



# Effectiveness and Ineffectiveness of the UN Security Council in the Last Twenty Years: A US Perspective

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## Abstract

Is the Security Council a concert of great powers, unrepresentative of the international community, or a more inclusive body that derives its legitimacy from being representative of the UN membership as a whole? The United States in particular continues to take seriously its "custodial" role for the international system, which explains its willingness to stand alone on some unpopular issues. Elsewhere in the world, there is little sympathy for this attitude. Most countries around the world would deny that the great powers, and least of all the United States, play or should play anything like a custodial role in the international system.

**Keywords:** *UN Security Council / UN Peacekeeping / US foreign policy / Iraq / Military intervention / US-EU bilateral relations*

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by John Van Oudenaren\*

### Historical Background

The origins of the UN Security Council go back to the Congress of Vienna and the peacemaking process that followed the Napoleonic wars of 1799-1815, when the distinction between the great powers and all other powers first was enshrined in the practice of international diplomacy. The great powers were said to be those powers with interests general to the European system and thus by implication a stake in the system as a whole, in contrast to lesser powers, which had merely local or regional interests.<sup>1</sup> This distinction carried over into the peace-making process after World War I and was formalized in the Covenant of the League of Nations, which identified the Principal Allied and Associated Powers as the permanent members of the League Council. The distinction lived on in the United Nations Organization and the UN Charter, which assigned responsibility for the maintenance of peace to the Security Council, in which the five states defined as great powers were given a permanent veto.<sup>2</sup>

The experience after each of these global conflicts demonstrated the advantages and drawbacks of assigning responsibilities for the maintenance of peace to a small group of powers. The most acute danger to the functioning of such a system has been that unity among allies does not survive the defeat of the former common enemy. The system then becomes deadlocked and unable to respond to international challenges. The other danger is that would-be great powers or coalitions of middle powers excluded from the top tier of the international order agitate against the system and undermine it from without.

The conference system after the Napoleonic wars was relatively successful in avoiding both of these pitfalls, at least for a time. France, the original enemy against which the system was organized, was admitted at an early date, and the threat against which the powers were united redefined as instability from any quarter rather than aggression by

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<sup>1</sup> See the discussion of the great powers in Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 1977).

<sup>2</sup> Sir Charles Webster (1886-1961), the British historian and diplomat, embodied the continuity among these three postwar peacemaking processes. Webster was a prominent student of the Congress of Vienna who served as secretary of the Military Section of the British delegation at the Paris peace conference, 1918-19, and who later played a role in and wrote about the founding of the UN.

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a particular enemy. The European system eventually broke down in the years leading up to World War I, but this had largely to do with the globalization of European politics, as represented by such developments as Germany's rise and its bid to become a world power, Russia's emergence as a Far Eastern and Central Asian power, the rise of extra-European powers such as Japan and the United States, and the dilemmas that Britain and France faced in balancing the requirements of their empires with the preservation of a balance in continental Europe.

The post-World War I system was far less effective than its predecessor. Although no power that considered itself a great power was ever fully excluded from the inner circle of League of Nations decision making – the permanent membership of the Council of the League of Nations varied over time, but at its height included France, Germany, Italy, Japan, the United Kingdom, and the Soviet Union – Britain and France, as the main victors of 1918, were never able to use the League to co-opt the leading revisionist powers into accepting as legitimate the Versailles peace and the other elements of the post-World War I order. Nor was the United States ever prepared to enter the League and use its power to buttress the system.

The failures of the League of Nations convinced Franklin Delano Roosevelt, the chief architect of the United Nations Organization, that unity of purpose among the great powers was the key to an enduring peace. He thus conducted a diplomacy that focused heavily, indeed at times almost exclusively, on preserving cooperation between the United States and the Soviet Union. The United Nations Organization, and the Security Council in particular, in which the rights of the great powers were much enhanced relative to what they had been in the League of Nations, can be seen as largely an instrument of Roosevelt's effort to preserve amicable relations with Stalin.

Unlike the post-1918 system, which chiefly suffered from external indifference to or agitation against the system, the post-1945 system was characterized by internal deadlock. The Soviet Union blocked Western efforts to use the Security Council to resolve the Berlin crisis, and, in a development that shocked Western and especially American sensibilities, began to wield its veto on a range of issues, many seemingly trivial, in violation of the spirit of great power cooperation on which Roosevelt had staked his hopes for a future world order. Prior to 1989, political deadlock rooted in the East-West ideological conflict was the hallmark of the UN system.

The period of Cold War deadlock went through two distinct phases. In the first, the United States and its allies generally had the upper hand; the Soviet Union was forced to rely on the veto to defend its interests. Between 1946 and 1965, Moscow used the veto 106 times, compared with none for the United States. In the second phase, this situation was reversed, as the United States and the West were placed on the defensive by the coalition of the communist countries and radicalized developing countries that came to dominate the UN system.<sup>3</sup> From about 1970 (when the United States cast its first Security Council veto) until the end of the Cold War, the United States was the main wielder of the veto, which it used to neutralize attacks on Israel

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<sup>3</sup> The first veto was in connection with the situation in Southern Rhodesia. This period is best chronicled in Daniel Patrick Moynihan (with Suzanne Weaver), *A Dangerous Place* (Boston: Little Brown, 1978).

and in relation to other issues. Between 1966 and 1989, the United States vetoed 67 Security Council resolutions, compared to just thirteen for the Soviet Union.

Even at the height of the Cold War, however, the Security Council was able to exercise some of what scholars have called its role as both a great power concert and a force for global governance.<sup>4</sup> In 1956, the United States joined with the Soviet Union in supporting two resolutions calling for an end to the military intervention in Suez. France and the UK vetoed these resolutions, but pressure in the Security Council was one of the factors that helped to bring a swift end to the Suez crisis. The Security Council also played a role in containing conflicts in Cyprus and the Congo, in stopping the 1967 Arab-Israeli war, and in providing a venue for the resolution of the first Berlin crisis and the Cuban missile crisis.

The Security Council's role in the promotion of what has come to be called global governance was less prominent in this period than was its role as a concert of powers. Collective action by the great powers in pursuit of broad social and economic objectives has been an element of international diplomacy at least since the Congress of Vienna, which issued a path-breaking declaration on the suppression of the slave trade. The League of Nations launched ambitious programs of cooperation in economic and labor affairs, arms control, and other areas.

The activities of the UN in these areas initially were cut back, in large part because of the ideological standoff between East and West and the relative disinterest of the Soviet Union in such forms of cooperation. Even during the Cold War, however, global governance was never entirely missing from the UN system, and as such was a factor in the politics of the Security Council. In the 1960s, the United States and the Soviet Union, joined by the UK, united to create the nuclear non-proliferation regime embodied in the Nuclear Non-proliferation Treaty (NPT) of 1968, which arguably remains the most enduring of the governance structures created during the Cold War and the one with the greatest relevance for the post-Cold War international order.

The politics of the NPT demonstrated that the distinction between the great power concert functions of the Security Council and its role in promoting global governance is never absolute. In circumstances in which the great powers continue to be rivals to each other and in which middle powers and would-be great powers resist the functioning of a concert that tends to marginalize their roles, efforts to promote global governance inevitably become latent or proxy struggles over power. In the case of the NPT, France, China, and India all revolted against what they saw as the discriminatory treatment embodied in the arrangement. The middle powers of Europe (other than France) ultimately backed the non-proliferation regime, but were distinctly unenthusiastic about doing so, as witnessed by the fact that it was not until 1975 that states such as West Germany and Italy ratified the NPT.

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<sup>4</sup> For the distinction, see David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (New York: Oxford University Press, 2009), pp. 5-6.

## 1. The UN Security Council since 1989

The end of the Cold War meant the end of the post-1945 deadlock in the Security Council. A period of maximum cooperation in the council began with the international response to Iraq's 1990 invasion of Kuwait, which roughly coincided with a number of other momentous events, including the breakup of the Soviet Union, the dissolution of Yugoslavia and the onset of the wars in the Balkans, the reunification of Germany, and the conclusion of the Maastricht treaty establishing the European Union (EU).<sup>5</sup>

Between the late summer of 1990 and the early winter of 1991, the Security Council passed a total of twelve resolutions dealing with the Iraq crisis, including ones that mandated, under Chapter VII of the Charter relating to the existence of a breach of the peace or act of aggression, the imposition of sanctions and that authorized the use of "all necessary force" should the sanctions fail. Among the most noteworthy aspects of the Iraq crisis was the commitment by the United States, and in particular of President George H. W. Bush, to using the Security Council to legitimate action against Saddam Hussein and to build the broadest possible international coalition. In a speech to a joint session of Congress in September 1990, Bush hailed the emergence of a "new world order" and proclaimed: "We are now in sight of a United Nations that performs as envisioned by its founders."<sup>6</sup>

Britain under Prime Minister Margaret Thatcher supported military action to reverse what Saddam expected would be an international fait accompli (much the way Thatcher herself had reversed the Argentine seizure of the Falklands in 1982), but she argued that the United States and its allies could go to war under Article 51 of the UN Charter (inherent right of individual or collective self defense), without seeking explicit authorization from the Security Council. Absent the strong U.S. lead, France and Russia probably would have acquiesced in the Iraqi takeover of Kuwait. In fashioning a veto-proof majority in the Security Council, Bush and Secretary of State James A. Baker first enlisted the support of the British by reassuring Thatcher that he meant to use the UN to broaden his base of support, not as an excuse to "go wobbly." With London safely on board, Baker focused on winning over the Russians, on the grounds that the way to lock the French into a favorable position was to reach a prior understanding with Moscow. China was at this time still a secondary player in the Security Council, preoccupied with overcoming the international opprobrium heaped upon it as a consequence of the Tiananmen massacre of 1989, and was expected to follow the lead of – or at any rate not block a consensus decision by – the other permanent members.<sup>7</sup>

The end of the Cold War and the successful example of the Iraq operation opened a period in which discord among the permanent (and rotating) members of the Security Council was muted, and the body was able to function, at least on the surface, like something of a concert of powers. Between 1990 and 1996, the United States vetoed just three Security Council resolutions, Russia two. Britain, France, and China did not exercise the veto at all in this period. Between 1996 and 2003, Russia did not use the veto a single time. In the same period, the United States vetoed nine resolutions, eight

<sup>5</sup> The latter established a Common Foreign and Security Policy (CFSP), whose founding provisions included a legal commitment to collective EU action in the UN and in the Security Council.

<sup>6</sup> George H. W. Bush, speech to a joint session of Congress, September 11, 1990.

<sup>7</sup> See Baker, *The Politics of Diplomacy*, pp. 279-280.

of which concerned Israel.<sup>8</sup> France and the UK did not exercise the veto at all in this period, while China blocked two resolutions, one in 1997 and another in 1999.<sup>9</sup> The early 2000s, and especially the period since 2003, have seen a partial reversion to Cold War patterns, as Russia, the United States, and China all have become somewhat more liberal in the use of the veto. The United States continued to block resolutions relating to Israel (twice in both 2004 and 2006), while Russia vetoed resolutions relating to the UN peacekeeping force on Cyprus (2004), Burma (2007), condemnation of government violence against civilians in Zimbabwe (2008), and the mandate of a UN mission to Georgia (2009). China joined the Russian vetoes relating to Burma and Zimbabwe, and abstained on the Georgia vote.

As important if not more important than these actual vetoes are the “virtual vetoes” that members of the Security Council cast when they signal that they will not allow passage of certain resolutions, thereby dissuading their backers from bringing them to a vote. This was clearly the case in the run up to the Iraq war of 2003, when France made clear that it would veto any resolution authorizing the use of force, and more recently in the discussions of sanctions on Iran for its nuclear activities, which Russian and China have indicated they will block.

## 2. UN Peacekeeping Operations

The success of the peace enforcement operation in Kuwait and Iraq of 1990-91 ushered in a period of UN activism in regional trouble spots around the world, which manifested itself most prominently in a growing number of peacekeeping missions. After having mandated just three peacekeeping missions in the 1970s and five in the 1980s, the Security Council authorized a total of 38 missions in the course of the 1990s: in the Balkans, in Central America and the Caribbean, in the Middle East, and in several countries in Africa and Central and Southeast Asia.

- In January 1992, the Security Council unanimously adopted UN SC Resolution 733 imposing a general and complete arms embargo on Somalia, where the breakdown of the central government and a civil war among rival clans was causing widespread famine. This was followed by the establishment of the United Nations Operation in Somalia (UNOSOM I), a largely civilian operation that was charged with monitoring the cease-fire of March 1992 and ensuring the delivery of humanitarian relief. In response to the continued deterioration of conditions in Somalia, in December 1992 the Security Council adopted UN SC Resolution 794, which established the Unified Task Force (UNITAF), a U.S.-led multinational force that was authorized under Chapter VII to use “all necessary means” to ensure the delivery of humanitarian aid in Somalia.
- In February 1992, the Security Council mandated the establishment of the UN Protection Force (UNPROFOR), which was to ensure conditions for peace talks in

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<sup>8</sup> The other veto was in 2002, and related to the dispute between the Bush administration and the Europeans over the International Criminal Court and the renewal of the mandate for the peacekeeping mission in Bosnia.

<sup>9</sup> China had previously exercised its veto on two occasions, both in 1972, when it joined with the Soviet Union to block a resolution relating to Arab violations of the 1967 Middle East ceasefire, and when it blocked the application for membership of newly independent Pakistan.

the former Yugoslavia and provide security in designated “safe havens.” The latter initially included three regions in the former Yugoslav republic of Croatia, but were expanded to encompass other parts of Croatia and havens in Bosnia-Herzegovina, including Sarajevo airport.

- In October 1993, UN SC Resolution 872 authorized the establishment of the United Nations Assistance Mission for Rwanda (UNAMIR), charged with monitoring the August 1993 Arusha Accords, a power-sharing agreement intended to end the civil war in Rwanda.
- In February 1993, the UN and the Organization of American States jointly deployed an International Civilian Mission to Haiti, a step that led to increasing UN involvement in the country, culminating in the passage, in April 1994, of UN SC Resolution 1542 establishing the UN Stabilization Mission in Haiti (MINUSTAH), which was authorized to support the transitional government in consolidating its authority throughout the country.

Most if not all of these peacekeeping missions ended badly, for one reason or another. In Somalia, UN SC Resolution 794 provided the legal framework for Operation Restore Hope, under which President Bush deployed approximately 17,000 U.S. troops to the country to deliver humanitarian assistance. In the course of the operation, some 38,000 soldiers from 23 different countries and representatives from 49 different humanitarian relief operations worked to avert a mass starvation. But the humanitarian operation suffered from what came to be called “mission creep.” After forces of the warlord Mohammed Aideed killed 24 Pakistani soldiers in June 1993, U.S. Special Forces went on a hunt for Aideed, a mission that ended with the disastrous October 3-4, 1993 firefight in which sixteen Army Rangers were killed, and their bodies dragged through the streets. President Bill Clinton, focused on his domestic agenda and convinced of the basic isolationism of the American people, moved to withdraw the U.S. force. Lacking its American core, the UN presence in Somalia was wound down and the country soon returned to chaos.<sup>10</sup>

- Following the murder, in April 1994, of ten Belgian soldiers by government troops, most of UNAMIR’s 2,500 troops were withdrawn from Rwanda, clearing the way to the unchecked genocide that ultimately claimed between 800,000 and 1,000,000 lives. This genocide is seen as the UN’s biggest failure to date, and led to a formal admission of fault by the Security Council in 2000.
- UNPROFOR failed to stem the violence in the former Yugoslavia, and the force’s mission and mode of operation became a major point of contention between, on the one hand, Britain and France, which had provided the bulk of the peacekeeping force, and the United States, which did not contribute forces to the operation but was highly critical of the operation. A crisis point was reached in the summer of 1995, when UN peacekeepers failed to prevent the slaughter of Bosnian men and boys in Srebrenica. This was followed by the belated entry of NATO airpower into the conflict and the convening and eventual success of the Dayton peace conference. In December 1995, UNPROFOR units still in the former Yugoslavia were merged into the NATO-led Implementation Force (IFOR).

<sup>10</sup> For Clinton’s view that the American people were “basically isolationist,” see George Stephanopoulos, *All Too Human: A Political Education* (Boston: Little, Brown, 1999), p. 214.

- In Haiti, U.S. forces intervened in September 1994 and restored ousted President Jean-Bertrand Aristide to power the following month. U.S. troops handed authority over to UN peacekeeping forces in March 1995. Elections took place in December 1995, and Haiti's first transition of power to a democratically elected leader occurred in February 1996. In view of the tenuous situation in the country, the Haitian authorities requested an extension of the UN mission, but the UN had difficulty in raising the funds to keep in place troops from Bangladesh and Pakistan.

The failures of these operations led to a pullback from UN peacekeeping operations in the second half of the 1990s, and to a general discrediting of the UN and the Security Council in certain political circles. The United States under UN ambassador and later Secretary of State Madeleine Albright began a campaign to scapegoat the UN and Secretary General Boutros Boutros-Ghali in particular for the peacekeeping failures of Clinton's first term.

In this political environment, the number of UN peacekeeping missions and the forces engaged declined dramatically. Traditional blue-helmeted missions were replaced by actions in which the Security Council authorized a lead nation, often assisted by token or niche forces from other countries, to tackle a particular problem on behalf of the international community.

- In March 1997, UN SC 1101 authorized the deployment to Albania of a 6,115-person multinational force led by Italy for the purpose of creating a secure environment for the delivery of humanitarian aid. This mission, whose mandate later was extended for another 45 days, succeeded in stabilizing the country.
- In September 1999, UN SC 1264 authorized the deployment of a multinational force to East Timor to restore peace and security, facilitate humanitarian assistance operations, and protect and support UNAMET, a small civilian UN mission sent to the territory to oversee the implementation of an agreement between Portugal and Indonesia that provided for the independence of the country from Indonesia. Australia led and provided the main capabilities for the force, INTERFET, which helped to restore order in the country and establish independence.
- In October 1999, the Security Council mandated the establishment of the United Nations Mission in Sierra Leone (UNAMSIL) to assist with implementation of the Lomé Peace Accord ending the civil war in Sierra Leone. UNAMSIL was a large and motley array of forces from some 27 different countries that incorporated large contingents (e.g., 4,000 Nigerian soldiers) from a force previously deployed by the Economic Community of West African States. In this sense, UNAMSIL represented a reversion to the traditional blue-helmet pattern, but the ineffectiveness of the force soon became apparent. In 2000, the UK deployed a purely national force to Sierra Leone to assist the UN force and to help stabilize the country.

Russia and China became increasingly skeptical of Security Council activism in this period. China abstained on the 1997 resolution authorizing the Italian deployment to Albania, stating that the UN Charter did not authorize interference in the internal affairs of states (even though in this case the government of Albania had requested and welcomed the deployment of the force). In other cases, the Western powers declined to bring to the Security Council resolutions that Russian and China were certain to veto. Chinese and Russian opposition to Security Council efforts to interfere in the internal

affairs of other countries became overt in the Kosovo crisis of 1998-99. In several resolutions passed in 1998 (UN SC 1160, March 31; UN SC 1199, September 23), the Security Council expressed concern about the conflict in Kosovo and the excessive use of force by the Serbian army and called for a halt to the fighting.

But there was no chance that Russia or China would vote to authorize external intervention in a conflict involving what from a strict international law perspective was the province of a sovereign UN member state. NATO eventually acted on its own in the spring of 1999, initiating a conflict that some experts characterized as legitimate but not strictly legal.<sup>11</sup> The Security Council later passed UN SC Resolution 1244 (June 10, 1999), which provided post facto legitimacy to the political solution brought about by the NATO bombing, and a framework for de facto rule of the province through NATO as a UN protectorate. The vote was 14-0, with China abstaining.

While Russia and China were chiefly concerned about the basic principles on which the Security Council acted, the Western powers were questioning the effectiveness of the Security Council and the failures of leadership, management, and resourcing that contributed to such debacles as Bosnia, Rwanda, and Haiti. Such concerns led to the convening, in March 2000, of the UN Panel on Peace Operations, which was charged with undertaking a thorough review of UN peace and security operations and presenting a “clear set of specific, concrete and practical recommendations to assist the UN in conducting such activities better in the future.” The resulting Brahimi Report (named after the panel’s chair, former Algerian foreign minister Lakhdar Brahimi), issued its recommendations in August 2000. With regard to the Security Council, the panel emphasized the need for “clear, credible and achievable mandates” and stated, in unusually blunt language, that the Security Council should “leave in draft form resolutions authorizing missions with sizeable troop levels until such time as the Secretary-General has firm commitments of troops and other critical mission support elements, including peace-building elements, from Member States;” that it should ensure that operations meet military requirements, “especially the need for a clear chain of command and unity of effort;” and the Secretariat “must tell the Security Council what it needs to know, not what it wants to hear, when formulating or changing mission mandates [...]”<sup>12</sup>

The Brahimi exercise and the sentiments it reflected were probably helpful in enforcing a certain caution and discipline on the Security Council in its use of peacekeeping missions in the early 2000s. But recent years have seen a partial return, albeit in different forms, to the activism of the 1990s. One source calculated that in early 2009 the UN was providing 80,000 military personnel and another 12,000 civilians in 18 missions worldwide.<sup>13</sup> The same report noted a perception that the Security Council has “forgotten to observe the ‘rules’ of Brahimi: the need to match politics to peacekeeping, and resources to mandates. After a period of improvement in Security

<sup>11</sup> See Adam Roberts, “NATO’s ‘Humanitarian War’ over Kosovo,” *Survival*, vol. 41, no. 3 (Autumn 1999), pp. 102-123.

<sup>12</sup> Report of the Panel on United Nations Peace Operations (Brahimi Report), August 23, 2000.

<sup>13</sup> Bruce Jones, Richard Gowan, and Jake Sherman, *Building on Brahimi: Peacekeeping in an era of Strategic Uncertainty* (New York: NYU Center on International Cooperation, April 2009), p. 5.

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Council performance on mandates and resourcing, some lessons have gone unheeded in recent Security Council debates [...]”<sup>14</sup>

Recent UN operations reflect a number of complex features that were not present, or were present to a lesser degree, in the 1990s:

- More operations involve a mixing of operations conducted by the UN with those undertaken by regional organizations, such as the AU and the EU. Cooperation among such organizations can be effective in mobilizing resources that might not otherwise be available, but it also can lead to buck-passing, as well as to organizations using missions to pursue various agendas of their own.
- China has become a more active player in peacekeeping. The international community has generally welcomed this change as providing more resources and greater political legitimacy, but it comes with a price, as China increasingly uses its position in the Security Council and its active involvement in order to shape UN missions to serve parochial, purely national issues (as in with regard to Sudan).
- Peacekeeping is taking on some of the features of peace enforcement, as peacekeepers are sent into settings where they encounter hostile state and non-state actors. This is done, however, without the troops being supplied with the military wherewithal that has characterized true enforcement missions backed by major powers.
- The political environment has become more complex. On the one hand, the increasing acceptance of the “responsibility to protect” doctrine and the founding of the International Criminal Court suggest an expansive role for the UN in the domestic affairs of sovereign states. On the other hand, other factors – the war on terror and the cynicism bred in many places by the war in Iraq – work in the opposite direction.

While specialists are likely to draw different conclusions about these various complications, for the young and politically engaged, especially in North America and Western Europe, the salient fact about the Security Council and its permanent members about the present period is likely to be its failure to stop the genocide in Darfur, or even to be seen as seriously attempting to do so, a perception that clearly undermines its legitimacy.

### 3. September 11 and Beyond

The terror attacks on New York and Washington of September 11, 2001 opened a new chapter in the history of the Security Council. In UN SC Resolution 1368 of September 12, the Council condemned the attacks of the previous day and expressed its readiness to “take all necessary steps” to respond to the attacks and to “combat all forms of terrorism.” This resolution, in conjunction with UN SC Resolution 1373 of September 28, 2001, provided a broad legal and political justification for what became the U.S.-led “war on terror.” Following the successful U.S.-UK effort to topple the Taliban, the Security Council passed, on December 20, UN SC Resolution 1386, which authorized an International Security Assistance Force (ISAF) to assist in forming a

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<sup>14</sup> *Ibid.*, p. 8.

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stable order in Afghanistan. The same resolution acknowledged the UK as the lead nation in ISAF, a function that later was transferred to NATO.

The September 11 attacks also marked the beginnings of a trend in which the Security Council began to function as a quasi-legislative body with what might be called “supranational” powers over the individual member states in the international community. In response to the growing threat of terrorism in the 1990s, UN SC Resolution 1267 of October 15, 1999 imposed a limited air embargo and a financial assets embargo on the Taliban. UN SC Resolution 1333 of December 19, 2000 imposed similar restrictions on Osama bin Laden and associates. Building upon these early steps, Resolution 1373 demanded that all states in the international community take steps to prevent and suppress the financing of terrorist acts, criminalize the collection of funds by their nationals or on their territories intended to be used to support terrorism, freeze funds and other assets of individuals and organizations supporting terrorists, deny safe haven to persons involved in terrorist acts, assist each other with criminal investigations involving terrorism, and so forth. Additional measures were mandated in UN SC Resolution 1390 of January 16, 2002, which adjusted the scope of the existing sanctions on al-Qaeda and the Taliban in line with post-September 11 circumstances.

These legislative actions by the Security Council generally did not have, to borrow the language of the European Union, “direct effect” in the UN member states and had to be “transposed” into national law and policy through the adoption of laws and regulations. Coming at a time when even many Western countries did not have on their books laws that criminalized terrorism as such, this was an extraordinary program of domestic legal and administrative action imposed on the member states by the Security Council.

As also might have been predicted from the EU experience, adoption of this program all but required the establishment of a body with quasi-executive powers to deal with its technical aspects and to monitor implementation. This took the form of the UN Security Council Sanctions Committee. This body was not entirely unprecedented. Its origins can be traced to the first Gulf war, when UN SC Resolution 661 of August 1990 established a committee to monitor sanctions imposed on Iraq. The Security Council subsequently went on to establish eight more such committees – for Côte d’Ivoire, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone, Sudan, Syria, and the above-mentioned al Qaeda-Taliban committee – to monitor various arms embargoes, travel bans, asset freezes, and other measures imposed in response to various transgressions by these states and organizations.<sup>15</sup>

While all of these committees have had theoretical implications for domestic law and policy in the UN member states, the al Qaeda-Taliban committee marked a step to a qualitatively different level, given the nature of the threat and the inherent intrusiveness of measures to root out support for shadowy networks of international terrorism. This change was most apparent in the EU, where a Council (i.e., EU Council of Ministers) Common Position and a Council Regulation, adopted under the CFSP provisions of the Treaty on European Union, essentially incorporated the UN list of sanctioned

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<sup>15</sup> See the *Chart of Sanctions Committees* at <http://www.securitycouncilreport.org/atf/cf/{65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/Sanc%20Chart%20Mar%2006.pdf>.

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individuals and organizations into EU domestic law and empowered the European Commission to make regular additions to and deletions from this list on the basis of determinations by the UN Security Council and its Sanctions Committee.<sup>16</sup>

Following the pattern established after September 11, in recent years the Security Council has expanded its role into new areas of global governance, most importantly with regard to nuclear non-proliferation, but also to areas that less readily cast as immediate threats to peace and security. In April 2007, for example, the Security Council took up the issue of climate change, which the United Kingdom, in its capacity as monthly chair of the council, had placed on the agenda as constituting a threat to international peace and security. In response, the G-77 sent a strongly-worded letter to the president of the Security Council complaining about the encroachment of the Security Council on areas that did not constitute immediate threats to peace and security but rather involved the setting of global norms in such areas as climate change, HIV/AIDS, and even terrorism and non-proliferation policy.

#### 4. Iraq

The 2002-2003 Iraq crisis highlighted both the importance and severe limitations of the Security Council in the post-Cold War, post-September 11 era. Nearly all parties preferred to see the crisis resolved in the Security Council, with the main exception being the Cheney wing of the U.S. government. But the actual performance of the council in dealing with the crisis was most uninspiring. The entire debate over Iraq was marked by a legalism that was far removed from how one might expect a concert of powers would take responsibility for an international problem about which they were truly concerned.

The debate shifted over time from whether any UN resolution was needed to authorize action against Iraq, to whether a second resolution was needed if a first was passed, to such arcane questions as whether passage of an enabling resolution by nine members followed by a veto by one or more permanent members would constitute a political if not a legal mandate for military action.

The United States was much criticized for its behavior in the run-up to (and even more so, the conduct of) the war, and rightly so. Washington purported to respect the legal authority of the Security Council, and even expressed concern about the council's becoming irrelevant by failing to fulfill its responsibilities. But the United States never clearly articulated how the Security Council might fulfill these responsibilities without simply rubber-stamping U.S. views.

The gaggle of European countries on the council at the time also took an extremely parochial approach to the Iraq issue, importing into the council unresolved and unrelated squabbles from domestic and intra-EU politics. France and Germany were determined to use the struggle for peace and against the United States to cement their leadership of the EU (which at the time extended to such parochial matters as the preservation of agricultural subsidies), weaken the Atlanticist wing of the EU, and

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<sup>16</sup> See Council Common Position 2002/402/CFSP of May 27, 2002, in OJ L 139, May 29, 2002.

promote the union internationally. Bulgaria was concerned about its candidacies to both NATO and the EU, while Prime Minister Aznar of Spain took his country in a markedly pro-U.S. direction, out of step with domestic public opinion, in part out of pique at Spain's treatment by the big two of the EU. Prime Minister Blair of Britain was much preoccupied by his own political survival. Perhaps shocked by being outflanked in its habitual anti-Americanism by long-time NATO allies of the United States, Russia was somewhat quieter than Paris and Berlin, as was China.

The most absurd aspect of the whole Iraq debacle was the competitive courting, mainly by the United States and France, of the non-permanent members of the council that purported to be undecided about the issue (Chile, Mexico, Angola, Cameroon, Guinea, and Pakistan). These countries never should have been placed in the position of having to decide on a crucial international issue involving the major powers. Most of them never attempted to articulate anything like a unified G-77 or regional position, but were mainly swayed by their own domestic politics and such bribing or bullying that came from the permanent members.

Much more could be said about the Iraq crisis, about which numerous books and articles have been written. It seems clear, however, that the crisis weakened the image and the authority of the Security Council. The United States is likely to be far more cautious about entering into wars such as Iraq in the future, but should it feel compelled to do so, it is likely to be warier than ever about going to the Security Council for authorization. The weakened stature of the council and the rifts that opened within have been evident as it has attempted to tackle other pressing issues, notably the challenge of nuclear proliferation in North Korea and Iran.

## 5. Issues

The record of the Security Council in the last two decades raises a number of questions for the future that bear upon its effectiveness and that have implications for world order. One concerns the degree to which the Security Council is a concert of great powers, almost by definition unrepresentative of the international community, as opposed to being a more inclusive body that derives its legitimacy from being representative of the UN membership as a whole. Closely related to this question is the issue of whether permanent members of the Security Council have special obligations to uphold certain transcendent principles embodied in the Charter or whether their role is merely to represent, in a more "democratic" function, the will of the member states.

Even at the height of the Cold War, the United States and the Soviet Union tended to cloak their positions in terms of certain universal principles that they were pledged to uphold. The Soviet obsession with the enemy states clauses of the UN Charter and Moscow's constant harping on the neo-Nazi danger in Germany, as well as its campaigns against states such as Spain and Argentina, made for good propaganda and good domestic politics, but they also represented an effort by the Soviet Union to legitimate its policies by wrapping them in the mantle of the wartime struggle against the Axis and the evils it represented. On the U.S. side, Secretary of State John Foster Dulles' attacks on the immorality of "neutralism," often caricatured as a manifestation of his crude anti-communism, was rooted in his view that the United Nations was the

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institutional embodiment of certain universal principles embodied in the Charter and that to profess neutrality in regard to violations of these principles was tantamount to a violation of the charter itself.

To what extent the idea of special great power responsibilities for the international system can survive as an organizing principle for international order is an open question that underlies, at least in part, all discussions of reform of the Security Council. Some scholars have argued that the United States in particular continues to take seriously its "custodial" role for the international system, which explains its willingness to stand alone on some unpopular issues.<sup>17</sup> Elsewhere in the world, there is little sympathy for this attitude. Most countries around the world would deny that the great powers, and least of all the United States, play or should play anything like a custodial role in the international system. They tend to view the question of the reform of the Security Council through the prism of representative-ness, in effect transferring the one-person-one-vote principle to which most governments pay at least lip service in domestic politics into the international arena.

A second issue concerns the degree to which the Security Council should focus on peace and security narrowly defined, and to what extent it should take on broader global governance functions. It bears noting that while opponents of American "unilateralism" have been swift to complain about U.S. actions taken without Security Council authorization, many of the most vocal proponents of enhanced global governance have not favored an expanded role for the council in this area. Coalitions of small states and ambitious middle powers in fact have used global governance as an instrument to attack the power and prerogatives of the Security Council, and especially of its permanent members. The 1997 Ottawa Convention banning land mines involved an effort, initially led by Canada and Norway but later joined by Austria, Belgium, and Germany, to move the land mine issue out of a UN forum, the Conference on Disarmament, and into a new, ad hoc forum, "the Ottawa process," in which a total ban on mines could be negotiated in opposition to the major powers.<sup>18</sup>

Similarly, the "like-minded group" of 27 countries that led in the drafting and negotiation of the Rome Statute establishing the International Criminal Court (ICC) included many habitual critics of the Security Council and its permanent members. It produced a draft that provided for a strong ICC with its own independent powers of initiative, outside the influence of the Security Council. Another group of middle-power LDCs (led by Mexico and Egypt) favored a weak court with limited powers and were especially interested in ensuring no special role for the Security Council, but also sought to use the negotiations on the court to criminalize the use (and by implication possession) of

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<sup>17</sup> W. Michael Reisman, "The United States and International Institutions," *Survival*, vol. 41, no. 4 (Winter 1999-2000).

<sup>18</sup> As a Canadian official later concluded, the Ottawa process showed the potential for a "middle power/civil society coalition" to challenge the permanent members of the Security Council on an issue with implications for international security. Bob Lawson, "Ottawa Process Points Towards a New Multilateralism," *Peace and Environment News*, November 1997; see also Lloyd Axworthy and Sarah Taylor, "A ban for all seasons: The landmines convention and its implications for Canadian diplomacy," *International Journal*, vol. 53, no. 2 (Spring 1998).

nuclear weapons, another province of the great powers.<sup>19</sup> At a minimum, any broadening of the range of issues addressed by the Security Council is likely to increase pressures for it to become more representative and universal in its membership.

A third question, especially germane to the work of this research project, concerns the role of the EU in the UN system and its relationship to the Security Council. Europe is markedly over-represented in the leadership of most international organizations and reforms of these organizations aimed at improving their effectiveness must proceed from recognition of this reality. In any given term, five of the fifteen members of the Security Council (two permanent and usually three rotating) can be members or candidate members of the Union. This level of over-representation is not as extreme as that in certain other international bodies, but it is likely to become increasingly unacceptable to other countries over time, especially as the Lisbon treaty takes effect and the EU defines a stronger CFSP.

Addressing the representation issue is especially difficult, however, because European governments and foreign policy elites are ambivalent about how the EU should define itself in the international system. Should it strive to become a unified great power that will take its place alongside China and the United States in a future "G-3" of global governance? Should it define itself as a confederation that respects the continued historical role of the nation-state and that enables two or three of these states (France, the UK, and probably Germany) to play great power roles on the international stage, notwithstanding the gap in size between them and such continental powers as the United States and China? Or is the EU a special moral force that by virtue of its internal features and proclaimed commitment to multilateral principles has a special external mission? Unable to decide definitively on any one of these roles, the EU (or different actors within the EU) seeks to play all three simultaneously, with at times confusing results for others in the international system.

The actions taken – or not taken – by the Security Council over the course of the last two decades raise many other questions for debate and discussion, for example:

How can the Security Council square the conflicting principles of respect for sovereign equality with the "responsibility to protect"?

How will the growing emergence of multipolarity affect the functioning of the Security Council? Is there a basis for a concert of major powers involving the United States, China, Europe, Russia, and perhaps India that can enforce minimal standards of world order, or will the system settle into a U.S.-China deadlock, with Europe and Russia factoring mainly as spoilers or bystanders?

What will be the relationship between the Security Council and other international bodies, e.g., the G-20, which some are already suggesting should take on political and security functions?

What is the future of regionalism? Will regional organizations such as the AU and the EU continue to function mainly as entities that can implement Security Council

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<sup>19</sup> See Philippe Kirsch, John T. Holmes, "The Rome Conference on the International Criminal Court: The Negotiating Process," *American Journal of International Law*, vol. 93, issue 1 (January 1999), pp. 2-12; David J. Scheffer, "The United States and the International Criminal Court," *ibid.*, pp. 12-22; and Mahnoush H. Arsanjani, "The Rome Statute of the International Criminal Court," *ibid.*, pp. 22-43.

resolutions but that have no overarching legal authority, or will the world gravitate toward the kind of regionalized legal order that was contemplated in 1945 but ultimately rejected in favor of the universal system?

These and numerous related questions need to be addressed by this and other research project dealing with the future of the Security Council and the UN system.

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