SYMPOSIUM

THE PROSPECTIVE ROLE OF THE UNITED NATIONS IN DEALING WITH THE INTERNATIONAL USE OF FORCE IN THE POST-COLD WAR PERIOD: An Analysis in Light of the Persian Gulf Crisis
University of Georgia School of Law March 1-2, 1991

MARCH 1

DAVID GAPP: Good afternoon. I would like to welcome all of you here to the University of Georgia School of Law. On behalf of the Georgia Society of International and Comparative Law it is a great pleasure to be able to open this conference this afternoon. I would like to make several acknowledgements. First, this conference is possible because of funding that we have received from the Ford Foundation. Secondly, it was due to great efforts from both Professor Wilner and Professor Sohn who helped us initially in formulating the focus of this conference. And four students in particular: Bill Roebuck, Christopher Sabec, Michael Thomerson, and Alan Creighton. They put a great deal of time and effort into this and I would like to thank them and all of the other students and members of the Society who helped out to make this conference possible. We are going to have presentations from the first panelists now and Professor Wilner, who is the advisor of the Georgia Society of International and Comparative Law will be moderating the panels. We will be starting with Mr. Rusk. At this time I would like to turn the program over to Professor Wilner.

PROFESSOR WILNER: Thank you very much Mr. Gappa. My role this afternoon will be that of introducing one great expert after the other. I want to begin by thanking Mr. Gappa and his colleagues for this conference. It is they who have been the heart and soul of this and who ought to receive the credit for the excellent organization, their steadfastness in insisting that the participants come to Athens, and that they have arrived. The efficiency with which they have put everything together has made it so easy for us. The idea of the conference was not merely to talk about one specific problem, although that problem as a case example is certainly timely, namely the crisis
in the Persian Gulf—but to talk in more general terms of the manner in which the United Nations deals with the problem of aggression and the necessary use of force to deal with that sort of problem. We have of course expanded that to look at the powers of the various organs of the United Nations beyond the use of force merely in response to aggression. You will see that unfolding as the meeting continues.

Now, it is my great honor to introduce a colleague whom it has been my privilege to follow over a long number of years here at the University of Georgia Law School. He is an inspiration for all of us and has been the single factor of greatest importance in making our international law program viable here at the University of Georgia.

Professor Dean Rusk is the Samuel H. Sibley Professor of International Law. He has in the past held very high offices. Obviously we know about his most distinguished career from the books that have been published about him recently. He was Secretary of State for eight years and before that had a distinguished public career. We are very fortunate to have Professor Rusk give us his wisdom on the very basic issue of the international peace with respect to the international organization with which he has been connected since its inception. Professor Rusk —

Introductory Remarks

PROFESSOR RUSK: Thank you very much, Mr. Chairman, and Ladies and Gentlemen. Let me add a personal word of welcome to those of you who are attending this conference. I shall be very brief.

In January 1947, then Secretary of State George Marshall asked me to leave the post of Personal Assistant to the Secretary of War in the Pentagon and cross the Potomac River to assume responsibility for the United Nations Affairs in the State Department. The office that was responsible for it was then called Special Political Affairs, because during the war they wanted some sort of neutral name for it. It was soon changed to the Bureau of United Nations Affairs. I was the immediate successor to Alger Hiss and for those of you who remember the later story of Alger Hiss let me just say that when I took charge of this office, I had heard rumors in the Pentagon about Alger Hiss and so I asked the security office of the State Department to give me a run down on the members of that Bureau—227 of them—from a security and loyalty point of view. And they all checked out in tip top shape and no one of them ever got into any difficulty in that subject later on. So whatever the story of Alger Hiss was,
least he did not cram that part of the State Department with questionable characters. That has always been a matter of interest to me.

My role as director of the Office of the United Nations Affairs soon became first Assistant Secretary of the United Nations Affairs. At that time there were three of us—three Assistant Secretaries. Today there are more than twenty officers of the State Department who hold the rank or the title of Assistant Secretary of State. There is a tendency in government for constant inflation of titles. I went to a meeting in Ardenhouse before I became Secretary of State. The various characters sat talking about Latin American relations. And they were very insistent that the Assistant Secretary for Latin America be promoted to Under-Secretary of State for Latin America, to underline the special significance they attached to relations in this hemisphere. Well the effect of that would be that every other Assistant Secretary of State would insist upon becoming an Under-Secretary of State and there we go. One distinguished retired American diplomat protested this constant inflation of characters and he pointed out that the term "Madam" began as a form of address for a queen, and that it has deteriorated pretty badly since then.

But I was present for the impact of the early stages of the Cold War on the promises and hopes that were attached to the United Nations Charter. I think we ought to understand as Americans something about the origins of the Cold War—not everyone will agree with me on this. But immediately after V-J Day, the United States demobilized almost completely and almost overnight. By the summer of 1946 we did not have in our Army a single division, or in the Air Force a single wing, that was really ready for combat. The ships of our Navy were being put into mothballs as fast as we could find berths for them, and those that remained afloat were being manned by skeleton crews. Our defense budget for three fiscal years came down to a little over $11 billion, seeking a target of $10 billion. We were, in practical effect, disarmed. Well, Joseph Stalin sat over there in Moscow and looked out across the West and saw the armed forces melting away. So what did he do? He demanded two eastern provinces of Turkey. He supported the guerrillas going after Greece. He had a hand in the Communist coup d'etat in Czechoslovakia. He blockaded Berlin. He gave the green light to the North Koreans to go after South Korea. He walked out of the Paris meeting of European governments to consider their response to the invitation to the Marshall Plan. He broke up the negotiations with the United States for a $1 billion loan in the postwar period. In other words, he embarked upon a series of adventures that literally began the Cold War. The result
was that he produced the Marshall Plan, he produced NATO, and he produced the policy of containment. Well, that had an immediate effect upon the theory of the United Nations Charter, because the U.N. Charter was based upon the principle that the five permanent members of Security Council would have to act together if the Security Council was to perform its primarily function (which was to maintain international peace and security).

There began a series of Russian vetoes in the Security Council which paralyzed the Security Council on important matters, and it produced a good deal of frustration with the United Nations because it could not live up to the promises of its Charter. There was one incident previous to the present situation in which the United Nations was able to act, but that was largely accidental in character, because when the North Koreans attacked South Korea the Russian representative had recently walked out of the Security Council over the issue of the Chinese seat. Well, I asked Ambassador Dobrynin to find out for me why it was that the Russian Ambassador did not return to the Security Council in order to veto those resolutions on Korea, and he went to Moscow on a visit and came back and told me that he had learned that Joseph Stalin had personally telephoned his representative at the United Nations and had instructed him not to return to the Security Council to handle the Korean question.

Now that was done before President Truman made his decision to introduce American troops. So we don’t know what Joseph Stalin would have done had he made that decision after the American troops appeared on the battle field. But we have had a long chain of Soviet vetoes in the Security Council, both on Chapter 6 and Chapter 7 issues.

Chapter 6, you will recall, deals with the peaceful settlement of disputes and Chapter 7 involves the enforcement powers of the Security Council. The United States itself had recommended that we eliminate the veto on the Chapter 6 questions, but the Soviets would have none of it. I once chided Mr. Gromyko, who at the time was the Soviet representative at the United Nations, about casting so many vetoes. And he simply pointed his finger in my face and said, “There will come a time when you Americans will value the veto as much as we do.” And there was a certain prophetic ring to that as history will record.

But the Security Council is given by the Charter primary responsibilities for the maintenance of international peace and security. The United States has taken the word “primary” literally and assigns certain responsibilities to the General Assembly in the event the Se-
curity Council is unable to act because of a veto. The Soviets have largely taken the view that the Security Council has the sole responsibility for maintaining international peace and security and that the General Assembly should not act in the absence of the Security Council decision. Well, there has been a good deal of controversy over that but we have seen that the Soviet Union is not really willing to accept the changes in the Charter except for the membership in the Security Council, which was moved from eleven to fifteen, and membership in the Economic and Social Council. Otherwise the Charter is subject to veto as far as amendment is concerned.

Now look at the present situation, where the Soviet Union and China joined with Britain, France and the United States in passing twelve resolutions affecting Kuwait. That was a major event in the history of the United Nations, the first time since Korea that the United Nations had been able to act on an issue of aggression. One would have to say that it became possible because of the personal policy of Mr. Gorbachev. We have a great stake in the fate of Mr. Gorbachev in the Soviet Union. He faces very great problems over there. He has an economic system that is barely working. He has a military establishment to deal with. He has the problem of the remnants of the Communist party which is deeply entrenched throughout the country. He has the intrinsical tendencies of the republics of the Soviet Union to declare their independence or something near independence. And so his future is in considerable jeopardy. But we have a stake in the policies announced by Gorbachev and his Prime Minister at the United Nations in talking about in effect a new world order. It may be that if there is a change in the Soviet Union it will be a reversal of that attempt by Gorbachev and we will return once again to the impact of the Cold War upon the operations of the United Nations. I for one hope that that will not occur and that we will be able to work with the Soviet Union on other issues just as we have on the Persian Gulf. I have regretted that President Bush did not take more time to find out whether it was possible to reconcile the approach of the Soviet Union with the approach of the United States before we took the last couple of steps. Nevertheless, the Soviet leadership has apparently responded with a certain maturity of judgment and has not broken off relationships in a heat because of the differences that emerged between Gorbachev and Bush, although this relationship has been described as “fragile” by Soviet leaders.

Now, the ability of the Security Council to operate does depend upon the ability of the five permanent members to agree. The five permanent members are in effect the five victors of World War II,
although we would have to say that the status of China and France as victors of World War II is somewhat shaky, but nevertheless those five have the veto. The United Nations in the peacekeeping field, therefore, is dependent upon the ability to obtain agreements among those five permanent members and it has been very difficult to do so during this Cold War period. Whether that is changed fundamentally depends upon attitudes in Washington and Moscow. It is a little premature to say that those changes that have occurred thus far have been fundamental in character, that they will endure, but we have to hope that that will be the case.

Now, the United States does not have a clean slate in using the United Nations. We really messed up the Law of the Sea negotiations, for example. We denied the jurisdiction of the International Court of Justice in the Nicaraguan case. We have done various things during the Reagan Administration to assure a certain contempt for the United Nations and international law. But we can repair that very quickly with a former representative of the United Nations as president. So my hunch is that the ability of the United Nations to carry out an effective and functioning peacekeeping role is still up for grabs, it is still to be determined, and it will be determined largely by agreement between Washington and Moscow. The uncertainties in both capitols on that subject will give us a result as to whether the United Nations Security Council can in fact do the job that it was anticipated in the Charter that it should do. Thank you, Mr. Chairman.

Panel I: Institutional Powers of United Nations Organs

Professor Wilner: Thank you very much, Professor Rusk, for locating the entire set of issues and your perspective.

Our first panel will concentrate on the powers of the political organs of the United Nations. The first, obviously, in matters of the maintenance of peace is the Security Council. And so we will proceed. Our speaker, who has very kindly come from a very busy schedule indeed at this time and who has been very kind in leaving New York when the United Nations Security Council has been so occupied is, of course, Ambassador Phillipppe Kirsch, who is currently the Deputy Permanent Representative of Canada to the U.N. It is a position he has occupied since the summer of 1988. During the recent term that Canada had on the Security Council (1989 to the end of 1990), he was the Deputy Representative to the Security Council. He was—and this is of greatest importance to our discussion—the Vice Chairman
of the Security Council Committee on Sanctions against Iraq and Chairman of the Subcommittee on States Confronted with Special Economic Problems as a result of these sanctions. Ambassador Kirsch is the Chairman of the U.N. Special Committee on Peacekeeping Operations working group. He has spent his career in the Department of External Affairs, has had postings in various places and has in the past been posted to the Canadian Mission from 1977 to 1981. He has devoted a significant part of his career to international law and has been a member of the Quebec Bar since 1970, is a graduate of the University of Montreal and was appointed Queen’s Counsel in 1988. At External Affairs, he has been the Director of Legal Operations Division, Ambassador and Agent from Canada in an international arbitration of fisheries, and represented Canada in the Sixth Committee of the General Assembly of which he was the Chairman in 1982. He was in 1988 the President of the I.K.A.O. Conference for the Suppression of Unlawful Acts of Violence at Airports, Chairman of the Subcommittee of the IMO Conference of the Suppression of Unlawful Acts Against the Treaty of Maritime Navigation. He has written extensively on various subjects relating to international law and to the United Nations. He comes to us with an expertise in a large number of areas, but with a particular and very recent expertise in the aspects of the powers of the Security Council where in fact he practiced U.N. law. Ambassador Kirsch . . .

The Powers of the Security Council

Ambassador Kirsch: Thank you very much. Mr. Rusk’s presentation has made mine easier, not only by making clear that the Security Council is primarily responsible for the maintenance of international peace and security which I assume you knew, but also by pointing to some elements that are essential to understand how the Council functions or does not function, and I am thinking in particular of the cooperation among its members, and particularly the permanent members, and also because it is impossible to understand how the Council has evolved, how its powers originally were supposed to be different, really, from what they have become because of the Cold War. It is impossible to understand the Council without making reference to that. You know, of course, that the Council acts on behalf of all the members of the United Nations in carrying out these responsibilities, and that its decisions are binding on all its members. Not all members necessarily comply by the decisions, but they are binding.
Simply put, the role of the Council is to bring about the peaceful settlement of disputes and to take appropriate actions in cases where the peace has been threatened, or breached, and where acts of aggression have occurred. The way I would like to approach the subject of the powers of the Council is to deal first of all with what are the powers of the Council as described in the Charter, then the powers as they have evolved in practice, and the limits of the powers to the Council, and its potential. This is a broad subject and I think I would prefer to concentrate on certain topics that are particularly relevant today.

I will not deal with certain issues that have become really marginal, such as the connection with the trusteeship council and its role in disarmament, and I will not deal either with the question of regional arrangements which will be dealt with much more competently by my neighbor here, Mr. Caminos.

The general powers of the Council are described in Article 24 of the Charter, which essentially I have summarized, and then in certain chapters. I would like to concentrate on two chapters in particular, lightly on Chapter 6 which deals with the peaceful settlement of disputes and more extensively on Chapter 7 which deals with enforcement action.

The principal of Chapter 6 on peaceful settlement of disputes is that the onus is on states to resolve their own problems among themselves or through regional arrangements by peaceful means, but the Council has a role if it deems it necessary. It can call the parties to settle and it can also investigate disputes and situations in order to determine threats to international peace and security and it can make recommendations for appropriate procedures or methods of settlement. This is really all I am going to say on Chapter 6 because Chapter 6, which is almost never invoked, is used all the time in virtually all resolutions in which the Council calls upon the parties to do this or that; there is an implicit reference to Chapter 6.

Now Chapter 7 forms the heart of the Security Council machinery and powers as seen by the drafters of the Charter. The Council was granted strong and centralized powers to deal with threats to and breaches of peace and acts of aggression. Chapter 7 is much more specific than Chapter 6 as to what these powers are. The main elements are, I think, very familiar now. The Council may call upon the parties concerned to comply with provisional measures, it may use measures not involving the use of armed forces, including of course economic sanctions as was done in the case of Iraq, and then if these measures
are deemed to be inadequate, it may authorize action as may be necessary involving the use of armed force.

These are roughly the powers of the Council under Chapter 7. But I would like to mention other provisions which were supposed to give teeth to these powers and which are particularly relevant today because they have not been used. One is that all member states of the U.N. were supposed to make available to the Council armed forces, assistance, and facilities. And in another, a national air force is contingent also for enforcement action purposes. So there could be, essentially, a U.N. army.

And then there would be a Military Staff Committee that would advise and assist the Council on military requirements and the deployment and command of armed forces, and it would also be responsible under the Council for the strategic direction of armed forces. So it was a centralized system, and as Mr. Rusk mentioned, it assumed that the members in the Council would be able to agree on the development and use of the mechanisms provided for its use in the Charter. And cooperation among the permanent members was, of course, essential because as was mentioned by Mr. Rusk, all the permanent members have a veto on any substantive decision.

What happened in practice, until recently, was not very much of what was intended, largely because of the Cold War. Limited sanctions were applied in the case of Rhodesia and South Africa, but they were nothing compared to what was done in the case of Iraq. Compliance with the sanctions in the case of Iraq was rather good, but irrespective of what effect they had on Iraq’s ability to pursue the war, the economic impact of those sanctions on other states was enormous. And this, I think, was one of the discoveries of this episode, what a double-edged sword sanctions in fact are. There was a provision in the Charter aimed at encouraging provision of assistance to states which have suffered particular economic consequences to which Professor Wilner referred, and this was done. This was acted upon, but between a decision in principal and actual delivery of assistance, there has been and there continues to be quite a gap.

As I said before, there was supposed to be a U.N. army at the disposal of the Council. Well, this army never materialized. The states did not put armed forces at the disposal of the Council because of lack of agreement on modalities. The permanent members had continued and prolonged disagreements in a variety of areas and exercised their vetoes. And until recently, the only military operation authorized by the Council as Mr. Rusk mentioned was Korea, but this is something that is unlikely ever to repeat itself. I just cannot imagine a permanent
member being absent from the Council in circumstances like that today.

What are the consequences of those changes on the way the system functions? I see three. One is that simply for political reasons, the powers of enforcement of the Council were simply not used. They were out of the question because of the fundamental opposition between the super powers. Even Korea was not technically an enforcement action. Even now this is probably not going to be the majority of the action taken by the Council.

The second consequence is the mechanisms that were supposed to be used as far as enforcement were not in place when the time came to use them, like in the case of the Gulf crisis. So the Security Council could not produce an armed force—a U.N. armed force did not exist—and had to use a non-U.N. force operating under its authority. Now this is perfectly permissible, for there is an article which provides for that, but it is also clearly not exactly the way the founders of the Charter were envisioning the functioning of the Council.

This also raised other issues. It raises a question as to the degree to which the Security Council has remained in control of the operation once launched, in the case of the Gulf, but again this is not really my subject.

So as a first consequence, the enforcement powers were not used for a long time and as the second consequence, when they were used, they were used in a different way from that which was anticipated initially. The third consequence was that the Council then had to develop something to deal with threats to peace and security, and in particular, acts of aggression which were short of enforcement action. This is how the peacekeeping operations were born.

Essentially they were holding actions, the peacekeepers were interposed between belligerents out of necessity, a practical response to a problem requiring action. They have been used to supervise and have maintained cease fires to assist in troop withdrawals and to provide a buffer between opposing forces, but they are also a flexible instrument. And the last point I would make on this, a second point I would make on this, is that as the cooperation among the major powers improved and increased, the peacekeeping operations recently were almost always put into a context, a lot of other things were done by the Council, aimed at ensuring a lasting peace with various measures taken of a political nature, of an economic nature, of a humanitarian nature such as refugees, and all that.

To differentiate, in practice, the peacekeeping operations from enforcement actions, I think, only one point needs to be made: that is
that although there was never a paper written as to what exactly they were and what they should do because of fundamental opposition between the super powers for a long time, there was eventually an informal agreement as to the conditions that would allow peacekeeping operations to be established and one of the conditions was that it could be established only through the consent of the parties to the conflict in question, which by definition is not the case of enforcement action.

The result of peacekeeping missions have been generally very good. Some mandates have not been achieved; Lebanon and Cyprus are two cases in point. But even then they have brought about a reduced level of conflict, certainly, and they have also provided a lot of humanitarian assistance and other services which would not be available otherwise.

In considering the limit of the role of the Council, I think you have to keep in mind two factors: one, that the Council can be involved in an issue only if there is some connection with the maintenance of peace and security; and two, that other U.N. bodies, and most particularly the General Assembly and its subsidiary organs, have defined functions which are not supposed to be infringed upon, either. I am sure Professor Sohn will talk about this also.

Generally speaking, there has been a great deal of flexibility on the part of the members of the Council in interpreting its functions. It has been seen particularly clearly in the case for example of Namibia where the Council took responsibility for a whole set of issues including military deployment, police elections, and all that. In other cases, and you begin there to see some tension, for example, the case of Central America, which was also a very diversified operation and probably the most interesting in terms of what it has done, you can see that the Council was only responsible for part of it. Some other things were done by the General Assembly and/or by the Secretary General.

Before saying why that is the case, I would like to mention the fact that a couple of years ago and last year there were attempts to bring certain issues into the Council which were not really a part of its traditional mandate. The first two cases were terrorism, two resolutions on terrorism a couple of years ago, which were adopted without major difficulty. But then a delegation, the United Kingdom, tried the following year, having been successful the first time, to put the question of drug trafficking as an issue that the Council should deal with, and this failed. This failed because theoretically the members of the Council consider this issue as being within the mandate of the General Assembly, that is there is no obvious connection with peace
and security. But in reality I think the issue is quite different. The issue is that the Security Council is small in membership and developed States have proportionate representation in the Council, much bigger proportionately than anywhere else, so there are a number of countries, particularly Third World countries, which are nervous at the idea of seeing the mandate of the Council span beyond traditional questions. And there have been other cases also. Some attempt to introduce elections in Haiti into the Council, which failed also, and human rights issues which were never discussed publicly, nor was the Haiti question, and human rights issues in Rumania before the change in government there and in China. Beyond the reasons that I have already given for why the Council is unable to deal with certain issues, there is another one which is that many states remain extremely sensitive to the possibility that not only the Council but the U.N. in general might begin to circumvent the last, but not the least, of the principals of the Charter—that is the prohibition on the U.N. generally to intervene in matters that are essentially within the domestic jurisdiction of any state.

The potential of the Council can be dealt with quickly. Enforcement action is, I think, continuing to be an exceptional situation for a variety of reasons. You need to have a very clear case of aggression. You need to have a predisposition of the major powers to cooperate. You also need a situation, obviously, where one of the major powers does not consider the aggressor as a client-state, but you also need to have a situation of such gravity that the major powers' interests are sufficiently affected to justify the major investment of resources and the major political and economic disruption and risks that an enforcement action entails. More optimistically, it is to be hoped that since this enforcement action has worked it could indeed work, it will indeed work as a deterrent for future aggressors.

My impression is that the main role of the Council is going to continue to be in peacekeeping and peacemaking, again depending on the cooperation of the super powers. I am rather optimistic about that cooperation. Even though there are difficulties, major powers all have a fairly clear interest in having a stable world, and I do not anticipate the kind of fundamental opposition that used to exist in the Council before.

Peacemaking itself will have to be defined because at this stage it is done in a variety of different ways with very different mechanisms starting with the state of a region using only the U.N. mechanism. The Central American issue is a very good example of that. You also have a very important role of the Secretary General and the major
powers, who have played a very important role, in the case, for example, of Cambodia.

The one area, and I will finish with that, that has been underdeveloped today is the question of prevention of conflict. There is growing interest in that; the General Assembly in fact adopted a declaration on this question a couple of years ago, which shows that there is a desire that the state should become more active in trying to prevent a conflict and there are all sorts of ideas also relating to how the Secretary General's role might be expanded in this area. There is now another draft of the declaration being developed on fact finding, and one of its purposes could be to try to achieve prevention of conflict. But this issue to this day is very difficult to deal with. It raises a number of complex questions ranging from the sensitivity of states to anything suggesting interference with their internal affairs, or in fact suggesting that they in fact intend to do something aggressive, which of course everyone will deny until the aggression has been committed, and it also raises questions about the capacity of the Secretary General to provide early warnings of potentially threatening situations. It raises questions about the implications of peacekeeping and the relationship of those organs of the U.N. which are so jealous of their respective prerogatives. But nevertheless this is something that should continue to be worked on because ultimately is the way that a really better world could be developed. Thank you very much.

PROFESSOR WILNER: Thank you very much, Ambassador Kirsch, for your first comments. We expect to hear from you again this afternoon.

Ambassador Kirsch indicated some of the problems and some of the issues involved in the relationships between the great political organs of the United Nations. On the one hand, the Security Council and its major principal role in the maintenance of peace and that of the General Assembly and the role, of course, of the Secretary General, whose role I am sure we will be told, has fluctuated over the decades. The speaker that we are going to hear from next is obviously one of the men in the field. This is really having the information from the horse's mouth. Professor Louis Sohn is, we are very proud to say, the Woodruff Professor of International Law at the University of Georgia School of Law. He was for some time at another law school, namely Harvard, where he was Bemis Professor of International Law. He has been the President of the American Society of International Law. He was at the San Francisco Conference at which the United Nations Charter was drafted, and has, of course, commented and contributed to the building of the United Nations system since then.
Obviously you know about his writings, and about the other honors and responsibilities that he has had over the years. Professor Sohn will discuss the role of the General Assembly and the Secretary General in the general context of inquiry. Professor Sohn...

*The Role of the General Assembly and the Secretary General*

**Professor Sohn:** Thank you, Professor Wilner. You mentioned I was at San Francisco and I thought it would be very proper to start with what happened at that conference.

One of the big fights at the Conference was about this very question. What should be the relationship between the General Assembly and the Security Council? First, we have to point out that the idea of the United Nations was supposed to be quite different from the idea of the League of Nations. In the League of Nations, we had division of power simply nonexisting. Both the Council of the League and the General Assembly of the League were of equal power. Any question of any kind could be presented to either of them. And in order to make it palatable, the rule of unanimity was applicable in both; therefore, a small power could very easily block the majority of the General Assembly and there was no problem about worrying about too much interference in domestic matters.

In the United Nations, they decided on something different. Let us divide things by subject. The Security Council was to deal only with questions of maintenance of international peace and security. The General Assembly was supposed to deal with everything else. And that else was quite a lot. At the same time it was quite clear at San Francisco, that there was a connection between those two things—between maintenance of peace and maintenance of well-being of the population of the world. As often happens when a treaty is adopted, the draftsmen of the treaty have to defend it later before the Senate of the United States when it is asked to give its consent to the ratification. The man who was in a way the mastermind behind the preparation of the United States of the Charter, Dr. Leo Pasvolsky was put on the carpet by several Senators who asked why such important powers, embracing practically everything under the sun, were given to the General Assembly? And without hesitation he replied that the General Assembly's function obviously will involve a very wide and complicated field of activity: the field of economics, social, cultural, and educational problems. So it was thought that if the General Assembly, which is the most representative body, were given the function of having primary responsibility in that vast and all
important field, it would then be the agency bringing about conditions in which the use of force as the ultimate sanction would be less and less necessary. If you have well-being around the world, and people are happy and satisfied, use of force will not be necessary. That was a very nice, simple, but perhaps not very realizable, idea.

At the same time it was thought that by having such nice agenda, the General Assembly would be satisfied with that and would not meddle in what the small Security Council would have to do about peace and security. It was argued that an emergency requires speedy action, that any use of force by the United Nations would require the support of the five powerful members of the Security Council, and that peace would be greatly endangered if some of them tried to take such action over the opposition of one of them. As a result, to prevent that, each of them was granted the right of veto of any decision that might lead to an enforcement action.

The Security Council was given primary responsibility—we are told by Ambassador Kirsch—for the maintenance of peace and security, and each decision supported by all the major powers should be binding then on all the states. While the insertion of these instructions satisfied the major powers, the smaller ones worried about something else. If one of them should be threatened by one of the big powers or one of their friends or allies, the U.N. would not be able to come to their rescue. To address that imbalance, the smaller powers, led by Australia, Belgium, Mexico, and New Zealand, made various proposals to strengthen the role of the General Assembly in situations likely to endanger international peace. To achieve this goal they started to propose a variety of amendments to the draft of the Charter which was prepared by the big powers several months before at Dumbarton Oaks in Washington in October 1944.

One of the first skirmishes occurred when it was agreed that the Security Council would make its reports to the General Assembly on measures taken by the Council to maintain international peace and security. Small powers proposed then that the General Assembly be given powers to approve or disapprove the Security Council's report. When the major powers opposed this proposal, a more moderate one was substituted which merely empowered the General Assembly to receive and consider the reports. However, in the follow-up discussions, the major powers were forced to agree that the General Assembly would be free to discuss any question relating to maintenance of international peace and security brought before it by any member of the United Nations or perhaps by the Security Council itself. And the General Assembly would be allowed to make recommendations
with regard to any such question to the state or states concerned or to the Security Council, or to both. However, as that sounded like too much to the big powers, one important restriction was imposed. The General Assembly must refer to the Security Council any questions on which action is necessary, and what the word "action" means caused later some big problems.

In addition, to avoid conflicting decisions, the General Assembly was prohibited from making any recommendations with regard to a dispute or situation as long as the dispute or situation was being dealt with by the Security Council, and at the very beginning of its session of the General Assembly, the Secretary General gives a list of somewhere around 100 issues which are the Security Council's agenda.

More vaguely, the General Assembly was authorized after some battle to discuss general principles of cooperation and the maintenance of peace and security, including the principles governing disarmament and the regulation of arms and to make recommendations with respect to such principles to the members of the Security Council, or to both. The major powers thought they had satisfied sufficiently the small ones and there would be no trouble, but to everybody's surprise, at the very end of the Conference, in the middle of June, a new issue arose. The small powers made again an attempt to broaden the General Assembly's role by asserting that the Assembly is the town meeting of the world—a very nice phrase—and must have the power to discuss and make recommendations in respect of any methods within the sphere of international relations. They claimed that the General Assembly must have an unlimited right of discussion with respect to such matters.

The Soviet delegation strongly objected to this idea and insisted that its right of discussion be limited only to matters that affected the maintenance of international peace and security and that this right should be subject to the various restrictions previously agreed upon. One problem was, of course, that the Soviet Union and all the other big states worried that the General Assembly might use this power to deal with matters which are within the domestic jurisdiction of states. That can be stopped at the Council by a veto but it cannot be stopped by a veto in the General Assembly.

The United States was unclear at the beginning as to which side it was on, but it was under strong pressure from the other countries, and there was the fact that the United States delegation had two members, Senator Vandenberg and Governor Stassen, who were very strongly for broadening the powers of the Assembly. So something had to be done.
The people at San Francisco worried that this issue might break the Conference and we might not have a Charter. So they suggested that we ought to ask Ambassador Harriman, who was then negotiating in Moscow about possible economic aid to the Soviet Union, to tell him about the crisis and impress upon Molotov the Foreign Minister the need to conclude the Conference expeditiously and that this issue was a real stumbling block because if we don’t get the Charter now, we are not going to get it later.

Molotov, however, refused to change his position and Harriman had to go over his head to Marshal Stalin, who finally overruled Molotov and ordered him to accept a compromise language allowing the Assembly to discuss and make recommendations upon any question or matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the present Charter. Of course, there is an exception—the General Assembly may not make any recommendations when the matter is being dealt with by the Security Council although it was argued that if somebody didn’t want the matter being dealt with by the Assembly, the easiest thing to do would be to put it on the agenda of the Security Council.

Reluctantly, the small powers accepted it and you could almost at that time see that we would have another big battle to the very end about the veto rights in the first place.

Now I would like to say a few words about the practice of the United Nations after the Charter came into force. One thing happened to the Security Council; the General Assembly did not hesitate to interpret broadly its powers under the Charter. One of the most important big debates related to the Palestine case (not yet solved), where the Security Council rejected the request of the General Assembly that the Council should implement the Assembly’s plan for the partition of the country. And you will remember this was divided into three parts; Israel, Arab States, and a separate small area around Jerusalem which would have become a trusteeship under the actual jurisdiction of the United Nations.

When the Council received the request, there was some debate about it, but finally the United States representative, Senator Austin, admitted that the Charter of the United Nations does not empower the Security Council to enforce a political settlement, whether it is pursuant to a recommendation of the General Assembly or of the Security Council itself. At the same time he pointed out that the Security Council is authorized to take forceful measures with respect to Palestine to remove a threat to the peace, and it can take action to prevent aggression against Palestine from outside and, he added, even a threat to international peace and security coming from inside Pa-
lestine. But then he said action by the Council would be directed solely to the maintenance of peace and not to enforcing a petition. As you know, a few months later the fighting started nevertheless in Palestine, and all the exhortations of the Council on the subject were disregarded by the belligerents. Finally the Council decided, yes, the situation in Palestine constitutes a threat to the peace, in the meaning of the Charter, and would become even a breach of the peace if they do not stop soon. And it ordered, therefore, an immediate cease-fire. At that point, finally, the parties complied and a truce came into effect three days later and the boundaries between the parties were of course quite different at that point than the original boundaries described by the General Assembly. If you look at it now so many years later, it might have been probably better if the Council had enforced the Assembly's decision.

Next, that issue arose also with respect to the case already mentioned, the Korean conflict. At the beginning the Security Council was able to recommend that the members of the United Nations furnish assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area, language quite similar to what we have done recently in Kuwait, and in particular that they should put their military forces and other assistance under a unified command to be established by the United States. However, later the Soviet Union returned to the Security Council and vetoed any further action by that body, and it was then that the General Assembly stepped in and recommended that all proper steps be taken to assure conditions of stability throughout Korea. General MacArthur immediately interpreted this resolution as authorizing the United Nations forces at his command to enter North Korea and to completely destroy the North Korean army. The People's Republic of China then intervened and it was the General Assembly that determined that China, in giving direct aid and assistance to those who were already committing an aggression in Korea by engaging in hostilities against the United Nations forces there, had itself engaged in aggression in Korea. After a further study the General Assembly recommended economic sanctions against both North Korea and China, and most member states imposed immediate and necessary restrictions in their trade with these countries and those restrictions lasted quite a number of years.

You wonder what was the basis for this action of the Assembly? The basis was the fact that a few months before the General Assembly was called to do something about this difficulty in Korea, the same session of the Assembly decided to deal directly with the issue of rights and duties with regard to maintenance of peace and security.
It adopted something called the "Uniting for Peace" Resolution. This recognized the primary responsibility of the Security Council, but asserted at the same time that if the Security Council because of the lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly has the right, and the obligation, to consider the matter immediately with a view to making appropriate recommendations to members of collective measures, and if there is a breach of the peace or act of aggression the General Assembly shall when necessary recommend the use of armed force. In addition, to facilitate the use of force by either the General Assembly or the Security Council, the Assembly recommended that each member of the United Nations maintain within its national armed forces elements so trained, organized, and equipped that they could promptly be made available in accordance with its constitutional processes for services as a United Nations unit or units.

Several states, including Canada and the Scandinavian countries, established such units, which proved to be readily available later for peacekeeping activities of the kind that Ambassador Kirsch described. It is ironic that the first use of this procedure after the Korean case occurred during the Suez crisis when Israel, retaliating against terrorist excursions from the Sinai peninsula, invaded that peninsula and was able to get all the way almost to the Suez Canal. This gave an excuse to the United Kingdom and France to send a military force to protect the Suez Canal against the possible destruction that would have affected the supply of oil to Europe—a problem of great importance recently. When Egypt asked the Security Council for assistance, France and the United Kingdom vetoed that resolution and the matter was transferred under the Uniting for Peace Resolution to the General Assembly.

As a result of another Canadian initiative, for which Mr. Pearson later got the Nobel Peace Prize, the General Assembly authorized the establishment of a United Nations Emergency Force (UNEF) to secure and supervise the cessation of hostilities and to ensure that the parties to the armistice agreement would withdraw their forces behind the armistice line, desist from raids across the armistice line, and observe scrupulously the provisions of the armistice agreements. The United Nations Emergency Force was promptly established, the French and British forces left soon thereafter, and after the United Nations agreed to place the United Nations Emergency Force on either end of the Egyptian armistice line, Israel evacuated the Sinai peninsula.
As a result of the United Nations presence, the boundary raids ceased and the Israeli border remained quiescent until a new crisis in 1967, which was provoked by the Egyptian request that the United Nations forces be withdrawn. This led to the new hostilities between Israel and several neighbors, resulting in Israeli occupation of the Gaza strip, the west bank of Jordan, Jerusalem, Golan Heights and Sinai Peninsula, a problem that we are still having with us.

Before even the second part of the Palestine issue arose, we got another crisis, the civil war in newly independent Congo, involving the introduction of the Belgian forces to protect the Belgian nationals who were remaining in the area, and the attempted secession of Katanga, the Congo's richest province. The Security Council itself was able to agree initially on the creation of the United Nations force for the Congo, known as ONUC (using its French initials) in which almost 100,000 soldiers served in rotation, not all at the same time, between 1960 and 1964, mostly coming from African countries but including as well contingents from other countries.

Later a dispute arose between the Soviet Union and the Secretary General about the role to be played by the force in the hostilities between various factions and about the Soviet assistance to one of these factions. The Soviet Union vetoed a Security Council resolution and the African countries then requested that the matter be transferred to an emergency session of the General Assembly under the Uniting for Peace Resolution.

That session of the Assembly confirmed the mandate of the Secretary General to assist the central government of the Congo in the restoration and maintenance of law and order throughout the territory of the Republic of the Congo and to safeguard its unity, territorial integrity and political independence, especially in view of the possible secession of Katanga. At the same time, it called upon all states to refrain from direct and indirect provision of arms and military personnel, except upon request of the United Nations or the Secretary General, a provision that the Soviet Union previously objected to in the Security Council.

The matter returned, however, later to the Security Council which not only confirmed most of this resolution by the General Assembly but also authorized the United Nations to take immediately all appropriate measures to prevent the recurrence of civil war in the Congo, including arrangements for cease fire, the halting of military operations, and the use of force, if necessary, in the last resort. So there was another possible use of force.
After Secretary General Hammarskjöld died in a mysterious plane crash on his way to arrange a cease-fire in the Congo, his successor U Thant was authorized by the Security Council to take vigorous action, including the use of requisite measures of force if necessary, for the immediate apprehension, detention, and deportation of all foreign military and paramilitary personnel and mercenaries of that area of the Congo. On the basis of that authorization, the United Nations force, on the pretext that the mercenary forces were interfering with its freedom of movement, took military action to restore that freedom, and in the process happened to demolish the Katangese forces and ended the Katangese secession.

One consequence of this particular venture, and also the fact that the United Nations force in the Sinai Peninsula was staying there for many years, some states including France and the Soviet Union refused to pay their share of those expenses on the grounds that the aggressors should pay for them or because the decision on the method of payment should have been taken by the Security Council, not the General Assembly. This last issue was referred to the International Court of Justice for an advisory opinion, and the Court used that occasion to pass also on the validity of the underlying General Assembly decision authorizing the establishment of the first force and broadening the mandate of the second force.

The Court pointed out that the responsibility of the Security Council for the maintenance of peace was primary but not exclusive and that the Charter makes it abundantly clear that the General Assembly also is to be concerned with international peace and security. It relied on Article 14 of the Charter that authorizes the Assembly to recommend measures for the peaceful adjustment of any situation, including those resulting from a violation of the provisions from the Charter. It was pointed out that the word "measures" implied some kind of action that showed that the functions and powers of the General Assembly were not confined to discussion and the making of recommendations.

Article 12(2) provides that the General Assembly must refer to the Security Council any question on which action is necessary, and the Court held that this phrase refers only to coercive or enforcement action. Only the Security Council can make enforcement decisions that are binding on member states, but the General Assembly can nevertheless make recommendations to states, organize peacekeeping organizations at their request, or with the consent of the states concerned. Later it was pointed out that even the decisions of the Security Council that led to the action in Korea were just recommendations, and that, therefore, if the General Assembly can make that kind of
recommendations that are not binding, and states are willing to follow them, then this is sufficient.

There are several other examples of the General Assembly initiatives in the field of peace and security but time does not permit me to discuss them. I am not able either to discuss the role of the Secretary General. However, I would like to say one word about the Assembly's power to make recommendations concerning the general principles of cooperation and the maintenance of international peace under Article 11(1). The General Assembly was able to adopt by consensus important interpretations of the Charter of the United Nations, such as a definition of aggression and the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States. That decision codified the United Nations practice with respect to the prohibition of the use of force, the duty to settle international disputes by peaceful means, and nonintervention in matters within domestic jurisdiction of states, the principle of self-determination of peoples and the principle of sovereign equality of states, and the obligation to fulfill in good faith obligations assumed by members in accordance with the present Charter.

So this little phrase in the Charter permitted a very elaborate codification of the laws of the United Nations up to that point—in 1970—and very interestingly when another issue came before the Court in the Nicaraguan case, the Court said that the provisions of the Charter plus this interpretation of them by the General Assembly in the Friendly Relations Declaration have now become customary international law binding not only on the members of the United Nations but even states not members of the United Nations and became jus cogens that prevails over everything else. So I must say that it is by now clear that the General Assembly has certain powers in the area of peace and security.

WILNER: Thank you Professor Sohn. We now have a basis for our discussion of these powers and a discussion particularly of examples which we will of course take up next. Mr. Caminos is going to continue on the issue of a regional arrangement.

Our next speaker, who will be speaking on U.N. cooperation with regional organizations with respect to the maintenance of peace, is Dr. Caminos, who is the Assistant Secretary for Legal Affairs and Legal Counsel for the Organization of American States. He has been in that office since 1984. He was Professor of Public International Law at the University of Buenos Aires, was the Director of International Organizations at the Argentine Ministry of Foreign Affairs and Legal Counsel, Argentine Ambassador to Brazil from 1981 to
1984, and then as many of you know he was the Deputy-Director of the Third U.N. Conference on the Law of the Sea from 1974 to 1981, and was a representative of Argentina to the United Nations, the OAS, and at various international conferences. He has lectured in the external program of the Hague Academy and has been involved as Director of Studies at the Hague, worked with UNITAR, and is active in a number of international organizations. Dr. Caminos is uniquely placed, of course, as legal counsel to an important regional organization and in view of his experience with the United Nations, to discuss the issue of cooperation under the Charter between the U.N. and regional organizations in the maintenance of peace.

United Nations Cooperation with Regional Organizations

AMBASSADOR CAMINOS: Thank you very much Professor Wilner. Let me begin by saying that I was also present at the San Francisco Conference in 1945, and I was a witness as a journalist to the efforts carried out by the Latin American delegation to get some place under the sun in the new Charter that was going to be adopted. They had met two months before in Mexico and adopted the Act of Tepalcatepec in 1945, and they succeeded to a certain extent in getting the so-called "Vandenberg" formula in Article 51 of the U.N. Charter regarding the right of individual and collective self-defense, which enabled them to avoid the veto of the permanent members of the Security Council that was for any sort of use of force as was included in the Dumbarton Oaks proposals.

Now the Charter of the United Nations, as all of you know, deals with the relationship between the U.N. and regional arrangements or agencies in three different chapters. Chapters 6, 7, and 8, which carries the title of Regional Arrangements, emerged from a compromise between universalism and regionalism and moreover a compromise in which, as is so often the case with compromises, there existed latent ambiguities. I will try in this brief presentation to deal with different areas of cooperation and of course of conflicts, too, between the universal organization and regional organizations. Although my analysis will focus specifically on the relationship between the Organization of American States (OAS) and the United Nations, this does not mean that I place the OAS in a sort of privileged position vis-a-vis other regional arrangements or agencies. On the contrary, most of my comments are applicable to regional organizations in general. In fact, there was a single proposal in San Francisco to make a definition of what is an international regional organization, and this proposal by
an Egyptian delegate was not accepted but he referred to different ties: cultural, economic, geographical, historical, which really formed the basis for the establishment of the real international regional organization.

Let me say a few words, first, about coordination between the United Nations and the OAS in this case, in the area of settlement disputes. Well, I will not repeat provisions in the U.N. Charter which everyone knows, but the problem arose in the OAS precisely because of the paralysis of the Security Council due to the Cold War. It was necessary to give a definite priority to the methods to settle disputes at the regional level before taking the dispute to the United Nations, to the Security Council, and this was reflected in several texts of the instruments approved by the OAS including the Charter, including the Pact of Bogata for the Peaceful Settlement of Disputes which still exists and says that members or parties to the pact should settle their disputes regionally before taking them to the Security Council—which is absurd, because if they settled the dispute, there would be no dispute to take to the Council. However, this change toward regionalism in the hemisphere is finished, because after several experiences, after claims from OAS members of their right of a direct access according with their own Charter which you know has prevalence according to Article 103 over any other treaty, then the text of the Charter of the OAS, of the Inter-American Reciprocal Assistance Treaty, Real Treaty, were changed. This new change included a paragraph providing that all these efforts that had to be made at the regional level to solve or to settle the disputes did not impair the right to take the case directly to the United Nations under Articles 33, 34, and 35 of the U.N. Charter. So, this dispute is finished, is settled, in favor I would say of the universalist approach. However, this was the result of a very difficult experience in which there were many cases, and I will not go into them because you all know about them, for instance the first one was in 1954, the Guatemala case in which the government of Guatemala had to resort to the Security Council and through different political procedures was denied both in the OAS and in the Council to hear their claim of aggression on the part of the United States. But as I said, I don't have the time to go into this.

The second area about which I would like to say a few words is the cooperation between the OAS and the United Nations for the maintenance of collective security. Regional arrangements enjoy an almost complete autonomy in the exercise of the competence of a peaceful settlement of interregional disputes. Indeed, Article 52(3) of
the Charter of the United Nations charges the Security Council with the obligation of encouraging the development of such competence. However, when we talk about collective security, this is different.

In Chapter 8, Article 53 states that no enforcement action shall be taken under regional arrangement or by regional agencies without the authorization of the Security Council. There are two exceptions to this Article, both of which are found in the same paragraph of Article 53: the right of self-defense which I have just mentioned, and the measures taken against former enemy states in the Second World War. The general principle is that coercive measures adopted by regional arrangements or agencies cannot be applied without the authorization of the Security Council.

This authorization must be given before the implementation of measures but not necessarily prior to their adoption. In other words, regional organizations may decide freely on the need to adopt coercive measures, but they must obtain the Security Council’s authorization before putting those measures into action. Of course, this competence presupposes the regional organization’s ability to examine the situation in order to determine whether there exists a threat to the peace or an act of aggression in the region.

Up to this point the regional organization may act in complete autonomy in contemplation of activities for the maintenance of international peace and security, but with the obligation of keeping the Security Council at all times fully informed of such activities pursuant to Article 54 of the Charter.

Now, as I said, all of the discussion that has been going on for several decades is or lies in the interpretation of this phrase in Article 53 which says that “no enforcement action shall be taken by regional arrangements or agencies without the authorization of the Security Council.” This question was also the subject of controversy in the first case that diplomatic and economic sanctions were adopted at the regional level against the Dominican Republic in 1960, and the Cuban case of expulsion from the OAS in 1962. So all of these problems were brought to the Security Council, especially through the states affected by this sanction. I will not go into the details of these cases that did not decide the issue, but the fact is that the sanctions were applied in both instances and, as you all know, still the government of Cuba is excluded from participating in the activities of the Organization of American States under the sanctions approved at Punta del Este by the order of consultation of foreign ministers in this meeting and this question is still in force.
The other case that was a very interesting one was the application not of sanctions of economic or diplomatic nature, but sanctions of an enforcement of the coercive nature, and that was the missile crisis in 1962 when the United States declared the quarantine around Cuba, and of course this question, as you know, led to a very tense international situation. The quarantine was confirmed by a position at the regional level of the order and consultation of foreign ministers which decided to recommend that the member states in accordance with Articles 6 and 8 of the Inter-American Treaty of Reciprocal Assistance, take all measures individually and collectively—including the use of armed force—which they may deem necessary to ensure that the government of Cuba cannot continue to receive from the senior Soviet powers military material and related supplies which may threaten the peace and security of the continent and to prevent the missiles in Cuba with offensive capabilities from ever becoming an active threat to the peace and security of the continent. The fact is that this measure was applied and later on as you all know there was an agreement between President Kennedy and Secretary Krushchev which put an end to the dispute.

Also, the other case where the use of force was applied by a regional organization was in the case of the Dominican Republic in 1965 in which the United States invaded the Dominican Republic and after that, ex post facto, the OAS at the regional level adopted a resolution which legitimized, at least at the regional level, the action taken by the government of the United States. And of course there have been in the region many other cases of the use of force, but not necessarily as a result of the position of the regional organization, rather from different acts of aggression and I would not deal with that in detail.

But the important thing is that through these experiences, the practice has developed in the sense that the measures referred to in Article 41 of the U.N. Charter, namely those that do not involve the use of force, could be applied by the regional organization. Those measures that require definitely the approval or authorization, and not ex post facto but previously, are the measures involving the use of armed force. I remember, I will recall here, the position that was supported by the United Kingdom at the time of the debate of the Dominican Republic case in 1960, not the second one in 1965. The British Representative on the Security Council said that when Article 53 refers to enforcement action, it must be contemplating the exercise of force in a manner which would not normally be legitimate for any state or group of states except under the authority of a Security Council resolution. Other pacifying actions, under regional arrangement as
listed in Chapter 7 of the Charter (we do not come into this category) have simply to be brought to the attention to the Security Council under Article 54.

Now, I would like to refer more in detail about the cooperation between the United Nations and the regional organizations; in this case the OAS, in the field of peacekeeping operations, that have been mentioned by both previous speakers.

Although you know the term peacekeeping is not found in the Charter, the concept has come to be accepted as an anti-escalation device used in the restoration of maintenance of peace. As is well known, U.N. peacekeeping operations have been used with mixed results in a variety of international conflicts. The competence of the regional organizations to carry out these peacekeeping operations within these regions derives from their relative competence to make every effort to achieve pacific settlements of local disputes or situations. Of course, these regional peacekeeping operations cannot involve enforcement actions which, under Article 53, would require U.N. Security Council authorization. A regional organization, therefore, may undertake peacekeeping operations autonomously pursuant to their own internal procedures without the prior authorization from the Security Council of the U.N. Peacekeeping operations usually involve the position of forces, groups or missions in an area of conflict, with the purpose of restoring or maintaining the peace or mitigating the deteriorization of a situation. And, as has been mentioned today, the two essential conditions to differentiate an enforcement action from a peacekeeping operation are that in the latter, forces or missions may only be stationed with the consent or at the request of the state in whose territory they will act, and second, forces should be assigned a strictly noncombatant role that is of a defensive or protective nature. Therefore, the inter-American peace force that was created in 1965 in the Dominican Republic was not, from this point of view, a peacekeeping operation because the forces attacked one of the conflicting parties in the Dominican Republic. Now, recently there has been a very interesting development which I believe has also been mentioned by Ambassador Kirsch, and this is the peacekeeping activities of the OAS and U.N. Secretaries General. This is one of the most important contributions to international organizations for the maintenance of international peace in the recent peace process in Central America. This development is unique for several reasons.

(a) All operations have been carried out with the parallel and coordinated participation of the U.N. Secretary General and the OAS Secretary General.
(b) In the case of the Secretary General of the OAS, his participation was sanctioned as part of the inherent powers recently attributed to his office. This new role is in fact a consequence of the reform of the OAS Charter which gave the Secretary General of the OAS similar powers in the hemisphere to those granted to the U.N. Secretary General under Article 99 of the U.N. Charter. This amendment effectively ended a trend whereby the Secretary General of the OAS was considered to be an administrative officer deprived of all political initiatives.

The first step in the coordination of U.N. or OAS peacekeeping in the region took place on November 18, 1986 when the Secretaries General jointly submitted a memo to the governments of the five central American States involved and to the eight governments making up the contra dora and support groups. The two officials expressed their concern over the deepening crisis and outlined the services that their respective organizations singly or jointly could render in support of consolidated peace efforts in Central America. Some of these services would require, in addition to the parties' consent, an authorization from the appropriate organs of the United Nations, or of the OAS, or of both. The fact that this document was presented jointly by the Secretaries General is significant for it highlights the potential for greater cooperation between the United Nations and regional organizations in the field of peacekeeping and collective security.

For example, the document mentions inter alia the following services, including the establishment of an appropriate presence, civil and military, for the following purposes or a combination of them: observation of wartime incidents or reduction or withdrawal of armed forces or dismantling of military bases or installations or disbandment and resettlement of regular forces. I could go on. This is a very interesting document which was not given to the public. It was only given by the two Secretaries General at the meeting they held in New York of all these representatives of the eight countries of the contra dora group and the five Central American republics.

After that, the Secretaries General of the two organizations took a very active role in the peace process in Central America. It started with the so-called Arias plan. The Arias plan was in essence that the Central American Republics decided to take the peace process into their own hands. They requested the assistance of the two Secretaries General and that led to the first international commission for verification and follow up in which both Secretaries General acted on an equal footing in every respect and they presented a report after several
days. The only difference, and I want to point out this, and this is a characteristic of a regional action in these cases, is that while the United Nations Secretary General—which is an office that has many problems—appointed representatives for this task, the Secretary General of the OAS went personally. I can tell you that he has made in the last couple of years at least twenty to thirty trips to Central America, supervising the process in every respect on a personal basis.

The Secretary General of the OAS played a very important role in the agreement of support which is very interesting because it is the first agreement between the government of Nicaragua, the constitutional government of Ortega and the Nicaraguan Resistance, and both the Cardinal of Nicaragua and the Secretary General of the OAS. For instance, the Secretary General of the OAS had to supervise the application of the general amnesty for political prisoners. This gave an increasing role to the Secretary General. The Secretary General also played a role in the Tela agreement signed in August 1989 and which created an international commission for verification and support. This Commission is known as the CR Commission. The two Secretaries General sent a letter accepting the task and explaining to the five Presidents of Central America, the terms of reference for the fulfillment of their tasks. They had to perform a series of political and diplomatic functions that they would assume directly. They would create a military body following consultation with the OAS Secretary General and the U.N. Security Council, and finally for receiving the weapons from the Contras, from Nicaraguan Resistance, and also humanitarian and development functions in Honduras and Nicaragua.

In early March 1990, the two Secretaries General agreed, through an exchange of notes, on a division of tasks within the framework of CR. Under the terms of this agreement, the U.N. would assume responsibility for immobilizing those members of the Nicaraguan resistance found outside of Nicaragua while the OAS would be responsible for immobilizing the resistance in the Nicaraguan territory. The OAS also assumed responsibility for assisting and escorting the families of the Nicaraguan Resistance repatriated by the U.N. from Honduras and Costa Rica. The military force authorized by the Security Council would be charged with the reception and custody of weapons and military material from the resistance out of Nicaragua. This division of labor between the two organizations resulted from the fact that the Secretary General of the OAS would not accept that the U.N. be the operational center of the CR. Such a procedure would not have been justified given that the Tela agreement had placed the two Secretary Generals on an equal footing as sole members of the
CR. The operational phase of the CR-OAS began with the agreement signed on March 23, 1990 by the then-President Elect of Nicaragua Madame Chamorro and the Nicaraguan resistance. They agreed on the process of immobilization including the cessation of military hostilities in Nicaragua. The work of the CR-OAS encompassed a number of stages, the mobilization and reputation of the resistance as well as on-going moratorium of guaranteed human and civil rights, programs for development areas, humanitarian assistance for the resistance and their families, including food and medical services, and financial aid. CR-OAS was made up of protection officials, security officers, and members of the medical and paramedical corps of the Panamerican Health Organization. The mandate to receive weapons expired on June 29, 1990. At that time the government of Nicaragua requested CR-OAS continue demobilizing groups of combatants that were still disbursed and in every case the weapons entrusted to CR-OAS were destroyed by the Nicaraguan army in the presence of members of CR-OAS staff and witnesses. I do not intend to enter into further details of the success of the two organizations in a project where the two Secretaries General shared their responsibilities. The total number of persons immobilized after July 30, 1990, was 19,720 while the number of family members declared by the formal combatants totaled 53,349. These figures give us an idea of the dimension of the work carried out by CR-OAS which continues today. At present, OAS has in Nicaragua a personnel staff of 80 people who are following up on the process of resettlement of food, of medical services, etc.

The last aspect I would like to mention in regard to the cooperation between the two organizations is democracy as a means for peacekeeping, a new era of cooperation between the OAS and the U.N.

The involvement of international organizations, universal or regional, in electoral processes is not a new thing. Until now, this observation was mainly on election day. The importance of democracy, particularly in Central America, for the peace process, started with the Nicaraguan request to both the U.N. and the OAS to establish missions to monitor the electoral process. This started even before the registration of voters. It started when the legislation was being implemented and adopted. On election day, the 25th of February last year, there were 433 observers from the Organization of American States, 215 from the United Nations. They acted independently, but they coordinated in order to avoid duplication of certain expenses. This had a tremendous impact because no one expected that this process would be solved through an electoral process. There was a similar experience of both organizations acting in a coordinated man-
ner, but independently, in Haiti. The Secretary General of the OAS made his first report on the election to be held in March, this month in San Salvador, which of course faces tremendously difficult problems.

In all these cases I have mentioned these regional organizations act directly under the head of the Secretary General. He goes there, he talks to the people. The United Nations as a much bigger organization cannot have this sort of communication with the people, with the political parties, with the government, with the electoral tribunal or commission responsible in the government for the control of the election process and this has given tremendous results in the countries in which it has been established. The OAS members are very sensitive about the question of nonintervention, but the basis of this intense active observation of electoral process is based, of course, on the request and consent of the states; otherwise it would be impossible.

The first stage is to establish, in an agreement with the OAS in this case, all the privileges and immunities of their service and the second agreement is made with the agency of the government that has the task of organizing the electoral process. This second treaty it is very detailed. All the rights of the members of the observation mission are detailed, and of course they include things that you could not imagine, and this has had a very positive result in Latin America. There is now being organized another observation group for the elections to be held in Paraguay. The initial request was by the political parties and then the government acceded to this request, and made an official request to the Secretary General of the Organization of American States.

I will finish by saying that the end of the Cold War will facilitate cooperation of the United Nations and regional arrangement within their legal spheres of competence. The case of the hostilities between El Salvador and Honduras in 1969 (the so-called Soccer War) started after a football match between the national teams of both countries which fell outside the East/West conflict and proved that the regional mechanism can indeed work. In this case the organ of consultation of the OAS succeeded in the suspension of hostilities that the withdrawal would draw all of the Salvadoran troops occupying Honduran territory, the exchange of prisoners of war, and in organizing a mission of military observers to verify compliance with the position taken at the regional level. In October 1976, both countries agreed to submit their dispute to mediation.

We hope that a new era of cooperation will begin, wherein the U.N. and all regional organizations will be able to exercise their
respective competence in accordance with the original intent of the founders of the San Francisco Charter.

Thanks.

PROFESSOR WILNER: Thank you very much indeed. You have given us much food for thought. As you know in Eastern Europe the regional arrangement is about to be ended for a particular reason whereas in other parts of the world such as in Latin America new emphasis is being given to the system. In another area of the world, the Middle East, an attempt was made and everyone tried to have a regional system operational which would have had a universal system. We do need to focus on all of these while looking at the basic issues and the basic mechanism of the universal system of the United Nations.

MARCH 2

PANEL II: MEASURES AT THE SECURITY COUNCIL’S DISPOSAL

PROFESSOR WILNER: Our first speaker this morning, our major speaker, is Mr. Nico Schrijver, who is the Legal Officer in the Office of the Legal Counsel. He works directly with the Under-Secretary General of the Legal Counsel. He is on leave from his position as Senior Lecturer in International Law and International Institutions at the Institute of Social Studies in Hague, in the Netherlands, is a member of a number of governmental and non-governmental advisory bodies in the Netherlands, and has published extensively. He is the co-editor of the volume entitled “The U.N. Under Attack” which was published in 1988 and co-author of the 1990 Annual Report of the Academic Council of the United Nations System which is entitled “Changing Global Needs: Expanding Worlds of the United Nations System.” Mr. Schrijver, whom I will introduce later on, will make comments and bring some of his expertise on the issue of the concept of the meaning of sanctions and other measures available to the Security Council in particular measures short of the use of force. Mr. Schrijver has, with respect to this crisis, worked directly with the Legal Counsel on issues of the sanctions and therefore comes to us with an insider’s knowledge and an insider from the viewpoint of the Secretariat rather than that from any particular national point of view. And as a former U.N. Secretariat member, I, of course, believe that the Secretariat has a unique view, and a much more universal view, with all due respect, than to national delegates and national experts. So it is with great pleasure that I introduce Mr. Schrijver.
The Meaning and Operation of Sanctions and Other Measures Short of the Use of Force

MR. SCHRIJVER: — Let me first tell you that although the United Nations in recent moments has not been very good in respect of the difference between office hours and free time, I would like to make it clear that I speak in my personal capacity and that I do not intend to reflect the views of the Office of Legal Affairs of the U.N. Secretariat.

The topic is the United Nations and the use of sanctions against Iraq. Although, as all of us know, after mid-January the sanctions regime has been supplemented, if not overtaken, by the action stemming from Resolution 678, I believe it is still a very interesting case to see whether members of the international community are capable of compelling another member of the family to redress unlawful conduct and to restore legality.

In the very early morning hours of the 2nd of August 1990, the Security Council unanimously adopted Resolution 660, and in the Resolution the Council unanimously condemns the Iraqi invasion of Kuwait. It demanded that Iraq withdraw immediately and unconditionally all its forces from Kuwait and it called for Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences.

Eleven additional resolutions of the Security Council would follow by which the Council has used, in a very unique way, makeshift parts of its functions and powers under Chapter 7, the chapter of the Charter which deals with action with respect to the threats to peace, breaches of peace, and acts of aggression.

The twelve resolutions of the Security Council have been widely supported by the 15 member Council: 5 out of 12 were unanimously adopted, 2 with 14 votes in favor, 4 with 13 votes in favor, and 1 with 12 votes in favor (Resolution 678, which also got one abstention from China and two votes against by Yemen and Cuba).

On the 6th of August, only four days after the adoption of Resolution 660, the Security Council determined that Iraq had failed to comply with the demands of Resolution 660, to withdraw immediately and unconditionally its forces from Kuwait and thereupon the Council decided to impose comprehensive mandatory sanctions against Iraq and against occupied Kuwait.

First, I would like to review the concept of sanctions and I would like to discuss some precedents of past collective economic sanctions. Second, I would like to discuss some major legal aspects of the
sanctions regime including the scope of the sanction resolutions and the objectives pursued by them. I will dwell a bit on the work of the Sanctions Committee of the Security Council and I will say a few words about the implementation mechanism of the sanctions.

But first, a few words on the concepts and functions of collective sanctions. The use of economic sanctions to achieve political ends is of course not at all new. Throughout history states and regional institutions have regularly resorted to economic sanctions for a very wide variety of objectives. We have an ample practice of unilateral sanctions, reprisals, counter measures, retortions, etc. in international relations. I think, for instance, about the sanctions of the members of the OECD against the Soviet Union after the invasion of Afghanistan. I think about the sanctions in the trade relationships between the United States and European Communities, the so-called Spaghetti Wars, or Pork Wars, etc., all of them examples of unilateral sanctions. Relatively new, however, in international relations is the concept of collective sanctions—by which for purposes of this presentation, I refer to collective measures imposed by organs representing the international community in response to unlawful conduct by one of its members and meant to uphold standards of behavior required by international law. This concept of collective sanctions is closely linked to schemes for collective security as well as to issues of enforcement of international law. As such, the very topic of collective sanctions lies at the heart of the debate of the effectiveness of the United Nations system and the effectiveness of international law. However, there is a very limited practice of collected international sanctions which I will refer to later.

Sanctions can be adopted to serve a variety of functions. Maybe you can compare it with the function of punishments in national criminal law and then you can also distinguish various functions of punishment in comparison also for sanctions.

First, sanctions can serve as a means of expressing condemnation of certain conduct which has been perceived by a majority of the international community as unlawful. Second, sanctions can serve as a kind of punishment and retaliation for unlawful behavior. And third, sanctions can be serve as a method of compellence or persuasion to change policy, and if there is the option to widen the scope of the sanctions they can also perform the additional function of deterrence.

As I already stated, there is a limited practice of collected economic sanctions. In fact, in a Covenant in the League of Nations there was an article, Article 16, which related to collective measures of an
economic and military nature. In case any member of the League would resort to war in violation of its international law obligations, then the aggressive state, according to Article 16, would among others automatically be subjected to the severance of all trade or financial relations.

This Article has been applied only once, in 1935, when the League imposed sanctions against Italy because of its unlawful invasion and occupation of Ethiopia in 1935. These sanctions included an arms embargo, financial embargo, an embargo on the exportation of news (you were living in another era in those days), and an embargo on important minerals, but excluding oil. These sanctions have never been very effective and it was partly due to the fact that there was no centralized system of supervising monetary sanctions and that the members of the League were in fact free to decide for themselves which, if any or all, measures they would take.

The Charter of the United Nations, built on the lessons of the League of Nations period, elaborated on Article 16 of the League’s Covenant and provided a more elaborate and centralized system of collective sanctions in Chapter 7. Chapter 7 deals with threats to the peace, breaches of the peace, and acts of aggression, and is central to the functions and powers of the Security Council. In order to be able to take measures in Chapter 7, in order to “open the door” to decide on the use of sanctions, the Security Council is required under Article 39 of the Charter to determine whether there is a threat to the peace or breach of the peace or act of aggression. And once the Security Council has made such a determination, has used one of the three keys indicated in Article 39 to open the door to Chapter 7, then it has the competence first to call upon the parties to comply with certain provisional measures—that is Article 40; second, it can make certain recommendations—Article 39; third, it can decide on the employment of measures not involving the use of armed forces—Article 41; and fourth, it can commence or recommend measures involving the use of armed force.

Please note that the Security Council is free to combine any of these possibilities as circumstances require and also the Council is free to commence or to recommend such measures under Chapter 7. All members have bound themselves, by ratifying the United Nations Charter, to accept and to carry out the decisions of the Security Council, and in this way the drafters of the Charter and the member states of the United Nations have gone far beyond the system established under the League of Nations.
This is, in a nutshell, the constitutional framework within which the Security Council has taken action with respect to the breach of the peace which occurred on the 2nd of August 1990.

Let me just briefly review a few examples of the practice of the Security Council under Chapter 7 with respect to collective economic sanctions. In debates of the Security Council, there have been frequent speculations throughout the decades about imposing economic sanctions: among others against Spain in 1946; against South Africa in 1949 and ever since it practiced an apartheid policy; and against Belgium in 1969 during the Congo crisis; against Portugal in 1963 because of its refusal to grant independence to its colonies in Africa. It was, however, only in 1966 that the Security Council used for the first time its power under Article 41, the article dealing with economic sanction, when it recommended first an oil embargo and then eight months later further reaching economic sanctions against the illegal minority regime in Rhodesia. In 1968 the Security Council finally launched a full-fledged financial embargo against Rhodesia with exceptions provided for medical supplies and educational materials. The sanctions were maintained up to 1979 and then the Lancaster House Agreement impelled the long awaited independence of Zimbabwe on the basis of black majority rule. The second relevant example is the arms embargo against South Africa which was imposed in 1977 because the Council determined that the acquisition by South Africa of arms and related military material could constitute a threat to the maintenance of international peace and security. This mandatory arms embargo imposed on all states is in place to the present day.

What about the sanctions against Iraq and occupied Kuwait? Now, without going too deep in all kinds of details, it can be concluded that the Security Council has placed its actions regarding the situation between Iraq and Kuwait (as the item is sometimes called in the United Nations) squarely within Chapter 7 of the United Nations Charter and that it has followed the logical order of Chapter 7 as I have just outlined to you. With the duration of the conflict, the Council has made use of its powers in a step-by-step and ascending way as provided in the U.N. Charter.

If you look at the Resolutions you will notice that as early as the 2nd of August, 1990, the Security Council immediately opened the door of Chapter 7 by the determination that there was a breach of the peace. So the Council starts in Chapter 7 and stays with its actions under that Chapter, but now we had as from the early hours of the crisis only the determination of the Security Council under Article 39 of Chapter 7 that there was a breach of the peace. And it demanded
under Article 40 the immediate withdrawal of Iraq from Kuwait and
called as provisional measures for the two countries to begin imme-
diately its terms of negotiations.

As discussed before, only four days later the Security Council,
deeply concerned that Iraq had failed to implement Resolution 660,
decided to impose a comprehensive package of economic sanctions
against Iraq and occupied Kuwait. Resolution 661 was a financial and
trade embargo. And then Iraq continued to fail to comply with
Resolution 660 and economic sanctions were complemented and refined
as a means of additional compellence and deterrence. For example,
Resolution 665 adopted on 25 August 1990, provided for the en-
forcement at sea of the trade embargo. Resolution 666 related to the
delivery of medical supplies and, in human care and circumstances,
food stuffs. Resolution 670 confirms that the economic sanctions
imposed under Resolution 661 applied to all means of transport,
including air, so this resolution is known as the Air Embargo Res-
olution. Finally on 29 October, 1990, Resolution 674 was adopted,
providing that Iraq would be liable for any loss, damage, or injury
arising in regards to Kuwait, third states, states and their nationals
and companies. But the major sanction Resolutions are 661 and 670
which relate to the air embargo.

What were the objectives pursued by the Security Council in the
sanctions resolutions? Well in fact they are very clearly indicated in
the relevant Security Council Resolutions and include: first, to bring
the invasion and occupation of Kuwait by Iraq to an end; second,
to restore the sovereignty, the independence, and territorial integrity
of Kuwait; and third (and this was added later in Resolution 662) to
restore the authority of the legitimate government of Kuwait.

So sanctions were not so much intended to punish or to repress
Iraq, but rather to coerce it into putting an end to its unlawful
occupation and purported annexation of Kuwait. In other words,
collective measures were as a means of compelling a state to redress
an international wrongful act and to restore legality.

What is the scope of these sanctions? To what kind of trade and
economic relationship do they apply? Resolution 661 provides for a
very comprehensive package of economic and financial measures in-
cluding: first, the prohibition of the import of all commodity products
originating in Iraq and Kuwait; second, the prohibition of the sale
or supply of any commodities or products including weapons to any
person or body in Iraq or Kuwait (basically an export embargo); third,
the prohibition of any activities by nationals of states which would
promote or was calculated to promote the export or transmission of
shipments of commodities or products from or to Iraq or Kuwait; and fourth, the prohibition of any transfer of funds or other financial or economic resources to Iraq or occupied Kuwait.

States were called upon to comply with the sanctions, notwithstanding any contract entered into or licenses granted before the 6th of August. So you could say that the sanctions to a certain extent had some retroactive character. Now, as I told you the sanctions are complemented and refined in subsequent resolutions, but basically the 661 trade and economic sanctions and the 670 air embargo resolutions are the main and major resolutions in this field. Exceptions to the sanctions are indicated for the delivery and the payment for medical supplies and also, in humanitarian circumstances, foodstuffs.

To whom are these sanctions resolutions addressed? Well if you read through these sanctions resolutions you will see that they are addressed to all states, including member states and non-member states of the United Nations, such as Switzerland. The sanctions resolutions contain ample references to such phrases as “all states shall prevent,” “all states shall not make available,” “calls upon all states,” “demands that all states prevent the nationals from” doing this or that. So this implies that the primary responsibility for the implementation of the sanctions rests with states and that they are obliged to introduce the sanctions in their national legislation and domestic league of order for which unfortunately no uniform practice exists.

Soon after the adoption of the trade embargo, a question arose—what would be the effect of these sanctions on the activities of the United Nations itself and the activities of UNP or the activities of other international organizations such as the World Bank or the International Monetary Fund relating to Iraq and occupied Kuwait? In view of Article 48, Paragraph 2 of the Charter, and in view of the relationships agreements between the United Nations and the various specialized agencies, by which all have become members of the United Nations family (the relationship agreement for instance of the food and agricultural organization, and U.N. agreement of the IMF or UNESCO and the United Nations), it seems obvious that those activities which were export or import related activities—for instance of the World Bank financing the improvements of the infrastructure in Iraq in order to promote its export capabilities—would be covered by the sanctions. Not only states but also international economic institutions would be bound by the sanctions resolutions and indeed in Resolution 670 the air embargo resolution—which is in a way is an omnibus resolution, because the Council took the freedom to arrange a few methods in this resolution as well—the
Council affirmed that the "United Nations organizations, its specialized agencies, and other international organizations [such as the European Community for instance] are required to take such measures as may be necessary to keep in effect the sanctions."

Now, I would like to tell you something about the Sanctions Committee. As in cases of sanctions against Rhodesia and against South Africa, the Security Council decided to establish a committee consisting of all the members of the Security Council who deal with the sanctions. The committee is commonly known as the Sanctions Committee. Ambassador Kirsch served as its Vice Chairman in 1990. The Sanctions Committee decided that it would take its decisions by consensus and I can reveal to you that that proved not always to be easy.

The original mandate of the Sanctions Committee as you can find in Resolution 661 includes: first, to examine the progress reports submitted by the Secretary General on the implementation of the sanctions resolution; second, to seek from all states further information regarding action taken by them concerning the effective implementation of the sanctions. In later resolutions the mandates of the Sanctions Committee have been somewhat widened. For instance, in Resolution 666 which relates to the exception clause relating to the delivery of food supplies, and humanitarian circumstances, the Security Council decided that the Sanctions Committee also shall have the task of keeping the food situation in Iraq and Kuwait under constant review in order "to make the necessary determination that there are not humanitarian circumstances which have arisen in which there would be an urgent humanitarian need to supply food stuffs to Iraq and Kuwait in order to relieve human suffering."

Under Resolution 669, the Committee received the additional task of dealing with the requests of member states of the United Nations which experienced "special economic problems" referred to in Article 50 of the Charter arising from carrying out of the sanctions, and the Committee was asked to make appropriate recommendations to the President of the Security Council in this respect.

Finally, the Council allocated the Sanctions Committee with some specific responsibilities as regards the air embargo, apart from monitoring the air traffic from and to Iraq and Kuwait. These new functions of the Committee specifically included the competence to approve particular flights to and from Iraq or Kuwait, such as those for the purposes of evacuating foreign nationals from Iraq or Kuwait or providing food supplies to certain communities in Iraq to certain foreign communities in Iraq or Kuwait. And the approval of the Committee would mean that the aircraft in question is not to land
in overflight countries nor to allow inspection as was provided in another paragraph of the Resolution.

How has the implementation of the superficial machinery of the sanctions been organized? First, states have frequently reported, as requested under the relevant Security Council Resolutions, to the United Nations on the way they are carrying out these sanctions. In addition, the Secretary General has also sent notes to all states informing them of their obligations under the relevant Security Council resolutions requesting them to send information on the actions they have taken at the domestic level to implement the sanctions. There was for instance a questionnaire and there was a rather good response to it by 15 January 1991; 96 states out of 159 member states had sent in rather extensive replies to the questionnaire and that is in comparison with other questionnaires for the United Nations—not a bad score at all. So the responsibility for the implementation rests with states but they have to report to the United Nations on what they have done at the domestic level.

Secondly, third state participation is foreseen in monetary compliance and if necessary enforcement of the sanctions. For example, through Resolution 665 in late August, 1990, the Security Council called upon those member states cooperating with the government of Kuwait who were deploying maritime forces to the area to halt all inward and outward maritime shipping in the area in order to inspect and verify the cargoes and destinations and if necessary they had the right to use limited force to stop and inspect the ships. These were the major ways in which the implementation machinery of the sanctions has been organized but I must note that basically the primary responsibility rests with states themselves.

Now I would like to mention three main problems which arose in the Sanctions Committee concerning the implementation of the sanctions resolutions. The first issue relates to the provision and distribution of food supplies to Kuwait and Iraq. The effects of the sanctions, and also the effects of the discriminatory Iraqi food policy in the first few months, on the food and health situation of foreign nationals who were stranded in Iraq or Kuwait were a major concern to the Security Council and its Sanctions Committee. Now, apart from diplomatic personnel, technical experts, consultants, and business people, the foreign nationals included in particular hundreds of thousands of migrant laborers, mainly from Southeast Asian countries and from other Arab states. On the basis of the exception clause relating to food supplies, some homesteads requested the Sanctions Committee’s authorization to ship food to their nationals, and this has time
and again given rise to difficult debates in the United Nations as to how to assess the situation in Iraq and Kuwait and as to how to prevent the food supplies, if authorized by the Sanctions Committee, from falling into the hands of the Iraqi Army.

In Resolution 666, adopted in September 1990, the Security Council has elaborated on the exception clause for food and medical supplies. The Council decided to allocate to the Sanctions Committee certain tasks in the field of the assessment of whether there were humanitarian needs to supply foodstuffs to Iraq and Kuwait. The Resolution provides for three stages. First, the Committee has the task of keeping the food situation in Iraq and Kuwait under constant review, using information provided by the Secretary General of the United Nations and by other humanitarian agencies. It was not very easy, for the international organizations are hardly represented any longer in Iraq and Kuwait, and it was also very difficult in view of the refusal of Iraq to cooperate with the United Nations, for instance its refusal to receive missions of the United Nations to assess the food and health situations. So the first stage under 666 was collection of information concerning the actual food and health situation in Iraq and Kuwait.

Second, on the basis of that recommendation, the Committee had the function to determine whether or not circumstances have arisen in which there would be an urgent humanitarian need, as stated in the Resolution, to supply foodstuffs to Iraq and Kuwait in order to relieve human suffering. And if the Committee identified such humanitarian circumstances, then it had to formulate certain decisions, certain modalities on how to provide the foodstuffs and how to supervise the distribution of the foodstuffs in Iraq and Kuwait with the United Nations in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies.

Well, as I told you already, this task has been far from an easy one. At this very moment people from UNICEF and WHO are working very hard on the first substantive reports to be issued on the food and health situation in Iraq and Kuwait. Only last week Iraq allowed (for the first time) the mission of an international organization to assess the food situation over there and we hope to deal with it in a very intensive way in the days to come. There have been so far only two cases in which the Committee has authorized shipments of food to Iraq and Kuwait, and those shipments were accompanied by officials of the National Red Cross Societies of the countries in question, who also supervised in cooperation with their embassies in Baghdad the distribution of the foodstuffs in Iraq and Kuwait in order to make sure they would reach the intended beneficiaries.
The second difficult issue is certainly not an absolute one and is in principal only cargo related. In general, flights to or from Iraq and Kuwait which do not engage in activities contrary to the trade embargo are allowed. Apart from that the air embargo resolution itself identifies three particular categories of flights which do not fall under the air embargo: first, flights for shipments of medical supplies and (if authorized by the Committee on humanitarian circumstances) for the provision of foodstuffs; second, particular flights approved by the Committee, for example for the purpose of evacuating foreign nationals or for the purpose of VIP flights, diplomatic consultations; and third, flights certified by the United Nations as solely for the purpose of the U.N. Observer mission between Iraq and Iran. Between 25 September, 1990, (the date of the adoption of the Resolution in question) and 15 January, 1991, the Committee dealt with about 198 flights to and from Iraq and Kuwait and as regards the approval of the particular flights a very interesting practice emerged. If the Committee approved a particular flight it often stipulated that the aircraft in question should be inspected before departure to and upon arrival from Baghdad by the customs authorities of the countries where the flight originated or the countries of destination, and it stipulated that this inspection should be carried out in the presence of representatives of the United Nations or an appropriate international humanitarian agency (such as, for instance, the International Organization for Migration or the Red Cross) and in this way a kind of international surveillance of the inspection of the aircraft in question evolved.

The third and last major item which I would like to mention in the work of the Sanctions Committee relates to the so-called special economic problems for third countries resulting from these sanctions. There is a Charter Article, (not very well known) that is Article 50, which provides that if the Council has taken enforcement measures against any state, then 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 with the Security Council with regard to a solution to these problems.

Such an Article was not included. I cannot find it in the League of Nations covenant and in a way this reflects emerging principles of modern international law relating to incredible sharing of the burdens. There is, however, only a very limited practice of the Security Council under this Charter Article which in the past has only been invoked by some African countries during the Rhodesia sanctions: among others by Zambia, Mozambique, and Botswana. During the Persian
Gulf crisis it soon became obvious that the whole network of trade, financial, and also human relationships became seriously affected as a result of the sanctions. One should make, however, a distinction between special economic problems directly arising from the carrying out of the sanctions to which Article 50 refers, and those more indirectly resulting from the international crisis such as the impact of the sudden rise of oil prices, lost business opportunities, and stop of aid and stop of flow of oil at concessional prices from Iraq or Kuwait, etc. These problems are very serious problems, especially to oil importing African countries, but these problems were, however, not within the scope of Article 50 of the U.N. Charter.

It is no wonder that a large number of countries have invoked during this particular crisis Article 50. So far, twenty-one countries sent in applications to the Security Council under Article 50, and (roughly speaking) these countries consist of three groups: first, the neighboring countries of Iraq and Kuwait and the neighboring countries with very close economic relations with Iraq and Kuwait such as Lebanon, Jordan, and Yemen; second, Asian states with many migrant laborers in the Gulf regions whose economies are very dependent on the remittances sent by their migrant laborers in Iraq and Kuwait—this group includes such countries as Sri Lanka, India, Vietnam, the Philippines, and Bangladesh; third, countries with rather strong economic and political relationships with Iraq such as the North African states of Syria, Tunisia, or some eastern European states such as Bulgaria and Rumania.

The Sanctions Committee decided to establish a working group to examine the requests for assistance under the provisions of Article 50 of the Charter and to make appropriate recommendations to the President of the Security Council. And from November on, the working group completed a series of meetings during which the representatives of these twenty-one countries were heard and during which special economic problems were identified. The main problems included losses resulting from undelivered products to the Gulf area, undelivered oil shipments from Iraq and Kuwait, and costs associated with the reappropriation and rehabilitation of the nationals returning from Iraq and Kuwait. The working group has made a series of recommendations to the President of the Security Council, among others to appeal to all states on an urgent basis to provide immediate technical and financial assistance to the countries concerned and also to invite international organizations and development institutions such as the IMF, the World Bank, the FAO, etc. to refuel and to upgrade their persistent assistance programs with these countries. And of course
in the United Nations we sincerely hope that this will work out satisfactorily. However, the U.N. is not in a position to establish a compensatory program or fund for these countries because basically Article 50 is only a kind of consultation machinery.

I would like to conclude with some observations. I hope I have given you a relevant bird's eye view of the Security Council action with respect to the crisis in the Persian Gulf and also of the major problems involved in the implementation of the sanctions resolutions. As I told you the Security Council in my view has logically acted within the constitutional framework provided for in Chapter 7 of the Charter following the general scheme of measures indicated and also the descending order of the measures.

The sanctions resolutions include the comprehensive package of financial and economic measures as well as cargo related air embargo. The primary responsibility for their enforcement lies with states as long as the international enforcement machinery at the international level is in such a primitive stage apart from states. Also the United Nations organizations, specialized agencies, and other international organizations are required to implement the sanctions and enforce the sanctions. The United Nations can only play a role in monitoring and appraising the implementation of the sanctions. The United Nations had to face very difficult problems with regard to the implementation of sanctions against Iraq and occupied Kuwait, in particular concerning the provision and distribution of food supplies to people in Iraq and Kuwait and also difficult problems with respect to evacuation flights and also the very difficult problems relating to the special economic problems of states arising from carrying out of these measures.

It is obvious from this experience that in today's interdependent world, effective sanctions (and I believe the sanctions against Iraq have been rather effective and in the case reported yesterday compliance has been overall very good) cut deep, probably much deeper than foreseen in 1945 at the time of the drafting of the Charter in all kinds of trade, financial and human relationships. On one hand, the founding fathers of the United Nations Charter foresaw that such a situation would call for an equitable sharing of the burden both politically (Articles 48 and 49 of the Charter) and economically (Article 50, which relates to the special economic problems). However, I guess that in 1945 one did not and could not foresee that our world would become so interdependent that the imposition of sanctions against one or two particular countries could result in a mass migration of people and would result in so many unintended shifts in trade and financial flows involving many countries; some countries benefit and also a
large number of countries suffer. If the international community would like to maintain the imposition of collective economic sanctions as a major weapon to combat an aggressor, then it is my personal view that a rethinking of these side effects should occur, since as Ambassador Kirsch also put it yesterday, it proved to be a double-edged sword.

Although all of us know that the sanctions have been overtaken by the action based on Resolution 678, I hope a review of the sanction resolutions and the review of the work of the Sanctions Committee has been an interesting case study for you and I hope you can learn from it in which way members of the international community, by applying collective measures short of the use of armed forces, can peacefully impel a state to redress unlawful conduct and to induce it to live up to its international obligations. Thank you.

PROFESSOR WILNER: Thank you very much, Mr. Schrijver. This is a comprehensive and quite brilliant review of the use of sanctions in particular and in general in the history of the use of sanctions.

Mr. David Scheffer is a Senior Associate of the Carnegie Endowment for International Peace where he spends his time analyzing developments in international and national security law. He is a graduate of Harvard and has law degrees from Oxford and Georgetown. He is a member of the New York Bar, D.C. Bar, practiced law in Singapore, then served as Counsel on Foreign Relations International Affairs Fellow and served a year with the Arms Control in International Security and Science Subcommittee, the Committee on Foreign Affairs of the U.S. House of Representatives. In 1987 he joined the professional staff of the Committee on Foreign Affairs and worked on legal aspects for powers, arms control, arms exports, intelligence foresight and anti-terrorism and became a member of the staff of the Carnegie Endowment for International Peace on February 1, 1989. He is published widely on International legal and political subjects as well as U.S. legal affairs. He is a contributing author of a book called Right Versus Might: International Law and the Use of Force. His recent article entitled, “Limited Collective Security” appears in the Fall 1990 issue of Foreign Policy. His occasional papers in United Nations in the Gulf Crisis and options for U.S. policy and roles for the United Nations after the Gulf War were published by the U.N. association for the United States. A forthcoming book Mr. Scheffer is co-editing will examine international law and the use of force after the Cold War.
Mr. Scheffer will comment on the presentation made by Mr. Schrijver and particularly on the use of sanctions beyond and after force has been used for compliance purposes.

MR. SCHEFFER: It is a great pleasure to be here in Georgia. And it is a pleasure to be pinch-hitting here because what we just heard in Mr. Schrijver's paper was really, I have to repeat the word, a brilliant overview. For someone who spends a lot of time each day monitoring and analyzing what has been going on at the U.N. and in the Gulf over the last seven months, you just received a lot of hard information from one of the sources within the actual workings of the U.N. and I am looking forward to seeing his paper published. My commentary is going to veer off into some additional points that I hope will elaborate some critical sanction issues that have been briefly touched upon by Mr. Schrijver and maybe we can launch into a little bit of the controversial elements of a few of them, and also prospects for the future.

Let me just begin by making one short observation about the transition from economic sanctions to military action under the U.N. Charter in this crisis, for those of us who were deeply involved in following this during the weeks and months after the invasion, there was one issue that kept coming up in public discourse; it was a general conception that during the early months of the Iraq/Kuwait crisis, trade sanctions must be proven to have failed before the Security Council could authorize the use of force under Article 42 of the Charter. In other words, economic collapse first, use of force last.

However, the text of Article 42 offers more latitude. It states "should the Security Council consider the 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." The Security Council could make a determination at any time that trade sanctions would "be inadequate" and then move on to Article 42 and the use of force. Iraq, for example, was not driven to economic collapse, which could have taken years, before the Council by adopting Resolution 678 concluded that economic sanctions were not achieving the objective of forcing Iraq to withdraw from Kuwait. The Security Council decision reflected a judgment, particularly by the Bush Administration, both that the economic sanctions had proved to be inadequate up to that date of the Council action, and would be inadequate at least in the event Iraq continued the policy of non-compliance following the deadline of January 15, 1991, established
in Resolution 678. So although in retrospect now everything seems to have followed logically one after the other, at the time, just a few months ago, there were a lot of people talking about the necessity to keep sanctions in place until certain events had occurred as a consequence of those sanctions before moving on to force. And my point here is simply that the Charter is more flexible. The Security Council can make the determination that those sanctions would be inadequate and then move on to the use of force. It is a judgment call depending on the circumstances of the crisis, but that is an important point to stress for future application of economic sanctions.

However, it leads me to what I think is a significant point, because of the perceptions that will arise from this entire conflict. I even heard this point made yesterday by the British Permanent Representative to the Security Council, who referred essentially to the fact that sanctions did not work here. Well, I would argue that the story is not yet in on whether or not economic sanctions worked. In other words, we will know at some point in the future to what extent the economic sanctions weakened the Iraqi army so that it became obviously a very weakened fighting force once the U.N. authorized forces went into Kuwait and Iraq. We seem to be under an impression now that it was the bombing campaign and then the massive use of force in the ground attack that really crippled that army into submission, but I submit that at some point in the future we will learn to what extent these sanctions had an impact on weakening the military capability of the Iraqi army and therefore when we have situations in the future, it will be important not to jump first to Article 42 and the use of force because we saw it work in the Persian Gulf crisis, but rather to remember that there are some procedures set forth in Chapter 7 to apply nonmilitary efforts first and that those nonmilitary efforts, even if they prove not to succeed in ensuring compliance by the violating state, the Security Council Resolutions involving economic sanctions and arms embargoes can have a tremendous impact and effect upon the fighting capability of that violating nation's army. We still need to await the real evidence of that, but I think we must keep that strongly in mind. I am almost not inclined to say this yet, but at some point it may well be true that you could say that not just the bombing and the actual use of force won this, but that sanctions also won this war and we will just have to see how that plays out. But it does also raise these judgment calls that Mr. Schrijver so competently described to us, that there is a downside—the impact on the civilian population. That is why the establishment of a Sanctions Committee under the auspices of the Security Council was a critical
and historic event here because they are responsible for monitoring what is going on with the sanctions, what is the impact, both within and outside of Iraq, in other nations which are filing applications under Article 50.

Let me also mention that we have a novel aspect with respect to the sanctions that were imposed during the last seven months. A lot of those sanctions were imposed to protect the assets of Kuwait, not to prevent a country from ultimate access to those assets, but rather to ensure that an aggressor nation does not seize control of the assets of a legitimate government of a nation. That, unless I stand corrected, I think is a novel development in U.N. practice and it also led to a tremendous complex of issues for lawyers around the world, and that story has yet to be written. In particular, I understand that it took months for the U.S. government just to draft the regulations on the frozen assets of Iraq and Kuwait so that U.S. lawyers would have clear guidance on how to advise their clients with respect to those particular assets. And what made it so complicated was the fact that we were protecting Kuwaiti assets and we had to provide ways and exemptions for access to those assets.

This leads me into the whole issue of the frozen asset problem for the future. This was an ad hoc operation, both militarily (even though it was under U.N. authorization), but also in many respects with the sanctions. And by that I really mean focusing on frozen assets. The Security Council essentially said, "Okay everyone, freeze. Freeze what you have. Don't let it go, but you figure out how to do it and you enforce it." And that meant that in every legal jurisdiction around the world, people had to come up with their own ways of implementing this under law, and even though they could do so with the instruction and authorization of the United Nations, and that greased the wheels, the point is that national laws have to be effected to really make this work.

It leads one to wonder and wonder very seriously about the development in the future of an international convention or international procedures of some sort that could be invoked when sanctions are imposed and enforced by U.N. Security Council; in other words, clear-cut streamlined procedures that all nations are obligated to implement upon a decision by the Security Council to impose sanctions on a particular nation state and in particular to freeze the overseas assets of that state. And I might suggest in a law school forum, that it is exactly the kind of issue that beckons an academic exercise of analysis in a law journal or in a special conference just to try to bring together the whole complex of issues of private law as well as public law that
have to be dealt with to implement a Security Council direction to freeze assets and to impose a massive trade embargo on a particular nation. And that might help to deal with some of the Article 50 problems of hardship as well.

Let me comment on the continuation of sanctions after this conflict. That is obviously the issue that is before the Security Council today and let me just check off the obvious for you, that there is going to be a further Security Council decision now on what the future character of sanctions will be against Iraq. First, the Security Council has to have something to say, with respect to lifting the sanctions on Kuwait and the unfreezing on Kuwaiti assets. Just to clean that aspect of the prior resolutions up there is going to have to be some kind of detailed statement by the Security Council that will authorize nations to lift sanctions from liberated Kuwait and on the assets of liberated Kuwait. So that is one issue that we are going to see the Security Council dealing with.

Second, is the scope of sanctions that will continue to be employed against Iraq—and this is really an issue of leverage—but it is still something the Security Council will have to grapple with. Some of the things that you would assume would continue in place would be an embargo on military items and certain highly sensitive industrial and manufactured goods, the type of dual-use technology that we refer to in U.S. law where a commercial item could also be used for military purposes. You will also be thinking, I assume, at the U.N. of technology related to the manufacture of nuclear, chemical, and biological weapons or any type of ballistic or cruise missiles. Those will want to be frozen out of Iraq. The Sanctions Committee will have to monitor the continuation of sanctions not only in Iraq but any kind of trade or arms control regime that may evolve in the Middle East as well as monitoring and oversight of the trade sanctions. But without being in that forum today, it is hard to know precisely where these issues are leading in the Security Council, but I think as lawyers we can assume that there is going to be some legal framework for a continuation of sanctions. A lot of it is, of course, going to depend on the continuation of the Saddam government, and the Revolutionary Command Council if a more enlightened Iraqi comes to power, then once again you will see the situation probably change within the Security Council.

I think on the issue of sanctions themselves, that more or less does it except for one thing. On the whole issue of reparation, which the Security Council is also grappling with, it is going to be interesting to see how that issue intersects with sanctions, because the whole
reparations issue is a mine field in and of itself. The dollar amounts you are probably familiar with, upwards of $100 billion damage in Kuwait, may eventually be lodged as claims. There will be claims by Israel, by Saudi Arabia, by U.S. companies, and also there will be claims even by the U.N. itself, which has incurred a tremendous amount of cost in this entire engagement. That would be a very dicey issue but nonetheless the claims can certainly be filed by international organizations. There is nothing conceptually preventing that.

Nonetheless, if you have a very strict sanctions regimen imposed and continued to be imposed upon Iraq, it is going to hobble the ability of that government to raise the necessary revenue and to rebuild its industrial base to pay reparations, much less rebuild the country itself. If, for example, frozen assets of Iraq are applied toward reparations, that will be a loss of I believe $6-9 billion in frozen assets overseas (I am not sure of the precise figure—maybe it is just $3 or $4 billion). But relatively speaking to the cost, it is a small amount of money overseas. But also the whole idea of garnishing the oil export revenue of Iraq in order to pay for some of the reparations is another critical issue and how that plays into the sort of punitive imposition of sanctions in the future, especially if Saddam remains in power, is going to present very complex, difficult decisions for the Security Council to make. It will be those decisions that will be facilitated if there is a new government in Iraq, because I think then the Security Council might view the situation with a higher degree of forgiveness and perhaps a greater relaxation of sanctions and some kind of deal struck on reparations. In fact, as lawyers you probably want to start thinking of this more in bankruptcy terms, you know $.30 on the dollar, or $.40 on the dollar, required of Iraq as opposed to 100 percent compensation. Because, frankly, the figures are staggering and remember that Iraq has upwards of $90 billion in foreign debt still outstanding to Arab nations, to the Soviet Union, to Eastern Europe and to Western banks and governments. So it is an enormous cost and those kinds of issues I wager the Sanctions Committee will probably continue to find themselves involved with.

PROFESSOR WILNER: We obviously can glean from the discussion thus far the fact that first in this particular situation mechanisms were set in place to define how the sanctions which have been imposed would in fact be implemented and the limits to the implementation. I think this is an important creation of the sanctions and of course of their use. And as our crystal gazer has now just told us, their
continued and perhaps permanent use is an important point for us to have to bear in mind.

The other point is that when we do talk about sanctions, economic sanctions you think about immediately, but there are obviously other sanctions possible and in use, that is, those not necessarily relating to economic constraints but those which deal with military constraints or financial constraints. And I suppose it would be reasonable to think that the concept of sanctions and other measures short of the use of force can really be a panoply of types of constraints which would fit a particular situation. Of course we see that these sanctions, as Mr. Schrijver has made very clear, also relate not only to a situation of aggression but to other breaches of the peace and to other situations which would lead to breaches of the peace. In the past much of the response was to colonial situations. I think that perhaps ought to also be borne in mind.

And then finally it would seem that we also ought to think in terms of the possibility on the one hand of immediate measures, measures that will have an immediate effect, and then of longer-term measures. On the one hand you use certain economic sanctions in the present situation to bring about an end to the aggression, but on the other hand, then it is also important to talk about sanctions beyond the end of aggression. In this case one may want to think in terms of the use of sanctions or other measures to maintain the peace after peace has been re-established—in this case, the use of the embargo of certain types of arms or certain products susceptible to being used in an aggressive fashion.

**Panel III: Application of Security Council Measures in the Persian Gulf Crisis and Other Current and Future Crises**

**Professor Sohn:** Our last panel will first continue to discuss the question of application of the Security Council measures in the Persian Gulf crisis and in the second half will deal also with other current and future international crises.

Our first speaker this afternoon is Mr. David Scheffer, who was introduced already this morning by Professor Wilner. I just want to add one comment, which might not surprise you, namely that Mr. Scheffer is also a very good writer on current affairs. I appreciate what Mr. Scheffer is doing in keeping me informed, and now he is going to tell us a bit further about what we discussed this morning and how far out we are going from there into the future.
The Persian Gulf Crisis

Mr. Scheffer: I am going to talk about the Persian Gulf and collective security. I will jump around a little bit.

Elihu Root, who represented New York in the New York Senate and who is one of the great international lawyers of the 20th Century, also the first President of the Carnegie Endowment, wryly noted once that "the people of the State of New York are in favor of Prohibition but against the application of it." When one considers Chapter VII of the U.N. Charter and the debate over its application during the Kuwait crisis, a similar observation would be warranted. Governments are quick to favor the principles of Chapter VII but have a harder time supporting the application of them.

Much of the debate centered on how to harmonize collective self-defense with collective security. The Security Council did not deny the relative parties in the Kuwait dispute the inherent right of self-defense. Of the twelve Security Council Resolutions on Iraq adopted in 1990, the only explicit reference to self-defense appears in one of the preambular provisions of Resolution 661, and even there the Council affirms the right "in accordance of Article 51 of the Charter." That sole reference reflects a consensus about the continued existence of an inherent right of self-defense that can be exercised in accordance with the procedures set forth in Article 51.

The question with regard to the Kuwait crisis was whether the inherent right of individual or collective self-defense could be implemented at any time without the participation of the Security Council. The language of the twelve resolutions including Resolution 661 would have been rendered nonsensical if the legal principle of self-defense could have been invoked unilaterally at any time. The Security Council put the collective security train in motion immediately following the Iraqi invasion of Kuwait in early August 1990. Thereafter, as long as the Security Council remained actively seized with the issue, the principle of collective self-defense had to be harmonized, not negated, but harmonized with collective security in the implementation of these particular resolutions. One of you asked me, "what about Kuwait and the right of individual self-defense?" My response to that is that Kuwait retains the inherent right of individual self-defense unless otherwise directed by the Security Council and it was not otherwise directed by the Security Council, but the reality is that Kuwait could not exercise that right in any meaningful way without collective security supporting it. The efforts of Kuwaiti resistance fighters, etc., all of
that I would consider to be perfectly legal under the circumstances.

An effective collective security system determines how the principle of self-defense will be implemented. If the system of collective security proves incapable, as it so often has since World War II, of responding to an act of aggression, then there has been a failure to implement the principle of self-defense on the kind of collective basis envisioned by the framers of the U.N. Charter. If and when collective security fails, then there certainly arises, or more likely reappears, a legitimate basis for relying on the inherent right of collective defense affirmed in Article 51 of the Charter.

In the Kuwait crisis the United States was confronted for all intents and purposes with the no-lose legal proposition. If it obtained the approval of the Security Council to use force against the Iraqi army then collective security was working. If, however, the Security Council had balked at a proposed resolution of authorization and drifted into a state of perpetual indecision while Iraq's aggression against and occupation of Kuwait remained unchallenged, then the United States and its allies could have fallen back on Article 51 and armed force in collective self-defense of Kuwait. When that point would have been reached would have been a speculative and subjective determination.

It would be futile to define the point where sole reliance upon collective security can be legally abandoned in favor of sole reliance upon the right of collective self-defense. Yet this imprecision in international law does not deny the legitimacy of the distinction. The Kuwait crisis at least established the important precedent that collective security can be implemented within a reasonable period of time.

And I want to stress that we need to keep in perspective now that the war is over, and it seems like everything worked like tick-tock, that in many respects the Administration had to be compelled and persuaded to seek that Security Council authorization for the use of force. Remember the public, official position was that "we don't need the Security Council, we can do this specifically under collective self-defense," but a lot of pressure was put on the United States, and for a lot of very practical political reasons; if they wanted to do it, they needed the world behind them. And the U.N. Charter provided the means to do that. And finally Resolution 678 was obtained, and it was used as the fundamental premise to the air war and the ground war. No one talked about collective self-defense after November 29, 1990. They talked about collective security.

Furthermore, for you constitutional lawyers in the audience, in January 1990 the same pattern developed where in previous months the Administration had argued that it did not need congressional
approval to go to war, and yet it was persuaded that there was some logical sense in getting this, and a lot of us argued that there was a legal basis for seeking that authorization for Congress as well. They got the authorization and you didn’t hear anything after that about Executive prerogative to go to war. You heard about American prerogatives to go to war. So there are still some things to work out there for lawyers; it will require a lot of work by the legal community to iron out what remain to be substantive differences on the theory of how we actually go about doing these things.

A collective security action taken with the authorization of the Security Council arguably may permit the use of armed force in a manner that exceeds some of the traditional parameters of self-defense actions. The law of collective self-defense labors under certain constraints: proportionality, necessity, and the request of the victim state. But if the Security Council authorizes military action to enforce its resolutions, as was the case in the Kuwait crisis, then the need and the right may arise to employ disproportionate force not only to repel an aggressor but to defeat it in a definitive manner so the aggressor no longer can be a threat to international peace and security. In Resolution 678, the Security Council authorized all necessary means to require the withdrawal of the Iraqi army in Kuwait as well as to enjoy international peace and security in the region. The latter objective can encompass actions such as attacks to destroy or weaken Iraqi military assets far from the Iraq/Kuwait border, that normally might not be considered legitimate for purposes of self-defense.

Further, whether a U.N. authorized military action must comply with all of the laws of war in order to achieve the Security Council’s objective remains a debatable proposition. One could argue that the higher moral objective of a collective security action (for example, to restore international peace and security and eliminate the threat of aggressive use of nuclear, chemical, or biological weapons, or other threats of future aggression) might permit a larger degree of collateral civilian casualties and property damage than the use of more highly destructive weaponry that otherwise would be prohibited by the laws of war, particularly in a limited self-defense action. But I stress that that is debatable. We have not resolved that under international law. In fact our esteemed chairman was on a committee of the American Society of International Law in the early 1950’s that looked at this question in light of the Korean War and came up with certain conclusions. Other conclusions were reached by the French Institute of International Law in the early 1970’s. But these are independent bodies. They are looking at it. We have no definitive guidance on this par-
ticular issue of U.N. authorized use of force in compliance with the laws of war. So this will be a key issue for lawyers to examine in the future.

Now there is a grand presumption incorporated in Chapter 7 of the Charter that member states may not rise to the challenge of a U.N. enforcement action unless they are compelled to do so. Chapter 7 establishes a step-by-step procedure partly designed to compel the performance by member states. Escalating steps include condemnation, provisional measures, economic sanctions and other non-military actions, the Security Council’s authorization for the use of force, and finally, if they have been ratified, actual use of forces under U.N. authority pursuant to Article 43 Special Agreements.

This elaborate scheme anticipates the hard case; namely one where a member state not only can be directed to participate in an enforcement action but would be obligated to provide a predetermined number of military forces at the request of the Security Council. In many respects, however, the Kuwait crisis represented the easy case. A multinational army that was deployed to the Persian Gulf region at the request of Kuwait and Saudi Arabia obviated the need for the special agreements contemplated by Article 43 of the Charter and the U.N. military command structure described elsewhere in Chapter 7.

The technical argument about whether the Security Council can authorize any military action in the absence of Article 43 forces, that argument was over-shadowed by the larger realities that the permanent members acted in unison on the Security Council Resolution 678 (notwithstanding China’s abstention), and that three of them committed troops to the defense of Saudi Arabia and other Gulf states. The fact that the coalition troops were transformed into a potential offensive force with the adoption of Resolution 678, and finally a fighting armed force on January 16, 1991, represents an extraordinary development in the history of the U.N. Charter and, for that matter, the history of warfare.

I would argue that the era of being intimidated by the provision of the U.N. Charter is over. The Charter is a flexible document and can be interpreted as such. If one applies a narrow positivist interpretation to the Charter, then what one is trying to achieve through the Charter may be stymied. In other words, if one relies heavily on the Charter for legal guidance but then construes the Charter provisions too precisely within a positivist paradigm, then it may become exceptionally difficult to implement those provisions. This was especially true in the Kuwait crisis. We talked this morning about some of the
difficulties in interpreting the provisions of the Charter with respect to sanctions.

Another issue during the early months of the Kuwait crisis involved the special agreements called for by Article 43 of the Charter. The argument was that "well, we can't really do anything here because they haven't been ratified, we don't have these forces available to the Security Council, that is the end of the story, you can't go to war under U.N. authority." Well, first we know that pursuant to Article 39 of the Security Council there can be recommendations for military actions to maintain or restore international peace and security. Second, Article 42 does not condition an authorization to use military force on the existence of any special agreement. Nothing in the Charter language prevents the Security Council from authorizing a member state from using its national armed forces to enforce a Council Resolution.

The legislative history of the Charter, with which Professor Sohn was so integrally involved, suggests that the intention of the framers was to create a U.N. rapid deployment force which the Council could call upon at any time to either dissuade would-be aggressors or to respond quickly to acts of aggression. With Article 43 Special Agreements in place, the Council could direct or command member states to participate in a military action and contribute certain numbers of armed forces to the collective effort. In the absence of those agreements, the Council certainly can authorize a member state to use its armed forces in an enforcement action if that member so chooses.

Whether the Council could legally compel a member state to use armed forces without the foundation of an Article 42 agreement is a far more difficult question. It certainly was not inconceivable during the Kuwait crisis that the Security Council could invoke Article 42, acknowledge the presence of the multinational force that had gathered in the Persian Gulf region, and authorize the various contingents of that force to enforce Security Council resolutions. Of course, the Security Council action would be an authorization, not a legal command. Therefore, it would remain in the hands of each participating government in the multinational force to decide whether its troops would be committed to the offensive campaign, and that is precisely what happened in January 1991 when the Gulf War commenced.

Significantly, however, the Security Council did not explicitly invoke Article 42 when it adopted Resolution 678. Rather the Council referred generally to its authority under Chapter 7 to authorize military enforcement action against Iraq. This was not unusual, for the Security Council had acted under Chapter 7 in many of its prior resolutions
on the Kuwait crisis and it acted sometime without even referring to Chapter 7 in other situations which required enforcement action in earlier years.

I am not going to get into how to deal with the Military Staff Committee, but it is definitely possible to use the Military Staff Committee or not to use it at the discretion of the Security Council. It really acts at the pleasure of the Security Council and it is not a rigid obstacle to enforcement action.

Now the drafters of the U.N. Charter opposed creation of a standing U.N. police force or U.N. army. First, it was argued that it is easier to control an ad hoc army than a standing army because the former minimizes the danger that the U.N. police force might itself become a threat to world security.

Second, an ad hoc force dissuaded notions that the United Nations might become a super state with a large standing army that would intimidate member states at will. Third, the ad hoc force was more acceptable to the great powers—China, France, Soviet Union, U.K., the United States—that convened at Dumbarton Oaks, because each wanted to keep its own armed forces under national control except in the kind of emergency situations that they all would agree would require concerted action under Article 42.

There is a unique arrangement provided for in Article 45 that would require that national air force contingents be immediately available to the Security Council but still separate from the Council's formal organization. I think it is interesting to note that in 1942, U.S. Vice-President Henry Wallace said of this prospective U.N. Air Corps (which does not exist today) "when this war comes to an end [World War II] the U.N. will have such an overwhelming superiority in air power that we shall be able to enforce any mandate." He later said the method would be to bomb the aggressor nations mercilessly until they ceased fighting. I remembered that when General Dugan made some of his infamous comments in September.

The unprecedented bombing campaign waged by the coalition air force during the Gulf War reflects, perhaps unwittingly, the original concept underpinning Article 45. In fact, at Dumbarton Oaks the Soviet delegation was the strongest advocate of the U.N. air force, but it only evolved into a less formal arrangement as now described in Article 45. I believe I will leave to my colleague from Egypt any discussion about Chapter 8 and regional arrangements, because that is something that I think has tremendous potential.

Finally, I just want to point out that Article 106 of the Charter, while we have not heard much about it, actually was the failsafe
provision of the Gulf War, and in retrospect we should understand something about it. Article 106 was drafted to deal with the very kind of situation that the United Nations continues to confront in the absence of the Special Agreements called for under Article 43. Article 106 authorizes the five powers which became the permanent members of the Security Council to take "joint action on behalf of the organization as may be necessary for the purpose of maintaining international peace and security." This special authorization remains available until "the coming into force of such special agreements referred to in Article 43 has in the opinion of the Security Council enabled it to begin the exercise of its responsibilities under Article 42."

There is no requirement that the decision to take joint action under Article 106 must be made within or outside the Security Council. On the one hand, Article 106 may be interpreted to authorize the five powers to take joint action involving the use of force only after the Security Council has determined existence of a threat to or breach of the peace and decided that enforcement action involving the use of armed force is necessary. But on the other hand, Article 106 provides a rather convenient method by which a multinational force of the character which was deployed during the Kuwait crisis could take enforcement action under the direction of the great powers, which could have reached a decision outside of the Security Council to use force offensively in conformance with the U.N. Charter and on behalf of the United Nations. It is still on the books, still there, and some day it still may be implemented.

Now a final point in this part of my remarks, and then I am going to get to some very specific little points. A permanent U.N. military force, even if properly trained and effectively managed, is not the answer for the near future. There remains little likelihood that the major powers or even other governments want to totally cut the umbilical cord to those national forces that would be contributed to this so-called permanent U.N. force. The framers of the Charter had the right idea when they drafted Article 43 with its requirement for special agreements between each member state and the United Nations. Even though negotiations among the major powers broke down in 1947 over the obligations that could be imposed by special agreements, the end of the Cold War offers a realistic prospect that these negotiations can be resumed. It is more pragmatic at this precarious stage in the development of protective security to require that nations make certain limited forces available on call to the Security Council rather than to permanently deploy them in the service of the United Nations. A permanent stand-by U.N. force might be a vision worth
pursuing for the 21st century, but the organization will have taken a major step if it can implement the Charter's original design in the coming years.

Now I just want to make a few points and then I will pass the torch here, about the Gulf War and its aftermath. I think we can take some pride that in the Gulf War we witnessed the enforcement of international law. It was never really put that way by the Administration in the past. We have talked a lot about the Rule of Law and decency and what is right, but the Administration's policy never quite put it so bluntly as to say "we are here to enforce international law and we have the legitimate right to do so."

They said it with different words, but I think we need to start thinking of it in those terms. We are passing from an age of norm creation in international law since World War II (one in which our distinguished chairman was the key pillar of) to an age of international law enforcement, and there are going to be tremendous challenges for this generation of lawyers as to how we go about multilateral and collective means of enforcing international law, both through peaceful dispute settlement procedures and ultimately through the use of military force. It includes what we do with the International Court of Justice, what we do about international arbitration, conciliation, and also how we use military force in the future.

I was somewhat amused to hear the remark of a Pentagon official recently who was asked by a journalist whether the Pentagon was compiling a list of violations of international law, war crimes, etc., and he said "not only are we doing so, but we are increasingly impressed with our image of the fact that Saddam Hussein must have awakened every morning and asked his advisors what international law can I violate today."

The list is simply growing so long, and that means that we have a tremendous challenge ahead of us on the issue of war crimes. I might be corrected by our U.N. colleagues, but I don't think the Security Council was going to address that in its immediate resolution. It is something that will come down the pipe, and some things we need to keep thinking about in that respect are: whether or not a war crime's tribunal would be established by the U.N. Security Council, whether it would be established by the coalition governments ala Nuremberg and Tokyo, or whether war criminals will simply be prosecuted in Saudi courts or Kuwaiti courts depending on who has custody of the particular individuals. I think it is important to remind ourselves that the Nuremburg Tribunal tried, convicted and sentenced (I don't know, I think they sentenced) Martin Borman who was in
absentia throughout the entire affair and I don't think he ever was apprehended. We never quite knew what happened to Martin, but the point is it is possible, theoretically, to think about a prosecution in absentia as long as you have the appropriate authority or the tribunal to do so and it is part of its Charter.

The other thing to keep in mind is that I think Saddam Hussein and the Revolutionary Command Council will remain individuals who for the rest of their lives will remain at risk of prosecution wherever they are, and so we need to keep that in mind. As far as I know war crimes do not have a statute of limitations and the fact that we cannot gain custody next week or next month is not something we need to panic over with respect to the Revolutionary Command Council; even if they rule for another two or three years we don't need to panic about it. Ultimately they may be brought to justice, even by Iraqi courts, and I think that is one thing we have not thought enough about. If an enlightened Iraqi government comes into power, you may ultimately see these individuals prosecuted in Iraq. But at the same time we have a tremendous political dilemma ahead of us over whether or not to prosecute these individuals and what sort of signals that sends to the Arab world, so these are all things to keep in mind.

On the issue of reparations, I think we have already talked about that this morning, in terms of frozen assets and getting control of the oil revenue, but that I want to go further into. I want to in fact stress the point that one of the future challenges for the Security Council will be peacekeeping in the region. You are going to start seeing some proposals, not perhaps in this immediate resolution that you are going to hear about this weekend, but in later resolutions, about deploying a U.N. peacekeeping and/or observer force in, perhaps, occupied Iraq and perhaps along the Iraqi/Kuwait border. I would envision that for the next few months you will see a very heavy coalition force presence in the Security Zone but that there will be the proposal and hopefully the implementation of a transition of a draw down on that force and a build up of U.N. peacekeepers to man that order and ensure security.

But there will definitely be a new peacekeeping role that might involve some new duties for peacekeepers that we have not seen before at the U.N., a particular kind of defensive posture that we have not seen before, but those issues are all ahead of us on the peacekeeping front.

I finally want to close with just a few very broad points about what this all means for what we have been hearing is the “New
World Order.'" The Gulf War has focused our minds on this issue of what comes after the Cold War, and I would simply put down on the table the following points: one of our largest challenges will be to convince Arab nations, particularly those who were sympathetic with the Iraqi cause, that the collective enforcement of international law is in their own best interests and that the principles at stake in the Gulf War are principles that are intended to protect their interests as well, and unilateral American solutions or unilateral Arab solutions to these problems are not going to build lasting peace and security in the region. That is going to be a major challenge for what we have come to term the "New World Order."

Further, I think we have seen quite rapidly that we have reached the stage where there are situations where the use of force can be authorized, where it is a legitimate tool for the enforcement of international law. After all, that is what it was conceived to be in 1945, and we have a perfect model here of one way in which the U.N. Security Council has resurrected that concept for us to follow. I gave a talk in January of 1990 entitled "Controlling the Use of Force" up in Washington where I listed what I thought would be future areas in the post-Cold War world where force could be authorized as a legitimate tool, and to get away from Brezhnev and Reagan doctrine concepts of the use of force and to look at U.N. authorized uses of force. And one of those tick lists was blatant aggression, etc., and I can remember the response of the audience at that time was "oh no, this is far too outrageous, we are in a period of peace now and we want to build a peaceful world, with force behind us," but I think the reality is that we can't predict the future and these things are going to be reality.

Furthermore, we are talking a lot these days about the Rule of Law, and especially here in the United States it is going to be important that we remain consistent with that principle and that we don't dive off the board into vast tracts of reinterpretation exercises which can be so damaging to our own credibility in trying to build a world where the Rule of Law persists.

I would also point out that it is very true that now that we are in what I would consider the age of the enforcement of international law; this is going to be at the top of the agenda of policy makers in foreign ministries, in the White House, around the world. During that age of norm creation it got to be kind of a tedious exercise as the codifying of what we know as customary international law, or what we decided to create as codified international law, really was not a subject that hit the Oval Office all that often. But now those
documents are on the books, and we are at a stage of enforcing international law; when you go about enforcing it, you also have to know what the norms are. Policymakers are going to be under much greater demand or subjected to much more pressure to know what those principles are. So I think the idea of the legal counsel that policymakers are going to have to expose themselves to in the future has to be at the top of our list of priority items, and it should give encouragement to those of you interested in public international law that this is a field of the future. It is going to be right at the top of the agenda.

Professor Sohn: Thank you very much. That was a very comprehensive statement of the problems. I would like to add a few footnotes to what has been said. The definition of aggression that the United Nations adopted after many, many years of negotiation contains quite a number of very interesting norms which, when they started drafting the definition, people did not think they were ever going to get, especially about indirect aggression by armed bands.

Second, we are of course now working very hard on the code of offenses against peace and security of mankind which has become a code of crimes against the peace and security of mankind, and it is getting broader and broader every year. Last year the International Law Commission was authorized to study the question of establishing an international criminal court. And in the next session, they are supposed to actually try to draft a statute of this court.

Third, I would like to say that Mr. Scheffer's interpretation of the Charter of being broad and flexible was the very interpretation it was given after San Francisco. Paul-Boncour made a great speech at the last session of the conference, saying "we have left behind the mistakes of the League of Nations, we have put into the Charter all of the necessary principles that would permit us very quickly when an aggressor strikes, to strike back at him." They decided to give the Security Council almost plenary power to do what is necessary, what is important, to punish the aggressor for his aggression, and to restore peace as quick as possible. And this was the basic mandate; Chapter VII in a way has no limits. The first article, Article 39, is written so broadly that it really permits the Council to do everything. You can implement it this way but of course if you find it necessary to implement it another way you have the power. But the limits are (1) that you have five permanent members, if they agree, then they certainly have the power to do it, and (2) in order to control the
situation there were six, and are now ten nonpermanent members who are elected by the General Assembly and represent the various trends in the General Assembly. They are the watchdogs, and it is their duty to provide the necessary possible restrictions and limitations. If they voted differently from what the General Assembly wanted, then they are certainly never going to get re-elected, so they have to be very careful about this. In fact, it is now accepted that if you are a nonpermanent member of the Security Council and if you act against the wishes of the General Assembly, it might elect somebody else, although that was not put in the text.

The other point that interested me is your statement about the air force. It is not novel at all because during the 1930s, when we had the first great conference on disarmament, the French from day one insisted on an international air force to maintain the peace. And in fact when President Eisenhower started talking about open skies, the French immediately came back saying, “we need an international air force today; not only open the skies but keep them open by having an international air force.”

Finally, on your other point relating to the transition period. We start with the institutions that we have but we slowly change them into something else. Dr. Caminos yesterday did not have time to tell us the details of that but in the Dominican Republic case that actually happened. There was an emergency; with the permission of the OAS, Marines went there and stabilized the situation and saved the foreign citizens who were in great danger, and then, under further negotiations, it was decided that the American force was to be replaced by an international force and various countries provided contingents. A Brazilian general was appointed to be in charge they were able to restore peace. A good precedent of this kind could happen even here.

We are very lucky to have Mr. Mohammed Galal from Egypt who studied in Egypt both law and political science. He then joined the foreign ministry and has had a very distinguished career. He has visited practically all the important states of the Middle East that we are talking about. He was ambassador to Jordan, Kuwait, United Arab Emirates, and also spent some time in Norway and India. When he was in Norway he published something in Norway and when he was in India he published various things in India and he was not simply observing but he was doing.

Another distinguished point in his career was that he participated quite a lot in various Third World organizations. So he is just the right man to tell us about how those organizations function. I give you now Mr. Galal.
The Gulf Crisis and the Role of Egypt of Support International Law

AMBASSADOR GALAL: Thank you Professor Sohn. In fact, I am in a difficulty, to tell you frankly, that after such distinguished speakers, my job has become even harder to follow suit and to speak with such eloquence and in such a scholastic manner, in the way Professor Sohn or Mr. Scheffer, and others have spoken. However, I will try to venture to speak not as a diplomat, because luckily we are not on any diplomatic forum now, but among scholars so we try to imitate them, and you can imagine when you are not a scholar and you try to imitate scholars what a mess you do to yourself.

My presentation here today will be divided into four parts. The first part will be how this crisis started; the second, what activities in the different regional forums have been done to try to solve or to rally support to solve the crisis; third, the aftermath—what priorities; and fourth, some conclusions.

So to start with, a heading: the Gulf Crisis and the role of Egypt to support international law. When I was in law school my law professor, who was a distinguished student of Professor Sohn some years ago, asked me to write an analysis about oil and the difference in the oil agreement in eastern Arab countries, the Gulf and Saudi Arabia, as compared to the agreement between Algeria and France. I wrote a paper of ten pages and I gave it to him. He read it and he said to me, "It's a very good one, but I am afraid nobody is going to read it, so better to make it just one page so that people can read it." And that was the end of my lengthy contributions in anything.

The crisis started in so many stages. The first stage, which Professor Sohn mentioned, was in 1961 when Iraq never accepted that Kuwait could be an independent state. This is also due to the oil; if there was not oil there, for sure Iraq would not have cared to have had so many kilometers. But anyway, when Kuwait got its independence in 1961, Iraq was keen to get it back into its Iraqi fold. And there was a struggle. And you know history is exactly as international law, with all respect. It is very flexible and you can interpret it in so many ways as the famous professor said, "you can interpret Article 39 this way or that way." So that is exactly the case with the history. They had to follow with ample approach the political interests and economic interests, and then invent certain rules of law to substantiate what they want. And you can, as our distinguished colleague from
the Soviet Union and the Legal Committee, find certain arguments now and the next day you find another different argument from this same delegation. Not necessarily a certain delegation or a specific delegation, but any delegation. You name it, you will find there is an everyday different argument, and so on. So the point is that in 1961 the British came in but also they couldn't fill in the shoe exactly, because it was the age of Arab Nationalists and Arab aspiration. The British came in but very quickly the Security Council, trying to discuss the issue, resulted to the Regional Arrangement since it was the age of the Cold War and the Security Council was paralyzed. The Arab League came into being with the Regional Arrangement, which is referred to in Chapter 8 of the Charter of the United Nations. So the Arab League filled the vacancy because the U.N. was paralyzed and sent a peacekeeping force. This peacekeeping force consisted of three or four countries, among them Egypt. This peacekeeping force stayed in Kuwait from 1961 to 1963 until Iraq had an agreement and recognized Kuwait in 1963. So the peacekeeping forces were withdrawn. This is probably one of the blessings of the Regional Arrangement, that you can withdraw them quickly, while the International Peacekeeping Operation tend to have a longer stay, so many years like in Cyprus for example, and in many other occasions like Lebanon, and so on. Probably the exception is just Iran-Iraq now. They dismantled it in Afghanistan partly but they put it in a different shape.

In the beginning of July 1990 we had an Arab meeting, a council of the Arab League. Iraq wrote a long statement, a long letter against Kuwait and the United Arab Emirates accusation of waging an economic war against Iraq through their oil policy. They were over-producing their oil, during down prices, which affected Iraq badly. So we tried, as Egypt, to mediate, and to contain this crisis. The President of Egypt went personally and had a meeting with President of Iraq, Saddam Hussein, and we came to a conclusion that he accepted to have a meeting in Saudi Arabia with the Prime Minister of Kuwait and Vice President of Iraq to try to settle the matter peacefully. This was on July 30 and they stayed in that meeting for one day, meeting in two sessions. The first session was just an opening for a photo and the second was only restricted to an introduction by Iraq of their claims, and then the Iraqi pretended that he was sick, and could not continue, and he left. He left at the end of August 1, and the midnight of the second was the invasion. So this shows us how this manipulation of the process started. This led to a reaction from Egypt and other Arab countries that we took a matter of principle, as the distinguished speakers have mentioned earlier; as
an American you take pride that you have to enforce international law, so we can claim that we also as a matter of pride tried to enforce the concept of solving the principles in accordance with international law and the peaceful settlement of disputes.

It so happened at that time that there was a meeting of the Islamic conference in Cairo. It was a regular meeting, but the invasion of Kuwait took place while that conference was taking place in Cairo, and we had the foreign ministers of forty-six countries there, from different parts of the world. The meeting made a statement, a strong one, condemning the Iraqi invasion and asking for the Iraqi withdrawal, and Egypt was presiding over that meeting. Meanwhile, this meeting was suspended, and the Arab countries had another meeting at the ministerial level which also led to a resolution to condemn the Iraqi aggression and to ask Iraq to withdraw from Kuwait unconditionally. In both of these two meetings, there was no unanimity. There was no unanimity on that—it was a majority who condemned it and a very small minority, they are all Arab countries and you know them, who abstained or opposed; two opposed—Iraq, because they were the aggressor, and another country—and the others abstained under different pretexts.

However, the majority were supportive of condemning Iraq and asking for the withdrawal of Iraq. The efforts increased or intensified one week later, on 3 August, and on 9 August President Mobarek called for an Arab summit to be held, which took place in Cairo, also. President Mubarak was chairing that meeting and this Arab summit was very much instrumental in rallying the support for Kuwait against Iraq. This summit made a long resolution which condemned the Iraqi actions and so on, but most important it spoke about allowing other countries to respond to the request from Saudi Arabia to send forces to defend Saudi Arabia. This was done on the framework of the Arab League Charter and another charter within the Arab League system, with mutual cooperation and assistance. This packet of mutual cooperation and assistance in security matters was invoked, as well as the Charter of the Arab League, to send forces from Egypt, Syria, and other Arab countries, to Saudi Arabia to help them against a potential Iraqi aggression after invading Kuwait.

Meanwhile, one month later, a ministerial meeting of nonalignment took place on the first of October in New York and that meeting passed a statement to condemn the Iraqi aggression and to ask for full Iraqi withdrawal from occupied Kuwaiti territory. These complete steps intended to do two things. First to rally the public opinion in the developing countries against the Iraqi aggression. Generally among
the developing countries, we easily unite to condemn the super powers, because usually we have to take a different perspective than the prospective which you have, and which the distinguished speakers mentioned before, of aggression. For us as a developing country the concept of aggression generally comes from the super powers. This is also a different approach, because the British and the French have been occupying most of the world. I don’t want to speak about American relations with Latin America, in different perspectives than in the Dominican Republic. I remember that when I was a student, and I did a study about the American "invasion" of Grenada, but it is a different way to look at things when you belong to different part of the world. The geography here, it has a very important impact on your thinking on how to see things. So from this point, what I want to say is that Egyptian diplomacy managed to rally the Third World countries for the first time to condemn another Third World country for invading their neighbor. This happened for the first time with humbleness due to Egyptian diplomacy. Recall when Iraq invaded Iran; there were so many activities, the nonaligned movement never dared to condemn Iraq for their invasion of Iran. The same happened when other countries invaded Afghanistan. The nonaligned movement was divided because India, as a regional power, did not take this stand, but took a different stand. And here I am speaking very frankly. I am not speaking as a diplomat, but this is real politics. This is real: national interest comes first, irrespective of any other consideration. In a case like Iraq’s invasion of Kuwait, it is number one national interest in the United States or national interest in Egypt (we put it in a very nice beautiful framework of international law, which is really there also, luckily). The concept of national interests is the driving force for fighting against aggression. Probably because of my background in the political science and international relations, is why I am concentrating on the concert of national interest.

We managed to have resolution after resolution in the developing countries forums—nonalignment, Islamic conference, Arab League—to condemn Iraq. But more than this, in the Security Council itself, those in other leagues were witnesses as Egypt and some other countries who have national interest against the Iraqi invasion and the occupation of Kuwait, were lobbying hard with the members of the Security Council to convince them to pass also one resolution after the other. Of course, it was not thanks to our efforts only, but through thanks to so many efforts by many parties and many members, and the clear-cut case of invasion, because there are many cases where you can argue that this is not clear and you need more evidence
and so on. This case was very clear-cut state of aggression. We also contributed in highlighting the violation of human rights by Iraq in Kuwait in a resolution adopted by the General Assembly in the last session, and this resolution was passed also in spite of some disagreement from Iraq on how to interpret the Charter of the United Nations and the division of work between the Security Council and the General Assembly. As one of the speakers yesterday was referring to, when the Security Council is seized with an issue, the General Assembly should stop discussing it. In spite of this and with such a vast majority, the General Assembly adopted this resolution against Iraq and condemned the Iraqi violation of human rights. And this was also thanks to this clear-cut position and the efforts by many countries, including mine. These were some points on the second part of my presentation, what happened when developing countries rallied to support a solution to the crisis.

Third, the aftermath and the priorities. The best approach was shown in the testimony of Mr. Baker in Congress a few days ago, talking about the necessity to have economic cooperation and to address the gap between the rich and the poor as well as to have security arrangements and to try to tackle the Palestinian and Israeli question. In fact, this was a prelude to it, but more important in this year, I would like to add the Egyptian outlook on these three issues. The regional security, we envision out of our experience, should come from the region and should be the exclusive responsibility of the region itself. And here, as I stated, we look from different perspectives to the matter. So when you have the long-term arrangement for security, it should be a regional responsibility; but when you have an act of aggression, which a region cannot stop, then you need international support and an international rally to fight against aggression. There are two different stages: the stage of aggression, which is clear in the Iraqi case; and the stage of after the aggression—long-term security arrangements. The other issue, then, is regional cooperation. We have also in the framework of the Arab League and many Arab subregional groups some arrangement for cooperation, but these arrangements were not enough and they did not do very much to help in it because of the different levels of development of each Arab country, as well as the difference in natural resources. The Gulf countries were afraid that other big countries like Egypt with so much population and not enough resources, would take all the resources from them. The Egyptians tried to help, but also from a different perspective. But now, if we are talking about the era after the Cold War, the era of interdependence, then we have to look
forward in a spirit of not thinking about selfish interests of a certain country, but the interests of a region which goes after the interregional integration.

So here we envision, we also held a ministerial meeting in Cairo between eight Arab countries—Egypt, Syria, and the six Gulf countries—to look into the future and to see how we can arrange our cooperation, our security in the long-term. One of the problems which raised the question always is the third one, the Palestinian-Israeli conflict. I insist that it should be called not Arab-Israeli conflict but Palestinian-Israeli conflict, because it is located in a certain area. This area is called Palestine so it is between the Palestinians and the Israelis who are living in the same area; historically it is called like this and it will continue like this. However, you have two peoples, the Israelis and the Palestinians. They are fighting for so many reasons, we will not go into the issues, but the most important is that they both had the right to this land. We have to help them to think in a futuristic approach to co-exist together, work peacefully together, to satisfy the aspirations of both in one way or another so we can help the stability of the whole region. We’ve had recent resolutions of the Security Council on the Gulf issue, but two in these past six months were not on this, but on Israeli treatment of the Palestinians. And you can compare these two resolutions with any of the twelve Gulf resolutions. The two were very mild, very soft, just a touching smoothly on Israel that we request, we beg you, just treat the Palestinians in a nice way. We have a responsibility as a regional power, as Egypt, and you have a responsibility as a super power, as the United States, and a friend of both the Arabs and the Israelis, to work in a futuristic approach, not looking at the Holocaust or the 40’s or 30’s, but looking on the future: how to help the Palestinians to be a nation, to be a state; how to help Israel to be a nation and a state; and how to cooperate together. Otherwise you will find we will go through a long period of turmoil and instability in the whole region.

I raise this issue here because I feel with such intellectual distinguished personalities, you have a role. Especially the poor diplomats like myself, we are white collar and just follow instructions to do this or not to do that; but you are the future, especially the young lawyers, you are the future and with your intellect and your background you can do a lot to help in this matter.

The conclusion here is we can think about what to do next. What lessons will we draw from this crisis in the Gulf? The first lesson, is that with the aggression by any country. With due respect to the
excellent presentation earlier, and the work of the sanction committee established by Resolution 661, it is not easy to fight through sanctions. As my distinguished colleague from the Soviet Union would say, Resolution 678 never mentioned the use of force, but it is well known that its code name is the Use of Force Resolution. It is the same as the League of Power, which is never mentioned in the Charter of the United Nations, but it is well known that the League of Power is used in different terms but the name is never mentioned. The lesson is that economic sanctions, though they have impact, also have consequences, and they can hurt a certain country, but they never quite work adequately to stop aggression or to force a certain country to change its position. The sanctions within the League of Nations against Italy never stopped the Italian aggression against Abyssinia at that time, and on the contrary it led to war. The sanctions after the Second World War against Rhodesia or in the case of South Africa never changed the two systems. Sanctions helped a little bit, it made their life difficult, but political change in the international arena is what forced the issues. The liberation movement in Rhodesia or the liberation movement in South Africa lacks the different international situation which helped to expedite the process of decolonization for the process of de-apartheid.

The second conclusion is the spirit of reconciliation. Now more than any other time, we need a reconciliation in the Middle East. I touched briefly about the reconciliation between the Israelis and the Palestinians, but more important than this is reconciliation with Iraq itself. As Mr. Schrijver and the others have touched upon, the reparation issue after the First World War forced Germany into the Nazi era because they could not afford to pay all this. What we think as legal minds or politicians or diplomats is to think of the future, in a spirit like Mr. Bush has mentioned in his statement to suspend the hostilities. He said, if I recall the words, “it is not a time for jubilation or celebration of a victory, but it is a time to think about reconciliation, about how to address the wounds, how to heal, to help, to recover the situation and to bring everyone into order.” This is the second conclusion.

The third conclusion which I also touched upon is the pivotal role of the regional organizations as well as the regional councils. In a certain region, as I said, the role of Egypt helped to rally support for Kuwait and condemnation to Iraq. In other regions, other countries can play a role like this. We are living today in a post Cold War era; probably this era will continue, but there is also speculation that it will not continue, so we will come back to the Security Council.
and the United Nations with another form of a Cold War, you never know, and in that we have to highlight the role of the regional organization and the regional countries to help in the process of maintaining peace and restoring stability. These are just small reflections which I dare to say. Thank you.

PROFESSOR SOHN: Thank you very much. It was a very good statement from the point of view of the Third World, especially of the Arab World, especially of the Egyptian point of view. And I think it gives us what we needed very much, a look from another perspective. And sometimes we look too much from one point of view. We think sometimes that the world centers on us, and we forget that there are 4.5 billion people elsewhere, and I am glad that you were able to bring this point of view to us.

Of course you by now probably know Mr. Wilner, but just to remind you of what he has done I would like to say a few words. First, he is the Thomas Kirbo Professor of International Law and Director of Graduate Legal Studies at the University of Georgia School of Law. He started his career in 1963 in one of the oldest Universities in the United States, William & Mary. He has both a Bachelor and Masters Degree in Law. He later went to Columbia University, and spent some time in Brussels continuing graduate studies. He later became Director of the Brussels Seminar on the Law and the Institutions of the European Economic Community. He has been teaching every year there as an Adjunct Professor of the Free University of Brussels. He also started working in the United Nations in 1969 for three years as a legal officer and became involved in a number of things there. As a result he became a consultant to the Conference on International Trade and Development called UNCTAD. After he became consultant to that organization, and as part of his work for the Commission on Transnational Corporations, he has been doing very special jobs for them including assistance to various countries in West Africa and has been helping them in both establishing international organizations and in dealing with foreign corporations, etc. His specialty is transnational law and also arbitration. He published a new edition of a book on international arbitration a few years ago, and several other books and articles of general interest. So I give you Professor Wilner.

Application of United Nations Measures in Other Current and Future International Crises

PROFESSOR WILNER: Thank you Professor Sohn. That was very kind of you. I am usually known as the other person who teaches
at the University of Georgia Law School. It was very kind of Professor Sohn to have alluded to my rather unillustrious past.

First, a few comments on the present structure of the political organs of the United Nations charged with the maintenance of peace, although one would like to change the theories about how one could improve the system. I think we have all posited that this is the way things are and this is the way the Charter is and as we all know, it is difficult to amend it, etc. I think it is clear that when we talk about the application of U.N. measures in other current and future international crises, although the experience in the Persian Gulf crisis is very instructive and is of importance for the future, I think there will continue to be difficulties in finding agreement in the international community on specific crises to which Chapter 7 and/or Chapter 8 might be applied, either under Article 39 or through the use of Article 39, or even Article 51, and that is self-defense, or collective self-defense, in the sense that national interests are of great importance. Very often when one thinks of the application of international law, or the application of the rules by which we all live under the United Nations Charter, there are such tremendous variations in the thinking of the governments on when they should be applied that it is difficult to predict which crises will bring about the use of measures involving force to deal with a particular breach of international law or a breach of the security or sovereignty of a particular country. If we go down some lists of current disputes and problems, some relate to aggression in the classical sense—the kind of aggression that we saw in the invasion by Iraq of Kuwait—and others are much more complex and include aggression but also are related to civil war. One finds that it is difficult to see how one can posit a general model for when the international community will take action. In Kuwait it was pretty clear. I think the Iraqi army went into Kuwait looking for Kuwaitis who wanted to become part of Iraq. They didn’t find any, so there was no question of civil war there. On the other hand, some situations are more complex, like the situation of Lebanon. Our distinguished colleague mentioned the Israeli-Palestine problem, but I think the Lebanese problem is a problem that also ought to be dealt with by the regional organization. And there may be others that crop up over a period of time.

Kampuchea is a mishmash of all sorts of problems. There was the aggression, at least it’s posited that way by some, conducted by China with respect to Tibet. There is the problem of Kashmir—is that not an aggression that should be redressed? Is Pakistan entitled to ask the world to assist it in freeing Kashmir? Certainly India doesn’t
think so, and I think that these are some of the realities with which we have to live.

I don’t think it’s a question of bad faith on countries who assert the notion that in fact aggression has been committed or that in some other way there is a threat to peace as a result of which the Charter should be invoked either under Article 39 or 51. But I think that it’s just a reality today that we are not yet at the stage where we can as a matter of routine have countries go to the Security Council and have them determine “Oh yes, this is in fact what makes it necessary to invoke Chapter 7.” I think that is something for us to ponder. The United States has been accused in the case of the Persian Gulf of having been involved for all sorts of reasons. I was in France recently and some rather conservative business people said, “Well aren’t you in a recession, don’t you need a war so that the country can recover from the recession?” Frankly I try to be critical even of my own country when necessary, but this is not something that had occurred to me and I don’t think that this is the basic motivation of the United States.

Once again, I think that it is a good faith motivation, but on the other hand it’s not necessarily perceived as such. And in other circumstances, where a state should act or where the community of nations should act there may be no action, even though action could be taken under Chapter 7, and that’s the problem I think. The problem is there is no one to force us to say an aggression has been committed and the U.N. should do something about it immediately. Sometimes some of the most heinous of aggressions and some of the most heinous behavior has never been punished—in Kampuchea we see this as a very great reality. We talk about war criminals and talk about persons who of course were in absolute breach of human rights obligations, yet nothing really has been done; in fact some governments continued to recognize that regime for a very long time. So while it’s true that national interests are still involved and while it is true that in many cases good faith efforts are made to redress threats to the peace and aggression, it’s still very selective and I wish we could find a system whereby that could be redressed. And perhaps, and this is really the other comment that I would like to make, perhaps we ought to use regions or groupings of states to raise the alarm, to be at the forefront of dealing with specific acts of aggression.

We do have regional groupings in the sense of geographical regions. We have regional groupings in terms of economic, social, and cultural interests or cohesion. These are usually self-selected groups of countries, and the potential I think is very great that at that level good
faith identification of real problems could be made for the sake of peace in that particular part of the world. The danger with that of course is that should a regional group be based on the economic or military domination of one country, that certainly is not consistent with the Charter. That is to say, one country keeps the peace of the region in its own fashion and that's not the idea. Alternatively, in a sense the regional peace should not be kept by the majority against the interests of a minority of states with differing ideologies or differing ethnic composition. So of course there still is the danger in the regional grouping of the state interests or group interests acting to the exclusion of some member of that region. It occurs to one then that the imperfect system that we have today will have to continue to operate on the two levels, and that the system as it exists now is not consistent with what we really would like to have, but it has functional results in many cases and the lesson to be learned, I assume, from this successful application of the United Nations system is that it is possible and that one should persevere in making use of the system.

At one point I think there was a general pessimism, a view that in fact the system could never work, would never work, part of it due to the Cold War, part of it due to a certain isolationism or pessimism with respect to international solutions of problems. But I think that we've gotten over that, at least for the moment, and we ought to pursue these new elements of good will in the international community as far as they can go.

Let me stop here and see what the rest of our discussion will bring us.

PROFESSOR SOHN: Thank you Gabe. A slightly pessimistic, perhaps, point of view on the subject. But we can come back to this later. And I would like to give the floor to a much more radical thinker about the future, Professor Mendlovitz. At this point he has a very interesting title, Professor of Peace and World Order Studies at Rutgers School of Law and has been teaching since the 1960s. For a while he did some work with New York University, at Columbia, and now at the University of Chicago. He also for a long time was Director of another great project, World Order Models Project based in New York at the World Order Institute, in which he looked at that subject from a transnational point of view gathering people from all over the world, eminent jurists, sociologists, and others to try and look at what kind of world order we would like to have and he got some very interesting results out of it.
He has done also many other things. He has written many books, many collections. He has received several awards, one from UNESCO for instance, and presidential award for outstanding public service at Rutger's University. I give you Professor Mendlovitz.

*The Gulf Crisis and Possibilities for a Peaceful Future World Order*

**Professor Mendlovitz:** I am somewhat intimidated because of the titan to my left here. He knows everything. Indeed if you travel with him he carries with him on the one hand all of the railroad charts of a particular region of the world you are in and wine lists in the other. So he is the perfect companion. I mean he is a marvelous man to have aboard.

This has been an extraordinarily rich day and a half. I hope most of you, especially the students, have had an opportunity to listen, because there has been a kind of sense of craft with regard to both the Charter and the problems, so that this symposium has been on the one hand legalistic in the best sense of the word, and at the same time has attempted to provide some sort of sense of where it might go.

Let me begin with George Bush, a good place to begin. "We have before us the opportunity to forge for ourselves and for future generations a New World Order. A world where the Rule of Law, not the law of the jungle, governs the conduct of nations." This was delivered on January 16, 1992, announcing the opening attacks in the Persian Gulf War. We are not yet clear what the New World Order is but I would like to give you a speech of January 29 in his State of the Union message. "The world can therefore seize this opportunity to fulfill the long-held promise of a New World Order where brutality will go unrewarded and aggression will meet collective resistance. Yes, the United States bears a major share of leadership in this effort. Among the nations of the world, only the United States has had 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."

Now that may have been for home consumption, or indeed it may be accurate. But if I were sitting in Egypt, or in India, or in the Soviet Union, and I heard the speaker or the President of the United States state that language, I would have thought that the message of the world order that was coming through was the world order in which Pax Americana had returned to the face of the world, and
that the ordering of the globe was to be done from Washington, D.C.

I was delighted, as Ambassador Galal pointed out, that George Bush showed some sensitivity on the day that the carnage was over, to talk about this is not a time for jubilation. I am hoping somehow that in the negotiations which are taking place in the Security Council that the Security Council will, shall I say, reassert its proper role in all of this, but it is a kind of an extraordinary notion that somehow or other we are the only leaders that are available for this when we are at a moment of history when I believe if we do not have collective enterprise, we will go down.

So let me begin by giving to you what future studies people call some scenarios of the future. And I will just state them.

First is a loose hegemonic world run by the United States using the U.N. when it needs to, using its client states throughout the world, setting up wherever it needs summer relationships with what they consider to be a weaker and troubled Soviet Union, worrying a little about the Peoples' Republic of China, but in the end it runs things.

Second, a balance of powers system going back to the 1974, 1975 speeches of Kissinger and Nixon, that we are going to set up a Big Five. The Big Five are going to run the world. It will be a concert of the globe the way we had the concert of Europe in the 19th Century.

Third, we are going to have a tight hegemonic power. It will really be run by the United States.

Fourth, we are going to have some form of functionalism.

Fifth, we are going to have regionalism.

Sixth, we are going to have a modern, medieval society ala Hedley Bull.

Seventh, we are going to have levenization.

Eighth, we are going to have an Orwellian world.

Ninth, we are going to have bioregionalism.

Tenth, Shumaker wins and small is beautiful.

Now, all of those strands exist as both predictions and in some cases preferences. I would say 7 out of the 10 there exist as preference. And it makes a difference in the way you analyze what is taking place and when you state to the Third World which of those worlds you think is possible, which is likely, and which you want. That is, it is not really that law is not positivistic and that the framework that we use is flexible, it is that we are in pursuit of values. Law is a value realizing process and it uses the normative order to achieve
those values. It has a normative order, the oughts; it has institutions and processes of procedures. What it is you think you are trying to realize, the maximization or the optimization of those values, seems to me to be very significant.

Now let me state my vision of a just world order. My vision of a just world order is a world in which security for people has replaced security for states. My vision of a just world order is a world where a global political economy is geared into a basic need world and sustainable growth. My world is a human rights regime meeting tolerable levels of human rights throughout the world. And my world is an environmental regime in which attention is placed on pollution, resource depletion, and quality of life.

Don’t most people want that world? Well, first of all I think it is like mom and apple pie, and what do I mean by that? A lot of people don’t want to be mothers, and a lot of people have stopped eating apple pie. These are not a set of pieties in other words. They are a set of values which certain people throughout the globe are trying to realize and others are fighting. So it becomes crucial in the way you analyze what has taken place in the Gulf Crisis, to get to what we are supposed to talk about—what it is that you want to achieve.

One of the elements which we have all been working at here today is the element of what I would call its mythic quality. How will we now relate to the major meaning of what has taken place on the face of the globe and put it into our political history into our political thoughts? What do we make of it? What we have been doing here through legal analysis is trying to demonstrate what we think it would come to, and therefore it is very sensible that we do a kind of tough minded analysis of the Charter and the provisions and the Resolutions.

As part of what I will call still world order thinking, I conceive of modern international law and in that modern political international relations, the global political system, which emerged someplace between the 14th and the 17th century, and which most international lawyers like to put in 1648 because it gives it a nice resting place, the Treaty of Westphalia. I prefer, actually, 1625, the Grocher’s Book on the Laws of War and Peace. For me the Laws of War and Peace is what I call a Grocher noma; somebody attempted to take what was taking place in the breakdown of medievalism and put it into a kind of modern framework and permitted then, or legitimated, the notion of a state system that then emerged in 1648. I conceded that to have six elements which are with us. I would call them territoriality; state sovereignty with its national interest; an uncritical acceptance
of violence as a necessary component of state sovereignty; industrialization and unlimited growth; secularism, the breaking away from the sort of sacred society; and finally capitalism in the marketplace, just re-emerged again but a dominant notion up until 1920, and now reheard. Those I take it to be the six components of what we consider to be the modern political economy and military system.

And what I want to say about each of those is that they are under attack. Each one of them. Despite the fact that people want territory, despite the fact that people want unlimited growth, there are people throughout the world beginning to question the validity of each of those. It is precisely because those are being questioned that we have sort of this difficulty of providing ourselves with what I would say is a clear vision of where to go and what to do.

Okay, with that in mind now, let me move directly to the twelve resolutions, and to the coalition. That is to say, let me move to what George Bush considers to have been, and I believe was, his major political achievement in all this. George Bush was able to get twelve resolutions through the U.N., and you have heard the analysis, which provided authorization, permitted him to engage in the kind of behavior he wanted to engage in with this society, and have these other, depends on how you count them, 28 to 29 societies as part of the coalition, so that every time he was speaking, he was speaking on behalf of the international community.

Let me, however, remind you of some of the things that occurred. The Soviet Union is in need of aid, in need of help, I would say—and I apologize for this—but now that the Soviet Union is no longer monolithic (and people don’t take things on a political level, they may take it personally), they were almost obsequious in their support of the resolutions. The Chinese, in exchange for meeting the foreign minister to overcome the Tiananmen Square problem, abstained from Resolution 678. The New York Times said about Yemen, I quote, and the New York Times has all the news that is fit to print, ‘Minutes after the Yemeni Delegate joined the Cubans in voting against the resolution of the Security Council on Thursday, a senior American diplomat was instructed to tell him, ‘That was the most expensive vote you ever cast,’” meaning it could result in an end to more than $70 million in American foreign aid to Yemen. Now some day somebody is going to write up a full history of the arm-twisting, the cajoling, the carrots, the sticks, but these are not jokes. These are what are going to come out, whether it is in Egypt, or in India, or wherever in the world, and we use the word twist, they are going to
help develop what is the mythic underpinning of this set of resolutions and what we actually did. If indeed it turns out that it was U.S. interest-oriented, and that is all it was blood for oil, if that is what it turns out to be, well, that is one thing. If it turns out, as I happen to believe the case, that part of this was that many states leaders were absolutely appalled by the aggression, there is just no question about it. So now you have this very sort of ambivalent attitude and ambiguous attitude on the one hand, and in my view Saddam Hussein is a war criminal. He planned and prepared and executed a war of aggression. Although aggression, incidentally, was never used in the resolutions, invasion is used and there was a breach of the peace, because the Security Council did not decide there was an aggression. Somehow all they decided was that there was an invasion and a breach of the peace.

So most of the states, and many people throughout the world, were just appalled by the aggression. Furthermore many of us—and now I say us in the sense of being in the peace movement, and you should understand I as a member of the peace movement am an abolitionist—believe that it is possible to dismantle the war system. I take this seriously. I was in favor in some grudging fashion of American troops going to Saudi Arabia. I thought that 50,000 would have been enough. I allowed 200,000. When he sent in another 200,000 I said "oh my God, they have gotten to him," and when he started the war with that bombing, that merciless bombing, I was appalled, absolutely appalled.

Now we have the resolutions. I do not have to go through the sanction resolutions because they were done very well this morning by my colleague, extraordinarily well. But I want to say a few words about the economic sanctions before I go on to 678. The United States was faced with a crucial decision between two general lines of action. Course A was to propose to the U.N. Security Council a further resolution authorizing the initiation of hostilities against Iraq, if it approved to initiate such an act. Course B, which I obviously would prefer, would be to exercise patience and get the embargo approved by the Security Council and give it more time to work. Senator Sam Nunn of this great state of Georgia, believed that giving the embargo a chance to work was the appropriate thing to do. I happen to believe that that was the case. I happen to believe that while it is true, as Daniel Scheffer pointed out this morning, it was a matter of judgment. I believe it was a mistake, especially, to engage in the kind of war we engaged in. Yes, I am absolutely pleased and delighted that there were less than 500 U.S. and Allied casualties.
I am also absolutely appalled at the image it brings tears to my eyes of a minimum of 50,000 and it may be 100,000 people who are dead on the Iraqi side, plus another 50,000 to 100,000 who are wounded. Now, I know that there were coalition alliances, there were 40,000 Egyptians, there were Saudis and Kuwaitis, but that is an image of the cowboys fighting the Indians. That is an image of the colonial power, the Raj coming in and deciding what it will do when the Indians are settled, and here is where I come to sort of shed this point about whether or not collective security permits us to do away with this proportionality discrimination and all those things which we talk up in the laws of war. I must say that I am appalled at that notion. I do not understand that just because we have engaged in a collective enterprise we are now permitted to engage in bestial behavior. So there is this sense of that image that what we have done has been extraordinary in the sense of the carnage.

It is difficult, trying to watch CNN, and trying to integrate into my life the fact of what the Iraqis did to the Kuwaities; forcing myself to look at that, and sort of reminding myself of the Holocaust in most pictures and sort of saying they literally were below the level of humanity, and as Schwartzkopf said about them, "they are not humans like us." But the fact disturbs me, that this bombing was extraordinary, and we are as a people beginning to delight in it. Some time this morning George Bush said, "I had not been feeling the euphoria of the American people, but I am beginning to feel it now." So we are now about to have a victory parade, we are about to bring the boys home and we are going to demonize more and more these other individuals.

Now again I understand, I appreciate, I really appreciate as a man who was born into this society, what it is to feel that we did not have our boys and girls and woman get shot up, and yet if we are going to use Resolution 678 as a rationalization for that form of carnage, then I find it very difficult to take. Now I give it one saving caveat; I do believe that Schwartzkopf and company might have thought they had a much more difficult job than really was the case, and in this sense there was literally overkill because they did not have to do what they wanted to do. But they should have the humanity to admit it.

That is, if reconciliation is to occur, then we have got to say 678 was overexercised as we used it. We did not know at the time that that was the case. We were being what we thought was prudential. Next time around we will do it differently. In addition to which if you look at 678, the lessons for the future, one wonders why the
United Nations gave up its control. Agreed, there was no reason. That is, the Military Staff Committee does not have to come out, the sanctions committee does not have to, but for all of those things, there is flexibility in the policy level. But what was the reasoning behind permitting them to do it, and why did the members of the Security Council from the so-called Third World and the so-called nonaligned permit it except for Yemen and Cuba who finally just could not stand it. Right?

So Resolution 678 stands there. That is, the actual decision to use force was made by the United States government, “in concert with its allies in the coalition.” It did not go back and ask the United Nations whether it could do it. The decision to go in and to bomb mercilessly was made by the U.S. air forces. The decision to go in with the ground forces, again there was the customary “consultation.” I remember during the midst of the Cuban crisis the story of when John Fitzgerald Kennedy sent Abe Cheyes to see DeGaul, and when he went in to see DeGaul he said “I want to talk to you about what is happening in Cuba” and DeGaul said “are you telling me or are you asking my advice?” and Abe Cheyes said “I am telling you, sir,” and DeGaul said “okay.” That is he just wanted to know. I don’t know whether these consolations were that sort or not. But it is very important to know what actually occurred in those consultations. I look at 678 and I ask myself the question, how valid would it be if we do not immediately begin to think of how we would have retained commander control.

Let me move on to the notion of security. Two years ago Ambassador Petrovski and our Deputy here from the Soviet Mission, attempted to get the terminology of comprehensive security adopted by the General Assembly. They attempted, but my sense of it is that they did not do their political homework. What they were trying to do was extend the notion beyond military security to economic security, to social justice security, and to technological security. Those were the notions, and those four notions became the cornerstone of thinking about the future of the U.N., and I would add the global polity. When I think of security, then, that is the way I think about it. That is to say I think of a global security arrangement in which we are thinking of, again I want to make clear, not the states of the world, but the people. Think about the future, the year 2016, twenty-five years from now. The threat of thermonuclear holocaust seems to have left this room. If you had been there 10 years ago you would have had no nukes, now we are nuking them in Iraq. Somehow that seems to have disappeared from the rhetoric and the
conversation of what we are about. Nevertheless, comprehensive security has to take into account that there are nuclear armaments, there are other weapons of mass destruction. It has to take into account that there are people below the poverty line, that every ten seconds another child under the age of 15 dies from lack of nutrition, starvation, disease. It has to take into account social justice so that when the Kampucheans are engaged in the kind of behavior they are engaged in, the U.N. or the international community has to intervene. And when you have a kind of ecological degradation that falls below the level of a minimal standard, then I believe the U.N. ought to jump in. It is in that forum that I now want to go to the notion of what kind of peacekeeping forces or police forces we should create.

I believe that if we are looking at the year 2016, it is necessary to begin to promote the notion of a transnational police force. David Scheffer and Louis Sohn talked last night about a world in the foreseeable future that is completely armed and in which states continue to have unilateral military structures. Now I just want you to know, a book called "World Peace to World Law" remains the most authoritative statement of a world without war. It gives a sense of how it is possible to put into place a complete and general disarmament, a global police force, compulsory jurisdiction before a court, economic development programs, a legislature that handles the war prevention issue—it is extraordinary. Louis Sohn almost 35 years after the publication of that, writes a document which assumed that the world is still armed and that you need 50,000 forces from each of the Big 5 plus another 50,000. Now he may be becoming a realist. I mean he was the radical when I first met him, he was the visionary, but to set our sites that way, I think, denigrates the capacity of the human race for change.

If three years ago somebody had told you that the Warsaw Pact would be dissolved by the end of March, that the Eastern European states would no longer be part of the Russian hegemony, that three Balkan States might be getting out of the Soviet Union, etc., people would have thought you were just nonsensical and that you had no sense of reality of life. Now I honestly believe in this moment in history that there are people throughout the world who are prepared to engage in a movement for a standing police force. I would give to you the establishment of a 10,000 person police force, individually recruited, located in three or four different places of the globe, which would be at the beck and call of different voting arrangements within the Security Council and the General Assembly. I actually would start with the notion that when you want unarmed troops or an
observer the Secretary General might just say, "okay, you are going to go, you 15 people, tell them I have sent you." I am willing to think that it is possible to change the unanimity vote of the Security Council in the next decade. I am willing to believe and dare that there is a way of changing the composition of the Security Council in changing the voting arrangements. Well, those constitutional arrangements should be looked at and I believe that we could begin with the kind of individual recruitment, training, and policing that I talked about.

I want to end on a kind of mythic note. A myth is the story of events that unfolds a world view of people, their origin, their destiny, their practice, and their beliefs. And what I wish to argue now is that we have come to a moment of history when the myth that we are discussing is the myth of human society. I realize that we still, many of us, believe that we are in the Tower of Babel, that we still live among all these differentiated peoples, territorially and culturally held. Believe me I know that these are matters which you cannot take lightly, but let me just read to you two pieces.

This piece that I am about to read to you, was written on December 10, 1941. It was three days after Pearl Harbor. It was written by a man called E.B. White, one of the great essayists of our time. I read to you:

"The passionate love of Americans for their America will have a lot to do with winning this war. It is an odd thing, though, that the very patriotism on which we now rely is the thing that must eventually be, in part, relinquished if the world is ever to find a lasting peace and an end to these butcherings. To hold America in one spot is like holding a love letter in one's hand. It has so special a meaning. Since I started writing this column, snow has begun falling again. I sit in my room watching the reenactment of this stagy old phenomenon outside the window. For this picture, for this privilege, this cameo of New England with snow falling, I would give everything. If all the time I know that this very loyalty, this feeling of being part of a special place, this respect for one's native scene, I know that such emotions have a big part in the world's wars. Who is there big enough to love the whole planet? We must find such people for the next society."

Now I could end with that because it is a lovely ending. But let me give you one more.

"We are citizens of the world. We demand that our borders be opened. We want commercial and cultural exchange, the right to export our labor force abroad. We want the freedom to leave China
in order to study on a semi-study, semi-work basis. We demand to be able to travel freely and to take care of our prerequisites." Manifesto of Alliance for Human Rights in China January 1, 1979. Nine members signed it; two of them are back in jail, two of them are still wandering around, and I do not know where the other five are. But I end on this note, that we are citizens of the world.

Professor Sohn: Thank you. Now the time has arrived for another view from the other super power. Our next speaker is Sergie Nikolai Urich Smirnoff, a diplomat of old standing, in fact I would have to admit, 40 years. He started at the Moscow Institute of International Relations, then joined the diplomatic service, served in Warsaw, Poland, then New Zealand. He then returned to Moscow, and he must have done very well, because then he was sent to the United Nations where he has stayed by now almost 20 years. He is at present Extraordinary Deputy Permanent Representative of the Soviet Union to the United Nations with special assignment to the Security Council. And therefore we are going to hear from the person who has been there now for almost 20 years.

The Door to a New Peaceful World

Ambassador Smirnoff: Thank you very much Professor. It is a great pleasure, first for me to be here and to listen to all that was said by the previous speakers. I am basking in the rays of the wisdom of the speakers, and I feel very uncomfortable despite my experience here at the United Nations.

These scholars and the professors of law look at the activities of the Security Council of the United Nations as a whole, I should say from a distance, from a perspective, and so their views and their assessments and their conclusions actually are more, I should say, of a general nature; more well-thought. They go far beyond the horizons the diplomats can allow themselves in their practical work.

I will give you an example of how diplomats are sometimes confused in the Security Council. For many days some diplomats, some members of the Council, requested that Iraq would accept and promise to comply with all the Security Council resolutions, all twelve, it was stressed all the time. And when the letter of Tariq Aziz was brought to the Security Council there was amazement on the part of some of the members of the Council that Iraq accepted all the resolutions. There were some doubts expressed that it is not what they wanted, that it is not all but all relevant resolutions, and so they requested
the President to go back to the Iraqi Ambassador and ask him to add the word "all relevant resolutions." And after the President explained that it was those diplomats who requested him to go and ask Iraqis to consent on the acceptance to all resolutions, that is what they did. So it was what the President said, and only after this was misunderstanding or confusion cleared. I want to stress that working in the Security Council we are mostly involved in the practical day-to-day life with these resolutions, working hard on the wording, and sometimes we are not satisfied with the wording because it is a compromise always or by majority, but anyway it is done by many players and so the resolutions are not perfect.

Now coming back to the discussion we have had these two days. What was missed in my view in this debate—reference was made and stress was made on the sanctions, to the use of force, but political efforts, efforts to find peaceful solution of this conflict were put aside and almost ignored except by Ambassador Galal when he was talking about the regional efforts. I should stress that the Security Council to the very last moment stressed the necessity of a political, peaceful solution to the conflict. In the resolutions adopted by the Security Council there was on 29 October, a month before Resolution 678, a specific request to the Secretary General for good offices in this respect. All states were called upon in the region and others, to pursue, on the basis of the Security Council resolutions, their efforts to restore peace, security, and stability.

In responding to these requests or these appeals of the Security Council, the Soviet Union did its best, together with the other leaders of the non-aligned movement, leaders of the Arab states, the Organization of Islamic Countries, and others to persuade the Iraqi leaders, to show that they had to comply with the resolutions of the Security Council and withdraw unconditionally and as quickly as possible. I would like to remind you that the Secretary General appealed to the Iraqi leadership the day before the bombing started, January 15, to withdraw from Kuwait and he promised there would be a ceasefire or no hostilities and their forces which were brought to the region would be withdrawn as soon as possible.

So these political efforts are very important to understand the whole situation in which the Security Council was working. It was not only sanctions, not only preparations of the State to use force, although these words were never mentioned as "aggression" or something like this, it was only "invasion" as they called it in the first Resolution 660.
So my country, through the Minister of Foreign Affairs and the leadership of the country, did their best to persuade the Iraqis to comply with the will of the international community and withdraw. It is of course regretful that our appeals were ignored, but even after the military operations started, the Soviet Union continued to try hard to bring a peaceful settlement. Finally Iraq agreed to accept the resolutions and to comply with all of them; relevant or irrelevant, they agreed to all of them. So this is very important and I wanted to bring to your attention these efforts of my country.

Before talking about the prospects for the future, long-term or short-term prospects, I would like to share with you some conclusions or assessments, my personal assessments, of what and how the Security Council was doing its job.

First I would like to draw to your attention that the Security Council failed to use the possibilities of the Charter and especially failed to adopt preventive measures. As Ambassador Galal was advising you, it was well-known that something is going on in this part of the world, that there are differences or a dispute between the two countries, and the Iraqis were preparing to, maybe not to use force, but preparing some actions against Kuwait. And maybe, using the possibility of the Charter, I presume the Security Council could possibly give a strong warning to the Iraqi leadership. Maybe it would not be enough, but this strong warning could be helpful and could show the Security Council was ready to act from the very beginning in a preventive manner.

This brings me to the future. I presume that the Security Council and the Secretary General now does not have the possibility to get impartial information on the development in different areas of the globe so as to warn the U.N. as a whole, and the Security Council especially, well in advance so that measures can be taken. For these purposes, to make the Security Council act well in advance, of course it would be necessary to take some steps to create centers for collecting this information, maybe one international center and then maybe some regional centers under the auspices of the United Nations, of course, in different areas. This will be very important for the Security Council and for the United Nations to prevent aggravation of a dispute or a situation or especially an armed conflict when the measures to put it down are more difficult and more risky.

Now the second point which I want to draw your attention was already mentioned, about this Military Staff Committee. I remember we brought the idea of reviving a Military Staff Committee during the Iran-Iraq war when we worked together within the five on putting
an end to this conflict. It was in the winter of 1987. That was the first experience of the work of the five, and it finally proved successful. At that time we brought this notion that the Military Staff Committee should be revived and should play its role. The Charter of the United Nations gives the mandate to use forces of the member states which make them available to the Security Council on its call in accordance with the special agreement. The Military Staff Committee is there first to make strategic planning and then to assist the Security Council. It is not the task of the Military Staff Committee to command the forces or to play any other role than that which is in the Charter.

Of course it is a pity that up until now there were no agreements and that is why the Soviet Union brought this proposal and expressed its readiness to conclude such an agreement with the Security Council. Why did we make this suggestion? We feel that if these states, especially the permanent members, will clearly say that they are ready to give some contingent of military force, whether it will be aviation or ground forces, whatever, at the disposal of the Security Council and the Council may use these forces taking the advice and assistance of the Military Staff Committee, it would be a warning to a possible aggressor. It will be a strong warning that the use of force will not pay. Maybe it sounds a bit idealistic on our part, as it was with the suggestion on the proposal of comprehensive assistance of the international peace and security, but I should say that there is a strong conviction on our part that this kind of arrangement plus the system of early warning at the disposal of the U.N., the Security Council, or the Secretary General, will be very helpful to deter aggression; not to allow any state to use force without punishment. This is another conclusion which can be drawn from the experience of this Gulf Crisis.

I should say that we brought this idea about activating or revising the Military Staff Committee. The committee consists of the representative's military contingent, for each of the five permanent members of the Security Council. From a practical point of view, we may have come to this conclusion also at the experience of the operation of the United Nations in the media. When the Security Council made a mistake in calculation of what force should be given for this election in the media, it brought a very tense situation, and then the Council had to do much more to rectify this mistake.

At the same time we feel that—and we brought this suggestion some time ago, maybe at the same time we also discussed the Iran-Iraq war—some naval forces should be at the disposal of the United
Nations. At that time we suggested that the naval force would be used in the Persian Gulf for securing the safe passage of ships but then their tasks may be different now.

Another point to which I wanted to draw your attention, and I presume that the lawyers now will have a klondike or bonanza to study all these actions of the Security Council from the legal point of view, as specialists in international law. We diplomats cannot do this, that’s for sure but you especially young and future lawyers, you have a great possibility to study all the actions and legal repercussions or legal possibilities which were used, misused, not used, missed, and how it should be properly used for the course of peace and international security in the future. If we take for example Chapter 7 it was used by the Security Council in the first Resolution 660, and the reference was to Articles 39 and 40. Then the Security Council jumped to Chapter 7. I was a lawyer for some time, but then I deserted, but my understanding is that we like this chapter as a whole, not two or three articles here or there, interpreted one way or the other, but we like this chapter as a whole.

If we look now from Chapter 7 and the use of force in the Persian Gulf, we can have peacekeeping operations, on which very much was said yesterday, when the lawyers invented a new chapter for the U.N. Charter, 6 1/2, and peacekeeping was somewhere in there. One must compare how the peacekeeping was arranged, what body of the U.N. made the decisions on the peacekeeping, and what is the operation of this in Resolution 678. I feel that it has a solid basis in the U.N. Charter under Chapter 7 and at the same time the peacekeeping operations are somewhere in between, but I strongly am convinced that they do not have a solid enough legal basis. That is why we have to think about the future of peacekeeping, how it should be continued, what will be the legal basis, and how to give a clear-cut legal interpretation of the last operation, as it was done by the Security Council.

I should say that Resolution 678 does not use the word "force" or "forces," it uses "means," and that is also a very significant thing. Another point to which I wanted to draw the attention of the future lawyers is that all the resolutions adopted by the Security Council on the Gulf, all twelve of them, are considered and were adopted as binding. In my view, it is very important from the point of view of international lawyers that it now gives end to the long arguments of what is the decision and what is the recommendation. The decision is whether one decides to use force, that's one of the arguments and all the others are recommendations. But this is an
argument which is not a very solid one, so from the legal point of view there should be a new notion and new vision of the binding resolutions of the Security Council which are obligatory or compulsory to all members of the U.N. under Article 25.

It is also important from another point of view, from the practical point of view. If the Security Council adopted Resolution 660 as binding, and acted very decisively, very swiftly to ensure its implementation, to enforce these decisions, then from my point of view there should be equal treatment to the other decisions of the Security Council adopted previously or which will be adopted in the future. I am not saying that all the time we should go into sanctions immediately and then we have to adopt the decisions of all other means to be used, but the legal, so to say, efforts of the Security Council to reinforce the fulfillment of its own decisions should be repeated in the future for different kinds of areas.

Now another point which I wanted to say a couple of words about was the word "veto" which was used very often here. I should say that I have some misgivings about this word. Of course, it is easier to understand than this concurrent vote of the five permanent members, but in my view it gives quite a different vision of the Security Council. In the time of Cold War, yes it was obviously veto, one member of the Security Council could end any resolution. But now, and I presume it was the idea of the founding fathers, I presume Professor Sohn will clarify this point, the idea was quite different—not to give the power to kill a resolution or a decision or a proposal to a member of these permanent members of the Security Council, but to ask them to consult, to have debate, consultations, meetings, just to find a generally acceptable solution, and in my view that is the way that practice goes now. It started step-by-step in 1987 when on the working level the five permanent members started to find a solution to the Iran-Iraq war and finally managed to prepare the famous, well-known Resolution 598 which contains the comprehensive plan of settlement of the crisis. Regretfully the meaning of the words was immediately interpreted as one year, and implementation without delay as three years, but that is a different interpretation and a different story.

I feel that we should at least for ourselves understand the difference between the veto powers and the necessity to have an agreement between the five, because the latter forces or requests the permanent members to consult and strive for a common position in the interest of effective work of the Security Council.
It was mentioned that the activities of the Council now open the way for enforcement of international law. I am not a lawyer anymore, but I humbly disagree with this. The Council did not give power to enforce international law by using bombs or using ground forces or by—let's put it as it was in the resolution—by all other means. The Council was talking about enforcing its own decisions. This is in strict accordance with the provisions of the Charter to give effect to the decisions of the Security Council. Enforcement of the law of international law in my view can be done only through law, not in other ways.

Maybe I did not quite understand what was said, but there was a very grave statement that the time to be intimidated by the U.N. Charter is over. I do not know, maybe I am wrong and maybe I misunderstood, but I would say that in my view it is time now to use the Charter, to use the possibilities of the Charter, to use the new international situation which made it possible for the United Nations to work in such a manner that the law can be enforced through the legal means, through the means which are at the disposal of the United Nations, not at the disposal of the individual states, but from the decisions of the Security Council and in strict accordance with the Charter. That is the only way force can be used. If Article 51 was mentioned, the right to individual or collective self-defense, we should not forget the Article says until the Security Council has taken measures necessary to maintain international peace and security. Article 51 gives the right of course to defend when there is a direct attack on a state, individually or collectively, but not until the Council acts and we hope the Council will act in the future as quickly as efficiently as it did in the case of the Gulf crisis.

Very much was said about the narrow issue of long-term measures which should be taken to settle the situation in the Persian Gulf and long-term prospects of establishing a regional security system. In this area there were different approaches about the role of the regional states and regional organizations. Of course, they have their primary responsibilities and it is for them to decide this kind of stuff, but of course the U.N. as a whole and the Security Council, of course, will be involved since they have been involved since the 2nd of August. They will play their roles not only in finalizing the war, but the measures the Council has taken against the act of invasion or the invasion should give a solid, legal political basis for the future of this area as a stable and peaceful future.

I cannot risk to go as far as the speaker which preceded me about the more general vision of the world of tomorrow, but I feel that
he was right, of course, saying that we cannot and should not proceed from what we have today. We have today no military organization of the Warsaw Pact, not the Pact as a whole, but only military organization at this juncture. We should remember other changes which have taken place in Europe, the United Germany, all other changes in the international arena and even within the United Nations, which enhance the possibility of the organization and which give new possibilities for settling not only the problems of international peace and security, but many other problems of an economic nature, humanitarian, social, environmental. If we take the most difficult problem, the problem of disarmament which was also mentioned, we have the first solid steps which have been taken on a bilateral basis between the two countries, the Soviet Union and the United States, as well as the agreements which are being shaped in Europe. So this creates, opens the door to, a new peaceful world, I should say.

Let me finish on this note. Thank you.

Concluding Remarks

PROFESSOR SOHN: Thank you very much for bringing us back to where we should have been though we have flown into many directions during our discussions of the last two days. And what of course is encouraging about what we have heard several times over the last two days is the fact that as was said just a minute ago by Mr. Smirnoff, new vistas have opened to us.

It will be a great shame if we do not make progress towards a better future. You can always go backwards and make it worse, but here is a great chance to go forward and make it better.

Professor Mendlovitz has kind of complained that maybe I deserted my younger days, and that I am proposing different things now. Far from it. The goals of mine, the goals that this man has told us about the Soviet Union doing, the proposals presented to the United Nations over the last few years, that the developing countries met at The Hague last year and made various proposals, all these things are going in one direction. Namely many nations want to at this point by the end of this century, by the magic year of 1999—because it is also 100 years from the Hague Peace Conference—we all would like, really by that year, to have peace in the world and to make everything possible to have such peace and we have started on it.

People forget, the papers did not even report it, that on February 8 when everyone was watching the horrible things that were happening in the Middle East, a conference ended in Malta of the thirty-four countries of the Conference on Security and Cooperation in Europe,
the CSCE, including the European countries plus the United States and Canada. They reached an agreement unanimously on improving the means for settling disputes, including establishing, for the first time as far as CSCE is concerned, a new mechanism to assist states in settling disputes. This was never mentioned. Is this not as important as a few bombs?

And I think this, we have to change our values. That peace is more important than war. That people should try every step they take to go in the direction of peace. And we have many important people here. Some of them have spent most of their lives trying to find a way to peace. And I think that is what everybody here should leave this place saying to himself or herself, my duty also is to do what I can for bringing peace to the world. Because without peace we don’t have all those other things. War is negation of everything that is dear to mankind. And that I agree, certainly, is so. But everybody realizes that it is difficult and has to be done step by step. Grenville Clark always was saying, “Yes people say we should take a big leap forward, but if you had a precipice in front of you and you make the leap forward, you land at the bottom of the precipice. And you will need a very great leap to be able to get to the other side of the dangerous place. And if there is a way you can go down one way and up the other way it may be much safer.” And I think that is what we have been doing.

I do not think it is time now to start another discussion. Therefore, I think I would like, unless my co-chairman objects, to say that we have had two days of great debate. We have heard statements putting light on quite a number of problems which we have been thinking a little about but did not really realize their implications, the variety of meanings of various statements and phrases, and the fact that yes, over the last two months, we have done something very important for the future of humanity. Namely we have restored some faith, maybe not complete faith, but some faith in the importance of the United Nations, in its usefulness and in the fact that perhaps from now on we are going to pay much more attention to it. And maybe some day we will even pay much more attention to the fact that in many other periods the United Nations has made great accomplishments over the last 40 years, and that they are as important perhaps as some accomplishments we are making in the military field.

Whether we are going to have this kind of force, or that kind of force, the future is going to decide. And it seems to me that what Ambassador Smirnoff has said is very clear, that the Soviet Union is now banking very much on improving the military situation of the
United Nations and thinking about signing some of those agreements that they started making in 1946 and never did, about bringing new life to the Military Staff Committee. We know that we have accomplished quite a lot of disarmament and we have just put a few dots over the i’s and crossed a few t’s and we are about ready to finish; but we always almost get to the point and then someone says, in Article 27 there is a phrase I do not understand, and the whole business has to wait for another few weeks or months to solve this new problem.

It reminds me of what happened to us when we were drafting the Test Ban Treaty. Ambassador Harriman went to Moscow to do it, and got it almost done and was about to make the final speech, but suddenly his Deputy ran to him and said there was a new telegram from the Pentagon. They would like to make one change. The draft says "under water" in two words in the title of the treaty, but says "underwater" one word in the text and they want a clarification further we meant "under water" or "underwater." Harriman simply took his hearing aid out of his ear and said to him, "I cannot hear what you are saying," and proceeded to sign the treaty and then let them worry later about whether there was an important difference between those two words.

I think this is the kind of trivial objections that occur very often when we are working on important things, and they are completely unnecessary. Therefore I hope that what you have learned here is that we have made important progress over the last 45 years and I hope that we do not have to wait another 45 years to make even more progress.

THE END