

*Frederic L. Kirgis**

[The following essay has been submitted by the author in lieu of a transcript of his remarks from the Colloquium.]

COMPARATIVE ADVANTAGE AND THE UNITED NATIONS IN SITUATIONS OF CONFLICT

The United States should keep very much in mind not just its short-term political interests, but also its longer-term interest in a stable and just world community. That does not preclude self-interest, but it does mean that self-interest is something more than self-absorption. It is in the United States' long-term interest to try to identify and make the most of whatever comparative advantage the United Nations has in the peace-maintenance or peace-restoration arena.

The question I think should be asked is: In what specific areas of decision-making or action in the overall field of maintaining peace does a global, inter-governmental organization have a comparative advantage over individual governments, regional inter-governmental organizations or non-governmental organizations? Comparative advantage should be measured in terms of justice, breadth of vision, and efficiency.

Considerations of justice include the capacity to take into account the interests of people who will be adversely affected by the decision or action, as well as the interests of those who presumably will gain from it.

Breadth of vision involves the ability to assess the total costs of the proposed action, including externalities such as the long-term social or environmental detriment that might be expected to flow from the action, and to take the total costs into account in the decision-making process.

As for efficiency, I realize it may seem like an oxymoron to talk about the United Nations and efficiency in the same sentence. But the U.N. actually might sometimes be the most efficient decision-making body when it is necessary to take account of the big picture: that is, when a decision needs to be made on peace-related measures taking into account the other considerations—justice and externalities.

* Law School Association Alumni Professor, Washington and Lee University School of Law.

In the areas where the U.N. has a comparative advantage in this sense, U.S. policy should be to engage the U.N. and to support it fully. In other areas, the U.S. should be wary, especially in a time of shaky public support in the U.S. for bureaucracy and for the U.N. in particular.

What are the specific peace-related areas in which the U.N. enjoys a comparative advantage? Here are some tentative suggestions:

(1) One category would consist of those enforcement decisions expressly identified in the U.N. Charter as belonging to the Security Council, e.g.:

(a) Determining whether there is a threat to the peace, breach of the peace or act of aggression (art. 39), provided that the Security Council demonstrates that it is serious about making reasoned determinations on these matters and willing to make them in some principled manner;

(b) Determining whether to impose trade restrictions or other economic sanctions for political purposes (art. 41). If the U.N. does have a comparative advantage in making just decisions with the breadth of vision in this area, adherence to the principle of yielding to comparative advantage would normally preclude unilateral restrictions or sanctions that might be imposed for non-economic reasons;

(c) Determining whether to use armed force against a government or armed faction that is behaving inconsistently with basic international norms (art. 40 or 42). The principle of yielding to comparative advantage would preclude unilateral use of armed force except in self-defense against an actual armed attack, under the explicit Charter authority of Article 51.

(2) There is also a batch of peace-related *activities* where the U.N. might have a comparative advantage—where the U.N. has proved itself, even though the activities are not expressly identified in the Charter, e.g.:

(a) Good offices and perhaps mediation, by the Secretariat or by emissaries designated by the Secretary-General. This may not be an example of U.N. comparative advantage, though, if one state, such as the United States, or an alliance of states, has particular influence over the disputing parties, or if the U.N. for whatever reason has lost its credibility with them;

(b) Traditional peace-keeping and peace observation, which would include stationing lightly-armed forces along cease-fire lines;

- (c) Helping to organize elections, advising fledgling governments on organizational and constitutional matters, etc.

The activities in this category require the consent of the government or governments involved, whether the U.N. undertakes the activities or some other organized body does so. The point is that, provided consent has been obtained, the U.N. has demonstrated its ability to act impartially and with breadth of vision in these areas. It therefore seems to have a comparative advantage here.

(3) The latter category could be expanded to include any situation, even if untested and not expressly set forth in the Charter, where the potential or actual adversaries agree on a U.N. role, so long as the agreed role is consistent with the basic purposes and principles of the Charter.

The U.N. probably does not have a comparative advantage in some identifiable conflict situations, e.g.:

- (a) Emergencies where very quick action is needed, though in these cases the U.N. may have a comparative advantage later in assessing the appropriateness of any other actor's response. The U.N. may also some day have a comparative advantage in reacting to some peace-threatening emergencies if it ever has a rapid reaction force at its disposal, but that day has not yet come;

- (b) Front-line delivery of humanitarian assistance in volatile circumstances, where Non-Governmental Organizations (NGOs) have shown they can do the job better in many cases (ICRC, Doctors Without Borders, CARE, etc.). The NGOs have specialized experience, and they are widely recognized as nonpolitical in a way that the U.N. never can be. The comparative advantage principle in these circumstances would not necessarily preclude U.N. background assistance or logistical support to the NGOs;

- (c) Active intervention in ethnic conflicts that are essentially confined to a single state, even if there is some regional spillover, provided that there is a regional organization that is capable of mediating or taking action, and that is regarded as reasonably impartial;

- (d) Active intervention in almost any conflict situation when U.N. peacekeeping operations are already stretched thin, as they have been recently.

The point here is not to prepare a complete catalog of areas in which the U.N. does or does not have a comparative advantage. It is just to suggest that this should be the question asked, and to suggest, with diffidence, some areas where one might presume the U.N. does or does not have an advantage over other possible actors. We would all be better off if the U.S. government—and other governments, too—would identify justice, breadth of vision, and efficiency as goals that are more important than short-term self-interest, and would look for comparative advantage in this sense when they decide what is appropriate for unilateral, regional, or global decision-making.

We would be better off, too, if the United States worked within the U.N. to strengthen whatever comparative advantage it may have, rather than legislatively tying the U.N.'s hands. If the United States, the U.N.'s largest debtor, begins acting like a money lender in a green eye-shade, requiring repayment of every penny's worth of cooperation the United States gives the U.N., the U.N.'s only comparative advantage will be in the fields of bookkeeping and accounting as it tries to keep up with U.S. reimbursement demands.