was issued two days before the adoption by the General Assembly of the Convention Against the Taking of Hostages.

[16] See comments by, John F. Murphy on 'The United Nations and international terrorism' in Henry Hyunwook Han, *Terrorism, political violence and world order,* University Press of America, Lanham, New York, and London, p. 603.

[17] Draft resolution (S/10784) and amended draft resolution (S/10786), Security Council meeting 1662, 10 September 1972.

to terrorist attacks. Paragraph 3 of the submitted draft reads: 'Condemns all terrorist activities, whether perpetrated by individuals, groups or states'. France, Britain, and the United States vetoed the draft.[18] Between 1945 and 1990, the Security Council did not adopt any resolution which condemned terrorism and no measures were employed by the Council against a terrorist aggressor.

The case of Kuwait, however, represented a significant move from the pattern of practice within the Security Council in dealing with this sensitive issue. For the first time in the history of the UN, the Security Council, acting under Chapter VII of the Charter, adopted in April 1991 a resolution explicitly referring to international terrorism and subsequently applying enforcement measures on Iraq.[19] Two preambles of resolution 687 referred to the international obligation of refraining from terrorist acts and deplored the threat of the use of terrorism in retaliation for the imposition of the measures authorised by the Council. Furthermore, resolution 687 made the cease-fire contingent, among other conditions, upon the official notification by Iraq to the Secretary-General and the Security Council of its acceptance not to 'commit or support any act of international terrorism or allow any organisation directed towards commission of such acts to operate within its

[18] Draft resolution (S/18016/Rev.1), Security Council meeting 2682, 21 April 1986.
[19] Security Council resolution 679, 3 April 1991.

territory and to condemn unequivocally and renounce all acts, methods, and practices of terrorism.' Iraq notified the Council that it intended to comply with the provisions of resolution 687 including the above demands. The call for Iraq, not only to stop committing or supporting terrorism, but also to condemn unequivocally 'all acts, methods, and practices of terrorism' is a reflection of the comprehensive nature of resolution 687 which has been dubbed 'the mother of all resolutions'.

Consideration of the issue of international terrorism was not a predominant character of the Gulf crisis. Instead, discussions on breaches of internationally agreed principles and norms prevailed. None of the twelve resolutions adopted by the Council before 15 January 1991 with relation to the Gulf crisis included a provision which explicitly condemned Iraq for committing terrorist acts.

The case of Kuwait, in this respect, provided a pattern for the future. In 1992, the Security Council acting under Chapter VII, decided in resolution 748 'that the Libyan government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete action, demonstrate its renunciation of terrorism'.[20] Eight months later, the Council determined in resolution 883 that the Libyan

[20] Security Council resolution 748, 31 March 1992.

government failed 'to demonstrate by concrete action its renunciation of terrorism' and, therefore, the situation constituted a threat to international peace and security.[21]

In a more recent experience, the Council adopted three resolutions under Chapter VII in relation to the case of Sudan. The texts of these resolutions were solely pertinent to an issue of international terrorism. Resolution 1054, in one of its preambles, stated that 'Reaffirming that the suppression of acts of international terrorism, including those in which States are involved is essential for the maintenance of international peace and security'. The Council expressed its determination to eliminate international terrorism and its fifteen members expressed their unanimous support for the involvement of the Council in issues of international terrorism.

2- Embargo against Libya

Libya was an obvious target for sanctions. Uniquely, the Lockerbie incident directly involved the three Western permanent members of the Security Council.[22] Indeed, the American airplane, which crashed over Scotland in December 1988 killing 270 people, was carrying French, British and

[21] Security Council resolution 883,

[22] For analysis of confrontation between Libya and Western states over terrorist allegations before Lockerbie, see Lawrence Freedman, Christopher Hill, Adam Roberts, R.J. Vincent, Paul Wilkinson, and Philip Windsor, *Terrorism and international order,* The Royal Institute of International Affairs, Routledge and Kegan Paul, London, New York, and Henley, 1986.

American citizens.[23] The victims of the crash included all 259 passengers and crew, as well as 11 people on the ground. The Security Council asked Libya to extradite two suspects for their alleged involvement in the crash, and subsequently imposed mandatory air and arms embargo.[24]

Sanctions against Libya are three-pronged. First, the Security Council, acting under Chapter VII, asked all countries, whether members of the United Nations or not, to prohibit any aircraft from taking off, landing in, or flying-over their territory if it was going to or coming from Libya, unless a particular flight had been approved for significant humanitarian reasons. Ancillary-measures were also adopted to ban the supply of any aircraft or aircraft components to Libya, and to ban the provision of engineering and maintenance servicing, the certification of airworthiness and the provision of new direct insurance for Libyan aircraft. Second, all states were asked to prohibit the provision to Libya of arms and related materials of all types. Military relations with Libya, from the supply of equipment to technical advice and maintenance of army machinery, are also prohibited. Third, countries were asked to reduce significantly the number and level of staff at

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See also C. Greenwood *International law and the United States air operation against Libya,* West Virginia Law Review, No. 89, 1986-87, p. 911.

[23] The victims of the crash included all 259 passengers and crew, as well as 11 people on the ground.

[24] Op. cit. notes 20 and 21.

Libyan diplomatic missions and consular posts and to restrict or control the movement within their territory of all such staff who remain.[25]

More restraints designed to extend and tighten sanctions against Libya were included in the preambles. States hosting international organisations were asked to consult with them on the actions required for implementing the diplomatic measures. All states were to prevent the operation of all Libyan Arab Airlines offices. Libyan nationals who have previously been denied entry to or expelled from any country for involvement in terrorist activity were to be denied entry to all states or even expelled from their territory.

So far, sanctions against Libya have involved three measures: an air embargo, an arms embargo, and diplomatic sanctions. A ban on petroleum exports is not included. In the first years most countries have tended to be strict in imposing sanctions against Libya.[26]

Developments of 1998

During 1998, many states and organisations challenged the validity of the measures arrayed against Libya. On 27 February 1998 the ICJ declared that it had the jurisdiction to deal with the dispute between Libya and the United

[25] Security Council resolution 748, 31 March 1992.

[26] A detailed discussion about the legality of sanctions against Libya is found in, among other studies, Turkkaya Ataov, *The Lockerbie case, sanctions against Libya & Legality,* Ankara, 1992; Mark Weller, 'The *Lockerbie* Case: Premature End to the "New World Order"', *African Journal of International and Comparative Law,* 1992, vol. 4 no. 2. p. 321.

Kingdom.[27] A similar judgement was issued by the ICJ concerning the situation between Libya and the United States.[28] The Court based its ruling on the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. The Court explicitly referred to article 14(1) concerning the settlement of disputes on the interpretation or application of the provisions of the Convention. The United Kingdom and the United States argued that the Security Council resolutions had rendered the Libyan claims without object.[29] However, the Court found it inappropriate, at this stage, to decide on the arguments raised by the UK and US.[30] The two countries, the Respondents, were allowed until 30 December to file the Counter-Memorials, before the Court could start to consider its judgement on the merits.[31]

Despite the preliminary nature of the ICJ rulings in this respect, many member states considered them to signal a significant development with relation to the issuing of sanctions.[32] On 20 March 1998, in an open session,[33]

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[27] ICJ Press Release, 552, 27 March 1998.
[28] Ibid.
[29] ICJ Report, 1 August 1995.
[30] ICJ op. cit. note 27; Ibid.
[31] ICJ Press Release, 555, 2 April 1998.
[32] For useful discussions on the relation between the Security Council and the International Court of Justice see Sydney D. Bailey and Sam Daws, *The procedure of the UN Security Council,* Clarendon Press, Oxford, 3rd edition, 1998, pp. 307 - 320. Baily and Daws included in the 3rd edition of the book discussions on the relation between the SC and the ICJ over the case of Lockerbie until 1996 on pages 318 and 319. See also Gowlland-Debbas Vera 'The relationship between the International Court of Justice and the Security Council in the light of Lockerbie case' *The American Journal of International Law,* 1994, vol. 88, no. 4, pp. 643 - 677.
[33] According to Article 31 of the UN Charter the Council may allow a state which is not a member of the Council to participate in discussions on a specific dispute. In recent years the Security Council expressed its willingness to increase recourse to open meetings. In 1994 a

the majority of the Security Council members and other speakers who were not members of the Council, called for sanctions against Libya to be lifted or suspended pending a final decision by the Court.[34] The United States did not agree. It asserted that the Court rulings did not question the legality of the Security Council actions and, in its opinion, that Libya must continue to comply with its obligations pursuant to the Security Council decisions.[35]

The Security Council discussed an Arab League proposal, which provided three options for the trial of two Libyan suspects.[36] According to these options, the suspects could either be tried: a) in a neutral country to be determined by the Security Council, b) at the World Court in The Hague by Scottish Judges, or c) in a special tribunal to be created at The Hague. The Organisation of African Unity (OAU) and the Organisation of the Islamic Conference also approved the proposal. The text of the proposal clearly intended to alter one of the provisions of resolution 883 of 1993, which asks

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Security Council Presidential Statement asserted that there was widespread support among member states for greater recourse to open meetings of the Council and a clear will on the part of members of the Council to respond to this. It is therefore the intention of the Council, as part of its efforts to improve the flow of information and the exchange of ideas between members of the Council and other United Nations Member States, that there should be an increased recourse to open meetings, particularly at an early stage in its consideration of a subject. The Council will decide on a case-by-case basis when to schedule public meetings of this sort. Security Council meeting 3483, 16 December 1994. In this case Libya called for a Security Council open session to discuss the matter. The OAU supported the Libyan request in a letter dated 5 March 1998 by the Chairman of the OAU committee on Lockerbie issue, Zimbabwean foreign minister, to the Security Council. See Panafrican News Agency, 26 March 1998.

[34] Security Council meeting 3864, 20 March 1998.

[35] Ibid.

[36] Ibid.

for the appearance of those charged with the bombing of Pan Am flight 103 for trial before the appropriate United Kingdom or United States courts. Responding to the above proposal, the United Kingdom expressed hopes that the Arab League and the OAU would not be used to undermine the Council's resolutions.[37]

The OAU, however, took a practical step towards lifting sanctions against Libya. In June 1998, the OAU Summit in Burkina Faso, decided that all African states would cease implementing sanctions against Libya if they were not formally lifted by the Security Council before the end of 1998.

However, in August 1998, the United States and Britain offered a plan for the trial of the two suspects in The Hague by Scottish judges, a suggestion which matches one of the options proposed by the Arab League in March 1998. The plan also offered Libya the immediate suspension of economic sanctions by the Security Council.

3- Diplomatic Sanctions against Sudan

Introduction

Husni Mubarak, President of Egypt and former President of the Organisation of African Unity (OAU), was on his way to the 1995 OAU summit in Addis

[37] Ibid.

Ababa when a serious attempt was made on his life. A group of around nine Egyptian Islamic militants carrying machine guns, attacked President Mubarak's car a few miles from the airport of Addis Ababa. President Mubarak was not hurt, one of his private guards was killed, and some of the attackers were shot dead by Ethiopian security forces. Mubarak returned to the airport and took his airplane back to Cairo the same day.[38]

As the competent regional organisation, the OAU immediately started to investigate the attempted assassination, which was unanimously condemned by other African leaders. Seven months after the incident, the Security Council discussed the issue and adopted mandatory measures under Chapter VII of the Charter against Sudan.

Diplomatic sanctions

Security Council resolution 1054 of 26 April 1996 affirmed the determination of existence of a threat to international peace and security. Acting under Chapter VII, the Council decided that 'the non compliance by the Government of Sudan with the requests set out in paragraph 4 of resolution 1044 (1996) constitutes a threat to international peace and security.' Furthermore, the Council expressed its determination to 'eliminate

[38] Independent, 27 June 1995; Africa Overview, Websit http://www.acsp.uic.edu/patter/Ethiopia.htm.

international terrorism and to ensure effective implementation of resolution 1044 (1996).'

Under Security Council resolution 1054 which imposed diplomatic sanctions on Sudan, all member states which maintained diplomatic representation in Khartoum were compelled to reduce the numbers of Sudanese diplomatic personnel in their counteries and restrict the travel of Sudanese officials to their territories. The resolution decided that 'all states shall: (a) Significantly reduce the number and level of the staff at Sudanese diplomatic missions and consular posts and restrict or control the movement within their territory of all such staff who remain; (b) Take steps to restrict the entry into or transit through their territory of members of the Government of Sudan, officials of that Government and members of the Sudanese armed forces'. Moreover, paragraph 4 of the resolution called 'upon all international and regional organisations not to convene any conference in Sudan'. The resolution was adopted under Article 41 of Chapter VII of the United Nations Charter, 'enforcement measures short of the use of force'.[39] Thirteen

[39] Abram Chayes, and Antonia Chayes, discuss the frequent mobilisation of Chapter VII in the 1990s. They contrast this tendency with the original intentions of UN framers: 'The UN framers and their immediate successors held a common-speech conception of a threat to international peace and security as a situation in which significant interstate hostilities are in train or at least imminent. By mid-1993, the words had become little more than a necessary incantation to transmute a Security Council resolution into a formally binding obligation. Where in 1945, action under Chapter VII was regarded as the Jovian thunderbolt of the international system, fifty years later it seemed to be only one among many instruments at the disposal of the Security Council. It was simply a specialised tool, to be called on when agreement could not be negotiated ...' Chayes, Abram and Chayes, Antonia Handler, *The*

members of the Security Council voted for resolution 1054. Two permanent members, Russia and China, abstained. No member voted against.[40]

Recourse to Chapter VII in the case of Sudan was unique in several ways. It was the first time that an attempted assassination of a political leader had triggered the imposition of UN mandatory sanctions.[41] The provisions of Chapter VII were explicitly invoked to satisfy a broad interpretation of the principle of non-use of force against the independence and territorial integrity of states, provided for in Article 2(4) of the United Nations Charter. Although, the Charter does not make an explicit reference to international terrorism, it is widely accepted that such activities may create aggressive actions within the context of the 'Definition of Aggression' adopted by the General Assembly on 14 December 1974.

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new sovereignty, compliance with international regulatory agreements, Harvard University Press, Cambridge, 1995, p. 50.

[40] Security Council meeting No. 3660, 26 April 1996. The ten non-permanent members of the Security Council during the adoption of resolution 1054 were Botswana, Chile, Egypt, Germany, Guinea-Bissau, Honduras, Indonesia, Italy, Republic of Korea, and Poland. Other three countries, Sudan, Ethiopia, and Uganda were invited to attend the meeting.

[41] On 24 June 1960, President Romulo Betancourt of Venezuela was injured in an assassination attempt. The Organisation of American States (OAS) accused the President of the Dominican Republic Rafeal Trujillo of fomenting the attempt and adopted diplomatic sanctions against the Dominican Republic. However, Trujillo himself was assassinated and the OAS voted to lift diplomatic and economic sanctions against the Dominican Republic. In another case the OAS ordered member states to sever diplomatic relations with Cuba because an arms cache of Cuban origin was found in Venezuela in 1964, which the OAS regarded as posing a threat to international peace. In July 1975 the OAS sanctions against Cuba were lifted, though the United States maintained the embargo on a unilateral bases.

Enabling of resolution 1054

During discussions on the draft of resolution 1054 the two abstaining permanent members made similar statements on three points. They approved the involvement of the Security Council in issues of international terrorism, regarded the evidence provided against the Sudan as insufficient, and generally opposed the use of sanctions to resolve such situations. Mr. Sergey Lavrov, the Russian representative, stated that

> The current draft resolution seemed intended, not to locate the suspects, but to isolate the Sudan internationally. Really convincing evidence of Khartoum's involvement in the assassination attempt had not been provided to the United Nations. The co-sponsors of the draft resolution had been forced to acknowledge that fact. There was also information that one of the suspects was not even in the Sudan. If that turned out to be true, other practical steps would need to be taken.[42]

Mr. Lavrov added that his government 'opposed the use of sanctions to punish certain regimes or attain the political goals of one or more member states.'[43] Russia maintained its opposition to the employment by the Council

[42] Security Council meeting no. 3660, 26 April 1996.
[43] Ibid.

of sanctions against Sudan and it abstained during the voting on resolution 1070 raising similar arguments.

The United States and the United Kingdom were confident that the government of Sudan was involved, at the least harbouring, and therefore, knowing the location of the suspects. The United States expressed reservations contrary to those of Russia, it stated that the measures imposed against Sudan were not commensurate with the situation and called for even tougher sanctions against Khartoum.[44] Mr. Edward Gnehm, representative of the US at the Council meeting, said that his government 'supported the resolution, with reservations. It did not believe the sanctions outlined in the resolution were sufficient to convince the government of the Sudan to cease its sponsorship of international terrorism and return to the fold of responsible, law abiding nations.'[45] Mr. Gnehm warned the Council on persevering with such a mild response. He stated that 'in failing to impose more meaningful sanctions against the Sudan, it (the council) risked further insecurity and instability for the people of Eastern Africa, the Middle East and the Sudan.'[46] Sir John Weston, representative of the United Kingdom, dismissed the notion of conspiracy which was explicitly claimed by the representatives of the Sudan and Russia. He explained that the measures 'had nothing to do with the

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[44] Ibid.
[45] Ibid.
[46] Ibid.

orientation of the current government in the Sudan.' He further stated that '[i]t was purely and simply a necessary response to Sudan's failure to respond adequately to the demands of the Council and the OAU.'[47]

France supported the adoption of the resolution in a restrictive manner. The French representative described the demands of resolution 1054 as follows: 'It required the Sudan to try to extradite the suspects if they were in its territory. To ask more than that would not be appropriate.'[48] Both France and Germany welcomed the imposition of sanctions as far as they had no economic impact on the population of the Sudan.

Application of sanctions

The United States was the first to act, but it only ordered one of the Sudanese diplomats in Washington to leave.[49] The US did not seem to favour diplomatic sanctions against Sudan. Perhaps that is the reason for its limited application of the diplomatic measures contained in resolution 1054. Russia and China, who abstained during the course of voting on resolution 1054, did not take any action under the provisions of the resolution.[50] Austria considered that the provisions of the resolution contradicted its constitution.

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[47] Ibid.
[48] Ibid.
[49] UN Security Council Documents (S/1996/532) 2 July 1996.
[50] UN Security Council Documents (S/1996/515) 28 June 1996 and (S/1996/530) 2 July 1996.

However, it asked Sudan not to replace one of its mission staff in Vienna who returned to Khartoum at the end of his term, and maintained that it had thereby implemented the resolution.[51] Most of the states, which took diplomatic measures against Sudan, asked Khartoum to remove one diplomat from its mission. Only the United Kingdom, and then Egypt, required three Sudanese diplomats to return to Khartoum.[52] The UK warned Sudan against taking any retaliatory decisions by reducing the size of the British mission in Khartoum. Prior to that diplomatic relations between the two countries had suffered a serious blow in 1993 when Sudan expelled the British Ambassador in Khartoum and the UK retaliated in kind, but diplomatic representation between the two countries returned to normal soon after with the exchange ambassadors in 1994.[53]

Some other countries made varying responses. Kuwait, for instance, notified the Security Council, through the Secretary-General, that it would apply the measures concerning the restrictions on visas for Sudanese officials, but it regretted that it had no resident Sudanese diplomats to expel, having severed diplomatic relations with Sudan at the time of the Gulf war.[54] South

[51] UN Security Council Documents (S/1996/455) 20 June 1996.
[52] UN Security Council Documents (S/1996/387) 22 May 1996 and (S/1996/534) 3 July 1996.
[53] Another setback to the relations between the two countries was marked by the Sudanese government's decision on 24 August 1998 to reduce the level of its diplomatic representation in Britain by withdrawing its ambassador and the second in command from the Sudanese embassy in London, and asked Britain to take a similar step.
[54] UN Security Council Documents (S/1996/398) 28 May 1996.

Korea, a non-permanent member of the Security Council, explained that the Sudanese mission in Seoul was very small and it would be unrealistic to reduce the number further.[55] In summary, by July 1996 about 40 countries had responded to resolution 1054.

[55] UN Security Council Documents (S/1996/428) 7 June 1996.

Table shows the dates and document numbers of 40 replies of member states.

Country	Date of reply	Document no.
United Kingdom of Great Britain and Northern Ireland	22 May 1996	(S/1996/387)
Spain	22 May 1996	(S/1996/388)
Kuwait	28 May 1996	(S/1996/398)
Ecuador	31 May 1996	(S/1996/415)
Israel	3 June 1996	(S/1996/406)
Hungary	6 June 1996	(S/1996/419)
Republic of Korea	7 June 1996	(S/1996/428)
Ethiopia	12 June 1996	(S/1996/440)
Brazil	12 June 1996	(S/1996/441)
Norway	14 June 1996	(S/1996/450)
Czech Republic	17 June 1996	(S/1996/437)
India	17 June 1996	(S/1996/451)
Monaco	17 June 1996	(S/1996/480)
Belarus	17 June 1996	(S/1996/519)
Japan	18 June 1996	(S/1996/482)
Finland	18 June 1996	(S/1996/483)
Turkey	19 June 1996	(S/1996/452)
Austria	20 June 1996	(S/1996/455)
Chile	20 June 1996	(S/1996/484)
Slovakia	21 June 1996	(S/1996/461)
Burkina Faso	21 June 1996	(S/1996/481)
Bulgaria	21 June 1996	(S/1996/485)
Sweden	21 June 1996	(S/1996/486)
Liechtenstein	21 June 1996	(S/1996/487)
Germany	21 June 1996	(S/1996/489)
Slovenia	24 June 1996	(S/1996/488)
Netherlands	24 June 1996	(S/1996/490)
France	24 June 1996	(S/1996/491)
Italy	24 June 1996	(S/1996/516)
Argentina	25 June 1996	(S/1996/492)
Greece	25 June 1996	(S/1996493)
Ukraine	25 June 1996	(S/1996/504)
Denmark	25 June 1996	(S/1996/512)
Belgium	27 June 1996	(S/1996/518)
Russian Federation	28 June 1996	(S/1996/515)
Malta	28 June 1996	(S/1996/517)
Luxembourg	2 July 1996	(S/1996/524)
China	2 July 1996	(S/1996/530)
United States of America	2 July 1996	(S/1996/531)
Egypt	3 July 1996	(S/1996/534)

Source: Abstracted from reports of the Secretary-General to the Security Council.

Suspended air measures

Since the Security Council's actions dealing with the attempted assassination of Husni Mubarak, Sudan was facing the threat of further measures if it did not comply with the Council's demands. Some of the Council's member states preferred what they called a 'gradual approach in the light of the efforts of the government of Sudan'.[56] The build-up of pressures on the government of Sudan through the Security Council culminated in the adoption of resolution 1070 on 16 August 1996, which imposes air-craft sanctions on Sudan.[57] The resolution bans all international flights of Sudan Airways or of any other Sudanese public airlines company. Operationally, the resolution has set a precedent. While paragraph 3 of resolution 1070 clearly states the limited measures to be implemented against Sudan, paragraph 4 asserts that

> the Security Council further decides that it shall, 90 days after the date of adoption of this resolution, determine the date of entry into force of the provisions set out in paragraph 3 above and all aspects of the modalities of its implementation, unless the Council decides before then, on the basis of a report presented by the Secretary-General, on the compliance of Sudan with the demand in paragraph 1 above.

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[56] op. cit. note 42.

[57] All Security Council resolutions in the case of Sudan (1996), including resolution 1070, were adopted under Chapter VII of the UN Charter.

The resolution does not specify when the measures stated in paragraph 3 should come into effect. The 90-day period declared in paragraph 4 was not an ultimatum after which sanctions would automatically be implemented. Rather, if the Secretary-General's report did not indicate that Sudan had complied with the Council's demands then the Council was expected to meet after this period to specify when sanctions should come into effect. This was the first time that the Security Council adopted mandatory sanctions under Chapter VII in such imprecise terms, concerning their application. No official decision was made by the Council to determine whether to implement the ban, suspend it, or to negate the course of action altogether. Many members of the Security Council feared the humanitarian effect of the ban, and asked for the provision of detailed reports on possible effects. When the Secretary-General reported to the Security Council on 15 November 1996 pursuant to paragraph 5 of resolution 1070 he referred to the humanitarian and economic aspects in one paragraph which asserts

> During my Special Envoy's mission, the Sudanese government, trade union, non-governmental organisations and private air transport

> companies all spoke of likely negative humanitarian effects of the possible ban envisaged in resolution 1070(1996) and gave my envoy memoranda and petitions thereon. His attention was also drawn to the potential negative impact on the health situation. My Special envoy's interlocutors also underlined the likely economic consequences of a possible ban.[58]

The Secretary-General report did not encourage the application of the measures provided for in resolution 1070. The report stressed the possible humanitarian effects of sanctions and featured a detailed description of steps undertaken by the government of the Sudan pursuant to resolution 1070.

Generally, the issue of the humanitarian effects of sanctions has always led to real concerns among member states, but, before the case of Sudan, it did not lead to indefinite suspension of mandatory measures after their formal adoption by the Security Council. In previous cases, the Security Council has raised the issue of sanctions' effects after their application, in an attempt to alleviate the consequent suffering of the people in the target state as well as the economic effects on other countries.[59] In the case of Sudan, however, throughout the consideration of the issue of sanctions, the

[58] Security Council Documents (S/1996/940) 14 November 1996.

[59] In accordance with Article 50 of the UN Charter and reports submitted by special committees usually established by the Security Council to observe the application of sanctions and their economic effects.

humanitarian aspect played a crucial role in restraining the capacity of the Security Council to apply stringent measures. Many members of the Council, who voted for the above resolutions, including Egypt, France, and Germany, stipulated that sanctions against Sudan should not entail measures that would have negative economic effects on the people of Sudan.

International and regional factors

Two factors played a significant role in the process of imposing sanctions on the Sudan. The first factor was the relation between the United States and Sudan, and the contentious dispute over the issue of terrorism at the bilateral level. The United States withdrew its diplomats from Khartoum in 1996, employed financial sanctions against Sudan in 1997, and, in 1998, made recourse to the unilateral use of force against Sudan. The US measures paralleled the UN mandatory sanctions against Sudan, and claimed Sudan's alleged relationship with terrorism as justification.

The second factor is the regional context of Sudan's relationship with four of its neighbouring countries. Each of these countries has its own interests and political agendas in the region, which, to a certain extent, dominated their responses to the issue of sanctions against Sudan. The

analysis of the two factors will highlight the role of some of the forces, regional and international, which shaped the development of the case of Sudan.

US unilateral sanctions

The United States was a major actor in the Security Council during consideration of the issuing of sanctions against Sudan. Careful monitoring of the discussions in the Council during the adoption of resolutions 1044, 1054, and 1070 of 1996 would suggest, *inter alia,* that the United States was the most ardent supporter of the application of sanctions against Sudan. A better understanding of the case of Sudan requires an explanation of the United States' behaviour in this context. This can be achieved by studying the role of the United States in the Security Council, as well as its subsequent unilateral attempts to deploy sanctions against Sudan.

Sudan is the most recent addition to America's list of states which, it claims, support international terrorism. Before 1993 Sudan was not on the list. In 1989, a report of the US Department of State, 'Patterns of Global Terrorism', asserted that 'the United States has maintained its formal designation of six countries as state supporters of terrorism - Cuba, Iran,

Libya, North Korea, South Yemen, and Syria'.[60] Only Libya out of the six states was subjected to UN mandatory sanctions, which came into effect in 1992. In 1993, the United States formally added Sudan to the list.

Withdrawal of US diplomats

On 31 January 1996, the same day resolution 1044 was adopted by the Security Council calling on Sudan to hand over the suspects, the US Administration ordered its diplomatic staff to leave Khartoum and to pursue their mission from Nairobi.[61] A statement issued by the State Department declared that

> The United States has decided to suspend its diplomatic presence in Sudan, due to continuing concern for the safety of American officials in Sudan. While we are aware of the government of Sudan's assurances regarding security, there are abiding concerns about movements and activities of terrorist groups in Sudan. In our discussions with the Sudanese government we have urged them to take adequate measures to

[60] *Patterns of Global Terrorism, 1989,* United States Department of State, Washington DC, 1990, p. 43.

[61] It may be recalled that twelve of the staff of the United States Embassy in Nairobi were killed in a terrorist attack which also resulted in the destruction of the building and the killing of more than 200 Kenyan citizens in August 1998.

curb the activities of terrorists groups and to guarantee the safety of Americans.[62]

However, the suspension of official American presence represents 'neither a break in diplomatic relations with the government of Sudan nor a change in US policy toward Sudan.' Furthermore, the declaration announced the establishment of an office in the region for the purpose of maintaining a dialogue with Sudan.

Neither the language of the decision, nor the actual measures it employed, has matched the rhetoric of American officials in calling for tougher sanctions against Sudan. As the State Department declared in a later statement, the US embassy in Khartoum remained open and 'Ambassador Carney and his staff have made regular trips to Sudan to conduct political, consular and administrative business.'[63]

One of the United States' possible aims in making such a decision was to advance political pressure on the government of Sudan. However, reports about the existence of non-Sudanese militant groups in the country might have caused worries to the United States. Washington probably feared a repetition of past incidents. In March 1973, members of a Palestinian faction,

[62] Netsite file///H//doc.us.htm, US Department of State, 2 February 1996.
[63] US Department of State, Fact Sheet: *Restaffing of US embassy in Khartoum,* 24 September 1997.

Aylool El-Aswad (Black September) stormed the Saudi Arabian Embassy in Khartoum and took the American ambassador and charge d'affaires, the Belgian charge d'affaires, the Saudi Arabian ambassador, the Jordanian charge d'affaires and the Japanese charge d'affaires as hostages. The group announced their demands to the US, Jordan, West Germany, and Israel. On the second day the three Western diplomats, including the American ambassador, were killed, and on the fourth day the group released the remaining hostages and surrendered to the Sudanese authorities.

The legacy of such an incident, the degree of security measures that local authorities afford to provided for the safety of foreign diplomats, and the unfriendly stance of the Sudanese government all contributed to the concerns of the United States. However, the government of Sudan has repeatedly made assurances that the country is safe and diplomats and nationals of other Western countries, as well as representatives of international organisations, enjoy a satisfactory level of security in Sudan.

In September 1997, the State Department decided to restaff the American embassy in Khartoum. The text of the decision explained that '[w]e have determined that the security situation permits American diplomatic staff to be reassigned to Khartoum.'[64] The diplomatic presence in Khartoum,

[64] Ibid.

according to the State Department fact sheet, would allow the United States, *inter alia,* to 'monitor and gauge Sudanese government compliance with UN Security Council resolutions which demand that the Sudanese government end its support and sanctuary to terrorists' and to 'conduct an intensive dialogue with Sudanese government officials to induce change in Khartoum.' Yet, the fact sheet ended by stating that 'We seek, among other things, stronger sanctions against Sudan and an increase in non-lethal military assistance to the front line states of Eritrea, Ethiopia, and Uganda to contain Sudanese-sponsored insurgencies.' Within 48 hours, the United States had changed its decision to restaff its embassy in Khartoum. No official statement was issued to explain why the Administration had reversed its decision.

Until November 1997, the United States showed ambivalence towards the imposition of stringent sanctions against Sudan. Differences between the Administration and the Congress contributed to uncertainty in the American policy towards Sudan for many Congressmen wanted tougher sanctions to be imposed on Khartoum.

US financial sanctions

On 4 November 1997, the President of the United States declared the

imposition of economic sanctions against Sudan. Exercising his statutory authority, President Clinton issued unilateral sanctions pursuant to section 204 (b) of the International Emergency Economic Powers Act, 50 U.S.C.1703(b) which entails a declaration of national emergency to deal with an external threat. President Clinton reported to Congress he had decided to impose comprehensive sanctions on Sudan 'in response to (among other things) the Sudanese government's continued provision of sanctuary and support for terrorist groups (and) its support of regional insurgencies that threaten neighbouring governments friendly to the United States.' The package of trade and financial sanctions included blocking Sudanese government assets in the United States. It also prohibited certain financial transactions, banned imports of any goods or services of Sudanese origin, and outlawed the exportation to Sudan of any non-exempt goods or technology. President Clinton explained that humanitarian, diplomatic, and journalistic activities between the two countries would continue. The presidential order exempted the importation from Sudan of certain products unavailable from other sources, such as gum arabic. As it deems necessary, certain financial transactions and trade activities will be permitted in accordance with the executive order and the licensing system.[65]

[65] The presidential order made other exemptions such as: transactions necessary to conduct the official business of the United States and the United Nations, regulated transfers of fees and stipends from the government of Sudan to Sudanese students in the United States. It also considered licensing activities, which allow American citizens residents in Sudan to make

The American economic measures were not imposed in response to a specific or direct provocative incident. However, there were repeated calls from Congress, urging the White House to take measures against Sudan. In her remarks on economic sanctions against Sudan, the Secretary of State, Madeline Albright, explained that the Administration 'appreciate(s) and share(s) the concern that many members of Congress have expressed regarding this issue' and promised to maintain close co-operation with Congress in the future.[66]

Furthermore, there was the possibility of Congress issuing sanctions against Sudan in the form of legislation. This action could have undermined the administration's absolute monopoly of the application of measures and hindered chances of manoeuvring over the subsequent possibilities of relaxing or lifting the sanctions. In a paper presented to the Council on Foreign Affairs, Gary Mufbauer and Maurice Greenberg argued that

> the president must have unfettered freedom to lift sanctions step by step, when he obtains appropriate co-operation from the target country. Sanctions legislation enacted by Congress, states, or

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payments for their routine living expenses, including taxes and utilities, and 'products to ensure civilian aircraft safety'.

[66] Press Release, US Department of State, 4 November 1997.

> municipalities should be vetoed, or challenged in court when it does not contain a national interests waiver exercisable by the president.[67]

With regard to Sudan, the President might have acted in anticipation of an imminent move by the Congress in this direction. Congress has long pressed for the employment of sanctions against countries like Syria and Sudan. Both countries were considered by the United States to threaten the security of neighbouring states which America considered strategic allies in two sensitive areas. Members of Congress who welcomed the President's decision to employ sanctions against Khartoum might have seen it as an overdue step to punish Sudan. According to this explanation the President acted in attempt to avoid being superseded by the Congress.

Another possible interpretation for the course of US sanctions against Sudan could be the unwillingness of Security Council members to adopt further measures or even to implement the authorised measures against Sudan. The adoption of mandatory diplomatic sanctions in April 1996 was considered by the United States as unsatisfactory and even in that case, UN member states showed little enthusiasm for implementing the measures.

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[67] Gary C. Hafbauer and Maurice R. Greenberg, *Economic Sanctions: America's Polly,* Website, The Council on Foreign Relations, Home page, 1997, p. 3.

US missile strikes

On 20 August 1998, the United States launched a missile attack against Sudan. The US unmanned cruise missiles targeted Elshifa Pharmaceutical Factory in Bahri, one of the three main towns which form the capital, Khartoum. The factory was suspected, by the United States, of having the capacity for chemical weapons production. The five missiles, which landed on the Sudanese factory, represented one of four simultaneous American strikes. The other three were aimed at what American officials claimed were terrorists camps in Khowst and Jalalabad in Afghanistan near Pakistan's North-West Frontiers Province. The missiles were launched from seven ships in the Red Sea and the Arabian Sea.

The United States justified its attack as a response to the bombing of its embassies in Nairobi and Dar es Salaam. In a letter to the Security Council, the United States argued that it was acting in self-defence and in conformity with the United Nations Charter. The British Prime Minister and the French President, as well as the German Chancellor, immediately declared their support for the United States. Boris Yeltsin, the Russian President, criticised the American action.

The US missile strike against Sudan and the Western support for that

action, has remarkably moved the issue of Sudan from a phase of political pressure and mild sanctions, to military coercion and the actual use of force. It represented the first incident of Western military force used against Sudan since the Kitchiner conquest of Omdurman in 1898 and Mussolini's attempt to annex eastern Sudan during World War II.

The American action also demonstrated two important factors. First, it was the first time since the end of the Could War, with the exception of controversial military strikes against Iraq, that the United States had taken a unilateral military action without seeking prior authorisation from the Security Council. Once again the United States, in a pre Gulf war manner, invoked the right of self-defence under Article 51 of the Charter to justify the military attack against Sudan. Michael Howard classified the US attack against Sudan among 'wars of honour' which have been motivated by 'the desire to restore the prestige and dignity' of a certain country. He stated that '[i]t was certainly a sense of offended "honour", and probably a desire for vengeance as well, that led the US to retaliate so precipitately against Afghanistan and Sudan when their embassies in Nairobi and Dar-es-Salaam were bombed in August 1998, we would be unwise to assume that "honour" is any less significant in causing and prolonging conflict today than it was in

the days of Thucydides'[68]

It might be asked whether the United States will be required in this case to disclose the results of its intelligence investigations and to impart details of its military assault to the Security Council. The strikes also demonstrated that the United Nations should establish rapid reaction teams of experts to investigate such situations and report back to the Security Council.

Second, the international response to the US air strikes marked a significant shift in the perception of the unilateral use of force in such cases, at least at the level of the United Nations and Western governments. The situation could be contrasted with the response to the American air strike against Libya in 1986. At that time, the Security Council voted on a draft resolution which condemned the attack and explicitly called it a terrorist action by the United States.[69] Perez de Cuellar, then Secretary-General of the United Nations, strongly condemned the military strike against Libya. However, when the strike against Sudan was made, the United Nations did not condemn the attack. Secretary-General, Koki Annan, explained that the United States informed him a few minutes after the strikes. Annan issued a brief and general condemnation of terrorism pending further information on

[68] Michael Howard, 'When Are Wars Decisive?' *Survival,* Spring 1999, vol. 41, no. 1, p. 128.
[69] Draft resolution (S/10784) op. cit. note 11.

the issue.[70] The Security Council did not consider the strike as an urgent issue and its discussion was delayed many times.[71]

These changes are definitely related to the end of the Cold War and practice of world peace and security since then. The emerging notion of justifiable foreign intervention, especially among Western policymakers and academics, and the condemnation of international terrorism at the level of international norms, provides a conceptual thesis that explains such changes and their scope.

Regional diplomacy

At the level of non-state actors, the OAU made some efforts to settle the question of extradition between Egypt, Sudan and Ethiopia. Salim Salim, the OAU Secretary-General, held talks in the capitals of the three countries but no agreement was concluded before the Security Council imposed sanctions against Sudan in April 1996. The two statements of the Mechanism for Conflict Prevention, Management, and Resolution on 11 September and 14 December 1995, considered the attempt on the life of President Mubarak as aimed at Africa as a whole.[72] Despite the fact that the OAU efforts did not make significant assertion or any real progress, the Security Council

[70] Press Release, SG/SM/6675.
[71] In cases during the 1980s the General Assembly condemned the United States for an aggression in Grenada by 109 votes of UN member states and by 75 votes of an act of aggression in Panama.
[72] Security Council Documents (S/1996/10, annexes I and II).

frequently referred to them in resolution 1054. The rhetoric of all sides seemed to indicate a greater involvement for the OAU in the conflict than actually occurred. In reality, the role of the OAU was strictly limited.

The role of the OAU cannot be viewed out of the context of its functioning and capabilities. Some experts believe that the OAU was formed, and historically functioned, as a promoter of independence and in cases where a challenge was posed from outside the region. In the view of those experts, the OAU is not capable of playing a significant role in issues of regional security. Edmond Keller argued that 'The Organisation has aspirations of becoming the focus of a large regional order, but the reality of the situation is that the process has moved much faster and further at the sub-regional level.'[73] The inherited limitations, which for decades crippled the Organisation and its ability to function properly in the resolution of regional conflicts, proved to render its mediation in the case of Sudan unsuccessful.

At the level of neighbouring states the situation was described by the Secretary-General as 'difficult', one that needed co-operative efforts.[74] On the one hand, all the neighbours of Sudan who were visited by the Secretary-General's Special Envoy, namely Egypt, Ethiopia, Eritrea, and Uganda,

[73] Edmond J. Keller, 'Rethinking African Regional Security' in David A. Lake and Patrick M. Morgan, *Regional Orders, Building Security in a New World,* The Pennsylvania State University Press, Pennsylvania, 1997, p. 298.
[74] Security Council Press Release (SC/6214) p. 3.

'accused Sudan of supporting terrorist activities within their territories'.[75] On the other hand, Sudan submitted complaints to the Security Council accusing the four neighbouring countries of military assaults on its borders.[76]

Sudan was accused of harbouring three suspects wanted by Ethiopia for their involvement in the Mubarak assassination attempt. Thus, Egypt, Sudan, and Ethiopia, the three countries which form the valley of the Blue Nile and have vital common interests, were all involved. These factors all added to the already complex and unique situation in the Horn of Africa and further exacerbated the deteriorating relations between Sudan and its two neighbours.

Egypt, a non-permanent member of the Security Council, first called for the imposition of sanctions against Sudan. The Egyptian rhetoric was full of bitterness and relations between the two countries suffered a further deterioration as a result. Assaults on the Sudanese diplomatic mission in Cairo and Egyptian diplomatic representatives in Khartoum were reported.[77]

The following scenario was put forward by the Aspen conference a few weeks after the assassination attempt.

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[75] The Secretary-General report to the Security Council on 11 March 96 (S/1996/179).
[76] Ibid.
[77] Attacks on diplomats and other internationally protected persons were regarded by the 1979 Convention as terrorist acts.

> In the wake of the June 1995 assassination attempt on President Mubarak of Egypt, the Egyptian government has increased security measures against Islamist elements. Fighting breaks out between Egypt and Sudan over the border question. Internal opposition to Egyptian government mounts, possibly with external support from Sudan and Iran. Attacks of foreigners and on leading Egyptian public figures mount. Egypt's friends fear that it might become another Algeria or even Iran. Several army units refuse to assist internal security in putting down rebellion in rural areas. One can hear open calls for the establishment of an Islamic Republic of Egypt. President Mubarak is getting conflicting advice: carry out a domestic crackdown, take action against Sudan, negotiate with opposition groups. Your government has a call to Mubarak arranged in an hour. What should your government recommend? If Mubarak asks for a show of external military support, what should your government reply?[78]

Although the scenario addresses problems beyond the scope of this chapter, the question of how Egypt should behave towards Sudan was central to the above text as it remained an important factor in Western strategic thinking

[78] Report of the Aspen Institute Conference 2-6 August 1995, *Managing conflict in the post-cold war world: the role of intervention,* The Aspen Institute, 1996, p. 25.

about the region.

Yet, Egypt obstructed the adoption by the Security Council of more stringent measures against Sudan. Egyptian officials have repeatedly asserted that Cairo will not propose or support any sanctions that might hurt the Sudanese people. Husni Mubarak was trying to draw a line between the government in Khartoum and the Sudanese people. A partial explanation for Mubarak's stance can be found in Francis Deng's observation that 'Arousing nationalist sentiment against Egypt is likely to rally support for the government (of Sudan)'.[79]

Attempts to apply certain measures of a strategic nature against Sudan were abandoned by Egypt. President Mubarak stated publicly, in an interview with CNN, that he would not agree to an arms embargo against Sudan.[80] In his view, such a move would cause an imbalance of power in the region whereby the south would be well armed while the north would be denied access to weapons. In fact, Mubarak has mixed feelings about the issue of sanctions against Sudan. He would like to see an early end to the Islamic regime in Khartoum which is approaching its second decade in power, but at

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[79] Francis M. Deng, 'Egypt's dilemmas on the Sudan' *Middle East Policy,* vol. IV, no. 1&2, September 1995, p. 53. For background and further analysis of the special nature of the relationship between Sudan and Egypt see, for example Peter Woodward, *Sudan 1898-1989, The Unstable State,* Lynne Rienner Publishers and Lester Crook Academic Publishing, Boulder and London, 1990, pp. 13 – 62, 160, 168-9; Richard Hill, *Egypt in the Sudan,* Oxford University Press, Oxford, 1959; Tim Niblock, *Class and Power in Sudan, The Dynamics of Sudanese Politics, 1898 – 1985,* Macmillan, London, 1987, pp. 121, 129, 235.

[80] *CNN Interview* with President Husni Mubarak, 10 April 1996.

the same time a prolonged period of weak Sudanese government without an adequate force to defend its territory might pose a threat to Egyptian interests there.

Nabil El-Arabi, the Egyptian representative in the Security Council, gave further explanation for Egypt's consideration of the case of Sudan. He stated during the adoption of resolution 1054 that 'Every Egyptian felt and appreciated the special nature of the historical relations which bound the peoples of the Nile Valley and the Sudan. Anything that harmed the people of the Sudan harmed the people of Egypt, and vice versa. The relations between their countries should return to normal, so the people of the Sudan might enjoy good relations with all its neighbours.'[81] Egyptian leaders see great strategic importance of Sudan; it is the source of necessary reserves of water and other natural resources for their over-populated country.

The Ethiopian stance was different. Ethiopia wanted an arms embargo against Sudan in order to weaken the Khartoum regime's ability to threaten its security. Its representative in the Security Council expressed his dissatisfaction with the diplomatic measures by stating that 'we feel justified to be disappointed when our call for justice is given short shrift and when we see principles being sacrificed on the altar of expediency and political

[81] Security Council meeting 3660, op. cit. note 42.

calculations.' He added that 'An arms embargo would have been one of the most appropriate steps that the Council should have taken to secure Sudan's compliance with its demands.'[82]

The Ethiopian government feared that Khartoum might attempt to exploit the traditional rivalry between the two powerful groups, the Amhara and the Tigray. Sudan played a significant role in the armed overthrow of the Mengistu regime. Ethiopians know that Khartoum keeps close ties with many Ethiopian political leaders who grew up in Sudan and organised opposition movements from Sudanese territory. However, in terms of logistics, the regimes in Ethiopia and Eritrea equally benefit from their previous experience.[83]

The assassination attempt proved to be a turning point in Ethiopian-Sudanese relations. The two countries maintained good relations until three months after the attempt, when the Ethiopian government issued a statement explicitly accusing Sudan of providing support and shelter for the Egyptian suspects.[84]

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[82] Ibid.

[83] The *Washington Post* reported on 10 November 1996 that the US Administration was ready to provide military aid to Sudan's neighbouring countries to help overthrow the Khartoum regime. The report added: 'Nearly $20 million in surplus US military equipment will be sent to Ethiopia, Eritrea and Uganda ... the three countries support Sudanese opposition groups preparing a joint offensive to topple the Khartoum government.'

[84] *Independent,* 2 September 1995.

Extradition of Suspects

The question of extradition was central in the two cases of Sudan and Libya which the Security Council considered as threatening international peace and security. Extradition, defined in simple terms by Alun Jones, 'is an act of government, normally in fulfilment of formal, reciprocal arrangements between states, by returning a person suspected or convicted of crime to the country which wishes to try or punish him for that crime'.[85] Extradition is a delicate issue that sometimes triggers discontent in interstate relations. Historically, most extradition treaties excluded political offenders, following the lead of a Franco-Belgium extradition agreement signed in 1834. Twenty years later, this treaty was amended to include political offenders when a failed attempt to assassinate Napoleon III took place in 1855.[86] A relationship could be traced between the tendency to exclude political offenders from the application of extradition rules and the lack of will to characterise activities of liberation movements as terrorist acts.

Although extradition is normally conceived of as involving two states, the requesting state and the asylum state, in many cases, a third or fourth state is also involved. Geoff Gilbert gives an interesting hypothetical example:

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[85] Alun Jones, *Jones on Extradition,* Sweet and Maxwell, London, 1995, p. v.
[86] Adrian Guelke, *The Age of Terrorism and International Political System,* I.B. Tauris Publishers, London and New York, 1995, p. 163.

> Sven is a Swedish national. In Dublin, in the Republic of Ireland, he is alleged to have used explosives to rob a bank. With the funds raised from the robbery, he fled to New York, U.S.A., where he committed financial crimes having cross-frontier aspects, which seriously damaged the economic interests of France. To avoid arrest, he hijacked a plane and flew to Toronto, Canada. Shooting several guards and Turkish tourists at the airport, he boarded a plane bound for London. At Heathrow Airport he was arrested.[87]

Gilbert's example illustrates how terrorist attacks can provoke claims of extradition by several countries. It also explains the nature of terrorist activities and their inclination to transnational proliferation. In reality, many governments around the world demand the hand-over of criminals or political dissidents who have taken shelter in other countries, to be tried or even - if they have already been convicted of serious crimes - executed. Almost all cases involve sensitive political calculations and in some cases fugitives have been used by host states as a bargaining counter in their political relations with other countries. But in most cases, requests by states for the return of suspects tend to remain unsatisfied.[88] Controversy often arises from the

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[87] Geoff Gilbert, *Aspects of extradition Law,* Martinus Nijhoff Publishers, Dordecht, Boston, and London, 1991, p. 5.

[88] See John F. Murphy, *Punishing International Terrorism, The Legal Framework for policy initiatives,* Rowman and Allanheld, 1985, pp. 107 – 122.

elastic nature of multilateral treaties on extradition. Like other branches of international law, international criminal law and extradition law lack adequate enforcement of their rules.[89]

In the cases of Libya and Sudan, the demands of the requesting states were supported by Security Council mandatory measures. The Council asked Sudan to take 'immediate action to ensure extradition to Ethiopia for prosecution of the three suspects sheltered in Sudan and wanted in connection with the assassination attempt' on the life of President Husni Mubarak.[90]

This demand touches on complicated and delicate issues, one of them constitutional. Ostensibly, sanctions in such cases are implemented on the preliminary assumptions that: (a) the suspects are likely to have been involved in the terrorist action; (b) the suspects are definitely resident within the territory of the target state, whether they are its nationals or not; (c) the government of the target state has refused to hand over the suspects.

Political problems also arise in the hand-over of suspects in cases of alleged terrorism, since the political regime in the target state may itself be involved in the terrorist plot. If so, it might fear that the hand-over of suspects could worsen its situation, provoking more trouble and tougher sanctions. If the regime is in fact not part of the plot and the suspects are not in its

[89] Rosalyn Higgins, 'The general international law of terrorism' in Rosalyn Higgins and Maurice Flory, *Terrorism in international law,* LSE / Routledge, London and New York, 1997, pp. 13 - 30.

territory, or at least it does not know that they are, the mistrust which usually surrounds such cases may prevent any understanding being reached, and the situation may long remain unresolved.[91]

4- Effects of mandatory sanctions against Libya and Sudan

Impact of sanctions on Libya

The mandatory closure of Libyan air space is unprecedented in the African continent. Similar to the situation in Iraq, the air blockade has significantly increased the international isolation of Libya. The air embargo has proved to be a demonstrably damaging measure. It causes conspicuous interruption to trade and communications especially when adopted on a mandatory basis, with a total ban on flights.[92] Two elements contribute to the enforceability and efficacy of an air embargo. First, the nature of an air embargo may not allow for easy evasion or undetected flights. Second, the increasing dependency on air navigation for different trade activities made it an essential economic tool.

[90] It could be noted that in August 1994 Sudan extradited to France Carlos for his alleged killing of two French officers in 1975.

[91] Perhaps it is significant to note that the first extradition treaty in history was concluded between Rameses II of Egypt and the Hittite Prince Hattushilish III. The treaty explicitly referred to surrender of political offenders (great men) and not common criminals. However, most contemporary extradition treaties strictly exclude political offenders from surrender.

[92] In September 1990 the Security Council imposed the most comprehensive air embargo regime against Iraq, Security Council resolution 670, 25 September 1990.

For these reasons an air blockade may have multiple consequences on the economy of the targeted state, as proved to be the case in Libya.[93]

Apart from Iraq, Libya represents the longest term of mandatory sanctions imposed on a target in the post-Cold War era. More than six years after the air and arms embargo against Libya came into effect in 1992, and despite effective implementation of measures and their impact on the people of Libya, sanctions have failed to bring about the settlement of the conflict over the aerial incident at Lockerbie. The Secretary-General expressed, what could be called 'Good Offices fatigue', and so indicated his special envoy's reports.[94] However, there is some hope that the plan of the United States and the United Kingdom, which coincided with the proposal of the Arab League and the OAU, could finally bring justice to all parties to the conflict.

Incoherence of mandatory sanctions against Sudan

Non-comprehensive application of mandatory measures under Chapter VII by UN member states is by no means unique to the case of Sudan. From Rhodesia (1966) to Zaire (1996), some countries always evade mandatory sanctions, undermining the measures adopted by the Security Council. Even

[93] During the 1990s, the Security Council applied mandatory sanctions in various forms, including trade and financial sanctions, diplomatic sanctions, arms embargo, oil embargo, air embargo, and no-fly zones.

[94] Boutros Boutros Ghali described his efforts to find a peaceful solution to the problem as unsuccessful. For a brief account of Ghali's effort and the report of his special envoy to Libya Vladimir Petrovsky, see UN Chronicle, September 1992, pp. 22 - 23.

in serious cases like Iraq, despite sanctions being tightened and maritime forces policing the blockade, oil tankers continued to travel between Iraq and Jordan after August 1990. On 19 August 1990, American warships fired two shots across the bow of two Iraqi oil tankers.[95] In Rhodesia, states violated mandatory sanctions more than 350 times, and over 45 violations were committed by the United States.[96]

However, the application of diplomatic measures against Sudan may be seen as mild and selective. The majority of UN member states disregarded the resolution, and, apart from Egypt, hardly any of the Arab countries which maintain diplomatic relations with Sudan implemented the measures prescribed by the Security Council. However, diplomatic sanctions were not adopted before in such an exclusive form. In other cases, they were always used to back up the application of economic sanctions.

The first attempt to issue diplomatic sanctions through the Security Council was made against Spain in response to a complaint by Poland. The attempt was made a few months after the creation of the United Nations, the Polish claimed that Franco's policies endangered international peace and security and proposed a draft resolution under Articles 39 and 41. The draft resolution called upon 'all member states of the United Nations who maintain

[95] *Independent*, 20 August 1990.
[96] See J. Pokalas, 'Economic sanctions: an effective alternative to military coercion?' *Brooklyn Journal of International Law,* vol. 6, 1980, p. 312; Nigel White, 'Collective

diplomatic relations with the Franco Government to sever such relations immediately'. A Sub-Committee, which was appointed by the Security Council, concluded by stating that

> although the activities of the Franco regime do not constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or authorise enforcement measures under Article 40 or 42, nevertheless such activities do constitute a situation "likely to endanger the maintenance of international peace and security." Within the meaning of Article 34 of the Charter ... the Security Council is therefore empowered by paragraph 1 of Article 36 to recommend procedures or methods of adjustment in order to improve the situation mentioned.[97]

However, when the amended draft resolution was put to the vote, although ten out of the eleven members of the Council voted in favour, it was atrophied by a negative vote from the USSR.

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sanctions: an alternative to military coercion?' *International Relations,* vol. XII, no. 3, December 1994, p. 83.

[97] *Report of the Sub-Committee on the Spanish Question,* S.C.O.R., First Year, First Series, Sp. Supp., p. 5.

Even if they are to be effectively implemented, diplomatic sanctions alone can only have mild effects on the target. A group designated by the Royal Institute for International Affairs in 1938 to study the issue of sanctions, concluded that diplomatic sanctions do not amount to more than conveying a message of disagreement.[98] The case of Sudan corroborates the conviction of the Group of the Royal Institute. As it included one of the rare analyses of the issue of diplomatic sanctions, the report still retains significant relevance to today's inter-state practice. During 1998-99, the United States and Britain expressed willingness to restore diplomatic relations with Sudan as Khartoum reduced the level of its diplomatic representation with the two countries after the US missile attack against Khartoum in August 1998.

Sudan represents a case where Chapter VII was invoked to impose mild measures and rhetoric overwhelmed the actual application of mandatory sanctions. It further constitutes what Lawrence Freedman calls an attempt 'to obtain concessions through a threat-based bargaining process.'[99]

Conclusion

The end of the Cold War allowed the United Nations to develop and approve methods for the management of incidents of international terrorism. The

[98] *International Sanctions,* op. cit. note 1, pp. 15 - 23.
[99] Lawrence Freedman, 'Introduction' in Lawrence Freedman, ed. *Strategic Coercion, Concepts and Cases,* Oxford University Press, Oxford and New York, 1998, p. 3.

agreement and co-operation among members of the Security Council permitted the undertaking of enforcement measures under Chapter VII to address situations which involve allegations of international terrorism and subsequent non-compliance with Security Council resolutions.

Peace enforcement is not an alternative for peaceful measures to settle disputes over incidents of international terrorism, but in cases of non-compliance and defiance peace enforcement measures will be the appropriate course of action to deal with the situation. However, since the Security Council is functioning and capable of taking measures commensurate with the situation, unilateral actions are restricted according to the provisions of Article 51.

The progress attained by the United Nations in the area of international terrorism does not mean that the international community has established an agreed formula or achieved coherence in the interpretation of the phenomenon. The adoption of conventions and declarations by the General Assembly which include useful guidelines represent a step forward, but member states are still far from agreeing on a specific definition or establishing a framework for the prevention and elimination of international terrorism.

Part VI

Review of peace enforcement

The purpose of this part is to review cases of peace enforcement during the Cold War and post-Cold War periods. It examines the political aspects and the constitutional basis of military enforcement actions and the regimes of mandatory sanctions imposed by the Security Council during these periods.

Part one of this thesis highlighted how the frequent involvement of the Security Council in situations of civil war by adopting enforcement measures has transformed the concept of peace enforcement. This part demonstrates, through empirical analyses, how this transformation has affected the consideration of the nature of the UN actions in earlier cases such as Korea 1950 and Congo 1960. The argument that the Security Council is not permitted to take enforcement measures with relation to civil wars is no longer the convention.

Two controversial cases are studied to verify whether they represent peace enforcement cases or not: the Congo crisis during the Cold War and the intervention in Iraqi Kurdistan in the post-Cold War period. In Congo, the dispute was about whether the mandate and function of ONUC constituted a peacekeeping or peace enforcement operation. In the case of Kurds the enforcement nature of Operation Provide Hope was admitted, but the confusion was about the authorisation, justification, and the extent of time. Despite the

controversy over their mandate, the cases of Congo and the Kurds influenced the study and practice of the UN peace enforcement operations.

The impact of the enforcement measures on the outcome of each conflict will be evaluated with the aim of drawing some conclusions for the future of UN practice in the area of peace enforcement.

Chapter 7

The Cold War Period

The Use of Force by the United Nations

1- Korea

The involvement of the United Nations in Korea predated the outbreak of war in 1950 and came at a time of turmoil and instability that marked the most sensitive transitional period in the Korean peninsula. Korea, which remained a dependency of China for centuries and had been formally subjugated by Japan in 1910, was declared a free state at the Yalta conference in February 1945. However, a transitional period was agreed upon during which the United States would operate south the 38th parallel and the Soviet Union North of it.[1] When the US-Soviet Commission disagreed on the issue of democratic elections in Korea the United States unilaterally decided to refer the matter to the United Nations.[2] On 14 November 1947 the General Assembly formed a UN Temporary Commission on Korea (UNTCOK) to observe elections in both parts of the country.[3] As disagreement continued between the superpowers and the relations between South Korea and North Korea became bitter, UNTCOK

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[1] See I. Stone, *The Hidden History of the Korean War,* Monthly Review Press, New York, 2nd ed. 1969; D. Rees, *Korea, The Limited War,* Macmillan, London, 1964; Guy Wint, *What happened in Korea, a study of collective security,* The Batchworth Press, London, 1954;

[2] General Assembly Official Records, 5th Session, Supplement No. 1, p. 18.

[3] General Assembly resolution 112(11), 14 November 1947. Yugoslavia pointed out that it would be a dangerous precedent to involve the United Nations in elections, and described the Korean election as an internal issue to be undertaken by the people of Korea alone.

was only able to observe the election in South Korea in May 1948. On 20 July 1948 Dr Syngman Rhee became the first President of the Republic of Korea and the General Assembly recognised his Government's authority and control over the part of Korea which was accessible to the Commission.[4]

North Korea established its own authority through the adoption of a new constitution and the election of Kim Il-sung on 10 September 1948 as Prime Minister of the Government of the Democratic People's Republic of Korea. The United States and the Soviet Union completed the withdrawal of their forces the following year.

Growing enmity between the two authorities and repeated border skirmishes culminated in the invasion of South Korea by forces from North Korea on 25 June 1950. As it did with Kuwait in 1990, the United States was the first to bring the North Korean invasion to the attention of the Security Council shortly after the attack.[5] The Council convened on the same day and passed a resolution which deemed the armed attack a breach of the peace, and called upon North Korea to withdraw its forces to the 38th parallel.[6] With the Soviet Union absenting itself from the Security Council meetings between

[4] General Assembly resolution 195 (III), 12 December 1948; 48 member states voted for the resolution 6 against and one abstaining; the resolution had also called for the withdrawal of the occupying forces.

[5] See L. Goodrich, *Korea, A Study of United States Policy in the United Nations,* Council on Foreign Relations, New York, 1956.

[6] Security Council resolution 82, 25 June 1950; 9 members voted for the resolution, 1 member abstained (Yugoslavia), and the USSR absent; non-permanent members of the Security Council during this period were Cuba, Ecuador, Egypt, India, Norway, and Yugoslavia.

January and July 1950,[7] and the seat of China in the Council occupied by the Nationalists, the mobilisation of the veto was almost impossible. Two days later the Council adopted another resolution recommending the provision of necessary assistance by member states to the Republic of Korea to repel the armed attack and to restore international peace and security in the area.[8] For these purposes the resolution of 7 July stated that the Security Council requested

> 4. ... the United States to designate the commander of such forces; 5. Authorise[d] the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating.[9]

President Harry Truman announced the sending of ground forces to Korea and the appointment of General Douglas MacArthur as commander of the United Nations force. For the United States, the Korean case represented the most convenient form of command and control of force it has ever been able to secure from the Council. In 1992, the United States sought a Security Council resolution to designate to it command of UN forces in Somalia, but Russia and China, haunted by the Korean experience, were obviously not prepared to allow

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[7] When the Soviet Union returned to the Council in August 1950, the Council was presided by its representative Jacop Malik.
[8] Security Council resolution 83, 27 June 1950; 7 members voted for the resolution, 1 against (Yugoslavia), two members (Egypt and India) did not participate and the USSR absent.
[9] Security Council resolution 84, 7 July 1950.

such an authorisation. The only incident similar to Korea took place in 1994 with relation to the crisis in Haiti. However, it was made possible in Haiti because three permanent members were simultaneously seeking to be authorised by the Council to establish the command of UN forces in three different situations. Consequently, France was authorised to lead the international forces in Rwanda, Russia was allowed to command a peacekeeping force in Georgia and the United States led the international force in Haiti.

Fifteen countries sent military contingents to fight against North Korea under the Unified Command and the flag of the United Nations. On 15 September General MacArthur launched a full-scale offensive against North Korean forces. Before the end of September, MacArthur retook Seoul and on 1 October ordered his forces across the 38th parallel. On 27 October allies' forces reached the Yalu River on the Korean border with China. This action provoked an immediate Chinese response. On 26 November China formally entered the war, and before the end of December 1950, Chinese forces pushed the Unified Command beyond the 38th parallel and recaptured Seoul.[10]

On 11 April 1951 Truman relieved MacArthur, as they disagreed on the scope of the military operation and their views appeared to represent the two different schools of limited and total war. General MacArthur wanted to

[10] See A. Whiting, *China Crosses the Yalu,* Macmillan, New York, 1960.

capture North Korea and to expand the war into China's mainland; Truman disagreed, he sought to avoid a total war with China and the Soviet Union.[11]

There was also confusion within the United Nations on the objectives of the unified command and the mandate and function of the operation. Although the Security Council resolutions defined the mandate of the forces as the repulsion of the North Korean aggression, the General Assembly adopted a resolution on 7 October 1950 recommending that the Unified Command should undertake all appropriate steps to reunify the country under one government.[12]

By mid 1951, General Mathew Ridgway, the new American commander of the UN forces, had retaken Seoul again. On the initiative of the Soviet Union, the Security Council called for a cease-fire and a two years negotiation process started on 10 July 1951 with many interruptions and disagreements. Finally a cease-fire agreement was reached in May 1952 and a two and a half mile demilitarised zone was demarcated along the border between the two Koreas.

Western and Eastern authorities expressed opposing views on many vital points including the nature of the conflict in Korea - was it civil war or international conflict - the effect of the absence of the Soviet Union, and the

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[11] For deep analysis of the American and Chinese strategies to end the war, see Rosemary Foot, *The Wrong War, American Policy and the Dimensions of the Korean Conflict, 1950-1953,* Cornell University Press, Ithaca and London, 1985, pp. 204 – 223.

[12] A wider discussion on the history of UN roles in Korean reunification is found in Tae Hwan Kwak, 'The United Nations and Reunification' in Young Whan Kihl, ed. *Korea and the World Politics Beyond the Cold War,* Westview Press, Boulder, San Francisco, and Oxford,

representation of China in the Security Council.[13] The latter issue was even a source of disagreement between the United States and the UN Secretary-General, Trygve Lie, who supported Peking's claim to the seat of China in the Council.[14] Animosity between the two camps reached its zenith. The Soviet Union had repeatedly accused Western countries of monopolising the United Nations to serve their own interests. In the Western opinion, it was customary 'to view the attitudes and actions of the USSR in the United Nations - as elsewhere – as dictated only by malice and evil.'[15] Statesmen and scholars on both sides arrayed a series of well-established and opposing arguments regarding the situation in Korea.

The constitutional effect of the Soviet absence was discussed in Part II of the thesis. However, this chapter will further the discussion by exploring the

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1994, pp. 302-4; L. Gordenker, *The United Nations and the Peaceful Unification of Korea 1947-50,* Nijhoff, The Hague, 1959.

[13] The stance of the Communist block towards the Security Council resolutions and the Secretary-General was exemplified in the message cabled by Chou En-lai of China to the Secretary-General in July 1950: 'The resolution adopted by the Security Council on 27 June (S/1511) under the instigation and manipulation of the United States Government calling upon the members of the United Nations to assist the South Korean authorities, is in support of United States armed aggression and constitutes an intervention in the internal affairs of Korea and a violation of world peace. This resolution, being adopted moreover in the absence of China and the Union of Soviet Socialist Republics, is obviously illegal. The United Nations Charter stipulates that the United Nations shall not be authorised to intervene in matters which are essentially within the internal jurisdiction of any state, while the resolution of the Security Council of 27 June exactly violates this important principle of the United Nations Charter. Therefore the resolution of the Security Council with regard to the Korean question is not only destitute of any legal validity, but greatly damages the United Nations Charter. The action taken by Mr Trygve Lie, Secretary-General of the United Nations, on the Korean question serves exactly to aggravate this damage.' UN Documents S/1583, 6 July 1950.

[14] Robert G. Wesson, 'The United Nations in the World Outlook of the Soviet Union and of the United States' in Alvin Z. Rubinstein and George Ginsburgs, eds. *Soviet and American Policies in the United Nations: A Twenty-Five-Year Perspective,* New York University Press, New York, 1971, p. 10.

[15] Rupert Emerson and Inis L. Claude, JR. 'The Soviet Union and the United Nations, An Essay in interpretation', *International Organisation,* vol. VI, no. 1, February 1952, p. 1.

political philosophy behind the constitutionality of the absence of a permanent member. The Charter implicitly assumed that peace enforcement could not be effected against the will of a permanent member. The power of veto was envisaged in the system to assure the permanent members that no such an action could be pursued. Technically, the USSR did not use the veto in the Korean situation, but it vigorously opposed the action undertaken by the unified command which had been directed against its will. Furthermore, Western powers led the General Assembly to assume peace enforcement responsibilities under the Uniting for Peace resolution of 3 November 1950,[16] and subsequently paralysed the Security Council. Inis Claude argued that the adoption of this plan soon proved futile, and

> members of the United Nations have returned to the original conception that collective security is inapplicable to crises involving great powers. Korea was an aberration. The Uniting for Peace plan represented a fleeting urge to normalise the abnormality of the Korean experience, but second thoughts turned the minds of statesmen back to the view that the Organisation should not challenge a recalcitrant great power.[17]

[16] 52 member states voted for the Uniting for peace resolution, 5 members against and 2 abstaining.
[17] Inis L. Claude, JR., 'The United Nations and the Use of Force' *International Conciliation,* March 1961, p. 364.

Robert Keohane and Joseph Nye reiterated this conviction in 1990, by stating that the Uniting for Peace was a failure and no action should be attempted against a great power.[18]

Still, this assertion does not represent a conventional view. The inability of the United Nations to act against a great power, when this power engages in an act of aggression, was cited by many critics as one of the deficiencies of the UN peace enforcement system. Ronald Steel argued that

> The virtue of collective security for powerful states is that it is extremely difficult to invoke against them. The major ones have vetoes in the Security Council. Yet it is against such states that collective action is most needed. It is hardly necessary to summon the might of all the world's industrial powers to punish countries like Somalia and Serbia. [19]

Attempts to reform the veto regime and discussions on the issue of membership[20] have subsequently sought to deal with this kind of impotency in the system of the Security Council. However, in practical terms, Claude's assertion represents a widely embraced argument. Alan James stated coherently

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[18] Robert O. Keohane and Joseph S. Nye, *Power and Interdependence,* Harper Collins Publishers, 2nd edition 1989, p. 280.
[19] Ronald Steel, *Temptations of A Superpower,* Harvard University Press, Cambridge and London, 1995, p. 94.
[20] See for example Barry O'Neill, 'Power and Satisfaction in the United Nations Security Council' *Journal of Conflict Resolution,* vol. 40, no. 2, June 1996, pp. 224, 235-36.

> [t]hus the Soviet Union was not in a position to cast a veto-which it assuredly would have done had it been present. Furthermore, there were many who saw what happened in Korea as a case of the organisation being, as it were, captured by the United States and its allies and used as a front for U.S. anticommunist foreign policy. Partly for this reason the steam soon went out of the idea that, on further occasions when the Security Council was blocked by a veto, the General Assembly might make the kind of recommendation that the Council had made in June 1950. The United States also lost its initial enthusiasm for this scheme.[21]

The Soviet Union's rejection of the Uniting for Peace plan was consistent with its opposition to the idea of a larger role for the General Assembly, especially in issues of security.[22] The United States abandoned the Uniting for Peace strategy because the General Assembly was dominated, a few years after the Korean war, by the Third World countries. William O'Brien observed that 'It is not inconceivable that a contemporary Uniting for Peace Resolution might brand Israel or South Africa as an aggressor ... the United States ... would no

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[21] Alan M. James, 'Unit Veto Dominance in United Nations Peace-Keeping' in Lawrence S. Finkelstein, ed. *Politics in the United Nations System,* Duke University Press, Durham and London, 1988, p. 78.

[22] John Holmes observed that 'The USSR deserves credit for opposing full powers to the General Assembly.' John W. Holmes, 'A Non-American Perspective' in David A. Kay, ed. *The Changing United Nations, Options for the United States,* Praeger Publishers, New York and London, 1977, p. 31.

longer accept the majority votes of the assembly as right and/or binding'.[23] Although, the application of the Uniting for Peace scheme had practically succeeded in reversing the North Korean invasion, it did not result in creating a universal collective security system as initially intended by the majority of member states.

However, a more fundamental question was raised about the nature of the Korean war and whether the Security Council was empowered to intervene in such crisis. Western allies considered the North Korean invasion as an external attack against a sovereign state, while the Soviet Union and China regarded the situation as an internal civil war. B. K. Gills argued that

> the Korean war (1950-53) is a classic example of Clausewitz's famous dictum on the relation of war to politics. The initial issue in which the war was fought was national reunification, but this implied a struggle to determine the form of government and social system. This aspect was essentially civil war. As the war expanded, however, it came to embody an issue of global importance. It became the focal point of conflict between 'capitalism' and 'communism' and stood at the centre of the US policy in Asia and around the world. In this respect it was essentially an international war among great powers.[24]

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[23] William O'Brien, *The Conduct of Just and Limited War,* Praeger Publishers, New York, 1981, p. 249.
[24] B. K. Gills, *Korea versus Korea, A case of contesting legitimacy,* Routledge, London and New York, 1996, p. 45.

A literal understanding of Gills' analysis could lead to the conclusion that the Korean conflict was initially a civil war fought on internal issues before the arrival of the foreign forces under the Unified Command in the peninsula. In line with this, it is possible to argue that the Korean conflict was internationalised by the United Nations. However, a plausible reservation on this contention is that the conflicting interests of the two superpowers in the area were evident before the outbreak of war. Soviet and American forces were formally present in Korea until 1949, dividing the country into two separate parts. After the elections of 1948 two different regimes were installed in North and South Korea. However, the fact that the General Assembly did not recognise the existence of two Koreas supports the argument that war was not between two internationally recognised countries.

Martin Wight, accepted the assertion that the Korean War illustrated a kind of collective security, but in military terms he defined the Korean war as a balance of power paradigm, 'a struggle between the two great coalitions into which international society was divided'. [25] In his view 'the attempt by one half of partitioned Korea to unify the country turned into a Sino-American War.'[26]

Attempts made during the Cold War to refute the argument that the Korean conflict was an internal affair did not contest the principle of non-intervention in domestic jurisdiction or purport to justify the UN intervention in

[25] Martin Wight, *Power Politics,* Leicester University Press and the RIIA, Leicester, 2nd edition 1995, 2nd print 1997, p. 227.
[26] Ibid.

civil wars. At that time the principles of state sovereignty and non-interference in domestic jurisdictions of other countries retained universal approval, as the world was becoming more amenable to the process of de-colonisation and the principle of self-determination. Instead, these attempts endeavoured to prove the international character of the conflict. For Higgins, Kelsen, and other Western scholars if Korea was to be identified with the internal civil strife then the US led military response would have lacked the legal justification.

Korea is a significant episode for today's discussion on intervention and UN enforcement action in civil wars.[27] Attempts to assess the outcome of the UN involvement in Korea face the challenge of the continuing existence of two irreconcilable evaluations. However, international norms regarding collective actions in civil wars as well as in interstate conflicts have been significantly transformed since the Korean crisis. In many situations during the 1990s, measures undertaken by the Security Council to deal with civil wars were labelled as peace enforcement actions. By analogy, the argument that the military measures taken against North Korea represent a UN peace enforcement operation under Article 42 of the Charter or an action in collective self-defence pursuant to Article 51 could hardly be challenged in the light of

[27] It is worth noting that now, almost half a century since the outbreak of war in Korea, the Pentagon 'still considers a Korean war scenario to be the primary near-term military concern of the United States. The Pentagon also appears to think that North Korea just might achieve an initial breakthrough, perhaps taking nearby Seoul and even much of the rest of the peninsula ...' Michael O' Hanlon attempted to answer the question: 'Could another massive North Korean attack on South Korea intended to quickly reunify the peninsula under Pyongyang's rule really succeed?' Michael O' Hanlon, 'Stopping a North Korea Invasion, Why Defending South Korea Is Easier than the Pentagon Thinks' *International Security,* Spring 1998, vol. 22, no. 4, pp. 135 – 170.

UN practice in the post-Cold War era. The right of sovereignty is no longer absolute and civil wars in many parts of the world have become a major concern for the international community. The United Nations has intervened militarily in Somalia, Bosnia, and Rwanda without being blamed for breaching the principle of non-interference in internal affairs. On the contrary, the UN was accused in the three incidents of not doing enough to save civilian lives.

Korea 1950-53 and Kuwait 1990-91 have been considered the closest two cases to the spirit and letter of Chapter VII. Most of the studies which attempt to compare Korea with Kuwait intend to investigate how much each situation was in conformity with the UN peace enforcement regime. This chapter intends to compare the significance the Korean case had for the four decades, following the war, with the patterns provided by the case of Kuwait for the 1990s.

D. W. Bowett argued in 1964 that the UN action in Korea was highly unusual and that it was unlikely to give a pattern for the future.[28] This claim proved to be very accurate. For forty years no similar action with such a clear mandate was enacted. The Uniting for Peace resolution remained dormant, as no permanent member of the SC was interested in its revival. The attempt made by member states in 1960 to refer the issue of the conflict in Congo to the General Assembly proved unsuccessful and the matter was soon returned to the Security Council.

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[28] D. W. Bowett, *United Nations Force, A Legal Study of United Nations Practice,* Stevens and Sons, London, 1964.

In forming one of its main hypotheses with regard to the case of Kuwait, this study has reformulated Bowett's assertion in the following context: the UN operation in Kuwait was highly unusual but it is likely to give a pattern for the future. The characteristics of succeeding episodes would not be identical to those of the Gulf crisis and might not necessarily affirm a transformation towards a perfect collective security system, but they do represent a replication of some of the major sanctioning policies imposed by the Security Council against Iraq. The measures adopted by the Council with relation to the crises in Somalia, Bosnia, and Rwanda were clear examples of this replication.

The broad explanation of this difference is due to the effect of the Cold War on the competence of the Security Council; it rendered it virtually inactive. Even when a breakthrough was made in 1950, member states were not able to sustain it or agree on the legitimacy of the military action. The Gulf crisis emerged in a different political context. The world did not fear a confrontation between the superpowers as a result of a military action against Iraq. Unlike Desert Storm in 1991, the Korean war had directly involved the two superpowers opposing each other, risking the outbreak of a total war between the Western and Eastern blocs. The Korean war had, therefore, substituted for a third world war. It ended with no conclusive victory and provided no pattern for the future of UN practice in the maintenance of international peace and security.

Inis Claude described the allies' victory in Korea as follows: 'They finally emerged from the venture with a sense of relief, not a sense of triumph. They felt fortunate to be able to muddle out of a messy and potentially disastrous situation, not heroic at having performed admirably in a noble cause. When the Korean war was over, the general reaction was more "... never again" than "Now let's arrange things so that we can repeat this whenever necessary."[29]

In the Gulf war, the allies attained a relatively decisive victory and when the war ended member states did start to arrange for further possible preventive and peace enforcement actions. On 31 January 1992 the Security Council summit, meeting for the first time in its history at the level of heads of states, instructed the Secretary-General to prepare his analysis and recommendations on the role of the UN in identifying potential crisis and areas of instability and to make recommendations on ways of strengthening the UN capacity for maintaining international peace and security.[30] In June 1992 Boutros Ghali, presented his famous report, *An Agenda for Peace,* which included the most ambitious project for the enforcement of peace and security in international conflicts as well as in civil wars.[31]

Korea remained an isolated experience for forty years, but it might have deterred potential aggressive actions from taking place during that period. It is

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[29] Inis Claude, op. cit. Note 17, p. 362.
[30] UN Document S/23500, 31 January 1992.
[31] Report of the Secretary-General on an Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping, UN Document S/24111, 17 June 1992.

significant that even in the case of Kuwait, the Security Council resolutions and decisions, for reasons explained in part II of this thesis, did not refer to Korea, despite the fact that it represented the only previous UN experience in taking collective action to combat aggression. Despite the agreement between member states on the adoption of mandatory and coercive measures under Chapter VII in many situations since August 1990, disagreement over the Korean war still exists among the concerned members. Co-operation among member states of the Security Council during the first ten post-Cold War years did not remove these differences and each permanent member continued to hold the same opinions almost half a century after the breakout of war in Korea.

2- Congo 1960-63

In June 1960 Belgium ended its occupation of the Congo allowing for the declaration of independence and the formation of a national government. The new Congolese parliament elected Joseph Kasavubu the leader of the *Abako* political movement as President of Congo and Patrice Lumumba the leader of the *Mouvement Nationale Congolaise* as Prime Minister. Belgium continued to maintain two military bases at Kamina and Kiton and the Congo army (Force Publique) remained under the leadership of Belgian officers.

General Janssens, the Belgian Commander, rejected a petition submitted by Congolese soldiers calling for better conditions. Five days after the

announcement of independence mutiny spread in the armed forces and security in the country started to deteriorate. Prime Minister Lumumba responded by dismissing General Janssens and appointing two Congolese, Victor Lundula as Commander of the Army and Joseph Mobutu as Chief of Staff. A few days later, as the situation continued to deteriorate, Belgium intervened by sending forces to Katanga and was soon involved in fighting the Congolese army, *Armee Nationale Congolaise* (ANC).

Following the Belgium intervention Moise Tshombe declared on 11 July 1960 the secession of Katanga from the Republic of Congo. On 12 July Kasavubu and Lumumba asked the United Nations Secretary-General to furnish the government of the Congo with military assistance against the 'external aggression which is a threat to international peace and security.'[32]

The text of this telegram, which invoked the meaning of Article 39 of the Charter, and the subsequent response made by the United Nations, represented the first signs of disagreement over the purposes and mandate of the UN mission in the Congo. This contention had gradually developed between the Secretary-General and the Congolese Government and led to major disputes between member states during the consideration of the issue in the General Assembly and the Security Council. It also proved to be a controversial issue in the subsequent scholarly discussions and literature.

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[32] Telegram dated 12 July 1960, UN Document S/4382, 1960. The next day Kasavubu and Lumumba stressed in a message to the Secretary-General explaining that they were asking for military assistance not for the maintenance of the internal order, but to enable the

The aim of the following analysis is to establish whether resolutions adopted by the Security Council with relation to the crisis in the Congo had authorised the employment of enforcement measures. It attempts to verify the controversy over the mandate of *Operation des Nations Unies-Congo* (ONUC) and explain how the discussion on this issue has been influenced by two significant elements pertinent to the internal nature of the conflict as a civil war, and the effect of the foreign military intervention by Belgian forces.

In July 1960 the Secretary-General deployed ONUC, as authorised by the Security Council, to provide military and technical assistance for the Congolese Government 'until the national security forces may be able to meet fully their tasks.'[33] The Secretary-General had carefully emphasised the impartial nature of the UN force which, under no circumstances, would become a party to the internal conflict or treat a party to the conflict as an aggressor.[34] Security Council resolution 146 affirmed this meaning by stating that 'the United Nations Force in the Congo will not be a party or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise.'[35] At the same time all the Security Council resolutions on the Congo crisis called for the immediate withdrawal of Belgian troops from the Congolese territories. Although the Security Council treated the existence of

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Congolese to counter the Belgian aggression, see telegram dated 13 July 1960, UN Document S/4382, 1960.

[33] Security Council resolution 143, 14 July 1960.

[34] Secretary-General report to the Security Council on the implementation of resolution 143, UN Document S/4389, 18 July 1960.

[35] Security Council resolution 146, 17 September 1960.

Belgian forces in the Congo as an intervention by a foreign power, it never called Belgium an aggressor.

In September 1960, the Security Council admitted that the lack of unanimity among the five permanent members had prevented it from assuming its primary responsibility for the maintenance of international peace and security.[36] Therefore, the Council decided to call an emergency session of the General Assembly under the Uniting for Peace resolution, which had been adopted during the Korean crisis in 1950.[37] For six months, between September 1960 and February 1991, the Security Council did not adopt any resolutions regarding the situation in Congo. However, when the killing of Patrice Lumumba was announced[38] the Council immediately convened, regretted the killing and its grave repercussions, and adopted resolution 161 authorising the use of force as a last resort to stop the civil war.[39] The explicit authorisation of the use of force in this resolution was different form the right of UN troops to

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[36] Security Council resolution 157, 17 September 1960.

[37] General Assembly resolution 377 A (V), 3 November 1950.

[38] Brian Urquhart mentions four versions of Lumumba's death: '(1) the fabrication of Lumumba's escape and capture put out by Munongo in February 1961, (2) the story that Munongo and /or the Katangese authorities executed the prisoners, (3) Tshombe's story that the prisoners were already dying when they reached Elisabethville, and, (4) the allegations of Nkrumah and other African sources that Europeans were the executioners.' see Brian Urquhart, *Hammarskjold*, Alfred A. Knopf, New York, 1972, p. 505; *Report of Commission of Investigation on the deaths of Mr. Lumumba and his colleagues,* Yearbook of the United Nations, Special Edition, UN Fiftieth Anniversary 1945-1995, Martinus Nijhoff Publishers, The Hague, Boston, and London, 1995, pp. 39 and 40.

[39] Security Council resolution 161 (A), 21 February 1991. Two observations could be made in this respect. First, in paragraph 1 of this resolution the Council called upon 'the United Nations to take all 'appropriate measures' including the use of force. In all other cases of authorised use of force the Council called upon member of states or a specific group of states to carry out the mission. Second, the same paragraph indicated that the mission of the UN forces was to prevent the occurrence of the civil war though it would be more accurate to describes its mission as prevention of the spread of civil war which already erupted in the Congo.

use force in self-defence, implied in the mandate of any peacekeeping operation. Writing in 1995, Anthony Parsons described resolution 161 as follows 'This resolution had no parallel in the UN history.' He noticed that the UN peacekeeping force was authorised by the Council 'to adopt an enforcement role without' formally invoking Chapter VII of the Charter or being empowered to face the deteriorating situation.[40]

The impact of this resolution on ONUC was profound, in that it provoked military attacks by all factions against UN forces present in the country. One of the United Nations official publications described the consequences of resolution 161 as follows: 'The period immediately following the adoption of the Security Council's resolution of 21 February 1961 was a critical one for the United Nations Operation in the Congo.'[41] The authorities in both Leopoldville and Elisabethville interpreted the Council resolution as a declaration of war against them and started to prepare for fighting against the United Nations forces. On 4 March 1961 the ANC troops attacked ONUC forces in Matadi and forced a Sudanese garrison out the Atlantic port city. This incident was followed by a series of military assaults against ONUC.[42] In another situation the UN forces took the initiative to put down an imminent attack by Toshombe's forces against the people of Kabalo in Katanga. In

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[40] Anthony Parsons, *From Cold War to Hot Peace, UN interventions 1947-1994,* Michael Joseph, London, 1995, p. 87.

[41] *The Blue Helmets, A Review of United Nations Peacekeeping,* 3rd edition, The United Nations Department of Public Information, New York, 1996, p. 184.

[42] In April 1996, 44 ONUC personnel were massacred by ANC troops in Port-Francqui; another 13 ONUC aircrew members were killed in November 1996.

response to these developments the Security Council took a further step by authorising the Secretary-General under resolution 169

> to take vigorous action, including the use of the requisite measures of force, if necessary, for the immediate apprehension, and detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, as laid down in paragraph 2 of Security Council resolution 161 A (1961); Further requests the Secretary-General to take all necessary measures to prevent the entry or return of such elements under whatever guise, ...[43]

The provisions of resolution 169 stressed the foreign element in the conflict and authorised the use of force, if necessary, to secure the deportation of foreign forces.[44] Britain and France declined to support a UN action against Belgian troops and, for this reason, abstained during the course of voting on this resolution. However, the adoption of resolution 169 marked the beginning of a new phase of ONUC's roles in the Congo.

This chapter will now analyse both the arms embargo and the use of force authorised by the Security Council resolutions to test the validity of the

[43] Security Council resolution 169, 24 November 1961.
[44] It is significant that resolution 169 ordered the deportation of political advisers from the Congo by the use of the requisite measures of force.

general argument that no enforcement measures were taken in the Congo conflict.

Arms embargo

Almost no prominent studies have discussed the arms embargo imposed on Congo by resolution 169 and its relevance to the dispute on the nature and mandate of ONUC. Paragraphs 5 and 6 of this resolution stated that the Security Council

> 5. Further requests the Secretary-General to take all necessary measures to prevent the entry or return of such elements under whatever guise, and also of arms, equipment or other material in support of such activities;
>
> 6. Requests all States to refrain from the supply of arms, equipment or other material which could be used for warlike purposes, and to take the necessary measures to prevent their nationals from doing the same, and also to deny transportation and transit facilities for such supplies across their territories, except in accordance with the decision, policies and purposes of the United Nations;[45]

[45] Security Council resolution 169, 24 November 1961.

These provisions were not referred to as mandatory measures within the meaning of Article 41, as no such measures were applied against North Korea in 1950, Rhodesia and South Africa remained the only two experiences of United Nations mandatory sanctions during the Cold War. However, when the text of paragraphs 5 and 6 of resolution 169 is compared with the provisions of Security Council resolutions which imposed mandatory arms embargoes against South Africa,[46] Somalia,[47] UNITA (Angola),[48] or Haiti,[49] it is difficult to draw clear distinctions between them as two different regimes of arms embargo.

When the Council was first engaged in the conflict in July 1960 it had no intention to impose an arms embargo against the Congolese Central Government as its initial aim was to provide military and technical assistance for that Government. There was also no attempt to employ a partial arms embargo either against Belgian forces or Katangese secessionists as it did three decades later with UNITA in Angola.[50] However, by the time the Council had adopted resolution 169 in November 1991 the situation had changed remarkably. The ANC forces of the Central Government, the Katangese forces, and the Belgian forces were all active parties to the civil war and initiating or supporting aggressive military attacks against ONUC. Furthermore, after February 1991, the United Nations proposed that the ANC forces should be

[46] Security Council resolution 418, 4 November 1977.
[47] Security Council resolution 733, 23 January 1992.
[48] Security Council resolution 864, 15 September 1993.
[49] Security Council resolution 841, 16 June 1993.
[50] Security Council resolution 864, 15 September 1993.

dissolved, restructured, and kept away from politically motivated disputes. There was no reason why at least the nine members of the Council who voted in favour of resolution 169 should, not aim at a general and mandatory arms embargo in the Congo as a means of preventing the flow of arms to the country.

Hammarskjold, the majority of the ICJ jurists, and other scholars stated that the UN measures in the Congo, though not authorised under Article 41 or 42, were binding on all member states. This would logically lead to the assumption that the arms embargo against the Congo was a binding measure which should have been implemented by all member states.

ONUC's uncertain mandate

The question of whether ONUC was a peacekeeping or peace enforcement operation raised practical and constitutional differences on various levels. First, the question was a source of deep disagreement between Hammarskjold and the central Government of Congo. On the one hand, there is evidence that Prime Minister Lumumba regarded ONUC as a peace enforcement operation. This evidence could be drawn from the chronicle of Michael Donelan and M. Grieve: 'Lumumba wanted the UN force to be used to end Katanga's secession.'[51] During his life-time Lumumba's demand remained unsatisfied, but it was ultimately accomplished by ONUC after the adoption of resolution

[51] M. D. Donelan and M. J. Grieve, *International Disputes, Case Histories 1945-1970,* Europa Publications, London, 1973, p. 205.

169. On the other hand Dag Hammarskjold held the opinion that ONUC was not a peace enforcement operation. He stated that

> it is significant that the Council did not invoke Articles 41 and 42 of Chapter VII, which provide for enforcement measures and which would override the domestic jurisdiction limitation of Article 2(7). I mention this as one of the reasons why some far-reaching interpretations of the mandate of the Force, to which we have listened here, are, quite frankly, difficult to understand. Those interpretations would require at least that the Security Council had clearly taken enforcement measures under Article 41 and 42. [52]

As Linda Miller observed, '[f]or Hammarskjold, the legal basis of ONUC's mandate remained unchanged by the Council's February resolution.'[53] Hammarskjold continued to embrace this opinion until his death on 18 September 1961, when his plane crashed near the airport of Ndola in Zambia.[54] It could not be determined whether, if Hammarskjold was alive in November 1961, he would have admitted a shift in ONUC mandate after the adoption of resolution 169 and the undertaking of a coercive action against defiant forces. However, members of the Secretariat and the Secretary-General's close

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[52] Security Council Official Records, 15th year , 920th meeting, paragraph 73.
[53] Linda B. Miller, *World Order and Local Disorder, The United Nations and Internal Conflicts,* Princeton University Press, Princeton, New Jersey, 1967, p. 94.
[54] For further statement by Hammarskjold in support of this opinion see UN Documents S/P.V. 887th meeting, 20 July 1960, p. 17.

advisers adhered to Hammarskjold's opinion and continued to regard his belief that ONUC and the UN Emergency Force (UNEF) were laying the groundwork for UN peacekeeping operations. A partial explanation of Hammarskjold's stance could be found in Brian Urquhart's observation that 'Hammarskjold was increasingly convinced that in the political field the UN should concentrate on preventive action rather than corrective action.'[55] Another reason was Hammarskjold's determination to avoid loosing necessary Western support in his quest to find a resolution for the Congo crisis.

Second, on the part of the permanent members of the Security Council, the Congo case aroused Cold War tensions with claims of hypocrisy and a general distrust. This was further aggravated by a series of allegations concerning the killings, secessionist activities, and the conflict of foreign interests in the region. Discussions in the Security Council during that period represented a clear manifestation of this Cold War tension. The Council was crippled by East-West divisions and only after shocking incidents of murder, atrocities, and attacks on UN personnel, was the Council able to adopt effective measures. However, even when effective actions were taken there was no agreement among the permanent members on the function and constitutional bases of these actions. The Soviet Union interpreted the authorisation of the use of force as falling within the enforcement measures of Chapter VII. For different reasons, France adopted the same interpretation to argue that it was not obliged to pay for the expenses of ONUC. The Soviet Union wanted the

[55] Brian Urquhart, *Hammarskjold,* op. cit. Note 38, p. 256.

Security Council to impose economic sanctions against Belgium, to expel its forces from the Congo, to call Tshombe forces terrorist bandits, and to authorise the arrest of Mobutu and Tshombe. Western countries opposed such proposals and adopted a restricted interpretation of the measures authorised by the Council.[56]

When the Soviet Union and France refused to pay their contributions for ONUC, on the grounds that ONUC was a peace enforcement operation, the Security Council referred the matter to the International Court of Justice. In its subsequent advisory opinion of July 1962 'the case of Certain Expenses of the United Nations' the Court stated that

> UNEF and ONUC were not enforcement actions within the compass of Chapter VII of the Charter and ... therefore Article 43 could not have any applicability to the cases with which the Court is here concerned.[57]

Most scholars shared the opinion expressed by Hammarskjold and supported by the International Court of Justice that ONUC was not a peace enforcement operation. Judge Higgins observed that 'By the end of 1960 the question was being raised within the UN and without: did the actions of ONUC constitute enforcement measures?' Higgins viewed the situation, until February 1961, as

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[56] For comprehensive account of the Soviet Union and the Congo crisis see Alexander Dallin, *The Soviet Union at the United Nations, an Inquiry into Soviet Motives and Objectives,* Greenwood Press, Westport, Connecticut, 1962, pp. 135 – 148.

[57] *Certain Expenses of the United Nations,* Yearbook of the International Court of Justice, 1961-62, pp. 78 – 84.

follows: 'while in resolution S/4741 the Council now spoke of a "threat to international peace and security" [employing the language of Chapter VII] there is still no evidence that ONUC had embarked upon enforcement action.'[58] Even after the ONUC mandate was enlarged by resolution 169 of November 1961, for Higgins the action was still not enforcement.[59]

Writing in October 1961, R. Y. Jennings discussed the provisions of resolution 161 asserting that '[t]hey were now authorising military action should it prove necessary in the last resort in order to prevent civil war. In so doing they were, I would have thought, authorising 'enforcement' measures with the clear implication that there was a threat to peace in the sense of Chapter VII of the Charter.'[60] Many scholars did not go as far as Jennings did,

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[58] Rosalyn Higgins, *United Nations Peacekeeping, 1946 – 1967, Documents and Commentary,* III Africa, Oxford University Press, Oxford, New York, Toronto, and Melbourne, 1980, p. 57.

[59] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations,* Oxford University Press, London, 1963, p. 236; In the same study Higgins asserted that

'The important point as to whether the United Nations action in the Congo-or any part thereof-has fallen under Article 42 rather than under Article 40 has been the object of surprisingly little discussion. The question has only been occasionally raised in the United States, and in the United Kingdom there has been a general tendency to assume that, in recent months at least, the United Nations action fell under Article 42. The distinction is a vital one, both for legal and political reasons. ... The political consequences of the United Nations role in the Congo being interpreted as one of 'enforcement' are too apparent to need further elaboration here. This writer believes that there is every reason for considering the United Nations operation as one of interim measures under Article 40.' Ibid. p. 235. D. W. Bowett argued that ONUC was not an enforcement action under Article 42 of the Charter, see D. W. Bowett, op. cit. note 28, p. 180.

[60] R. Y. Jennings, 'The United Nations, Force, and the Congo' *The Listener,* vol. LXVI. no. 1699, 19 October 1961, p. 591. Few recent studies adopted similar views, for instance Brady, Daws and Arnold-Foster stated that 'However, as the crisis developed, SCRs 161 and 169 became far more permissive and were clearly enforcement resolutions.' Christopher Brady, Sam Daws and Josh Arnold-Foster, *UN Operations: The Political-Military Relationship,* DHIA and UNA-UK, London, no date, p. 11; Winrich Kuhne observed that ONUC 'mandate had to be extended to allow for limited enforcement action' Winrich Kuhne, 'Fragmenting States and the Need for Enlarged Peacekeeping' in Paul Taylor, Sam Daws, and UTE

but they admitted that ONUC was an obvious exception to UN traditional peacekeeping.[61]

The paradox is overwhelming.[62] According to the UN official opinion which had been endorsed by the ICJ Advisory Opinion and embraced by the majority of scholars, the UN action in the Congo was a provisional measure under Article 40 of the Charter. Article 40 reads

> In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable.

Could the provisions of this Article be stretched to cover the areas of UN action and the scope of its military engagement in the crisis? This chapter will attempt to show why it was not possible for UN officials and many Western statesmen and scholars to argue otherwise.

Adamczick-Gerteis, *Documents on reform of the United Nations,* Dartmouth, Aldershot and Brookfield, 1997, p 43.

[61] To mention some of these views, Nigel White asserted that 'It is very difficult to see ONUC as a true peacekeeping operation ... On the other hand, ONUC was not clearly an enforcement action as undertaken by the UN forces in Korea ...' Nigel White, 'UN Peacekeeping – Development or Destruction?' *International Relations*, vol. XII, no. 1, April 1994, p. 150; Geoffrey Stern described ONUC as controversial 'some times firing without being fired on.' Geoffrey Stern, *The Structure of International Society - An Introduction to the Study of International Relations,* Pinter, London and New York, 1995, p. 208.

[62] Evan Luard argued in 1989: 'The Congo operation was immeasurably the largest, most complex and most controversial the United Nations has ever undertaken.' Evan Luard, *A*

Viewing the Congo crisis of 1960-64 at the end of the century against the background of UN engagement in conflict resolution during 45 years of Cold War and 10 years of post-Cold War experiences is likely to prove a challenging task.[63] The perception of UN policies in civil wars has significantly changed since the Congo crisis, especially in the post-Cold War years. In 1996 it was much easier for the Security Council to adopt enforcement measures under Chapter VII to stop the civil war in Zaire, despite the absence of hostile foreign involvement, signified by the presence of Belgium forces in 1950. The main reason behind the Council's inability to adopt enforcement measures during the Cold War era, as mentioned by many scholars, was the confrontation between the great powers.

However, the element of colonialism had a far-reaching impact on the case of Congo. This study contends that the understanding of the colonial context in which ONUC was mandated is crucial to the discussion of the functional and organisational aspects of the UN action in the Congo.

By the time the Security Council started to consider the crisis in the Congo, European forces were still present in many parts of the African continent. The dispute between France and Tunisia, which coincided with the conflict in the Congo, was one example of the effects of colonial interests in

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History of the United Nations, Volume 2: *The Age of Decolonisation, 1955-1965,* Macmillan, London, 1989, p. 264.

[63] Thomas Frank discussed the situation in Congo under the heading: 'Hard Cases', while classified Korea and Kuwait as 'Easy Cases'. In his opinion the latter did not pose challenges to the legitimacy of UN collective action, as did the Congo case. Thomas M. Frank, *Fairness*

Africa. In 1960 France was facing mounting pressures from the United Nations to withdraw its troops from Tunisia. The French President, Charles de Gaulle, was adamant, he wanted to keep his forces in Bizerte and thus diplomatic relations broke off between the two countries. The Security Council considered three draft resolutions presented before it in July 1960, calling for the withdrawal of the French troops, but the United States and Britain, with France absenting itself from the meetings, blocked the adoption of any of the these resolutions.[64]

Hammarskjold supported the Tunisian claim and asked the United States to try to persuade France to withdraw its forces from Bizerte. During July and August 1960 the situation was tense in the United Nations and the relation between Hammarskjold and de Gaulle reached a breaking point.[65] De Gaulle, ten years later stated in his biography: 'Hammarskjold who was already in disagreement with us at the time because he was interfering directly in the affairs of the Congo, sided personally with Bourguiba.'[66] The Tunisian question was then moved to the General Assembly which passed a resolution supporting the Tunisian request for the evacuation of French troops that were

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in International Law and Institutions, Clarendon Press, Oxford and New York, 1997, pp. 222-242.

[64] UN Documents S/4903, S/4904, S/4905, 28 July 1960.

[65] Brian Urquhart, *Hammarskjold,* op. cit. note 38, pp. 537-8.

[66] Charles de Gaulle, *Memoirs of Hope-Renewal 1958-62, Endeavour 1962-,* (translated by Terence Kilmartin) Weidenfeld and Nicholson, London, 1971, p. 118.

present on its territories without its consent and contrary to sovereign rights of independent states.[67]

Consequently, the Security Council was not able to condemn the presence of colonial forces in African states or to call any colonial power an aggressor.[68] The study argues, in this respect, that peace enforcement was never a plausible option against colonialism. This general contention was specifically applicable to the Congo. Anthony Parsons mentioned one vital element of this colonial dominance stressing the effect of European financial interests in Africa on the work of the Security Council and how this element restrained its ability to adopt enforcement measures against Belgium. He asserted that 'Britain and France, sympathetic to Belgium and with important financial interests with breakaway Katanga which was also developing close relations with the (British) Central African Federation of the two Rhodesias and Nyasaland, would have vetoed any enforcement action directed specifically against Belgium.'[69] Prime Minister Harold Macmillan admitted the political and financial influence in support of Katangese secessionist. He stated that 'there was strong pressure in Britain, partly from business interests and partly from the right wing of conservative party, to support Toshombe.'[70]

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[67] General Assembly resolution 1622 (S-III), 25 August 1961. Thirty states abstained including the United States and Britain.

[68] For discussion on the United Nations and colonial wars in relevant cases, Indonesia, Algeria, and Angola see L. B. Miller, note 53, pp. 36 – 60; for a brief discussion on the role of preventive diplomacy and peacekeeping in enabling the process of decolonisation see A. J. R. Groom, 'The Question of Peace and Security' in Paul Taylor and A. J. R. Groom eds. *International Institutions at Work,* Pinter Publishers, London, 1988, p. 80.

[69] Anthony Parsons, Note 14.

[70] Harold Macmillan, *Pointing the Way,* Harper and Row, New York, 1972, p. 263.

For these considerations it was not possible to invoke explicitly the UN Charter mechanism for peace enforcement in the Congo, but provisions for the Council resolutions and the practice of the UN forces on the ground indicate some obvious peace enforcement characteristics of the UN action in the Congo.

Mandatory sanctions

Mandatory sanctions had only been imposed twice before the 1990s. In both cases sanctions imposed against the rule of white minority governments and their racial and apartheid policies, which lingered on into the post-colonial era in South Africa and Southern Rhodesia and remained intact even during the first years of the post-Cold War period in the case of South Africa. In fact, these were the only two cases of UN mandatory sanctions applied anywhere in the world before August 1990. Therefore, they represent the only opportunity for the study of the UN practice in the area of sanctions during 45 years. They also demonstrated the limitations of the Cold War period on the sanctioning policies of the UN.

3- Rhodesia: Economic sanctions

In Rhodesia, sanctions were invoked in response to the white minority's Unilateral Declaration of Independence from Britain on 11 November 1964. Mandatory economic sanctions came into effect in 1966. Resolution 232 which designated one of the most comprehensive sanctions regime, was adopted by

the Security Council in accordance with Articles 39 and 41 of Chapter VII. Member states were explicitly reminded that 'refusal by any of them to implement the resolution shall constitute a violation of Article 25'.[71]

Rhodesia represented a case where, for more than a decade, sanctions failed to bring about compliance, as the white minority government of Ian Smith remained defiant throughout that period. However, after this period Smith's government showed readiness to comply with the Security Council resolutions and to accept a peaceful settlement to the conflict. Therefore, in December 1979 the Council expressed its satisfaction with the outcome of the conference held at Lancaster House in London, and asked member states 'to terminate the measures taken against Southern Rhodesia under Chapter VII'.[72]

4- South Africa: Arms embargo

The Security Council started to consider the case of South Africa after the March 1960 Sharpeville massacre, which resulted in the killing of 69 people during a protest march, but mandatory measures against the white government

[71] See Pokalas, J. 'Economic sanctions: an effective alternative to military coercion?' Brooklyn Journal of International Law, vol. 6, 1980, p. 312; Nigel White, 'Collective sanctions: an alternative to military coercion?' *International Relations*, vol. XII, no. 3, December 1994, p. 83.

[72] Security Council resolution 460, 21 December 1979. Of course, much has been written about the Rhodesian case. Useful studies include: Margaret Doxey, *International Sanctions in Contemporary Perspective,* Macmillan, London, 1987; Ralph Zacklin, *The United Nations*

of South Africa were not adopted until 17 years later. Meanwhile, in 1963, two resolutions - 181 and 182 - were adopted recommending a voluntary arms embargo against South Africa. Black African states struggled to make the embargo mandatory. Their efforts finally culminated in the adoption by the Security Council of resolution 418 on 4 November 1977, imposing a mandatory arms embargo on South Africa. Furthermore, in 1985 resolution 569 suspended all sports and cultural links and banned computer exports to South Africa. In September 1992 the UN established an observer mission (UNOMSA) which represented the first deployment of force in South Africa.

In 1993 President De Klerk called for free elections to be held in April 1994. However, the embargo remained in place until a new government was formed by Nelson Mandela, ending the longest ever case of mandatory sanctions, as well as decades of apartheid.[73]

The case of South Africa was not replicated. The adoption and implementation of mandatory arms embargo to combat apartheid remained peculiar to South Africa. However, some scholars consider it as the earliest precedent of UN intervention to protect human rights, and called for the UN experience in South Africa to be generalised.[74]

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and Rhodesia: a study in international Law, Praeger, New York, 1974; See discussion on Rhodesia in Part II of the thesis under: the impact of sanctions.

[73] For further details see Daoudi, M. S. and Dajani M. S. *Economic Sanctions: Ideal and Experience,* Rouledge and Kegan Paul, London and Boston, 1983.

[74] Stanley Hoffmann, observed that 'It is high time that the principle the UN has applied only to South Africa be generalised: No state should be able to claim that the way it treats its citizens is sovereign right if this treatment is likely to create international tensions' Stanley Hoffmann, 'Avoiding New World Disorder' *The New York Times,* 25 February 1991.

Rhodesia, South Africa, and other cases of long-term sanctions show that even if sanctions were not strictly implemented, target states cannot afford to live with international sanctions, mandated by the UN, for unlimited time. In this sense sanctions serve as a means of political pressure and isolation, to induce target regimes to abandon unacceptable policies. However, by imposing such long term sanctioning policy, compliance would be attained at a high cost of civilian suffering and devastation. In fact, the population would continue to suffer from both, the internal repressive policies of the regime, while the regime might intend to manipulate sanctions to strengthen its internal position, and the effect of the economic blockade imposed by other countries.

Chapter 8

The post-Cold War period

1- The Kurds

The Kurdish community forms one of the largest ethnic groups in the Middle East. Their population totals 26 million, with over 13 million in Turkey, 6 million in Iran, 4 million in Iraq, 1 million in Syria, 500,000 in the former Soviet Union, and 700,000 in different parts of the world.[1] However, Iraq has the highest percentage of population, 23%, of their presence in states.[2] Despite their large population, Kurds lack a state of their own, and they have been denied any genuine political autonomy by the regimes of these countries.[3] This peculiar situation caused the Kurdish population cycles of atrocities and displacement.[4]

The international community has done little to find permanent solutions for the Kurdish problem. Until 1991, the Security Council of the United Nations did not adopt any resolution concerning the Kurds' problem.

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[1] David McDowall, *The Kurds,* MRG, London, 1996, p. 7.

[2] For history of Kurds in Iraq see 'Ismet Sheriff Vanly, 'Kurdistan in Iraq', in Gerard Chaliand, *People Without A Country, The Kurds and Kurdistan,* Zed Press, London, 1980, pp. 153 – 210.

[3] For discussions in the League of Nations on the future of Kurdistan during the 1920s see F. S. Northedge, *The League of Nations, its life and times 1920 – 1946,* Leicester University Press, Leicester, 1986, pp. 105 – 107.

[4] For accounts of atrocities against Kurds see Middle East Watch, *Genocide in Iraq: The Anfal Campaign against the Kurds,* New York and London, 1993; Medico International and Kurdish Human Rights Project, *The Destruction of villages in South-East Turkey,* London, June 1996; David McDowall, A Modern History of the Kurds, Tauris, London, 1996. For claims of genocide committed against Kurds see Lori Fisler Damrosch, 'Genocide and Ethnic Conflict', in David Wippman, ed. *International Law and Ethnic Conflict,* Cornell University Press, New York, 1998, pp. 256-79.

The first clear involvement of the Council in the Kurdish problem came in the aftermath of the Gulf War in April 1991 in response to Iraqi suppression of the Kurdish uprising in northern and north-eastern Iraq. The Kurds attempted to take advantage of the situation caused by the war to advance their political agenda and to attain the political autonomy of Iraqi Kurdistan. The deteriorating economic situation as a result of the sanctions and blockade since August 1990[5] and the effects of the destruction of essential infrastructure in the country caused by the war[6] also contributed to the Kurdish revolt.

Kurdish guerrilla forces stepped-up their military activities and took control of the main cities of Arbil, Suleimaniya, and the oil city of Kirkuk.[7] Kurds had never before gained control of Kirkuk 'even at the height of Mulla Mustafa's Kurdish wars in the 1960s and 1970s'.[8] Fighting in Sulaymanyia resulted in the killing of over 900 pro-Government officials including the governor of the town, and the arrest of thousands of Iraqi forces by Kurdish insurgents. They also captured heavy Iraqi weapons including tanks, armoured cars, and several air-fighters.[9] Masud Barzani cited the historic triumph of Kurds by stating that 'the result of seventy years of Kurdish struggle is at hand

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[5] David Keen, *The Kurds of Iraq: How Safe is Their Haven Now,* Save the Children, London, 1993, p. 4.

[6] Chris Dammers, 'Post-War Iraq and the Politics of Humanitarianism', in Herbert H. Blumberg and Christopher C. French, eds. *The Persian Gulf War, Views from the Social and Behavioural Sciences,* University Press of America, Lanham, New York, and London, 1994, pp. 399 – 411. Dammers provides a useful summary and analysis of reports on the humanitarian effects of war prepared in 1991 by special agencies and groups including Harvard Study Team in Iraq, on health issues, Food and Agriculture Organisation (FAO), and UNICEF along his own observations.

[7] The Kurdish control over Kirkuk lasted for only 11 days, before Iraqi forces retook the town.

[8] Majid Khadduri and Edmund Ghareeb, *War in the Gulf, 1990-91, The Iraq-Kuwait Conflict and Its Implications,* Oxford University Press, New York and Oxford, 1997, pp. 202-3.

[9] For more details see ibid. p. 203.

now'.[10] However, it was only a matter of days before the insurgents' victory turned into a most grievous situation.

The Iraqi counteroffensive and the subsequent killings and destruction of areas populated by Kurds resulted in the tragic humanitarian crisis of 1991 in Northern Iraq. Panic and fear among Kurdish civilians was aroused by news of massacres at Sulaymanyia and Qara Hanjir, and the possible use of weapons of mass destruction by Iraqi forces against their villages. As a result, by early April 1991 more than a million Kurds were moving in freezing weather towards Iranian and Turkish borders. It was estimated that 1000 people, most of them children and aged men and women, died every day.

Turkey and Iran claimed that the situation had posed a threat to regional peace and security and urged the Security Council to take effective measures to stop the flood of refugees into their territories.[11] Turkey cited the need to cope with about 500,000 having fled to areas on its border with Iraq. Iran cited the almost 1 million people seeking shelter in the country. [12]

Meeting on 4 April 1991, the Security Council passed resolution 688, which determined that, the 'massive flow of refugees towards and across international frontiers ... threatened international peace and security'. According to this resolution, the Council

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[10] *The Washington Post,* 27 March 1991.
[11] UN Document S/22435 (1991), letter from Turkey to the Secretary-General on 2 April 1991; UN Document S/22447 (1991), letter from Iran to the Secretary-General on 4 April 1991.
[12] The United Nations Blue Books Series, vol. IX, *The United Nations and the Iraq-Kuwait Conflict 1990-1996,* Report by Sadruddin Aga Khan to the Secretary-General, 15 May 1991, Ducument 51, The United Nations Department of Public Information, 1996, p. 246.

2. *Demands* that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression and expresses the hope in the same context that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected;

3. *Insists* that Iraq allow immediate access by international humanitarian organisation to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations.

Three days after the adoption of resolution 688, Britain proposed the establishment of an 'enclave' in Northern Iraq to protect and assist Iraqi refugees. The plan was endorsed by the Luxembourg summit of the European Community (EC) on 8 April 1991. However, the original conception of an 'enclave' was changed by the EC members to a 'safe haven' for Kurds.[13] The United States promised to consider the plan and eventually accepted, with reluctance, to lead the humanitarian efforts and the enforcement of the protected area.

The Council intervention was meant to provide shelter and relief supplies for Iraqi refugees.[14] Resolution 688 asked Iraq to end immediately the repression of its people and hoped that human and political rights would be respected through sustainable dialogue. Although the resolution contained a

[13] Cambridge International Documents Series, Vol. 3, *Iraq and Kuwait: The Hostilities and their Aftermath,* Marc Weller, ed. Cambridge Grotius Publication, Cambridge, 1993, pp. 714-5.

[14] It should be noted that over twenty million Kurds living in Turkey, Iran, and Syria were not meant to be affected by this resolution.

sense of urgency in dealing with the crisis, it did not mandate the coalition to use force to protect the Kurds in Northern Iraq. Instead, Iraq was asked to allow immediate access for the delivery of relief supplies. Furthermore, the resolution affirmed in its preamble the commitment of all member states 'to the sovereignty, territorial integrity and political independence of Iraq'. However, the 'humanitarian need' compelled many observers to seek justification beyond the authority of Chapter VII.[15]

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[15] Three contributions by British scholars, Edward Mortimer, Lawrence Freedman and David Boren, and James Mayall, provided justifications beyond the framework of Chapter VII; Edward Mortimer argued that Operation Provide Comfort

> would find its strongest legal support in the Convention on the Prevention and Punishment of the Crime of Genocide. ... A prima facie case could be made against Iraq under several of ... [its] headings. However, none of the powers involved in Operation Provide Comfort invoked the convention.

Edward Mortimer, 'Under What Circumstances should the UN Intervene Militarily in a "Domestic" Crisis?' in Olara A. Otunnu and Michael W. Doyle, eds. *Peacemaking and Peacekeeping for the New Century,* Rowman and Littlefield Publishers, Lanham, New York, and Oxford, 1998, p. 131.

Lawrence Freedman and David Boren asserted that

> The 'safe havens' were organised with full awareness of the fact that this constituted an 'interference in internal affairs' of Iraq, but were justified by the failure of Iraq to conduct its internal affairs in an acceptable manner.

They further observed

> Its logic was to establish Western military authority over a substantial area of Iraq.

Lawrence Freedman and David Boren, 'Save Havens for Kurds' in Nigel S. Rodley, ed. *To Loose the Bands of Wickedness, International Intervention in Defence of Human Rights,* Brassey's, UK, 1992, pp. 43 and 57.

James Mayall argued that

> The Iraqi safe havens were justified because, having encouraged the Iraqi people to depose Saddam Hussein, Western leaders could not escape responsibility for the fate of the Kurds when predictably he suppressed their rebellion.

James Mayall, 'Intervention in International Society: Theory and Practice in Contemporary Perspective', in B. A. Roberson ed. *International Society and the Development of International Relations,* Pinter, London and Washington, 1998, p. 177.

Britain, France, and the United States hinted that the no-fly zone was mandated under resolution 688. Francois Mitterrand stated after the adoption of the resolution that 'for the first time, non-interference has stopped at the point where it was becoming a failure to assist a people in danger.' France was quite enthusiastic about the establishment of the no-fly zone and even called, in the wake of the adoption of resolution 688, for the principle of non-intervention to be reconsidered in favour of human rights protection.[16] President Mitterrand had sent 1000 French troops to join the 5000 American and 2000 British forces in imposing the safe areas in Northern Iraq.

Allied forces established two military bases in Turkey, in Diyarbakir and Silopi. They were instructed to make occasional patrols of the area to the south as far as Almousel, 100 Kilometres inside Iraq. The 36th parallel, north of Baghdad, was designated to serve as the demarcation line for the no-fly zone. This logistical task was accomplished by the Pentagon. Colin Powell stated that

> with me in Washington and Jack in Belgium, (Jack Galvin the American Supreme Allied Commander Europe, SACEUR) each with a map in front of us, we sketched out a "security zone", a sector around Kurdish cities in Iraq that Saddam's troops would not be allowed to enter. I felt like one of those British diplomats in the 1920s carving out nations like Jordan and Iraq on a tablecloth at a gentleman's club. I called Galvin, in

[16] H. Fontanaud, 'France Says World Must Re-examine "Non-interference" Code', *Reuters*, 4 April 1991.

his Trans-European role. "Charlemagne," and I told him that now he was truly a kingdom maker. After lining out the security zone, we ordered the Iraqi military to get out.'[17]

A no-fly zone is defined in military terms as 'a de facto aerial occupation of sovereign airspace in which only aircraft of enforcement forces may fly'.[18] However, in Kurdistan only Iraqi fixed or rotary-wing aircraft were required not fly north of the 36th parallel.[19] In fact, the prohibition against the Iraqi fixed-wing planes was concluded between Schwarzkopf and Iraqi generals on 3 March within the cease-fire agreement. Iraqis asked for their helicopters to be exempted. General Ahmed, the leader of Iraqi negotiating team in Safwan, appealed at the end of discussion 'We have one point, you know the situation of our roads and bridges and communications. We would like to fly helicopters to carry officials of our government in areas where roads and bridges are out.'[20] Schwarzkopf agreed to exempt Iraqi helicopters from the ban. James Baker

[17] Colin Powell, with Joseph E. Persico, *A Soldier's Way, An Autobiography,* Hutchinson, London, p. 531.

[18] Michael N. Schmitt, 'Clipped Wings: Effective and Legal No-fly zone Rules of Engagement' in Michael N. Schmitt, ed. *The Law of Military Operations,* (International Law Studies, vol. 72), Naval War College Press, 1998, p. 240.

[19] Lawrence Freedman and David Boren observed that 'Choosing the 36th parallel, north of the oil town of Kirkuk claimed by Kurdish separatists, reduced the likelihood that this policy would encourage Kurdish separatism.' Lawrence Freedman and David Boren, op. cite. note 15, p. 53. A similar observation was made by Sean Murphy, that the term 'safe havens' was 'designed to avoid subsequent claims of statehood by the Kurds', see Sean D. Murphy, *Humanitarian Intervention, The United Nations in an Evolving World Order,* University of Pennsylvania Press, Philadelphia, 1996, p. 173.

[20] General H. Norman Schwarzkopf, *The Autobiography, It Doesn't Take a Hero,* Bantam Press, London and New York, 1992, pp. 488-89.

later criticised Schwarzkopf for making this commitment.[21] Schwarzkopf himself asserted that 'In the following weeks, we discovered what the [sic] really had in mind: using helicopter gunships to suppress rebellions in Basra and other cities.'[22]

The US Administration had repeatedly stressed the temporary nature of the operation. In a letter to the UN Secretary-General, President Bush described the no-fly zone as an 'extraordinary and temporary measure' intended to provide humanitarian service for refugees and displaced persons.[23]

George Bush expressed the US intention 'to turn over the administration of and security for these sites as soon as possible to the United Nations' in a way similar to the 'handing over of responsibility to UN forces along Iraq's southern border' with Kuwait.[24] The US Administration was also anxious to emphasise the limited scope of the operation. This was, in part, motivated by the desire to preserve the allies' victory in the Gulf war and the remarkably low number of casualties among the coalition forces. Another reason was the fear that unrestricted support for Kurds may lead to the establishment of an independent Kurdish political entity, a consequence the United States sought to avoid. Washington maintained that it was 'not going to intervene militarily in Iraq's internal affairs and risk being drawn into a

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[21] James A. Baker, III, with Thomas M. DeFrank, *The Politics of Diplomacy, Revolution, War and Peace, 1989 – 1992,* G. P. Putnam's Sons, New York, 1995, pp. 439-40

[22] Norman Schwarzkopf, op. cit. note 20.

[23] Javier Perez de Cuellar, *Pilgrimage for Peace, A Secretary-General's Memoir,* St. Martin's Press, New York, 1997, p. 276.

[24] George Bush News Conference, 16 April 1991, in Cambridge International Documents Series, Marc Weller, ed. op. cit. note 13, p. 717.

Vietnam-style quagmire.'[25] Bush stated that his Administration did not want to see any American soldier 'shoved into a civil war in Iraq that has been going on for ages'.[26] He was referring to the complexity of the Kurdish problem. He further stated: 'I want to stress that this new effort, despite its scale and scope, is not intended as a permanent solution to the plight of Iraqi Kurds.'[27]

If 'recognition did not mean protection' in Bosnia, as Anthony Parsons proclaimed,[28] the situation was totally the opposite in the case of the Kurds, efforts to protect them did not mean recognition by the international community of Iraqi Kurdistan. Yet, protection[29] did not save the Kurds from being exposed especially to Iraqi and Turkish forces. Turkey was allowed to crush the Kurds several times in the safe havens area inside Iraq. It did so in 1992, 1995,[30] and in 1999[31] following the arrest of Abdullah Ocalan, the leader of the Kurdish Workers Party (PKK) in Kenya.[32] Although, these operations are mainly directed against Turkish Kurds, they had destructive effects on Iraqi Kurdistan.

Could it be concluded that the Kurds had been utilised and betrayed by the international community in the aftermath of the Gulf crisis? The large

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[25] Ibid.
[26] Ibid
[27] Ibid.
[28] Anthony Parsons, *From Cold War to Hot Peace, UN interventions 1947-1994,* Michael Joseph, London, 1995, p. 228.
[29] For clarification of the functions of protection force in civil and international conflicts see International Committee of the Red Cross (ICRC), Symposium on Humanitarian Action and Peace-Keeping Operations, Report, ed. Umesh Palwankar, Geneva, 22-24 June 1994, pp. 102-3.
[30] K. Couturier, 'Turkey Invades North Iraq to Battle Kurdish *Guerrillas' The Washington Post,* 21 March 1995
[31] Michael Theodoulou and Andrew Finkel, 'Ankara force storms into northern Iraq' *The Times,* 18 February 1999.

humanitarian operation to alleviate their suffering and the rhetoric of coalition leaders in their support may not provide an alternative interpretation. No proposals for resolving the Kurdish problem were put forward. Calculations of regional balance were critical to the United States and Western allies as well as to the neighbouring countries. The relatively generous reception by Iran of Iraqi refugees and the uprising of the pro-Iranian Shi'ite in Southern Iraq aroused fears among coalition members of an Iranian hegemonic influence in the region. Another factor was the Turkish determination not to allow any attempt by the Kurds to establish political autonomy in the area.

James Baker, former US Secretary of State, observed that

> Our detractors accused us of inciting the Kurdish and Shiite rebellions against Saddam in the days immediately following the end of the war, then dooming them by refusing to come to their aid, either through US military action or covert assistance. These are many of the same voices who also allege that Desert Storm was halted prematurely for political reasons, and that United States forces should have gone on to Baghdad and occupied large portions of Iraq. We never embraced as a war aim or a political aim the replacement of the Iraqi regime. We did, however, hope and believe that Saddam Hussein would not survive in power after such a crushing defeat. Ironically, the uprising in the north and south, instead of lessening his grip on power as we felt they would, contributed

[32] Turkey sent, 20.000 troops in 1992, 35.000 in 1995 and 4.000 in 1999 across the Iraqi border into the safe areas.

> to it, as he skilfully argued to his army that these events required his continued leadership in order to preserve Iraq. When he managed to consolidate his power, Saddam scrambled our strategic calculations. The result was a sobering reminder that the consequences of success are often far more intricate and unpredictable than anticipated.[33]

The criticism was made against George Bush's explicit encouragement during the Gulf war 'for the Iraqi military and Iraqi people to take matters into their own hands to force Saddam Hussein the dictator to step aside'.[34] However, it was the Kurds population who paid the price of the failing American strategy. Waiting for the 'consequences of success' to work in the way anticipated by the US Administration did not lead to the removal of Saddam Hussein from office and contributed to the appalling humanitarian situation in Northern Iraq in 1991. The imposition of no-fly zone over Northern Iraq marked an early division in the UN and threatened the fragile post-Cold War agreement on a collective policy. In 1997 the former UN Secretary-General, Javier Perez de Cuellar disclosed part of his discussion with George Bush during the crisis:

> President Bush had called me on April 16 to tell me of the planned military move into northern Iraq ... the president expressed the hope that

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[33] James Baker, op. cit. p 435.

[34] *International Herald Tribune,* 16 February 1991. This could be contrasted to Woodrow Wilson promise to the Kurds in the 1920s when he stated that the Kurds should have 'absolute unmolested opportunity of autonomous development.'; see Michael Binyon, 'West blamed for broken pledges of past' *The Times,* 18 February 1999. For similar promises by the British Government see for example David Keen, op. cit. pp. 1 – 2.

> I would make clear publicly ... that the action being taken was entirely in accord with Security Council resolution 688. This I could not do. ... The Security Council could, in principle, have authorised the action as an enforcement measure, but whether agreement could have been achieved in the Council remains an open question. ... I said I was entirely sympathetic with the need but after giving the matter most careful study with the assistance of my legal counsel, I had concluded that resolution 688 did not provide an adequate legal basis to deploy a peacekeeping or police force on Iraqi territory without the consent of the Iraqi Government.[35]

The United States and its allies did not recourse to the Security Council for further authorisation, because they feared that the rejection of a proposal to this effect might render their plan illegitimate.[36] Although leaders of the coalition had consistently referred to relevant Security Council resolutions, they constantly cited the humanitarian crisis in Northern Iraq as appalling, and creating an intolerable situation.

Some scholars indicated the 'dramatic innovation' constituted by the case of Kurds 'in the field of human rights policy'.[37] Many writers argued that Operation Provide Hope created a precedent for humanitarian intervention. In

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[35] Javier Perez de Cuellar, op. cit. note 23, p.275-6.

[36] Thomas Franck observed that 'Security Council consultations ... made it clear that China would veto any resolution to intervene with force to protect the Kurds.' Thomas Franck, *Fairness in International Law and Institutions,* Clarendon Press, Oxford and New York, 1997, p. 236.

[37] Fred Halliday, *Rethinking International Relations,* Macmillan, London, 1994, p. 238.

practice, the issues of sovereignty and domestic jurisdiction did not restrict outside intervention in situations of human crisis during the 1990s, and the international community has intervened in many cases of internal conflicts for humanitarian reasons since 1991.[38] Still, these changes did not acquire universal recognition and each state insists on the sanctity of its sovereignty. However, in terms of its mandate, the case of Kurds did not serve as a precedent. In Somalia, Bosnia, and Rwanda the United Nations intervened for humanitarian reasons, but forces were clearly authorised to use 'all necessary means' to carry out their purposes. Hitherto, humanitarian intervention did not substitute for peace enforcement and the case of Kurds remained unique.

2- Somalia

Civil war erupted in Somalia in an environment of political turmoil and economic hardship, exacerbated by the drought and the subsequent disturbing famine. The political disorder ruined the authority of the central government and destroyed the entire institutional establishment. In the face of this crisis, the international community had a number of aims: the delivery of food to starving people; the cessation of widespread fighting; settlement of the conflict between the warring factions; and an undertaking of peace-building responsibilities through reconstruction of the economy and rehabilitation of civil society.

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[38] Boutros Ghali stated that 'Civil wars are no longer civil and the carnage they inflict will not let the world remain indifferent. The narrow nationalism that would oppose or disregard the norms of a stable international order and the micro-nationalism that resists healthy economic

On 23 January 1992, the Security Council adopted a resolution under Chapter VII, calling on all states to implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia.[39]The Secretary-General launched a comprehensive plan, 'the 100-day plan' which sought to achieve various humanitarian objectives. The peacekeeping force, the United Nations Operation in Somalia (UNOSOM),[40] was deployed to oversee the implementation of the plan and to assist in disarming the population and demobilising the irregular forces. The Secretariat invented an 'arms for food' exchange program which attempted to persuade people to give up their arms in return for food. However, this ambitious project which combined the tasks of aid provision and disarmament, failed to deprive the clans of their weapons and further distorted the UN humanitarian mission. Instead of surrendering their weapons according to the UN plan, clans used their arms to obtain food.

The experience of UNOSOM in securing the delivery of relief supplies to starving people attained very little success and raised the question whether peacekeeping operations are capable of delivering aid supplies in civil wars. Paul Diehl argued that 'the peacekeeping strategy seems largely inappropriate to the task required in humanitarian assistance'.[41] Relief convoys in Mogadishu, Kismayo, and other parts of Somalia were repeatedly subjected to hostile attacks, hijacking, and looting by supporters of warlords.

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or political integration can disrupt a peaceful global existence.' UN Documents SC/5360/Rev.1, 31 January 1992.

[39] Security Council resolution 733, 23 January 1992.

[40] Security Council resolution 751, 24 April 1992.

By the end of 1992, both the Secretary-General and the Security Council expressed the view that it was time to move from peacekeeping to peace enforcement by authorising a coercive action in Somalia. The Secretary-General proposed three options to be considered by the Council:

> (1) A show of force in Mogadishu by UNOSOM troops 'to deter factions and other armed groups there and elsewhere in Somalia from withholding cooperation from UNOSOM'.
>
> (2) A countrywide enforcement operation undertaken by a group of Member States authorised to do so by the Security Council.
>
> (3) A countrywide enforcement action undertaken under United Nations command and control.[42]

On 3 December 1992 the Council adopted resolution 794 authorising the use of 'all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia'. It was the first case since the Congo (1960) in which the Security Council had authorised the use of force in a civil war in Africa. The deployment of 37,000 troops under Operation Restore Hope was also the largest since ONUC.

The United States asked to be authorised to designate the command of the Unified Task Force (UNITAF) in Somalia in a manner similar to Korea

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[41] Paul F. Diehl, 'Peacekeeping in Somalia, Cambodia, and the Former Yugoslavia' in Roger E. Kanet, ed. *Resolving Regional Conflicts*, University of Illinois Press, Urbana and Chicago, 1998, p. 159.

1950, but the Council rejected this request despite the fact that more than 27,000 of the troops were provided by America. In fact, the United States proposed sending forces to Somalia even before the adoption of a Security Council resolution authorising the use of force. During the five months of UNITAF there was improvement in the distribution of food and security in many parts of the Country.

When the Secretary-General recommended the establishment of UNOSOM II under the authority of Chapter VII[43] to take over from UNITAF by May 1993 he stipulated that the operation should not be subject to the agreement of local factions. One year later Boutros Ghali reversed his stipulation. After a series of hostile attacks against UNOSUM II and American forces, including the killing of 25 Pakistani soldiers on 5 June 1993, the downing of two US helicopters and the killing of 18 American troops on 3 October, Ghali announced that UN forces would not stay longer unless local clans showed a readiness to cooperate with UNOSOM II.

UNOSOM II was terminated in March 1995 without achieving its main objectives. The withdrawal was justified by the hostility and the lack of co-operation on the part of the warring factions. The initial plan of UNOSOM II proved too ambitious and overestimated the UN ability to overcome the limitations inherented in its peace operations. Following the approval of his report, *An Agenda for Peace*, by the Security Council, Boutros Ghali formulated a comprehensive peace enforcement plan for Somalia comprising a wide range

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[42] The Blue Helmets, A Review of United Nations Peace-keeping, United Nations Department of Public Information, New York, 3rd edition, 1996, p. 294.

of actions. The roles of UNOSOM, Ghali described, were to include the combat of hostile attacks, demobilisation of militiamen, delivery of food, national reconciliation, rehabilitation of the country's infrastructure, supportfor the agricultural sector, and the opening of primary schools.[44] However, it proved impossible to accomplish such duties in the absence of an agreement between the major combatants. The complexity of the internal situation, the degree of societal antagonism, and the massive destruction caused by the continuing war in Somalia and similar situations, led to suggestions for a wider UN enforcement action, extending to an imperial solution or to treat failed states as UN protectorates under a new trusteeship system.[45]

3- Liberia

Civil war erupted in Liberia in 1990 following the overthrow of President Samuel Doe's government, leaving over 150,000 dead and 750,000 refugees. The country was divided into three zones controlled by three main warring factions: the Interim Government of National Unity (IGNU), the National Patriotic Front of Liberia (NPFL) and the United Liberation Movement of Liberia (ULIMO).

For the first three years of the civil war in Liberia, West African countries assumed the roles of regional peacekeeping and mediation. As UN officials acknowledged, the United Nations Observer Group in Liberia

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[43] Security Council resolution 814, 26 March 1993.
[44] The Blue Helmets, op. cit. note 42.

(UNOMIL) was the first UN peacekeeping force to join an already existing peacekeeping operation created by another organisation.[46] UNOMIL was established by the Security Council in September 1993 to share peace-keeping responsibility with the Economic Community of West African States (ECOWAS), a sub-regional organisation which played a significant role, through peaceful initiatives, in an attempt to find peaceful solution for the conflict in Liberia.[47]

These initiatives resulted in the signing of Yamoussoukro IV Accord in October 1991,[48] Cotonou Peace Agreement in July 1993[49], Akosombo Agreement in 1994,[50] Accra Agreement in December 1994, and Abuja Agreement in August 1995.[51] Subsequent cease-fire agreements were repeatedly breached by belligerents. In the face of these violations ECOWAS Monitoring Group (ECOMOG) took in several incidents peace enforcement actions by employing coercive measures against different factions, especially the NPFL.[52] ECOMOG was not authorised by the Security Council to take peace enforcement measures either under Chapter VII or Chapter VIII in the way that NATO was mandated by the Council under the authority of both Chapters in Bosnia to take all necessary measures to secure the supply of

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[45] Brian Urquhart, 'Who can police the world' *New York Review of Books,* 12 May 1994.
[46] The Blue Helmets, op. cit. p. 379.
[47] For evaluation and detailed analysis of the role of ECOWAS in the Liberian crisis see Karl P. Magyar and Earl Conteh-Morgan, *Peacekeeping in Africa, ECOMOG in Liberia,* Macmillan Press and St. Martin's Press, London and New York, 1998.
[48] UN Document S/24815, annex.
[49] UN Document S/26272, annex.
[50] UN Document S/1994/1174.
[51] UN Document S/1995/742, annex.
[52] Earl Conteh-Morgan, 'Introduction: Adapting Peace-Making Mechanisms in an Era of Global Change' in Karl Magyar and Earl Conteh-Morgan, eds. op. cit. note 47, p. 5.

humanitarian assistance. However, the Secretary-General stated that ECOWAS was cooperating with the UN pursuant to the provisions of Chapter VIII which allow regional organisations to take enforcement measures.[53]

Acting under Chapter VII, the Security Council imposed a mandatory arms embargo on Liberia following the adoption of resolution 788 on 19 November 1992. This measure had hardly affected the sale of arms by mercenaries to the country. Due to the insignificant presence of UN forces in Liberia, 93 officers, and because both ECOMOG and UN forces remained present over only 15 percent of the populated areas in the country, they were neither qualified to observe the peace effectively nor capable of monitoring the arms embargo.

4- Angola: Embargo against UNITA

Like Congo, Angola had been entangled in civil war almost immediately after its independence. Following the declaration of Angolan independence from Portugal in 1975, fighting erupted between the three liberation movements: the Popular Movement for the Liberation of Angola (MPLA), the National Union for the Total Independence, and the National Front for the Liberation of Angola.[54]

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[53] Secretary-General report to the Security Council on 12 March 1993, UN Document S/25402.

[54] For discussion on history and origins of the struggle in Angola see Arslan Humbaraci and Nichole Muchink, *Portugal's African Wars, Angola, Guinea Bissao and Mozambique,* Macmillan, 1974, pp. 119 – 132; John Marcum, *The Angolan Revolution,* Vol. 1, *Exile Politics and Guerrilla Warfare, 1962 –1976,* MIT Press, Cambridge, 1978.

On 22 December 1988 a peaceful initiative under the auspices of the United Nations was approved. Two substantial agreements were signed at the headquarters of the United Nations by the Foreign Ministers of Cuba, Angola and South Africa. Under the Bilateral Agreement between Angola and Cuba which came into effect on 1 April 1989, 3,000 Cuban troops started to move northwards as the first phase of the withdrawal of the 50,000 Cuban troops who based in Angola.[55] The United Nations Angola Verification Mission (UNAVEM) was created five days before the signing of the two agreements at the request of Cuba and Angola to oversee compliance with the bilateral agreement.[56]

In response to a request from the Angolan government to the Secretary-General, on 30 May 1991 the Security Council adopted resolution 696 entrusting a new mandate to UNAVEM (UNAVEM II) to verify the implementation of the Peace Accords for Angola (Accords de Paz), signed by the Angolan government and UNITA in Lisbon.[57] UNITA rejected the result of elections held and endorsed by UN officials, in the autumn of 1992. Furthermore, UNITA initiated hostile military attacks against government forces and fighting intensified and spread all over the country.[58]

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[55] UN Document S/20325, 1989. See Robert S. Jaster, *The 1988 Peace Accord and the Future of Southwestern Africa,* Adelphi Paper no. 253, International Institute for Strategic Studies, Autumn 1990.
[56] Security Council resolution 626, 20 December 1988.
[57] Abiodun Williams, 'Negotiations and the End of the Angolan Civil War' in David R. Smock, ed. *Making War and Waging Peace, Foreign intervention in Africa,* United States Institute of Peace Press, Washington D.C., 1993, pp. 208 – 211.
[58] UN Document S/24720, 1992.

On 15 September 1993, the Security Council discussed the situation and decided to impose a mandatory embargo against UNITA. Acting under Chapter VII of the Charter, the Council asked all states to prevent the sale or supply of weapons, ammunition and military equipment, as well as petroleum products, to Angola, other than through points of entry indicated by the government.[59] It is significant that in the Angolan crisis the Security Council was able to single out one faction as a target for its mandatory measures, without affecting the rest of the country. In previous civil war cases the Council had applied arms embargoes indiscriminately against warring parties. Impartiality was always viewed in the context of the role of UN forces in civil wars. In Angola, the Security Council did not employ military enforcement measures and the verification missions remained equitable. However, by excluding areas controlled by the elected government the Council did not preserve an impartial role in the conflict. The Council has also threatened to impose trade sanctions on UNITA and to restrict the travel of its personnel and a special committee was established by the Council for the purpose of monitoring the arms and oil embargo.[60]

The signing of Lusaka Protocol on 20 November 1994[61] and the subsequent establishment of a third UN Verification Mission (UNAVEM III)[62] faced the same fate of the previous agreements. Angola represented an early frustration for UN efforts in the settlement of military conflicts. The signing of

[59] Security Council resolution 864, 15 September 1993.
[60] Security Council resolution 864, 15 September 1993.
[61] UN Document S/PRST/1994/70.
[62] Security Council resolution 976, 8 February 1995.

two agreements in December 1988 was universally celebrated and considered by many as one of the breakthroughs of the United Nations.[63] However, the success it achieved in Angola during the Cold War, had been frustrated by the outbreak of intensive fighting in 1992 and the spread of civil war as a syndrome of the early years of the post-Cold War era.

5- Rwanda (Operation Turquoise)

It is significant that both parties to the Rwandan conflict, the Hutu-dominated armed forces and the Tutsi-led Rwandese Patriotic Front (RPF) jointly called for the UN to intervene by taking command of an international force.[64] On 14 June 1993, the parties asked that the international force oversee the demobilisation of the existing armed forces and the formation of a new national army.[65] It could be argued that the UN did not respond sufficiently to the early demands of the conflicting parties to prevent the situation from becoming inflamed.[66]

A French initiative[67] was eventually approved by the Security Council to deploy foreign forces in the area. UN Secretary-General Boutros Ghali favoured the idea of a French-commanded multinational force, similar to the

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[63] G. R. Berridge, *Return to the UN,* Macmillan 1991, pp. 71 - 85 .
[64] UN Document S/25951, 15 June 1993.
[65] Ibid.
[66] Scretary General, Boutros Ghali, described his efforts to convince member states to send forces to Rwanda in a news Conference at the UN Headquarters on 25 May 1994 and admitted that 'Unfortunately, let me say with great humility, I failed. It is a scandal. I am the first one to say it and I am ready to repeat it.' SG/SM/5297/Rev.1.
[67] Letter from France to the Secretary-General on 20 June 1994, UN Document S/1994/734, 21 June 1994.

American-led Unified Task Force (UNITAF) in Somalia in December 1992. He accepted the force's purposes as laid down in the French proposal, namely to carry out a specifically humanitarian mission, not to intervene in the internal political conflict or seek to influence the outcome of the war, and to create conditions for the take-over of UNAMIR to pursue its expanded mandate by August 1994.[68] The French plan was approved by the Security Council and resolution 929 was adopted to this effect. Acting under Chapter VII of the United Nations Charter, on 22 June 1994 the Security Council authorised member states to set up a temporary multinational operation to contribute to the security and protection of displaced persons, refugees, and civilians at risk. On the same day French troops supported by Senegalese forces launched Operation Turquoise.

The mandatory arms embargo which had been imposed on Rwanda in May 1994 proved ineffective and weapons continued to flow to the area abundantly.[69] Two years later the Security Council was compelled to adopt a resolution under Chapter VII expressing its 'grave concern' over repeated allegations of illegal arms sales to Rwanda.[70] The Council asked the Secretary-General to consult with Zaire on stationing UN observers in its border area with Rwanda to monitor airfields and other transit points. By 18 April 1996, all peacekeepers had left Rwanda, ending the thirty-month mission of UNAMIR.

[68] UN Document S/1994/734, 21 June 1994.
[69] Security Council resolution 918, 17 May 1994.
[70] Security Council resolution 1053, 23 April 1996.

6- Zaire

The dispute over whether the conflict was external or internal that dominated opinion in the case of Congo in the early 1960s, did not arise in the recent crisis. Thirty-six years after fighting first erupted following the independence of Congo, the ex-territorial regional element in eastern Zaire is obviously admitted by the Security Council. The resolution of 15 November 1996 explicitly referred to enforcement measures under Chapter VII of the UN Charter.[71]

Security Council resolution 1080 authorised the use of all necessary means to accomplish the humanitarian mission of the multinational force. The resolution referred to the conflict in eastern Zaire as a 'continuing deteriorating situation in the Great Lakes region', stressing the regional nature of the conflict and the responsibility of Central African countries. The international community, haunted by the experience of Rwanda and its grave responsibility for allowing genocide to take place in 1994, responded swiftly in 1996 to avoid a repetition of human disaster in the region. Paris did not expect the rapid British reaction. John Major, then British Prime Minister, at a meeting with President Jacques Chirac in November 1996, declared that Britain would be prepared to send forces to Zaire. Contrary to the US stance in Bosnia, where it had protracted its reluctance to join European forces until 1995, a few days after his re-election President Clinton expressed readiness to send US troops to Zaire to serve under Canadian command. It was the first time since the Gulf war that major Western states including France, Britain and the United States had so

[71] Security Council resolution 1080, 15 November 1996.

quickly agreed to join forces in a multilateral action under the leadership of a state other than the United States, under the authority of Chapter VII of the UN Charter.

7- Bosnia

More than any other case, the Bosnian conflict provided the United Nations and the international community with an unprecedented range of difficult issues and complications.[72] It constituted a comprehensive test to the capability of the United Nations in dealing with the complexity of the post-Cold War conflicts and their repercussions, after Kuwait 1990-91.

Following the death of President Josip Tito in 1980 the unity of the federal state in Yugoslavia had become increasingly fragile .[73] The ethno-nationalistic claims of political groups[74] led to the outbreak of war in Slovenia in June 1991, Croatia in August 1991, and Bosnia in April 1992.[75] By the year 1992 the international community recognised Slovenia, Croatia, and Bosnia as independent states.

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[72] Issues raised with relation to the Bosnian conflict and discussed in various contexts included: the nature of conflicts, the use of force by the UN and regional organisations, the relation between peacekeeping and peace enforcement, humanitarian intervention, international recognition, protection, safe havens and no-fly zones, deterrence, delivery of humanitarian aid, the relation between peace and justice, human rights, ethnicity, genocide, international mediation, consent, sanctions, and war crimes' tribunal.

[73] For background and useful bibliographical notes see Christopher Civic, *Remaking the Balkans,* Pinter Publishers, London, 1991, pp. 29 – 62, 63 – 82, and 111 – 113; Sir Duncan Wilson, *Tito's Yogoslavia,* Cambridge University Press, Cambridge, 1979.

[74] See, among others, Ivo Banac, *The National Question in Yogoslavia: Origins, History, Politics*, Cornell University Press, Ithaca, 1984.

[75] V. P. Gagnon, 'Ethnic Nationalism and International Conflict: The Case of Serbia' *International Security,* vol. 19, no. 3, 1994-5.

The process of self-determination in Bosnian started when the Bosnian people voted in favour of independence in a referendum in December 1991. In February 1992 the European Community (EC) recognised Bosnia as an independent state, and on recommendation by the Security Council,[76] the General Assembly adopted Bosnia on 22 May 1992 as a member of the United Nations. In two separate resolutions the Assembly granted, on the same date, the UN membership to Slovenia and Croatia. The declarations of independence provoked hostile military responses by Serbs in the three former Yugoslav republics and led to atrocities unprecedented since World War II.[77] The international community was faced with the dilemma of stopping ethnic genocide and protecting the newly recognised states. Scholars provided different evaluations of the international recognition and its consequences for the Balkans. Some analysts viewed the recognition of the three Yugoslav Republics as an internationalisation of an internal ethnic conflict.[78] Ramsbotham and Woodhouse argued that the 'international community, having recognised Bosnia should have helped to defend it and reassert government authority within it'.[79] Anthony Parsons made a realistic observation that 'international recognition did not mean international protection' in Bosnia.[80] In fact, the issue of protection was crucial in the Bosnian case and for this reason

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[76] Security Council resolutions 753 and 754 of 18 May 1992 recommended Croatia and Slovenia, and resolution 755 of 20 May 1992 recommended Bosnia for admittance to the UN.

[77] See collection of articles in Ben Cohen and George Stamkoski, *With No Peace to Keep, United Nations Peacekeeping and the War in the Former Yugoslavia,* Grainpress, London, 1995.

[78] Paul Diehl, op. cit. note 41, pp. 161 – 168.

[79] Oliver Ramsbotham and Tom Woodhouse, *Humanitarian intervention in contemporary conflict, a reconceptualisation,* Polity Press, Cambridge, 1996, pp. 175 and 176.

the whole mission of the UN forces was defined by the Security Council resolutions as one of protection.

The conflict had almost coincided with the aftermath of the Gulf war and the ambitions of the international community to resolve the conflict were high.[81] However, it is equally right that the international community did not pay enough attention to the conflict in Bosnia because it was preoccupied with too many post-Cold War issues.[82] In Slovenia, where the Serb population is very low, fighting was brought to an early end after an agreement signed under the auspices of the EC.[83] Regional and international efforts to resolve the conflict in Croatia and Bosnia proved to be unsuccessful and the war continued in the two regions for more than three years. Initiatives to attain peaceful solutions were also unsuccessful. The Vance Owen Plan failed to reach a negotiated settlement in 1993. The Invicible package, the EU Action Plan, and the Contact Group proposal also failed to bring about a peace settlement.

The efforts of the Security Council to end the fighting started at an early stage of the conflict. In its meeting at the ministerial level on 25 September 1991, the Council adopted its first resolution (713) with relation to the conflict in Yugoslavia. The resolution imposed a mandatory and 'complete embargo on all deliveries of weapons and military equipment' to all parts of Yugoslavia. In February 1992 the Security Council established the United

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[80] Anthony Parsons, op. cit. note 28, p. 228.
[81] Filippo Andretta, 'The Bosnian War and the New World Order, Failure and Success of International Intervention' *Occasional Papers,* Institute for Security Studies of the Western European Union, Paris, 1997, pp. 1 – 3.
[82] Anthony Parsons, op. cit. note 28, pp. 222.

Nations Protection Force (UNPROFOR) with a mandate to create conditions of peace and security for the negotiation of a peaceful settlement. The use of all necessary means was later authorised to protect the delivery of humanitarian relief.

The performance of the UNPROFOR mission was widely used for measuring UN successes and failures in Yugoslavia and has also been used to judge the solvency of the UN peace enforcement system. UNPROFOR was described by some scholars as being trapped in a wild ethnic war between half a dozen national ethnic groups.[84] Yasushi Akashi acknowledged this fact but he referred to another difficulty, that UNPROFOR was crippled by disagreement between the permanent members of the Security Council.[85] In order to overcome these differences the Council had to compromise over the terms of its resolutions and to sacrifice the clarity of the mandate of the UN forces. It is argued that ambiguity in the mission's mandate caught UNPROFOR between peacekeeping and peace enforcement.[86] However, even when the mandate was clearly designated to accomplish a peace enforcement mission and UN troops were authorised to defend places declared by the Council as safe areas, the outcome was one of the worst human disasters. Evidently, UN forces were unable to fulfil their assigned mandate.

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[83] The EC changed to the EU on 1 November 1993 when the Treaty on European Union (Maastricht Treaty) went into effect.

[84] John Halstead, 'UN Peacekeeping: The Lessons of Yugoslavia' in S. Neil MacFarlane and Hans-George Ehrahart, eds. *Peacekeeping at a Crossroad,* The Canadian Peacekeeping Press, 1997, p. 66.

[85] Yasushi Akashi, 'Managing United Nations Peacekeeping' in Wolfgang Biermann and Martin Vadset, eds. *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia,* Ashgate Publishing, Aldershot, Brookfield USA, 1998, pp. 132 and 133.

[86] John Halstead, op. cit. note 84.

John Lee, Robert von Pagenhardt, and Timothy Stanley suggested that the Security Council should carry out a combat operation against Serbia on a scale comparable to that of Desert Storm.[87] They predicted, in 1992, 'it would be ill-advised in the extreme to launch a Serbian "war" with inadequate force or hasty preparation. Failure would be a disaster not only for the Balkans, but for the whole concept of collective action by the UN to enforce peace and security.'[88]

This was presumably the ultimate result of the UN policy in Bosnia. Apparently, the policy of using minimum force had failed to deter Bosnian Serbs from launching more attacks against safe areas, [89] and further raised doubts about the effectiveness of the UN peace enforcement regime.

Sir David Hannay rejected the idea that the UN was pursuing a policy of excessive caution. In his view economic sanctions against the Former Republic of Yugoslavia were comprehensive and effective to the extent that compelled Milosevic to 'break with the Bosnian Serbs' and to support the peace efforts of the Contact Group.[90] Anthony Parsons elaborated on this point by stating that 'Sanctions may well have turned President Milosevic of Serbia from being the standard-bearer of Greater Serbia into a man of peace, but only after

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[87] John M. Lee, Robert von Pagenhardt, and Timothy W. Stanley, *To Unite Our Strength, Enhancing the United Nations Peace and Security System,* University Press of America, Lanham, New York, and London, 1992, pp. 106 and 108.
[88] Ibid. pp. 108 and 109.
[89] Timothy Wallace Crawford, 'Why Minimum Force Won't Work: Doctrine and Deterrence in Bosnia and Beyond' *Global Governance* Lynne Rienner Publishers, vol. 4, no. 2, April – June 1998, pp. 235 – 254.
[90] Sir David Hannay, 'The UN's Role in Bosnia assessed', *Oxford International Review,* Spring 1996, vol. VII, no. 2, p. 9.

200,000 deaths, 2 to 3 million people displaced and all the horrors of ethnic cleansing.'[91]

It is true that sanctions did not help the Bosnians, on the contrary it impeded them from getting weapons necessary for defending themselves, but in the end it compelled the Serbs to stop the cycle of atrocities and brought about a kind of peace deal. Whether a sanctions policy should bring justice to the victim as well as forcing the aggressor to accept and sign peace accords depends on the particular conflict. In 1994, the United States accepted the Contact Group peace plan 'which was partly predicated on the idea that a speedy end to the conflict would greatly ease humanitarian suffering even though the Serbs would be unjustly rewarded for their aggression.'[92] For Filippo Andreatta the insistence to obtain justice had delayed the accomplishment of a peace agreement and, in the end, peace was attained without justice.[93]

In November 1995, Bosnians, Croats, and Serbs signed Dayton Accords under the auspices of the United States.[94] This step was a culmination

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[91] Anthony Parsons, 'The UN – Peace and Security: a Balance Sheet', in Roger Williamson, ed. *Some Corner of Foreign Field, Intervention and World Order,* Macmillan Press, and St. Martin's Press, London and New York, 1998, p. 250.

[92] John C. Hulsman, *A Paradigm for the New World Order, A Schools-of-Thought Analysis of American Foreign Policy in the Post-Cold War Era,* Macmillan and St. Martin's Press, London and New York,1997, p.133. For comprehensive discussion on Thomas Hobbes, J.J. Roseue, Hedley Bull, and Martin Wight ideas on the relation between justice and order see Leo McCarthy, *Justice, the State and International Relations,* Macmillan and St. Martin's Press, London and New York, 1998, pp. 78 – 91.

[93] Filippo Andreatta, op. cit. note 81, p. 19. See Charles G. Boyd, Making Peace with the Guilty, *Foreign Affairs,* vol. 74, no. 5, September, 1995.

[94] For pessimistic accounts of the application and future of Dayton Accords see John B. Allcock, 'Bosnia-Herzegovina After Dayton' *Cambridge Review of International Affairs,* Summer – Fall 1997, vol. XI, no. 1, pp. 68 – 80. See also a letter sent by Alija Ixetbegovic and Haris Silajdixic to the members of the international Contact Group, on 21 April 1997, *Bosnia Report,* February – May 1997, pp. 1-2.

of the UN and EU efforts during the preceding years.[95] Washington, finally, announced its readiness to provide ground troops for the Implementation Force (IFOR) which had been authorised to take over from UNPROFOR.

By December 1995 the presence of the United Nations in Bosnia was formally replaced by US-led NATO forces, and the UN slogan was removed from troops helmets and operating vehicles.[96] In fact, Bosnia represented the first incident where the United Nations has delegated not only the command of forces, but the whole peace enforcement mission and mandate.

8- Haiti

Haiti had not experienced democracy in its modern history. For nearly two centuries, no democratic government was elected in the country. This compelling fact led the international community to view the election of father Jean-Bertrand Aristide in December 1990 as the president of Haiti by 67 percent of the Haitian electorate, as a significant historical change which should be preserved and protected. One year later, on 30 September 1991, Colonel Raul Cedras led a military coup and forced Aristide into exile. Many viewed this move as an early end to the brief experience of democracy in Haiti,[97] but a

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[95] Adam Roberts, 'Communal Conflict as a Challenge to International Organisation: The Case of the Former Yugoslavia' in Olara A. Otunnu and Michael W. Doyle *Peacemaking and Peacekeeping for the New Century,* Rowman and Littlefield Publishers, Lanham, New York, Boulder, and Oxford, 1998, pp. 40, 41, and 54.

[96] Security Council resolution 1031, 15 December 1995

[97] David Malone, 'Haiti and the International Community: A Case Study', *Survival,* vol. 39 no. 2, Summer 1996, p. 127.

determination grew in the Western hemisphere to restore the democratic government.

Aristide soon appeared before the Council of the Organisation of American States (OAS) meeting at the level of Ministers of Foreign Affairs on 3 October. He urged the OAS Council to take necessary measures to counter the military action against democracy in Haiti, pursuant to the Santiago Declaration, which had been signed by American states in June 1991. The OAS responded by calling for the reinstatement of Aristide and recommended a range of diplomatic and economic measures against the military authorities in Haiti.[98]

The continuing arrival of Haitian refugees to the shores of the United States posed a real challenge to the Administration. As a drafter of the Santiago Declaration, the United States was also concerned with the termination of the democratic process in Haiti. It wanted Haiti to serve as a 'singular example' against the success of military coups in the hemisphere, as it represented the first test to the commitment included in Santiago Declaration. The Pentagon was assigned to block the influx of refugees and to advice on the possibility of military intervention. The US military launched "Operation GTMO" to detain fleeing Haitians at Guantanamo Bay, a piece of Cuban land occupied by the United States. With regard to the military option Colin Powell stated that

[98] Michael Reisman said that the OAS sanctions against Haiti 'proved to have the double disadvantage of being both economically destructive in Haiti and politically unsuccessful.' W. Michael Reisman, 'New Scenarios of Threats to International Peace and Security: Developing

> My advice to Cheney was to go slow. 'We can take over the place in an afternoon with a company or two of Marines' I said. 'But the problem is getting out.' We had intervened in Haiti in 1915 for reasons that sounded identical to what I was hearing now-to end terror, restore stability, promote democracy, and protect US interests-and that occupation has lasted nineteen years.[99]

The Bush Administration adhered to its policy not to intervene militarily in Haiti. Aristide was not a preferable choice for the United States, a leader with a mixed record who 'was reputed to be anti American' and the Administration 'had concerns about his erratic behaviour and human rights record.'[100] But it would have been difficult for the US to distance itself from a legitimate president with 67 percent of the Haitian votes without jeopardising the whole democratic process.[101]

The United States endeavoured to involve the OAS, the UN, and the National Endowment for Democracy in the electoral process and later pressed the OAS to adopt financial measures against the military leaders in Haiti and asked the Security Council for the imposition of mandatory measures. However,

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Legal Capacities for Adequate Responses' in Jost Delbruck, ed. *The Future of International Law Enforcement: New Scenarios – New Law.?* Duncker, and Humblot, Berlin, 1993, p. 25.

[99] Colin L. Powell, with Joseph E. Persico, *A Soldier's Way, an autobiography,* Hutchinson, London, 1995, p. 544.

[100] James Baker, op. cit. note 21, p. 601.

[101] For analysis of Aristide radical and anti-imperialist ideas see Robert Fatton Jr. 'The Rise, Fall, and Resurrection of President Aristide' in Robert I. Rotberg, *Haiti Renewed, Political and Economic Prospects,* Brooking Institute Press, Washington, D.C. and The World Peace Foundation, Cambridge, Massachusetts, 1997, pp. 140 – 146.

the concerns of the international community over the situation in Haiti predated the overthrow of President Aristide.

In October 1989, France and Venezuela took the initiative to rally support for a free, fair, and peaceful elections in Haiti.[102] Their efforts culminated in the formation, with Canada and the United States, of the 'Group of Friends' of the UN Secretary-General for Haiti. Nevertheless, Haitians themselves were aware of the importance of having international observers to monitor and protect the process of elections. In 1987, following the overthrow of Jean-Claude and the end of almost thirty years of Duvalier regime, an attempt to hold a presidential election was frustrated by military forces and resulted in killing and bloodshed. In 1990 the transitional government of President Ertha Pascal-Trouillot asked the United Nations to support and monitor the process of an election to be held before the end of the year.[103] By a consensual resolution the General Assembly established in October 1990 the United Nations Observer Group for the Verification of the Elections in Haiti (ONUVEH).[104]

Hitherto, the interests of the United States in Haiti are apparent and so its immediate involvement in the crisis. It is also evident that the US sought to activate the OAS and the UN to adopt resolutions with relation to the situation in Haiti. However, states and non-state actors had willingly played pivotal roles

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[102] David Malone, op. cit. note 97, pp. 126 – 127.

[103] The election was also observed by the OAS, the Organisation of Eastern Caribbean States, delegates from the US, Canada, Venezuela, and France, Jimmy Carter's Council of Freely-Elected Heads of Government, the National Democratic Institute for International Affairs (US), and other NGOs; see Deon Geldenhuys, *Foreign Political Engagement, Remaking States in the Post War World,* Macmillan Press, London, 1998, p. 229.

in Haiti, by showing a consistent and unique determination to restore the democratically elected President to power.

On the part of the United Nations this determination was clear and had been demonstrated in different forms by the Secretary-General, the General Assembly, and the Security Council. Although there were fears that the services of the United Nations could be demanded in similar situations around the world and, despite reservations raised by some member states in different stages, the UN commitment to democracy in Haiti had persisted over the period of the crisis.[105] David Malone asserted that 'While the UN had observed elections in Nicaragua in 1989, working jointly with the OAS, it had done so within the framework of a regional peace plan in which the UN was heavily involved. There was concern in New York that the Haitian request could lead to a plethora of similar pleas from countries with democratic troubled records.'[106] However, a more serious demand was made by President Aristide when he addressed the Security Council meeting on 3 October 1991 asking the Council for assistance to restore his elected government. The Council immediately reacted by issuing a presidential statement calling for the restoration of the legitimate Haitian government.[107] One week later, the General Assembly passed

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[104] General Assembly resolution 45/2, 10 October 1990.

[105] In a useful contribution to the issue of the right of people to democratic governments as an emanating international human right, Jack Donnelly argued that 'The emerging norm of electoral legitimacy is unlikely to displace power interests and sovereignty equality. Nonetheless, states today face political costs for practices that just two decades ago were standard, and the dramatic upsurge in international election monitoring indicates growing acceptance of an active international interest in national electoral democracy.' See Jack Donnelly, 'Human rights: a new standard of civilisation', *International Affairs,* vol. 74, no. 1, January 1998, p. 19.

[106] David Malone, op. cit. note 97.

[107] UN Documents, S/PV.3011, 3 October 1991.

a consensual resolution condemning the illegal replacement of 'the constitutional President of Haiti' and demanded his immediate reinstatement.[108] On 24 November 1992, the General Assembly adopted a resolution asking the Secretary-General to take 'necessary measures' to facilitate a regional solution of the Haitian crisis.[109] Therefore, the OAS and the General Assembly expressed determination to support the restoration of the democratic process in Haiti. The measures undertaken by these bodies prepared the ground for the adoption of enforcement measures to resolve the crisis.

The Security Council issued its first mandatory resolution under Chapter VII concerning the crisis in Haiti on 16 June 1993 by imposing oil and arms embargoes against the country.[110] Sanctions seemed to have convinced General Cedras to accept Mr. Dante Caputo's, the UN Special envoy to Haiti, invitation to negotiate with Aristide. Two days before the embargo came into effect Cedras declared that he was ready to cooperate with the efforts to resolve the Haitian crisis through peaceful negotiation. Talks started immediately on Governors Island, New York City, and on 3 July 1993 an agreement was signed by Cedras and Aristide.

The Governors Island Agreement was based on the premise that Aristide is the only legitimate president of Haiti and that the present government is illegitimate and thus to be dissolved. This premise distinguished the provisions of the agreement from most peaceful accords signed under the auspices of the UN for the settlement of internal crises. For instance, there was

[108] General Assembly resolution 46/7, 11 October 1991.
[109] General Assembly resolution 47/20, 24 November 1992.

no mention of elections or any possible political future for the present *de facto* military leaders of Haiti. Instead, the agreement provided for the return of President Aristide on 30 October 1993 and the early retirement of General Cedras.

Cedras returned from New York to oversee the transitional period and to prepare for the departure of his government. On 25 August he welcomed the appointment by Aristide of Mr. Robert Malval as a Prime Minister who was also ratified by the Parliament.

In response to this significant political step the Security Council unanimously agreed to suspend the oil and arms embargo.[111] During this period, the Secretary-General started to deploy the United Nations Mission In Haiti (UNMIH) pursuant to the Governors Island Agreement and the Security Council resolution 867.[112] The Governors Island Agreement provided the UN with a framework for peaceful settlement and, from July 1993, the UN plan was to effect the provisions of the agreement. On 11 October 1993 the ship Harlan County sailed to Haiti carrying the main contingent of the peacekeeping force UNMIH. At its arrival in Port-au-Prince a hostile armed civilian militia prevented the deployment of the UN forces. This incident raised difficult issues in relation to the UN peacekeeping and led to a change of the UN's course of action in Haiti.

As regard the issue of sanctions, the Security Council terminated the suspension of the embargo against Haiti and implemented further economic and

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[110] Security Council resolution 841, 16 June 1993.
[111] Security Council resolution 861, 27 August 1993.

financial sanctions, a partial air embargo, and diplomatic measures. Resolution 917 invoked Chapters VII and VIII authorising member states acting nationally or through regional arrangements to inspect outward and inward shipping and verify their cargoes and destinations.[113] This mission was carried out by eight United States ships, one Canadian, one Argentinean, one Dutch, and one French. The twelve ships patrolled the High Seas around the Island and a team of technical experts was dispatched to assess the situation on the Dominican–Haitian borders where violations of sanctions had been repeatedly reported. The invoking of Chapter VIII as regard the tightening of sanctions and the imposition of the blockade is unique in the case of Haiti.

Operationally, the obstruction of the peacekeeping forces could be considered as a withdrawal of consent by the host country while the deployment of forces was in motion. The UN was confronted by this problem in an earlier case when President Nasir revoked, in May 1967, his ten years consent to the continuing presence of UNEF1 in Sinai. In the Cold War context, the UN considered Nasir's decision as a termination of UNEF1 and started to remove the peacekeeping forces from the desert of Sinai. In Haiti the withdrawal of consent was not recognised by the UN. The Security Council decided to continue the mandate of UNMIH and further renewed its validity for two consecutive periods without the actual presence of UN forces on the ground. Persuasion, as a Secretary-General policy, which in 1960 succeeded in convincing Tshompe to withdraw his rejection to allow the deployment of

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[112] Security Council resolution 867, 23 September 1993.
[113] Security Council resolutions 917, 6 May 1994.

ONUC in Katanga, failed to restore General Cedras' consent for more than eight months. Due to this situation, the Security Council decided to move from peacekeeping to peace enforcement.

On the part of the United States the shift of policy was described by the Secretary of State during the first term of Clinton's Presidency, Warren Christopher

> President Bush and Secretary Baker had judged that national interest did not justify the use of force in Haiti. ... Congressional and public opinion reinforced this reluctance. Nevertheless, as the situation continued to deteriorate that summer, with waves of refugees trying to leave the island, we began to explore the options relating to the threat and use of military force.[114]

Boutros Ghali recommended to the Security Council the authorisation of a multinational force under Chapter VII to enforce the return of the legitimate government.[115] On 31 July 1994 the Council adopted resolution 940 asking member states to establish, under unified command and control, a multinational force and to use all necessary means to facilitate the restoration of the legitimate president of Haiti. However, the Council's decision to employ coercive measures reflects the willingness and agreement on the part of the great powers

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[114] Warren Christopher, *In the Stream of History, Shaping Foreign Policy for a New Era,* Stanford University Press, Stanford, California, 1998, p. 178.

[115] *The Blue Helmets, A Review of United Nations Peacekeeping,* 3rd edition, The UN Department of Public Information, New York, 1996, p. 623.

rather than the influence of the Secretary-General's recommendation. Boutros Ghali made similar suggestions in other situations but the Council did not proceed on his recommendations. His proposition in Burundi, for instance, of a major initiative under Chapter VII to resolve the deteriorating situation since the military coup of 21 October 1993 was turned down by the Security Council.[116] This would reaffirm the necessity of the agreement among great powers, as a determining factor for the invoking of Chapter VII.

Three months later, the President of the United States declared that all diplomatic efforts were exhausted and warned the military leaders 'The message of the United States to the Haitian dictators is clear. Your time is up. Leave now or we will force you from power.'[117] President Clinton announced that the multinational force under the command of the US General Hugh Shelton might soon be deployed to the area.

There was controversy within the United States over the shift in Washington policy towards the issue of military intervention in Haiti. With the Somali experience in mind '(n)either house of Congress had voted for an invasion, nor for that matter had public opinion favoured such a course.'[118]

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[116] Letter from the Secretary-General to the Security Council, SC Document S/1996/36, 17 January 1996; Boutros Ghali proposed the deployment, under Chapter VII of 25.000 troops to Burundi, by air and sea, including attack helicopters; parachute, motorised and mechanised units; artillery; light tanks, and combat engineers. These are well summarised in James A. Barry, *The Sword of Justice, Ethics and Coercion in International Politics,* Praeger, Westport and London, 1998, p. 74; for discussion on the role of the Secretary-General in Burundi see Edward Newman, *The UN Secretary-General from the Cold War to the New Era, A Global Peace and Security Mandate?* Macmillan Press, London, and St. Martin's Press, New York, 1998, p. 172.

[117] Warren Christopher, note 114, p. 180.

[118] David M. Barrett, 'Presidential foreign policy' in John Dumbrell, *The making of US foreign policy,* 2nd edition, Manchester University Press, Manchester and New York, 1997, p. 64.

However, internationally, more than 20 countries agreed to join force with the US by sending military contingents to the area. The multinational force finally arrived in Haiti, led by the US 82nd Airborne Division, after a direct military confrontation was averted due to an agreement brokered by the former US President Jimmy Carter. Aristide was reinstated and General Cedras left the country, though he had been granted an amnesty by the parliament.

In the case of Haiti a whole range of mandatory sanctions and military measures were mobilised and enforced under the authority of Chapter VII. The aim was to restore democracy by reinstating the elected president of Haiti. Throughout the crisis, the United Nations' decisions had never compromised on this goal. Therefore, when the Supreme Court Judge Emaile Jonassaint was installed as a provisional President, the Security Council rejected both his installation and his announcement of an early election.[119] The OAS adhered to its declaration of 8 October 1991 that 'no government that may result from this illegal situation will be accepted'.[120] Therefore, Aristide remained the only recognised President. In effect, when he returned to Haiti Arisitde only had to serve for 16 months, as he had spent most of his five years duration in exile.[121]

In this respect, the United Nations may not appear to be consistent in that many overthrown democratically elected leaders were imprisoned in their countries or banished around the world. Until 1998 more than 70 governments lived in exile, some of them elected by their people and many of them gained

[119] Security Council Presidential statement, 11 May 1994.
[120] UN Document S/23127, 9 October 1991.
[121] At the end of Aristide's 5 years Rene Preval was elected President of Haiti.

universal recognition.[122] In terms of human rights abuses, violence, and tragic atrocities, Haiti was not a priority for the United Nations. For these reasons, member states were anxious to point out that Haiti was an aberration. When the Council adopted mandatory measures in resolution 841 (1993), the President of the Security Council issued a statement explaining that the adoption of the resolution was warranted by the unique and exceptional situation in Haiti and should not be regarded as constituting a precedent.[123] Whether Haiti will serve as a precedent can not simply be determined by such statements. In this respect, the study may borrow Elizabeth Kier and Jonathan Mercer's assertion that 'Something can be unprecedented and not set a precedent. Only later can we know if a novel act sets a precedent.'[124]

Labelling the military operation in Haiti as 'Operation Uphold Democracy' is significant, this study would argue, for the relation of 'the military' to 'the political'. This action will affect the theoretical discussion on the relation between 'the military' and 'the political' as well as the conduct of interstate bilateral relations, but its impact on the world organisation will be far greater. When the UN, as a grantor of legitimacy and state recognition, mobilises force to restore a democracy the consequences are expected to be profound. The questions of consistency and devotion to democracy will continue to challenge the ability of the UN to take actions in similar situations.

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[122] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile,* Clarendon Press, Oxford, 1998, p. 286.
[123] United Nations Peacekeeping, Information Notes, PS/DPI/24/Rev. 1 May 1994.
[124] Elizabeth Kier and Jonathan Mercer, 'Setting precedents in anarchy, military intervention and weapons of mass destruction' *International Security,* vol. 20 no. 4, Spring 1996, p. 85.

Yet, Haiti provides a unique test case for determining the future of a democracy restored by peace enforcement measures rather than through internal political evolution.

Chapter 9

Conclusion

Peace enforcement is the original system of the United Nations Charter for the maintenance of international peace and security in the face of threats to peace, breaches of the peace, and acts of aggression. It represents the major improvement of the UN Charter on the League of Nations Covenant. These facts had widely been recognised,[1] as the system derives its authority from an almost universal approval by the signatory states. However, the intentions of the founders were not satisfied during the Cold War and peace enforcement remained largely latent with no effect on various armed conflicts.

Due to inherited causes the UN was unable to take measures against illegitimate coercive actions carried out by big powers to secure national interests. Countries allied to big powers escaped mandatory measures in situations represented potential risks and threats to international order. Condemnation was in most cases the only means available for the UN. Even condemnations were difficult to pass through the Security Council and had to be issued by the General Assembly or the Secretary-General. UN Under Secretary-General, Brian Urquhart, observed in 1986 that 'We in the United Nations run a resolution-producing

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[1] See for instance H. G. Nicholas, *The United Nations as a Political Institutions,* Oxford University Press, Oxford, 5th edition 1975, pp. 14 – 40.

factory that has now reached industrial proportions. We deluge the world with an enormous number of resolutions. Most of them are reasonably benevolent, but I really do not know what influence they have.'[2]

In some cases, impartial and consensual means were employed, and peacekeeping combined with the Secretary-General good offices prevailed as the UN mechanism for conflict resolution. Forces of big powers were largely precluded from participation in peacekeeping with other national military contingents. Given the limitations of peacekeeping, the international community failed to adopt a comprehensive system for conflict resolution as an alternative to peace enforcement. Provisional measures and classical methods of mediation, in most cases, remained the only possible options.

The important lesson of the Cold War period is to know why peace enforcement did not work as intended, for more than forty years. The general contention was that the Security Council's inability to invoke provisions of Chapter VII had been caused by disagreement between super-powers during the Cold War. This contention entails a variety of critical issues including the conflict of economic interests of major powers and their opposing political agenda in different parts of the world. During the process of decolonisation European countries inclined to tolerate military presence in former colonies, what would

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[2] Brian Urquhart, 'The United Naions, Collective Security, and International Peacekeeping' in Alan K Henrikson, ed. *Negotiating World Order, the Artisanship and Architecture of Global Diplomacy,* Scholarly Resources, Delaware, 1986, p. 59.

otherwise have constituted a breach of Article 2(4) of the UN Charter. Many countries remained under European rule for almost twenty years after the adoption of the UN Charter in 1945. Colonialism was partially responsible for impeding the Charter system for peace enforcement.

Yet, the Soviet Union used the veto more than any other country. During the first five years of the United Nations, the Soviet Union used the veto 50 times. Until May 1990 the number of vetoes cast by permanent members were as follows: France 18, China 22, United Kingdom 33, the United States 82, and the Soviet Union 124.

This thesis reconsiders an argument frequently referred to in the literature, that the use of veto prevented the adoption of effective measures by the Security Council. An investigation carried out by this study reveals that in many cases permanent members of the Council used the veto to protest against mild measures recommended by various draft resolutions, and they considered these measures as not commensurate with the gravity of such situations. When the Soviet Union claimed that the United States had directed its military aircraft in 1958 armed with atomic and hydrogen Bombs towards its frontiers, the Soviet delegation submitted a proposal to the Security Council suggesting specific measures for the removal of the threat to peace and security caused by the US action.[3] In this respect the Soviet Union vetoed a US draft resolution proposed by the United States because it

[3] A letter from the Soviet Union to the President of the Security Council (S/3990) 18 April 1958

failed, according to the Soviet delegation, to meet the urgency of the situation and attempted to distract the attention from the US 'aggressive invasion of the Soviet airspace'.[4]

The Soviet Union was also not satisfied with the measures recommended against the Franco regime during the consideration by the Security Council of a Polish complaint against the threatening activities of the Franco regime.[5] On 13 June 1946, the Soviet Union vetoed a draft resolution which stated that the Council endorses

> the transmitting by the Security Council to the General Assembly of the evidence and reports of [the] Sub-Committee, together with the recommendation that, unless the Franco regime is withdrawn and the other conditions of political freedom set out in the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations;[6]

The representative of the Soviet Union explained that his government rejected this proposal because it believed that mandatory measures under Articles 39 and 41 of

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[4] Security Council draft resolution (S/3995) 2 May 1958.
[5] A letter from Poland to the President of the Security Council (S/34) 9 April 1946.
[6] Security Council draft resolution, 39th meeting, 29 April 1946.

Chapter VII should have been adopted by the Security Council to impose diplomatic sanctions against Franco regime. The Soviet Union further stressed the responsibility of the Security, Council not the General Assembly, to deal with threats to international peace.[7]

Similar situations existed with relation to the Syrian and Lebanese Question in 1946,[8] the RB-47 Incident in 1960,[9] and the situation in the Republic of Congo in 1960-61.[10] In these cases, the Soviet Union justified its vetoes on the bases that the Security Council should have taken firmer actions. [11]

In June 1982, the United States and the United Kingdom vetoed a resolution with relation to the question of the Falkland Islands.[12] The representative of the UK explained that his government was not satisfied with the wording of the draft resolution which called for a cease-fire and negotiation with no explicit link to the immediate and total withdrawal of all Argentine forces from the Islands.[13] In all these cases, the vetoing states called for effective actions and more precise wording in order to resolve international or internal conflicts. This

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[7] Ibid.
[8] Security Council draft resolution, 23rd meeting, 16 February 1946.
[9] Security Council draft resolution (S/4409/Rev.1) 883rd meeting, 26 July 1960.
[10] Security Council draft resolution (S/4578/Rev.1) 920th meeting, 13 and 14 December 1990.
[11] One of the reasons that Western countries did not need to use the veto during the first two decades of the UN was that most of the draft resolutions suggested by the Eastern block failed to obtain the required votes.
[12] Security Council draft resolution (S/15156/Rev.2.) 2373rd meeting, 4 June 1982.
[13] Ibid.

reveals that the veto was used in many cases as a means of protest at the ineffective solutions attempted by the Security Council.

However, it is equally true that permanent members used the veto to block the adoption by the Council of effective measures in situations where their strategic interests were at stake. The Soviet Union raised the veto to stop measures with respect to Czechoslovakia, North Korea, and Afghanistan. The United States used the veto to block the adoption of measures in the cases of South Africa, Israel, Vietnam, Nicaragua, and Panama. However, the fact remains that the majority of vetoes during the Cold War were not cast to block effective measures by the Security Council.

An important aspect the UN system for peace enforcement lacked during the Cold War was the continuous negotiation by member states on its major provisions. The UN had rarely arranged for dialogue between member states on the provisions of Chapter VII during the Cold War. On 30 April 1947 representatives of the five permanent members in the Military Staff Committee presented to the Security Council 'General Principles' governing the organisation of UN forces for the implementation of the UN scheme for peace enforcement.[14] The report of the Military Staff Committee was a result of a serious debate between the permanent members that lasted until August 1948, and elaborated on discussions at Dumbarton Oaks on the provisions of Chapter VII. At the end of the

[14] Security Council Official Records, (S/336) 2nd year, Special Supplement, No. 1, pp. 1 – 32.

debate the permanent members agreed on some issues and disagreed on others. This result was widely viewed as a failure and led members of the Security Council to abandon discussions on the implementation of Chapter VII enforcement measures. Successive literature reiterated the argument that unless political unanimity is achieved it is impossible to fulfil the promise of a workable UN peace enforcement system.[15]

In the view of this thesis, these discussions attained a considerable success which could have been developed by further discussions. The report indicated that permanent members agreed on the purposes of armed forces. They also agreed that the Council assisted by the Military Staff Committee should determine all matters related to the size and composition of forces and their degree of readiness, command, and strategic directions. It was also agreed that the employment of forces for the undertaking of action pursuant to Article 42 would be solely by the decision of the Security Council.[16] They disagreed on the size of forces contributed by each member compared with the contributions of other members, the location of forces, and the provision of passage and logistical support by member states.[17] It is also important to notice that disagreement was not always between the East and West. There were differences between Western countries in

[15] D. W. Bowett, *United Nations Forces, A Legal Study of United Nations Practice,* Stevens and Sons, London, 1964, pp. 17 – 18.
[16] Ibid.
[17] Ibid.

many points and on several Articles joint texts were submitted by the Soviet Union with France, China, or the United States.

The triumph of the early post war years and the establishment of the UN largely influenced the judgement that the report of the Military Staff Committee was a failure. Nations who agreed on one hundred and eleven Articles of the UN Charter were not expected to fail in providing a detailed arrangement for the UN forces. However, a second look, after more than fifty years of UN practice, would consider the results of these negotiations as reasonable and promising.

This contention was further substantiated by the practice of the Security Council in the early 1990s. During the Kuwait crisis, although political agreement between the permanent members was unprecedented since the establishment of the United Nations, the Council did not invoke the provisions of Articles 43 – 47. When D. W. Bowett analysed the report of the Military Staff Committee of 1947, he concluded by stating that 'It is, therefore, a trite but evidently true statement that further progress cannot really be made until this political distrust has been allayed.'[18] In the light of recent practice, the thesis argues that the automatic correlation between political agreement and the revival of the entire UN Charter system for peace enforcement is doubtful. However, the ultimate lesson is that only sustainable dialogue can ensure the development of peace enforcement.

[18] D. W. Bowett, op. cit. Note15, p. 18.

At the end of the Cold War peace enforcement emerged as a major method for the maintenance of international peace and security. Its revival had been associated in 1990-91 with the proclamation of a New World Order and it was expected to meet the objectives spelled out by political leaders. In September 1990, George Bush stated before the Congress that the international community was moving towards a world 'free from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace.'[19] The performances of the operations in Kuwait, Somalia, and Bosnia were required to satisfy such standards. In Kuwait, the peace enforcement operation had clear objectives and it succeeded in reversing the Iraqi invasion. This clarity of objectives is essential for the success of the mission and it was only repeated in Haiti in 1994 where the aims set by the Security Council were also achieved. However, after the Gulf war new objectives were set out by resolutions 687 and 688. The enforcement policy in post-war Iraq failed to bring a lasting settlement and sanctions remained in place for many years. The bases of the no-fly zone strategy in Northern and Southern Iraq are questionable. The disarmament plan, the work of UNSCOM, and the subsequent Desert Fox operation were not less controversial.

The hopes expressed by George Bush and the UN Secretary-General in 1992 to replicate the experience of Iraq in a civil war model in Somalia proved futile. Somalia was the first case of a peace enforcement mission to be explicitly

[19] Text of President Bush's Address to Joint Session of Congress, *New York Times,* 12 September 1990.

authorised by the Security Council in a civil war. The detailed peace enforcement plan forged by Boutros Ghali purported to deal with a diverse range of military and civilian issues. Such a wide approach to peace enforcement, which has been termed by some writers 'multifunctional operations'[20] failed to integrate the military, diplomatic, and humanitarian objectives in a harmonised workable strategy. The careful 'division of labour', which has been stipulated for the success of such operations,[21] was not achieved in Somalia. In Bosnia, the mandate was expanded to peace enforcement but UNPROFOR continued to function as a peacekeeping mission causing many contradictions between mandate and practice. In fact, the chances of success in peace enforcement operations are better when the objectives of the mission are specific, clearly defined, and adhered to.

The scope of peace enforcement activities and purposes have remarkably been expanded during the 1990s. Originally, the United Nations peace enforcement system was intended to combat any breach of the peace, threat to the peace, or acts of aggression. It was also assumed that measures under Chapter VII should only be invoked in the most serious situations and should be carefully executed to fulfil certain purposes. In the 1990s, the Security Council adopted a broad interpretation of these provisions. In various situations, the Security Council

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[20] Jarat Chopra, 'United Nations Peace-Maintenance' in Martin Ira Glassner, ed. *The United Nations at Work,* Praeger Publishers, Westport and London, 1998, p. 337.

[21] Edwin M. Smith and Thomas G. Weiss, 'UN Task-Sharing: Toward or Away from Global Governance?' in Thomas G. Weiss, ed. *Beyond UN Subcontracting, Task-sharing with Regional Security Arrangements and Service-Providing NGOs,* Macmillan Press, and St. Martin's Press, London and New York, 1998, pp. 227 – 255.

sought to combat aggression, protect human rights, restore democracy, demobilise armed factions, hunt warlords, and to combat international terrorism.

However, protection was a central element in Security Council peace enforcement resolutions. The relative success in protecting the Kurds in Northern Iraq led to an inaccurate judgement that UN forces could provide protection elsewhere. This understanding missed the fact that Operation Provide Hope was enacted in the aftermath of the allied victory in the Gulf. The situation in Somalia and Bosnia was quite different.

General Sir Michael Rose, the UN Commander in Bosnia explained the limitations of the United Nations Protection Force in Bosnia by stating that

> The term 'safe area' is a misnomer because there's no such thing. Nothing can be totally safe, and relative safety is always dependent on a number of factors. If one side choose to attack outward from a 'safe area' and the other side then decides to respond, as happened in Bihac, then the area cease to be safe. The United Nations can't do anything about such a situation ... Even the name of our mission, the United Nations Protection Force, was misleading. We were not actually protecting anybody and in terms of military activity, we were trying to protect convoy runs through the

country. Again there's a limit to how much protection can be provided, so another name for our mission would have been better.[22]

In Rwanda, the French troops designated and protected areas in accordance with resolution 929, but the council authorised the mission originally for a limited period of two month[23] and the toll of death was already high. By analogy to military intervention by regional organisations, after seven weeks of military air attacks against Yugoslavia the Nato spokesman admitted on 6 May 1999 that air raids did not succeed in securing the objective of protecting the people of Kosovo.[24] In fact, the air raids over Belgrade and Pristina killed more civilians than soldiers.[25]

Failure to protect civilians has damaged the credibility of UN peace enforcement operations in the 1990s. Although, the UN was responsible for not acting swiftly in Rwanda and because its forces, for various reasons, did not carry out its mandate in Bosnia, protection proved to be a difficult task and critical aspect of conflict resolution. The issue of civilians' fate combined with the extensive media coverage poses a new challenge to peace enforcement operations.

The difficulty of controlling conflicts in stateless countries was compounded by the spread of weapons among the combatants. Security Council

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[22] Sir Michael Rose, Fighting for Peace, (an interview), *Oxford International Review,* vol. VII, no. 1, Winter 1995, p. 39.
[23] Security Council resolution 929, 22 June 1994.
[24] Nine O'clock News, BBC1, 6 May 1999.

resolutions attempted to alleviate this problem by taking local and external measures. Locally, peace enforcement missions were instructed to demilitarise warring parties and declare certain areas weapon free zones. However, demilitarisation became a critical issue and in Somalia, it jeopardised the credibility of UNOSOM II. To be able to deprive people of their weapons, UN missions needed to provide a substantial degree of safety and confidence in the area and to pursue a high degree of equality among the antagonists.

Externally, the Security Council imposed arms embargo against states and factions asking all countries to stop sending them weapons and military equipment. Almost in every case the Security Council had taken measures under Chapter VII arms embargo was included,[26] and in Liberia, Angola, it was the only mandatory measure to be employed. The aim was to reduce the capacity of combatant to wage war. The only two exceptions were Libya and Haiti where an arms embargo were imposed to inflict political pressure on governments to extradite suspects in the case of Libya and to accept the restoration of the democratic government in the case of Haiti. However, there is no evidence that an arms embargo had any significant effect on the intensity of wars. In a clear interstate war between Ethiopia and Eritrea, the Security Council did not impose mandatory measures; instead, countries were urged to refrain voluntarily from

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[25] Michael Evans and Richard Owen, 'Bombs hit refugee convoy' *The Times,* 15 April 1999.

[26] Sudan is the only exception.

supplying arms to the two countries.[27] The Security Council tried other methods to deal with the flow of weapons to Africa, and in November 1998 the Council adopted a general resolution stressing 'the need for the international community to respond to the challenge of illicit arms flows to and in Africa in a comprehensive manner, encompassing not only the field of security but that of social and economic development.'[28]

Such a comprehensive approach affirms that an arms embargo alone is not enough to deal with the multidimensional problem of the flaw of weapons. More measures by the Security Council are required and if the Military Staff Committee is to be reactivated it could play a useful role in making the necessary arrangements as it has been authorised under Article 47 to foresee 'the regulations of armament and possible disarmament.'

During the second half of the 1990s the activities of the Security Council in the area of peace enforcement have relatively decreased. This was viewed by some scholars as a reversal of the enthusiasm and willingness among member states to use the Security Council which had prevailed in the early 1990s. Brian Urquhart observed in 1999 that the cases of

[27] Security Council resolution 1227, 10 February 1999.
[28] Security Council resolution 1209, 19 November 1998

> Northern Iraq, Somalia, Bosnia, Rwanda, and Haiti-already seem to belong to another era, ... Even now it is hard to recall those heady and euphoric days of the early post-Cold War period, when nothing seemed impossible and when the United Nations Security Council could agree on just about anything. The sky seemed to be the limit ... Of course it did not last. Failure and expense took their toll. Casualties in Somalia produced a U-turn in U.S. policy on peacekeeping operations.[29]

Another opinion was expressed by Nigel White and Ozlem Ulgen in 1997 that

> Undoubtedly, not every enforcement action has been completely successful ... nor will they be so in the future. However, the UN's track-record in the exercise of the military option is improving both in terms of constitutionality and effectiveness.[30]

The record of evaluations made before the end of the Cold War, in the early post-Cold War period, and late in the 1990s on the viability of peace enforcement shows how it is difficult to make a final judgement, as many dynamics in the

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[29] Brian Urquhart, Foreword, in Thomas G. Weiss, *Military-Civilian Interactions, Intervening in Humanitarian Crisis,* Rowman and Littlefield Publishers, Maryland, 1999, p. xi.

[30] N. D. White and Ozlem Ulgen, 'Security Council and the Decentralised Military Action: Constitutionality and Function' *Netherlands International Law Review,* vol. XLIV, 1997, p. 413.

international arena, as well as the achievements of operations, will continue to affect the development and utility of peace enforcement. Peace enforcement has its deficiencies as a system and in practice, it failed to resolve the conflict in two major cases in Somalia and Bosnia. However, there is a profound danger in acting unilaterally or outside the UN framework for conflict resolution. Such actions may lead to friction and possibly endanger international stability. This was recalled when the Russian defence minister, Marshal Igor Sergeyev announced during the first week of Nato military air attack against Belgrade, that Russia would send a naval reconnaissance vessel through the Bosphorus and Dardanelles into the Mediterranean to 'analyse and draw the appropriate conclusions' from the Balkans situation.[31] The possibility of confrontation over such actions was reiterated by the wide anti-Western demonstrations in China after the attack against Beijing's embassy in Belgrade by Nato jets on 6 May 1999. [32] However, the important question is why it had been possible for the Security Council to authorise the use of force in Bosnia while stopping short of doing so in Kosovo. Whether the reason is willingness on the side of Nato to act regionally, or because there are more Russian interests at stake than in Bosnia, the significance of the incident is that it represented the first use of force by Nato without Security Council authorisation and against the wishes of two permanent members.

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[31] Marcus Warren, 'Russian ship to sail for Adriatic' *The Daily Telegraph,* 1 April 1999.
[32] Matthew Campbell and Stephen Grey, 'Blundering into China' *The Sunday Times,* 9 May 1999.

Despite the growing tendency, at the end of the century, to resort to the unauthorised use of force, a reformed and developed system of peace enforcement will serve the cause of peace and stability better than the disputed proclamations of 'humanitarian intervention' and 'new internationalism.'[33] The experience of the 1990s provides comprehensive and useful lessons for peace enforcement. One of these lessons is that wishful thinking of UN officials, who seek to negotiate peaceful settlements without preventive or coercive deployment in cases of ethnic cleansing and mass murder, will result in the UN losing the initiative and giving way to unauthorised intervention as in Kosovo, or allowing for humanitarian disaster and genocide as in Rwanda.

The Security Council made two innovative rebuttals in the areas of internal democracy and international terrorism. In the case of Haiti, the Council resolutions clearly authorised the undertaking of peace enforcement measures to restore democracy. However, as Haiti constitutes a successful attempt to re-install a democratically elected President it also represents a test of the UN's consistency towards other similar situations in the world.

The mandatory measures imposed against Libya and Sudan in relation to international terrorism remain unique. However, members of the Security Council seem to be more willing to punish international terrorism when a credible evidence

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[33] Tony Blair, 'Why the Generation of 1968 Chose to Go to War' *Newsweek,* 12 April 1999; for justification of war against Belgrade see Bill Clinton, 'Why the allies must fight on' *The Sunday Times,* 18 April 1999.

is provided, than to undertake enforcement measures to restore democracy. Most member states still consider the instalment of democratic government as a matter of domestic jurisdiction, that should be decided on by the people of the country. Therefore, despite the significance of the case of Haiti, the experience did not bring about a change in the international community's stance, that the restoration of democracy or replacement of undemocratic governments is mainly an internal affair.

The two cases of the Iraqi Kurds in 1991 and the crisis in Kosovo in 1999 posed a challenge to the authority of the Security Council in this decade. In the Case of the Kurds, the allied forces imposed the no-fly zone without seeking further authority from the Council and the United States and Britain continued their air attacks against military targets in Northern Iraq for many years.

In the case of Kosovo, Nato did not attempt to obtain the authorisation of the Security Council for its military strikes against Serbia. However, the strikes ceased in a few weeks when Serbian forces agreed to withdraw from Kosovo, and the operation was transferred to UN peacekeeping forces under the command of Nato.

In situations where the Security Council was able to take enforcement actions the command and control of the UN forces represented a critical problem. The provisions of Articles 43 and 47, which govern the strategic directions and control of forces, remained dormant. From Korea in 1950 to Zaire in 1996, the United Nations always delegated the command of its forces to member states and

in most of these cases the United States assumed the role of designating the command of forces. To overcome the paradox in UN practice and the obvious deviation from the principles of the UN Charter, in future authorised peace enforcement actions the relationships between the authority of the Security Council and the power of permanent members needs to be clearly defined. Three options may be pointed out in this respect.

First, the revival of the United Nations mechanism for peace enforcement; this would require the conclusion of agreements between the Security Council and member states in order to undertake necessary measures for the maintenance of international peace and security. Subsequently, the Military Staff Committee should be responsible for the strategic direction of armed forces and questions related to the command of such forces.

Second, there would be an amendment of the United Nations Charter to allow for new regulations, an option which always seen difficult to attain.

Third, there would be a policy of the adoption of a contemporary formula of power delegation, through which the United Nations could delegate the command of forces and the execution of its enforcement measures to a member state, a group of member states, or a regional organisation.

It is necessary to reach an agreed formula on the structure of UN forces. As long as disagreement on questions of command, control, and strategic directions of UN force persists, a system of power delegation must be agreed to, but core

permanent and small UN military units should be established and the political objectives of the operation should be observed by the Security Council.

The principle of true representation, which assume that members of the Security Council are delegated to act on behalf of the international community, has increasingly been obscured and breached by permanent members. To preserve the UN's credibility, members of the Security Council should carry out these duties in the area of peace enforcement on the understanding that they act on behalf of UN member states and not in the interests of their governments only, as clearly stipulated by Article 24 of the Charter.

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