

One of the disadvantages of speaking at the end of a panel is not just that the time runs out on you, but that all of your best lines have already been taken. Raymond Sommereyans began his comments by noting that perhaps it was hopeful to think that the U.N. would even exist after the year 2000. With all the budget cuts going on here in the United States, and with the debate that is now raging about the role of the United States in world affairs generally, let alone in U.N. affairs, I sometimes wonder if the Department of State will exist after the year 2000!

On a more serious note, the reason why I couldn't be here yesterday to participate in the discussion you had on U.S. attitudes towards the United Nations was in part because I had an engagement at the White House at which Tony Lake, the National Security Advisor, made some comments to a group of foreign affairs specialists about the United States and its role in the world. He regarded the continued support of the United States for the United Nations as absolutely critical, including the use of U.S. forces to support U.N. operations around the world. Conferences like this are important for thinking through such issues about the U.N. and about the United States' role in the U.N.

My comments will be brief. I recently published an article in the *Columbia Journal of International Law*<sup>1</sup> which elaborates considerably on what I will say here today. I intend to address four basic questions about implementation of Security Council decisions concerning international peace and security. First, what is in fact being done by the Security Council? Second, who is doing it? Third, what principles are operating in the process of doing it? Finally, does the Charter provide an adequate structure for Security Council action?

*What is the Security Council doing?* I think one clear conclusion from the contributions of this panel is that there is a key distinction between a "peacekeeping" operation and a "peace enforcement" or "peace building" or "peacemaking" operation.

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\* Office of the Legal Adviser, Department of State. The views expressed herein are those of the speaker and do not necessarily reflect the views of the U.S. Government.

<sup>1</sup> Sean D. Murphy, *The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201 (1994).

“Peacekeeping,” at least in the traditional sense, is the deployment of forces with consent on the part of the host state(s), often using lightly armed forces and usually under a mandate that allows those forces to defend themselves, but that precludes them from becoming involved in the underlying conflict. Peacekeeping operations have assisted in monitoring cease fires within and along borders, in repatriating refugees, in monitoring elections, and other measures that help defuse armed conflict. There have been several peacekeeping successes, most recently in Libya, Mozambique, Cambodia, and El Salvador. Indeed, peacekeeping operations are a major success story of the United Nations, which should be kept in mind when thinking about how the U.N. is doing.

Peacekeeping operations, however, must be distinguished from much more aggressive U.N. deployments of forces, which I will refer to as “peace enforcing” operations. Peace enforcing operations are not predicated on the consent of the host state(s) and, indeed, have it within their mandate to engage in coercive measures against warring factions. It is with these operations that we have seen the most difficulties of late. In analyzing these difficulties, it is useful to break out some very different objectives of the operations. For instance, you can have an enforcement of economic sanctions as one type of peace enforcing operation. That is, once economic sanctions have been imposed on a state, you might deploy armed forces (often naval) to intercept goods and products from going to or from that state. Since these forces are usually stationed outside the target state, this is perhaps the least intrusive of peace enforcing activities. You can have “no fly zones”—we saw that first in Iraq, we’ve also seen it in Bosnia—in which civilian and military air traffic is prevented from flying within, as well as going in and out, of the targeted state. Again, this is a little bit more intrusive, but it is still something that many states might be willing to participate in with their air forces as a part of a U.N. operation since it can involve a minimal amount of risks to their forces.

Next, you can have intervention by ground forces whose objective is to prevent human rights violations or deprivations. This might consist of an effort to open up food lines and protect humanitarian aid workers, which General MacInnis referred to at some length, or of an effort to create safe havens—again, first seen in Iraq, also seen in Rwanda. With respect to the latter, local forces are essentially told, “stay out of this zone; so long as you do so, we will not engage you.” In Bosnia, you had something along those lines with the various safe areas that were set up. Such intervention may also consist of an effort to destroy local weapons. This was a major issue

in Somalia. My interpretation of that intervention slightly differs from those who say that the U.S. did not engage in destruction of weapons in its initial operations. In fact, the U.S. did so to a certain extent. Only after the U.N. took over the operation in Somalia under UNOSOM II did that particular activity create considerable tension with the local warlords, particularly with Mohammed Aideed, prompting greater difficulty in maintaining the operation.

Finally, you can have a peace enforcing operation whose objective is the engagement of aggressive forces. We see this less; Iraq is really the only example in recent history.

Now, where you ultimately go with those various types of peace enforcing operations can vary. It may include "nation building," which we have also talked a bit about today, and that, of course, can raise a number of very difficult issues for a U.N. operation. So that, in a very broad brush stroke, is my perception of what is being done.

*Who is doing it?* Peacekeeping operations typically involve a number of different states contributing forces to a U.N. commanded operation. There are various reasons why states contribute those forces. During the Cold War, for the most part, the major powers did not contribute forces. It was thought that their involvement would complicate rather than assist the effort to defuse armed conflict. Since the end of the Cold War, however, we are seeing U.S., Russian, and other forces participating in these peacekeeping operations. Some countries do it out of a sense of duty and belief that it is something they want to participate in. For others there is a financial aspect to it. By participating in these forces, each person is paid a certain amount (or his or her government is paid a certain amount) of money per month, which can be very substantial. Having a wide range of states involved in the operation has advantages, but also presents considerable logistical difficulties in organizing those forces.

For peace enforcing operations, the states involved are a bit narrower in scope. The major powers tend to be involved more in those operations. In situations such as Haiti or Rwanda, while there is notionally a coalition operating, in fact it is dominated by a major power.

The original idea in the Charter under Chapter VII for the deployment of peace enforcing forces involved states making forces available to the U.N. through agreements negotiated pursuant to Article 43. That approach still has not come to pass. If you were to ask why that is—why do we have to do this just on an ad hoc basis—I suppose you would want to look at the motivations of the different states that contribute these forces. Powerful

states presumably see it in their interests to continue as we currently are. If they can be involved in deployments of these peace enforcement operations through using their own forces, within their own control, why should they want to give that up to the U.N. and have a U.N. commanded operation? One reason might be to spread the cost of the operation to all U.N. members. But in the Iraq context, the United States basically went around with a tin cup and collected a lot of money from other countries, particularly Japan and Saudi Arabia, which ended up funding a good part of the cost incurred by the United States in the operation. So, maybe you don't need Article 43 arrangements to spread the costs.

Efficiency might be another reason for pursuing Article 43 arrangements, but when you look at the ability of the U.N. to conduct these sorts of major peace enforcing deployments, it is pretty clear that the U.N. is not really equipped logistically to handle it. Some of the major difficulties experienced in Somalia concerned how to integrate forces with different levels of training, different types of equipment and supplies, and different languages. Simply concluding Article 43 arrangements will not overcome those hurdles. Efficiency might instead call for peace enforcing operations where you rely predominantly on an already existing, integrated national force, supported as appropriate by forces from other states.

Such an approach is what we are seeing in recent peace enforcing operations. Iraq is the prime example of that, but you can also point to Somalia, Rwanda, and Haiti. Rather than deploy forces under U.N. command, the U.N. essentially authorizes individual states to intervene. There might be some advantage in having the U.N. command such a force, in terms of credibility and things of that sort, but I think there is also an advantage in not having the U.N. as the primary organizer or deployer of these forces. It allows U.N. officials to sit on the sidelines at least for a certain period and act as more of an impartial, disinterested mediator between the intervening forces and the relevant local factions. There is an advantage in the U.N. not being drawn in at the "heavy lifting" stage so that it can then play a meaningful role once factions have been disarmed and separated.

*What are the principles that are operating in these sorts of operations?* On the peacekeeping side, I think the relevant principles were sufficiently discussed today—the idea of consent, lightly armed forces, and impartiality.

What about on the peace enforcing side? I think that if you analyze the various incidents of intervention that have gone on—Iraq, Somalia, Liberia, Haiti, Rwanda, Bosnia—I think you can discern certain principles that are

operating. Whether these principles will govern future interventions, I do not know, but let me just run through them.

First, there seems to be a sense that you should only be deploying force after nonforceable actions of some type have been taken, such as trying to encourage a resolution of the dispute through diplomacy or the imposition of economic sanctions. Is that necessarily good? In the case of Haiti, was it a good idea to impose comprehensive economic sanctions on the poorest country in the Western Hemisphere for three years before actually intervening? One might debate that point. But in any event, that does seem to be what is happening.

Second, it seems to be accepted that you should only use force that is necessary and proportionate to end the threat to international peace and security. In situations where there is a particularly egregious threat, you will likely see more intrusive steps taken than in situations where there is less of a threat perceived.

The third general principle seems to be that you should withdraw the forces as soon as possible. It is interesting to think about this principle because it is not necessarily driven by international community expectations. In some instances, like Rwanda, the intervening force (in that case, France) for domestic political reasons wanted to limit the amount of time it would be in the target state. In any event, there seems to be a sense that these forces should be going in and getting out rather quickly or, in the minimum, transferring the operation to the United Nations.

Fourth, it seems to be accepted that the intervention should preserve the territorial boundaries of the target state. Many of these interventions have involved conflicts between ethnic and nationalistic groups. You might conceivably carve up a country to resolve the underlying conflict. Yet across the board this has not been the case. The idea has been to try to preserve the state intact, if possible.

Let me suggest one principle that I do not think is operating. You might have thought there would be a principle calling for the disinterestedness of any intervening state. That is, you might have thought the international community would only favor interventions by states with the purest of motives, and thus would not favor a country like the U.S. going into Haiti, or a country like France going into Rwanda, because of its prior history with respect to that state. Well, that is not what is happening. One reason why that is not happening is that it is actually very difficult to get states to undertake these kinds of interventions. In many instances, now and in the future, it may be the case that the state which has the greatest historical

connection, and perhaps is the least disinterested, is the one that you would have to expect to spearhead the intervention, for better or worse.

*Does the Charter provide an adequate structure for these kinds of interventions?* Like any good lawyer, I guess I will answer the question no and yes. The Charter clearly does not, at least explicitly, provide a basis either for the current peacekeeping or peace enforcing operations. You can look for the word "peacekeeping" to appear somewhere in Chapters VI and VII and you will look in vain. You can also look for the idea that the Security Council can authorize a coalition of states ad hoc to do certain things. You do not see that explicitly stated either. Further, what constitutes a "threat to the peace" also is an important issue that is not spelled out in the Charter. At the Dumbarton Oaks Conference and also at the United Nations Conference in San Francisco in 1945, it was purposely decided that we did not want to try to define in any depth what was meant by concepts like "aggression" so as to leave flexibility for future incidents as they arose.

Personally, I think that is a good thing, but it does mean that the Charter is not telling us how we should act, and that is having, I think, a spillover effect in the success of the operations. An invasion by one state of another state is very different from the internal ouster of a democratically elected president. Both might be "threats to the peace," but they are very different threats to the peace. I agree with Professor Kirgis that, for the most part, the Security Council is not telling us why a particular situation is a threat to the peace. So, that is why I think that the Charter does not provide an adequate structure.

On the other hand, I would argue that, for the most part, things are working okay under the Charter. There is nothing about the language of the Charter per se that is creating the problems that we are seeing right now, and I do not think that amendment of the Charter will assist in resolving those problems. Instead, I think that we need to do a lot more policy thinking about what situations truly constitute threats to the peace and how far the United Nations can and should go in nation building or creating democracy.

To that end, let me note a couple of provocative thoughts. First, there appears to be an essential link between internal political structures and transnational threats to the peace. If you look at the international conflicts of the past century, you have nondemocratic states fighting or going to war against democratic states or against other nondemocratic states, but you do not see democratic states initiating wars against democracies. Why is that? The theory seems to be that in nondemocratic states you have regime elites who are not accountable internally to anyone such that they are more willing

to resort to warfare than their counterparts in democratic states. If that is true, then it suggests that even a United Nations that is primarily interested in transnational threats to the peace should be worried about internal political structures because they may be indicative of the potential for transnational threats.

The other provocative thought is that those very same states that are more apt to resort to transnational war are the ones prone to commit internal human rights abuses. Thus, where you see a government committing widespread human rights violations you need to be worried about it resorting to transnational war. Perhaps this gives the international community some right to take steps against that government, even where the conflict is purely internal.

I will finish by saying a couple of things about Somalia, where we just had the final withdrawal of foreign forces in the past few days. Somalia been held up as some sort of failure by the United Nations for which we should be rethinking all of our future U.N. activities. My view is that Somalia was not a failure. It is true that in conducting the operation, soldiers were killed. For the United States, there were thirty servicemen killed; there were also many soldiers killed from other states as well. There was a lot of money spent—somewhere between \$2 and \$3 billion, depending on how you count it. But I think that we have to keep in mind that in 1992, when there was widespread violence and famine and disease flourishing in Somalia, upwards of 300,000 Somalis died. Had there not been the intervention in December of 1992, you might have seen somewhere in the neighborhood of 250,000 Somalis die in 1993. Today, Mogadishu continues to have considerable violence. Yet, in 1994 Somalia was actually an exporter of livestock and fruit and was able to feed itself. So I think that quite a bit of good was generated by the intervention. Mistakes were made, mistakes from which we should learn for future interventions, but I do not think we should point to Somalia as a wholesale example of failure on the part of the United Nations.

