

**The Legal and Strategic Paradigms of the United Nations'
Intervention in Somalia**

by
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Dedication

This work is dedicated to the memory of Captain Michael Allen who gave his life in the performance of his duty.

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The decision to include and exclude those who have contributed to this process is a difficult and onerous task. My greatest gratitude goes to Professor Joel Sokolsky who immediately and unselfishly volunteered to supervise my thesis. His insights and rigour were instrumental in allowing me to think, write and create. I must also acknowledge the immense contributions of Professor Raman of the Faculty of Law at Queen's University. He was always supportive and receptive to my academic challenges. I could not have finished either degree without his benefaction. Professor Jim Finan's honest integrity at an academic and personal level meant a great deal to me. Moreover, the ever present assistance and humour of the Royal Military College's Dean Haycock was marvellous.

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For God doth know how many now in health
Shall drop their blood in approbation
Of what your reverence shall incite us to
Therefore take heed how you impawn our person
How you awake our sleeping sword of war

Henry V, Act 1 Scene 2

Introduction

On 3 December 1992, the United Nations Security Council authorized the United States and any other volunteer state "to use all necessary means to establish a secure environment for humanitarian relief" in Somalia. This action responded to two letters of the Secretary-General, Boutros Boutros-Ghali, which outlined his grave and legitimate concerns for the tragedy of Somalia in the wake of its worsening civil war. The Security Council's resolution epitomized the recent post Cold War activities of the United Nations in the domain of humanitarian intervention by using an expanded peacekeeping agenda. These activities also highlighted a substantial shift in the United Nations' ability to act under the authority of Chapter VII of its Charter. Even though this shift may represent the realization of the organization's original purpose of maintaining international peace and security, the domestic interventions may also contravene other purposes and indeed the spirit of the Charter.

The United Nations is the principal multilateral organization for the maintenance of international peace and security. The emerging international situation, however, has presented greater disorder with which the United Nations was expected to contend. The dissolution of the Soviet Union had created "large scale civil strife" in the remnant nations.

Several African countries were engaged in or recovering from violent civil wars. The Afghanistan and Cambodia situations were not as easily resolvable as anticipated and the peace negotiations in the Middle East were stalling.¹ Although the United Nations seemed to have been rendered impotent by the Cold War, it was "suddenly at the centre of international efforts to deal with unresolved problems of the past decades as well as an emerging array of present and future issues."²

In fact, the United Nations was unable to establish its own coercive means - a standing U.N. force under the strategic direction of the Military Staff Committee - for the maintenance of peace and security. In the Gulf War, its aftermath and in the Somalia crisis, the Security Council chose to authorize Member States to take measures on its behalf.³ The Security Council would not have been able to invoke article 42, which wishfully assigns command and control to its own military apparatus. Its direct military capability had atrophied. Nevertheless, the allied forces in the Gulf "had carried out its basic mission, and had done so quickly, with surprising little loss of life on the prevailing side." In large part this is attributable to the overall leadership, particularly American leadership.⁴ The Gulf War operation represented a triumph of difficult cooperation at

¹ Richard Falk, "In Search of a New World Model," Current History, 92, No. 573 (April 1993), p. 147.

² Boutros Boutros-Ghali, "Empowering the United Nations," Foreign Affairs, (Fall 1992), p. 89.

³ Boutros Boutros-Ghali, An Agenda for Peace (New York: United Nations, 1992), p. 24.

⁴ Falk, "In Search of a New World Model," p. 146.

many levels. The diplomatic efforts attained "an approach that was effective and consensual, authorizing first sanctions, then military force to reverse Iraq's occupation of Kuwait."⁵

Despite the euphoria of victory, a "doubtful mood" ensued as the United Nations appeared to be little more than a "rubber stamp" of American foreign policy. Moreover, the initial media images of precision bombing were revealed to be only part of the truth pertaining to the devastation of Baghdad. Finally, there were negative attitudes generated by the abandonment of the Kurds and Shiites after they had been encouraged to revolt. Saddam Hussein once again became viewed as "a potential stalwart against Islamic fundamentalism."⁶ Despite these negative perceptions, the fundamental premise of restoring the Kuwait nation remains sound in both legal and strategic terms. In the aftermath of the war, the Security Council began a more obscure and perhaps questionable practice of interventionism.

Operation Provide Comfort in Northern Iraq and the United Nations Protection Force (UNPROFOR) efforts in the former Yugoslavia were the two principle interventions prior to Somalia. The establishment of Kurdish "safe-havens" in the Iraqi north formed part of a more ominous plan:

The Council demanded that Iraq end this repression and allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq. It should be noted that in this instance the Security Council construed the repression of Iraqi civilians, in particular the Kurds, and the ensuing refugee flows across international borders as a threat to international peace and security in the region and

⁵ *ibid.*, p. 146.

⁶ *ibid.*

consequently as a basis for action under Chapter VII of the U.N. Charter.⁷

In Northern Iraq, Resolutions 733 in January 92, 746 in March, 751 in April and 767 in July all demanded "that security be ensured for the personnel sent to the place to provide assistance." In essence, the U.N. forces primary functions were to observe, supervise and report. Simultaneously, however, they were to ensure the protection of United Nations personnel and equipment on Iraqi territory, but in no way ensure the Kurd's security. While the principle mission was to deliver humanitarian assistance, the presence of the allied military also acted as a limited form of deterrence against the Iraqi government.

The initial scenario in the former Yugoslavia was different. The Security Council had "decided to extend the mandate progressively." It adopted Resolution 807 on 19 February 1993 deciding to upgrade the UNPROFOR equipment so that it could more effectively use force in situations of legitimate self-defence. Afterwards, the Security Council neutralized the Sarajevo airport and established security corridors to "ensure the forwarding of aid and the transfer of required personnel."⁸

These actions marked the realization of the "New Interventionism" which "combines an awareness that Civil War is a legitimate issue of international security with a sentiment for

⁷ Theo van Boven, "The Security Council: The New Frontier," The Review: International Commission of Jurists, No. 48 (June 1992), p. 21.

⁸ Mario Bettati, "The Right of Humanitarian Intervention or the Right of Free Access to Victims," The Review: International Commission of Jurists, No. 49 (December 1992), pp. 8-10.

crusading liberal internationalism."⁹ Stephen Stedman identifies that this phenomenon is conceptually underpinned by a belief that "civil war is more prevalent, violent and threatening." It is imbued with the "moral belief that a 'new humanitarian order' is to be established by force." It may be problematic that order can necessarily be established by force. Nevertheless, Stedman describes the fact that "sovereignty is no longer a tool for creating international order, but a 'political constraint' on international action."¹⁰ He counters that civil wars are no more frequent than during the Cold War. There were 19 in 1985 and currently there are 18. Furthermore, he argues that they are no more bloody in terms of casualties than the United States Civil War, the Spanish Civil War or the Nigerian Civil War. Finally, he argues against the Cold War/New World Order distinction. Despite the absence of superpowers equipping rival factions, access to weapons is pervasive.¹¹ Ironically, he also cited the "... possibility that humanitarian assistance may extend wars"¹² by perpetuating the fighting capability of warring factions. If Stedman's assertions are correct then these transfigurations impact the individual foreign policies of the international community.

These operations are military actions undertaken to attain the political objectives - as embodied in the Charter and in the

⁹ Stedman, Stephen John. "The New Interventionists." Foreign Affairs, (Winter 1992/93), p. 1.

¹⁰ *ibid.*, pp. 3-4.

¹¹ *ibid.*, pp. 7-8.

¹² *ibid.*, pp. 10.

individual permanent members' foreign policies - of the United Nations Security Council. Thus the U.N. is performing as a strategic actor. These activities may go beyond its political mandate by not dealing exclusively with threats to peace and security and by violating commonly perceived notions of state sovereignty. Traditional peacekeepers such as Canada must reassess their new roles and abilities to meet the changing mandate. Most importantly, there must be a determination of whether its policies and capabilities are congruous with mounting successful operations.

Canada's foreign and defence policies have always been incorporated to the context of international stability:

We start from the assumption that the threat to Canada is one and the same with the threat to international stability and peace.¹³

Canada's peacekeeping policy has always emanated from this precept. In the October 1990 of the Canadian Defence Quarterly, the Assistant Deputy Minister of Policy outlined Canada's peacekeeping objectives. The principle goal is to "prevent the escalation of regional conflicts" which represent a threat to international peace and security. Furthermore, Canada aspired to negate the human suffering caused by war and to promote the United Nations as a vehicle for maintaining peace and security.¹⁴ As such, there are very few distinctions between the

¹³ Joseph T. Jockel and Joel J. Sokolsky, Dandurand Revisited: Regional Instability and Canadian Defence Policy in the 1990s (Kingston: Centre for International Relations, Queen's University, 1993), p. 4.

¹⁴ Canada, Department of National Defence, Final Report on NDHQ Program Evaluation E2/90 Peacekeeping, 1258-77 (DGPE) (Ottawa: Queen's Printers, 30 June 1992), p. 55.

Canadian objectives during the Cold War and the post Cold War Era. The nature of the post Cold War "peacekeeping" operations, however, has changed dramatically. An accurate assessment of Canada's participation in U.N. authorized interventions will be based on the perceptions of their success and their consistency of application to obtain the objects of international peace and security. This infers more than an assessment of whether the means justify the ends. It also requires an understanding of what the ends are, whether or not the ends are attainable and whether the ends are to be universally applied.

This thesis examines the Somali intervention against a duoparadigm of strategic and legal principles. First, it outlines the strategic imperatives and applies relevant Clausewitzian principles to assess the factors affecting the Security Council's ability to enact strategy. Central to this Clausewitzian analysis is the perception that theory represents a frictionless dynamic to be attained only in the ideal. The reality of imperfect institutions, policies and human beings serve as frictions which reduce the theoretically perfect to model to a less perfect state. This approach bridges the gap between idealism and realism. Idealism represents what ought to be and realism relates what is. A perfect frictionless model is the goal and the realities identify those imperfections which must be addressed.

The analysis focuses on U.N. actions since 1990, the Secretary-General's proposals in Agenda for Peace and the Charter provisions which authorize the use of force. Traditional U.N. peacekeeping is then compared to the recent interventions. This study also relates the impact of the Security Council dynamic

with the utility of the Military Staff Committee in achieving the U.N.'s goals.

The legal template assesses the evolving sources of international law since the Treaty of Westphalia in 1648. It focuses on the evolution of concepts pertaining to the use of force emanating from the United Nations Charter, customary international law, and relevant decisions of the International Court of Justice. The assessment scrutinizes the new interventionism to determine whether it conforms to the appropriate legal principles. This determination is essential to an understanding of the Security Council's legitimacy. Legitimacy is a quintessential element for any polity because it serves the long-term interest of its survival. A political entity that is not viewed as legitimate will be challenged and perhaps removed. The U.N. long term interest is inextricably linked to the world's perception that its objectives and actions are valid, appropriate and hence legitimate. Unsuccessful and questionable goals and actions could ultimately undermine the U.N.'s perceived validity.

The final section applies these principles to the Somalia intervention by examining its context in the international system, U.N. involvement prior to the crisis, the resolutions authorizing the intervention and the subsequent actions of the coalition forces. The changing structures embodied in the termination of the Cold War were altruistically and perhaps mistakenly perceived as a movement towards a more orderly and peaceful international society.

As the last superpower of the twentieth century, the United States will formulate foreign policy in this context. The

supposition that "the United States stands alone as the world's bastion of stability and as the foremost sphere of power and influence" is flawed. The apparent unipolar structure is neither permanent nor omnipotent. Nevertheless, the United States is currently the dominant leadership in the Security Council. Hence, the U.S. must make a concerted effort not to alienate the remainder of the global community, through perceived illegitimate acts. While priority should be given to the "stability and security of American interests, serious consideration must be given to America's place in the international arena."¹⁵ The United States' long-term interest is to positively affect the global community in cooperation with its constituents through the United Nations. Since the United Nations is engaged in strategic activities by the extended use of the military means at its disposal, it has become a strategic actor in an evolving international system. Its success will depend on consistent and principled approaches to its objectives. A failure to do so could result in an ineffective and stilted organization whose survival could be jeopardized. More creative and multi-faceted perspectives of the international system are required to properly analyze the United Nations' role and actions.

The traditional approaches to international law and strategic studies created compartmentalized and seemingly independent disciplines. International law represents more than a set of principles and rules governing interstate relations. It is

¹⁵ Jeffrey F. Addicott, "The United States of America, Champion of the Rule of Law or the New World Order," Florida Journal of International Law, 6, No. 1 (Fall 1990), p. 65.

the standard by which nations' activities are judged, as well as a perceived authority and justification for United Nations' actions, particularly its military undertakings. Grand Strategy is the utilization of a nation's resources, including military forces, to advance policy objectives to the end that force is rendered unnecessary or used with the maximum chance for success. Accordingly, there must be consideration of the peace which follows in the wake of war. If war is used to guarantee security and peace is a condition without war then peace and security may be two very distinct and even contradictory objectives.

The tensions between the two paradigms manifested themselves during the Cold War as the legalist and anti-legalist debate. Traditional proponents of a legal and principled approach to international relations would often reject the validity of actions taken to protect the vital interests of a state or an alliance. Understandably, they would also be apprehensive when such actions were illegitimately justified on the basis of international law:

In such circumstances, law is less a fig leaf than a see-through garment. Consequently, there is a strong impulse to strip away the legalistic pretension; better see policy as naked power than disguise the choice by enshrouding it in a gauzy film of legalism.¹⁶

Ironically the post Cold War Era now presents a scenario whereby legalist paradigms are being used to justify strategic military action to attain the objectives of the United Nations. Hence, strategists should understand that the successful enactment of grand strategy within the United Nations context is identified

¹⁶ Richard A. Falk, "Law, Lawyers, and the Conduct of American Foreign Relations," Yale Law Journal, 78 (1969), p. 922.

more closely with international law. This does not relieve legal advocates of understanding strategic principles. It does, however, provide a guiding function for all members of the international system.

... international law provides the potential basis for guiding the action of all governments within an agreed framework. It has relatively stable principles that are not easily altered by shifts in governmental conception or the national interest or by miscalculations as to the intermeshing of definitions of national interests by adversary governments.¹⁷

Nevertheless, the legalist paradigm does possess inherent limitations. Focusing exclusively on legal issues "can become an excuse for inaction:"

No legal arrangements has ever or will ever work by itself. A legal arrangement will only work with courageous leadership. The reasons for the failure of international peacemaking are to be found in the failure of that leadership at every level of the world community.¹⁸

The enactment of policy through escalated modalities of force under U.N. auspices is a leadership issue of a global magnitude. A legalist approach is limited if it fails to incorporate and understand the essential criterion of strategy.

This fact was highlight by Hans Kelsen's work, The Law of the United Nations. In a comprehensive review of the U.N. Charter Kelsen juridically establishes that the organization can intervene in a civil war provided that the conflict is a threat to international peace and security. The almost imperceptible

¹⁷ *ibid.*, p. 926.

¹⁸ W. Michael Reisman, "Peacemaking," The Yale Journal of International Law, 18, No. 1 (Winter 1993), pp. 422-423.

weakness in his dissertation is revealed by one short and pithy assertion:

It is doubtful whether there is a difference between peace and security. International security is guaranteed if international peace is maintained. It seems that the addition of the words and security is superfluous.¹⁹

The strategic paradigm would never support such an all-encompassing claim. The history of the appeasement factions prior to World War II is the most striking example of why security is not guaranteed by virtue of the existence of peace. This truism did not change during the Cold War. In the post Cold War Era there is no reason to assume this fundamental principle has changed:

The overriding goal of the New World Order and the Rule of Law are essentially identical 'the maintenance of global stability by preventing unlawful aggression.... [It] must depend upon new dispositions of effective power and not upon rearrangements of authoritative words.'²⁰

It does not follow that this stability is guaranteed by virtue of the mere existence of peace. A merging of these two approaches is therefore essential.

It would be inappropriate to create a new discipline of strategic law or legal strategy. Either expression connotes fundamentally different concepts, approaches and abilities; thus detracting from their essence and their utility. It is necessary to allow each discipline to temper and enhance the strengths, weaknesses and functions of the other. In this manner, the two

¹⁹ Hans Kelsen, The Law of the United Nations: A Critical Analysis of Its Fundamental Problems (New York: Frederick A. Praeger, Inc. 1951), p. 13.

²⁰ Addicott, p. 77.

approaches can be merged to create a more comprehensive duo-paradigm as a contributing factor to the overall success of the United Nations principle objective of maintaining international peace and security. The Security Council's recent and unprecedented freedom of action has demonstrated that its membership is engaged in strategic activities which are being justified on the basis of Security Council resolutions under international law. Supporting or challenging these precepts depends on both disciplines. The United Nations intervention in Somalia represents a situation to be assessed within the duo-paradigm of law and strategic analysis.

In very general terms, the United Nations will not be able to function effectively if the community of nations as a whole does not view its actions as legitimate. Since legitimacy is based on a legal construct, the United Nations will be judged on the basis of its consistency in applying legal principles. It will also be judged on its success. This will only occur if the United Nations understands how success is to be attained. The "how" aspect of its endeavour rests within the grand strategic paradigm.

Chapter 1: The Strategic Use of Force by the United Nations

The Essence of Strategy

The strategic context of United Nations operations does not adapt well to a "domestic analogy" whose basis is that "the world of states takes on the shape of a political society the character of which is entirely accessible through such notions as crime and punishment, self-defense, law enforcement...."²¹ The inappropriateness of this standard is revealed by the fact that the United Nations is not a world government. It is a treaty based supra-systemic organization providing a forum for the community of states and a means for the realization of shared objectives. The United Nations can, however, be viewed as an independent actor within the international context, even though it is comprised of sovereign constituents of the international order. The nexus between law and strategy is far stronger than the legalist/anti-legalist debate would indicate.

International law represents more than a set of principles and rules oriented towards the governance of interstate relations. International law is a standard by which the actions of nations are judged, as well as the authority and justification for military action. Logically, the use of force within this context will be a criterion for legitimacy perceptions regarding the United Nations. This legitimacy will also be determined by the success of these operations. The Charter of the United Nations embodies the premises upon which military intervention may be justified and enacted. Appropriate military operations are

²¹ Michael Walzer, Just and Unjust Wars (New York: Basic Books Inc., 1977), p. 58.

governed by the principles of necessity and proportionality. The use of military force for necessary purposes are guided by strategic principles:

Strategy is the art of controlling and utilizing the resources of a nation - or a coalition of nations - including its armed forces, to the extent that its vital interests shall be effectively promoted and secured against enemies, actual, potential, or merely presumed. [emphasis added]²²

This definition is the accepted norm as it embodies the actions of any state in the international community. The definition is also broad enough to encompass the essential workings of non-state actors engaged in the attainment of internal or political objectives. Theoretically, if the United Nations is to be viewed as a strategic actor then it should fit within the parameters of this definition. Characterizing the U.N. as a strategic actor would establish a paradigm to provide insight into its nature and ability to attain its goals. These abilities will be discussed in detail in later sections. The underlined portions of the characterization represent the essential criterion.

The United Nations, as a treaty based organization comprised of independent sovereign states, could best be described as a coalition of states. In very general terms, this coalition has an immense resource potential - the entire international community - at its disposal. Unfortunately, its ability to gain access to and utilize these resources is problematic in the light of historical and contemporary trends in the political dynamics of the international system. Individual states will tend to their own

²² Edward Mead Earle, ed., "Introduction" in Makers of Modern Strategy: Military Thought from Machiavelli to Hitler (Princeton: Princeton University Press, 1971) vii.

needs first. Nevertheless, the resources are there and the United Nations ability to tap into this potential will depend on the evolving political circumstances of the post Cold War Era.

The vital interests of the organization are clearly articulated in Article 1 of the Charter. While Article 1 should be read holistically, the successful attainment of Articles 1(2),(3) and (4) ultimately rests with Article 1(1):

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

Certainly, some may question the description of the peace and security as a vital interest. Perhaps it is too abstract or far removed from more easily identifiable and tangible interests. It is, however, no less abstract and no less important than the values purported by many nations relating to the ideals of democracy, free trade or self-determination. As a derivative of the United Nations, the abstracts of peace and security may not impart the same emotional and perceptual connection with individual governments or their populations.

In theory, peace and security represent the ideals of a frictionless system whereby the vital interests of all nations represented in the U.N. are secure and disputes are resolved through less destructive means. For example, the importance of the United States to the United Nations as the last military superpower, an industrial great power and permanent member of the Security Council creates a commonality of vital interests between

the U.S. and the U.N. This is balanced by the other vital interest of the permanent members. In the Gulf War, the interests were varied but substantial enough to elicit a momentous effort. In a Clausewitzian sense, the theory is reduced to a lesser order by reality or the frictions of human interaction at all societal levels. In addition, the U.N.'s legitimacy will determine its survivability. Survival represents the one common vital interest of all state, non-state and multi-national actors. While protracted and sometimes contradictory, peace and security are vital interests nonetheless.

Any political entity that represents a threat to international peace and security is an enemy relative to the United Nations' objectives and perceived vital interests. There is a contradictory irony in this perception because the enemy *per se* is by definition a constituent member of the coalition. This should be viewed as a contextual element of the United Nations structure but not as a preclusion of its strategic nature and activities.

Finally, the ability to promote and secure its vital interests, including the armed forces at its direct and indirect disposal, is related by the provisions of the Charter itself. The Charter is a multi-faceted and multi-dimensional prescription for the utilization of the resources of the coalition. Assuming that the United Nations is a strategic actor specifically capable of engaging in military operations, it is logical to assume that the broader principles of strategic theory apply.

Encompassing the concept of strategy is the broader notion of grand strategy which "so integrates the policies and armaments

of the nation that the resort to war is either rendered unnecessary or is undertaken with the maximum chance of victory."²³ Within this paradigm, as well as the context of the United Nations, the term war should be expanded to include the use of force. Grand strategy must not be limited to the goal of victory in war or a potential war for ultimately, as articulated by Sir Basil Liddel Hart, "the object in war is to obtain a better peace ... it is essential to conduct war with constant regard to the peace you desire:"

...if you concentrate exclusively on victory, with no thought for the after-effect, you may be too exhausted to profit by the peace, while it is almost certain that the peace will be a bad one, containing the germs of another war.²⁴

Paul Kennedy ascertained that Liddel Hart's perspective leads to two broad conclusions. First, "the ends must be adjusted to the means" to ensure that the state of peace is better after the war. This fits neatly into the legal paradigm of proportionality and jus ad bellum. Second, that grand strategy involves much more than the use of military force:

... fighting power is but one of the instruments of grand strategy - which should take account of and apply power of financial pressure, of diplomatic pressure, of commercial pressure, and, not least of ethical pressure, to weaken the opponent's will.... It should not only combine the various instruments, but so regulate their use as to avoid damage at the future state of peace - for its security and prosperity.

²³ *ibid.*

²⁴ Paul Kennedy, in Paul Kennedy, ed., "Grand Strategy in War and Peace: Toward a Broader Definition" Grand Strategies in War and Peace (New Haven: Yale University Press, 1991) 1 at 2.

Success for the United Nations will be based on its ability to organize itself and to act in a manner that will preclude the need to use force, or ensure that when undertaken it will succeed. It must also be capable of analyzing beyond the actual use of force to the peace desired afterward. This ability will be precipitated by an understanding of the means at its disposal and that the threat or use of military force is not a singular component of its power base. Essentially, the crux of grand strategy lies in the adequate implementation of policy in both peace and war. The issue, however, is whether the United Nations is capable of institutionally understanding the phenomenon of war or the use of force; and most importantly, effectively utilizing the proper strategic principles and tools that will render such action effective and legitimate in its quest for international peace and security.

Clausewitzian Principles

This summary is meant neither to advocate nor to condemn the use of war as a political instrument. The use of military force against another state is an act of war. If the United Nations continues to engage itself in "peace enforcement, preventive deployment, or peacekeeping plus" then it should be aware of the phenomenon of war. The template of Clausewitz's strategic theory may provide insight into the Somali debacle and prescriptions for future U.N. actions.

Carl Von Clausewitz's On War retains great relevance at the theoretical level of strategic studies. Caution should be foremost in any reader's mind. Its simplicity should not be underestimated. It is a first draft written in the 1820's as the

author died prior to making final revisions. It is quite metaphysical and detached in its descriptions of the war phenomenon but this should not be construed as indicating that the author was a proponent of war. Having served on the Russian front during the Napoleonic wars he was horrified by the violence to the extent that he viewed the understanding of the phenomenon as essential. Theory was a quintessential component of this process as Clausewitz was an idealist:

Theory should cast a steady light on all phenomenon so that we can more easily recognize and eliminate the weeds that always spring from ignorance, show how one thing is related to another and keep the important and unimportant separate.²⁵

It is essential that the U.N. understand this phenomenon in its proper context. The characteristics of any war are representative of the societies themselves. The forces that cause war are also the forces which "circumscribe and moderate it."²⁶ Therefore, the dynamics of any use of force involving the U.N. will be affected by the nature of the organization itself.

Great significance has been accorded to Clausewitz's theoretical model of "Absolute War"- "War is an act of force and there is no logical limit to the application of that force." The carnage of the First World War has often been viewed as the result of misinterpreting this maxim the ultimate object of war. Clausewitz's model also states that war, in any theoretic form is the "collision of two or more living forces" and the "use of

²⁵ Bernard Brodie, "A Guide to Reading On War," in On War, ed. Michael Howard and Peter Paret (Princeton: Princeton Univ. Press., 1984), p. 700.

²⁶ Carl Von Clausewitz, On War, ed. Michael Howard and Peter Paret (Princeton: Princeton Univ. Press., 1984), p. 76.

total means at his disposal and total strength of will." The nature of the competition between these factors will reflect the nature of a particular war.²⁷ This is only a theoretical model and does not advocate the attainment of the absolute state of war.

In Clausewitzian theory, however, the extremes of abstract theory are tempered by reality. The conditions required to make war absolute are virtually unattainable. To be absolute war must be an "isolated act", not produced by previous events in the political world. There must also be a "single decisive act or set of simultaneous acts." Finally, decisions must be "complete and perfect."²⁸ Ultimately, the nature of the human condition has made this state unattainable. These are the "frictions of war" which reduce it from the absolute state to real war:

We must allow for natural inertia, for all the friction of its parts, for all the inconsistencies, imprecision and timidity of man... was in all its forms results from ideas, emotions and conditions prevailing at the time.²⁹

Hence it is necessary to assess the theoretical principles of war to shift the paradigm and enlarge the perspective to what the Security Council is doing. This analysis substitutes the traditional Clausewitzian use of the term "war" with the United Nations application of force in varying contexts. It assesses the frictions affecting the United Nations ability to use force to

²⁷ *ibid.*, pp. 76-77.

²⁸ *ibid.*, p. 78.

²⁹ Bernard Brodie, "A Guide to Reading On War," pp. 701.

attain its objectives. The Somali intervention will be a practical analysis of this ability.

Critical to Clausewitz's analysis is the point that war is merely the "continuation of policy by other means." This is the most quoted and the most misunderstood part of his theory. It is not meant to diminish the ugliness of war. It is simply stating that the original motive for war should determine the military objective and the amount of effort it requires. War is a "pulsation of violence" moving at various speeds and intensities towards an objective. [It] ... is natural that the prime cause of its existence will remain the supreme consideration in conducting it."³⁰ Accordingly, there must never be a resort to war without an essential understanding of what is to be achieved and how it is to be conducted.³¹ Within the United Nations context, armed forces should not be used in any context unless the political objectives are clear and identified. It is also essential that the abilities to achieve these ends be assessed. This requires an accurate strategic determination of what resources can be utilized in relation to those goals and resources of the opponent state. Once this has been determined and the war or war-type actions are engaged, Clausewitzian theory maintains that the aims of war must be clarified and converged in light of the political aim. Clausewitz warned of the dangers in not approaching war from this perspective:

³⁰ Clausewitz, p. 87.

³¹ Bernard Brodie, "A Guide to Reading On War," pp. 700.

A dilemma arises, however from the fact that 'in war too small an effort can result not just in failure but in positive harm.'³²

An essential element of the military objective, in Clausewitzian terms, must be the defeat of the enemy. However, this axiom is predicated by the fact that different contexts might render different military objectives:

Thus, seizing the enemy's capital may sometimes be more significant than destroying his army, and if the enemy has a stronger ally, an effective blow against that ally may carry one's purpose further than dealing with the weaker party.³³

In each context, the role and goal of the military is to be determined and mitigated against the means. If the United Nations is to deploy or use force the purposes for that force are paramount. The relationship and role of its armed forces relative to the opposing sides or the sides opposing it are extremely important. Traditional peacekeeping has been successful because its relationship to the other side is proportionate to its abilities and role - acting as a peaceful buffer between warring factions. In a larger war-like scenario those abilities and goals would shift to the destruction of the enemies ability to win. This could entail destroying the industrial base of a nation or simply destroying the enemy's armies or both. Common to each is the fact that the use of armed forces entails, in some way, the neutralizing of the other sides forces. If this is not the goal then why are armed forces being used? Implicit in this principle

³² Brodie, p. 702.

³³ *ibid.*, p. 703.

is that the political and military objectives be so sound as to preclude other nations from entering the fray as enemy's so that the push to the ultimate goals are not derailed. Convoluted and incoherent objectives will, at a minimum, lead to the non-realization of the ultimate political objective, and in the worst case, significant damage against the entity waging the war. In very general terms, once these objectives have been established they may only be realized if the military is allowed to act with "the utmost concentration of aim and of force, ... and to act with the utmost speed."³⁴

These theoretical underpinnings are enacted on the basis of strategic and grand strategic policy. Nation-states have been performing this function to varying degrees and with various standards of success since time immemorial. Moreover, internal coalitions engaged in a civil war also act within this conceptual framework. The efforts of United Nations will always be affected by the "internal parties" that "command the assymetries of war":

... the will of those who intervene will wane over the long term if resource and human costs run high; intervention will be one of many commitments for outsiders, whereas internal actors will be single-minded.³⁵

The U.N. defends more than principles. It defends the vital interests and even the territory of those states or groups that have called for its assistance. One of the greatest frictions for the U.N. has been that the will to mobilize and support such operations is far more protracted and vague relative to the

³⁴ *ibid.*, p. 708.

³⁵ Stedman, p. 8.

individual state actors. Principles will not motivate the global populace but threats and fear will. Hence the distinction between the Gulf War and the other humanitarian interventions arises. The governments and people represented by Security Council felt threatened by Iraq's invasion of Kuwait. The willingness to sacrifice and the willingness to kill were far greater. The other operations in northern Iraq, Somalia and the former Yugoslavia did not carry the same emotional and strategic impact. Therefore the will to deal with the threats was minimized.

In summary, the conceptual strategic underpinnings to be applied to the United Nations' Organization and the intervention in Somalia will be the following:

Strategy:

1. The U.N is coalition of nations which must be able to control and utilize the resources at its disposal to protect its vital interest of international peace and security; as well as those vital interests of specific states.

Grand Strategy:

1. It must be able to coordinate all aspects of its policies and armaments to render the use of force unnecessary or highly likely to succeed.
2. It must look beyond the use of force and assess the peace which is to ensue.
3. It must adjust its political goals to its means

Clausewitzian Standard:

1. The coalition must systemically understand what war and force are and how it is used.
2. There must be a clear political objective linked to resources and means to avoid too great or too small an effort.
3. There must be a clear role for the military relative to the opponent(s) ie. destroy the enemies armies or maintain a presence.
4. There must be a concentration of force and speed when utilising its resources.

These theoretical standards are ideal and frictionless.

Naturally, these ideals are ultimately unattainable in the same manner that absolute war is only theoretically possible.

Nevertheless, certain frictions can be readily removed if they are understood as impediments to the effective operation of the United Nations. Moreover, the success of the United Nations in any action where it is using force will be determined by a deep understanding and proper applications of these standards. The institutional "frictions" acting as an impediment to the attainment of these ideals are immense.

The United Nations' Ability to Enact Strategic Policy

The strategic dilemmas currently encountered by the United Nations are not unprecedented. The apparent general inertia and bureaucratic intransigence have plagued the organization's ability to deal with peace and security issues since its inception. In 1957, Lester B. Pearson stated in his Nobel Peace Prize acceptance speech:

Are we to go from crisis improvising in haste or can we now pool our experience and our resources, so that the next time we, the governments and peoples whom the United Nations represents, will be ready and prepared to act?³⁶

An ad hoc approach is simply a factor which can impede the performance and success of a U.N. operation. The impact of an ad hoc approach is negligible in a scenario such as the Gulf War because of the will of the participants to succeed in the attainment of the objective. Moreover, the U.S. lead coalition was institutionally maintained to fight the type of war exemplified by this conflict. Hence, it was able to react more quickly and concertedly. In contrast, U.N. operations are far

³⁶ Clayton E. Beattie, "The International Peace Academy and the Development of Training for Peacekeeping," in Peacekeeping: Appraisals and Proposals, ed. Henry Wiseman (Toronto: Pergamon Press, 1983), p. 203.

more protracted. The mandates are varied and the forces are created on a case by case basis. Logically, the effect of a minimal political will for less critical operations and the constant requirement to reinvent and reorganize can drastically impede the attainment of any political objective.

Since 1945, it is estimated that there have been in excess of 100 wars which have caused the deaths of 20 million. The present Secretary-General attributes the United Nations inability to deal with these situations as being caused by the vetoes in the Security Council - 279 vetoes during the Cold War. While this should not be viewed as the sole reason for the inaction, Boutros Boutros Ghali was correct in assessing the vetoes as "a vivid expression of the divisions of that period." Since 31 May 1990, there have been no vetoes "and demands on the United Nations have surged." The Secretary-General, in his report Agenda for Peace, was overly optimistic in his appraisal of the United Nations ability to deal with security issues:

Its security arm, once disabled by circumstances it was not created or equipped to control, has emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace.³⁷

This is an overstatement of the Security Council's potential. Hope should be derived from the removal of the Cold War impediments. The success of the Gulf War, however, emanated from American leadership. In Somalia, the American support for the operation allowed it to be mounted so quickly. Much of the debate over the former Yugoslavia is an American oriented debate. American leadership in the current, and perhaps temporary,

³⁷ Boutros-Ghali, An Agenda for Peace, p. 7.

unipolar international system has created a window of opportunity partially based upon the lack of a credible counterbalance to American power. Currently, there appears to be a commonality between American interests and those of the empowered states of the international community.

It is arguable that every state can benefit from the deterrence of aggression. While peace does serve the interests of economic development, it also maintains the balance of power in favour of the principle industrial bases of the United States, Japan and the European community. Their interests to promote democratic and economic openness are not solely ideologically based. These nations have an incredible technological, financial and industrial edge that will be promoted and secured in a more liberalized political and economic international environment. The successful promotion of these ideals "will be most favourable for the future development of [the Western version of] international law."³⁸ Hence the advantages derived from the unipolar system may also serve as a detriment to the U.N. ideals if the premises for its actions are not viewed as principled, balanced and inclusive. The wholesale imposition of Americanized Western liberal democratic values or a perceived self-servingness in the actions of the Security Council could foster resistance. The unipolar structure is a double edged sword which carries great hope and promise, as well as the potential for further conflict.

³⁸ Alberto R. Coll, "Just and Unjust Wars: The Future of U.S. Policy," Temple International and Comparative Law Journal, 6, No. 1 (Spring 1992), pp. 57-58.

Unipolarity could act as a long term friction in the U.N. dynamic.

Despite the provisions of the Charter's Article 1, the United Nations is also impeded from creating comprehensive grand strategic policy because of its compartmentalized structure. In the Expenses Case the International Court of Justice established that "each organ must, in first place at least, determine its own jurisdiction." The premise for the new interventionism is that non-military economic and social factors can constitute a threat to international peace and security. Assuming this to be valid, it is logically infeasible to resolve these problems through an institution whose means are intrinsically incohesive, limited and contradictory. This compartmentalization, according to the court, could only be removed by the Security Council. If the objective of international peace and security can be attained without the use of force then the United Nations has successfully followed the grand strategic paradigm by obviating the need to use such force. In contrast, if the use of force is made necessary because of the U.N.'s internal intransigence then it has failed to properly enact grand strategy and may, in fact, have violated its charter. As will be seen in the Somalia Crises, if the response had been more concerted and effective in the early stages of the civil war, Operation Restore Hope would probably not have been necessary. The essence of grand strategy is to take action designed to avoid the need for force or to use force with the maximum chance for victory. The two perspectives are not separate but inextricably linked. The removal of this friction by

utilizing a more holistic approach where each organ of the United Nations is coordinated to achieve a common end.

The Charter is less of an impediment to strategic actions than the legalist perspectives pertaining to the non-use of force would assume. "It is often forgotten that the U.N. Charter is a very robust document in its attitude to the use of force."³⁹ While Article 41 outlines the organizations preference for peaceful solutions, "Article 42 bares its military teeth." If the Security Council views that more peaceful measures would not be adequate then it may take any military action "to restore international peace and security." Article 45 adds to this component providing that national air forces be made available for combined efforts when urgent action is needed.⁴⁰ The flexibility of the Charter is offset by certain other inherent characteristics.

The strategic paradigm may be helpful in understanding why the United Nations failed to act decisively during the Cold War and on occasions after its termination. If the fundamental definition of strategy - "the art of controlling and utilizing the resources of a nation - or a coalition of nations - including its armed forces, to the extent that its vital interests shall be effectively promoted and secured...."⁴¹ - is accepted, then it follows that each nation is engaged in a competition to attain

³⁹ Eric Grove, "UN Armed Forces and the Military Staff Committee: A Look Back," International Security, 17 (1993), p. 173.

⁴⁰ Grove, p. 173.

⁴¹ Earle, p. vii.

its respective goals through grand strategy. Accordingly, the level of great power cooperation will vary according to the particular vital interest at stake. Since the Security Council is composed of the principle strategic actors, its effectiveness will be determined by the degree of commonality between their vital interests. By definition, the component members of the Security Council do not hold the objectives of the Security Council's vital interests with the same intensity as those of their respective states. No measure of concern over principled conduct, international law, or the values of international peace and security will displace the vital interests of the constituent nations - particularly the veto-empowered states. This fact establishes an essential contradiction of the United Nations mandate. The concepts of international peace and security are to be universally applied in a legal sense but the reality is that only the great powers can take effective action in accordance with their decisions. The irony is that this tenet is now more in evidence than during the Cold War. It is also more consistent with the intent of founding members.

When the Charter was created, the Security Council organized itself to deal with threats to peace at a lower level. The expectations regarding the values of the United Nations were far more grandiose. From 1946 to 1948, the British Chiefs of Staff interpreted the Charter to determine its own mission. The perceived threats were "inevitably, smaller powers, albeit of significant military weight regionally. The veto made it unrealistic to expect that U.N. enforcement actions would take

the form of a major war between great powers." The study recognized the following potential problem areas:

The Balkans - Yugoslavia, Albania, Bulgaria, and Rumania;
The Middle East - Syria, Lebanon, Palestine, Transjordan, Iraq, Saudi Arabia, Egypt; and
South East Asia- Burma, Malaya, Indo-China, Netherlands and the East Indies.⁴²

Despite the absence of an African component, the recent history of the turmoil in these areas shows the grand strategic insight of the charter creators. It was "unlikely that the U.N. would be dealing with very many such powers. Anything any larger would imply that it was backed by a permanent member."⁴³ In reality, the idealistic aspirations of the United Nations was curbed by the fact that great power involvement was anticipated from the beginning. In one sense, the great powers are now doing what was intended. The problem, however, is that decolonization created a system where the inherent rights of sovereign states were deemed essential elements of the international order. If the non-industrialized world views the Security Council as applying force for its own ends without consideration of their needs then resistance to the legitimacy and the authority of the United Nations will occur as its actions will be viewed as an alternate form of colonialism.

In addition, the current structure of the Charter does not constitute a document on the same level as a nation's constitution. While both define the relationships of power, an individual state is far less diffused and cooperation based. A

⁴² *ibid.*, pp. 173-175.

⁴³ *ibid.*, p. 175.

state's constitution involves the submission of the political will of the power bases to its laws and principles. It also possesses the means for enforcing its standards. Democracies have the luxury of removing a government for political reasons but all exercises of power are enacted within the constitutional framework. Most significantly the power relationships are curbed by the courts who represent the principle interpreters of a state's constitution.

The Charter is also imbued with a sense that there is a necessary link between the concepts of peace and security. Agenda for Peace purported this notion at a superficial level. Peace is essentially an absence of war but security is not guaranteed by the existence of peace - particularly in the current system where there is an intense proliferation of weapons combined with the technological revolutions in communications and electronics.⁴⁴ This should not be viewed as something new or solely relevant to the current international structure. The definitions of strategy and grand strategy relate broad concepts pertaining to threats to vital interests and the mobilization of a state's resources to protect those interests. Ultimately, vital interests are political determinations. The political perception of a threat is another friction which will allow or disallow concerted action.

There remain critical advantages to the current Charter system. If there is agreement then the Security Council can act; "the veto precludes the confrontation of core powers by a member" [even though in some circumstances, for legitimacy's sake, it

⁴⁴ Boutros-Ghali, An Agenda for Peace, p. 6.

would be in the fundamental interest of permanent members to appease or be conscious of such opposition]; there "is potential for a veto from an alliance of non-permanent members; and "if blocked, individual states can still act unilaterally." The negatives could partially be addressed by a revamped system of consultation." Michael Reisman argues that there is an absence of means to consult the General-Assembly when Chapter VII actions are undertaken. He states that the Secretary-General may have been intended for that purpose.⁴⁵

Democracy also acts as an implicit friction to the Security Council dynamic at two levels. First, the United Nations aspires to be a democratic body. Each member of the Security Council has one vote, as do those states relegated exclusively to the General Assembly. Despite its democratic nature the U.N. is not a government:

Unlike a developed federal system in which a continuing federal enforcement agency coexists with state or provincial agencies, the international system still must create or adapt a specific mechanism to enforce every international legal decision....⁴⁶

This democratic nature is off-set by the concentration of power in the Security Council and the further imbalance of power created by the military and economic strengths, as well as the vetoes of the permanent members.

Second, three of the permanent members - the United States, France and the United Kingdom - are industrialized democracies

⁴⁵ W. Michael Reisman, "The Constitutional Crises in the United Nations," American Journal of International Law, 87 (January 1993), p. 98.

⁴⁶ Reisman, "Peacemaking," p. 419.

subject to the political pressures of their populace and media. While Russia retains a more limited democratic structure it also contends with popular opinion. Both levels of democracy add a dimension to the readily identifiable problems discussed by Alexis de Tocqueville:

It is especially in the conduct of foreign relations that democracies appear to me decidedly inferior to other government.... A democracy can only with great difficulty regulate the details of an important undertaking, persevere in a fixed design, and work out its execution in spite of serious obstacles. It cannot combine its measures with secrecy or await their consequences with patience.⁴⁷

The inherent difficulty of democratic bodies to go to war or to use force is both a strength and a weakness of such entities. While democracy provides a systemic check against authoritarian uses of force, it can also preclude concentrated and rapid responses to situations requiring immediate attention.

Assertive action by the United Nations requires the support of the three permanent democracies in the Security Council. The media's influence is pervasive in the age of CNN. When the media presents horrifying images of suffering to people there is an understandable rise in public concern to correct the injustices. This is also fuelled by a sense of "failed moralism" and sense of responsibility for the existence of those injustices.⁴⁸ There is a tendency for this reaction to invoke an immediate and limited desire to do something even when a particular situation requires more thoughtful and time consuming efforts. This phenomenon also

⁴⁷ James Schlesinger, "Quest for a Post-Cold War Foreign Policy," Foreign Affairs, 72 (1993), p. 27.

⁴⁸ Reisman, "Peacemaking," pp. 420-421.

works in reverse when the populations do not like the sacrifices being made for protracted ideals and distant persons:

The prospects for success of an American war against an abstraction are far less than those of a war against an identifiable enemy. Wars on poverty or on drugs do not generate the same degree of national energy and effectiveness as a hot war on Iraq or on the Soviet Union.⁴⁹

The Agenda for Peace failed to address in detail how perceived international indifference to long-term abstractions which may result in military problems can be overcome.

Agenda for Peace

During the Cold War, the inaction of the United Nations precipitated a reduced and less potent strategic means for dealing with peace and security. This era was marked by third world decolonization and the transition of the United Nations from an enforcement organization based on interdiction by major powers to an entity focused on "pacific third party initiatives to achieve peaceful settlement."⁵⁰ The impact of the breakup of the former Soviet Union and the loss of the bipolar system seems to have caused a reversion back to the original concept of major power interdiction. Within this framework, the United Nations has reestablished, in very general terms, a grand strategic political agenda. This approach was identified in the Secretary-General's Agenda for Peace. It articulated the need to identify potential

⁴⁹ Alton Frye, and David Leyton-Brown "The unipolar moment? cross-border perspectives," International Journal, XLVIII, No. 1 (Winter 1992-93), p. 28.

⁵⁰ Clayton E. Beattie, "The International Peace Academy and the Development of Training for Peacekeeping," in Peacekeeping: Appraisals and Proposals, ed. Henry Wiseman (Toronto: Pergamon Press, 1983), p. 204.

conflict situations to be addressed before they erupt. When they do erupt, it is incumbent on the United Nations to engage in peacemaking to resolve the causes of the problems. Peacekeeping and Peace building would involve the mobilization of its resources to be applied in various contexts:

... rebuilding institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war....⁵¹

The Agenda for Peace "...identified four critical, interconnected U.N. security functions" designed to attain these objectives: preventive diplomacy, peacekeeping, peacemaking, and peacebuilding." Preventive diplomacy was defined as:

Action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.

This concept is not novel as the U.N. has engaged in preventive diplomacy [throughout the Cold War,] often with real success, and usually without publicity.⁵²

Peacemaking was defined as "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations." Accordingly, peacemaking should not involve the use of force in the conventional or peacekeeping sense. Peacekeeping was distinguished on several basis:

The deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military

⁵¹ Boutros-Ghali, An Agenda for Peace, pp. 7-8.

⁵² Reisman, "Peacemaking," p. 415.

and/or police personnel and frequently civilians as well.⁵³

Conceptually peacemaking and peacekeeping were identified as separate and distinct instruments to be used for the securing of peace and security: "...peacemaking and peacekeeping are required to halt conflicts and preserve peace once it is attained."⁵⁴ Moreover, these are graduated and relatively reduced strategic steps designed to facilitate the peace process. Preventive deployment represents the more traditional great power interdiction to be used in "conditions of crises of an inter-state origin." The preventive deployment approach has now been expanded beyond the focused perceptions of threats to international peace and security involving states. Most significantly, the inclusion of the word peace is a veiled semantic attempt to conceal the forceful nature of these policy instruments.

The concept of preserving international peace and security was changed by the Agenda for Peace to include internal crises:

In conditions of crisis within a country, when the government requests or all parties consent, preventive deployment could help in a number of ways to alleviate suffering and to limit or control violence.⁵⁵

The expanded mandate is premised on the perception that humanitarian assistance could stave off potential threats to the peace by providing security forces that could save lives and

⁵³ Boutros-Ghali, An Agenda for Peace, p. 11.

⁵⁴ *ibid.*, p. 11.

⁵⁵ *ibid.*, p. 17.

create internal conditions conducive to peace-oriented negotiations.

This creates a potential strategic dichotomy for the United Nations. The use of force to impose humanitarian assistance within a state may, in fact, be irrelevant to the objective of international peace and security thus obviating its strategic justification. Moreover, the authority for taking military action is based on such a threat actually existing. The continuation of this authority must be based on a continuation of the threat. If the United Nations perpetuates or causes this threat to exist then its strategic objective will not be achieved. Its means will have prevented attainment. In addition, if it does not take the necessary action short of force, then it will have violated the grand strategic principle that the resources be mobilized to avoid the need to use force. There is also a strategic contradiction between the imposition of peace through humanitarian assistance and the perception that the United Nations have a neutral disposition.

The Secretary-General was very specific in identifying the required neutral mentality of the United Nations:

In these situations of internal crises the United Nations will need to respect the sovereignty of the State; to do otherwise would not be in accordance with the understanding of Member States in accepting the principle of the Charter.⁵⁶

Neutrality and consent are highly difficult standards to meet. It is difficult not to conceive of a situation whereby the Security Council proclaims respect for sovereignty, requires neutrality

⁵⁶ *ibid.*, p. 17.

and consent, yet is willing to enforce resolutions for the maintenance of peace and security in a manner which violates those characteristics. There is a broad difference between protecting humanitarian convoys from obvious dangers and forcibly entering a country under the auspices of Chapter VII which requires a subjective determination of a threat to peace and security.

The political and strategic cohesion breaks down when faced with Chapter VII operations. Chapter VII requires the determination of a threat to the peace and the use of force to prevent or remove that threat. Maintaining neutrality in such circumstances would be exceedingly difficult and probably impossible. This also translates into confusion regarding the means to be employed to attain the objective. There are three principle methods employed by the United Nations in the post Cold War Era, representing a graduated scale of forcefulness. The first is Peacekeeping which is not authorized by the Charter except under the very general provisions pertaining to the Security Council. The second, more forceful expedient contains three principle sub-components - peace enforcement, preventive deployments and peacekeeping plus. Peacekeeping plus -involves the deployment of United Nations forces to contain intra-state conflicts. The final means involves military action under the Chapter VII provisions of the Charter.⁵⁷

Regardless of their legitimacy these three principal levels represent separate and distinct uses of military force oriented

⁵⁷ Lecture, Professor D. Cox, 11 March 1993 Queen's University, Kingston Ontario.

towards separate and distinct objectives. Since the objectives are to be tempered by the means, mixing and matching these methods will likely serve to confuse the objective. It is theoretically contradictory to refer to a Chapter VII operation as peacekeeping. Moreover, these action, in every related context but traditional peacekeeping, are euphemisms for acts of war if they do not adhere to the strict principles of neutrality and consent.

Such confusion is typified by Canada's own definitions of peacekeeping. The typology is as follows: "prevention, interdisposition, restoration, preservation, facilitation, protection, enforcement, punishment." The preconditions are "continued support of all parties, effective military force, strict neutrality, and no enforcement of an external will or solution."⁵⁸ It is difficult to conceive of neutrality and continued consent when the United Nations, through its military means, takes actions to enforce or punish, particularly when the traditional rules of engagement only allow the use of force in self-defense. The mission typology of peace enforcement, on the other hand, is not congruent with the peacekeeping typology - "observation, reporting, prevention, supervision disarmament, and decompression"⁵⁹ - does not include any form of retribution or imposition in a classic military sense.

⁵⁸ Canada, Department of National Defence, Final Report on NDHQ Program Evaluation E2/90 Peacekeeping, 1258-77 (DGPE), pp. 16-17.

⁵⁹ *ibid.*, pp. 16-17.

Conformity is essential for the maintenance of public and media support in democratic states. Hypothetically, U.N. action requires permanent member support which is premised on the popular support in each democracy. Not only will mission confusion regarding the means preclude the attainment of the objective, but it will also serve to erode the public endorsement for the endeavour if the people feel duped or engaged in something to which they had not agreed. It also creates a vicious circle of politics whereby the inability to attain the objective also undermines public support.

Unfortunately, these distinctions seem not to have been addressed and all of the potential uses of military force by the United Nations, with the exception of the Gulf War, have fallen under the aegis of the "peacekeeping." In this context semantics are essential. Failing to address these distinctions can breed confusion in the public, military and political mindsets and will eventually erode the clarity of United Nations operations at every level.

The Agenda for Peace commits the same error. The Secretary-General states that the peace enforcement units should be called "ceasefire enforcement units."⁶⁰ Certainly, this would be a more accurate description if this is the role that they are performing. Retaining the concept under peacekeeping would be illogical if there is no peace to keep and the United Nations is enforcing a resolution. Unfortunately, the recent acts of the Security Council have incorporated actions outside of the realm

⁶⁰ Boutros-Ghali, "Empowering the United Nations," pp. 93-94.

of traditional peacekeeping. Conceptually, peacekeeping is associated with "order" and peacemaking is connected to "justice." If there is no attempt to create economic or political justice then it will be impossible to impose order.⁶¹ This infers that the efforts of peacekeeping will be futile if there is no comprehensive approach to peacemaking. This underscores the need for unifying the organs of the United Nations to attack potential threats to peace and security before they are manifested as actual threats. The protection of relief convoys does not require the invasion of state, rather an expanded self-defence mandate in the rules of engagement. There is a need, therefore, to compare traditional peacekeeping with the humanitarian interventions since the ends must be adjusted to the means to ensure strategic and grand strategic success.

Traditional Peacekeeping versus The Interventions

Traditional peacekeeping evolved throughout the Cold War. Mistakes were often made and policies were frequently varied and confused. Nevertheless, certain critical characteristics were established. Troops would be provided by member states serving under the command of the Secretary-General and subsidized by "collective financing." There would be a minimal use of force as the consent of all parties to the dispute would be required. Successful operations entailed the cooperation of the disputants working within a "clear and practicable mandate" provided by the Security Council.⁶² During the Cold War, there were 13

⁶¹ Taylor, "Peacekeeping: A Component of World Order," p. 425.

⁶² Boutros-Ghali, "Empowering the United Nations," p. 90.

peacekeeping operations between 1948 and 1978. Five of them still exist, ranging in duration between 14 and 44 years. The Agenda for Peace did recognize the essential limitations of the process:

Peacekeeping has sometimes proved easier than the complementary function of peacemaking. This shows that peacekeeping by itself, cannot provide the permanent solution to a conflict. Only political negotiation can do that.⁶³

Although the terms are different, it is a fundamental recognition of the Clausewitzian principles that the use of military means is an extension of the political will. This political will must also attempt to negotiate and reach agreement through international law or other processes to avoid the use of force. The requirement, however, is that all means at the disposal of the will be coordinated and fused to allow the maximum chance of success. While Peacekeeping is not a product of the Charter, it was a legitimate and innovative enactment of strategy:

[It evolved distinctly] ...when it became clear that the Security Council was not going to be able to operate under the sequence of moves outlined in Chapter VI and Chapter VII...[and] because the attempts to enforce peace were not politically or militarily realistic in the context of contemporary political and military circumstances.⁶⁴

Even traditional peacekeeping has been plagued by inadequate interpretations of its nature.

The Canadian Final Report on NDHQ Program Evaluation E2/90 Peacekeeping, 1258-77 (DGPE) outlined four contradictory definitions. One definition, from 1983, referred to Peacekeeping activities as "a complex framework of political and diplomatic

⁶³ *ibid.*, pp. 89-90.

⁶⁴ Peacekeeping: Appraisals and Proposals, ed. Henry Wiseman (Toronto: Pergamon Press, 1983), p. 163.

efforts of countervailing pressures designed to keep peacekeeping efforts and the related peacemaking efforts effective." This definition is inadequate as it neglects the military component. Peacekeeping activities are the use of military, police or civilian personnel to attain the political objective of peace. Hence, the explanation in the United Nations Headquarters publication Blue Helmets is more accurate:

An operation involving military personnel, but without enforcement powers, established by the U.N. to maintain or restore peace in areas of conflict

The referenced lack of enforcement powers is a contradiction with the Agenda for Peace and the first definition. The Canadian delegation to United Nations refers to peacekeeping as "the employment of military, para-military or non-military personnel or forces in an area of political conflict for the purpose of restoring and/or maintaining the peace." How can peace be imposed by the United Nations enforcement mechanisms if it is also to remain neutral? The likely result would be the creation of armed opposition if there is enforcement, as opposed to mitigation, acting as a buffer or monitoring. The only limited exception has been self-defense. Finally, the Peacekeepers handbook was referred to as defining peacekeeping as:

The prevention, containment, moderation and termination of hostilities between or within states, through the medium of a peaceful third party; or intervention organized and directed internationally, using multinational forces of soldiers, police and civilians to restore and maintain peace.⁶⁵

⁶⁵ Final Report on NDHQ Program Evaluation E2/90 Peacekeeping, p. 15/272.

This last reference highlights the confusion regarding the term's interpretation. Peacekeeping seems to have been elevated to a greater, more war-like standard of action under the authority of the United Nations while the public vernacular applies the Cold War standards associated with traditional peacekeeping. The distinctions have not been made readily apparent. Traditional peacekeeping has always been considered to have four essential non-forceful aspects required to function. There should be acceptance by the Security Council, the countries involved in the conflict, as well as the contributing nations. The willing cooperation of all parties involved is essential as well as "an unambiguous and realistic mandate" imbued with perceptions of "international political necessity." The use of force has never been a major factor. In fact, "a peacekeeping force should never be expected to rely on force to achieve its ends." If force is used then it ceases to be a peacekeeping operation and the political and military objectives are invariably altered. "It will cease to be above the conflict and will have become part of it...." Fundamentally, a peacekeeping action is not an enforcement operation.⁶⁶ Moreover, the "political character of peacekeeping operations is paramount."⁶⁷ This is also Clausewitzian requiring a deeply rooted understanding of the political objective and the specific role that the use of force is to serve:

⁶⁶ Brian E. Urquart, "Peacekeeping: A View from the Centre," in Peacekeeping: Appraisals and Proposals, ed. Henry Wiseman (Toronto: Pergamon Press, 1983), pp. 164-165.

⁶⁷ Beattie, p. 210.

It should, therefore, not come as a surprise to members of a peacekeeping force that they must be fully aware of political and diplomatic sensitivities of their mission and that they must train to function within the force as members of a close-knit military/political team.⁶⁸

The Agenda for Peace has redefined the peacekeeping task without any political or legal authority, other than the acquiescence of the international community to the endorsement of the Security Council. The fundamental assumption was that peacekeeping would only occur with the consent of the parties involved." The Agenda for Peace, in a radical but largely unnoticed departure, defines peacekeeping as an activity conducted 'hitherto with the consent of parties....'⁶⁹ The notions imbued in the Agenda for peace go beyond traditional peacekeeping "to the extent that the operation would be deployed without the express consent of the two parties (though its basis would be a ceasefire agreement previously reached between them). U.N. troops would be authorized to use force to ensure the respect for the ceasefire."⁷⁰ The problem with this approach is that when you use force to attain your objective there will be forceful resistance if it runs contrary to some government or some faction:

... there still may be inherent political limits on how forcefully proactive such peacemaking can be. Local factions who resist a U.N. plan may calculate that they can outlast the fragile glue of national interests that are supporting the international action, or alternatively, that they can kill enough U.N. personnel

⁶⁸ *ibid.*, p. 210.

⁶⁹ Reisman, "Peacemaking," p. 416.

⁷⁰ Boutros-Ghali, "Empowering the United Nations," p. 94.

to escalate the crisis in ways to enure their benefit.⁷¹

Not only the strategic means have been expanded. The strategic justifications have been extended to include humanitarian intervention.

The United Nations Charter relates the fundamental importance of non-military issues to the international system. In the post Cold War Era "the non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security."⁷² The recognition that large-scale losses of lives constitutes a threat to international peace and security is valid. Therefore it would not be acceptable for humanitarian assistance in the forms of food and medicine to be prevented from "reaching the victims. Moreover, peacekeeping and peacemaking operations can readily incorporate and implement humanitarian objectives into their missions."⁷³ The aspirations of the interventions are also supported by the charter. "The idea of protection from death dominates the preamble in the matter of humanitarian assistance to victims of natural disasters and emergency situations of the same kind." In Resolution 43/131 the General Assembly declared:

... [itself] deeply concerned about the sufferings of the victims of natural disasters and similar emergency situations, the loss in human lives, the destruction of property and the mass displacement of populations that results from them.⁷⁴

⁷¹ Reisman, "Peacemaking," pp. 419-420.

⁷² van Boven, p. 13.

⁷³ *ibid.*, p. 23.

⁷⁴ Bettati, pp. 1-2.

The importance of these human rights to the larger U.N. constituency also means that political expediency is inappropriate:

If the major powers employ international organizations chiefly as public relations vehicles and fail to supply them with the means to get the job done, then the credibility of those organizations, and that of collective norms and decisions, will suffer.⁷⁵

Furthermore, if any intervention aggravates, inflames or perpetuates a conflict, then the Security Council will have violated its own Charter by creating a worse threat to international peace and security.

Great caution should be exercised pertaining to global altruism. The question remains whether deep concern constitutes a threat to international peace and security. Ian Brownlie accurately assesses the conundrum posed by the new interventionism. He argues that it creates a paradox for the United Nations since there is no commonly accepted standard for the conditions necessary for intervention. Moreover, he argues that double standards will undermine the legitimacy of the operations by being "highly selective" based upon political and strategic interests. Ultimately, he argues that this "will in practice be old-fashioned hegemonical intervention."⁷⁶

In addition, the newer motives for intervention are not congruent with the original vision of Chapter VII. This may or

⁷⁵ Edward C. Luck, "Making Peace," Foreign Policy, No. 89 (Winter 1992/93), p. 148.

⁷⁶ Ian Brownlie, "The Principle of Non-Use of Force in Contemporary International Law," in The Non-Use of Force in International Law, ed. W.E. Butler (Dordrecht: Kluwer Academic Publishers, 1989), p. 25.

may not constitute a rewriting of the Charter but it certainly represents re-textured appraisal of the U.N.'s essential purposes. Simply arguing that the United Nations is now able to perform the role for which it was intended is inappropriate because the issue of the Chapter VII operations being used for "humanitarian" threats to the peace is problematic.

Chapter VII was realistically created to contain conflict between states and in particular mid-sized powers. Human suffering is symptomatic of socio-political and economic disparities which preclude effectively dealing with large scale human suffering usually resulting from natural disasters, civil wars and inter-state conflicts. If such suffering is contained within a state then it logically cannot constitute a threat to international peace or security. If this suffering is not contained and could result in inter-state conflict then it is admittedly congruent with the objective, but only on the basis that this suffering would lead to international insecurity or war. Such determinations must be carefully considered. These types of operations are not traditional peacekeeping and may not be true threats to international peace and security. Therefore, they should not be authorized under Chapter VII. Humanitarian intervention, traditional peacekeeping and peace enforcement are not coherent within the framework of the Charter or general strategic guidelines.

The protection of human rights is likely to be so protracted from vital national security interests that it is incongruent with the degree of sacrifice required by specific nations to protect those rights; particularly when it could be perceived

that the violation of sovereignty - a major theme of the Charter - is another cost not justified by the objective.

The required environment for traditional peacekeeping and the ultimate political and military objectives contradict those of imposed humanitarian assistance. The Agenda for Peace failed to recognize the quintessential strategic differences between traditional peacekeeping and peace enforcement by stating that "there may not be a dividing line between" the two.⁷⁷ There is certainly a difference and the long term viability of these actions requires the understanding of that difference relative to the various uses of force, as well as the required resources.

Prolongation has been the one striking inadequacy of traditional peacekeeping.

... its operations have beginnings but all too often no conclusion. In other words, if peacekeeping cannot bring about the pacific resolution of a dispute, then we have to settle for a much less satisfactory and very expensive, alternative: the dispute's pacific perpetuation.⁷⁸

Prolongation is more politically acceptable to the people and governments of 'peacekeeping nations' when the impact on the forces and the overall cost to a nation is relatively low. The popular support for these operations will be further undermined when this prolongation also leads to deaths in the contingent forces. This fact relates the greatest dilemma of all. When nothing is done, people die. When the full force of the United Nations is used unreservedly to destroy the opposing side, then people also die. The United Nations is now realizing that non-

⁷⁷ Boutros-Ghali, An Agenda for Peace, pp. 26-27.

⁷⁸ Taylor, p. 424.

traditional peacekeeping does not preclude this constant - people still die. This dichotomy will be more readily overcome if an important vital interest is at stake. Major conflicts such as the Gulf War and even World War II, reveal this element. At the other end of the spectrum, peacekeeping does not pose the same difficulties because the vital strategic interest and the role of the forces does not demand the same level of coordination and cohesion. It stands to reason that conflicts falling between these two extremes will pose greater difficulty in eliciting the required public and governmental support, in prioritizing and enacting, because the requirements of force may increase while the perceived vital interests to participating nations remains relatively low.

Striking the appropriate balance will be even more difficult if the contingents of force are inadequate for the mission at hand:

This means also that, in most cases, contingents should be capable of dealing with a higher intensity of confrontation or conflict than that normally found in peacekeeping missions.⁷⁹

This is compounded by the fact that "the modular construction of a force presents a problem where national contributions form part of a functional group, but continue to retain individual unit and national identity."⁸⁰ Moreover, the types of forces to be used in non-traditional peacekeeping are not conducive to the expectation of resorting to force only in self-defence. The early development of peacekeeping, particularly in Cyprus and the

⁷⁹ Beattie, pp. 208-209.

⁸⁰ *ibid.*, p. 204.

Congo, identified the need "to assure the safety and security of United Nations troops." In part, this resulted from the impracticality of true impartiality of U.N. troops.⁸¹ The need for greater instruments of force will be magnified if peace enforcement continues. The modality of traditional peacekeeping remains imbued with the notions of the use of force in self-defense. Hence there is a need to address the implication:

Since peacekeeping operations emphasize the limitation or cessation of conflict there is also a natural desire to limit the equipment of such troops to "light weapons" in order to further emphasize the pacific nature of their nature.⁸²

This factor contradicts the perceived requirements of peace enforcement whose fundamental precept is that sufficient force must be concentrated, speedy and utilized effectively. This requirement runs contrary to traditional peacekeeping notions.

Peacekeeping entails a reluctance to use a large force for an extended period of time. There is also a [perpetuated logistic "nightmare" as "each operation is launched precariously, with its cast of players being required to write the script as the play proceeds, without any indication as to the form of the final act or the duration of its run."⁸³

There is another aspect relative to traditional peacekeeping to be considered. The international character of these efforts means that the forces contend with "differences in cultural, social, and professional attitudes affecting the melding of the composite

⁸¹ *ibid.*, p. 214.

⁸² *ibid.*, p. 209.

⁸³ *ibid.*, p. 204.

of national representations into a single force:"⁸⁴ The impact of this factor is directly proportional to the danger of armed resistance which is to be encountered at a given site.⁸⁵ This has not proven to be a problem for traditional peacekeeping. In the Congo, the initial troops arrived in 36 hours. In 1973, the Suez peacekeeping forces arrived on scene in 24 hours. This ability, however, is based on the fact that the forces were not "required to fight on arrival" because of their "non-combatant status." In Cyprus, the 50,000 British troops were less effective than 7000 U.N. soldiers because they were combatants. The peacekeepers "represented the will of the international community, their status right from the beginning has been quite different and far more effective."⁸⁶

This speed and concentration of effort is another consideration for non-military action:

Speed is, to start with, a criterion defining the conditions of forwarding such aid, its transport and distribution, taking into account the need to limit to the lowest common denominator, the obstacles and restraint which could hold up this aid.⁸⁷

Speed of response in all contexts is a paramount factor as the costs of delay or inaction are potentially disastrous:

The alternative between intervention and non-intervention is a question of life and death and, on the other, the safeguard of life depends on the speed of such intervention.⁸⁸

⁸⁴ *ibid.*, p. 204.

⁸⁵ *ibid.*, pp. 205.

⁸⁶ Urquart, p. 166.

⁸⁷ Bettati, p. 2.

⁸⁸ Bettati, p. 1.

Speed and concentration of force within this context is not a problem when there is the political will. The grand strategic standard is be that the resources are utilized so the resort to force is not required. The resources of traditional peacekeeping are already strained. Adding the expanded mandate will not alleviate the problem.

Since the United Nations is not a nation-state there is an even greater requirement to address the impact of financial uncertainty. The U.N. is owed more than \$1 billion in dues for regular debt and peacekeeping. There were "misgivings" in Bosnia and Somalia concerning overfunding. This contributed to operational postponements which may have exacerbated the situations. Moreover, "financial uncertainties delayed Cambodia and Croatia missions."⁸⁹ Increasing operational commitments have made the financing problem more acute. In the first half of 1992, peacekeeping operations quadrupled to 44000 personnel at a cost of \$2.8 billion. While there was a protest concerning a .5% increase of the peacekeeping budget there remains an increasing militarily build-up.⁹⁰ The contradiction is that these operations can serve as part of an individual state's foreign and defence policies if they are coherent and properly financed just as the vital interests of key states are ultimately part of the U.N.'s vital interests. The vicious circle is that if the systemic inefficiencies and policy ambiguities of the United Nations are not removed, support will decline and the

⁸⁹ Luck, "Making Peace," pp. 150-151.

⁹⁰ *ibid.*, pp. 150-151.

cohesiveness of the international community within the United Nations will become even more fractured.

This description would not bode well for the legitimacy of the Security Council or the United Nations as a whole. A unified strategic approach would coordinate and unify foreign policies to the extent that double standards and other inconsistencies can be eliminated so that the United Nations own vital interests can be served. The military incongruities could have been addressed had the Military Staff Committee (MSC) not been allowed to atrophy..

The Military Staff Committee

The responsibility for the lack of cohesion in the use of force policies within the United Nations during the Cold War rests in part with the Military Staff Committee:

The inability of the United Nations military staff committee and the Committee of 33 (originated in 1964) to develop the political, legal, and military guidelines, procedures and methods of financing have hampered the United Nations organization itself from taking progressive initiatives in the field of 'prior planning' and in the coordination of international training programs.⁹¹

Ultimate responsibility rests with the lack of political will resulting from the superpower tensions. These tensions were based on perceived conflicts in the vital interests of the United States and the Soviet Union. Now that the Cold War has ended, it may be possible to build on the early work of the MSC in the context of its role under the United Nations Charter.

The Charter is quite explicit as to its intended role. Article 46 states that "Plans for the application of armed force shall be made by the Security Council with the assistance of the

⁹¹ Beattie, p. 204.

Military Staff Committee." Article 47 establishes the committee and outlines its composition and mandate:

- Article 47
1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
 2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
 3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
 4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

The Agenda for Peace tried to address the role of this enfeebled institution:

It is my view that the role of the Military Staff Committee should be seen in the context of Chapter VII and not that of the planning or conduct of peacekeeping operations.⁹²

The contradiction in this is that humanitarian interventions are viewed as peacekeeping operations but they are authorized under Chapter VII. Insufficient study has been made of the history and potential role of the Military Staff Committee. Detailed and progressive work had been done prior to the onslaught of the Cold War. The Military Staff Committee had hammered out "the principles governing the organization of the forces to be placed

⁹² Boutros-Ghali, An Agenda for Peace, p. 25.

at the disposal of the Security Council for enforcement action," as well as the size and shape of those forces.⁹³

In the beginning, meetings were held with delegations of each service from the permanent members of the Security Council. The delegations were comprised of direct representatives of the Chiefs of Staff of each state. The chairmanship of each meeting rotated. Between February and April 1946, the meetings settled on the rules of procedure and the general principles to be followed by the committee. The Report of the Military Staff Committee on General Principles Governing The Organization of the Armed Forces made Available to the Security Council by Member nations of the United Nations: Report by the Chiefs of Staff, MS/265 was produced on 30 April 1946.⁹⁴ The command and control aspects were clearly defined. The vision was that a "powerful joint U.N. military staff would advise the Security Council and execute its orders." The MSC would be "responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council, "detailed command arrangements which were to be "decided subsequently".⁹⁵ The command and control contradiction is that traditional peacekeeping is implemented under the auspices of the Secretary-General. United Nations standing forces were never truly considered a viable option. The compliments "would be drawn from

⁹³ Grove, p. 172.

⁹⁴ *ibid.*, p. 176.

⁹⁵ *ibid.*, p. 176.

the contributing nations' normal order of battle" based on individual agreements with each member:

Forces made available to the Security Council would be under national command, except when operating under the control of the Council for Article 42 operations. Then they would come under the strategic direction of the Military Staff Committee for as long as the Security Council decided.⁹⁶

The intention was that they would "retain their national character as regards discipline and regulations." Moreover, each commander would communicate with their respective governments.⁹⁷ This standard is certainly more conducive with the expectations and requirements of peace enforcement. Efforts along these lines, however, are not prominent or immediately forthcoming.

In addition, it was expected the best possible forces would be trained and used so enemies would be sufficiently deterred or fearful. "The maximum size of the proposed forces allocated to the Security Council would be governed more by the need to have sufficient strength to take prompt action in any part of the world."⁹⁸ Ironically, there was a great deal of agreement concerning the report MS/264. More than half of the 41 articles were agreed to unanimously. Specifically, the document established that the forces were intended to be used against "any threat to international peace; of any breach of international peace and security; or any act of aggression." Accordingly, the intent was that such use of force would be taken as a last resort. Furthermore, the armed forces were not to be used for

⁹⁶ *ibid.*, p. 177.

⁹⁷ *ibid.*, p. 177.

⁹⁸ *ibid.*, p. 177.

purposes inconsistent with the charter.⁹⁹ There were, however, several major points of disagreement. The Soviet Union wanted "absolutely equal" contributions by the permanent members and they required that a time limit be set for troop withdrawal. There was also substantial disagreement between the French and the British over the command and control structure.¹⁰⁰ Nevertheless, a substantive force framework had been created.

Realistically, as the superpower tensions in the late 1940's escalated, there seemed to be little hope of carrying forward the substantial progress of the Military Staff Committee:

The Military Staff Committee had become what was to remain for the next four decades and more, a meaningless ritual kept in notional existence for the sake of form. Its discussions were forgotten. Yet they may offer some insights for the present and the future.¹⁰¹

At the inception of the Charter, the Military Staff Committee was to ensure the implementation of the strategy as emanating from the political will. The intent was consistent with Clausewitzian standards.

The current and consistently ad hoc approach of the United Nations in its application or use of force will affect its future operations, particularly if they escalate to higher orders of conflict. Situations such as the Gulf War may always require an ad hoc approach because of the more important vital interests at stake, as well as the need for immediate and forceful actions. The mere delegation of medium sized operations such as Somalia -

⁹⁹ *ibid.*, p. 177.

¹⁰⁰ *ibid.*, pp. 178-179.

¹⁰¹ *ibid.*, pp. 180-181.

particularly if they retain limited goals and are within the institutional abilities of the U.N. - will not bode well for the organization. Acting as a mere fig-leaf or rubber-stamp for the greater powers will ultimately undermine its legitimacy. This legitimacy will also be determined by the perceived consistency of such operations in the context of international law. Since law also emanates from the political will of a nation or collection of nations, it is arguable that competent strategy will be analogous to competent law. The recent actions of the Security Council will be assessed on this basis.

Chapter 2: The Legal Principles Applied to the Use of Force
The Parameters of International Law

A fundamental understanding of the role of law within domestic and international society requires a comprehension of the essential commonalities and distinctions. Michael Walzer purports in his work, Just and Unjust Wars, that international society is comprised of six fundamental characteristics which apply to varying degrees. First, there is an "international society of independent states." Second, this society has laws which establish each constituent's rights, particularly regarding "territorial integrity and political sovereignty." This law also establishes that any use or threat of force by one member against the sovereignty or territorial integrity of another is a "criminal act. Fourth, such "aggression" may be responded to with violence by the victim or other members on the victim's behalf. Fifth, "nothing but aggression can justify war." Finally, once "repulsed", the "aggressor can also be punished."¹⁰² In a very general sense, the first, second, third and fourth components are straightforward and accurate although the principles may be applied or perceived in different ways. The fifth and six components are more questionable because the term aggression is misleading and inaccurate since the U.N. Charter uses the term force. The inaccuracy is understood by the fact that there may be forms of aggression which do not involve the use of force. This distinction is essential to accurately measure the constraints imposed upon the actions of states. Law must also be viewed as

¹⁰² Walzer, pp. 61-62.

"politics by other means." All law emanates from the politics of the society:

Separation of law from politics in the presentation of national or international problems is possible in so far as law is not an end in itself but a means or, what amounts to the same, a specific technique for the achievement of ends determined by politics.¹⁰³

This fact relates profoundly to strategy. Neither strategy nor law are separate entities because they both are extensions of the political will and are means to the attainment of the objectives of that will. It must also be understood that the current laws pertaining to war originated and are more vehemently accepted by nations which have evolved within the traditions of Western culture. "Their injunctions rest on a particularly Western view of individual human dignity, the value of human life, and the canons of magnanimity and humanitarianism."¹⁰⁴ Just as it is difficult to fathom the comprehensiveness of the term "New World Order", it is also difficult to attribute a comprehensive definition to the word law. "[The]...the word is frequently used to tie in a single bundle rules of behaviour that derive from different sources and have different kinds of consequences when violated." Legal theory divides law into "two fundamental categories" - "natural law" and "positive law." Natural law originates "from sources outside human discretion;" whereas positive law is founded on "human discretion. [They are]... not

¹⁰³ Kelsen, p. xiii.

¹⁰⁴ Coll, p. 68.

necessarily neat tight compartments, but very general in terms of their classification."¹⁰⁵

The nature, purpose and function of international law requires a metaphysical inquiry into the essence of law and its relationship to the community it purports to serve. Despite its complications, strange conceptualizations which tend to over use Latin, and varying characteristics which are peculiar to each community, law concerns itself with the structuring of relationships between individuals, collective entities and the state. It is primarily concerned with the standards of conduct and the procedures of interaction between these entities. Perhaps the ultimate factor is the recognition that disparities and injustices will occur no matter how detailed and explicit the definitions of these relationships are. It may be argued that law's ultimate purpose is actually justice. Justice, however, can never be absolute because absolute justice would, by definition, require perfection and absolute knowledge. It is far easier to assess the interrelationships of individuals and collectivities at a national level, as opposed to an international level, in a community such as Canada.

Our system, as imperfect as it may be, attempts perpetually to establish prioritized prescriptive norms of conduct which have been established by consensus within a national framework. A constitution is the ultimate binding force which determines the relationships between the individuals, the provinces or states,

¹⁰⁵ Alfred P. Rubin, "Enforcing the Rules of International Law," Harvard International Law Journal, 34, No. 1 (Winter 1993), pp. 149-150.

the federal government and its institutionalized mechanism of justice administration - the courts. Each of these entities is subject to the all-encompassing procedural determinants, standards and inherent balancing forces established by the constitution. It strikes at the heart of justice and the role of the law.

Perhaps regrettably, international law does not have the benefit of a focused constitutionalized organization. International law is not "enacted or interpreted" by any centralized forum or court.¹⁰⁶ A fair characterization of the law involves the notion that the composite entities of any legal system ultimately want this system to serve its survival interests through the establishment of ordered and rational processes. Hence the survival interests of the more empowered entities and institutions will be served more readily than weaker societal components. This constant is true at the national and international levels. The survival aspect, within the context of the international society, may more euphemistically be referred to as a nation-state's security interest. Since the political and juridical authority is far more diffused, nation states have accorded themselves "a wide measure of freedom in unilateral action for maintaining their own security against external dictation by unlawful violence."¹⁰⁷ Even Grotius' legal conceptualizations of the "freedom of the seas principle" was, in

¹⁰⁶ S. McDougal and Norbert A. Schlei, "The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security." Yale Law Journal, 64 (1955), p. 660.

¹⁰⁷ *ibid.*, p. 674.

effect, a self-serving pronouncement established to satisfy "the whims of his nation."¹⁰⁸

The role and standards of international law have been entrenched in the Hague's International Court of Justice. Ultimately, international law is similar to domestic law as a reflection of the society it serves. Justice, coherence and consistency usually represent the fundamental characteristics of any well serving legal system. It is perceived that international law has thrived in "a soil tended by the power and joint energies of the great liberal powers." These powers, for better and for worse, are the preeminent proponents of international law. Their removal or inaction would seriously alter the essence of contemporary law.¹⁰⁹ In the current international society the sources of international law are formulated by the **Statute of the International Court of Justice**.

The Sources of International Law

Article 38 of the Statute of the International Court of Justice is considered the operative standard for establishing international law:

- 38(1)The Court, whose functions is to decide in accordance with international law such disputes as are submitted to it, shall apply:
- a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - b) international custom, as evidence of a general practice accepted as law;
 - c) the general principles of law recognized by civilized nations;
 - d) subject to the provisions of Article 59, judicial decisions and the teaching of the most highly qualified

¹⁰⁸ *ibid.*, p. 661.

¹⁰⁹ *Coll*, p. 69.

publicists of the various nations, as subsidiary means for the determination of rules of law ¹¹⁰

There is some debate over the nature of these provisions as to whether they represent a "hierarchical organization" or are of equivalent value in the eyes of the law. The one certainty, however, is that section 1(d) is a "subsidiary means for the determination of international law." International conventions refer in large part to formalized agreements between two or more states:

...treaty means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.¹¹¹

Actually, "treaties do not reflect a physical act, [but rather]... a statement, a promise"¹¹² This category may include substantive state practice which "... covers any act or statement by a state from which views can be inferred about international law."¹¹³ This facet, however, is not absolute and it would probably be more appropriate to categorize state practice within section 1(b) of the statute. International custom and the general principles of law are respectively "the practice between states and general principles [which] are applicable within states."

¹¹⁰ A.F. Fenske, "The Law of War: Legal Limitations on the Use of Nuclear Weapons." Canadian Forces J.A.G. Journal, 2 (1986), p. 33.

¹¹¹ Margaret E. Gouin, Nuclear Law: The Application of Canadian and related international public law principles to the obligations of Canada in relation to nuclear weapons (Kingston: Queen's University, 1989), pp. 23-24.

¹¹² *ibid.*, p. 27.

¹¹³ *ibid.*

More specifically, customary international law may be defined as "the conduct of states repeated so often in similar situations and circumstances that a general conviction arose that acting in accordance with this practice was demanded by law."¹¹⁴

Despite the notion that this opinio juris of the international community is essentially the belief that something is already law it must be confirmed that the "mere consensus" of the international community "does not make customary law."¹¹⁵ Obviously problems of definition and categorization are evident in that priorities can be very nebulous. This fact underscores a contention which exists between the substantive 'black letter' law approach which is very narrow and focused in its construction and the more 'critical' approach which involves the application of principles and standards which are often derived from other sources. For example, a very strict interpretation of the Charter of the United Nations would argue that the Security Council could conceivably do what ever it wants in the realm of international peace and security since it is the preeminent organ in that area and since the Charter takes effective precedence over all other treaties and statutes in accordance with Article 103. A more critical approach would attempt to assess the relevant case law in an attempt to refute the absolute quality of this proposition.

Finally, a subsidiary source of international law as highlighted by the International Court of Justice are highly regarded publications and actual judicial decisions. The former

¹¹⁴ *ibid.*, pp. 24-26.

¹¹⁵ Fenske, p. 40.

is highly subjective and the weighing of each side's arguments would likely render an inconclusive verdict. Key principles have been highlighted by cases such as the SS Lotus which determined that "states are free to do whatever they are not strictly forbidden to do."¹¹⁶ The application of appropriate case law will be discussed throughout this section as the relevant decisions of the International Court of Justice interpret the actions of nations.

The methodology of searching for legal solutions is the greatest strength of international law. The Antelope Case of 1825 specified that "a jurist must search for its legal solution...." Accordingly, moralism is best left to moralists¹¹⁷ and political decision-makers. The intertwining of law and moralism by the new interventionism creates confusion when law is used to justify what is essentially a moral act. Law must remain a means to attain justice and judge the actions of nations, rather than a convenient rationalization for those actions. Conversely, its greatest weakness is a chronic inability to provide clear unassailable definitions and interpretations when faced with the varying nature of state behaviour. This is because questions of law are written by human beings and so decisions will be altered, varied and overturned as law itself evolves.¹¹⁸ This duality was revealed in the recent Lockerbie decision of the International Court of Justice. The long term implications of the tribunal's

¹¹⁶ *ibid.*, p. 34.

¹¹⁷ *ibid.*, p. 36.

¹¹⁸ Rubin, p. 156.

reasoning are not readily perceivable. It is a jurisdiction oriented decision which must be discussed in advance of the actual Charter provisions as it outlines the fundamental relationship between the principle decision-making organs of the United Nations and the court itself. This decision precipitated Michael Reisman to describe it as constitutional crisis within the United Nations.

The Constitutional Crisis

On 14 April 1992, a large majority (11 to 5) of the International Court of Justice "dismissed an application by Libya to be provided interim protection in its dispute with the United States and the United Kingdom over the extradition of two persons who allegedly masterminded the bombing of Pan Am 102 over Lockerbie Scotland on 21 December 1988." Libya had argued that it retained the right to try those persons before its own courts under the provisions of the Montreal Convention. There was a joint declaration of opposing states on 27 November 1992 to the effect that Libya "must surrender for trial all those charged with the crime." The Security Council had in fact supported the extradition in Resolution 731 adopted on 31 January 1992, urging Libya to it to provide "a full and effective response" to the aforementioned declaration." Nothing resulted from the request and so the Security Council adopted Resolution 748 on 31 March 1992, in which it declared, under Chapter VII of the Charter,

that the Libyan government "must now comply with without any further delay" with Resolution 731.¹¹⁹

Certain juridical analysts are of the opinion that this case is an equivalent to Marbury v Madison - the American decision which asserted the role of the United States Supreme Court vis a vis the executive. It also established the American principle of judicial review. This proposition is overstating the case's importance since the Charter does not represent a global constitution of a duly elected government body. Nevertheless, the case did focus the attention of the International Court of Justice on its respective jurisdiction. Lockerbie continued the trend of the Nuclear Test Cases, Nicaragua and others whereby "the Court indicated that it was prepared to depart from the classical and strictly consensual basis for its operations and assert its jurisdiction over disputes on the basis of what would previously have been considered weak or even questionable grounds."¹²⁰ Certainly, these cases represent a varying approach regarding both organ's overall competence but the pattern of resorting to either has varied. In Lockerbie, "... unlike in the Teheran Hostage case where the US turned to both institutions for support as victims, the Uk and US were pressing the Security

¹¹⁹ Christian Tomuschat, "The Lockerbie Before the International Court of Justice," The Review: International Commission of Jurists, No. 48 (June 1992), p. 38.

¹²⁰ W. Michael Reisman, "The Constitutional Crises in the United Nations," American Journal of International Law, 87 (January 1993), p. 85.

council while Libya is turning to the International Court of Justice."¹²¹

The essential decision in Lockerbie is not difficult to comprehend. If the Security Council adopts a resolution under Chapter VII and the decision is "inconsistent with another treaty based right" then the resolution prevails. Reisman agrees with the narrow reasoning but contends that it was based on "unsound constitutional policy reasoning."¹²² Reisman agrees with the interpretation that when the Council is "involved in discharging" its primary responsibilities under Chapter VII no "inconsistent treaty or customary-based rights" can preempt that function. Otherwise, "... the council's function might be checked in some cases and the U.N. scheme for the maintenance of international peace and security could fail." This fact infers that there must be an immediate escalation to Chapter VII by the Security Council to protect any decision or resolution. Reisman argues that the court ought to have concerned itself with the "judicial methodology for the decision as to how to assess the actions of the Security Council."¹²³ This approach would have given greater legitimacy to the decision ensuring that ultimate authority remains with the political organ. One possible solution might be to refer the decisions of court back to the Security Council for reconsideration without binding authority. It would be inappropriate, however, in the current international system

¹²¹ Tomuschat, pp. 40-41.

¹²² Reisman, "The Constitutional Crises in the United Nations," p. 87.

¹²³ *ibid.*, pp. 88-89.

for the International Court of Justice to be able to strike down resolutions as is possible in the domestic constitutional sense. Such an ability would only be valid in a truly constitutional framework.

Juridically, the decision established that the Security Council should not contravene international law when acting under the auspices of Chapter VI of the Charter. Moreover, the court decided that the Charter's Article 36(3) provides that judicial disputes should be referred to the Court. Different considerations, however, will be applied if the Security Council is acting under Chapter VII. Foremost, there must be a determination of a threat to international peace and security.¹²⁴

Actually the Charter "does not establish precedence of the Security Council over the World Court." Article 36(3) stipulates that legal disputes should be submitted to the Court. One alleged implication of the Lockerbie decision was that the Security Council could not insulate itself from judicial review since the court actually considered the case. In effect, "... both organs are duty-bound to cooperation and mutually respect their areas of competence, taking into account their different nature":

The Security Council is an action-oriented political organ, whereas the Court is a judicial organ whose function is limited to evaluating in strict legal terms disputes or other legal questions to it."¹²⁵

Another important facet that ought to have been analyzed by the court is the definition of international peace and security since

¹²⁴ Tomuschat, p. 41.

¹²⁵ *ibid.*

"the Security Council has never drawn a distinction between 'general' issues of international peace and security and 'individual' cases affecting international peace and security." Hence Resolution 748 cannot be attacked on grounds of inconsistency with constant practice.¹²⁶ In light of the more recent trends of the Security Council to identify much broader definitions of threats to international peace and security, a more systematic approach to the identification of such threats would have provided the Security Council with a guide. It would appear that the Court was adverse to such an analysis on the basis that the absence of a legitimate threat to peace and security would lead to an implication that actions taken by the Security Council were illegal. The ability of the Council to exclusively define such threats is a strategic advantage but a double edged political and legal sword. At some point, political and perhaps legal, accountability for threat determinations will be required. The long term interest of the United Nations is to be as politically and legally consistent as possible in the hope of establishing its long-term legitimacy. The critical caveat pertaining to a more substantive role for the International Court of Justice is that the court is probably not politically or strategically competent to properly decide these issues. In the absence of this centralized judicial guide, the legally appropriate use of force will be determined by customary international law.

¹²⁶ *ibid.*, p. 45.

The Just War Theories

The establishment of the nation state as the principle actor in international politics occurred in 1648 with the signing of the Treaty of Westphalia. A group of self-proclaimed Christian states recognized themselves as "a community of sovereign nation-states [which were] guided by certain rules of international and social intercourse."¹²⁷ The essence of these states was based on the "logic of Westphalia":

Gone is the medieval metaphysical assumption of a superordinate authority possessing ultimate sovereignty derived from God. The new metaphysical construct ascribes to all states equality of juridical authority Hence all states are equal in status, if not stature....¹²⁸

In addition, the political perception is that all states share other key elements - "a defined territory; a permanent population; an organized government; and recognition by other nation-states (and hence a capability to engage in foreign relations)."¹²⁹ The Logic of Westphalia forms the foundation for international law's perspectives on the use of force.

Hugo Grotius "envisioned societies where some reason and natural law limited the jus ad bellum (the law governing the right of state to go to war), as well as the jus in bello (the law governing the conduct of war, that restrained its ferocity)."¹³⁰ Grotius distinguished between "moral and legal principles", which represented a formulation of Christian teachings and the law of

¹²⁷ Addicott, p. 71.

¹²⁸ Taylor, p. 404.

¹²⁹ *ibid.*, p. 404.

¹³⁰ Lawyers and the Nuclear Debate, p. 1.

nature. He asserted that there should never be an automatic escalation to war even if the cause is just:

A ruler should balance the evil and the good that may result from the just war. The effectiveness of the means to contribute to the good must be part of this balancing process and resort should be had only if the likely result will contribute more to good than to evil.¹³¹

This "classic proportionality argument" is highlighted by the "dilemma between the forceful pursuit of freedom, which may result in the slaughter of one's own people, and peace without freedom. The evil of the former, in his view, outweighs the good of the latter and thus does not warrant resort to war."¹³² While the concept *jus ad bellum* was maintained throughout the seventeenth and eighteenth centuries, it fell in decline as war became viewed as an acceptable and even useful "instrument of national policy." at this point the *jus ad bellum* was no longer considered part of international law. Between the middle of the nineteenth century and the First World War the law focused on the "means and methods of warfare...."¹³³ Since the rules pertaining to *jus in bello* were accentuated during the decline of *jus ad bellum* both concepts must be viewed as "independent sets of rules."

The rare conceptual combination of the two has focused on "whether the rules on the conduct of human hostilities are affected by the legality of the resort to force." There is a

¹³¹ Judith Gail Gardam, "Proportionality and Force in International Law," American Journal of International Law, 87, No. 3 (July 1993), pp. 396-397.

¹³² *ibid.*, pp. 396-397.

¹³³ *ibid.*, pp. 396-397.

"subtle impact" by the a state's legal right to use force on "perception by that state of the means that can legitimately be used to achieve its goal." In effect, the just war theories emerged from their Christian roots to a plane of secularization.¹³⁴ The "'just war' theories ...became secularized as statesmen realized that sometimes the "unjust" win, regardless of the admonitions of philosophers."¹³⁵

The effect of the logic of Westphalia has been substantial in the creation of the modern nation-state structure. It founded the attempts to create an "inter-state equilibrium based on treaties and alliances" whose basis would be the balance of power.¹³⁶ Initially, the Charter of the United Nations is an extension of this process. Certainly, it may be argued that this 'equilibrium' has never been attained; it would be erroneous, however, to dismiss the jus ad bellum altogether as it is currently being reintroduced in international law by the humanitarian interventions. As such, international law can serve important functions within the global community as a means of education, regulation, and assessment. Moreover, it can reflect the preferential norms of the specific, as well as the holistic, state system. The just war theories have extended into the more modern customary international laws of proportionality.

¹³⁴ *ibid.*, pp. 392-394.

¹³⁵ Rubin, p. 155-156.

¹³⁶ *ibid.*

Proportionality

Proportionality originated with the Christian theory of the jus in bello. "Proportionality in just war theory required an assessment as to whether the overall evil a war would cause was balanced by the good that would be achieved."¹³⁷ This concept is based on necessity:

... the principle of necessity dictates when the use of force is acceptable, while the principle of humanity limits how much force may justifiably be employed to pursue a legitimate military objective.¹³⁸

This standard of conduct is exemplified by the Hague Convention (IV) of 1907 which outlined prohibitions against the use of poison or poison gas, the treacherous killing and wounding of soldiers and civilians and the use of arms calculated to cause unnecessary suffering:

The unnecessary suffering principle is very important because it requires a compromise between military necessity and the human suffering caused by a specific military action. The rule therefore is a function of context.¹³⁹

In effect, "a weapon causes unnecessary suffering when in practice it inevitably causes an injury disproportionate to its military effectiveness."¹⁴⁰ This proportionality requirement has, from the perspective of international law, profound implications for states, strategic planning and civilian and military commanders:

¹³⁷ Gardam, pp. 394-395.

¹³⁸ Arbess, p. 94.

¹³⁹ Fenske, p. 42.

¹⁴⁰ *ibid.*, p. 42.

...[a] commander is not entitled to cause collateral injury to noncombatants or damage to civilian objects which is disproportionate to the military advantage derived from an operation. Unfortunately, it is much easier to formulate the principle of proportionality in general terms than it is to apply it to a particular set of circumstances, largely because the comparison is between unlike quantities and values."¹⁴¹

F. Bright amplified this perspective by stating that "a weapon in and of itself is an inanimate object and is incapable of being treacherous per se. The manner in which a weapon is used is governed by its users not by the weapon itself."¹⁴²

Contemporary criminal law requires two key elements - an act and an intention. Without these elements there is no crime. A machine gun only kills if an individual uses it with intent. As with guns there is a need to act responsibly and within the laws established by the community:

It is not the particular physical modality of destruction that is relevant to law and policy but rather the purposes and effects to the values and the effects of destruction and the relation of these purposes and effects to the values of a free world society.... [and this fact] cannot preclude totalitarians from writing different meanings ...¹⁴³

Proportionality is itself a balancing process "between two opposing goals: the swift achievement of the military goal with the minimum losses of one's own combatants and the protection of the other party's civilian population."¹⁴⁴ The intertwining of jus ad bellum and jus in bello occurs with the proportionality

¹⁴¹ *ibid.*, p. 54.

¹⁴² *ibid.*, p. 41.

¹⁴³ *ibid.*, p. 690.

¹⁴⁴ Gardam, p. 409.

concept. Ignoring the proportionality requirement will not be justified by claims of self-defense.¹⁴⁵

This theory is "linked with another underlying premise of the law of armed conflict. 'That the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy.'" The St-Petersburg Declaration of 1868 first asserted this fundamental premise and has been carried through to modern times.¹⁴⁶ The conceptual problem with the intertwining proportionality test is that it relates to the specific use of military force against military force. Going beyond this framework for humanitarian interventions is problematic. Logically, there would be a proportionality argument which attempts to determine that whether a state's right to use force is abrogated by a disproportional use of force and whether the use of such force is also rendered illegitimate by the impact on the civilian populations. There is a profound commonality between the legal and strategic paradigms represented by the axiom that the ends must be adjusted to the means. The strategic paradigm would base this assertion on an approach which argues that what one hopes to attain must be tempered by what one can attain; whereas the legal paradigm would argue that what one can justifiably attain must be limited by how one attains it.

Considering the current international system and the flexibility in the U.N. Charter in justifying the use of force by Security Council, modern customary international law retains

¹⁴⁵ *ibid.*, p. 392.

¹⁴⁶ *ibid.*, p. 397.

great significance in the post Cold War Era. Customary international law adds a interpretative texture for the international court to apply to the actions of the Security Council or individual states. In the global context, the international community has declared through various means that every sovereign state must have "the right... to protect itself by preventing a condition of affairs in which it will be too late to protect itself:"

... self-help is often the only rational alternative for maintaining public order, whether the threat to that order is posed by individuals responsive to authority of no state, or by the instrumentalities of states themselves. ¹⁴⁷

Hence the diverse nature of the international community is highlighted. An "incoherence" is created when certain uses of force are described as "defensive" while others are "aggressive" in nature. In part, this contradiction extends from using the law to rationalize the self-interest of dominant states. It also reflects the "diversity of perspectives of different states, with different accesses to information, and different ideologies, cultures and world views."¹⁴⁸ There is a common, rational and pervasive element within all states, even the most moral ones. The people "expect their governments to protect their national security ... [rather] than trade them off for abstract moral and legal principles."¹⁴⁹

¹⁴⁷ McDougal, p. 676.

¹⁴⁸ R.A. Falk, "Toward A Legal Regime for Nuclear Weapons." McGill Law Review, 28 (1983), p. 534.

¹⁴⁹ Lawyers and the Nuclear Debate, p. 30.

The relationships between states and the dichotomies which exist within the international community, particularly with respect to international law, are evident within the framework of the United Nations. Since Protocol I to the Geneva Conventions of 12 August 1949, entitled Protection of Victims of International Armed Conflicts, "proportionality has been both a conventional and customary principle of the law of armed conflict."¹⁵⁰ "It is a necessary part of the very concept of self-defence and yet is very difficult to apply in practice."¹⁵¹ In a cursory sense, the United Nations approach to proportionality and the use of force is that it is only legitimate if it is used in self-defense under Article 51 or under the authority of Chapter VII of the Charter:

The resort to force on both these situations is limited by the customary law requirement that it be proportionate to the unlawful aggression that gave rise to the right. In the law of armed conflict, the notion of proportionality is based on the fundamental principle that belligerents do not enjoy an unlimited choice for means to inflict damage on the enemy.¹⁵²

This principle was affirmed by the International Court of Justice in Military and Paramilitary Activities in and Against Nicaragua.¹⁵³ The General Assembly is also vested with the responsibility for "matters affecting international peace" under Articles 10, 11 and 14 of the Charter.¹⁵⁴ The General Assembly and its resolutions or declarations "cannot have legislative

¹⁵⁰ Gardam, p. 391.

¹⁵¹ Brownlie, p. 25.

¹⁵² Gardam, p. 391.

¹⁵³ *ibid.*, p. 391.

¹⁵⁴ Kelsen, p. 974.

effect but they are a part of the subsequent practice of the member states of the United Nations and must be given appropriate weight for the purpose of interpreting the provisions of the Charter."¹⁵⁵ Article 17 of the United Nations Charter "confines binding resolutions to such administrative matters" as the approval of the budgets and the apportioning of expenditures ¹⁵⁶ The International Court of Justice, however, views these resolutions as "expressions of the 'legal conscience of peoples.'"¹⁵⁷ It should be noted that this perspective is very idealistic by holding that all states represent directly the views of its peoples. Nevertheless, several resolutions of the United Nations' two principle organs have affirmed the perspectives of proportionality and the legal limitations to be imposed on states in their use of force:

- (i) The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (General Assembly resolution 2131 (XX) adopted by 109 votes in favour, none against, and 1 abstention on 21 December 1965);
- (ii) The Declaration of principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), adopted without vote, 24 December 1970);
- (iii) The Definition of Aggression (General Assembly resolution 3314 (XXIX), adopted without vote, 14 December 1974);¹⁵⁸
- (iv) The inadmissibility of the acquisition of territory by the threat or use of force. (see Scres 242 1967) 22 Nov 67 and Snd 338 (1973) 22 Oct 73);

¹⁵⁵ Brownlie, p. 19.

¹⁵⁶ Fenske, p. 40.

¹⁵⁷ *ibid.*, p. 37.

¹⁵⁸ Brownlie, p. 19.

- (v) The invalidity of claims to secession and statehood by entities the existence of which stems from an illegal use of force by another State against the State adversely affected by the secession; and
 (vi) The principle that international disputes shall be settled by peaceful means. (see SC res 541 18 Nov 83).¹⁵⁹

The Charter remains, however, the preeminent treaty for the conduct of interstate relations.

The Essence of the United Nations and its Charter

The United Nations rose in the aftermath of World War II. Its legal predecessor, the League of Nations, proved to be an inadequate arrangement for the international community. In many ways the Charter of the United Nations was the direct result of the League of Nations' Covenant's foibles. The Covenant focused on "third party dispute resolution mechanisms." Article 12 of the Covenant stated:

The members of the league agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report of the Council.¹⁶⁰

Jeffrey F. Addicott argues that this approach was based on a false assumption that "wars could be settled [exclusively] through negotiation and arbitration." In addition, the League of Nations asserted that disarmament was the most important means of controlling inter-state conflict since "the probability of war was directly proportional to number of weapons in existence." This perspective of the international community was exemplified

¹⁵⁹ *ibid.*, p. 22.

¹⁶⁰ Addicott, pp. 72-73.

by the Kellogg-Briand Pact of 1929 which "prohibited the use of war for the settlement of international disputes." This marked a shift in the international perspective "by prohibiting all aggression under any circumstances."¹⁶¹ Ultimately, the League of Nations was flawed due to its overall approach to the problem:

In summation, all the League of Nation activities were rooted in the sincere but naive assumption that war was intrinsically irrational and that rational man could solve his differences simply through negotiation and reason.¹⁶²

The failure of the League and the "peace at any cost approach" culminated with the October 1938 Munich agreement when Prime Minister Neville Chamberlain remarked "I believe it is peace for our time... peace with honour."¹⁶³ This approach to war and the use of force was not carried over into the Charter of the United Nations.

The Charter attempted and succeeded as a written document to mesh the aspirations of the international community through international law with a more appropriate understanding of the use of force. Its principle emphasis was on peace and the use of force was to be acceptable only in establishing peace. Most significant to humanitarian interventions is the initial interpretation that "the United Nations has never been thought to have Chapter VII jurisdiction in cases not involving a military

¹⁶¹ *ibid.*, pp. 72-74.

¹⁶² *ibid.*

¹⁶³ *ibid.*

threat by one state against another."¹⁶⁴ Therefore humanitarian interventionism represents a violation of this premise if it is not specifically related to inter-state military violence.

The true legal impact of this assertion would be based on the status of the Charter as a treaty, constitution or something between the two. The term Charter is highly significant:

Charter is certainly a more adequate designation of the constitution of an international community than covenant the name which has been given to the Statute of the League of Nations. The term Charter refers to the contents of the treaty whereas the term covenant refers to the contractual form of the contents, which amounts to naming a treaty a treaty.¹⁶⁵

The use of the term constitution should raise significant controversy. It is hard to rationalize that the Charter is a global constitution because of its inherent nature and defects. Admittedly, the comparison of international law to "civil order" does have its conceptual value:

When the analogy is made explicit as it often is among lawyers, the world of states takes on the shape of a political society the character of which is entirely accessible through such notions as crime and punishment, self-defense, law enforcement and so on.¹⁶⁶

This "domestic analogy", however, is limited because it applies a more comprehensive, unified and central standard of the domestic society to what is essentially a decentralized and varying international structure. A constitution, in the Western liberal democratic sense, is the all binding legal document which unifies

¹⁶⁴ Tom Farer, "Political and Economic Coercion in Contemporary and International Law," American Journal of International Law, 79 (1985), p. 409.

¹⁶⁵ Kelsen, p. 1.

¹⁶⁶ Walzer, p. 58.

all levels of government and it is the source from which all laws, rights and responsibilities emanate. The preeminent difference is that a constitution establishes the relationship of a government to its people, the Charter of the United Nations establishes the relations of states to each other. Only if there is a more direct and complete written relationship unifying the union as a super imposing body with direct links to the people of the world, rather than its governments, it should be considered a global constitution. The term charter is appropriate because it signifies more than a treaty but less than a constitution. While comparisons are useful and sometimes meaningful, they remain limited.

Another international versus domestic factor relates to the control of violence. Under a constitutional structure, it is the state which controls all aspects of legitimized violence within its borders. In the international system violence control is much more diffused. It "has evolved through the customary practice of states in conflict and through formal agreements" such as the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1929, 1949 and the 1977 Protocol to the Geneva Conventions.¹⁶⁷ Regrettably, they still remain relatively incoherent and imprecise particularly since they failed to regulate the incongruities the Cold War. This "war-peace dichotomy"¹⁶⁸ should be addressed because of the current views on deterrence, which certain authors view as inherently illegal:

¹⁶⁷ Arbess, p. 93.

¹⁶⁸ McDougal, p. 689.

According to this view, it is perfectly lawful for a state to threaten to do in peacetime that which it would be unlawful in wartime. as long as the peacetime threat can be considered as rationally contributing to the end of deterring the unlawful nuclear attack.¹⁶⁹

It is uncertain whether the laws of war should necessarily be a separate branch of law considering the deterrence factor, the potentially more rapid escalation of events and the speed at which war can be waged. It is certainly arguable that the historical evidence indicates that the emergence of the "war-peace dichotomy" is the result of industrialization, technological advances, as well as the perceived need for nation-states to be prepared to defend themselves virtually at a moment's notice. Hence the need to distinguish between war and peace is less obvious and perhaps the mergence of the laws of war into a more solidified standard of conduct would be legitimate. This is particularly relevant because of the United Nations' current practice of using more forceful means. The essence of this reasoning is that a states' legitimate resort to the use of force will be determined by both customary international law and conventional treaty law as identified in the Charter. The fusion of law and grand strategy for the United Nations occurs with an understanding of the U.N.'s objectives. The Preamble to the Charter of the United Nations begins:

We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising

¹⁶⁹ Arbess, p. 123.

from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, ...¹⁷⁰

This sets the tone for the entire document and establishes the priorities of the international community in the post war era. The preamble addresses the overall objectives and attitude of the organization. These objectives, however, may be contradictory as its themes are peace and security, rights as individuals and as nations, and justice based on international law and social progress. These are lofty ambitions which are further modified by the preamble:

AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest,¹⁷¹

The Purposes of the United Nations Charter are established in Article I:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for

¹⁷⁰ United Nations, Charter of the United Nations (New York: Department of Public Information, United Nations, 1945), p. 1.

¹⁷¹ *ibid.*, p. 1.

fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.¹⁷²

There are several stark contradictions imbedded in these aspirations. In very general terms, these contradictions are revealed by poignant and blunt questions. What if peace and security require human rights violations? Who is to decide the common interest in deciding whether force is to be used and on whose behalf? Is this legitimate and should it be able to require the violation of a nation's right to self-determination? These are not mutually exclusive and independent objectives. Therefore, it is essential to understand how these conceptual contradictions are related. The Cold War Era prevented the proper development and promotion of the U.N. peace and security mechanisms in favour of human rights and economic and social approaches. This phenomenon therefore precluded the resolution of this conundrum. The harmonizing purpose under Article 1(4) necessitates the resolution of any contradiction. A failure to do so could render the organization illegitimate since customary international law would require the application of a proportionality test which could offset these objectives against the actions taken by the organization. In effect, the United Nations can deal with it now and methodically or it can deal with these problems when it is challenged in the international arena or the International Court of Justice. It would appear that the difficulties that the United Nations is currently facing could represent this resolution process.

¹⁷² *ibid.*, pp. 3-4.

Article 2 explicitly states that "the Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles...."¹⁷³ This is significant for it establishes that the organization cannot violate its own values and priorities. The organization is not above its own laws and cannot, therefore, be seen acting contrary to its purposes. To that effect, subsection 1 states:

1. The Organization is based on the principle of the sovereign equality of all its Members.¹⁷⁴

This provision highlights an exceedingly important aspect of the United Nations' role within the international community:

The United Nations was not intended to have the powers of a government in dealing with economic and social problems here listed; rather its function was conceived as that of serving as a means of promoting cooperation between states ... sovereign equality.¹⁷⁵

In fact, the international community has extensively defined the notion of sovereignty. Even though Resolutions of the International Community are not legally binding per se, they do have an impact as perceptions of the international community. General Assembly Resolution 1966 (XXVIII) of 18 December, 1963, a special committee was established to address the sovereignty issue. The consensus report claimed that sovereignty entailed the juridical equality of states and the "duty to respect the personality" of each. Moreover, their territorial integrity and political independence; as well as "the right freely to choose

¹⁷³ *ibid.*, p. 4.

¹⁷⁴ *ibid.*

¹⁷⁵ Leleand M. Goodrich, Charter of the United Nations: Commentary and Documents (New York: Columbia University Press, 1969).

and develop its political, social, economic and cultural system."¹⁷⁶ The implications of this report should be that states have the inherent right to determine their own destinies and the make up of their own society and governments.

Article 2(2) binds the members to fulfil their obligations under the Charter. Article 2(3) makes it incumbent on members to settle their disputes through peaceful means. The most significant and controversial provision is Article 2(4). It states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.¹⁷⁷

An understanding that this provision is not absolute is essential to a comprehension of what states may or may not do within the international community. Since the United Nations is required to follow the same practices it will also determine what the Security Council can and cannot do.

Thomas M. Franck argues that this provision was created on the basis of several false assumptions and strategic misperceptions:

... that the wartime partnership of the Big Five would continue, providing the means for policing the peace under the aegis of the United Nations. They appeared to address themselves to preventing conventional military aggression at the very moment in history when new forms

¹⁷⁶ *ibid.*

¹⁷⁷ Charter of the United Nations, p. 4.

of attack were making obsolete all prior notions of war.¹⁷⁸

This is an overstatement of the inadequacies of Article 2(4). While the military technology of nuclear weapons changed many of the dynamics of the international system it would be unreasonable to assume that the pertinent issues relating to the use of force have not changed. The provision against the use of force must not be viewed as an idealistic pacifist dream:

Thus, Article 2(4) was never an independent ethical imperative of pacifism. In the instrument in which it appears, there is full acknowledgement of the indispensability of the use of force to maintain community order. It is the context of the Organization envisaged by the Charter and not as a moral postulate that Article 2(4) acquired its cogency.¹⁷⁹

It is a rule, not dissimilar to those rules and laws which are frequently violated within the domestic context:

The failure of the U.N. Charter's normative system is tantamount to the inability of any rule ... in itself to have much control over the behaviour of states.¹⁸⁰

This perspective is extreme since it applies a perception that Article 2(4) is a moral and legal imperative which is inviolable and absolute. Franck argues that Article 2(4) was killed by "the wide disparity between the norms it sought to establish and the practical goals the nations are pursuing in defense of national interest." Franck's argument that the continued existence of nation-states which pursue their own national interest will

¹⁷⁸ Thomas M. Franck, "Who Killed Article 2(4)? or Changing Norms of Governing the Use of Force by States," American Journal of International Law, 64 (1970), p. 809.

¹⁷⁹ W. Michael Reisman, "Coercion and Self-determination: Construing Charter Article 2(4)," American Journal of International Law, 78 (1984), p. 642.

¹⁸⁰ Franck, p. 817.

"habitually run counter to a stated international legal norm"¹⁸¹ is not a properly contextualized perspective within the framework of the entire Charter. Article 2(4) simply prescribes a standard of conduct. The idealism infused in Article 2(4) is tempered by the provisions in Chapter VII which concedes that the use of force may be necessary. Article 2(4) is a prescriptive norm to which all states should aspire. Strict adherence to this principle, however, is unrealistic. Louis Henkin differs with several aspects of Franck's analysis on the basis that Article 2(4) has not been entirely unsuccessful. He argues that one must look beyond its failures by realizing that Article 2(4) was to establish a norm of national behaviour and to help deter violations of it.¹⁸² Certainly, deterrence has occurred at the level of the great powers, but this is not solely based on legal prescriptions. The impact of the superpowers' competition in the nuclear and the non-nuclear realms can not be underestimated. Henkin's analysis may be too broad. International law alone cannot impose standards of behaviour on individuals, let alone state; it can, however, articulate aspirations and provide means for their attainment - "law often reflects dispositions to behaviour as much as it shapes them."¹⁸³

Article 2(4) raises several pertinent questions relating to the use of force. What does the term mean? What is the limitation

¹⁸¹ *ibid.*, p. 817.

¹⁸² Louis Henkin, "The Reports of the Death of Article 2(4) Are Greatly Exaggerated," American Journal of International Law, 64 (1971), p. 809.

¹⁸³ *ibid.*, pp. 809-810.

imposed by the words "in their international relations?" What are "the conditions under which force may be used without violating 2(4)?"¹⁸⁴ If the domestic liberal democratic analogy were to be applied then these limitations would be addressed by the state's respective constitution. There is a dichotomy presented by all ideals imbedded within a constitution. Which ideal takes precedence and does this ideal take precedence over the society itself? This dichotomy is not unusual. The Canadian Charter of Rights and freedoms has its own checks and balances whereby the rights of individuals may be infringed upon because it is necessary to maintain the standards of a free and democratic society; these standards, however, are more firmly entrenched and visible, subject to the analysis of a court of law whose function is to interpret these provisions for the benefit of society and its constituents. This is not the case with respect to the United Nations by virtue of the decentralized system which it recognizes as the international society. The principle organs of the United Nations itself are viewed by the International Court of Justice as independent within themselves. The problem with this charter of nations is that it is more prone to misinterpretation because its provisions are so broad. It argues for the peaceful settlement of disputes but acknowledges that this may not always be possible and provides for such contingencies. This philosophic and non-dogmatic flexibility was evident during the Cold War debate over unilateral intervention. Understandably, this debate

¹⁸⁴ Goodrich, p. 131.

was also imbued with the ideological Cold War mentality of the Superpower competition:

... the temptation of military intervention in internal affairs is largely an affliction of the few big powers and even for them military intervention to promote or maintain internal wars is not always and everywhere possible....¹⁸⁵

There is an irony in this condemnation of the big powers for it is the same powers who are now intervening under U.N. auspices. These interventions must be placed within the constructs of contemporary international politics. Accordingly, the principle tenet of this system has been "political legitimacy." Political legitimacy rests upon the self-determination of people. Therefore, Article 2(4) "must enhance opportunities for ongoing self-determination."¹⁸⁶ Conversely, the legitimacy of an intervention even under U.N. authority will be legally undermined if it hampers or ignores this right.

During the Cold War, the seeming impotence of the United Nations lead to a "self-help system" based on the provisions of Articles 51, 52 and 53 of the Charter. Ironically, these legal postulates allowed for the application of force "outside the United Nations framework."¹⁸⁷ This is based on the essential postulates of the Charter whereby "... the modern rule of law specifically recognizes the fundamental distinction between unlawful aggression and lawful self-defense."¹⁸⁸ The original

¹⁸⁵ Henkin, p. 208.

¹⁸⁶ W. Michael Reisman, "Coercion and Self-determination: Construing Charter Article 2(4)," p. 211.

¹⁸⁷ Franck, p. 811.

¹⁸⁸ Addicott, p. 77.

conception was, as stated by U.S. Secretary of State Webster in 1842 during the correspondence relating to the Caroline Incident:

...necessity of self-defence instant, overwhelming leaving no choice of means, and no moment for deliberation... the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.¹⁸⁹

Unilateral or collective self-defence as articulated by Article 51 is logical should there be a breakdown in the machinery of the U.N. "It is only prudent that, in the event this machinery fails, an attacked state and its allies should be free to respond with force against the aggressor."¹⁹⁰ It must be realized that collective armed defense will have many manifestations and will be timed differently. On 8 November 1990, as the allied forces were preparing to evict Iraq from Kuwait, the Secretary-General of the United Nations stated "that three months was too long to use the justifications of the collective right of self-defense under article 51." This was a blatant misinterpretation of the Article and strategic necessity. First, the use of force by Iraq had not terminated; second, "the requirement that self-defense occur immediately is the anti-thesis of what the charter stands for." The peaceful means process was tried and failed; the allies therefore took action.¹⁹¹ Moreover, this comment disregarded the logic of Article 51:

If the term collective self-defense has any meaning at all it means defence of the attacked state exercised not only by this state itself but also by other states coming to its assistance... Collective defence implies

¹⁸⁹ Brownlie, p. 24.

¹⁹⁰ Franck, p. 210.

¹⁹¹ Addicott, p. 87.

organized defence; and such organization is effective only if prepared before an armed attack occurs. The interpretation of Article 51 according to which a defence treaty must not be concluded before an armed attack occurs has the effect to make collective self-defence almost illusory.¹⁹²

There is a great misperception by legalists concerning the nature of self defense as is highlighted by the following comment:

It tends, instead, to proceed along two radically different lines, one is too small and the other too large to be encompassed effectively by Article 51. These two categories are, first, wars of agitation, infiltration and subversion carried on by proxy through national liberation movements, and, second, nuclear wars involving instantaneous use, in a first-strike, of weapons of near-paralysing destructiveness.¹⁹³

This perspective fails to perceive how the contexts of war and force change within the international environment. War or the use of force are constants, their manifestations will vary.

Nevertheless, "the justifications for such use of force within the existing legal regime" are self-defence and collective self-defence in accordance with the provisions of Article 51; "the defence of third states (in so far as this may not be identical with collective self-defence)"; actions "authorised by the competent organ of regional arrangements or agency recognized as such for purposes of Chapter VIII of the Charter"; and finally actions within the territory of a state with the express consent of the government of that State.¹⁹⁴ Articles 2(5) and 2(6) requires that member states will give the United Nations "every assistance in any action it takes" and then obligates non-members

¹⁹² Kelsen, p. 915.

¹⁹³ Franck, p. 812.

¹⁹⁴ Brownlie, p. 22.

to follow the same principles.¹⁹⁵ Finally, Article 2(7) establishes a prohibition against domestic interventions except with respect to actions taken by the Security Council in accordance with Chapter VII. Article 2(7) will therefore be assessed within this context.

Chapter VII

Chapter VII is the enforcement portion of the Charter and it can be divided into three essential parts. The first part, which is comprised of Articles 39 to 42, outlines the standards by which Security Council may use force. The second part, from Article 43 to 50, represents the means of enforcement and the responsibilities of each state for the provision of those means. Article 51, which has already been discussed, articulates the legal authority for states to act in self-defense outside of the Charter's prescriptive parameters. The first part is the quintessential element for the determination of legitimacy with respect to Security Council actions. Actions taken outside of this standard would be deemed illegal and therefore illegitimate.

The provisions of Chapter VII are a realistically essential for the establishment and maintenance of international peace and security:

It is the essence of the concept of collective security as contained in the Charter that if peaceful means fail, the measures provided in Chapter VII should be used, on the decision of the Security Council, to

¹⁹⁵ Charter of the United Nations, pp. 4-5.

These are curious provisions in light of the fact that the Charter is a treaty. It is difficult to fathom how non-parties to that treaty can be obligated to follow its provisions. This is beyond the scope of the inquiry but is fundamental to a determination of what the Charter actually is - constitution or treaty or something else.

maintain or restore international peace and security....¹⁹⁶

Article 39 is quite explicit in that the Security Council can only take measures of force as outlined in Articles 41 and 42, if it has determined that there is a "... threat to the peace, breach of the peace, or act of aggression."¹⁹⁷ Hans Kelsen argued in 1951 that this power must be carefully considered:

Since the Security Council is authorized under Article 39 to take enforcement measures in case it determines a mere threat to the peace, the enforcement measures taken by the Security Council may not have only a repressive but also a preventive character,... the term prevention is rather problematical. If effective collective measures means enforcement measures as determined under Article 41 to 50, a threat to the peace cannot be prevented by such action. For according to article 39, these measures shall be taken only if the existence of a threat to the peace is determined by the Security Council. Then it is too late to prevent it. What can be prevented by an enforcement action is an actual breach of the peace.¹⁹⁸

Kelsen's point is that preventing threats to the peace is logically impossible and redundant on the basis that a threat to the peace, if determined by the Security Council, already exists and therefore cannot be prevented. Action, therefore taken on the basis of threats to the peace, should be done by viewing that threat as a potential breach of the peace or act of aggression by one state against another. This seems to infer that humanitarian interventions would not be justifiable unless the circumstances of human tragedy represents a potential breach of inter-state peace.

¹⁹⁶ Boutros-Ghali, An Agenda for Peace, pp. 24-25.

¹⁹⁷ Charter of the United Nations, p. 22.

¹⁹⁸ Kelsen, p. 14.

Articles 40 to 42 relate the myriad of actions legally available to the Security Council. Article 40 stipulates that the Security Council may "call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable." Article 41 asserts that the Security Council also decided to take measures "not involving the use of armed force...to give effect to its decisions."¹⁹⁹ Article 42, as it relates to the use of force, is the most important:

Should the Security Council consider that 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. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations.²⁰⁰

Notions that the Security Council must take graduated steps before employing force are basically misperceived. It must simply determine a "threat to the peace" as a minimum threshold and then "consider that measures provided for under Article 41 would be inadequate." The pivotal question is what constitutes international peace. One perception would be that international peace is the opposite of international war.

Under customary law it would appear that war is defined by the following:

[It] ...is a relation of one or more governments to at least one other government, in which at least one of such governments no longer [ascribes to] the laws of peace.... The state of peace between governments

¹⁹⁹ Charter of the United Nations, pp. 22-23.

²⁰⁰ *ibid.*

requires a concurrence of governmental wills; the state of war arises when one of these wills is withdrawn.²⁰¹

Kelsen argues that international peace "is not a status which exists within the area of one state - this is internal peace - but in the relations of two or more states...." He therefore challenged, from a technically legalistic perspective, the United Nations resolution in Korea which identified the conflict as a breach of international peace by authorizing member states to "restore" that peace. Korea began as an internal conflict which more appropriately should have been viewed as a threat to international peace.²⁰²

While semantic arguments may cloud issues, they do serve a vital function as a means of clarification to ensure consistency and a proper understanding of rights and obligations. Kelsen argues that "in ordinary language, international peace is a condition of absence of force in the relations among states." This means that war is a "condition" whereby military force is being applied by one state(s) against another. Not only are states prohibited from applying force against other members, they are precluded from threatening to do so in an subjective sense. Moreover, the Security Council is allowed to address threats which are perceived in an objective sense. These two perceptions epitomize determinations of apprehended force, thus constituting a security issue. Hence Kelsen's earliest refutation that peace and security are indistinguishable is wrong.

²⁰¹ Julius Stone, Legal Controls of International Conflict (London: Steven & Sons Ltd., 1954), pp. 8-9.

²⁰² Kelsen, p. 934.

Kelsen does accurately perceive that there must be a distinction between international peace and internal peace. The U.N is not intended to "maintain or restore internal peace by interfering in a civil war within a state." This postulate is based on Article 2(7) which forbids "intervention on the part of the Organization in matters which are essentially within the domestic jurisdiction of any state." The caveat is that when a civil war or like situation of anarchy is viewed as a threat to international peace and security then the intervention is permissible. Kelsen maintains that "...it is doubtful whether the restriction implied in the term international peace is of any importance."²⁰³ This last point should be refuted on the basis that internal violence is a condition which the international community should reluctantly impinge upon unless it threatens a peaceful or secure situation in the international order. Permitting internal strife may constitute a threshold of sovereignty to be respected.

The Security Council, however, is not legally required to rationalize its threat determinations or to subject itself to judicial scrutiny. This is politically dangerous since these determinations are made and controlled by a relatively small and select group of states. Certainly, an absence of a true threat to international peace and security would not substantiate an intervention, particularly if it is perceived that the permanent members of the Security Council are motivated by their own interests.

²⁰³ *ibid.*, p. 19.

The provisions of Chapter VII may be viewed from either of two extremes of the international political spectrum - the big and small power models. The small power model is comprised of:

... modest, lightly armed contingents from small states ... deployed to symbolize international concern rather than to enforce international order. Typically, the participating states have no direct stake in the outcome of the conflict in question and do not aspire to project their own power into the conflict area.²⁰⁴

In contrast, the big power model is utilized when ... "strong states deploy enough of their military assets to enforce objectives of international order." It is arguable that this is the model conceived of by the drafters of the Charter, on the basis that Security Council would be dominated by the five strongest powers of the day."²⁰⁵ Even though it seemed to have followed the small power model during the Cold War, this system seems to have reemerged in the post Cold War Era. Lori Fisler Damrosch identified two versions of the Big Power Model. The first is typified by the Korean conflict and Operation Desert Storm:

... where a leading power assumes the initiative and undertakes most of the burden of mounting a large-scale military action, invites participation or contribution from a range of other states, and obtains Security Council resolution endorsing the collective effort. Although, the details may vary, the essence of this version is reliance on the military might of one state that organizes and leads a coalition; co-participants assume a distinctly subordinate role and the United Nations offers little or no supervision apart from the formal resolution authorizing the activity. In other

²⁰⁴ Lori Fisler Damrosch, "The Role of the Great powers in United Nations Peace-Keeping," The Yale Journal of International Law, 18, No. 1 (Winter 1993), p. 429.

²⁰⁵ *ibid.*, p. 429.

words, the action is essentially unilateral with multilateral imprimatur.²⁰⁶

There is a contradiction in the Somalia Crises. This situation may have been diffused had the small power or traditional peacekeeping approach been applied more concertedly and quickly. Inaction necessitated the eventual application of the big power model as the United States assumed direct control of the humanitarian effort on the basis that the civil war constituted a threat to international peace and security. While this threat was identified almost one year before, limited actions were taken. Despite the application of the big power model and the related perceived escalation of force, the operation continued to be described in a small power context. There was definitive absence of clarity regarding the objectives, the mission and certainly the legality of the Security Council actions.

The second model is based on Article 43 which outlined that there would be "... network agreements between the Security Council and member states, the Military Staff Committee national military contingents would be at the call of the Security Council."²⁰⁷ Having been precluded by the Cold War, this model retains a fundamental ideal and resiliency:

... major powers states would be expected to concert their power to the achievement of collective objectives....It would give effect to the principles of the U.N. Charter as a system of meaningful restraints on power, and it would gave controls to safeguard against manipulation by one or a few states who seek to magnify or project their own power.²⁰⁸

²⁰⁶ *ibid.*, p. 430.

²⁰⁷ *ibid.*, pp. 430-431.

²⁰⁸ *ibid.*

If the United Nations is to continue to function there must be this standard of leadership on the part of the permanent members. The principle is somewhat naive, however, because it is based on an assumption that the leadership components of the permanent members will remain allies and even cooperative. Moreover, it assumes that the aspirations of the council leadership are uniform and consistent short of a constituent process which would address the key elements and desires of the United Nations as a whole. Such an approach would be constitutional in nature and not treaty based. Under the current legalities of the United Nations it would probably require the submission of each constituent state to an international and non-representative body. This is unlikely to occur unless the conflict between the dimensions of state sovereignty and international intervention must be resolved.

Sovereignty Versus Humanitarian Intervention

In the post Cold War Era there has been an assertion by proponents of the United Nations that there is a right to intervene in the domestic affairs of states. The Charter, however, articulates in Article 2(7) that:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.²⁰⁹

A technical reading of this provision would relate that the Security Council can disregard domestic interference if it

²⁰⁹ Boutros-Ghali, An Agenda for Peace, p. 5.

identifies a threat to the peace. This perception would run contrary to Article 2(1) which demands that the Organization must respect the sovereignty of a nation. This dichotomy provides a perceptual flexibility regarding the allowable actions, but it also reflects a conundrum of appropriate decision-making which must be addressed. United Nations legitimacy will depend on its ability to resolve what must be regarded as a profound philosophical issue of the organization:

A deeper conflict in ideals pits the principles of nonintervention against the notion that gross violations of human rights and other extreme failures to meet international norms can annul a government's sovereign immunity against intervention. But the permanent members of the Security Council can protect themselves from any form of U.N. intervention through their veto power.²¹⁰

This is not the first time that this dilemma has been faced. The intervention in the Congo in 1960 resulted from the persuasion of the Security Council by then Secretary-General, Dag Hammarskjöld. He convinced the Security Council "to dispatch a peacekeeping force to quell the local mutiny of Congolese soldiers that occurred in the wake of the independence from Belgium." This conflict, however, did not represent a "threat to its neighbouring states." Despite this fact, the Congo intervention evolved into one of the "largest U.N. peacekeeping operations" comprehensively involving a total of 93,000 men and officers from 34 governments. At its height, there were 20,000 troops on the ground at an overall cost of \$41 million. It is arguable that the interdiction merely prolonged the conflict "in contrast with a

²¹⁰ Gaddis Smith, "What Role for America?," Current History, 92, No. 573 (April 1993), p. 153.

low-level unilateral intervention by Britain in Tanzania in 1964. The British were invited, did their job and left promptly."²¹¹ Despite the expense and the prolongation, there were deeper issues involved as the Secretary-General viewed "that the force should be used to influence the outcome of an international conflict." While the Security Council accepted his interpretation, there was a dichotomous attempt by the United Nations to remain neutral while redefining the mission.²¹²

The first basis of questioning such interventions is that the Charter does not explicitly assert jurisdiction over internal conflicts:

Clearly, they did not intend to prohibit revolution or civil war. The Charter ...enshrines principles of independence, sovereign equality and self-determination.²¹³

This perspective has also been affirmed by the International Court of Justice in the Nicaragua Case:

The Court cannot contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system.²¹⁴

The court clearly outlines the basis for its reasoning;

The principle of non-intervention derives from customary international law. It would certainly lose

²¹¹ Ernest W. Lefever, "Reigning in the U.N.," Foreign Affairs, 72 (1993), pp. 19-20.

²¹² Leleand M. Goodrich, Charter of the United Nations: Commentary and Documents, p. 154. Comparisons with Somalia are striking but it would be premature to discuss them at this juncture.

²¹³ Henkin, pp. 155-156.

²¹⁴ Malvina Halberstam, "The Copenhagen Document: Intervention in Support of Democracy," Harvard International Law Journal, 34, No. 1 (Winter 1993), p. 174.

its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another state Indeed, it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a state , were also allowed at the request of the opposition.... Such a situation does not in the Court's view correspond to the present state of international law.²¹⁵

The second argument against intervention is that state sovereignty has always been viewed as a fundamental instrument in the maintenance of peace and security. The present Secretary-General, Boutros Boutros-Ghali, articulated this perspective in Agenda for Peace with one caveat:

The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.²¹⁶

The Agenda for Peace, however, did not even attempt to articulate how these perceptions could be reconciled and what the threshold for intervention could be. Arguing that determinations will be analyzed on a case by case basis seems to have been a mere rationalization for avoiding the most critical part of his analysis. During the Cold War, there was a trend to emphasize sovereignty to preclude or off-set great power intervention. The General Assembly also affirmed the preeminence of sovereignty against intervention in 1965 by a vote of 114 to 0 with 2 abstentions. It adopted The Declaration of the Inadmissibility of

²¹⁵ John A. Perkins, "The Right of Counterintervention," Georgia Journal of International and Comparative Law, 17, No. 2 (1987), p. 194.

²¹⁶ Boutros-Ghali, An Agenda for Peace, p. 9.

Intervention in Domestic Affairs of States and the Protection of their Independence and Sovereignty:

No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are condemned. GA res 213(XX), Dec 21 1965.
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The concept also transcends into the notion of the right self-determination by a people:

'to become free by their own efforts' if they can, ... non-intervention is the principle guaranteeing that their success will not be impeded or their failure prevented by the intrusions of an alien power. It has to be stressed that there is no right to be protected against the consequences of domestic failure, even against a bloody repression.²¹⁸

This perspective carries great weight if it is placed within the context of the suffering endured during the American War of Independence or during Sherman's campaign during its Civil War. In these contexts, it is highly probable that the United States would have resented and even fought against any state or supra-national organization interfering in its affairs. In the post Cold War Era such interventions are now promoted even though it is the same powers who are making the decisions through the vehicle of the United Nations. Therefore, caution must be taken when contemplating a possible disruption of a peoples assertion to determine their own destinies.

²¹⁷ Goodrich, Charter of the United Nations: Commentary and Documents.

²¹⁸ Walzer, p. 88.

This does not mean, however, that the perspectives of the interventionists are without value:

It is also increasingly perceived that intra-state conflicts often cause intense and more widespread human suffering than inter-state conflicts and that intra-state conflicts, by their repercussions on neighbouring countries or on the region may affect international peace and security.²¹⁹

Former Secretary-General Javier Perez de Cuellar articulated a perceptive and compassionate analysis:

Today, in a growing number of cases, threats to national and international security are no longer as neatly separable as they were before. In a few countries, civil strife takes a heavy toll on life and has repercussions beyond national borders.²²⁰

He did not, however, articulate the direct overspill effect and how it should be perceived. While this analysis may be right, it is problematic to simply argue that allowing people to starve will lead to inter-state conflict. The question remains, however, as to what the criterion for intervening in such matters should be. Legally, there are no restrictions imposed on the Security Council because of the Charter but customary international law might determine otherwise. The perception was the basis for a new role for peacekeeping - "the protection of humanitarian supplies to civilians caught up in the continuing conflict."²²¹ Political moralism, however, is a potentially dangerous avenue to follow if it entails the preclusion of the right to self determination. The Copenhagen Document, which originated with the Conference on Security and Cooperation in Europe (CSCE) in June 1990 argued

²¹⁹ van Boven, pp. 22-23.

²²⁰ *ibid.*

²²¹ Boutros-Ghali, "Empowering the United Nations," p. 91.

that there was a right to intervene on the basis of establishing democracies. The document argued that ...if free elections are held, and the government so elected is barred from taking office or is deposed of by use of force; and if another state or states may intervene, restore the legitimate government and withdraw, "that is not - and should not be - a violation of international law." This justification was supposedly based on "the language of article 2(4) of the U.N. Charter and the purposes of the Charter."²²² While this perspective did not argue for humanitarian intervention, it did reflect a substantial shift in priorities. These uncertain legal principles, without the benefit of legal precedent or constituent concurrence, should not be extended to encompass humanitarian intervention.

Humanitarian intervention's altruistic actions are based on several basic premises:

... free access to the victims, not as the desire of the aid givers to dominate the recipients, but as an essential condition to the good deployment of assistance to save victims...erga omnes- which imposes as upon other states not to hinder the transit or dispatch of humanitarian aid.²²³

The General Assembly affirmed this approach in Resolution 46/182 of 19 December 1991:

Those guidelines stressed, inter alia, that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality; that the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter.... should be provided with the consent of the affected country and,

²²² Halberstam, p. 175.

²²³ Bettati, p. 6.

in principle, on the basis of an appeal by that country.²²⁴

The required consent stands as an affirmation that sovereignty is a paramount aspect of the international order. Yet its fundamental nature and importance has changed:

A major intellectual requirement of our time is to rethink the question of sovereignty - not to weaken its essence, which is crucial to international security and cooperation but to recognize that it may take more than one form and perform more than one function.²²⁵

The sources of justification now seem obscure. Is humanitarian intervention to be performed because people are suffering or because there is a threat to international peace and security because of this suffering? Action which violates the territorial sovereignty of a state is precluded by the former and not the latter. If the former situation does exist, then consent is required but the legitimacy cannot be maintained if these limits are dictated or interpreted by a few states on behalf of the many:

In other words, who will judge when a threshold is passed that calls for international action? Who will decide what should be done, how it will be done and by whom?²²⁶

Moreover, the legitimacy of these interventions cannot be maintained if they are used "as a pretext for the intervention of big powers in the legitimate domestic affairs of small states, or that human rights issues are not used for totally different

²²⁴ Boutros-Ghali, An Agenda for Peace, pp. 17-18.

²²⁵ Boutros-Ghali, "Empowering the United Nations," p. 98.

²²⁶ van Boven, p. 12.

purposes of destabilizing other governments."²²⁷ It is illogical in a strategic and legal sense not to have addressed these issues prior to endeavour.

The standard of harmlessness to sovereignty will depend on essential limits. Mario Bettati articulates five key limits which must be adhered to in any humanitarian intervention. They must be limited in time; limited geographically; limited in their objectives; limited in its exercise; and oriented to the prevention of human suffering.²²⁸ This argument may be contemplated within the jus ad bellum and jus in bello context. According to the international community, humanitarian intervention is a legitimate reason to use force and its use must be tempered by a proportionality test. This is reminiscent of the Cold War debate between Michael Reisman and Oscar Schacter. Reisman considered intervention as legitimate on the basis of morality:

The critical question in a decentralized system is not whether coercion has been applied but whether it has been in support of or against community order and basic policies, and when it was applied in those ways whose net consequences include increased congruence with community goals and minimum order. Interpretation of constitutive instruments requires policies and procedures that achieve, in ways appropriate to the context and consistent with the need for community order, the fundamental policies of the instrument as a whole. In the construction of Article 2(4), attention must always be given to the spirit of the Charter and not simply to the letter of particular provisions.²²⁹

²²⁷ *ibid.*, p. 12.

²²⁸ Bettati, p. 6.

²²⁹ Halberstam, p. 169.

Schacter opposed Reisman on the basis that the latter's conceptualization involved the illegitimate imposition of mores on societies that did not share them:

It is incompatible with the concept of a pluralist society of independent states to allow states to impose a particular form of government. It is no answer to this to maintain that force should be allowed only to bring about a goal, such as self-determination, which all states profess to accept.... the realities of a world deeply divided about the meaning of democracy and self-determination. Powerful states would be given a virtually unlimited right to overthrow governments alleged to be unresponsive to the "true" will of the people. One side's favoured test of self-rule would not be acceptable to the other side.²³⁰

Gaddis Smith raises two fundamental question which must be answered in the context of Somalia and U.S. foreign policy:

What degree of intervention, however, might be required to create a stable, democratic, nonviolent government in a Somalia devastated by factional warfare? And what criteria should the United States apply in deciding on humanitarian intervention, when there are many cases of human misery comparable to Somalia's.²³¹

These question must be answered before too much damage happens; before such interventions actually perpetuate or create conflict. The concern over the creation of this new jus ad bellum is that it could spark, if not handled properly, a deep rooted resentment and revolt against the very institution that purports to serve the global interests of international peace and security. If the non-western nations perceive the shift in the U.N. approach as representing a return to "a form of colonialism":

... at best a resurrection of the idea of trusteeship for people unable to govern themselves, at worst a return to an international version of Theodore Roosevelt's corollary that 'flagrant wrongdoing or

²³⁰ *ibid.*, p. 170.

²³¹ Smith, p. 153.

impotence' renders certain nations subject to the applications of international police power.²³²

The survival of the United Nations will ultimately rest on the perceived legitimacy of the Security Council.

Security Council Legitimacy

Legal theory is adequate to provide insight and understanding into the requisite dynamics of international relations. The legal paradigm pertaining to the enforcement of international law requires an understanding of the dichotomies between natural law and positive law. It cannot be forgotten that "the bottom line of positive law is not justice, but authority." Therefore the pivotal issue is what entity "has the authority to define the offense, to determine if it has occurred, and to demand the accomplishment of what they believe to be a legal solution to that determination."²³³ The implication is that Security Council legitimacy will always rise when it is enforcing perceived standards based on natural law. This also works in reverse as the inherent weaknesses of natural law are realized in the light of reality:

Many naturalist jurists seek agreement on principles before addressing the rules needed to implement the principles. The result in the international sphere is the conclusion of treaties focusing on principles rather than on enforceable rules... They cannot be enforced as positive law because they do not define rules of positive law or allocate authority to determine whether their prescriptions are violated and what legal result should flow from a violation. To equate norms and principles with rules of law is to define law so broadly that the binding power and legal

²³² *ibid.*

²³³ Rubin, pp. 156-157.

result of violation of the rules come into question.²³⁴

If the Security Council is to be viewed as legitimately acting for the sake of the international community then it must involve this community as a whole in the determination of objectives and the appropriate means to the attainment of those objectives. Such an approach would affirm its validity in both a positivist naturalist sense. Not only would this be sound legally, but it is a legitimate grand strategic approach to ensure the continued support for the United Nations in its efforts to maintain international peace and security.

The euphoria over the ability of the Security Council to act resulted from the cessation of vetoes precipitated by the Cold War competition of the United States and the Soviet Union. The authority of Security Council, however, was based on another era where the place each power held in a global context "more closely approximated the world's top in population and power in its various manifestations...." The Security Council's permanent members, comprised of the U.S., the Soviet Union (supplanted by Russia), China, France and the U.K. are now ranked in terms of global population 3, 6, 1, 26 and 17 respectively. While bringing Japan and Germany into the fold to better balance the population issue, it would also "tilt the power balance in favour of the industrial world."²³⁵ Moreover, the international system itself has changed:

²³⁴ *ibid.*, 157-158.

²³⁵ Smith, p. 152.

...though the world of big and small powers and strong and weak states reflected in the Charter persists, the sharp asymmetries of 1945 have given way to complex international interdependencies. In this new world order, constitutional arrangements about the maintenance of peace and security, if they are to be effective, require more and more cooperation between large and small states.²³⁶

This is not happening, however, as the Security Council dynamic is devolving into "mini-councils". The P(power)-5 (U.S., Russia, China, France and U.K.) meet in a special room, after the P-3 (U.S., France and U.K.) at their respective missions in camera sessions. Ultimate authority currently rests with the P-1 - the United States. "After the fifteen members of the Council have consulted and reached their decision, they adjourn to the Council's Chambers, where they of through formal the formal motions of voting and announcing their decision."²³⁷ Consensus is only required of four additional members of the non-permanent members. Moreover, the agreement of the Security Council should not be overestimated:

A unanimous Security Council vote authorizing measures to deal with a threat to or breach of the peace does not necessarily mean that these measures are right or just. Such a vote may reflect a temporary and fragile concurrence of interest, or far more serious, a least-common-denominator consensus that compromises or undercuts effective action.²³⁸

Another aspect rife with uncertainty is whether the Security Council is in fact performing the mandate for which it was intended. In the actions taken against Iraq, the Security Council

²³⁶ Reisman, "The Constitutional Crises in the United Nations," p. 83.

²³⁷ *ibid.*, pp. 85-86.

²³⁸ Ernest W. Lefever, "Reigning in the U.N.," Foreign Affairs, 72 (1993), p. 19.

demarcated Iraq's boundaries, deployed military personnel on its territory, and utilized "economic and diplomatic means ... with the manifest objective of forcing a leader from power and changing a government":

Thus, with the end of the Cold War, the Council not only has revived atrophied functions, but also has undertaken activities that, arguably, may not have been contemplated at its inception.²³⁹

This action would seem to have contravened a key issue of "political legitimacy in contemporary international politics:"

The basic policy of contemporary international law has been to maintain the political independence of territorial communities so that they can continue to express their desire for political community in a form appropriate to them.²⁴⁰

Hence the domestic analogy falls apart because of the Charter's inherent subjugation to the structure of the international political system:

[It] ...does not incorporate a constitutional theory of checks and balances between separate branches, the reciprocal operation of the veto during the cold War and the resultant paralysis of the Security Council created a system that was its functional equivalent.²⁴¹

This translated into a preclusion of law's most useful and consistent function - judicial scrutiny.

It may serve the United Nations' ultimate interests if it creates and adheres to a more substantial judicial review process. During the Cold War, such judicial scrutiny by the

²³⁹ Reisman, "The Constitutional Crises in the United Nations," p. 85.

²⁴⁰ Reisman, "Coercion and Self-determination: Construing Charter Article 2(4)," p. 643.

²⁴¹ Reisman, "The Constitutional Crises in the United Nations," pp. 83-84.

International Court of Justice was non-existent, or at least, exceedingly impotent;

In principle, by virtue of a compromise agreed upon between them, states cannot be permitted to submit to judicial scrutiny resolutions of the main organs of the United Nations. There is a clearly perceivable danger that such procedural detours might be manipulated or misused. ...²⁴²

Judicial review is not a substitute for political decision-making. It is premised on a belief that an impartial and independent court system is capable of guiding the political process. This is a paramount consideration if the use of force continues to be justified on the legal precepts of the Charter and humanitarian-based just war principles. The United Nations' purported adherence to the precepts of international law would be bolstered by a such an approach. Even if the Security council manages to monitor itself within sound strategic and legal decision-making principles there will be perpetual questioning of its bias and it may eventually be challenged by hostile blocs within the international community. A legitimized system of judicial review could preclude such opposition.

In the Lockerbie case, the Security Council seemed to expand its power through "... a rather innovative use of the Charter's trigger concepts of "threat to peace." The International Court of Justice, in the Certain Expenses and Namibia cases, asserted the advisory and non-binding character of its decisions. "They would be recklessly wrong if they assumed that, for this reason alone, such an opinion would be devoid of political and even legal

²⁴² Tomuschat, p. 48.

force."²⁴³ Within this context, challenging a Security Council decision would be difficult since the term "threat to peace is open textured." Even though Articles 25 and 103, "trump all contrary non-charter legal obligations, Article 24(2) enjoins the Security Council, in discharging its duties, to 'act in accordance with the purposes and principles of the U.N.'" Nevertheless, no standard of review is contained within the charter:

Their very absence, in a context where so much power is assigned to the Council, is telling. A judicial review function viewed in the formal Charter regime, seems somewhat difficult.²⁴⁴

The common sense articulated by Judge Sahabuddeen's separate opinion will become more pervasive if the Security Council acts incoherently:

Are there any limits to the Councils powers of appreciation? In the equilibrium of forces underpinning the structure of the United Nations within the evolving international order, is there any conceivable point beyond which a legal issue may properly arise as to the competence of the Security Council to produce such overriding results? If there are any limits, what are those limits and what body, if other than the Security Council, is competent to say what those limits are? If the answers to these delicate and complex questions are all in the negative, the position is potentially curious.²⁴⁵

Legal legitimacy will ultimately be based on the proportionality test which measures the cause (jus ad bellum) against the means (jus in bello). The good derived must be proportionally better than the means used, the damage caused, and the ideals destroyed.

²⁴³ Reisman, "The Constitutional Crises in the United Nations," pp. 91-92.

²⁴⁴ *ibid.*, p. 93.

²⁴⁵ *ibid.*, p. 94.

These guidelines should be incorporated into the U.N. grand strategy. The humanitarian intervention in Somalia epitomizes the current state of the United Nations strategic capacity. As a debilitated product of the Cold War, this capacity was unrealistically expected to flourish in the post Cold War Era.

Chapter 3: The United Nations' Intervention in Somalia

The Context of Interventionism

There was great anticipation across the entire globe regarding the end of the Cold War. The fall of the Berlin wall, German reunification, Eastern European independence, the reemergence of civilian leadership in Brazil, Argentina, Chile and several African countries, all created a public perception that the international society was evolving beyond the rhetoric of ideology towards a more interdependent and peaceful order. As the coalition forces formed and prepared to expel Iraq from Kuwait's territory, President Bush described a new order comprised of "... a world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak."²⁴⁶ In this address to the U.N., President Bush highlighted the ideals of his claims:

The New World Order is an order in which no nation must surrender one iota of its own sovereignty; an order characterized by the rule of law rather than the resort to force; the cooperative settlement of disputes, rather than anarchy and bloodshed; and an unstinting belief in human rights.²⁴⁷

The irony in those words, in light of the intervention in Somalia, demands answers to the following questions. Whose sovereignty and whose rule of law? More specifically, the Somali crisis represents the potentially contradictory nature of this perceived New World Order. While the general principles of the

²⁴⁶ Jeffrey F. Addicott, "The United States of America, Champion of the Rule of Law or the New World Order," Florida Journal of International Law, 6, No. 1 (Fall 1990), pp. 69-70.

²⁴⁷ *ibid.*, p. 81.

humanitarian intervention were morally valid - feed the starving - there was nevertheless a substantial violation of Somali sovereignty. This assertion is based on the premise that sovereignty includes the right to self-determination. Certainly, the absence of a government and the general level of violence and disorder were great causes for concern. Yet, was this intrusion justifiable in law and are the aspirations of the Security Council in the New World Order strategically attainable? The general level of idealism emanating from the Cold War's termination seems to have been misplaced.

Despite the relaxing of tensions in the bipolar system, the end of the Cold War entailed the disintegration of the global balance resulting from the ideological conflict in the post World War II era. Four years after the Cold War's end the international system does not appear to be evolving to a new and better state, rather it seems to be degenerating to an even greater level of anarchy:

... we seem to be moving backwards into a world of tribalism, resurgent ethnic hatreds, nationalist passions, and ethno-nationalist warfare.²⁴⁸

The breakup of the Soviet Union and its sphere of influence has precipitated regional conflict previously contained or suppressed by the former superpower. Its absence from the global competition has removed a source of power for many client states who still must contend with their own internal divisions.

²⁴⁸ Alberto R. Coll, "Just and Unjust Wars: The Future of U.S. Policy," Temple International and Comparative Law Journal, 6, No. 1 (Spring 1992), p. 56.

The former Soviet Union's demise deeply affects the broader international system as the power vacuum is variably filled. In part, it is unipolar with the United States as the sole superpower, or multipolar based on the relative economic strengths of Europe, Japan and the United States.²⁴⁹ The conceptual connotations of the New World Order description are hopelessly inadequate as a result of these power fluctuations. Moreover, it is a poorly articulated concept and has possessed various historical meanings.²⁵⁰ The concept is too vague and contradictory in light of the ethno-centric violence and factionalism of the current international society. It is essential to eliminate the contradictions and ambiguities to more clearly perceive the unfolding dynamic. "So far the period has been labelled the post Cold War Era. It does not even have a name of its own because we do not yet know its dominant characteristics."²⁵¹

While there were certain indications of the transition to a different international construct the Gulf War provided the pivotal reference point. Initially, it was perceived as a "watershed between past and future" whereby the aspiration of "peace and justice in international relations" could be realized. Instead, it was "an ambiguous interlude in a wider process of restructuring that has been going on since the Cold War's

²⁴⁹ Falk, "In Search of a New World Model," p. 147.

²⁵⁰ Addicott, p. 80.

²⁵¹ *ibid.*, p. 64.

end."²⁵² It is hard to rationalize, however, that the restructuring process did not emanate from the Cold War itself since the attitudes and evolutions within each state and each region are either direct or indirect products of the superpower competition. The public perceptions and the deemed validity of U.N. actions seem to have been in response to the disappointments with the United Nations during the Cold War. Fundamental to the restructuring process is also a change in the mentality of the Cold War with respect to the general perceptions of war and military force.

The antecedent mentality is exemplified by Lester B. Pearson's acceptance speech for the Nobel Peace prize of 1957:

The stark and inescapable fact is that today we cannot defend our society by war, since total war is total destruction, and if war is used as an instrument of policy, eventually we will have total war. Therefore, the best defence of peace is not power, the removal of the causes of war, and international agreements which will put peace on a stronger foundations than the terror of destruction... The grim fact, however, is that we prepare for war like precocious giants and for peace like retarded pygmies...²⁵³

Ironically, in the post Cold War Era, it is arguable that the United Nations and its Security Council conduct themselves in a reversed manner to Pearson's description. Peace is lauded above all without understanding that its price is still sometimes war.

This reversal, however, would not have been possible without the demise of the Soviet Union. Its capitulation simply removed the largest threat and unleashed a myriad of others:

²⁵² Falk, "In Search of a New World Model," p. 145.

²⁵³ Alastair M. Taylor, "Peacekeeping: A Component of World Order," in Peacekeeping: Appraisals and Proposals, ed. Henry Wiseman (Toronto: Pergamon Press, 1983), p. 402.

... yes, we have slain a large dragon, but we live now in a jungle filled with a bewildering variety of poisonous snakes. And in many ways, the dragon was easier to keep track of.²⁵⁴

There was certainly a stabilizing and clarifying aspect to the Cold War and the bipolar international system. It forced virtually each member of the global community into one camp or another. Each side was maintained by deterrence through both competitors' understanding of the other's vital interests. Incidentally, these opposing camps also suppressed "lesser tensions."²⁵⁵ Therefore, the impact of the bipolar systems collapse was substantial:

... the discipline of the bloc system also was lost. There was no longer an enemy to serve as a focus for a united response. Without an enemy, there is less reason to ignore other social forces. The lack of correspondence between the territorial boundaries of states and the ethnic identification of people gave rise to intense new political conflicts, especially in settings of economic disparity and ideological tensions.²⁵⁶

Alberto C. Coll more accurately identifies these difficulties as the product of the "mutually antagonistic sets of forces" - integration and disintegration. The international system's economics, communications, and technology have been merging to "becoming increasingly interdependent." In addition, it would appear that Westernized cultures and political values, "especially in their American variant, have spread" leaving the

²⁵⁴ Falk, "In Search of a New World Model," p. 145. This quote was made by the then Director of the CIA, James Woolsey.

²⁵⁵ *ibid.*, p. 148.

²⁵⁶ *ibid.*, p. 148.

impression that the world is becoming "imbued by the values of Western democracy, egalitarianism and mass consumerism."²⁵⁷

He warns, however, that "these manifestations of Western culture are often poised rather precariously atop dissonant non-western cultural traditions which are" reemerging more vigorously with the decline of the Cold War's effect of suppression. The systemic disintegration aspect is far more substantive in its media borne manifestations. In addition to the rise of ethno-centric violence, there is a reluctance of the great powers to overtly manage the international system even though there is a "growing ability of second-rank states to threaten international peace by visiting devastation on their neighbours or even distant states through advanced military technologies."²⁵⁸

This was not the case in Somalia even though the removal of the superpower competition precipitated the frenzied quest for power by the principal clan factions. Their aspirations had turned inward rather than outward. Once the stability of the Cold War had dissipated, challenges to the recognized government began. By December 1990, the capital, Mogadishu, had been emerged in a Civil War. The president, Siad Barre, fled in January 1991 and the rebel factions then turned on themselves for the remainder of the year. Attempts to quell the war and to provide aid were sparse and minimal. The tragedy of the Somali people was exacerbated by a famine caused in large part by the conflict.

²⁵⁷ Coll, p. 57.

²⁵⁸ *ibid.*, p. 57.

Even though the United Nations had recognized the plight of the beleaguered nation as a potential threat to international peace and security in January 1992, no truly assertive action was taken until August 1992 when 500 Pakistani peacekeepers were put at the Mogadishu airport. The interim had been spent negotiating feeble cease-fires and delivering unprotected famine relief supplies. The tragedy could not attract the attention of the international community. By November 1992, after weeks of famine reports in the media and rhetorical declarations by the Secretary-General, the international community stirred and authorized the American lead invasion of Somali territory in December 1992 for the purposes of delivering humanitarian aid. In March 1993, the transition to a U.N. peacekeeping contingent was authorized by the Security Council, but the newly inaugurated Clinton administration accepted the duty of resurrecting Somalia. The operation became, despite its mantle of peacekeeping, an effort to impose peace by targeting one faction leader, General Mohammed Farah Aidid. The results were disastrous and when the final American forces left Somalia in March 1994, the limited mission objective of delivering aid had been realized - by March 1993, but the more grandiose endeavour of re-creating the Somali nation had failed because of strategic inadequacies.

Civil War and Famine

The contemporary Somali state was formed in 1960 when the British and Italian colonies were merged. There was a burgeoning democracy until 1969 when Major General Mohammed Siad Barre "seized power." His tenure was marked by largely unsuccessful attempts to erode the clan system with his own brand of

"scientific socialism" cultivated by an alliance with the Soviet Union. This alliance involved a substantial "increase in advanced weaponry and military advisers." In 1974, the Emperor in Ethiopia lost power and the two nations became embroiled in a border dispute over the Somali populated Ogaden region. A war ensued resulting in a "superpower 'swap' as the new Ethiopian government embraced Marxism and the Soviets abandoned Siad Barre." American military and economic assistance to Somalia by exceeded \$200 and \$500 million, respectively.²⁵⁹ The Somali defeat in the war and the general unrest exemplified in the coup attempt of 1981 resulted in the formation of the Somali National Movement. This group was formed primarily by the northern Isaac clans.

It would be fair to characterize many aspects of the current Somali tragedy as emanating from the Cold War competition between the superpowers:

In Somalia, the roots of the present tragedy lie in the massive corruption and violence of President Siad Barre's rule. In the late 1970's and 1980's Somalia received more foreign aid per capita than any other country in Africa. These were also the years during which tens of thousands were murdered, imprisoned or tortured because of the opposition.²⁶⁰

In 1988, Somalia and Ethiopia agreed to curb their respective incursions and attempts to undermine the authority of the other states. "In 1989, the United Somali Congress unified with other clans ...[and the] domestic unrest crept further south."

Improving political and military coordination between the clans

²⁵⁹ Jeffrey Clark, "Debacle in Somalia," Foreign Affairs, (Winter 1992/93), pp. 110-111.

²⁶⁰ Alex De Waal, and Rakiya Omaar "Doing Harm by Doing Good? The International Relief Effort in Somalia," Current History, 92, No. 574 (May 1993), p. 202.

opposing Barre eventually eroded his power base. He therefore launched attacks on the Hawiye clan sections of Mogadishu in a desperate attempt to destroy their infrastructure. A violent uprising resulted.²⁶¹

On 30 December 1990, fighting broke out in Mogadishu between the forces of President Siad Barre and those of the United Somali Congress. On 5 January 1991, American and Italian forces deployed distinct air and sea evacuations of foreigners. Government and rebel forces agreed to a temporary cease-fire to allow these operations to occur. At this point the deaths of both civilian and military personnel were estimated at over 1000.²⁶² President Barre fled Mogadishu in January 1991 and the resulting power vacuum split the rebel factions. The forces of General Mohammed Farah Aidid "gave chase" to Siad Barre, while the forces of Ali Mahdi Mohammed, a wealthy Mogadishu businessman, stayed in Mogadishu "and declared themselves the new government. In the north, the Isaac clans formed an independent Somaliland Republic, a state still unrecognized internationally."²⁶³ On 19 November 1991, Aidid announced the overthrow of Somali President Ali Mahdi. This declaration had followed two days of fighting between the two principle factions. Somalia had become embroiled in another civil war.

On 9 December 1991, the United States sent \$19 million to Somalia for medical supplies, "food and logistical support for

²⁶¹ Clark, p. 111.

²⁶² *ibid.*

²⁶³ *ibid.*, p. 112.

humanitarian agencies." On 12 December 1991, the United States joined other "relief operations" as the fighting continued and the casualty rates in the capital climbed to "an estimated 4,000 people ... killed and more than 8,000 wounded during 5 weeks of fighting."²⁶⁴ Since January 1991, no central government had functioned in any capacity and it is estimated that over 100,000 weapons left from the Cold War had reached the general populace:²⁶⁵

The crumbling armies of the government resulted in the flooding of abandoned arsenals into the general populace which would eventually result in the looting and banditry which precipitated the invasion.²⁶⁶

"Concurrently, lingering drought forced increasing numbers of Somalis from their land in a futile search for food, exposing them more directly to violence."²⁶⁷ Both Aidid and Mahdi were leaders within the dominant clan of Somalia, the Hawiye. It was, however, the legacy of Siad Barre that dominated many of their power motivations. "Siad Barre dominates the psychology for this country. All clans want what his clan had."²⁶⁸

The clan structure represented both an impediment to peace and a means for its attainment. Unfortunately, the "authority of the clan elders... had been undermined by the prevalence of

²⁶⁴ *ibid.*

²⁶⁵ Jonathan Stevenson, "Hope Restored in Somalia?," Foreign Policy, No. 91 (Summer 1993), p. 138.

²⁶⁶ Clark, p. 112.

²⁶⁷ *ibid.*

²⁶⁸ Stevenson, p. 142.

modern weapons...."²⁶⁹ Somalis are 99 percent Muslim and share common ethnic origins. Clans are not, "for the most part, religiously or ethnically based":

Instead they are vast patrilineal networks that originated generations ago. With succeeding generations, separate branches or "sub-clans" developed. In a given locale, people acutely identify with their clan and are suspicious of outsiders.²⁷⁰

The clan based political structure was so strong that any hope for peace required a comprehensive appreciation of this dynamic. The United Nations failed in many respects to incorporate the strengths of the clans to their advantage. The clan structure represented an internalized form of balance of power:

Traditionally clans would only band together if the equilibrium among nomadic enclaves was disrupted, returning afterwards to their exclusionary ways. In some respects, that pattern was repeated in 1989, when they joined forces as the United Somalia Congress in an effort to drive from power Siad Barre.²⁷¹

The potential for the clan system was revealed in those areas where its strengths were used to offset the impact of the famine. Abshir Musa's Somali Salvation Democratic Front, controlled the northeastern part of Somalia. While it was not touched by the Unified Task Force (UNITAF), this region managed to stave off the impact of the famine by coordinating their efforts. "Herds and non-food crops [were] maintained for export - all in an area that is largely semi-desert." There are numerous other examples of small clans "nourishing local gunmen into obedience. A loose alliance with Aidid in turn insulated Hoddur and has enable it to

²⁶⁹ Clark, p. 110.

²⁷⁰ Stevenson, p. 142.

²⁷¹ *ibid.*

remain one of the least-troubled places in southern Somalia."²⁷²
The guiding principle of self-determination obviously contributed to certain areas being able to mitigate against the impact of civil war and hunger which ultimately, within the context of Somalia, emanates from a political process. This perspective contradicts the impressions created by many non-governmental organizations, as well as the U.N.:

For these organizations famine is a human disaster, not a political scandal; launching a famine relief program is a matter for self-congratulation, not shame. In Somalia, international famine relief has become a mechanism for massive disempowerment of people, which has undermined the country's already battered civic structures. This is not an anomaly, it is a logical extension of an international famine relief system that is dependant on a portrayal of famine victims as powerless and dependent.²⁷³

Alex De Waal and Rakiya Omaar identified a great irony in the general approach to Somalia by the international relief organizations. During the reign of Barre, the relief groups maintained their silence, wanting to remain politically aloof. These same organizations then "prompted and welcomed a foreign invasion."²⁷⁴ Had the international community recognized the seeds of this tragedy at an earlier point, the need for the intervention might not have existed. The famine worsened into the next year.

In the winter of 1992, Jeffrey Clark purported that 350,000 Somalis had died and that "75% of children under five years of

²⁷² *ibid.*, p. 143.

²⁷³ De Waal, p. 199.

²⁷⁴ *ibid.*, p. 198.

age in the country's most afflicted regions" were starving.²⁷⁵ The peak of the famine occurred in August 1992 when the "International Red Cross (ICRC) estimated that 4.5 million Somalis were, to varying degrees, going hungry." The World Food Programme (WFP) had estimated that "one half of the people in the country's south-central region, more than 500,000 people, had perished by December 1992." The devastation of the war and the famine is most telling when a population of seven million incurs a death rate above one million.²⁷⁶ In contrast with the Ethiopian famine of 1984-85, the Somalia crisis was far more devastating to the society. Ethiopia had eight times the population and the geographically limited famine killed one million people. In Somalia, the International Committee of the Red Cross revealed that 95% of Somalis suffered malnutrition and that 70% endure severe malnutrition. The September 1992 "estimates indicated that 1.5 million Somalis faced imminent starvation and three times that number were already dependent on external food assistance." Moreover, 900,000 Somali refugees went to camps in Ethiopia, Kenya, Djibouti. An additional 150,000 Somalis went to Saudi Arabia.²⁷⁷ In retrospect, these reports may have been exaggerated as the current famine death estimates, as detailed by the Toronto Globe and Mail in March 1994, were adjusted to approximately 300,000 persons. Nevertheless, this problem was foreseeable and actionable by the international

²⁷⁵ Clark, p. 110.

²⁷⁶ Stevenson, p. 138.

²⁷⁷ Clark, pp. 112-113.

community well in advance of the perceived need for intervention. The political will was lacking as Somalia had ceased to be a "strategic flash-point:"

Somalia simply could not garner the political attention required for the scale of sustained and complex humanitarian assistance it needed to avert catastrophe.²⁷⁸

In 1991 and 1992, the international relief workers were "the sole representatives of the international community in Somalia":

They were largely responsible for the way in which the country and its people were portrayed in the international media; they determined its relations with the rest of world; and they were the sole conduit for foreign assistance.²⁷⁹

This problem was exacerbated when the United Nations moved its staff to Nairobi after Siad Barre had left. This "lack of on-the-ground expertise" was precipitated by the unavailability of casualty insurance. Under-secretary Jonah stated in the Washington Post on 21 September 1992:

The U.N., as it is now, is not structured for emergency situations. How do you cover them by insurance? It is very difficult to find a credible insurance company to cover them.²⁸⁰

When they did return in January 1992, under the mantle of a special mission, their conduct "merely aggravated tensions between Aidid and Mahdi, as well as alienating other neutral clans, perpetuated the conflict and eroded confidence in the U.N."²⁸¹ Other international bodies were culpable in their

²⁷⁸ *ibid.* p. 113.

²⁷⁹ De Waal, p. 198.

²⁸⁰ Clark, p. 121.

²⁸¹ *ibid.*, p. 115.

inaction. Initially, the "Arab League and the Organization of African Unity largely ignored Somalia." The only sub-Saharan African leader to visit Somalia was President Yoweri Museveni of Uganda and only the Sudan sent food. "Neighbourly help consisted primarily of Ethiopia's and Kenya's passive acceptance of Somali refugees."²⁸². Not even the political leaders of Somalia raised the issues of concern with the international community. Only Ali Mahdi's Prime Minister letters of January 1992 began to create support for more unified international action. Apathy seemed to have spread throughout the international community. One U.N. official responded to questions concerning the general inaction with "This is Africa, not Europe, if that is any answer."²⁸³ Generally, the United Nations response was too slow, too muddled and principally uncoordinated. The United Nations proved inadequate in its task of preventing the need to resort to force by not properly utilizing its resources at the early stages of crisis.

The first U.N. representative, James Jonah, did not demonstrate the requisite leadership to sort through the Somali crisis:

[He]... was so flabbergasted by the moral and physical putrefaction of Somalia, and so befuddled by its labyrinth of clan politics, that he privately dismissed Somalia as a problem child too filthy, bizarre, and suicidal to deal with. He did most of his peace brokering in New York and Addis Ababa, and he left Mogadishu after only a few sheltered days.²⁸⁴

²⁸² Stevenson, p. 145.

²⁸³ *ibid.*, p. 144.

²⁸⁴ *ibid.*

Institutionally, the coordinating abilities of the United Nations left much to be desired. The Save the Children Fund had delivered more aid than UNICEF. Moreover, The U.N. Development Program - the traditional coordinator of U.N. relief and development agencies - would not release, for nine months, \$68 million dollars, dedicated to Somalia, because there was no government to sign for it. There were also difficulties in the contract negotiations for trucking food from Djibouti to Somalia, between the U.N. High Commissioner for Refugees and the World Food Program to truck food from .²⁸⁵ Essentially, the situation represented a pervasive "lack of standards, criteria or guidelines."²⁸⁶ The intervention in Somalia may have been avoidable if there had been adequate strategic planning and implementation. This inadequacy may, in fact, have rendered the invasion unavoidable.

It also seemed as if the organization was working at cross purposes. Somalia was a low priority in the Security Council as the United States insisted on "watering down the language" of several resolutions. On the other hand the ICRC was able to "devote an unprecedented 50% of its worldwide emergency budget to Somalia."²⁸⁷ Either the threat to international peace and security was not readily apparent or the system disfunctioned by not acting quickly enough. The irony was that the crisis could only be dealt with through interventionism and this could only

²⁸⁵ Clark, p. 116.

²⁸⁶ *ibid.*, p. 118.

²⁸⁷ *ibid.*, p. 119.

occur when the situation was allowed to further deteriorate. There were significant other failures contributing to the deterioration.

In February 1992, a delegation lead by Special Coordinator Brian Wannop did not invite the other clan leaders to peace discussions in New York. "The lack of perceived standing made it easier for Ali Mahdi to launch attacks against smaller clans, which he did the day after the United Nations issued invitations." Another mission convened by United Nations, the Islamic Conference, the Organization of African Unity and the Arab League did manage to create a ceasefire of 3 March 1992 "despite the exclusion of neutral clans".²⁸⁸ The follow up-measures were "too weak" to perpetuate the agreement. Instead of increasing relief efforts the U.N. only sent a technical team to determine the peacekeeping and relief requirements. He then "threatened the warlords with a cutoff of food aid if the ceasefire did not hold, maintaining that it was they 'who must bear responsibility for denying the starving people of Mogadishu this vital source of life.'" Jonah did not understand or utilize the clan based system to his advantage. His efforts served no useful purpose:

Jonah's high-handed threat created no incentive to stop violence, and, if carried out, would have punished innocent Somalis.²⁸⁹

In April 1992, the Algerian diplomat Mohammed Sahnoun became the U.N. special envoy to Somalia. "In contrast to Jonah,

²⁸⁸ *ibid.*, p. 115.

²⁸⁹ Stevenson, p. 144.

Sahnoun immediately acclimated himself to Somalia, meeting with clan elders in the bush."²⁹⁰ Sahnoun's options were limited:

He had to make do with the U.N.'s own international capabilities; supplying food (WFP), providing administrative expertise in relief operations (UNICEF); restructuring infrastructure (U.N. Development Programme) and offering political meditations (the Secretary General's office).²⁹¹

Despite the stated concerns over the security of the relief agencies there was very little done to address the issue. The control problem was exacerbated in June when a Russian plane marked with the U.N. insignias was caught delivering military supplies and freshly printed Somali currency to Ali Mahdi. Despite the expiration of the contract with the Russians there was no conceivable explanation for this blunder. Aidid felt justifiably persecuted seeing the U.N. as favouring Ali Mahdi. He refused to permit 47 U.N. military observers into Somalia and withdrew his consent for 500 armed peacekeepers. Sahnoun deemed Aidid's suspicions "understandable" and criticized his own organization for its "lack of vigilance" in policing its contractors. In effect, Sahnoun clearly understood the impact of "bureaucratic inertia. In July, he even importuned donors to leapfrog a second U.N. technical assessment with food airlifts to Somalia's interior because, he said, 'kids are dying right now.'²⁹²

The Secretary-General's outburst in July, seven months after the crisis began, decried the international community's inaction

²⁹⁰ *ibid.*, pp. 144-145.

²⁹¹ *ibid.*, p. 145.

²⁹² *ibid.*

referring to it as "a naked double standard, was being applied by members more concerned with "the rich man's war" in the former Yugoslavia." This statement precipitated an increased American involvement as President Bush authorized \$148 million in aid to Somalia over two years, the August airlift, and rhetorically became seized of the crisis. Despite the political overtones of the American government, the Security Council Agenda avoided "any commitment to multi-lateral action."²⁹³ The successes, however, largely came as a result of Sahnoun's efforts. His greatest strength was the manifest utilization of the clan system to his advantage. He "recognized that for all their unfathomable idiosyncrasies, 'clans are politically interesting [and useful] because they dilute power." In August, he convinced the local elders to participate in security preparations of the airfield in anticipation of the American relief operation. In Mogadishu, Sahnoun innovatively arranged for the elders to "be given food to coax the gunmen out of the port." It was also believed that the "compulsion of Aidid's might and the elder's authority, in theory, would keep them out."²⁹⁴ By November, this form of clan participation was used in the assistance efforts in Baidoa, Bardera, Belet Huen, and Hoddur - four of the nine sectors later covered by Operation Restore Hope. In more tense areas where clan involvement was impossible - Kismayu and Merca - the efforts were impeded but not unsuccessful as the "malnutrition and disease

²⁹³ Clark, p. 118.

²⁹⁴ Stevenson, p. 147.

figures improved" during Sahnoun's involvement.²⁹⁵ Sahnoun's task was also impeded by the dearth of adequate security. He established strong relations with Aidid, in particular, who was ultimately the most hostile to the U.N. The other warlords, Ali Mahdi and Abshir Musa, needed less convincing about U.N. intervention as they were militarily weaker than Aidid. Sahnoun convinced Aidid to allow the 500 Pakistani soldiers into Mogadishu. This also formed part of the 90 day plan to "to improve aid distribution by tightening its logistical rein on all of the relief operations."²⁹⁶ Sahnoun was also in the process of convincing Aidid to accept a further 3000 peacekeepers when Boutros Boutros-Ghali publicly stated that they would go regardless of Aidid's consent. This violation of the consent requirement of traditional peacekeeping perpetuated Aidid's intransigence towards the U.N. The response was violent as the "Pakistanis were attacked at the airport, a food ship was shelled and U.N. officials were mugged. "Sahnoun's four months of arduous and fruitful diplomacy had been undone with one public statement from New York..." Sahnoun was enraged and sent the Secretary-General a letter of resignation offering to act as a 'special envoy" directly accountable to the his office. Essentially, he did not want to leave Somalia but "circumvent" an intractable U.N. bureaucracy. The resignation was accepted but the proposal was not. World attention had been diverted to Somalia by September as 35% of the ICRC's budget was "consumed by Somalia."

²⁹⁵ *ibid.*, pp. 146-147.

²⁹⁶ *ibid.*, p. 145-146.

Yet, Sahnoun continually criticized the bureaucracy of the operation. In particular, a 60 Minutes interview had caused the Secretary-General public relations damage to the extent whereby "Boutros-Ghali felt he had no choice but to accept the resignation."²⁹⁷ In effect, the U.N. had lost its most useful and successful instrument - the clans' perception of Sahnoun's independence and distance from the U.N. The loss of this asset worsened the security requirement issue. The distrust of the U.N. also stemmed from the incumbent Secretary-General. Rumours were circulated concerning "Boutros-Ghali's tenure as Egyptian foreign minister. Many believed that Egypt had agreed to give Barre arms in exchange for farming rights in Somalia."²⁹⁸ This distrust by the clans should have been recognized as a detriment to the usual peacekeeping approaches. As traditional peacekeeping approaches were, used their relative inadequacies within this context were highlighted.

The 500 soldier Pakistani force's mission was "to secure the port, safeguard food shipments to and from the airport and escort food convoys from the port to destinations within Mogadishu." They were entirely outnumbered and overpowered by the bandits. The commander refused to deploy his troops because of the dangers. Their mission was impossible to realize:

The Pakistanis had been assigned a task - replacing an economy based on armed extortion and outright theft with orderly martial law - for which they were not nearly strong enough.²⁹⁹

²⁹⁷ *ibid.*, pp. 147-148.

²⁹⁸ *ibid.*, pp. 148-149.

²⁹⁹ *ibid.*, p. 146.

In addition, their rules of engagement allowed for the use of force only in self-defence - "a virtual death sentence for point men patrolling hostile areas full of assault rifles."³⁰⁰

Inappropriate mandates, force strengths and rules of engagement revealed that the U.N. could not deal with the crisis. The inability to understand the society, as well as a reluctance to be more concerted, quick and innovative in addressing the problems, reveal the strategic inabilities of the U.N. These inadequacies would eventually lead to a perception that ultimate force embodied within Chapter VII operations would be required.

The Decision to Intervene

The decision to intervene was promulgated and fuelled by the media's presentation of the Somali tragedy. Its influence on the United Nations was unprecedented:

In the past it was said, 'Trade follows the flag'; these days it seems more pertinent to say that sanctions or the troops follow the television cameras.³⁰¹

The "immense power" of media-influenced policy is based on the fact that it presents images which "shape the public mind." These public perceptions ultimately motivate political leaders and institutions to act. Unfortunately, the media presents quick sound-bytes and vivid visual images. It contends with fourth dimensional problems using a limited two dimensional medium. Hence the nuances and context of situation are never adequately presented to the public that fuels political action:

³⁰⁰ *ibid.*

³⁰¹ James Schlesinger, "Quest for a Post-Cold War Foreign Policy," Foreign Affairs, 72 (1993), p. 18.

... unless policy is to be swept along by a tide of such images, we must have a clear notion of what is important and unimportant to us, a clear idea of where we wish to go, established guideposts and governmental institutions that recognize that reality is both different and more complex than the images that flicker over TV screens.³⁰²

The emotional impact of the television images seemed to preclude serious debate about the issues and implications of intervening in Somalia." The United States was doing something about the starving people of this faraway country. The virtue of this action was not to be questioned...." Even though the famine was almost over as heavy rainfalls were predicted, the international community seemed intent on redeeming itself for its initial slowness.³⁰³ This redemption began with the Secretary-General's letters to the Security Council.

The Secretary General's letter to the Security Council on 24 November 1992 highlighted several disturbing developments in Somalia. In particular, the Secretary General blamed the Somali faction leaders for instilling an "invasion syndrome" in the Somali people, and he issued a statement in the hope of dispelling this image. He also highlighted several incidents involving one of the faction leaders - General Aidid. In the autumn, General Aidid made hostile declarations pertaining to the U.N. forces involved in local peacekeeping operations. He proclaimed that the Pakistani peace-keeping patrols would not be tolerated in Mogadishu; he ordered the expulsion of the UNOSOM coordinator on the grounds that his actions undermined the Somali

³⁰² *ibid.*

³⁰³ De Waal, p. 199.

people, hence his safety could not be guaranteed; and he warned that any UNOSOM deployment would be met with violence.³⁰⁴

Several other incidents highlighted the growing tensions between the Somali factions and the United Nations. On 6 November 1992 UNOSOM observer vehicles were hijacked by unknown parties. Two days later, the U.N. special Representative reported to General Aidid and interim President Mahdi, assuring [them] of the UNOSOM "mandate of peace and cooperation." On 10 November a Pakistani patrol took control of the airport, and two days later General Aidid demanded their withdrawal. On 13 November the forces at the airport came under fire; and a docking prohibition of humanitarian relief ships took effect. There was general looting and pillaging allowing "barely more than a trickle" of aid. The Secretary General concluded that "it may become necessary to review the basic premises and the principles of the United Nations' effort in Somalia."³⁰⁵

The Secretary-General's letter of 29 November 1992 blamed the lack of government, the failure of faction cooperation, and the extortion, blackmail and robbery of international relief efforts as the principle causes of the plight of the Somali people. He argued that it may be necessary to move to chapter VII.³⁰⁶ His letter outlined five options addressing the primary

³⁰⁴ UN SC, Letter dated 24 November 1992 from the Secretary General addressed to the president of the Security Council, UN Doc. S/24859, (1992), pp. 1-2.

³⁰⁵ *ibid.*, p. 2.

³⁰⁶ UN SC, Letter dated 29 November 1992 from the Secretary General addressed to the president of the Security Council, UN Doc. S/24868, (1992), p. 1.

issue: "how to create conditions for the uninterrupted delivery of relief supplies... " to enable a more constructive political environment.³⁰⁷ The first option involved the completion of Resolution 775 which authorized 4200 peacekeeping troops; however, there would be no deployments without the agreement of the faction leaders. Moreover, the U.N. troops could only fire in self-defense. The Secretary-General determined without critical evaluation that this option could not work.³⁰⁸

The second option required the withdrawal of all U.N. military forces, thus leaving the humanitarian agencies to fend for themselves. He rejected this option because of the increased dangers to those agencies.³⁰⁹

The three remaining options entailed the use of force which the Secretary-General believed would be more appropriate due to the lack of government in Somalia. He reasoned that all of these options would require a determination under Article 39 that this situation constitutes a threat to the peace, as well as a determination that non-military measures had not been effective. He did not specify why this determination should be made; he reflected, however, on the quintessential role of the U.N. forces to achieve its goal:

...it would be necessary for at least the heavy weapons of the organized factions to be neutralized and brought under international control, and for the irregular gangs to be disarmed.³¹⁰

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

³⁰⁹ *ibid.*, p. 2.

³¹⁰ *ibid.*, p. 3.

The third option entailed "a determined show, and if necessary, use of force by UNOSOM" to convince the perpetrators to cease their hostilities. The premise was that it would be enough to create conditions warranted by the political purpose; in particular an unimpeded access to the ports. The Secretary-General was once again doubtful of its potential success.³¹¹

The fourth option was a country wide enforcement operation undertaken by a group of member states authorized by the Security Council. The United States had offered to take the lead militarily. The Secretary-General noted in his letter that participating member states should realized that the Security Council would have an interest in exercising control in various ways by reviewing and retaining authority, by replacing the troops with U.N. forces once the immediate security problem had been resolved through the disarmament of the factions, by ensuring that the operation was within the bounds of humanitarian law, and by attaching a Security Council field staff.³¹²

The fifth option involved an identical operation but under the command and control of the United Nations. However, the letter admitted that the Secretariat would be incapable of performing this task under its current structure and thus would require the assistance of participating states to augment the New York staff.³¹³

³¹¹ *ibid.*, p. 4.

³¹² *ibid.*, pp. 4-5.

³¹³ *ibid.*, p. 5.

The ensuing discussion of the Secretary-General's letter did not entail much debate between the members of the Security Council. The draft resolution was put on the table. Every state identified Somalia as a unique situation requiring a unique response. They also reiterated that the Somali people are ultimately responsible for national reconciliation. Some members mistakenly believed that the Secretary-General would be in control. Furthermore they agreed that the situation in Somalia was also a threat to international peace and security. No state articulated the reasons why or could rationalize how this threat differed from Yugoslavia. Finally each state agreed to the limited objective of achieving a secure environment.³¹⁴

Certain comments made during the meeting revealed little understanding of the task which the United Nations had set for itself. Ecuador commented prematurely that this operation "will alleviate the suffering of the Somali and create conditions conducive to reconciliation and reconstruction"³¹⁵ Certainly this rationale was not warranted since the resolution involved military action only and did not involve an on-site coordinated effort along the post-intervention relief and infrastructure angles of attack. It was not specific as to how this objective could be achieved. Cape Verde made the most curious statement of all. It referred to the United Nations as "guarantor of peace, international legality and the territorial integrity of

³¹⁴ UN SC Provisional Verbatim Record, 3145th Mtg, UN Doc. S/PV.3145 (1992), pp. 2-13.

³¹⁵ *ibid.*, p. 14.

states."³¹⁶ This comment was both curious and ironic since it pertained to a resolution authorizing the invasion of a state.

China was the only country to acknowledge that the Secretary-General retained official authority only:

... [the] draft resolution has taken the form of authorizing certain countries to take military actions, which may adversely affect the collective role of the United Nations.³¹⁷

China was also the only nation to question the clarity of resolution pertaining to the point when the troops would be withdrawn.³¹⁸ Another strange statement came from Venezuela:

Thanks to the sensitivity and concerns of the world's media, the plight of the Somali people has always weighed heavily on the conscience of mankind, which today is acting through the Security Council.³¹⁹

Once this action is put into context it should be evident that this statement is the most erroneous of all since the United Nations squandered several opportunities, well short of this unprecedented action, to resolve the crises and assist the Somali people. Even the President of the Security Council reflected this misguided optimism by hoping for the cooperation of the warring factions.³²⁰ If this had been likely, then the operation itself would not have been required.

Only the United States - the principle strategic actor - was precise in its assessment of the conditions and the role to be

³¹⁶ *ibid.*, p. 21.

³¹⁷ *ibid.*, p. 17.

³¹⁸ *ibid.*, p. 17.

³¹⁹ *ibid.*, p. 42.

³²⁰ *ibid.*, p. 51.

played by its government. The American representative identified one principle goal - "... to achieve a secure environment for the delivery of humanitarian relief to the Somali people in the areas of the greatest need." He further emphasized that "... our mission is essentially a peaceful one, and we will endorse the use of force only if and when we decide it is necessary to accomplish our objectives.[Emphasis added]" Clearly the Americans were in control from the outset. More importantly, they purported no grandiose notions of the military doing anything more than protecting the food.

He stated the American government's intent to withdraw as soon as possible highlighting the fact that "military intervention is no substitute for political reconciliation, and that task belongs firmly in the hands of the Somalis."³²¹ The minutes of this meeting reveal a forum of political rhetoric and not a coordinated strategic effort negotiated by members of the Security Council. The Americans retained obvious control of the operation and narrowed the objective to securing the delivery of humanitarian aid in direct contradiction of the internationally desired objective of securing the necessary environment for political reconciliation. The expectations of the operation were far greater than the limitations imposed by the Americans. Political reconciliation will not occur as a result of foreign intervention if the warring factions are not disarmed. This approach was not solidified in the council or even in the resolution.

³²¹ *ibid.*, p. 36.

Chapter VII operations, however, are premised on threats to international peace and security. A threat to peace and security is a strategic perception supported by a legal justification. Moreover, the strategic actions must adhere to legal principles. Hence the necessity for the application of a duo-paradigm is revealed.

The Threat to International Peace and Security

International law's fundamental tenets are based on natural and positivist law. The positivist law of nations is embodied in the United Nations Charter. All organs of the United Nations must adhere to its principles and objectives including the respect for sovereignty as embodied in a people's right to determine their own destinies. Article 2(4) prohibits the use of force to resolve inter-state disputes and Article 2(7) prohibits the interference in the essential domestic affairs of a state. Article 2(7) also stipulates that such interference is justified if the Security Council is acting under Chapter VII of the Charter, having determined that there is a threat to international peace and security. While an explanation of this threat is not technically required it is logical to assume that it is legitimate and real in the eyes of the Security Council. Natural law would assert that all peoples have a right not to die or starve because of their states or be subjected to other human rights violations. Such violations could be used as Just War precepts for the use of force in the international community to rectify the "evils" of a given state. Despite the lack of a coherent and centralized judicial system for the international community, the use of force in a positivist or naturalist context would logically be regarded

as legitimate by a proportionality test whereby the use of such force would be measured against the reasons and consequences of its application.

The strategic paradigm establishes that a nation or coalition of nations will protect their vital interests against enemies through the use of all peaceful and non-peaceful means at its disposal. By extrapolation, the vital interests of the U.N. extend beyond its legal mandate to maintain international peace and security to encompass those vital interests of its constituents. Threats to these vital interests by other states would be cause for a determination of a threat to peace and security in the international community. A peace and security problem becomes a vital interest to the U.N. if one of its constituents is threatened either directly or indirectly by a situation. The justification for intervention must be established accordingly.

The Security Council first dealt with the Somali Crisis in Resolution 733. On 23 January 1992 the Council expressed its grave alarm:

...at the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country and aware of its consequences on the stability and peace in the region....³²²

Accordingly, the Secretary-General was authorized "... to undertake the necessary actions to increase humanitarian assistance of the United Nations" He was also instructed to

³²² United Nations, UN SC Res. 21 Jan\733, 3039th Mtg, UN Doc. S/Res/733 (New York: United Nations, 1992), p. 1.

liaise with other relief organizations and appoint a coordinator to oversee the efforts.³²³ The resolution asserted that "the continuation of the this situation ... a threat to international peace and security." Most significantly, the resolution invoked Chapter VII to impose "a general and complete embargo on all deliveries of weapons and military equipment" to establish peace and stability in the country.³²⁴ Furthermore, the Security Council called upon all states to refrain from any other action that could prevent "a peaceful and negotiated outcome to the conflict in Somalia, which would permit all Somalis to decide upon and to construct their future in peace...."³²⁵

Initially, the resolution appeared to take the appropriate and balanced measures to curb a potential threat of the Somali crises. The determinations regarding a threat to the peace were taken to prevent outside involvement of other states and to allow the Somali's to work out their own difficulties through a political process. A continuing civil war and famine were legitimate causes for concern but certain critical elements were missing.

This determination was based on an oral report given by the Secretary-General that was not reproduced in the provisional verbatim reports or any other record of the United Nations. There was no detailed analysis done at the behest of the organization and, as previously mentioned, they were no on-site U.N. personnel

³²³ *ibid.*

³²⁴ *ibid.*, p. 2.

³²⁵ *ibid.*

to assess the situation. Furthermore, there was no discussion or debate amongst the council members and the resolution was adopted quite quickly.³²⁶ Moreover, there seemed to be very little alarm in the region. One letter from the League of Arab States did express its concern for the Somali nation but did not express concern for any larger regional instability.³²⁷ While the resolution was prompted by a different letter from the interim Somali Prime Minister, there was no involvement or express concern from any of Somalia's neighbouring states. Ironically, the identification of non-traditional threats to the peace did not occur in the Security Council until later that month.

On 31 January 1992, the heads of state of each member of the Security Council met to consider the organ's principle role in the maintenance of international peace and security. In this meeting the entire council acknowledged the impact of the Cold War's termination on its ability to achieve this primary objective. In particular it recognized that change in state structures may involve "new risks for stability and security." Most importantly, the Security Council identified the non-traditional threats to peace and security:

The absence of war and military conflicts amongst nations does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through

³²⁶ United Nations, Provisional Verbatim Record of the 3038th Meeting, UN Doc. S/PV 3039 (New York: United Nations, 23 January 1992).

³²⁷ United Nations, Letter Dated 21 January 1992 from the Permanent Representative of Morocco to the United Nations, UN Doc. S/23448 (New York: United Nations, 21 January 1992), p. 1.

the appropriate bodies, needs to give the highest priorities to the solution of these matters.³²⁸

This was not a revelation of any great magnitude. The strategic paradigm would view these fields as vital interests or key resources to be factored into the decision to use force. Greater voids in these realms for one country could precipitate violence at the expense of another. Nevertheless, the assertion was legitimate even if it did not involve discussions of the international community as a whole or any stated description of the threshold which must be crossed to constitute such a threat.

This meeting also tasked the Secretary-General with the preparation of the Agenda for Peace. Neither document dealt adequately with the threshold issue. Simply stating that the non-military factors now constitute a threat is analytically inadequate particularly with the absence of an examination of the other U.N. goals and principles which may be affected - sovereignty in particular. The remoteness of a particular humanitarian issue such as famine to the international community's security and peace interests requires greater substantiation. Humanitarian reasons may be legitimate but they are symptoms of a political situation that must be resolved through political means, even war. Somalia is the ultimate example of the failure to do this.

The Secretary-General presented the first major report on the Somalia crisis to the Security Council on 11 March 1992. The report reasserted its mandate under Resolution 733 and then dealt

³²⁸ United Nations, Note by the President of the Security Council, UN Doc. S/23500 (New York: United Nations, 31 January 1992), p.3.

systematically with the principal issues. The most obvious threat to international peace and security was dealt with by the arms embargo. While 68 states had acknowledged their intent to respect the embargo, the report mentioned that the two principal factions were still claiming that the other side was receiving arms from countries in the region.³²⁹ No details were given and no contravening parties were identified. Only the scant claims of the factions were mentioned. The report then discussed the attempts to attain a cease-fire. It referred to the widespread destruction caused by the civil war and the threat of famine in a situation where the effective delivery of humanitarian assistance was precarious. The same paragraph then stated "...the conflict has threatened instability in the Horn of Africa region and its continuation has occasioned threats to international peace and security in the area." It identified the neighbouring countries - Djibouti, Ethiopia, Kenya and the Sudan - as having common problems to varying degrees and therefore the worsening of the "conflict in one of the countries of the region could have serious repercussions in one or more of the others."³³⁰ While this may be true in a cursory sense it is entirely inadequate as an analytic tool.

Other than the vague assertions of embargo violations, what in the Somali situation has threatened the peace of the region? There were identified threats, military movements or expressed

³²⁹ United Nations, The Situation in Somalia - Report of the Secretary-General, UN Doc. S/23693 (New York: United Nations, 11 March 1992), p. 4.

³³⁰ *ibid.*

resentment regarding the refugees on the borders. There was not even a discussion as to the common characteristics and problems within the region. The League of Arab States simply stated that "the collapse of the State structure, with all the certain danger that this entails for the unity, security and stability of Somalia, which constitute an indivisible part of international peace and security."³³¹ As tragic and complex as the crises was, the appraisals of the United Nations, the League of Arab States, the Organization of Islamic Countries, and the Organization of African Unity did not relate the nexus between the internal dynamics of Somalia and the external relations of the region. The ultimate irony was that a unified Somalia probably would have posed a greater threat to international peace. It was not until the adoption of Resolution 746 on 27 March that any of the neighbouring states were directly incorporated in the process.

The Council invited representatives of Italy, Kenya, Nigeria and Somalia to participate in the discussion pertaining to the resolution.³³² Resolution 746 did little more than underscore the U.N.'s concern, adopt the Secretary-General's Report and encourage all parties to assist in the cease-fire. The decision of the Secretary-General to dispatch a technical team was supported and its findings were revealed in the second report produced on 21 April 1992. It identified the interim president's request for a substantial peacekeeping force to firm the

³³¹ *ibid.*, p. 22.

³³² United Nations, Summary Statement by the Secretary General on Matters of which the Security Council is seized and on the Stage reached in their Consideration, UN Doc. S/23370/Add.11 (New York: United Nations, 27 March 1992), p. 1.

ceasefire and protect the aid distribution. The security for the international relief organization was identified as an important element by the technical team. Its size and composition would be focused on Mogadishu and subject to the support of the fighting parties. While a traditional peacekeeping role was envisaged, the environmental assessment indicated a different requirement:

... a variety of armed elements - many of whom are not under the control of any political authority - and who have been attempting to control food supplies in the capital... Their task will be to provide the United Nations convoys relief supplies with a sufficiently strong military escort to deter attack and to fire effectively in self-defence if deterrence should not prove effective.³³³

Considering the lack of control over the bandit elements operating in the capital, it would be unrealistic to expect that the deterrent approach would be effective. Moreover, the limitation of a self-defence only rule of engagement would simply make the peacekeeping units an additional target. Nevertheless, a credible peacekeeping force would likely attain some benefit for the Mogadishu people. What is curious for a threat to international peace and security, however, is that the focus was almost exclusively on the Mogadishu area. Moreover, the required consent of the parties precluded an effective response to the crises. A threat to international peace and security and the safety of the international organizations should not require such a timid response. The failure to take advantage of the ceasefire by introducing peacekeepers with an appropriate mandate "in March 1992 eventually contributed to heightened levels of violence.

³³³ United Nations, The Situation in Somalia - Report of the Secretary-General, UN Doc. S/23829 (New York: United Nations, 21 April 1992), pp. 5-7.

Additionally, this criterion forced the United Nations to act as if all of Somalia were engulfed in Mogadishu's extreme circumstances, which was simply not the case."³³⁴

Nevertheless, the report did attempt to more clearly define the nature of threat:

The present crisis facing the people of Somalia also has regional consequences as already evidenced by the flow of refugees from Somalia into Kenya, Djibouti and Ethiopia and their grave concerns about the effect such population will have on the Horn of Africa.³³⁵

The concern was well founded, but necessarily describing it as a threat to international peace and security was premature. While 200,000 Somalis had gathered along the Kenyan border and a significant number along the Ethiopian border, repatriation efforts had been planned and the border states had not raised much of a fuss.³³⁶ The report also indicated that arms were still flowing from outside the country but no parties were identified. A recommendation that the borders should be monitored was not enacted, therefore it is difficult to judge how much credence should be given to the reports. Greater substantiation should have been demanded since there were no indications of numbers or types of weapons. Certainly the armoury remnants of the Cold War far outnumbered those being brought from outside. The first addendum was far more detailed and specific. It analyzed the situation by region. In north-west Somalia, the main city of Hargeisa had been largely abandoned by its 500,000

³³⁴ Clark, p. 121.

³³⁵ United Nations, The Situation in Somalia - Report of the Secretary-General, UN Doc. S/23829, p. 9.

³³⁶ *ibid.*, p. 11.

inhabitants to the neighbouring states but, by the time of this report, most of them had returned. A similar situation had occurred in the north-east and the report also identified the 200,000 Bantu Somalis along the Kenyan border. The refugee crises was described as follows:

As already evidenced by the flow of refugees from Somalia into Kenya, Djibouti and Ethiopia, the crisis has regional consequences and there are grave concerns about the effects such population movements will have on the Horn of Africa. Measures to encourage Somalis, who also might seek refuge in neighbouring countries, to stay in their homeland need to be explored as a matter of urgency.³³⁷

The report resulted in Resolution 751 which took note of the ceasefire, established the UNOSOM operation and its initial 50 United Nations observers. The resolution was more concerted in its efforts to curtail violations of the embargo but it merely requested information from states and solicited their input to make it more effective.³³⁸ The operation did manifest itself until July 1992 as noted by Resolution 767. This resolution rehashed many of the previous determinations and called upon the Secretary General to use all means to accelerate the delivery of humanitarian aid while at the same time calling on all factions to allow for the deployment of security personnel for the U.N. workers.³³⁹ Curiously, the U.N. assertions of a Chapter VII situation seemed to contradict the perceived requirement to have

³³⁷ United Nations, The Situation in Somalia - Report of the Secretary-General - Addendum, UN Doc. S/23829/Add.1 (New York: United Nations, 21 April 1992), pp. 8-12.

³³⁸ United Nations, UN SC Res. 24 Apr/751, 3069th Mtg, UN Doc. S/RES/751 (New York: United Nations, 24 April 1992).

³³⁹ United Nations, UN SC Res. 27 Jul/767, 3101th Mtg, UN Doc. S/RES/767 (New York: United Nations, 27 July 1992).

the consent of the parties. If the situation was such an emergency and the success was contingent on the protection of the relief efforts, then would a substantial but limited force for those expressed purposes have been resented by the factions? In light of the Russian plane incident, a stepped up relief operation would have seemed a more credible response to highlight its intent to prevent reoccurrences.

The next report was released on 24 August 1992 and it precipitated the authorization of a 3,500 person peacekeeping force designed to protect the food shipments and monitor the ceasefire. Resolution 775 once again highlighted the international community's concern over the situation by determining it to be a threat to peace and security.³⁴⁰ The resolution, however, did not identify the reasons as to why it was a threat. The Secretary-General's report did not even relate this notion. There was a meeting, however, with Kenyan representatives to discuss their concerns as the technical team made a detailed investigation of the border region through the use of an aerial survey.³⁴¹ The report admitted that the efforts were in no way adequate to meet the needs of the nation. In particular, it noted that "the critical problem is how to ensure relief supplies at all stages" of distribution.³⁴² It would seem that the critical issue was no longer the situation constituting

³⁴⁰ United Nations, UN SC Res. 28 Aug/775, 3110th Mtg, UN Doc. S/RES/775 (New York: United Nations, 28 August 1992), p. 1.

³⁴¹ United Nations, The Situation in Somalia - Report of the Secretary-General, UN Doc. S/24480 (New York: United Nations, 28 August 1992), p. 1.

³⁴² *ibid.*, pp.2-4.

a threat to international peace even though the report was more definite in its appraisal of the difficulties along the Kenyan border. A proposal to place military observers along the border was rejected by "regional leaders" because of the "implications of such an operation for the balance of military forces in the region."³⁴³ The implication is that, while this situation was considered a threat, it was not important enough for the regional actors or the United Nations to monitor. This proposal was also rejected on the basis that the security of the observers could not be guaranteed. The inherent contradictions in these assertions are untenable as Resolution 775 reaffirmed the need to comply with the embargo.³⁴⁴ Essentially, the perception of a threat to international peace and security seemed paltry in light of the actions that the United Nations was willing to take between January and November 1992. Three critical issues seemed to be of primary concern - the violation of the arms embargo, the flow of refugees to the border areas, the protection of humanitarian relief operations, and the monitoring of the cease-fires. The first two were legitimate international concerns which theoretically could have been perceived as a threat. There were, however, no detailed findings of violations, other than the Russian plane incident, and the allegations seemed vague and unsubstantiated. Moreover, the seeming passive acceptance of refugees by neighbouring states and an unclear explanation of

³⁴³ *ibid.*, p. 6.

³⁴⁴ United Nations, UN SC Res. 28 Aug/775, 3110th Mtg, UN Doc. S/RES/775 (New York: United Nations, 28 August 1992), p. 4.

their concerns beyond vague and general rhetoric make the characterization of Somalia as a threat to international peace and security problematic. The other two factors were largely internal and were apparently very remote from the international realm. It would therefore appear that the characterization was used as a justification to forcefully protect the relief operations. This was apparent in Resolution 794.

Resolution 794

The authorization for the intervention, Resolution 794, was a Chapter VII operation for humanitarian reasons while retaining the mantle of peacekeeping. This highlights the fundamental contradictions and the reasons for perceptual misunderstandings as to the political objectives and the military role. It outlined the context perceived by the Security Council:

Recognizing the unique character of the present situation in Somalia and mindful of its deteriorating, complex and extraordinary nature, requiring an immediate and exceptional response,

Determining that the magnitude of the human tragedy caused by conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, **constitutes a threat to international peace and security.**³⁴⁵

The difficulty with this rationale is that the reasons for this threat to international peace and security are not clearly defined. An explanation as to how this "human tragedy" and these "obstacles to humanitarian assistance" differ from any of the other similar situations in the world was not provided. Surely,

³⁴⁵ UN SC Res. 3 Dec\794, 3145th Mtg, UN Doc. S/Res/794 (1992), p. 1.

this should be a fundamental requirement that should precede resolutions of this magnitude.

The resolution also highlights the disparaging objective dilemma as it established a broader goal than the American position:

Determined to establish as soon as possible the necessary conditions for the delivery of humanitarian assistance wherever needed in Somalia, ... determined further to restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation...³⁴⁶

Clearly, there were discrepancies between the objectives of the Americans who conceived of their role as focused exclusively on the delivery of humanitarian aid, as opposed to the inferences of the resolution that the goal of military intervention was political reconciliation. While the delivery of aid might help in the attainment of these conditions in the short term, the long term stability of Somalia was always in jeopardy as the warring factions would resort to their pre-invasion tactics once the substantial coalition forces left the country. Hypothetically, if the objective had been the removal, capture or destruction of the factions' armaments, then the political objective of stability might be more readily attained. However, the effort required and the political will of the Americans would not support such an approach. Hence, the military objective and its means was vague and probably will be seen as ineffective if the conditions return to the pre-invasion status. The Americans were capable but obviously unwilling to become embroiled in this type of

³⁴⁶ *ibid.*, p. 2.

operation. The "use of any means necessary" was construed in the narrowest sense possible. This point does not necessarily advocate a complete invasion of Somalia, it merely identifies the question as to why the Americans were required to perform a task below their capabilities and within the supposed abilities of the United Nations forces. Arguably, the American ability to react quickly and forcefully through the extensive sea and airlift resources, as well as the impact of its reputation were certainly major factors in its selection as the leader of this invasion. The deployment of over 30,000 troops also underscores the American predilection to use overwhelming military. If the operation was in fact peacekeeping, the requirements for relatively large forces would be obviated. Traditional peacekeeping operations can achieve stability within a limited mandate with fewer forces. The UNITAF contingent would have been more conducive to the disarming objective, but this was not the goal of the Americans. In fact, President Bush had been negligently misled by Boutros-Ghali. In their preliminary discussions concerning potential problems regarding the Clinton administration, the Secretary-General pathetically stated "... such a force could obtain stability very quickly. I know Somalia. I have been there many times."³⁴⁷ Not only did this statement epitomize the lack of understanding regarding the use of force, but it also highlighted the United Nations' ultimate failure to properly address the Somali problem during the previous year.

³⁴⁷ John R. Bolton, 'Wrong Turn in Somalia,' Foreign Affairs, Vol 73(1) Jan/Feb 1994, p. 59.

This failure culminated with the sense of urgency that seemed to demand Resolution 794.

A veneer of legitimacy was also created by authorizing the Secretary General and the Member States to establish the necessary "unified command and control of the forces involved,..."³⁴⁸ However, Article 15 only established a small UNOSOM staff to the Field of the Headquarters of the unified command.³⁴⁹ This indicated that operational control would effectively be in American hands even though they were required to report to the Council.³⁵⁰ At best, it can be said that this structure was loose. The political control of the Secretary General and the Security Council was undermined by the firm operational control of the Americans. Moreover, the delegation of authority by the Security Council in granting the Americans the ability to use all means necessary created a chasm of command and control whereby the Americans retained de facto grand strategic control of the entire operation and, hence, the maintenance of the Security Council's political objective and authority was far more tenuous than it should have been. Realistically, however, this was the requirement for American participation, and the attainment of any political objective would have been virtually impossible without the Americans. This fact merely highlights the United Nations' inability to enact strategic policy under its current operational structure. This perception is supported by

³⁴⁸ UN SC Res. 3 Dec\794, p. 4.

³⁴⁹ *ibid.*

³⁵⁰ *ibid.*

the fact that the United Nations could only act with a concentration of force, aim and speed if it delegated to a member state. Evidently, the structure of the Security Council in pursuing military action under U.N. control, whatever its political purpose, is currently inadequate.

This inadequacy partially stemmed from an inability to distinguish between the role of peacekeeper and the euphemistically described peace enforcer. In peacekeeping operations "... there is no enemy, and success depends on keeping it that way." In peace enforcement, the "U.N. determines an aggressor and sets out to defeat or deter it militarily. Therefore the U.N. may become the enemy."³⁵¹ Yet the decision-making process, the administrative and bureaucratic mechanisms remain the same for both types of operations despite these distinctions. Not even the Security Council seems able to make this very important distinction.

Finally, the decision-making process and the resolution did not look beyond the attainment of the military objective to the "peace" which would ensue. There was no concrete suggestion of the point where the American troops would be removed from the area or the measures that should be taken by the non-military U.N. mechanism to facilitate and effect the political objective of Somali stability. While some of the forces appeared to be working towards the creation of domestic security forces and political infrastructure - which is the ultimate means toward internal stability - this role was not contained in or

³⁵¹ *ibid.*, p. 11.

specifically authorized by Resolution 794. If the U.N. is willing to intervene domestically in a drastic military fashion for the benefit of international peace and security, it must create a more comprehensive grand strategy-like approach to the problem whereby all the resources of the U.N. are systematically dedicated towards the common purpose. However, the nature of the U.N. and its Charter may preclude this from happening.

The Intervention's Aftermath

The first report arrived in mid-January when the American representative tabled the United States' operational commander's report on the action. He reported that phase I was completed on 16 December 1992 when the airport and port facilities at Mogadishu, Bale Dogle and Baidoa were secured. Phase II was completed on 28 December when eight major relief centres, including Kismayo, Baidera, Oddur, Gialalassi and Belet Weyne, were also secured. Phase III was ongoing as the security for relief supplies from seaports to interior relief centres were being maintained. On 31 December 1992, Merca was also secured.³⁵² The report also noted that advance parties either secured the withdrawal of factions and bandits from the immediate area, or had disarmed, isolated or seized heavy weapons. Furthermore, the report referred to the anticipated increased strength for UNOSOM with the granting of an appropriate mandate and proper equipment.³⁵³ This report highlights the predominant

³⁵² Letter dated 19 January 1992 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc. S/25126, (1992), p. 2.

³⁵³ *ibid.*, p. 3.

American control of the operation. More significantly, it underscores the disparaging objectives of the U.N. and the United States. Political reconciliation would only be possible with the total disarmament of the warring factions. By the end of December, "the number of malnourished children under five in Mogadishu had returned to a near-normal 10 percent, compared to the more than 60 percent 5 months before." The more widespread food distribution seemed to have arrested the refugee crises and the "U.N Food and Agricultural Organization is predicting 70% of normal agricultural production" for the next year.³⁵⁴ This relative success was easy compared to the more grandiose expectation to restore peace with more forceful military operation. The ambiguities and perceptual differences between the American commanders and the U.N. Secretariat appeared very early in the Operation Restore Hope.

The first Secretary-General's Report arrived on 19 December 1992. It reviewed the Secretary-General's mandate under the resolution as being the operation of the peacekeeping operation UNOSOM; implementation of the secure environment for relief operations; the creation of a fund for contributions; the creation of coordination mechanisms with the Unified Task Force; and the continuation of political negotiations. The coordinating mechanism was comprised of a policy group in New York to be chaired by the Secretary-General, an "operational task force to be chaired by the Secretary-General for Peacekeeping Operations" and including the representatives of the U.N. organs as well as

³⁵⁴ Stevenson, p. 139.

the American delegate, and a 24 hour a day cell in the Department of Peace-Keeping Operations. In Mogadishu, U.N. representatives were sent to consult with the Task Force Commander and the U.S. special delegate. In addition, a small liaison staff was attached to the UNITAF headquarters.³⁵⁵ The Secretary-General's report identified the discrepancies resulting from Resolution 794. In reviewing the rationale for the intervention, he related an essential contradiction:

...it authorized the Secretary-General and Member States to use all means necessary to establish as soon as possible a secure environment for humanitarian relief operations.... [with] the objective of establishing a secure environment to enable it to make the necessary decision for a prompt transition to continued peacekeeping operations.³⁵⁶

First, command and control was given to the United States and not the Secretary-General. Chapter VII operations are legally supposed to be under the command of the Military Staff Committee. Since that was impossible, the operation was turned over to the United States. Second, it is difficult to imagine how a return to traditional peacekeeping, based on the premises of neutrality and the consent of the parties, would be possible after the U.N. has used force against certain factions which could cause collateral damage to the general populace in the attempt to secure the environment. Third, the delivery of aid does not guarantee a secure environment. People's lives may be saved but banditry and political unrest may not dissipate. It is problematic that a

³⁵⁵ United Nations, The Situation in Somalia - Report of the Secretary-General submitted in pursuance of paragraphs 18 and 19 of Security Council Resolution 794 (1992), UN Doc. S/24992 (New York: United Nations, 19 December 1992), pp. 2-4.

³⁵⁶ *ibid.*, p. 7.

Chapter VII mandate was needed to protect the U.N. distribution teams if the intent was not to disarm the Somalis. Since this was not the mandate accepted by the United States, it was an unnecessary venture into Chapter VII.

In discussion with the United States, the Secretary-General emphasized two conditions. The first was the disarmament of the faction's heavy weapons; as well as the "irregular forces and gangs." This was promised on approach whereby the factions agreed to a ceasefire and turned over their weapons. Then the gangs' weapons would be confiscated. According to the Secretary-General this would supposedly allow a transition to traditional peacekeeping.³⁵⁷ Considering the previous failed attempts to maintain cease-fires, this result would be unlikely. Moreover, forceful confiscation precludes cooperation. The Security Council effectively euchred itself by transferring command and control and then prescribing a mandate unacceptable to the United States.

There were further disagreements between the Secretariat and the United States. The Americans pushed for an early transition to a peacekeeping model whereas the Secretary-General wanted to ensure that the operation was successful before discussing dates. Most significantly, their respective approaches to the new peacekeeping mandate were strikingly dissimilar. The Secretary-General highlighted this discrepancy:

They envisaged the Unified Task Force being replaced by a new UNOSOM which would be under United Nations command and control but whose mandate, concept of operations, level of armament and rules of engagement

³⁵⁷ *ibid.*, pp. 8-9.

would be little different from those of the Unified Task Force itself.³⁵⁸

This rationale accurately perceived that a traditional peacekeeping force would be inadequate to protect the relief efforts. The Secretary-General decided to postpone the decision. He had resisted a course of action prescribed in the Agenda for Peace and his recommendation letters of November 1992.

Apparently, the reasons for the failure of previous U.N. efforts had not been clearly understood. This conundrum also highlights the lack of cohesion in the political and strategic objectives resulting from hybrid operations involving Chapter VII and Chapter VI. Conceptually, these contradictory approaches should not be merged. The Secretary-General was not accurate or perceptive in his statement that "without the improved security the political process cannot prosper. But there is little prospect of a sustained improvement in security unless the political process does prosper."³⁵⁹ The U.N. failed to realize that the nature of the conflict resulted from the nature of the clan-based society. Their political dynamics dictated an approach of banditry. If the arms had been forcibly removed, then their means to use force would be limited. But this is neither a humanitarian nor a peacekeeping endeavour. Delivering aid will feed the people but its impact on the political process between the rival factions would be marginal. Their vital interests precluded those of the others. Only the imposition of a settlement through a military victory would likely succeed.

³⁵⁸ *ibid.*, pp. 11-12.

³⁵⁹ *ibid.*, p. 13.

Voluntary disarmament is peacekeeping but Chapter VII operations infers a forceful approach when voluntarism fails. This was not the mandate of the U.N. or the United States.

Moreover, the perception of the Somali clans differed in their views of the operation:

... the clans saw the action as unilaterally American and sought US support as opposed to neutrality for each clan therefore no equilibrium.³⁶⁰

Aidid's recalcitrance to outside assistance was based on a substantial distrust of the U.N. and so he welcomed the U.S as "a white Knight to the U.N.'s colonial raider."³⁶¹

In late February, when Aidid's positions in Kismayu were infiltrated by Mohammed Sidad Hersi's forces, he "complained of U.S. favouritism in a radio broadcast, prompting his supporters to riot in Mogadishu." Similar complaints were made by other warlords regarding the "encroachments" of enemies. UNITAF "insensitivity" to cultural differences also impeded cooperation. "The U.S. soldiers were not well briefed about Somali peculiarities. They skinny-dipped in full view of the Muslim natives, never realizing that Somalis would take offense. The soldiers were also instructed not to talk to the Somalis" thus creating misunderstandings.³⁶² If consent is a principle criterion for 'peacekeeping operations', then the reasons for this consent must be understood. Moreover, if consent is a

³⁶⁰ Stevenson, p. 150.

³⁶¹ *ibid.*

³⁶² *ibid.*, p. 140.

The article did not specify which soldiers; however, it would be fair to assume that this dictate applied to the non-commissioned officers.

requirement then why would Chapter VII be needed particularly if it is not to be used. The effects of the contradictory mandates continued into January and February.

The Secretary-General's reports of 29 January and 3 March 1993 alluded to the enlargement of the UNOSOM mandate. The former report in particular, merely highlighted the lack of true control that the United Nations retained over the operation. The latter report related the situational changes in the entire country. It established that the humanitarian objective of feeding the starving Somalis had been attained. The security of the relief operations, however, was tenable at best as murders of several workers revealed that "the security situation, in spite of the presence of large numbers of military forces," was extremely fragile.³⁶³ The deterrence impact of the forces had been marginal. This is not surprising considering the extreme volatility of the Somali situation and the fragmentation of its society. Military operations must be focused on military objectives. Protecting the food convoys is one thing, bringing stability to a country is another.

The report attempted to outline the 'modalities for transition' from the UNITAF to the UNOSOM II. Boutros Boutros-Ghali mused about whether its mandate should include Chapter VII operations as he reasserted the need to disarm the factions with force. Only this approach would allow the political process to flourish. He stated that this cease-fire-disarmament approach

³⁶³ Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794 (1992), UN Doc. S/25354, pp. 5-6.

would weave in and out of the peacekeeping and Chapter VII modalities.

Curiously, it was the Secretary-General who outlined the military requirements of the UNOSOM mandate. Despite the overtures to Chapter VII, the Military Staff Committee was not involved.³⁶⁴ Moreover, his appreciation of the rules of engagement was that they would be defined by the UNOSOM II Force Commander who would authorize his subordinates "to take certain specific actions if they were judged necessary to fulfil the mandate."³⁶⁵ The continual confusion over the precise nature of this mandate contributed to the perpetuation of the conflict.

Providing a secure environment for humanitarian relief and monitoring the cease-fires were quite legitimate peacekeeping considerations. The Secretary-General, then stated in the same report that UNOSOM deployments "would not be subject to the agreement of any local faction leaders" to prevent controlling refugee movements and maintaining the embargo.³⁶⁶ Such actions would require Chapter VII authorization, admittedly contained within Resolution 794, which was premised on the threat to international peace and security. If this threat no longer existed, or never did exist, then the peacekeeping modality would be more legally and strategically legitimate. The report merely pointed to the lack of a government and the national armed forces as a vacuum which could affect the stability of the region even

³⁶⁴ *ibid.*, pp.12-17.

³⁶⁵ *ibid.*, p. 18.

³⁶⁶ *ibid.*, pp. 20-21.

though it admits that the problems are "primarily of a domestic nature...."³⁶⁷ The marginal or weaving modalities of this operation merely contributed to the factions confusion over the respective roles of UNITAF and UNOSOM II. Either peace ought to have been imposed through military victory or the humanitarian assistance efforts should have been given greater but limited protection by peacekeeping forces. Resolution 814 simply adopted and rubber stamped the report.

Resolution 814 did represent the pivotal reference point of the operation as the Security Council authorized the transition to UNOSOM II with the expectation that twice the area of the UNITAF mandate was to be covered with 7,000 fewer troops.³⁶⁸ The resolution epitomized the phenomenon of "assertive multi-lateralism" whereby the Clinton Administration pioneered "efforts at nation-building that [ultimately] led to violence and embarrassment...."³⁶⁹ The U.S. Permanent Representative to the United Nations, Madeleine Albright, idealistically stated:

With this resolution, we will embark on an unprecedented enterprise aimed at nothing less than the restoration of an entire country as a proud, functioning and viable member of the community of nations.³⁷⁰

The American government also committed to maintaining 8,000 logistical troops and a 1,000 personnel rapid reaction force.³⁷¹

³⁶⁷ *ibid.*, pp. 21-22.

³⁶⁸ Stevenson, p. 141.

³⁶⁹ Bolton, p. 56.

³⁷⁰ *ibid.*, p. 62.

³⁷¹ *ibid.*

The essential Bettati limitation criterion was ignored for the sake of misperceived altruism. Responsibility had been wrested from the hands of the Somalis despite the rhetoric, and the ability of the U.N. to establish, prioritize and enact its mandate had not been improved.

The mandate confusion of peacekeeping and peacemaking was affirmed on 31 March 1993 when the President of the Security Council agreed with the essence of Agenda for Peace. It highlighted the desire to better protect U.N. troops and personnel.³⁷² It failed to address whether the consent of the parties - a traditional peacekeeping factor - was still required. Even limited intervention without consent still represents the use of force. Naturally, any application of force will antagonize those who have not consented to a U.N. presence. The UNOSOM II force was established by 4 May 1993. Mere weeks after its deployment, on 5 June 1993, a Pakistani battalion was attacked. The incident undoubtedly revealed the loss of consent by the parties for the U.N. presence.

On 6 June 1993, the Security Council condemned the attack and charged the Secretary-General with taking all means necessary against those responsible for "publicly inciting such attacks."³⁷³ Neutrality and consent were henceforth thrown out the window. Doubts concerning the status of the UNOSOM were confirmed as the operation ceased to be peacekeeping in nature as

³⁷² United Nations, Note by the president of the Security Council, UN Doc. S/25493 (New York: United Nations, 31 March 1993).

³⁷³ United Nations, UN SC Res. 6 Jun/837, 3229th Mtg, UN Doc. S/RES/837 (New York: United Nations, 6 June 1993), p. 2.

the U.N. selectively targeted Aidid's forces. These actions epitomized an American trait:

There is an apparent need in American politics, and especially in American public opinion, to define policy objectives in terms of the relationship with a specific and personalized enemy. Recent examples are evident in the Gulf War, with the excessive rhetoric about Iraq and the description of Saddam Hussein as the new Hitler, but countless earlier examples can be found.³⁷⁴

Ultimately, these unjustified efforts failed. The U.N. altruistically invaded Somalia with a flawed and unreasonable mandate. Neutrality and consent were relinquished to stage a war against Aidid. Yet the price for Somali stability through the complete disarmament of the factions was too high for the international community.

The one redeeming legacy of the operation was a "degree of disarmament:"

The one tangible benefit UNITAF and UNOSOM II may leave behind is a degree of disarmament. Total disarmament is practically impossible and perhaps even unfair, but the elimination of heavy weapons and the registration of small arms should prevent serious territorial battles....Unless each of the 15 factions is assured of territorial integrity, none will accept a singular source of law from a central authority.³⁷⁵

During the first eight months of Operation Restore Hope, tons of weapons were destroyed or removed. In March and April 1993, UNITAF "confiscated about 150 handguns; more than 750 rifles; more than 200 machine-guns and an equal number of other heavy weapons such as rocket-launchers and mortars; nearly 50 armoured

³⁷⁴ Alton Frye, and David Leyton-Brown "The unipolar moment? cross-border perspectives," International Journal, XLVIII, No. 1 (Winter 1992-93), p. 28.

³⁷⁵ Stevenson, p. 153.

vehicles including tanks, armoured personnel carriers and self-propelled guns; more than 400 artillery pieces; almost 700 other weapons and 79,000 items of ordinance.³⁷⁶ The weapons represent the symptoms of strife, however, and not its causes.

The operation became lost in a more typical peacekeeping quagmire. While the United States had effectively agreed to maintain its presence until 1995, the 3 October "disaster" forced a quick turn-around. Seventeen Americans were killed in a firefight and the media presented devastating images of dead soldiers being dragged through the streets.³⁷⁷ Ironically, the media was not only a catalyst for the invasion but it ultimately caused its withdrawal. The U.S. government announced its intention to withdraw on 31 March 1994. Ultimately the U.N. failed in its mission of stabilizing the country beyond its immediate needs. Much of this failure stemmed from its strategic inadequacies and misguided applications of its legal role and responsibilities.

³⁷⁶ United Nations, Further Report of the Secretary-General Submitted in Pursuance of Paragraph 18 of Resolution 814 (1993), UN Doc. S/26317 (New York: United Nations, 17 August 1992), p. 6.

³⁷⁷ Bolton, p. 65.

Conclusion

The United Nations' intervention in Somalia failed because the international community could not impose an internal peace in the ravaged country. This can be explained by the duo-paradigm of law and strategy. The proposition is that United Nations must enact its strategic policies on the basis of sound legal principles. Somalia exemplified the commonality between the two disciplines whereby strategic decision-making should be inextricably linked to legitimate legal reasoning. The intervention in Somalia was antithetical to this proposition because the decision to intervene was made without due regard to the conflicting strategic and legal principles, adherence to which would either justify or prohibit its undertaking.

The post Cold War phenomenon of the new interventionism is based on a new just war premise that the international community will interfere in the internal affairs of states to prevent human rights violations. The principles of sovereignty and self-determination are obviated by the international community's self-perceived responsibility to save suffering peoples. Even a just war involve the use of means that are proportional to the goal. Crossing the threshold entails causing more damage than may be justified by the importance of the objective.

The desire to save human lives in Somalia was a just cause which could have been substantiated under international law despite the sovereignty violations. The initial American intent to provide a secure environment for the delivery of humanitarian relief met the essential Bettati criterion. It was generally limited in time, geography, objectives, and exercise. Most

importantly, it was oriented to the prevention of human suffering.³⁷⁸ While the de facto limited invasion of Somalia was forceful in terms of sovereignty and self-determination violations, the premise of a negotiated political settlement and the continual requirement of factional consent remained important limiting elements of the operation. The original American intent, however, contradicted the Secretary-General's aspirations to disarm the factions through force. This created strategic military confusion that undermined the mission and shattered the international community's expectations of the operation.

The proportionality test renders a different result when it is applied to the Clinton administration's handling of the crisis. The enlarged mandate to resurrect the nation, the hunt for Aidid, the increasing numbers of civilian casualties at the hands of "U.N. Peacekeepers" and the ultimate failure to impose peace pushed the operation's legitimacy to the limits. The proportionality threshold was crossed when the United Nations began Aidid hunting. The operation ceased to be peacekeeping in nature and became peacemaking. Peacemaking is a mere euphemism for war. The U.N. took sides and waged war on a particular non-state actor and then unrealistically expected to resume its peacekeeping role. The perpetuation of the conflict and the infliction of civilian damage ceased to make the war just or justifiable. The principles of positivist law embodied in the Charter also serve to undermine the justness of the endeavour.

³⁷⁸ Bettati, p. 6.

The United Nations' Charter provides that the Security Council may intervene in the domestic affairs of constituent members if it determines that there is a threat to international peace and security. Although the original intent of this Charter provision was to control the extra-territorial aspirations of lesser powers, the interpretation of threats to international peace and security was ultimately vested with the Security Council. The perception that civil war, famine, large-scale movements of refugees or the supply of arms by an extraneous party could constitute an international threat, is not beyond strategic or legal logic. The published facts pertaining to Somalia, however, do not support the Security Council's determinations. The actual threats to international peace and security were too remote to justify the use of any means necessary. The neighbouring states passively accepted the refugees, were rarely involved in Security Council deliberations and complained even more rarely. In fact, their dispositions were quite cooperative. The civil war was limited in scope. While it was often violent and even vicious, the armed factions were focused on themselves and not forceful extra-territorial expansionism. Legitimacy would not be maintained by using Chapter VII as a means to attain legal access to Somalia even though the true objective was protecting the relief operation.

The United Nations performed poorly as a grand strategic actor. It failed to understand that phenomenon of war by not addressing its own institutional inadequacies. The U.N. did not truly understand the Somali society or that the famine, civil war and banditry were symptoms of Somali politics and not causes.

Neither was the nature of the threat to international peace and security understood or dealt with adequately. If the threat emanated from the arms embargo or the refugee issues, then why were troops not stationed along the border? If the purpose was to protect relief supplies, then why was Chapter VII necessary? In truth, the effort required to impose peace - through forceful disarmament or even military victory - was not supported by the political will of the Americans.

From the perspective of grand strategy, the U.N. did not effectively use its resources advantageously to enable the maximum chance for victory or the need for war unnecessary. Nor did it look beyond the intervention to the peace that would ensue. This "threat" to international peace and security received relatively little attention by the international community until the Autumn of 1992 when the worst of the famine had ended and political reconciliation seemed tenable. The removal of Sahnoun and the failure to act more decisively made the Chapter VII intervention inevitable. If the only premise for this intervention was that the U.N. perceived a situation with which it could deal quickly and effectively, then it was proved wrong.

The delegation of authority by the Security Council in granting the Americans the ability to use all means necessary created a chasm of command and control whereby the Americans retained de facto strategic control of the entire operation. This made the resurrection mandate of the Clinton administration easier to assert. The maintenance of the Security Council's political objective and authority was far more tenuous than it should have been. Moreover, the negligible participation of the

MSC revealed the lack of strategic capability and understanding. Despite the Secretary-General's stated belief that the MSC should focus exclusively on Chapter VII operations, its involvement was minimal. Great authority was vested with Boutros-Ghali even though the operation seemed to perpetually dart between Chapter VI and Chapter VII. The Charter clearly distinguished between these two extremes for a purpose. Chapter VI is designed for peacekeeping and Chapter VII for war. This purpose was ignored and the disaster of Somalia resulted. Calling it peace enforcement does not negate its essence. The U.N. cannot wage war and then expect to engage in traditional peacekeeping. This confusion lasted throughout the operation even with the transition to UNOSOM II.

Moreover, the U.N. did not take into account the objectives of the opposing forces. The ultimate aim of using force is to neutralize the enemy's military. While the delivery of aid might have helped to stabilize the situation, the long term stability of Somalia was always in jeopardy because the warring factions would resort to their pre-intervention tactics once UNITAF left the country. The vague and ineffective military mandate reflected this inadequacy.

The lack of realistic and clear political objectives served to obscure the military mandate. Even though the original American conception of Resolution 794 was realized when a "secure environment" for relief operations was established, a clear understanding as to the point of withdrawal was not clearly articulated. Moreover, there were obvious discrepancies between the initial objectives of the Americans and the resolution's

references to the establishment of conditions necessary for political reconciliation.

The strategic precept that success will result if there is a firm concentration of force and speed was marginal evident. Designating a mercenary American operation allowed for the necessary application of force; but permitting the mercenaries to ultimately control political objectives was dangerous and counter-productive. Realistically, however, this was the requirement for American participation, and the attainment of any political objective would have otherwise been impossible. This fact merely highlights the United Nations' inability to enact, under its current operational structure, concerted independent strategic policy as a coalition of nations.

The U.N. must concretely deal with its grand strategic and legal objectives, establishing a threshold criterion for humanitarian intervention which is reasonable and balanced against the principles of sovereignty and self-determination. Even a just cause premised on natural law has limits. At a minimum, the criterion should be based on a clearer understanding and pronouncement as to what constitutes a threat to international peace and security. Somalia was not a strategic threat but the operation was costly in terms of lives and dollars. Current U.N. resources and consensus are tenuous at best:

Potential cases for intervention far outstrip available resources.... Intervention will have to be selective, and a moral principle applied unevenly will leave even well-intended international actors variously open to

charges of hypocrisy, cowardice, neglect or self-interest.³⁷⁹

Furthermore, the distinctions between Chapter VI and Chapter VII should be maintained. The inability to distinguish between the role of peacekeeper and the euphemistically described peace enforcer creates too much confusion. In peacekeeping operations, "... there is no enemy, and success depends on keeping it that way." In peace enforcement, "the U.N. determines an aggressor and sets out to defeat or deter it militarily. Therefore the U.N. may become the enemy."³⁸⁰ The wisdom of the Charter must be respected. Finally, the enactment of this grand strategy must coordinate and effectively utilize all military and non-military resources to either prohibit the need for force or enhance its undertaking.

The duo-paradigm of strategy and law serve to identify the actual frictions undermining the attainment of U.N. objectives. It reveals that the new interventionism is fundamentally flawed because the charter defined political objectives of sovereignty and humanitarian rights have not been prioritized. Moreover, the military means to attain these objectives are obscure because the differences between peacekeeping and peace enforcement are not understood. Their political and military objectives are, by definition, diametrically opposed to each other. The Somalia intervention has undermined the legitimacy of the United Nations because the objectives and means were incoherent, misapplied and unsuccessful. In the post Cold War Era, the continued support for

³⁷⁹ Stedman, p. 9.

³⁸⁰ *ibid.*, p. 11.

the U.N. will be premised on a perceived validity in its objectives and its means. Ultimate legitimacy, and perhaps the survival of the organization, will be based on its success. If the legitimacy of the United Nations is premised on the 'what' embodied in international law and the 'how' of strategy, redemption can only be found if the lessons are learned and the policies are corrected.

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