

THE ROLE OF THE UN SECURITY COUNCIL IN PROTECTING HUMAN RIGHTS IN CRISIS SITUATIONS: UN HUMANITARIAN INTERVENTION IN THE POST-COLD WAR WORLD

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I.	INTRODUCTION	2
II.	DUTIES AND POWERS OF THE SECURITY COUNCIL UNDER THE UN CHARTER	3
III.	THE EVOLUTION OF SECURITY COUNCIL RESOLUTIONS DESIGNED TO PROTECT HUMAN RIGHTS	4
	A. <i>Resolution 678 and the Gulf War: A First Step Towards UN Humanitarian Intervention</i>	5
	B. <i>Resolution 688 and the Post-Gulf War Situation in Iraq: Severe Human Rights Deprivations Threaten International Peace and Security</i>	6
	C. <i>Resolution 794 and the Somali Crisis: Internal Human Rights Violations Warrant Humanitarian Action</i>	7
	D. <i>Resolution 940 and the Haitian Situation: The Purest Form of Humanitarian Intervention to Date</i>	9
IV.	CONFLICTS BETWEEN THE SECURITY COUNCIL AND UN MEMBER STATES OVER UN HUMANITARIAN INTERVENTION	11
	A. <i>The Legal Debate</i>	12
	B. <i>The Political Debate</i>	13
V.	CONCLUSION	14

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I. INTRODUCTION

The events of the last five years—the razing of the Berlin Wall, the reclamation of independence by the former satellite states of Eastern Europe, and the disintegration of the Soviet Union—have surprised us all. These historic milestones not only brought freedom to millions of people and an end to the Cold War but also triggered self-satisfied claims that the West had won that war along with premature assertions that a New World Order had arrived. The first claim is clearly wrong. As Dean Rusk remarked a year ago at a University of Georgia conference on U.S. Security Interests in the 1990s, “I hope that no one will leave here thinking that we won the Cold War. We merely survived it.”¹ The second assertion is, to say the least, problematic. As Hugo Caminos of the Organization of American States has observed, “the New World Order is nothing other than the [United Nations (UN)] Charter working [sometimes] as envisaged by its framers in 1945.”²

At the end of previous wars, the victorious powers presided over reorganizations of territorial boundaries and relations between states, as illustrated by the Peace of Westphalia in 1648, the Congress of Vienna in 1814-1815, the Versailles Conference in 1919, and the San Francisco Conference in 1945.³ The conclusion of the Cold War likewise presented a once-in-a-lifetime opportunity for the nations of the world, acting individually, collectively, and through the UN, to restructure the existing international legal order to help achieve the two principal purposes of the UN: the maintenance of international peace and security and the promotion and encouragement of human rights and fundamental freedoms. After the collapse of communism, however, nations failed to take advantage of such dramatic opportunities. The vast majority of states, including the United States, has remained content merely to fine-tune the system as it previously existed rather than revise the rules and revamp the institutions in place as we entered the last decade of the twentieth century. Such fine-tuning—if indeed that does not overstate the case—seems woefully inadequate to meet today’s needs. According to Mikhail Gorbachev, “[L]eaders

1. Dean Rusk, Remarks, *U.S. Security Interests in the 1990s*, RUSSELL SYMPOSIUM PROCEEDINGS 5 (1993).

2. Hugo Caminos, Remarks, 87 AM. SOC'Y INT'L L. PROC. 41, 42 (1993).

3. The U.N. Charter was drafted by the United Nations Conference on International Organization which was held at San Francisco from April 25 to June 26, 1945.

squandered the opportunity [to restructure the system] after World War II and led us into the dark period of the cold war. We cannot miss now, or this historic window of opportunity will close.”⁴

It is trite to state that both the break-up of the Soviet Union⁵ and the removal of repressive regimes in Eastern Europe have replaced one set of problems with another. The threat of communist expansion and the fear of nuclear annihilation may have been eliminated but, in their place, military conflicts and humanitarian crises have emerged within these and other states. Such conflicts and crises have been spawned by old, but until recently, repressed racial and religious hatreds, as well as by the ambitions of national leaders and local warlords who are no longer restrained by their superpower mentors. The former Yugoslavia, Somalia, and Haiti are current cases in point, but other examples exist and similar ones are sure to surface.

The problems generated by the end of the Cold War have produced a vast outpouring of learned and popular literature. It is not my intention to survey all of these problems or debate the various positions taken by scholars and commentators. Rather, I intend to concentrate on one important and highly-controversial topic: the role of the UN Security Council (Security Council or Council)⁶ in protecting human rights in crisis situations.

II. DUTIES AND POWERS OF THE SECURITY COUNCIL UNDER THE UN CHARTER

The UN Charter imposes general duties upon both the Security Council and UN Member States. Under Article 24(1) of the Charter, Members “confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”⁷ In carrying out these duties, the Security Council “shall act in accordance with the Purposes and Principles of the United

4. Douglas Mattern, *No Time to Squander*, N.Y. TIMES, Feb. 13, 1994, at E14.

5. In addition to Russia, nine new states have emerged from the former Soviet Union.

6. The Security Council consists of fifteen Members of the U.N., five of which are to be Permanent Council Members. These Permanent Members—namely, the United States, the United Kingdom, France, Russia, and China—often are referred to as the “Permanent Five.” U.N. CHARTER art. 23, ¶ 1. The ten remaining Non-Permanent Members are elected by the U.N. General Assembly. *Id.*

7. U.N. CHARTER art. 24, ¶ 1.

Nations.”⁸ Under Article 25, Members in turn “agree to accept and carry out the decisions of the Security Council.”⁹

The specific powers granted to the Security Council which enable it to discharge its duties are found, in part, in Chapter VII of the UN Charter, Article 39 of which provides:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.¹⁰

Article 41 authorizes the Security Council to order economic sanctions against states that have violated Article 39, while Article 42 permits it to order military action including “demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”¹¹ Finally, under Article 48(1) of Chapter VII, the Security Council may determine whether the action required to carry out its decisions is to be taken by all or only some of the UN Member States.¹² Even though the Charter does not specifically grant the Council the authority to initiate economic sanctions or military intervention to protect human rights in crisis situations, such inherent power recently was validated by Resolution 794, adopted in December 1992 in response to the Somali crisis.¹³

III. THE EVOLUTION OF SECURITY COUNCIL RESOLUTIONS DESIGNED TO PROTECT HUMAN RIGHTS

Over the years, the Security Council has not exercised its powers extensively against aggressor states or states that have engaged in gross and persistent violations of their citizens' human rights.¹⁴ The

8. *Id.* art. 24, ¶ 2.

9. *Id.* art. 25; *see also id.* art. 48(1) (stating that the Security Council has the power to determine which Member States shall be authorized to carry out its decisions).

10. *Id.* art. 39.

11. *Id.* art. 42.

12. U.N. CHARTER art. 48, ¶ 1.

13. *See infra* part III.C.

14. Exceptions to the Security Council's historic pattern of inactivity include the Korean War and the Gulf War.

reason for this inaction was the ever-present use or threatened use of the veto by one or more of the Council's Permanent Five.¹⁵ In a few selected cases, however, the Council, acting pursuant to Article 39, has found a state's violations of human rights to constitute a threat to the peace and has consequently adopted mandatory sanctions against that state. The first case occurred in 1966, when the Council imposed mandatory, albeit selective, economic sanctions against Southern Rhodesia.¹⁶ Eleven years later, the Council again invoked the "threat to the peace" rationale in order to impose a mandatory arms embargo against South Africa.¹⁷ Until the Gulf War and its aftermath, however, the threatened use of the veto power effectively prevented the Council from taking forcible action against states whose human rights violations took place primarily or exclusively within their borders.

A. *Resolution 678 and the Gulf War: A First Step Towards UN Humanitarian Intervention*

With the end of the Cold War and the perceived diminishing need of Russia and the United States to exercise their veto power, opportunities emerged for the Council to take or authorize action under Articles 41 and 42 against both aggressor states and states engaging in severe internal human rights violations. Such an opportunity arose after Iraq invaded and occupied Kuwait. The Council, by adopting Resolution 678, reaffirmed that Iraq had committed a breach of the peace and authorized Member States "to use all necessary means to uphold and implement [its resolutions concerning the invasion] and to restore international peace and security in the area."¹⁸ This relatively straightforward Resolution demonstrated that the Council finally could act as its founding fathers had intended.

15. U.N. CHARTER art. 27, ¶ 3.

16. S.C. Res. 232, U.N. SCOR, 23d Sess., 1428th mtg. at 5, U.N. Doc. S/Res/253 (1968).
See generally VERA GOWLLAND-DEBBAS, COLLECTIVE RESPONSES TO ILLEGAL ACTS IN INTERNATIONAL LAW: UNITED NATIONS ACTION IN THE QUESTION OF SOUTHERN RHODESIA (1990).

17. S.C. Res. 418, U.N. SCOR, 32d Sess., 2046th mtg. at 2, U.N. Doc. S/Res/418 (1977).
See RICHARD B. LILICH, INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE, 541-63 (2d ed. 1991).

18. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg. at 1, U.N. Doc. S/Res/678 (1990).

B. *Resolution 688 and the Post-Gulf War Situation in Iraq: Severe Human Rights Deprivations Threaten International Peace and Security*

More subtle and innovative was the post-Gulf War Resolution 688, designed to protect Iraqi citizens, primarily Kurds, from further repression by their own government.¹⁹ Noting the Council's responsibilities for the maintenance of international peace and security—an implied reference to Chapter VII—the Resolution expressed concern that Iraq's actions had “led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region.”²⁰ The Resolution, demanding that Iraq cease its repressive acts and permit immediate access by international relief organizations to persons in need of assistance, contained no express reference to Chapter VII, nor did it specifically authorize the military coalitions to create the “safe havens” which were subsequently established.²¹

The precedential value of Resolution 688 remains controversial among international lawyers. David Forsythe²² and Kelly Pease,²³ for instance, maintain that “[t]he Security Council for the first time in its history stated a clear and explicit linkage between human rights violations materially within a state and a threat to international security.”²⁴ They conclude that “the Council clearly has the legal authority to authorize armed action, or lesser coercive measures, to correct human rights violations materially within a territorial state.”²⁵ Peter Malanczuk,²⁶ on the other hand, contends that “the resolution cannot be cited as precedent for the proposition that the Security Council views a massive, but purely internal human rights violations as such, without transboundary effects, as a direct threat to international

19. S.C. Res. 688, U.N. SCOR, 46th Sess., 2982d mtg. at 1, U.N. Doc. S/Res/688 (1991).

20. *Id.*

21. *Id.*

22. Professor, College of Arts & Science, Department of Political Science, University of Nebraska.

23. Doctor of Philosophy, University of Nebraska.

24. Kelly K. Pease and David P. Forsythe, *Human Rights, Humanitarian Intervention, and World Politics*, 15 HUM. RTS. Q. 290, 303 (1993).

25. *Id.* at 304.

26. Professor of Law, University of Amsterdam; Chairman, Department of International Relations and Public International Law, University of Amsterdam.

peace and security.”²⁷ Consequently, he does not believe the Resolution to be precedent “for the authorization of the use of force by the Security Council to protect human rights in such circumstances.”²⁸ While Malanczuk’s more cautious conclusions at first appeared persuasive, Resolution 688 has in fact proved to be ground-breaking in that it was the first time that the Council had characterized severe human rights deprivations having minimal external effects as a threat to international peace and security.

C. *Resolution 794 and the Somali Crisis: Internal Human Rights Violations Warrant Humanitarian Action*

The critical normative landmark validating UN humanitarian intervention for human rights purposes was Resolution 794 of December 3, 1992, in which the Security Council authorized the use of force “to restore peace, stability and law and order” to Somalia.²⁹ After first determining that “the magnitude of the human rights tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitute[d] a threat to international peace and security,” the Council resolved “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.”³⁰ To achieve these objectives, the Council, this time specifically invoking Chapter VII of the UN Charter, authorized both the Secretary-General and cooperating Member States “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.”³¹

It is noteworthy that Resolution 794 makes no mention of then-existing or potential effects of the Somali crisis—such as the increasing flow of refugees—on neighboring states. The focus of the debates that preceded the Resolution likewise was not on the impact of refugee flows on contiguous states but on the violence and vandalism in

27. P. MALANCZUK, *HUMANITARIAN INTERVENTION AND THE LEGITIMACY OF THE USE OF FORCE* 17-18 (1993).

28. *Id.* at 18.

29. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145 mtg. at 2, U.N. Doc. S/Res/794 (1992).

30. *Id.*

31. *Id.* at 3.

Somalia.³² While the participants in the debate clearly recognized that the situation in Somalia had external repercussions, the opinion of the Security Council was that the internal situation, in and of itself, warranted action.³³

Even though the Somali crisis differed both factually and legally from Iraq's repression of its Kurdish peoples, the Security Council clearly saw common ground between Resolutions 688 and 794—specifically, that internal disorders producing severe and widespread human rights deprivations justify forceful action under the threat to the peace rationale. Accordingly, the U.S. representative, in voting for Resolution 794, noted that although the Council's immediate objective was to resolve the Somalia crisis, "[T]he international community is also taking an important step in developing a strategy for dealing with the potential disorder and conflicts of the post-Cold War world."³⁴

While, as Tom Farer notes, nothing that took place in San Francisco in 1945 "suggests that the parties [to the UN Charter] envisioned a government's treatment of its own nationals as likely to catalyze a threat or breach triggering potential Security Council action under Chapter VII,"³⁵ the above-mentioned Security Council resolutions, along with the resolutions the Council has adopted in connection with the former Yugoslav Republic³⁶ and Haiti,³⁷ have put a gloss on the phrase threat to the peace. They also have influenced the attitudes and expectations of many UN Member States with respect to the legitimacy, if not the likelihood, of UN or UN-authorized humanitarian intervention in crisis situations. These changes following the end of the Cold War have come as an unexpected, and in some cases an unwelcome, surprise to many Member States. Although they appear to be de facto amendments of the Charter by the Security Council permitting humanitarian intervention by the UN (or by regional

32. *Id.* at 2.

33. Susan M. Crawford, *U.N. Humanitarian Intervention in Somalia*, 3 *TRANSNAT'L L. & CONTEMP PROB.* 273, 291 (1993).

34. U.N. SCOR, 47th Sess., 3145th mtg. at 36, U.N. Doc. S/PV.3145 (1992).

35. Tom J. Farer, *An Inquiry into the Legitimacy of Humanitarian Intervention*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 185, 190 (Lori Fisler Damrosch & David J. Scheffer eds., 1991).

36. *See, e.g.*, S.C. Res. 757, U.N. SCOR, 47th Sess., 3082d mtg. at 2, 3 U.N. Doc. S/Res/757 (1992).

37. S.C. Res. 841, U.N. SCOR 48th Sess., U.N. Doc. S/Res/841 (1993).

organizations or Member States pursuant to UN authority), these changes, in my opinion, are consistent with the constitutional evolution of the UN Charter. For, to paraphrase Chief Justice Charles Evans Hughes' remarks about the U.S. Supreme Court's role in interpreting the U.S. Constitution, the international community is bound by the UN Charter, but the Charter is what the Security Council says it is.³⁸

D. Resolution 940 and the Haitian Situation: The Purest Form of Humanitarian Intervention to Date

The situation in Haiti, which came to a head in the months immediately following the delivery of the Deutsch Lecture that became this Article, eventually gave rise to the most recent, and perhaps most important, instance of UN-authorized humanitarian intervention. Recall that the military junta that ousted Haiti's freely elected President, Jean-Bertrand Aristide, from office in 1991 ruled that impoverished country with the proverbial iron fist, relying upon murder, disappearances, torture, and intimidation to maintain itself in power. The efforts of the Organization of American States (OAS) and UN economic sanctions had very little effect upon the military and the business establishment that supported it. Thus, it had been argued for some time that "only a surgical lancing of the Haitian military carbuncle has a reasonable chance of breaking the army's hold and, simultaneously, or restoring the democratic initiative. An intervention could also bring to an end the massive suffering of the Haitian people."³⁹ By mid-1994, the question of whether a humanitarian intervention should be mounted and, if so, what type—UN, OAS, or U.S. unilateral—was much debated.⁴⁰

Eventually, somewhat reluctantly, the Clinton Administration took the matter to the UN Security Council and secured the adoption of Resolution 940,⁴¹ a far-reaching one that pushed past the Council's previous normative landmark—Resolution 794 on Somalia⁴²—to authorize what arguably is the purest UN humanitarian intervention to

38. BARTLETT'S FAMILIAR LEGAL QUOTATIONS 700 (1980).

39. Rotberg, *What Now in Haiti?*, BOSTON GLOBE, Dec. 29, 1993, at 15, cols. 4-6.

40. Compare Trainor, *Clinton Should Send Troops to Haiti*, BOSTON GLOBE, May 16, 1994, at A11, cols. 2-4, with Editorial, *No Good Reason to Invade Haiti*, N.Y. TIMES, July 13, 1994, at A18, cols. 1-2.

41. S.C. Res. 940, U.N. SCOR, 49th Sess., 3413th mtg. at 1, U.N. Doc. S/Res/940 (1994).

42. See Resolution 794, *supra* note 29.

date. In Resolution 940, the Council, after expressing its grave concern with "significant further deterioration of the humanitarian situation in Haiti, in particular the continuing escalation by the illegal de facto regime of systematic violations of civil liberties," determined that "the situation in Haiti continues to constitute a threat to peace and security in the region" and, invoking Chapter VII of the Charter,

authorize[d] Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti.

The code phrase "all necessary means," taken from Paragraph 2 of the Gulf War Resolution⁴³ and Paragraph 10 of Resolution 794 on Somalia,⁴⁴ constituted an authorization by the UN of forcible intervention, should it be needed, to put an end to the gross human rights violations going on in Haiti. While there is a passing reference in the third preambular paragraph to "the desperate plight of Haitian refugees"—a nod in the direction of an international element to support the finding of "a threat to peace and security in the region"—the reference to "systematic violations of civil liberties," the operative language quoted above, the overall structure and phrasing of the Resolution, and the context in which it was adopted all combine to suggest that the Security Council was concerned almost exclusively with the worsening human rights situation within the country. Thus, despite the fact that it contains the by now obligatory references to "the unique character of the present situation" and to its "complex and extraordinary nature, requiring an exceptional response," Resolution 940 represents a significant general precedent for UN-authorized humanitarian intervention,⁴⁵ especially

43. See Resolution 688, *supra* note 18.

44. See Resolution 794, *supra* note 29.

45. Undoubtedly, persons wishing to limit the precedential value of Resolution 940 will emphasize the sixth preambular paragraph, which refers to two letters from the recognized Haitian government of President Aristide. They requested the U.N. "to take prompt and decisive action" to implement the so-called Governors Island Agreement and specifically noted the "agreement" of President Aristide with the draft text that was adopted as Resolution 940. Thus, in the mind of some observers, "intervention" may be too strong a description of an action based upon at least the tacit consent, if not the express invitation, of the de jure government concerned.

since the September 1994 occupation of Haiti by U.S. forces has turned out to be so successful and, therefore, a model for future such UN-authorized actions.⁴⁶

In short, then, Resolution 940, recently followed up by Resolution 975, replacing the U.S.-led multinational force with a 6,000-troop UN military mission,⁴⁷ further develops the legal framework for UN humanitarian intervention and underscores the proposition that when there is the political will, the UN possesses all the authority it needs to protect human rights in crisis situations.

IV. CONFLICTS BETWEEN THE SECURITY COUNCIL AND UN MEMBER STATES OVER UN HUMANITARIAN INTERVENTION

Heartening as it is to see the Security Council, freed from its Cold War shackles, embracing the doctrine of UN-sanctioned humanitarian intervention, it should not be overlooked that the Council, as the key player in this area, does not necessarily reflect the views of many UN Members. As Michael Reisman⁴⁸ reminds us, "The United Nations system was essentially designed to enable the Permanent Five, if all agree, to use Charter obligations and the symbolic authority of the organization as they think appropriate to maintain or restore international peace, as they define it."⁴⁹ A Council decision based on the "threat to the peace" rationale

expands the Charter's contingencies for action under Article 39 and engages the full authority of the United Nations, yet it need not be financed through the general budget and, hence, is not subject to control by the General Assembly. As such, [it] may aggravate certain latent tensions between the Permanent Five and the rest of the United Nations.⁵⁰

46. See generally Jackson, *America's Long, Slow, "Rush" to Invade Haiti*, BOSTON GLOBE, Sept. 14, 1994, at 15, cols. 1-3; Lewis, *Question of Power*, N.Y. TIMES, Sept. 24, 1994, at A5, cols. 5-6.

47. S.C. Res. 975, U.N. SCOR, 50th Sess., 3496th mtg. at 1, U.N. Doc. S/Res/975 (1995).

48. Hohfeld Professor of Jurisprudence, Yale Law School.

49. W. Michael Reisman, *Peacemaking*, 18 YALE J. INT'L L. 415, 418 (1993).

50. *Id.* at 421.

Such tensions, both legal and political, in fact have surfaced recently over the *Lockerbie* case.⁵¹

A. *The Legal Debate*

In the *Lockerbie* case, heard before the International Court of Justice (ICJ) in 1992, Libya challenged as ultra vires a Security Council Resolution based upon the threat to the peace rationale, ordering it to surrender two of its nationals accused of bombing Pan Am Flight 103.⁵² The ICJ held that Resolution 748, taken pursuant to Chapter VII, preempted its jurisdiction under the Montreal Convention.⁵³

Thomas Franck,⁵⁴ relying upon the dicta of several judges in separate opinions, likened the *Lockerbie* decision to *Marbury v. Madison* in that "the Court has carefully, and quietly, marked its role as the ultimate arbiter of institutional legitimacy."⁵⁵ I doubt, however, whether Franck's broad reading of the case is correct.

As Michael Reisman has correctly observed, despite the fact that "several judges in *Lockerbie* indicated, some more tentatively than others, that, under certain circumstances, a decision by the Security Council might be viewed as invalid by the Court,"⁵⁶ it is difficult to locate in the Charter substantive limitations on the Council's actions taken under Chapter VII. For example, Reisman notes particularly that the term threat to the peace has "proved to be quite elastic in the hands of the Council."⁵⁷ He furthermore maintains that the very absence of limiting standards "in a context where so much power is assigned to the Council, is telling. A judicial review function, viewed in the formal Charter regime, [therefore] seems somewhat difficult."⁵⁸ The real

51. Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.K.; Libya v. U.S.), 1992 I.C.J. 3, 14 (Orders of April 14). See Vera Gowlland-Debbas, *The Relationship Between the International Court of Justice and the Security Council in Light of the Lockerbie Case*, 86 AM. J. INT'L L. 643 (1994).

52. Montreal Convention, *supra* note 51, at 14.

53. *Id.* at 15.

54. Professor of Law and Director, Center for International Studies, New York University Law School.

55. Thomas M. Franck, *The "Powers of Application": Who is the Ultimate Guardian of UN Legality?*, 86 AM. J. INT'L L. 519, 523 (1992).

56. W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83, 92 (1993).

57. *Id.* at 93.

58. *Id.* at 94.

significance of the *Lockerbie* decision, Reisman concludes, and I agree, may be less in the case itself than in the fact that it is the judicial manifestation of “an international constitutional struggle on many fronts, as the governments of the majority of small states seek some checks and balances on unrestrained Security Council action, just as they sought to impose them without significant success in San Francisco in the spring of 1945.”⁵⁹

B. The Political Debate

The political counterpart to the legal debate concerning *Lockerbie* is reflected throughout other UN fora. At the Security Council summit meeting in January 1992, Zimbabwe’s Foreign Minister Shamuyarira, focusing upon UN humanitarian intervention, stated the issue with special cogency and caution:

In the era we are entering, the Council will be called upon to deal more and more with conflicts and humanitarian situations of a domestic nature that could pose threats to international peace and stability. However, great care has to be taken to see that these domestic conflicts are not 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 purposes of destabilizing other Governments. There is therefore, the need to strike a delicate balance between the rights of States, as enshrined in the Charter, and the rights of individuals, as enshrined in the Universal Declaration of Human Rights.

Zimbabwe supports very strongly both the Universal Declaration of Human Rights and the Charter on these issues. Zimbabwe is a firm subscriber to the principles in the United Nations Declaration on Human Rights. However, we cannot but express our apprehension about who will decide when to get the Security Council involved in an internal matter and in what manner. In other words, who will judge when a threshold is passed that calls for international action? Who will decide what

59. *Id.* at 96.

should be done, how it will be done and by whom? This clearly calls for a careful drawing up and drafting of general principles and guidelines that would guide decisions on when a domestic situation warrants international action, by the Security Council or by regional organizations.⁶⁰

The Foreign Minister's two rhetorical questions lead to the same answer—the Security Council. His final point touches upon a more difficult issue, one which has been the subject of much debate. However, one doubts the practical value of having the Security Council, much less the General Assembly, draft formal criteria to govern UN humanitarian interventions or peace-keeping exercises. Oscar Schachter, a UN veteran, has warned against

a tendency on the part of those seeking to improve the United Nations to prescribe sets of rules for future cases, usually over-generalizing from past cases. Each crisis has its own configuration. Governments will always take account of their particular interests and the unique features of the case. While they can learn from the past, it is idle and often counterproductive to expect them to follow 'codified' rules for new cases.⁶¹

It seems likely that his advice will be heeded and that criteria will be developed on a case-by-case basis.

V. CONCLUSION

Several conclusions may be drawn from Security Council practice over the past several years. First, as long as the United States, Great Britain, and France have the political will and Russia and China do not object, the Council now has the ability to intervene in crisis situations in order to make peace and save lives. Second, the Security Council, sensitized by responsible criticism and responding to the Secretary-General's June 1992 report entitled "An Agenda for Peace,"⁶² now appears able, if not always ready, to take on the role envisaged a

60. U.N. SCOR, 47th Sess., 3046th mtg. at 131, U.N.S/PV.3046 (1992).

61. Oscar Schachter, *Commentary*, 86 AM. SOC'Y INT'L L. PROC. 320 (1992).

62. *An Agenda for Peace; Preventive Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary-General*, U.N. SCOR, 47th Sess., U.N. Doc. A/47/277, reprinted in 31 I.L.M. 956, 974 (1992).

half-century ago by its founders. Charges that the Council is a nondemocratic, nonrepresentative body beg the question for a number of reasons.⁶³ First of all, the composition of the Council was agreed to by the State Parties when they ratified the Charter. Secondly, although the Council's fifteen Members represent only eight percent of the 185 Member States, their combined population is over two billion people, representing approximately thirty-eight percent of the world's population.⁶⁴ Finally, complaints that the Security Council acts in a runaway fashion simply are factually unsupported. While the Council presently has 70,000 soldiers in the field at a cost of \$3.5 billion a year—a fifteen-fold increase from the 1987 figure of 10,000 soldiers and an annual budget of \$233 million⁶⁵—most of these forces are engaged in over a dozen peacekeeping missions pursuant to the request and consent of the states involved.⁶⁶

Currently, the Security Council's credibility as a protector and enforcer of human rights is at stake. The use of limited military force in post-Gulf War Iraq and Somalia and, to a limited extent, in the former Yugoslavia has given some credibility to the Council's decisions because it has demonstrated a resolve to enforce them coercively, if need be. Prior UN actions in Somalia and, lamentably, even to this day, in most of the former Yugoslavia were not backstopped by either a credible authorization or even a serious threat to use force if Council demands were not met. Another aspect of the credibility problem concerns the Council's willingness to act consistently in the face of widespread human rights deprivations. While it has focused its attention on Iraq, the former Yugoslavia, Somalia, and, more recently, Haiti, equally severe deprivations have been occurring in Angola, Liberia, the Sudan, and other states without provoking meaningful Council action. Presumably, only more frequent and UN or UN-authorized widespread humanitarian interventions can diffuse this criticism. Whether they will be undertaken in the near future, however, remains to be seen.

63. *Id.*

64. The fifteen Members of the Security Council have a combined population of 2,094,399,768; the population of the world is said to be 5,480,000,000. *Population and Vital Statistics Report*, 45 Statistical Papers (No. 2), U.N. Doc. ST/ESA/STAT/SER.A/185 (1993).

65. Paul Lewis, *The Peacekeeper in Chief Needs More Soldiers*, N.Y. TIMES, Mar. 4, 1994, at A4.

66. U.N. Chron. No. 3, at 41 (Sept. 1993).

If effective UN humanitarian interventions are initiated, they will not be cost-free. As Michael Reisman graphically points out, they often may require

the demonstrated capacity and willingness to engage in what amounts to internationally directed war. We are not talking about 500 men from Fiji and 1500 from Canada, who have been issued blue helmets and side-arms, to police a demilitarized zone or to oversee some blue, red, or green line. We are talking of large-scale efforts against large-scale resistance. We are talking of actions that require the direct participation of the great industrial democracies.⁶⁷

He then cautions that “[t]he citizens of the great industrial democracies appear loathe to engage in costly military actions unless they are persuaded by their leaders that the expenditure of their blood and treasure is in the urgent national interest.”⁶⁸ Unfortunately, their leaders have made no such effort. In 1938, when asked about the crisis in Czechoslovakia, British Prime Minister Neville Chamberlain commented “how horrible, fantastic, incredible, it is that we should be digging trenches and trying on gas-masks here because of a quarrel in a far-away country between people of whom we know nothing!”⁶⁹ More recently, U.S. Secretary of State Warren Christopher, backing away from Bosnia, called the situation there “a humanitarian crisis a long way from home, in the middle of another continent.”⁷⁰

During the summer of 1993, Thomas Buergenthal, former President of the Inter-American Court of Human Rights and a survivor of Auschwitz, while addressing the Congressional Commission on Security and Cooperation in Europe, remarked:

I am outraged—all humanity should be outraged—by the inaction of the same governments which in

67. Reisman, *supra* note 49, at 419.

68. *Id.*

69. WINSTON CHURCHILL, *THE SECOND WORLD WAR: THE GATHERING STORM* 315 (1948) (quoting Prime Minister Neville Chamberlain addressing the English nation during a radio broadcast on Sept. 27, 1938).

70. Daniel Williams & John M. Goshko, *Administration Rushes to “Clarify” Policy Remarks by “Brand X” Official; Unnamed State Department Source Talked of Limiting U.S. Roles Overseas*, WASH. POST, May 27, 1993, at A45.

the 1930s tried to appease Hitler and which for many months now have done the same with the murderers and rapists in the former Yugoslavia. Not only have they done nothing, they have repeated over and over again that they would not use force. Have we learned nothing from the Holocaust?⁷¹

If we have learned anything, it should be that in Bosnia and many other states today, people cry out for the international community to bring an end to their sufferings caused by political oppression, persecution, famine, or other disasters. Their cries will go unheeded as long as contemporary statesmen lack the moral courage and political will to utilize the Security Council's powers to mount humanitarian interventions in situations which, to use President Clinton's words regarding Bosnia, "offend the world's conscience and our standards of behavior."⁷²

71. *Implementation of the Helsinki Accords: Hearing Before the Commission on Security and Cooperation in Europe*, 103d Cong., 1st Sess. 247 (1993).

72. Remarks to the Export-Import Bank Conference, 29 WEEKLY COMP. PRES. DOC. 765, 766 (May 10, 1993).