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The UN's Role in Transitions from War to Peace:

Sovereignty, Consent and the Evolving Normative Climate

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Note on the author

Introduction

The aspect of United Nations activity that has gained most attention in recent years relates to the progressive expansion of the Security Council's definition of what constitutes "a threat to the peace or breach of the peace"—the threshold for action under Chapter VII of the United Nations Charter. Yet as striking a development, and one that may have greater long-term impact, has occurred in the context of Chapter VI consent-based operations. While difficult experiences in Somalia and the former Yugoslavia tempered enthusiasm for peace enforcement among Member States, the UN continued to play a vital role conducting multidimensional consent-based operations in places as diverse as Cambodia, El Salvador, Mozambique and Eastern Slavonia.

The significance of these latter missions relates not only to their relative success, but also to their implications for our understanding of the permissible scope of external involvement in internal affairs. The parties to conflicts—including sovereign Governments—by requesting the UN to help implement difficult transitions from war to peace, in effect invite the UN to play a significant role in areas long viewed as the exclusive domain of domestic jurisdiction. In monitoring, helping to rebuild and in some cases actually undertaking state functions—all with the consent of the local actors—the UN is placed in a much more complicated relationship with the state in question than is the case for either traditional peacekeeping or peace enforcement. The operations are firmly based on consent, but by accepting the UN presence, the local actors consent to significant outside involvement in their sovereign affairs for the life of the peace process.[1]

This development, it shall be argued, was both influenced by and has profoundly shaped the normative climate in which the operations take place. It is in part because our conceptions of sovereignty have changed that local actors have been more willing (and have come under increased pressure) to accept this external involvement. At the same time, UN operations conducted to help implement a peace agreement are applications and implicit interpretations of the relevant norms embodied in the Charter and other legal instruments, and as such give meaning and precision to them in an evolving international climate.

This chapter traces that evolution by looking first at the expanding definition of threats to international peace and security employed by the Security Council. I will then consider the range and depth of activities undertaken by the United Nations pursuant to comprehensive peace agreements or other authority based on consent. The next section examines the meaning of consent in these circumstances, followed by a discussion of the broader normative context in which consent is granted and these operations take place. The chapter concludes with some observations about the strategic implications of this development for the United Nations, noting the opportunities, challenges and substantial risks it creates.

"Threats to the peace and breaches of the peace"

Ever since its reaction to Iraq's invasion of Kuwait in 1990, the Security Council has been employing a progressively more expansive interpretation of what constitutes a threat to international peace and security in relation to traditional notions of sovereignty.[2] The aftermath of the Gulf War itself was a key moment in this evolution, when the Security Council adopted resolution 687 in order to complete the work started by the military action to oust Iraq from Kuwait—namely to restore international peace and security in the region. The Gulf War cease-fire resolution, in addition to seeking redress for Iraq's act of aggression, also authorized unprecedented measures meant to constrain its *future* behavior, including provisions to eliminate Iraq's weapons of mass destruction and to control its nuclear, chemical, biological and long-range missile programmes.[3]

Three days after adopting resolution 687, the

Security Council declared in resolution 688 the flow of refugees caused by Iraq's repression of its minority populations to be a threat to international peace. Though not expressly adopted under Chapter VII, the United States, United Kingdom and France established "safe havens" and no-fly zones in Northern and Southern Iraq based on the resolution, paving the way to subsequent humanitarian action more explicitly under Chapter VII. A series of resolutions assigning a humanitarian role to peacekeepers in Bosnia followed shortly thereafter, which included authorizations under Chapter VII first to use "all necessary means" (i.e. force) to protect the delivery of humanitarian aid and subsequently to deter attacks on safe areas in Sarajevo, Srebrenica and four other locations.[4] This marked the first time Chapter VII was invoked for purely humanitarian purposes, although it was in the context of conflict that had an obvious international dimension once the Federal Republic of Yugoslavia had dissolved. Perhaps a more significant step conceptually came in Somalia, a purely internal conflict, where Chapter VII was invoked initially to help bring an end to the famine (UNITAF) and later to create a secure environment both for humanitarian relief efforts and to disarm the warring factions, and more generally to support political reconciliation and reconstruction of the country (UNOSOM II). That the relevant resolutions on Somalia passed without objection (and indeed the African members of the Council were the driving force behind them) was due in part to the fact that the principle of sovereignty was not seen to be at stake—in Somalia, a "failed state", there was no sovereign entity to override.[5] Operation Turquoise, the French-led intervention in Rwanda, did not set a new precedent in terms of pushing the boundaries of Chapter VII, because the threat to regional peace and security posed by the volatile situation in the country was clear. However, it came in the aftermath of the genocide and reinforced the sense that genocide virtually by definition is a "threat to the peace" that would justify action

under Chapter VII.

Perhaps the most significant step in terms of lowering the Chapter VII threshold came in Haiti, where Chapter VII was invoked to impose economic sanctions and authorize the use of force by a US-led multinational coalition. Conceptually, this went beyond Iraq, former Yugoslavia, Somalia and Rwanda because Haiti was not a failed state, there was a humanitarian crisis but not a catastrophe on the scale of the others, and the refugee flow, while a political problem for the US, was not a serious threat to international peace and security. The purpose of invoking Chapter VII was quite simply to authorize the use of coercive measures to restore a democratically-elected President. Then in 1997, the Security Council condemned the overthrow of an elected government in Sierra Leone and imposed sanctions, under Chapter VII, on the perpetrators of the coup. Although the Council never explicitly authorized the use of force to overturn the coup, when ECOWAS acted in early 1998, the Council welcomed the fact that the rule of the military junta had been brought to an end and commended the sub-regional organization. Following Haiti and Sierra Leone, one can reasonably ask whether the Security Council has given expression to a principle that the international community can now legitimately intervene, under Chapter VII, to reverse a coup d'état—at least when the coup comes in the aftermath of UN-monitored elections.

Most recently, in Kosovo, the Security Council has acted under Chapter VII of the Charter, albeit in the face of strong claims by some members of the Council that the matter is internal. The international community turned its attention to Kosovo in earnest in March 1998 when it imposed an arms embargo under Chapter VII in response to an upsurge in violence in Kosovo. The situation nevertheless deteriorated throughout the year, prompting a diplomatic effort by Richard Holbrooke that resulted in two agreements between the Federal Republic of Yugoslavia and the OSCE and NATO respectively, which provided for the deployment

of two verification missions, one on the ground and the other in the air. The Security Council endorsed the agreements and demanded under Chapter VII that the FRY authorities (as well as the Kosovo Albanian leadership) cooperate with the verifiers. Wrangling in the Council over the language of the resolution—and the right to intervene in a sovereign state—resulted in the following watered down authorization: "in the event of an emergency, action may be needed to ensure [the] safety and freedom of movement" of the verification missions.

The deployment of the missions, however, proved not to be enough to quell the violence. The campaign of repression by Yugoslav forces, culminating in a bloody massacre of 45 ethnic Albanians in Racak in January 1999, was met with intensified resistance on the part of the Kosovo Liberation Army. In an attempt to repeat the success of Dayton, the parties were brought together in Rambouillet, France under the co-chairmanship of the French and British Foreign Ministers. A last-ditch effort by US Secretary of State Albright induced the Kosovo Albanian side to sign the accord, but despite the threat of airstrikes, the Yugoslav delegation refused. On March 24, NATO launched the promised airstrikes, without Security Council authorization. A draft resolution condemning what the Federal Republic of Yugoslavia labelled "NATO aggression" was introduced a few days later, but lost by a vote of 12-3.

Looked at together, this series of decisions does signify an evolution in the Security Council's conception of permissible intervention in internal affairs, but the trend has not been linear. The painful experiences of Somalia and former Yugoslavia led to a notable reluctance on the part of Member States to risk the lives of their soldiers unless a compelling national interest was at stake (despite the horrific price of inaction demonstrated by Rwanda). Even in the cases of Haiti, Sierra Leone and Kosovo, the willingness to use force was not unequivocal.[6] Thus it would be wrong to suggest that contemporary practice in the Security Council signifies a complete erosion of the concept of

sovereignty. Despite the case-by-case evolution in its application, the general principle has not been rejected and indeed, it could be argued that recent practice demonstrates the continuing significance of state power and authority. An examination of the scope and nature of UN Chapter VI operations may well be a more fruitful line of inquiry for understanding our evolving conceptions of sovereignty. It is to those operations that I now turn.

Multidimensional operations

Consent-based multidimensional operations are typically deployed in two sets of circumstances: either to support the implementation of a comprehensive peace plan; or to support a process of reconciliation and re-establishment of effective government in the aftermath of a civil crisis.[7] In addition to military observers or troops, they often include police and civilian contingents, and their mandates may range from monitoring, to rebuilding and renovating state institutions, to assisting in and sometimes actually performing state functions. They invariably involve aspects of peace-building designed to address the root causes of conflicts and to prevent their recurrence.[8] These operations, firmly based on consent, are characterized by rather striking UN involvement in the workings of states in order to bring about major political and social transformations. Of course the relative successes and failures of the operations has varied, but it is noteworthy that such involvement—with the consent of the local actors—took place at all. Five areas stand out.

Demilitarization
The demilitarization functions in which the UN has engaged range from disarming and demobilizing warring parties, to helping to reintegrate ex-combatants into civilian society, and on the far end of the spectrum, reforming military establishments. Even the seemingly straightforward peacekeeping task of voluntary disarmament and demobilization has proven to be massively difficult, requiring a more

proactive role for the UN than simply "monitoring", for the simple reason that rendering itself militarily impotent is the most significant step a party to a peace agreement can take.[9] Assisting in the reintegration of ex-combatants takes the UN even deeper into the internal workings of a state as it can affect not only the distribution of power but also the distribution of wealth in a society. From countries that experience lengthy civil wars emerge war economies, where large segments of the population earn their livelihood from the conflict and indeed may not know any other way of life.[10] Their reintegration requires training, education and, to an extent, a redistribution of wealth in ways that can seem threatening to the established order.[11] Reforming and restructuring military establishments is even more disruptive to that order, especially in societies where the military has a long history of operating in relative freedom from civilian control. To succeed, as Berdal and Keen point out, "outside efforts to restructure armed forces [...] must be supplemented by more intrusive and long-term measures to monitor the workings of military establishments that have emerged from civil wars".[12]

Law and order
The most common "law and order" function performed by peace-keepers is to monitor local police forces and, if necessary, to train them in proper policing techniques. More intrusive are efforts to help create an entirely new police force, when the existing public security bodies are weak or corrupt beyond salvation. And in a few cases, UN police contingents have actually taken over some of the functions of the local police in order to maintain law and order. To a very limited extent, this was done in Cambodia, where UNTAC had powers of arrest and even held a number of people in custody for a limited period. It was also attempted in Somalia, where as part of the effort to capture General Aideed a few people were arrested (by military forces) and later released. There was talk in Bosnia of arming the International Police Task Force (IPTF) and endowing it with powers of arrest,

and in the refugee camps in what was then Zaire, the UNHCR turned to Zairian military and police forces to maintain law and order, aided by a number of foreign advisers serving as a "liaison support group".

Police functions of one sort or another are now a prominent feature of many UN operations with over 3000 officers deployed in ten missions, three of which were built around a police contingent (Haiti, Bosnia and Eastern Slavonia in Croatia). A recent study of the phenomenon has suggested that efforts to achieve sustainable security in a post-conflict societies ought to be geared not only at maintaining basic law and order but also "imbuing these structures of public security with an ethos of public service and impartiality, and to bolster societal mechanisms of accountability".[13] In that vein, the UN has devoted considerable effort and resources—through training, technical assistance and on-the-job supervision—to ensure that the civilian police forces it helps create understand and adhere to accepted policing standards and practices.

Human rights
UN human rights functions in the context of peacekeeping and peacebuilding may include monitoring and verifying on-going abuses; investigating past violations and imposing a measure of accountability for them; promoting institutional reforms to prevent future abuses; and prosecuting offenders in national or international tribunals.[14] El Salvador marked a turning point in this regard, where the first agreement reached by the parties was on human rights, an issue that not many years before would have been resisted strongly on sovereignty grounds and likely would have been left out of a peace agreement altogether. Instead, it served as the wedge that opened the door to the much broader political settlement that followed. And indeed, the fact that the human rights component of the mission (and the mechanisms established to ensure accountability for past crimes) did not undermine the peace process revealed that UN activism in this sphere

is not necessarily incompatible with its role as honest broker in political negotiations. In fact the El Salvador experience illustrates the symbiotic relationship between human rights and peace: on the one hand, the human rights agreement paved the way to the broader political settlement that followed; on the other hand, the demands of the peace process opened the door to deeper human rights accountability than either of the parties anticipated or may even have desired.[15] It should not be surprising, therefore, that most UN peace operations since ONUSAL (including in Abkhazia/Georgia, Angola, Bosnia, Cambodia, Eastern Slavonia, Guatemala, Haiti, Liberia, and Sierra Leone) have included human rights components.

Electoral assistance and political participation

UN functions here range from providing technical assistance; to coordinating national and international observers; to promoting electoral reform and helping to build institutional capacity; to observing, verifying or supervising elections; to actually organizing and conducting elections as part of a peace process.[16] Even the seemingly neutral act of observing an election has significant implications for the concept of sovereignty as it bestows legitimacy on the elected government. And indeed the demand for UN election-observation exceeds what the organization is prepared to supply, precisely because many Governments seek the international legitimacy the UN can confer.

The UN's electoral assistance work is part of a broader aim to promote and expand political participation. As the Secretary-General points out in his report on *The causes of conflict and the promotion of durable peace and sustainable development in Africa*, "elections must [...] be part of a long-term undertaking that will lead to a strengthening of national institutions and democratic processes".[17] Thus electoral reform, the building of institutional capacity and other measures designed to open political space feature in many operations. In both El Salvador and Mozambique, the UN helped to convert the

resistance movements into legitimate political parties; it is in the process of doing so in Guatemala; and it struggled to do so in Angola. In Cambodia, Reginald Austin, electoral chief of the mission asked about UNTAC: "Is it a political operation seeking a solution to the immediate problem of an armed conflict by all means possible? Or does it have a wider objective: to implant democracy, change values and establish a new pattern of governance based on multipartyism and free and fair elections."[18] The mandate of UNTAC was based on the belief that these goals are not mutually exclusive and indeed that the promotion of a more open and democratic culture was the surest way of securing lasting peace in Cambodia.

Local administration

In Cambodia, the UN actually had the authority to exercise control over critical aspects of local administration, namely defense, public security, finance, information and foreign affairs. Although it struggled to fulfill this "semi-trustee" role (mainly because the local administrative authorities were very good at not allowing themselves to be controlled), it is significant that not since the United Nations Temporary Executive Authority in what is now Irian Jaya had the UN tried anything remotely comparable. UNTAES, the mission established to oversee the peaceful reintegration of Eastern Slavonia into Croatia, also had important executive responsibilities relating to civil administration, the functioning of public services and the reintegration of public institutions under the authority of the Transitional Administrator.

Most UN missions do not have such direct control over national and local administrative machinery, but they have exercised indirect influence through verification, technical assistance and advisory functions. Thus in El Salvador, ONUSAL personnel engaged in what the mission termed "active verification", which meant not only investigating cases, but also uncovering structural defects in the justice system, recommending remedies, assisting low-level police and court officials in doing their jobs

and pressuring high level officials to adopt reforms in the entire system. In so doing, it effectively made itself a factor in the administrative life of the country—a non-threatening peacebuilding technique that was tolerated though not always appreciated by the authorities.[19]

Another technique the UN has sought to use to promote good administration is by reaching out to civil society. Formal mechanisms established in El Salvador (the National Commission for the Establishment of Peace) and Guatemala (an Assembly of Civil Society and the Commission to Follow up on the Implementation of the Peace Agreements) were designed to facilitate the participation of civil society in the respective peace processes. Most UN operations engage in education and information campaigns to promote public awareness of the goals of the peace process, and the Lessons Learned Unit of the Department of Peace-keeping Operations has spoken of the importance of "indirect peace-building": "the resurrection of a web of non-governmental, civic, professional, business and other associations".[20] By engaging civil society, the hope is that institutions, habits and attitudes will be left behind to carry through on the peacebuilding work started by the UN.

Other key aspects of UN peacekeeping and peacebuilding include the repatriation and resettlement of refugees and displaced persons (one need only look to Bosnia and the Great Lakes to see how intimately connected this is to the internal political dynamics of post-conflict societies) and the coordination of economic reconstruction and rehabilitation. As it happens, none of the peace agreements the UN has been charged with monitoring and helping to implement have called for radical economic reforms or wealth redistribution, although the El Salvador agreements do include a limited land transfer programme and the Guatemala agreements a somewhat more extensive programme of agrarian and socio-economic reform.[21] However, having learned an important lesson from the El Salvador experience, the UN has gone to considerable lengths to ensure that

structural adjustment and austerity programmes do not inhibit implementation of the peace accords by diverting scarce resources from institution-building and other measures needed to consolidate peace.[22] Thus in Guatemala, the peacemakers have worked closely with the UN system, the Bretton Woods institutions and other donors to ensure that their programmes are consistent with the peace plan. The United Nations Peace-Building Support Office in Liberia (UNOL) and the United Nations Observer Mission in Sierra Leone (UNOMSIL) consult regularly with key partners—including the Bretton Woods Institutions—in their peace-building efforts. And in a broader effort to strengthen coordination throughout the UN system, the Administrative Committee on Coordination (composed of the heads of all programmes, funds and agencies) recently agreed on the concept of a "strategic frame-work" for complex crises, designed to bring more coherence to the entire range of UN activities—political, humanitarian, human rights and development. Afghanistan was identified as a pilot project and, under the chairmanship of the Deputy Secretary-General, a strategy for that country has been formulated with the involvement of all UN political and operational partners.

All of these activities suggest a rather striking relationship between the international community and the state in question, well-summarized by Adam Roberts:

What is emerging in the post-Cold War era is not a formal doctrine of trusteeship but rather a modest, tentative and pragmatic international involvement in aspects of government in many countries, in collaboration with local and national authorities and often in connection with an on-going United Nations peacekeeping operation.[23]

Trusteeship is indeed too strong a word to describe what the UN has been doing, although the Kosovo crisis has prompted talk in media and academic circles about establishing an

international protectorate there as an interim arrangement pending final resolution of the region's status. Even in the UN context, however, it is clear that involvement in human rights, the reform of public security bodies, elections and other peacebuilding activities, indicate a wide role for the Organization in the management of social and political transitions required for the settlement of internal conflicts.[24] It is not enough, in trying to understand the implications of this phenomenon for the concept of sovereignty, simply to point to the fact that the UN was invited to play this role: the meaning of "consent" in these circumstances is altogether different from consent to a traditional peace-keeping operation.

UN operations and sovereign consent

In multidimensional operations, the UN's role, even if technically limited to verification of a peace agreement, is necessarily more proactive than that term would suggest. Because of the complexity of the mandates and multiplicity of the local actors involved, the level of cooperation can vary throughout the life of the peace process.[25] Moreover, no matter how comprehensive the peace agreements (the Guatemala accords run to some 250 pages), they cannot possibly provide for every contingency or completely define the scope of UN involvement. Implemented over an extended period, gaps in the accords materialize, problems of interpretation arise and circumstances change. The original consent granted is necessarily open-ended and in part a gesture of faith that later problems can be worked out on a consensual basis.[26] Multidimensional operations ultimately are designed to transform the political and institutional landscape in the societies where they are deployed. In the circumstances, the UN sometimes finds itself in the awkward position of being "more royalist than the king", insisting on full compliance more strenuously than the parties themselves. It is justified in doing so precisely because the transformative nature of

comprehensive peace processes means the UN's responsibility is to the society as a whole, and not only to the immediate signatories of the accords.[27]

Moreover, granting consent in these circumstances is rarely an act of pure volition. As Kofi Annan wrote when he was Under-Secretary-General for Peacekeeping Operations, "the decision of the parties to grant consent is never taken in a vacuum. It is, rather, a function of the alternatives."[28] UN mediation and monitoring will be called for if and when the parties believe the only alternative is military stalemate. When outside pressure to settle is added to the mix, as it was in Dayton, Ohio, then the notion of volition becomes even less meaningful. In January 1999 the Secretary-General suggested that the threat of force was necessary to bring about a negotiated settlement in Kosovo.[29] Indeed, the negotiations in Rambouillet took place under the shadow of airstrikes threatened against the Serbs and the Kosovo Albanian delegation only signed under intense diplomatic pressure. Thus if an agreement had been reached at the time, it would have been "consent-based" only in the broadest definition of that term. Short of the Dayton and Kosovo scenarios, more indirect pressure is often brought to bear by "contact groups" and "groups of friends"—a technique of peacemaking which has become so popular that some variation on the theme exists in almost every UN peace process.[30] These groups often remain engaged through the implementation and peacebuilding phase, exercising leverage either in the form of sticks or carrots. Kofi Annan, in distinguishing what he calls positive from coercive inducements, identifies two categories of the former: "civic action" aimed at gaining the goodwill and cooperation of the population; and "peace incentives" intended as leverage to further the reconciliation process by offering rewards to erstwhile antagonists.[31] Positive inducements can help shape and reinforce consent during a peace process and can help ensure that cooperation comes not only from the immediate parties to the conflict but from all political actors with a

stake in—or capacity to disrupt—a peace process.[32]

The fine line between consent and coercion in multidimensional operations is illustrated by UNTAES. Based on a peace agreement that was clear in its objective—the peaceful reintegration of the Eastern Slavonia, Baranja and Western Sirmium region into Croatia—but short on detail, the parties requested the Security Council to establish a "transitional administration" to govern the region for a 12 month period (subsequently extended). The Transitional Administrator had authority to impose decisions on the parties, backed up by a 5000 strong peacekeeping force and the looming presence of NATO deployed nearby in Bosnia.[33] Thus although UNTAES was based on the formal consent of the parties, what they consented to essentially was to submit to the executive authority of the Transitional Administrator for the life of the operation. This authority, used sparingly but effectively, was critical to UNTAES' success.

Normative developments

In addition to the internal dynamics of a peace process and overt pressure from outside, the international normative climate has contributed to the apparent willingness of sovereign entities to accept such extensive outside involvement in their affairs. At the end of World War II, international peace and security was conceived largely in terms of the military threat states posed to one another. The UN Charter, however, contains the seeds of a much broader conception of security—that of human security, a term the Secretary-General has used often in describing the UN's current mission. Established primarily to prevent the "scourge of war", the UN's objectives also include the promotion of human rights, justice and respect for international law, as well as "social progress and better standards of life in larger freedom". How the UN has gone about fulfilling these multiple missions since 1945 has been determined by the broader international climate in which it oper-

ates. The various post-Cold War Chapter VII interventions cited above would not have been possible had the normative climate not been ripe. But that normative climate did not change overnight when the Berlin Wall came down. One has to trace developments back further to fully understand the state of contemporary peace operations.

The United Nations was not conceived as a legislative body (although its decisions on specific disputes are binding), but as the world's only truly universal forum, it has come to play an important role in creating, shaping, and defining international law. The most obvious way in which it has done so is by generating multilateral treaties, such as the Law of the Sea Convention or the Nuclear Non-proliferation Treaty, which were negotiated under UN auspices. As relevant to this analysis is the recommendatory authority of the General Assembly, under Article 10 of the Charter. General Assembly declarations and resolutions have a prescriptive impact either as a reflection of custom or by serving as authentic interpretations of the Charter or general principles of international law—the unanimously adopted Declaration on Friendly Relations among States (1970) is often cited in making this point. As Jonathan Charney states:

customary law is still created in the traditional way, but the process has evolved in recent years to a more structured method, especially in the case of important normative developments. Today, rather than practice and opinio juris, multilateral forums often play a central role in creating and shaping contemporary international law [...] Today, developments in international law often get their start or substantive support from proposals, reports, resolutions, treaties and protocols debated in such forums. That process draws attention to rules and helps shape and crystallize them.[34]

Others argue that the weight of this so-called "instant custom" has been exaggerated by those who are anxious to escape the bounds of sover-

eign consent in norm-creation and recognition,[35] and indeed a vote for a General Assembly resolution should not in itself be understood as evidence of an enduring commitment to the norm embodied in the resolution.[36] It is significant, however, that the International Court of Justice in both the Nicaragua case (1986) and its Advisory Opinions on the legality of nuclear weapons (1996) looked to UN resolutions more than state practice and opinio juris to ascertain whether relevant law existed. Ultimately, whether these resolutions and declarations are viewed as "soft" or "hard" law, they form part of the normative climate within which peace agreements are negotiated and implemented. They are evidence of a standard of behaviour around which a consensus exists or is emerging and as such have an impact on the way the international community—including the parties to conflicts—reacts to circumstances meant to be covered by the norm.

Perhaps the most dramatic international normative development since the founding of the UN has been in the field of human rights. The adoption of the Genocide Convention and Universal Declaration of Human Rights in late 1948 spawned an impressive list of legal instruments, including the Geneva Conventions on humanitarian law, the Convention on Elimination of Racial Discrimination, the International Covenants on Civil and Political Rights/Economic, Social and Cultural Rights, the Convention on Elimination of all Forms of Discrimination against Women and the Convention Against Torture. These were accompanied by important regional developments like the adoption of the Helsinki Final Act (1975), and the Santiago Commitment to Democracy and the Renewal of the Inter-American System (1991). Within the UN system, the struggle against apartheid in South Africa, the 1993 Vienna Conference on Human Rights, the re-invigoration of the Commission on Human Rights, the establishment of two war crimes tribunals for Rwanda and former Yugoslavia, and the adoption in 1998 of a Statute for an International Criminal Court served to pro-

gressively elevate human rights to near the top of the international peace and security agenda. (The last is especially important as it means that, from the moment the Court is established, all peacemaking will take place in its shadow.[37])

Meanwhile, the appointment of Mary Robinson, a former Head of State, has invigorated the human rights activities of the Secretariat, and indeed in his proposals for reform of the Organization in July 1997, the Secretary-General identified human rights as a cross-cutting theme that must inform all the work of the UN.[38] Indeed, the Office of the High Commissioner for Human Rights currently conducts field operations in a number of countries, and during 1997-98, it carried out some 45 technical cooperation projects in over 25 states, as well as a number of regional and global level projects. The UNDP recently adopted a policy document on human rights and has entered into an agreement with the OHCHR to facilitate its efforts to integrate human rights concerns in development assistance. UNICEF has adopted a rights-centered approach, guided in particular by the Convention on the Rights of the Child.

The Secretary-General himself has raised the profile of human rights, invoking the theme repeatedly and with vigour in his speeches and public statements. A significant measure of how far the normative climate has evolved is the positive reception of the following statement made by the Secretary-General at the Summit of the Organization of African Unity in 1997:

I am aware of the fact that some view [the concern for human rights] as a luxury of the rich countries for which Africa is not ready. I know that others treat it as an imposition, if not a plot, by the industrialized West. I find these thoughts truly demeaning, demeaning of the yearning for human dignity that resides in every African heart.[...] So I say this to you, my brothers and sisters, that human rights are African rights, and I call upon all of you to ensure that all Africans are able fully to enjoy them.[39]

At the World Economic Forum in Davos in January 1999, the Secretary-General issued a challenge to the international business community, calling on firms "to enhance, support and enact a set of core values" in the areas of human rights, labour standards and environmental practices—explicitly chosen because they are areas in which fundamental values have been enshrined in and defined by international agreements.[40] It is no longer seen as exceptionable, or even exceptional, when human rights issues are raised across the range of UN activities from peacemaking and peace-keeping to the Organization's relations with the private sector.

Concern for human rights was the harbinger of a more general reconsideration of what may threaten domestic and international peace. Political participation and democracy have, in the view of some analysts, emerged as "rights" under international law and have come to be seen as fundamental to peace and stability.[41] Article 25 of the International Covenant on Civil and Political Rights provides that every citizen shall have the right to take part in the conduct of public affairs and to vote in genuine periodic elections.[42] And in the early 1990s, the General Assembly approved guidelines to govern UN election-monitoring missions and the establishment of a central coordinator for this function within the Secretariat, the Electoral Assistance Division in the Department of Political Affairs.[43] These and other developments within the UN system aimed at promoting democratization[44] came against the backdrop of a growing body of academic literature linking democratic forms of governance to peace, both inter- and intra-state.[45]

Commenting on the even broader concept of good governance, the Secretary-General in his 1998 Annual Report on the Work of the Organization stated "we now recognize more clearly than ever the crucial linkages between poverty, bad governance and the abuse of human rights, on the one hand, and violent conflict on the other".[46] Since its inception,

UNDP has provided technical assistance designed to strengthen the capacity of the state and in January 1997, "governance" was specifically confirmed as one of the UNDP's priorities. As part of its governance programmes, the Department of Economic and Social Affairs in the Secretariat is compiling an inventory of its governance projects. The World Bank, in a significant development, established a unit in its bureaucratic structure to deal with post-conflict reconstruction and in its 1997 World Development Report, devoted to *The State in a Changing World*, enunciated a strategy to:

raise state capability by reinvigorating public institutions. This means designing effective rules and restraints, to check arbitrary state actions and combat entrenched corruption. It means subjecting state institutions to greater competition, to increase their efficiency. It means increasing the performance of state institutions, improving pay and incentives. And it means making the state more responsive to people's needs, bringing government closer to the people through broader participation and decentralization.[47]

This focus on the effectiveness of government has been matched by a concern about what the Secretary-General has called the forces of "uncivil society"—terrorism, drug trafficking and transnational crime—the profile of which were raised by the recent Special Session of the General Assembly to examine the global drug problem and related threats. It is now conventional wisdom that these problems are global and can only be combatted through collective action, and the UN Office for Drug Control and Crime Prevention is being strengthened and re-focussed to meet these challenges.

Developments in the field of disarmament are also noteworthy. The indefinite extension of the Nuclear Non-proliferation Treaty, the adoption of the Chemical Weapons Convention and the Comprehensive Nuclear Test Ban Treaty, and the steps to strengthen the verification and

enforcement provisions of the Biological
Weapons Convention represent a significant
acceleration in multilateral control of weapons
of mass destruction. Ultimate responsibility for
enforcement of all of these treaties resides with
the Security Council—a role assigned by the
treaties themselves. The "taboo" against weap-
ons of mass destruction was reinforced at the
Security Council summit in January 1992,
where the Heads of State and Government
acknowledged that the proliferation of these
weapons was a threat to international peace and
security. The action against Iraq and the
statements of the Security Council on North
Korea's threat to withdraw from the Nuclear
Non-proliferation Treaty and the nuclear tests
by India and Pakistan (and disarmament
generally) suggest that the Security Council is
taking its commitment at the Summit seriously.[48]
The normative environment has also been
affected by two Advisory Opinions of the
International Court of Justice casting doubt on
the international legality of nuclear weapons.

The evolution in the field of weapons of
mass destruction has been matched by some
dramatic developments in conventional arms
control. The astonishingly quick adoption in late
1997 of the Anti-Landmines Convention, which
has already gained the 40 ratifications necessary
for it to come into force, reveals a determination
in the international community (though not all
Governments feel equally strongly) to outlaw
these weapons. New initiatives on small arms
trafficking are underway, which could strike
even closer to the heart of sovereignty given the
sanctity with which the right to bear arms is
held in some countries.[49] And in reacting to the
Secretary-General's report on Africa, the
Security Council adopted a resolution designed
to stem what it called "the destabilizing effect of
illicit arms flows, in particular small arms".[50]

UN operations and the evolving nor-
mative climate

UN Charter-based principles, values and poli-
cies—elaborated over the years in treaties,

resolutions, declarations, judicial opinions and
state practice—have found their way repeatedly
into peace agreements and the resulting peace-
keeping and peacebuilding operations. This was
not coincidental. Sovereignty-based objections
to outside interference, while still potent, are
less prevalent. Few Governments today, for
example, would argue that massive and system-
atic human rights abuses (which could lead to
conflict) are a purely internal matter. If accused
of such violations, they are more likely to stake
a claim of innocence on the facts rather than the
non-existence of relevant law (they would say
"we didn't do it" rather than "it's none of your
business").

The balance of power on the ground and the
pursuit of maximum advantage are the key
determinants of any peace negotiations, but the
normative climate provides a framework in
which the negotiations take place—generating
expectations and conceptions which are shared
by actors who inhabit the same normative
world. The process of course is not simply a
matter of the parties agreeing on certain norms
and arranging their relationship accordingly. It is
much more dynamic and complex. Arguments
that are consistent with global normative
standards are more likely to find favour in the
international community and are more likely to
win support for the party that makes them.
Conversely, if credibility in the international
community matters to a party, it will make
concessions to that community's normative
standards—as long as its vital interests are not
fatally compromised. Thus, in El Salvador, the
Government ultimately agreed to the extensive
human rights aspects of the peace accords in
part because its international credibility
depended on it.

This evolving normative climate, it should be
added, has influenced not only peacekeeping and
peacebuilding missions, but the entire range of
UN operational activities. The Secretary-
General's initiatives in Algeria and Nigeria—at
the invitation of the respective Governments—
are cases in point. His public involvement in the
first began with a statement made by his

Spokesman on 29 August 1997 regretting the "horrendous" loss of life in the country, and calling on the people of Algeria to build a "just and democratic society grounded in respect for human rights and fundamental freedoms". The next day, he said in answer to a question at a press conference:

We are dealing with a situation which for a long time has been treated as an internal affair, and yet as the killing goes on and the numbers of victims rise, it is extremely difficult for all of us to pretend that it is not happening, that we do not know about it and that we should leave the Algerian population to their lot. I think that as compassionate human beings, as people with conscience and moral concerns, I think we are all moved and concerned by what is happening in Algeria. Words may not be enough but it is a beginning to let the victims know that third parties care and sometimes it gives them courage [...] I hope we can find ways and means of encouraging the parties to cease the violence.

What followed was a dialogue with the Government that led to an invitation to a Panel of Eminent Persons established by the Secretary-General to visit the country, in order to "gather information on the situation in Algeria and present a report to him which he will make public". The Panel went to the country in late July, its report was delivered to the Government on 14 September and it was made public on 16 September.

In Nigeria, the Secretary-General's involvement in that country's transition to democracy dated to his early contacts with the Head of State, General Abdulsalami Abubakar, successor to General Abacha. At the invitation of General Abubakar, the Secretary-General visited the country in early July where he met among others Chief Abiola, the imprisoned putative winner of the 1992 elections, who died tragically only a few days after the Secretary-General left. The Nigerian Government subsequently announced its programme for the

transition to democracy and Presidential elections won by Olusegun Obasanjo took place in February 1999, with the handover to civilian rule scheduled to be completed by May. Meanwhile, on 18 September 1998, the Government agreed for the first time to a visit in November by the Special Rapporteur on Nigeria appointed by the Human Rights Commission.

Initiatives such as these, in the words of a UN official writing in the pages of a UN publication, represent virtually unprecedented involvement in the innermost political workings of a Member State:

[They] have pushed the limits to which the UN has traditionally hewed in offering multilateral diplomacy as a channel which simultaneously addresses a country's internal difficulties and its frayed international ties. These efforts can yield enormous dividends for peace, but while always carefully calibrated with key UN actors, they carry considerable risks for Mr. Annan's personal standing.[51]

It is too early to judge the long-term impact of the Secretary-General's initiatives in these cases, but it can safely be said that neither of them would have been possible in a different normative climate.

Finally, it should be emphasized that while UN operational activities are affected by the normative climate, they also give content to the prevailing norms and, case-by-case, push the normative boundaries. Because certain standards and rules are common to many peace operations, a body of practice surrounding them has developed and their status as global norms has been reinforced.[52] The most obvious example is the rules of engagement of peacekeeping, technical assistance, humanitarian and other kinds of missions, which constitute a body of internal law that tends to reach beyond the specific operations to which they apply. In a sense every operation established pursuant to a resolution of a UN organ is an application and interpretation of the UN Charter and other relevant law.[53] Either through a rational

application of lessons learned, or the inertial force of precedent, what seems to work in one operation will often be tried in the next. As a result, demonstrably successful cases of international intervention (or at least interventions that do not manifestly fail) reinforce inchoate norms.

Conclusion

The UN is, among other things, a forum where states meet to forge and give expression to values that govern attitudes and expectations about the requirements of peace. It is also a place where those values are put to the test in practical operations. The changing normative climate has affected UN efforts to manage transitions from war to peace, opening up new opportunities—and creating substantial risks. The UN simply does not have the capacity to respond effectively to every demand for its services, and moreover those demands are not always based on a genuine desire for peace. Drawing the UN into a conflict is often used by one or the other party to relieve less welcome pressure from other sources. The Organization must be careful not to allow its involvement to be used as a screen behind which parties hide or as an opportunity to play international efforts off against each other. Nor can it be used as an excuse for inaction by other external actors who may be better placed to make a difference.

Thus the UN must be strategic in choosing when it becomes involved in a conflict—an invitation from the parties in itself is not enough—and when it does become involved, it must necessarily do so proactively. Even a comprehensive peace agreement is only a road map; judgement must continually be exercised in travelling the road mapped out. Reconciling the demands of peace and justice, for example, is as much a challenge for implementation of these agreements as it is for their negotiation. The timing of elections in relation to other aspects of a peace process (such as disarmament) can make the difference between a return to war and peace, as transitions to democratic governance

can in the short term be divisive. Post-conflict reconstruction and economic rehabilitation require a balance between the long-term needs of development and the short to medium term demands of shoring up a fragile peace process. The UN and international community must judge when its peacebuilding work is done—when it can safely withdraw and resume normal development and assistance activities without risk of the country sliding back into war.[54] Conversely, how to react when a peace agreement goes wrong is a major normative challenge for the UN. Can it withdraw in good conscience, leaving the country to its fate, or does it have an obligation to see the process through, shifting into a Chapter VII mode if necessary?

Sometimes the UN must be " more royalist than the king", insisting on compliance more strenuously than the parties themselves, because in transformative peace processes, the parties narrowly defined are not the only ones with a stake in the process. If the UN is going to take the risky step of "second-guessing" the local actors, it must be guided by principle and not expedience. Moreover, recent experiences in Somalia, Bosnia, Rwanda and elsewhere have demonstrated that performance in the field does not always match the ideals of the UN Charter. The UN—the Security Council, the Secretariat and field missions—will be held accountable (in the court of international public opinion, if nowhere else) for their acts and omissions.

Ultimately, lasting peace cannot be imposed even when coercive intervention may be justified. Authentic reconciliation must come from within. The UN can play a role in these transitions, not by supplanting the sovereign actors but by encouraging moderate indigenous forces and helping to build institutions and shape attitudes necessary for self-sustaining peace. From time to time, this may require active involvement in sovereign processes. That these consent-based operations do often touch on the core of sovereignty is a measure of the growing consensus on the basic norms that govern global interdependence. By situating its efforts in the

increasingly firm bed of international law, the UN is more likely to gain local agreement to its involvement and better able to sustain the commitment of the international community to peacebuilding until the work of consolidating peace is done.

Notes

[1] In the words of Thomas Franck, the UN in these operations aims at nothing less than "the civic restructuring of societies destroyed by civil war". Thomas Franck, "A Holistic Approach to Building Peace", p. 275 in *Peacemaking and Peacekeeping for the New Century*, Olara Otunnu and Michael Doyle eds. (Lanham Maryland: Rowman and Littlefield Publishers, Inc.: 1998).

[2] The evolution of the concept of sovereignty in relation to threats to peace has been the subject of a large body of literature in recent years. See for example, Oscar Schachter "Sovereignty and Threats to Peace", in Thomas Weiss ed. *Collective Security in a Changing World* (Boulder: Lynne Rienner Publishers, 1993), p. 19-44; Adam Roberts, "Humanitarian War: Military Intervention and Human Rights", *International Affairs* 69, No. 3 (1993); Thomas Weiss, "Intervention: Whither the United Nations?", *Washington Quarterly* 17:1, pp. 109-28; John Ruggie, "Wandering in the Void: Charting the UN's New Strategic Role" *Foreign Affairs*, vol. 72, no.5 Nov/ Dec. 1993; James Mayall, *The New Interventionism 1991-94: UN Experience in Cambodia, Former Yugoslavia and Somalia* (Cambridge: Cambridge University Press, 1996); Michael Glennon, "The New Interventionism: The Search for a Just International Law", *Foreign Affairs*, Vol. 78, No.3, May/June 1999, p.2; Sean D. Murphy, *Humanitarian Intervention: The UN in an Evolving World Order,* 1998.

[3] For an analysis of resolution 687 and its implications, see Ian Johnstone, *Aftermath of the Gulf War: An Assessment of UN Action* (Boulder: Lynne Rienner Publishers, 1994).

[4] Security Council resolutions 770 (13 August 1992) and 836 (4 June 1993). Despite the expectations generated by its name, the United Nations Protection Force (UNPROFOR) had neither the authority nor the means to protect or defend the civilians in the safe areas and indeed the words "protect" and "defend" do not appear in the relevant Security Council resolutions. Rather, UNPROFOR was expected by its presence to deter attacks and, if necessary, to use force (including the right to call in NATO airstrikes)—acting in "self-defence"—in reply to bombardments, armed incursion or obstruction of freedom of movement of UNPROFOR or humanitarian convoys. This tortured language suited its diplomatic purpose but was largely unimplementable as a practical mandate. Shashi Tharoor and Ian Johnstone, "The Humanitarian Security Dilemma in United Nations Peacekeeping", (forthcoming chapter in *Aspects of Peacekeeping*, D.S. Gordon ed.), p.xxx.

[5] On failed states, see Gerald Helman and Steven Ratner, "Saving Failed States", *Foreign Policy*, No. 89, Winter 1992-93, pp. 3-20.

[6] As Adam Roberts points out, the US-led intervention in Haiti took place only after an agreement was signed in Port-au-Prince between former US President Jimmy Carter and the military-installed President Emile Jonaissant which provided a basis for the US military role there. A. Roberts, *Humanitarian Action in War*, Adelphi Paper 305 (Oxford: Oxford University Press, 1996), pp.19-31, at p. 24. See also, David Malone, *Decision -Making in the UN Security Council: The Case of Haiti*, (Clarendon Press, Oxford, 1998), especially Chapter 2, "The Rise and Decline of Security Council Activism". In Sierra Leone, the Security Council never explicitly authorized the use of force by ECOWAS. And in Kosovo, NATO did not act for close to a year from when it first threatened airstrikes and, when it did, several members of the Council objected strongly.

[7] UN operations in the following places loosely fall into one or the other category: Angola, Cambodia, Eastern Slavonia, El Salvador, Guatemala, Haiti, Mozambique, Namibia and Western Sahara. Bosnia, Central African Republic, Liberia, Nicaragua, Sierra Leone and Tajikistan are also relevant to this analysis.

[8] The Secretary-General, in his report on "The causes of conflict and the promotion of durable peace and sustainable development in Africa" (A/52/871 - S/1998/318, 13 April 1998), states that peace-building "may involve the creation or strengthening of national institutions, monitoring elections, promoting human rights, providing for reintegration and rehabilitation programmes, and creating conditions for resumed development" (para. 63). Later in the report, he identifies a number of priorities for peace-building: "encouraging reconciliation and demonstrating respect for human rights; fostering political inclusiveness and promoting national unity; ensuring the safe, smooth and early repatriation and resettlement of refugees and displaced persons; reintegrating ex-combatants and others into productive society; curtailing the availability of small arms; and mobilizing the domestic and international resources for reconstruction and economic recovery" (para. 66).

[9] Barbara Walter, *Designing Transitions from Violent Civil War*, Institute on Global Conflict and Cooperation, University of California, 1997. For a

more thorough account of this phenomenon, see Mats Berdal, *Disarmament and Demobilization After Civil War,* Adelphi Paper 303, International Institute for Strategic Studies (London, Oxford University Press, 1996). See also, Chris Alden, "The issue of the Military: UN Demobilization, Disarmament and Reintegration in Southern Africa", *International Peacekeeping,* Vol.3, No. 2, Summer 1996.

[10]The combatants in civil wars often have a deep economic stake both in a continuation of the conflict and in resisting the changes brought about by a peace agreement. See Mats Berdal and David Keen, "Violence and Economic Agendas in Civil Wars: Some Policy Implications", *Millennium: Journal of International Studies,* 1997, Vol. 26, No.3, pp. 1 - 23.

[11]Thus the land transfer programme in El Salvador, which was meant primarily as a vehicle for reintegrating ex-combatants into the civilian economy, was seen by some of the elite as a land-reform programme—something they strongly and successfully resisted in the negotiation of the peace accords. See Graciana del Castillo, "The arms-for-land deal in El Salvador", in Michael Doyle, Ian Johnstone and Robert Orr, eds. *Keeping the peace: Multidimensional UN operations in Cambodia and El Salvador* (Cambridge: Cambridge University Press, 1997), pp. 342-67.

[12]Berdal and Keen, *supra* note 12, at p. 22.

[13]Robert Oakley, Michael Dziedzic and Eliot Goldberg eds, *Policing the New World Disorder: Peace Operations and Public Security* (Washington D.C.:National Defense University Press, 1998), p. 524.

[14]For a persuasive account of the essential complementarity of these and various functions, particularly monitoring and institution-building, see *Honoring Human Rights: From Peace to Justice, Recommendations to the International Community,* by Alice Henkin ed. (The Aspen Institute, 1998) (hereinafter, Aspen II). The argument is set out succinctly in the introductory chapter by Thomas Hammarberg and Patrick Gavigan, at pp. 19-20.

[15]Ian Johnstone, *Rights and Reconciliation: UN Strategies in El Salvador,* (Boulder: Lynne Rienner Publishers, 1995), at p.14.

[16]The UN supervised the elections for Namibia's independence in 1989, which were organized and conducted by South Africa. Nicaragua was the first major UN election-observation mission in an independent state. It was followed by observer missions in Angola, El Salvador, Eritrea, Haiti, Liberia, Mozambique and South Africa—most of which were in the context of peace processes. The UN actually organized and conducted elections in Cambodia and Eastern Slavonia, and has responsibility for conducting a referendum in Western Sahara.

[17]*Report of the Secretary-General on the causes of conflict and the promotion of durable peace and sustainable development in Africa* (hereinafter, Secretary-General's Report on Africa), para.78. The Secretary-General went on to say that the real test of a democratization process is not the organization of first elections, but whether those first elections are followed by others in accordance with an agreed electoral timetable. (para.78).

[18]Quoted in Doyle, Johnstone and Orr eds, *Keeping the Peace,* at p.383. Indeed the promotion of "a system of liberal democracy, on the basis of pluralism" was an explicit objective of the Cambodia peace agreements. Shashi Tharoor, in a forthcoming article on the future of civil conflict concludes by asking whether instead of looking at post-conflict military interventions, the international community should not be devoting more attention to the promotion of democracy and pluralism around the world. Shashi Tharoor, "The Future of Civil Conflict", *World Policy Journal,* Vol. XVI, No.1, Spring 1999, p. 11.

[19]Similar opportunities for this kind of involvement, on a smaller scale, may arise in the Central African Republic, under the authority of the Special Representative's mandate "to provide advice and facilitate technical assistance in the areas of good governance and the rule of law". S/RES/1159 (1998), para. 14 (e).

[20]*Multidisciplinary Peacekeeping: Lessons from Recent Experience,* Lessons Learned Unit, United Nations Department of Peacekeeping Operations, December 1996, p. 42. One analyst has argued that peacebuilders should establish and if necessary directly fund citizen organizations and associations that cut across cleavage lines in order to prevent exclusionist groups from monopolizing political life. Roland Paris, "Peacebuilding and the Limits of Liberal Internationalism", *International Security,* Fall 1997, vol.22, no.2, p.82. See also, Susan Willet, "Ostriches, Wild Old Elephants and Economic Reconstruction in Mozambique", *International Peacekeeping,* Vol. 2, No.1 (Spring 1995), pp. 34-55.

[21]For this reason, the rather blistering critique of UN peace-building by Roland Paris is off the mark. He argues that such efforts have for the most part reflected a strategy of economic liberalization—what he calls "an enormous experiment in social engineering—and experiment that involves transplanting Western models of social, political and economic organization into war shattered states in order to control civil conflict"—and, for that reason, have largely failed. Roland Paris, "Peacebuilding and the Limits of Liberal Internationalism", *id.* at p. 56. In

fact, most of the cases he cites involve the implemen-
tation of peace agreements that manifestly do not
contain large economic components and thus do not
give the UN an opening to pursue such a strategy
even if it wanted to.

²²Alvaro de Soto and Graciana del Castillo, "Obstacles
to Peacebuilding", *Foreign Policy*, No. 94 (Spring
1994).

²³A. Roberts, "Communal Conflict as a Challenge to
International Organization: The Case of the Former
Yugoslavia", p. 46 in *Peacemaking and Peacekeeping
for the New Century*, Olara Otunnu and Michael
Doyle eds., (Lanham Maryland: Rowman and
Littlefield Publishers, 1998).

²⁴Tom Farer and Felice Gaer, "The UN and human
rights: at the end of the beginning", in Adam Roberts
and Benedict Kingsbury (eds.), *United Nations:
Divided World* (Oxford: Clarendon Press, 1993), p.
290.

²⁵William Durch, "Keeping the Peace: Politics and
Lessons of the 1990s", in William Durch (ed), *UN
Peacekeeping, American Policy and the Uncivil Wars
of the 1990s*, (New York: St. Martin's Press, 1996),
p.7.

²⁶Johnstone, *Rights and Reconciliation in El Salvador,*
p. 77.

²⁷Doyle, Johnstone and Orr, *Keeping the Peace:
Multidimensional UN operations in Cambodia and El
Salvador,* p. 383.

²⁸Kofi A. Annan, "Challenges of the New Peacekeep-
ing", in *Peacemaking and Peacekeeping for the New
Century,* Olara Otunnu and Michael Doyle eds, p.
172.

²⁹The Secretary-General's actual words were: "I am
pushing hard for a political settlement. If force
becomes necessary we will need to look at that. The
threat is essential" (as reported by Associated Press,
28 January 1999). In a telling lead editorial, *The
Economist* magazine suggested in January 1999 that a
solution in Kosovo would mean "not only deploying
armed peacekeepers to police whatever cease-fire
agreement were eventually reached, but setting out an
internationally agreed formula for the political future
of the federation and *then putting intense pressure on
the parties to accept it*". [emphasis added]. "Outrage in
Kosovo", *The Economist*, January 23 - 29, 1999, pp.
17-18. And indeed a senior official associated with the
talks over Kosovo to take place in Rambouillet,
France was quoted as saying "a compromise accord is
likely to be presented to the parties and basically
imposed upon them, which credible threats directed
toward both sides". Quoted in "Kosovo Negotiators
Will Look To Impose a Quick Settlement", by Steven
Erlanger, *The New York Times*, p. A10, Feb. 4, 1999.

³⁰Afghanistan, Angola, Cambodia, Central African

Republic, El Salvador, former Yugoslavia, Georgia,
Guatemala, Haiti, Liberia, Mozambique, Sierra Leone,
Tajikistan and Western Sahara.

³¹Annan, "Challenges of the New Peacekeeping", in
Peacemaking and Peacekeeping for the New Century,
pp.175-76.

³²On the concept of "enhanced consent", see Doyle,
Johnstone and Orr in *Keeping the Peace*, pp. 386-87.

³³The Security Council, in resolution 1037 (1996),
authorized NATO to "take all necessary measures" to
defend or help withdraw UNTAES if necessary and
requested IFOR and UNTAES to cooperate with each
other.

³⁴Jonathan Charney, "The Role of IGOs in Global
Governance", in Charlotte Ku and Thomas Weiss eds.,
Towards Understanding Global Governance,
ACUNS Reports and Papers, 1998, No.2, p. 61. For a
fuller presentation of his argument, see Jonathan
Charney, "Universal International Law" *American
Journal of International Law*, Vol. 87: 529-51 (1993).
See also, Oscar Schachter, "The UN Legal Order: An
Overview", in Christopher Joyner ed., *The United
Nations and International Law* (Cambridge:
Cambridge University Press) who states (at p. 6):
"The traditional case-by-case process of customary
law cannot meet the necessity for common action to
deal with the numerous problems raised by
technological developments, demographic and
environmental impacts, changing attitudes as to social
justice, or the many requirements of international
business. While all of these matters could be dealt
with by multilateral treaties, the treaty processes are
often complicated and slow, whereas UN resolutions
can be more readily attained."

³⁵Brad Roth, "Whatever Happened to Sovereignty?
Reflection on International Law Methodology", in
Chu and Weiss eds., *id.* at p.73.

³⁶Adam Roberts and Benedict Kingsbury, *Presiding
over a Divided World: Changing UN Roles, 1945-
1993* (Boulder: Lynne Rienner Publishers, 1994), pp.
64-65.

³⁷How to reconcile the potentially conflicting goals of
peace and justice has challenged peacemakers for
years, and various approaches have been attempted.
Prosecution and punishment of all human rights
offenders is deemed essential by some, while others
argue that something less may be necessary in certain
circumstances, fearing that the zealous pursuit of
justice may jeopardize peace by provoking a reaction
from those who fall within the law's net. For a
comprehensive examination of these issues, see Aryeh
Neier *War Crimes: Brutality, Genocide, Terror and the
Struggle for Justice*. (New York: Times Books/
Random House, 1998).

³⁸"Renewing the UN: A Programme for Reform", A/

51/950, 14f July 1997, Section V (F). For a critique of the way the UN organizes, manages and finances human rights field operations, seen Alice Henkin ed.. *Honoring Human Rights and Keeping the Peace: Lessons from El Salvador, Cambodia and Haiti* (Aspen Institute, 1991). In a follow-up volume, the authors suggest that many of these deficiencies were corrected as a result of the structural changes brought about by the Secretary-General's reform package, but that work still needs to be done to strengthen the capacity of the Office of the High Commissioner for Human Rights to conduct field operations. Aspen II, *supra* n.14, at pp. 22, and 27-28.

[39] *Address to the Annual Assembly of Heads of State and Government of the Organization of African Unity, Harare*, 2 June 1997 (SECRETARY-GENERAL/SM/6245). In a similar vein, he said at the end of 1997 in Tehran "human rights are the foundation of human existence and co-existence...Human rights are universal, indivisible and interdependent...Human rights are what make us human. They are the principles by which we create the sacred home for human dignity. It is the universality of human rights that gives them their strength. ". *Address at the University of Tehran on Human Rights Day*, 10 December 1997 (SECRETARY-GENERAL/SM/6419).

[40] *Address to the World Economic Forum in Davos, Switzerland*, 31 January 1999 (SECRETARY-GENERAL/SM/6881).

[41] See Thomas Franck, "The Emerging Right to Democratic Governance", *American Journal of International Law*, Vol. 86 (1992); Gregory Fox, "The Right to Political Participation in International Law", *Yale Journal of International Law*, Vol. 17: 539, 1992. More generally, the Secretary-General has stated "democratic government helps guarantee political rights, protect economic freedoms and foster an environment where peace and development can flourish. Report of the Secretary-General on "The causes of conflict and promotion of durable and sustainable peace in Africa", para. 77.

[42] 999 UNTS 171, art. 25. Most regional human rights conventions contain similar provisions. See the American Convention on Human Rights, Article 23; the African Charter on Human and Peoples' Rights, Article 13; The First Protocol of the European Convention on Human Rights, Article 3; Council on Security and Cooperation in Europe Accords, Copenhagen Document 29 ILM 1305 (1990), Charter of Paris for a New Europe, 30 ILM 190 (1991) and the Moscow Document, 30 ILM 1670 (1991).

[43] A/ 46/609 (1990). GA Res. 46/137.

[44] For an overview of those developments, see Report of the Secretary-General, "Support by the UN System of efforts of Governments to promote and consolidate new or restored democracies". A/53/554, 29 October 1998.

[45] The literature (drawing on Immanuel Kant's *Perpetual Peace*) begins with Michael Doyle, "Kant, Liberal Legacies and Foreign Affairs", 12 *Philosophy and Public Affairs* 205 (1983). See also, M. Doyle "Liberalism and World Politics", *American Political Science Review* Vol. 80, No.4 (Dec. 1986), pp. 1151-69; M. Doyle, *Ways of War and Peace* (New York: W.W. Norton and Co., 1997) ; David Lake, "Powerful Pacifists: Democratic States and War", *American Political Science Review*, Vol. 86, No.1 (March 1992), pp. 24-37; Samuel Huntington, *The Third Wave: Democratization in the Late 20th Century*; Boutros Boutros-Ghali, "Democracy: A Newly Recognized Imperative", *Global Governance*, Vol. 1, No.1, p.3.

[46] Report of the Secretary-General on the Work of the Organization, A/53/1 (1998), para. 72. See also paras. 71-78 of the Secretary-General's Report on Africa.

[47] *World Development Report 1997: the state in a changing world*, Summary, p.3 (Washington D.C.: World Bank, 1997).

[48] The response of the international community to the nuclear tests in South Asia was by no means unequivocal, however. At the 53rd session of the General Assembly, a resolution was adopted deploring the tests, but a number of countries from Asia and Africa sought to introduce amendments linking it to a broader call on all states to fulfill their obligations under the CTBT and the NPT, including the five declared nuclear weapons powers who are committed by the NPT to make progress towards nuclear disarmament. These amendments were narrowly rejected, while the resolution itself was passed by a vote of 98-6 with 31 abstentions.

[49] International efforts are aimed at arms trafficking rather than domestic possession, but even the former would likely require rules on registration if illicit trade is to be effectively tracked. The Department of Disarmament Affairs has been designated focal point within the UN system to coordinate all action on small arms.

[50] S/RES/1209, 19 Nov. 1998.

[51] Salim Lone, "Annan intensifies UN involvement in African crises", *Africa Recovery*, United Nations Department of Public Information, Vol. 12, No.1 (August 1998), pp. 1 and 16. Mr. Lone also refers to the Secretary-General's initiatives in Iraq and the Democratic Republic of the Congo.

[52] Gregory Fox has described the process well in arguing that a "right to political participation" is now sufficiently determinate to constitute an international law largely because its constituent elements have been defined and refined in thirty-five years of UN

election-monitoring reports, as well treaties, decisions of the United Nations Human rights Committee and other legal instruments. Gregory Fox, "The Right to Political Participation in International Law", *Yale Journal of International Law*, Vol. 17: 489, 1992, p.607.

[33]As Oscar Schachter states, "Applying and interpreting law take place continually throughout the UN system. In many fields, they are the main way in which law develops, whether case by case, or by new rules that add more specific meaning to existing law. [...] In practice, interpretation is generally required in applying text to actual cases. But unlike judicial interpretation, UN interpretation does not usually have an adjudicative character. The task faced by most bodies is practical and instrumental—that is, to prepare a plan of action or to recommend state behavior to achieve a goal...Interpretation is implicit in the measures adopted, which are centered largely on the relations between means and ends in the specific contexts". Oscar Schachter, "The UN Legal Order: An Overview", in Christopher Joyner ed., *The United Nations and International Law*, p.9. For an analysis of the theory and practice of interpretation in international law, which emphasizes the significance of "interpretive communities", see Ian Johnstone, "Treaty Interpretation: The Authority of Interpretive Communities", *Michigan Journal of International Law,* Vol. 12, No.2 (Winter 1991).

[34]On the need for sustained peace-building, see Stephen John Stedman and Donald Rothchild, "Peace Operations: From Short-Term to Long-Term Commitment", *International Peacekeeping*, Vol. 3, No.2, Summer 1996.