

COLLOQUIUM

THE ROLE OF THE UNITED NATIONS IN THE MAINTENANCE OF PEACE BEFORE AND AFTER THE YEAR TWO THOUSAND

INTRODUCTION

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The 50th anniversary of the founding of the United Nations Organization occasioned much reflection on the future of the universal organization charged by its Charter with maintaining the peace, with developing friendly relations among nations, with solving economic, social, cultural and humanitarian problems, with promoting respect for human rights, and with coordinating all of these efforts. This was a tremendously ambitious set of goals which the Member States set for themselves to accomplish. Indeed, the history of the United Nations reflects the moments at which the Member States were willing to collaborate and the moments at which political, economic and ideological barriers have prevented the world organization from functioning as its founders wished.

In particular, the rivalry between the United States and the Soviet Union, based in part on ideology and rendered deadly by their nuclear arsenals, cast a pall on the effective use of the Security Council of the United Nations for maintaining the peace. Moreover, the achievement of the process of

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decolonization brought membership in the United Nations to a large group of African and Asian countries who, together with the Latin American members, have dominated the U.N. General Assembly ever since. A majority of these economically developing countries sought to accelerate their development by experimenting with economic and social policies; they also sought to reinforce their political position by refusing to ally themselves with the rival nuclear super-powers and created a movement of non-aligned states. These non-aligned states often sought to reap some advantage from the rival super-powers and their respective blocks of allies.

Consequently, during the first decades of the U.N.'s existence, its political organs reflected the polarization of international political relations. The U.N. Charter's system for maintaining the peace, which depends on the collaboration of all the permanent members of the Security Council and consensus among the U.N.'s Member States, could not function properly. However, in areas of United Nations activities where a strong measure of consensus existed, in economic development, social change, and human rights protection, progress was possible.

The end of the super-power rivalry, which occurred after the dissolution of the Soviet Union, brought with it the end of the systematic use of the veto by one side or the other in the Security Council. The group of non-aligned developing countries lost much of its bargaining power with the industrialized countries when the Soviet Union disappeared; further, the developing countries were forced by their extreme financial plight to abandon their mixed economies and to accept the structural adjustment toward largely market economies required by the International Monetary Fund and the World Bank (IBRD).

These far reaching changes have not led to an end to the difficulties faced by the United Nations in acting to achieve its goals. As a traditional international inter-government organization, it is dependent on the sovereign will of each of its members. Neither the organization itself nor its Secretary-General possesses independent power of decision-making. All power continues to be exercised by the Security Council, some of whose members have maintained their veto power.

Nevertheless, despite the U.N.'s inherent dependence on its sovereign Member States, some optimism has been engendered in the past few years in the capacities of the system established in the Charter, and developed by practice, to deal effectively with the primary goal of the maintenance of peace.

I. THE COLLOQUIUM: SUBJECTS AND PARTICIPANTS

The Colloquium first explored current attitudes in certain Member States on the United Nations' role in the maintenance of peace. Proposals and suggestions for rendering the Security Council more effective in its role were next solicited from the Colloquium speakers. A third part of the discussion concerned the means for implementing decisions of the Security Council on the maintenance and restoration of peace.

A distinguished group of experts and scholars met at the Colloquium. The group of speakers included United Nations officials, ambassadors and other members of national missions to the United Nations, officials of the United States Department of State and professors of law active in the fields of international law and organizations. Two of the Colloquium speakers are distinguished military experts.

An Agenda for Peace, which the then Secretary-General of the United Nations, Professor Boutros-Ghali, presented to the Security Council and the General Assembly in 1992 (U.N. Doc. A/47/277, S/24111, June 17, 1992) served as a basic background paper for the meeting. The Colloquium participants made use of the Secretary-General's *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations* (U.N. Doc. A/50/60, S/1995/1, January 3, 1995). Some Colloquium papers and Professor Louis Sohn's separate article in this issue of the *Georgia Journal of International and Comparative Law* describe a number of the ideas set forth in the Secretary General's documents.

The papers published below constitute a written version of the remarks delivered at the Colloquium. Professor Paust has submitted an article which amplifies his remarks and which is included as his paper.

II. UNITED STATES ATTITUDES TOWARD THE U.N.

In the United States, the United Nations' most powerful member and its biggest supporter at the time of its creation, reasoned criticism by some political leaders and outright xenophobia by others, have resulted in significant opposition to the United Nations and to the United States' role in the organization's activities.

Several Colloquium speakers, including Professor Bilder, Mr. Johnson, and Colonel Clontz, commented on the doubts and concerns that characterize attitudes in the government and among the people of the United States.

Colonel Clontz also discussed the often-made proposals for the creation of an independent United Nations force. Among Professor Jordan Paust's contributions to the Colloquium, which his paper developed further, was his analysis of the relationship between the scope of authority of the Security Council in peacekeeping operations and the right of the United States to use defensive force when its forces are attacked. Professor Kirgis discussed the use of a balancing test of the relative advantages of U.S. or U.N. action in particular situations. Professor Sohn emphasized the utility of examining the use of avenues other than the Security Council to achieve the maintenance of peace.

III. VIEWS ON THE PRESENT AND PROSPECTIVE ROLES OF THE SECURITY COUNCIL IN THE MAINTENANCE AND RESTORATION OF PEACE

Prior to the Colloquium, several questions were sent to the speakers for their consideration. They consisted of the following:

- A. What is the utility of economic and other sanctions not involving the use of force by the Security Council? What are the limits of the utility of sanctions short of the use of force?
- B. Can the Security Council, as presently constituted and on the basis of its present powers, deal effectively with existing and future situations in which the maintenance and the restoration of peace are at issue? Should there be changes in the Security Council's substantive powers and structure?
- C. What are the circumstances that justify the use of force in the maintenance and restoration of peace? Do they include those set out below and does the Charter require modification to bring response to these types of activities?
 1. aggression or the threat of the aggressive use of force by one or more states against another state or states;
 2. the outbreak or threat of outbreak of armed hostilities between two or more states;
 3. gross and systematic wide-spread violations of human rights of the majority or of a minority within an existing state (including attempts at genocide);

4. internal armed conflict in a state, stemming from claims for self-determination;
5. the disintegration of a state because of armed conflict;
6. other circumstances such as economic aggression.

D. What are the criteria that should determine the threshold for the use of force by U.N. sanctioned forces to deal with aggression or the threat of aggression or other threats to international peace?

E. To what extent is it desirable to require regional or sub-regional action for collective self-defense or for peacekeeping before initiating U.N. action? Should the United Nations be the intervenor of last resort?

F. Is there a duty of action by the United Nations in all cases of the use or threat of the use of force which threaten the peace or which result in the massive violation of human rights?

G. How should all of these operations be financed?

Several Colloquium speakers commented on the issues taken up in the questions set forth above. Ambassador Türk's comments expressed some concern that the United Nations' recent operations have involved an overly strong role for one of the major powers. He also suggested that the United Nations too often plays an overly passive role in peacekeeping operations. He criticized the over-emphasis on the role of the Security Council when other organs of the U.N. were also available. His list of suggestions for strengthening the Security Council contained particularly useful ideas, such as the limitation of the veto. Mr. Sreenivasan spoke of the United Nations' contribution in areas other than peacekeeping. Clearly expressing views held in developing countries, he defended the importance to small countries of maintaining their sovereignty, and expressed his fear that sovereignty is being eroded. Professor Rohlik gave a timely critique of the current definition of aggression and offered his own. A set of proposals for structural changes in the Security Council was proposed by Professor Kirgis.

An idea suggested by the moderator is along the lines of concrete changes to improve the effectiveness of the Security Council, as proposed by Professor Kirgis and other speakers. It was not specifically taken up during the discussion. This idea, which is tentatively set forth here, deals with the

problem faced by the Security Council when it must make a decision on a legal issue, which is part of an essentially political problem. It is true that the Secretary-General can be asked to prepare a legal opinion to be considered by the Security Council. The U.N.'s Legal Counsel will willingly prepare a legal opinion which will be duly delivered to the Security Council. The Security Council could call on the International Court of Justice for some type of accelerated Advisory Opinion on legal aspects of political matters before it, but this would be an inevitably lengthy and perilous process for the Court. A more politically effective alternative might be to constitute a committee of the Security Council. Each of the Council Member States would have a seat on this Legal Committee. Member States would be expected to send legal advisors from their foreign ministries to this Legal Committee. They would be joined by a member of the U.N. Legal Counsel's office. The Legal Committee would deal with issues of a particularly legal nature which come to the Security Council. The Committee would be a reflection of the Security Council, except that the veto could not be exercised. All votes in the Legal Committee would be taken by a 2/3 majority. The Security Council, by simple majority vote, would determine whether a matter should go to the Legal Committee. The Council could bring the matter back from the Legal Committee, if the latter did not act rapidly. The final vote on the recommendation made by the Legal Committee would be taken by the Council in accordance with its normal rules.

IV. MEANS FOR IMPLEMENTING SECURITY COUNCIL DECISIONS CONCERNING THE MAINTENANCE AND RESTORATION OF PEACE

Questions were also prepared for the speakers who were asked to focus their discussion on the means for implementing decisions of the Security Council on the maintenance and restoration of peace. These include the following:

It is recognized that decisions of the Security Council have resulted in the deployment of soldiers and others in roles ranging from unarmed observers to fully armed combat troops.

A. What insights has the experience of the United Nations in making various use of military forces to implement Security Council resolutions given those involved in the implementation of the resolutions?

B. Is the system for implementing Security Council resolutions involving the use of force, provided for in the Charter and presently in place, a viable one? How can it be made more effective?

C. Are there effective alternatives to a system in which forces are under direct U.N. command?

D. Can the use of U.N. forces or forces acting on the basis of Security Council resolutions be used to implement Council decisions dealing with concrete threats to peace arising from the proliferation of nuclear weapons or other weapons of mass destruction?

General MacInnis, the first of several speakers on the subject, discussed the dangers of mixing peacekeeping work with peace enforcement work; he strongly advocated that the two activities be kept separate. General MacInnis also provided a list of challenges in peacekeeping and explained the elements of an effective peacekeeping system. Mr. Sommereyns urged that peacekeeping should continue to be based on the principles set forth in the United Nations Charter. Further, he emphasized the importance of what he called "preventive diplomacy" and described techniques for engaging in such action. Mr. Tubman pointed out the problems of civil wars in developing countries and the difficulties with intervention. Mr. Murphy analyzed the distinctions between peacekeeping, peace enforcement, and peace building, a process which was conceptualized in the Secretary-General's *Agenda for Peace*.

V. CONCLUSIONS

This short description of some of the important ideas set forth in the various contributions to the Colloquium is meant to give the reader an idea of the broad spectrum of issues and problems with which the international community is confronted both in continuing to use the present structure and competence of the Security Council and in making reforms. While the General Assembly and other organs of the United Nations and of regional and national institutions are mentioned as useful in the struggle to maintain world peace, it is clear that the Security Council will continue to dominate the work done in the various aspects of this essential activity. Rendering the Security Council more effective in carrying out its tasks requires the continuing exploration of changes in its structure and authority to achieve its goals under the United Nations Charter.

